

HUMAN RIGHTS PROTECTION-LEGAL REFORM

In the 2010 submission to the Universal Periodic Review of Mongolia, the Human Rights NGO Forum specifically emphasized the importance of implementing the following of its recommendations: performance of a human rights analysis of government policies and programs, application of a human rights-based approach to planning and developing policies and programs, building the capacity for policy and program implementation at all levels of the government, creation and consolidation of an effective national human rights mechanism and for the seeking of technical assistance for establishing a fund to ensure the independence and

sustainability of civil society activities. Since then, Mongolia has made progress toward implementing some of these recommendations by becoming a party to several international treaties and conventions or by making preparations to this end. Reform of domestic legislation is underway but participation of citizens and civil society organizations in this process is limited and not enough is being done to inform the public about the ongoing changes. Furthermore, the need to protect human rights defenders continues to be ignored and, regretfully, harassment and threats targeting them has not stopped.

THE NEWLY EMERGING ISSUES

1. There is a pressing need for creating a legal environment to guarantee citizen participation in the process of formulating Mongolia's development goals, objectives, and strategies, as well as for safeguarding citizens' right to development. As the country's economy mainly depends on the performance of the mining industry, people's livelihoods are being directly affected by the market demand for and prices of mineral resources. This dependence has resulted in the continuing high rate of inflation and MNT depreciation, as well as in the subsequent drop in the purchasing power of the population and the accompanying deterioration of living standards.
2. The national mechanism for the protection of human rights and freedoms has not been created:
 - The recommendation of the International Coordinating Committee of National Human Rights Institutions to bring the activities of the National Human Rights Commission (hereafter the Commission) in compliance with the Paris principles has not been implemented; The Commission has not built the capacity to express an independent opinion on major human rights violation cases or to deliver human rights-based conclusions, criticisms or recommendations on development plans and policies.
 - Since the dissolution in 2012 of a secretariat in charge of implementing the National Human Rights Program, no information has been available on the implementation status of the program.
 - The lack of a legal framework and financial support to ensure the sustainability of civil society activities has resulted in the inability of some NGOs to continue their work.
 - The objective to "upgrade the status of the Parliament's Sub-Committee on Human Rights to that of an independent committee and to expand its mandate to include, among others, the delivery of human rights-based conclusions to Members of Parliament (MPs) regarding international treaties and conventions to be ratified by the Parliament as well as the implementation monitoring of enacted treaties and conventions" included in the National Human Rights Program still remains an empty declaration.

3. Strengthening citizen participation in law enforcement activities is an important part of the changes undertaken within the framework of the legal reform. The newly adopted Laws on Police, Combating Human Trafficking and Crime Prevention contain provisions on citizen participation, but mechanisms for implementing some of these provisions are vague.
4. It is necessary to create a legal framework for strengthening human rights and freedoms protection mechanism. The funds allocated by the state for human rights related activities are insufficient and the implementation of current laws and regulations on human rights protection is inadequate.

THE RECOMMENDATIONS SUGGESTED BY THE MONGOLIAN HUMAN RIGHTS NGO FORUM:

1. Create a legal environment for strengthening the human rights and freedoms enshrined in the Constitution and protected under international treaties and conventions:
 - Produce official translations of newly ratified treaties and conventions, ensure their widespread dissemination among the public and create conditions and build the capacity for using these documents in court.
 - Adopt the laws necessary for the exercising of human rights, including the Law on Non-Governmental Organizations, Law on the Protection of Human Rights Defenders, the Law on Citizen Participation Right, the Law on Combating Gender-Based Violence, and the Law on the Editorial Independence of Media Outlets; amend relevant laws to include provisions on improving the accountability of MPs and ensuring civil society participation in public interest litigation and the monitoring of implementation of laws.
2. Strengthen the national human rights protection mechanism:
 - Boost the activities of the Parliament's Sub-Committee on Human Rights to implement the international treaties, conventions and constitutional provisions on the protection of human rights and freedoms; strengthen the capacity of the Sub-Committee to deliver human rights-based conclusions on laws, decisions and policy documents enacted by the Parliament.
 - Build the capacity of the National Human Rights Commission to operate freely and independently, and revise the Law on the National Human Rights Commission to ensure its conformity with the Paris principles for the purpose of expanding the Commission's mandate for human rights protection.
3. Attach special attention to the realization of the right to development by building and strengthening the capacity for applying a human rights-based approach to drafting, implementing, monitoring and evaluating development policies and programs; organizing trainings for civil servants to improve their understanding of their duty to respect and protect human rights; fostering an attitude of right-holders among citizens and building their capacity to claim their rights.
4. Seek technical and financial assistance from international organizations to build capacity for formulating human rights-based development policies and program planning, as well as forming conclusions on policies, programs, content of laws and their implementation from a human rights-based perspective.

IMPLEMENTATION OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMANE OR DEGRADING TREATMENT OR PUNISHMENT

The Government of Mongolia has accepted and made commitments to implement the recommendations made by the UN Human Rights Council under the Universal Periodic Review concerning the implementation of the Convention against Torture and Other Cruel, or Degrading Treatment or Punishment (14), ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights on abolishing the capital punishment (17) and becoming a party to the International Convention for the Protection of All

Persons from Enforced Disappearance (2). In 2012, Parliament ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on abolishing capital punishment. On the 8th of July 2014, the Government submitted to Parliament a draft law on the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance. The ratification of the draft law is pending.

CHALLENGES

By dissolving an independent unit responsible for investigating torture crimes, the Government of Mongolia has reneged on the commitments it made to the international community.

The imposition of limitations on visitation rights of any detainee and on his/her right to see a lawyer without hindrance constitutes a serious violation of human rights.

There is a continuing practice of placing detainees in detention facilities affiliated with territorial administrative units far from their homes (45-230 km far) and exposing them to psychological pressure by transferring them from one detention center to another. This practice can be viewed as a form of torture.

CASES, FACTS, COMMENTS

A Special Investigation Unit under the State General Prosecutor was dissolved by Parliament Resolution No. 22 in January 2014.

On the night of July 29, 2014, "T" and three other suspects were put in detention in the Tuv aimag Detention Center. The head of the Anti-Corruption Agency, Commissioner U.E. sent a letter (No.06/6444 dated July 31, 2014) to the Detention Center authorities telling them "not to allow 'T' and 3 other suspects to see their lawyers as contracts with the lawyers had not been received."

The suspects in the crime against the state were transferred from a detention facility in Ulaanbaatar and imprisoned in detention facilities located in Darkhan-Uul (230 km) and Tuv (45 km) aimags as well as Zuunkharaa soum of Selenge aimag (220 km).

There are no training courses or budget allocations for educating law enforcement officers and other civil servants on the prevention of torture.

The curriculum of a re-training course for lawyers does not include the topic of torture prevention. The Ministries of Health, Education, and Defense likewise do not have training courses on this subject.

Provisions prohibiting corporal punishment were included in the drafts of the Law on Crime and Criminal Procedure Code which were developed within the framework of the criminal justice reform. As of today, however, the legal framework banning corporal punishment is not in place.

Five cases of teachers beating children between the ages of 18 months and 9 years old for incomplete homework and disobedience were registered in 2013-2014, but none of the teachers were held responsible for his/her actions.

Mongolia has failed to fulfil its obligation under Article 3.1 of the Convention against Torture, which prescribes that: "No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."

Chinese citizens N. Tulguur, who held a UN Refugee Certificate and had the right to reside in Mongolia until 16 June 2014, and D. Dalaibaatar, who held a student visa and was waiting for his asylum application with the UNHCR to be reviewed, were secretly deported to China on May 13, 2014. Both of them were Chinese citizens of Mongolian ethnicity.

Mongolia has not taken steps to fulfill its obligation to remove capital punishment from its domestic legislation.

Despite removal of the death penalty provisions from the draft Law on Crime developed within the framework of the criminal justice reform, the current Criminal Code still contains death penalty provisions.

THE RECOMMENDATIONS SUGGESTED BY THE MONGOLIAN HUMAN RIGHTS NGO FORUM:

1. Reinstate the independent unit for the investigation of torture crimes.
2. Urgently create a national mechanism for the prevention of torture.
3. Adopt an effective training curriculum on torture prevention targeting law enforcement organizations and other relevant government institutions, and allocate sufficient funds for its implementation.
4. Take urgent steps to create a legal environment for prohibiting and penalizing corporal punishment.
5. Implement Article 3.1 of the Convention against Torture.
6. Make the declaration provided for in Article 22 of the Convention against Torture.
7. Remove the capital punishment clause from the current Criminal Code.

FREEDOM OF OPINION AND EXPRESSION

Although Mongolia became a signatory to the International Covenant on Civil and Political Rights (ICCPR) in 1974 and enshrined freedoms of opinion and expression in the Constitution and other legal acts, the freedom of expression and right to independent and free media continue to be violated. Following the 2010 NGO submission to the UN Human Rights Council, the situation regarding citizens' right to freedom of opinion and expression has warranted concern due to certain developments in the political, legal and regulatory arenas. In particular, the Government's action toward limiting digital

freedoms and the increased tendency on the part of politicians and public officials to use defamation-related Articles 110 and 111 of the Criminal Code against media and journalists have served as a reason for compiling this submission. Mongolia has neither a stand-alone law protecting whistleblowers or journalists' confidential sources nor a general broadcast law. The Government-initiated draft Law on Crime which was submitted to Parliament decriminalizes defamation, but as of this writing, the proposed legislation has not been discussed or adopted.

CHALLENGES

Content regulation is authorized by law and control over the law's implementation is wielded by government organizations, which use it as a means of censorship.

Although restrictions on the freedom to hold and express an opinion can only be imposed by law, the existing restrictions are set by regulations and procedures issued by a regulatory agency, and are not registered in the national unified registry of decisions establishing administrative norms. The use of restrictions imposed by invalid regulations and procedures constitutes censorship.

There have been overt violations of digital freedoms and of the right to anonymity. Particularly, a requirement for news and information websites to register and use a filtering program constituting a violation of Article 19 of the ICCPR.

CASES, FACTS, COMMENTS

"The General Condition and Requirement on the Digital Content" issued by the Communications Regulatory Committee (CRC) obliges websites serving more than 3,000 visitors a day over one month to register with the CRC and "...use without fail a filtering program."

The filtering program, which can be found at <http://www.happywebs.mn> contains a total of 108 banned words, including 86 words in Cyrillic and 22 words in Latin. For example, if a user writes "sex" or "terrorist" in his/her comment, the program will replace these words with asterisks (***)

On the 5th of January 2013, the Government passed Resolution No.1 entitled "A Unified System for Website Comments," which served as the basis for the CRC adoption of "The Procedure on the Regulation of the Comments on Websites." This procedure obliges private internet providers and mobile phone operators to assist government bodies in identifying persons suspected to be in violation of law as well as to collect information about them.

"A Unified System for Website Comments" was developed with the assistance of the General Intelligence Authority and obliges the Justice Minister to identify users who post comments deemed as libelous, insulting, seductive, obscene, or threatening and to ensure that "the offenders" are punished in line with the relevant legislation. The IP addresses of users are made publicly visible on top of their comments.

The CRC controls the content of news and information websites, content aggregators and content suppliers. The Committee also monitors copyright infringements. The CRC has the right to terminate the activities of a provider based on the statements and letters by the relevant government organizations, including the General Police Department, Intellectual Property Office and Authority for Fair Competition and Consumer Protection. The CRC uses this right to impose censorship.

On the 3rd of July 2014, the website amjilt.com featured a photo report entitled, "The Prime Minister's Khan Jimst resort is polluting the Tuul River." The following day, a female officer from the CRC called the website, citing a grievance filed by the Khan Jimst and threatened to blacklist the website within an hour if they did not remove the report and post a retraction. Three hours later, access to the website from Mongolia was blocked. The website is still not operational.

Since 2012, a total of 172 websites have been blocked in Mongolia on the grounds of copyright infringements. The CRC placed the list of blocked websites at www.black-list.mn

The lack of independence by the CRC serves to further reinforce censorship. Procedures and regulations adopted by the CRC do not meet the criteria for imposing restrictions stated in Article 19 of the ICCPR, such as "provided by law", "necessary", and "proportionate". The CRC decisions also violate provisions of the Government Resolution No. 119 from 2010, which approves the "Regulation on Issuing Decisions Establishing Administrative Norms", that say decisions "shall be within the legally defined mandate", issuing authority "shall not impose new duties which are not prescribed by the law, and shall not introduce restrictive regulations on issues not prohibited by the law", "no penalties shall be imposed on citizens, companies or organizations breaching the decision" and "shall conduct impact assessment".

The CRC is affiliated with the Information Technology, Post and Telecommunication Authority, a government agency. The chairperson of the Committee and its members are appointed and dismissed by the Prime Minister and the Committee reports to the Government. All seven members of the CRC are representatives of government organizations.

The procedures and regulations issued by the CRC are not registered in the national unified registry of decisions establishing administrative norms. Therefore, the CRCs termination of licenses and blocking of websites is invalid.

Elected and high-ranking officials use defamation-related provisions of the Criminal Code as a method of censorship against journalists.

The penalties specified in the Criminal Code for breaching defamation-related provisions include heavy fines, detention for up to 6 months and imprisonment for 2-5 years. The defamation-related provisions are also included in the laws regulating elections at all levels. Public officials are using the Criminal Code to detect and threaten whistleblowers and journalists' confidential sources.

From 2005-2012 - an 8 year span - there were 27 criminal defamation cases settled by the court. However, in only the past two years alone (2013-2014) this number has increased to 13 cases.

In the defamation case filed by Prime Minister N. Altankhuyag against "The Terguun" newspaper, the Chingeltei District Court ordered the editor-in-chief and journalist to pay MNT 20 million in fines or face up to 3-years in prison. The Court of Appeals upheld this decision, while the Supreme Court reduced the size of the fine for the editor-in-chief to MNT 7 million and upheld the MNT 7,160,400 fine for the journalist.

On the 18th of August 2014, the Court of First Instance found a blogger, Ts. Bat, guilty of violating Article 111.2 of the Criminal Code and sentenced him to 3 months and 10 days imprisonment. On the 9th of September 2014, the Court of Appeals ordered a further investigation of the case and released Ts. Bat on bail.

THE RECOMMENDATIONS SUGGESTED BY THE MONGOLIAN HUMAN RIGHTS NGO FORUM:

1. Revoke Government Resolution No. 1 and abolish the system of state control of opinions and expressions.
2. Repeal procedures and regulations issued by the CRC.
3. Guarantee full independence of the CRC, promote public participation, oversight and transparency of its activities, as well as revising the existing system of reporting, appointing and dismissing the committee members.
4. Avoid imposing restrictions on the freedom of opinion and expression in digital platforms and terminate the practice of requiring compulsory registration, use of filtering programs and license-issuing.
5. Bring the existing restrictions on content into conformity with the ICCPR and amend the relevant laws.
6. In addition to supporting the initiative to remove the defamation-related provisions from the Criminal Code, the Government should demonstrate its commitment to this cause as well as show political will and take leadership in respecting the freedom of opinion and expression.
7. Apply international human rights norms in resolving defamation cases, and improve the knowledge and understanding of lawyers, judges, attorneys and prosecutors concerning Article 19 of the ICCPR, comments by the UN Human Rights Council and other international norms.
8. Protect the privacy of citizens and guarantee the right to anonymity.
9. Provide legal protections for whistleblowers and journalists' confidential sources.

IMPLEMENTATION OF THE RIGHT TO BE FREE FROM DISCRIMINATION

Mongolia adopted the Gender Equality Law and the Law on Witness and Victim Protection, thus legally prohibiting both direct and indirect discrimination based on gender. The civil society organizations approve of the submission to Parliament of a revised version of the Law to Combat Domestic Violence and inclusion of provisions defining discrimination as a crime in the draft Law on Crime. Furthermore, we applaud the inclusion in the

Government Action Plan of the measures to explore a mechanism to eliminate discrimination and initiate corresponding legislation. While only 3 women were elected to Parliament in 2008, this number increased to 11 in the wake of the 2012 parliamentary elections, which constitutes tangible progress toward increasing women's participation in high-level decision-making. Despite these positive developments, however, discrimination still remains widespread.

Common grounds for discrimination experienced by citizens include the following:

- Age
- Sex
- Sexual orientation
- Disability
- Belief
- Appearance
- Social origin

CHALLENGES

Mongolia does not have a stand-alone anti-discrimination law and work to develop the new legislation has not yet commenced. Although the Gender Equality Law prohibits discrimination based on gender, efforts to publicize the legislation are insufficient. In practice, discrimination based on age, sex and appearance is widespread.

The real damage caused by discrimination is not considered, an effective complaint handling mechanism is lacking, and the existing mechanism is weak. Implementing the recommendations issued by the UN human rights mechanism is impossible due to the lack of unified policy planning as well as budget shortages.

CASES, FACTS, COMMENTS

One in every two newly advertised vacancies on the job market specifies an age preference, while one in three vacancies discriminates on the basis of gender.

A female employee of the Millennium Challenge Account of Mongolia lodged a complaint to the National Human Rights Commission (NHRC) in 2013 about workplace sexual harassment by a project manager named "B". The investigation uncovered evidence that "B" sexually harassed the woman on three occasions. The NHRC issued an official demand regarding the incident, which resulted in a punishment of only 10 percent salary reduction for the duration of three months, imposed by Decision No.13/81 from 12 April 2013.

There has been no significant increase in the women's participation at the executive branch and local decision-making levels.

The discrimination and mistreatment of women and girls in society persists. Although rising birthrates as a result of the government policy to encourage women to have more children is a positive development, due to the shortage of kindergartens, young women have to stay at home and therefore, are deprived of the possibility of work. The prevailing practice of registering movable and immovable property in a man's name prevents women from obtaining loans on collateral and participating in economic life.

The economic participation of women who are of working or reproductive age decreased from 59.4% in 2013 to 57.3% in 2014.

Citizen "D" living in Zuunkharaa soum of Selenge province: "... I am divorced with two children, and suffer from back pain. Because I am over 40 years old, I can't find employment. With the assistance from the World Vision international organization, I keep chicken and pigs to earn my bread. As winter is approaching, I need to build a chicken coop, but because I don't have collateral, the bank won't give me a loan. The only property I have, which can be used as collateral is my land, but because it is registered in my ex-husband's name, I can't use it..."

There is a widespread negative perception in society that only women engage in prostitution. Prostitution is banned by law in Mongolia, and administrative liability is only imposed on those who sell sexual services.

Article 4.1 of the Mongolian Law against Pornography and Prostitution states that "prostitution is prohibited", and Article 13.2.1 reads that "the violation of Article 4.1 shall entail a confiscation of income earned through prostitution as well as detention for a period of 14-30 days".

THE RECOMMENDATIONS SUGGESTED BY THE MONGOLIAN HUMAN RIGHTS NGO FORUM:

1. Establish a long-term development policy and planning to ensure the sustainability of state policy.
2. Urgently adopt the Family Law, Law to Combat Domestic Violence, Labor Law, and Law on Crime submitted to the Parliament without compromising the provisions in the proposed legislations that are intended to improve the human rights situation.
3. Adopt a stand-alone Law on the Elimination of All Forms of Discrimination in the near future, establish an accessible mechanism for lodging discrimination-related complaints and reclaiming one's rights, and ensure citizen participation in developing the draft of the above-mentioned legislation.
4. Allocate sufficient funds for the measures aimed at combating and preventing all forms of discrimination.
5. Implement an effective and consistent advocacy aimed at the general public as part of the effort to eliminate discrimination and prejudiced attitudes toward women and girls.
6. Terminate the practice of hiring and dismissing employees based on their beliefs, include relevant provisions to this end in the Law on Civil Service, and monitor implementation, and impose liabilities for non-compliance.

MINING, ENVIRONMENT AND HUMAN RIGHTS

Mongolia, which has earned the name “Saudi Arabia of Asia” has been working on its promise to become the star of the extractives market, a destination for foreign investors seeking profits and a country with the fastest-growing GDP. However, this process has triggered adverse effects as the country is located in an arid, high altitude region with a fragile ecosystem, where the climate is changing at a pace three times faster than the global average. Thus, the desertification is advancing at a rate of 4 km per year, 70% of the land is degraded, and 16.6% of all rivers, 24.4% of springs and 31.5% of lakes and ponds have dried up. While water is contaminated by mining activities and its reserves are fast depleting, the government is designing river diversion projects. The pretext of creating a favorable legal environment for promoting a rapid development of the mining sector was used to weaken the coordination among investment, minerals and environmental laws. The inadequate legal regulation coupled with a lack of implementation monitoring has

resulted in environmental, air and water pollution, all of which leads to violation of basic human rights. The expansion of the areas occupied by mining and mining infrastructure has inflicted a change in traditional land use patterns by stamping out lands previously used for animal husbandry, crop production and tourism, and prompting increased migration to the city. Mongolia has failed to fulfill its obligations under the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, and other human rights conventions such as the Kyoto Protocol, the UN Framework Convention on Climate Change, the Ramsar Convention, Convention concerning the Protection of the World Cultural and Natural Heritage, and the Convention on Biological Diversity. The Government has retreated on its promise to implement MDG # 7: “to increase the proportion of special protected areas up to 30 percent by 2015” and launched a policy to expand the mining sector, disregarding the land use classification system.

The commonly violated rights:

- To safe and healthy environment, and to be protected from the loss of ecological balance
- Access to traditional natural resources, access to water
- To preserve, protect and pass on to future generations one’s cultural heritage,
- To own and possess land, to engage in life sustaining economic activity
- Access to redress and adequate compensation for damages incurred
- A lack of enabling legal environment free from harassment and use of force for human rights defenders’ work

CHALLENGES

Parliament has impaired the legal framework for environmental protection, by passing laws governing the mining sector which contradict each other, which weakened the implementation and monitoring of natural resource use standards, which do not address the issues of accountability and dispute resolution. In violation of the Environmental Impact Assessment Law, the new law on Conventional Minerals, the amended Minerals’ Law further support already rampant practice of avoiding Environmental Impact Assessment (EIA) or doing it after obtaining a mining license. and Government has not created Legal environment for holding mining companies responsible for the protection of the rights of local communities to access traditional natural resources and clean drinking water.

CASES, FACTS, COMMENTS

The Government refused to abide by the Supreme Court’s decision ordering implementation of the Law to Prohibit Mineral Exploration and Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas (also known as the “Law with the Long Name”). Instead, the authorities submitted to Parliament a draft amendment, which changed the procedures of implementing this law. On September 16, 2013, Parliament discussed legally controversial decisions to amend the Law with the Long Name, to renew extraction licenses and permit extraction by granting strategic deposit status; and to reopen the mines that were shut down by court ruling. These decisions contradict MDG # 7, Target 15: “Prevent depletion of rivers and streams by protecting and rehabilitating their sources.”

The Government did not accept the recommendation by the UN Human Rights Council to mandate the Constitutional Court to act upon violations of the individual rights and freedoms guaranteed under the Constitution. As the Land Eviction Law draft was under discussion, the City Council Presidium issued a decree which seriously violated citizens' rights to land ownership, possession, life-sustaining economic activity, appropriate compensation for inflicted damages and redress for breached rights.

An online land allocation program allegedly intended to improve land privatization for citizens drew public criticism for two reasons: 1) the majority of the population lacks access to computers and high-speed internet and skills necessary for filing the online application; 2) the allocated lots of land are located in remote rocky areas away from infrastructure and public services, not suitable for construction of housing or other livelihood uses.

There is no mechanism to guarantee and restore the rights of herders to traditional pastures, hayfields, winter and spring camps they may own according to customary law. The herders affected by relocation, economic displacement or simply driven out of their lands are left with no infrastructure to herd their livestock, no patrimony to bequeath and, having lost all sources of income, turn into internally displaced persons.

Government Resolution No. 111 prescribing to complete the preparations for building the Ukhaa Khudag-Tsagaan Khad railroad within 2 months triggered a rush for the extraction of conventional minerals e.g. construction materials. Pastures and winter camps are being destroyed by the railroad construction infrastructure, and temporary roads. Companies engage in mining without doing environmental and social impact assessments, which has resulted in the absence of EPPs, resettlement, compensation and livelihood restoration programs.

No measures have been taken to disseminate to relevant parties and implement recommendations suggested by the UN Human Rights Council and Working Group on Business and Human Rights in its report entitled, "Mining and Human Rights in Mongolia."

The government's plan to use waters of Selenge, Orkhon by collecting in dams, diverting down to support mining activities in the south has triggered an expression of concern from the World Heritage Committee due to potential negative transboundary impact on its protected sites. Eugene Simonov, the Whitley Fund For Environment Award winner and Coordinator of "Rivers without Boundaries Coalition" was "deported" as he crossed the border on 12 August 2014 departing for China. It is believed that this action was entailed by Simonov's attempt to access a pre-feasibility report produced by the World Bank-funded "Mining Infrastructure Support Project" on transfers of river water to serve mining companies in the south. The fact that he was not informed about the deportation stamp at the Zamyn-Uud border-crossing is a stark example of arbitrary deportation practices and harassment of human rights activists by the government.

The Government continues to ignore the recommendation to create legal framework and mechanisms essential to protecting human rights defenders and persons engaged in environmental protection. Instead, attempts to harass and punish them are on the increase.

Ts. Munkhbayar, the Goldman Environmental Prize winner who led the fight to protect the environment from adverse effects of mining was sentenced to 7 years in prison. Throughout the lawsuit he was denied enjoyment of the rights pertaining to pre-trial and trial processes. The Government influenced judicial independence by waging a widespread public smear campaign and high-level statements intended to damage civil society activists' reputation.

THE RECOMMENDATIONS SUGGESTED BY THE MONGOLIAN HUMAN RIGHTS NGO FORUM:

1. Fulfill all obligations undertaken under all UN environmental conventions, including the commitment stated under MDG # 7, Target 14b.
2. Eliminate gaps in laws regulating environmental protection and mining sectors.
3. Adopt legislation to equally protect the constitutionally guaranteed rights for urban and rural residents to own and possess land, to own property, to earn a livelihood and to access pastures.
4. Reform the Constitutional Court to mandate it to accept and resolve individual complaints involving violation of Constitutional human rights and acts to restore them.
5. Develop and implement a national program to enact the UN Guiding Principles on Business and Human Rights.
6. Implement the recommendations issued by the World Heritage Committee to the Government of Mongolia on the protection of drinking water basins and water supplies (WHC-14/38, COM/16, page 130, 7B 76).
7. In implementing the afore-mentioned recommendations, seek technical assistance from the international community to apply the International Union for Conservation of Nature World Heritage Advice Note on Environmental Assessment.
8. Invite the UN Special Rapporteur on Internally Displaced Persons to a) seek legal solutions for the protection of the right of pasture-dependent, nomadic populations to use traditional natural resources; b) develop and implement a program to enable the preservation of the nomadic lifestyle and culture, as well as restoration of the livelihoods of herders.
9. Protect human rights defenders and create a legal environment to support their activities.
10. Create conditions enabling citizens of remote rural settlements to access both judicial and non-judicial mechanisms of redress and legal assistance.
11. Invite the Special Rapporteur on Human Rights Defenders for assessing and suggesting recommendations on the situation of human rights defenders in Mongolia.

THE RIGHT TO COURT SETTLEMENT OF ENVIRONMENTAL CASES

Mongolia is rich in mineral resources, and the state policy of economic growth relies on developing the country's mineral wealth. The fast development of the mining sector witnessed in recent years was accompanied by improper mining activities leading to numerous violations of human rights. Starting in 2005, the Centre for Human Rights and Development (CHRD) has engaged in public interest litigation by filing lawsuits on behalf

of rural residents and public administration entities to address the violation of the rights of rural residents caused by mining-induced environmental pollution and degradation. In this period we have worked on 22 cases in total, including 11 cases since 2010. The following information was prepared based on our experience of pursuing these cases, including the difficulties encountered in this process.

CHALLENGES

The opportunities for rural residents, especially herders, to access legal assistance, including the protection of their rights on environment-related issues in court, is limited.

There is no legal environment for public interest litigation. Only NGOs which have included environmental work in their charters have the right to engage in public interest litigation. This opportunity is foreclosed for NGOs which have specialized in human rights and public interest litigation.

NGOs cannot afford to pay high judicial stamp duties associated with environmental litigation.

Environmental litigation inevitably requires the participation of experts, but NGOs cannot afford to pay their fees. The courts are authorized to pay the cost of experts, but due to their reluctance in this matter, the consideration of cases is delayed in awaiting an expert's conclusion.

CASES, FACTS, COMMENTS

Although there are over 300 soums in Mongolia, there are only 29 soum and inter-soum courts, and 21 of them are located in aimag centers. All 20 administrative courts are situated in aimag centers. The absence of attorneys in soums precludes access to legal assistance.

The lawsuit filed by the CHRD for the termination of illegal licenses to mine the Burenkhaan phosphorus deposit in Khuvsgul aimag was rejected by the court on the grounds that "environmental protection" is not mentioned in the organization's charter.

The CHRD found itself in such situations when working on cases in Bayandun soum of Dornod aimag, Tsenkher soum of Arkhangai aimag and Zaamar soum of Tuv aimag.

The Capital City Administrative Court initiated the appointment of an expert in the case seeking to terminate illegally issued radioactive minerals exploration licenses in Sukhbaatar aimag. However, the appointed expert refused to work on the case because the Court had not paid the fees for the previous services. Since then three quarters have passed with the Court unable to take any measures except to wait for the expert.

The environmental public interest litigation incurs the following financial burdens on NGOs:

- Evidence collection expenses
- Cost of implementing court rulings

The lack of funds precludes the CHRDR from filing a request for forcible implementation of a court ruling requiring the mining company in Galuut soum of Bayankhongor aimag to perform environmental reclamation. The court ruling, to this day, has not been implemented.

No effective regulation or policy exists to support attorneys engaged in public interest litigation. The attorney fees have to be paid by the NGO filing the lawsuit.

Article 39 of the Law on the Legal Status of Lawyers states that: "attorneys shall be prohibited from engaging in dual practices other than being affiliated to legal entities engaged in teaching, academic work, advocacy and to the Bar Association." This regulation has made it impossible for attorneys to work in NGOs.

The courts are slow in dealing with environmental disputes. The cases are often protracted for long periods of time due to delays in obtaining an expert's conclusion, identifying defendants and implementing court rulings. The cases are also intentionally delayed on the excuse of examining case materials.

The newly adopted law prescribes the appointment of professional organizations engaged in conducting environmental impact assessments as experts in a lawsuit. However, since the fees asked by these organizations are extremely high, the need arises to involve competent civil servants as experts to work free of charge. This arrangement is time-consuming because of the need to wait for the civil servant to find time to work on the case and for approval of the associated travel expenses.

The court and judges fail to act independently in environmental cases. Not a single decision of the court in 22 cases dealt with by the CHRDR since 2005 ordered the imposition of penalties on civil servants or government institutions. All these cases, however, involve the failure of civil servants and government organizations to implement the law.

Although in 2013 the Supreme Court ruled to terminate licenses to mine the Burenkhaan phosphorus deposit in Khuvsgul aimag, the following year the Court reconvened and transferred the case back to the court of first instance, invoking "new circumstances and evidence."

There are no laboratories or experts independent from the state to deliver testimonies in environmental cases.

No expert could be found to deliver a conclusion in the lawsuit claiming public health damages incurred from air pollution.

THE RECOMMENDATIONS SUGGESTED BY THE MONGOLIAN HUMAN RIGHTS NGO FORUM:

1. Ensure availability of legal services in rural areas and improve access to courts.
2. Urgently create a legal framework enabling NGOs to engage in public interest litigation.
3. Provide comprehensive support for public interest litigation both at financial and policy levels through implementing the following measures: exempt public interest litigants from paying judicial stamp duties, ensure that courts pay experts' fees without delay, set up an environmental experts' team at the National Forensic Examination Center, require the state to pay for the attorney and evidence collection expenses in public interest litigation cases, encourage and reward the attorneys who provide free-of-charge legal assistance and introduce pro bono activities to Mongolian attorneys. Also, amend Article 39 of the Law on Legal Status of Lawyers to enable attorneys to work for NGOs.
4. Take steps to establish a specialised environmental court, promptly implement court decisions on securing experts' conclusions and identifying defendants and establish an independent experts' team to work on environmental cases.
5. Support the reforms aimed at ensuring that the appointment of judges and the delivery of court rulings is free from influence by political forces and high-ranking public officials. Also, ensure that courts impose due penalties on civil servants and government agencies for legal violations, and improve the implementation of the Code of Ethics for Judges.
6. Provide for the independence of experts and scientific laboratories.
7. Improve the implementation of court rulings, and reform the existing fee system for implementing court decisions by exempting environmental public interest litigation from expenses associated with implementing court decisions.

SMALL-SCALE MINING AND HUMAN RIGHTS

Small-scale mining emerged in Mongolia in the 1990s when widespread poverty pushed thousands of people to seek alternative forms of livelihood and income generation. The majority of small-scale miners are herders who lost their livestock to harsh winters. During the last decade, the first steps were taken to regulate artisanal and small-scale mining, including the Government's adoption of Resolution No. 308 entitled "Regulation on Extraction of Minerals from Small-Scale Mines", which became the first legal document to formalize small-scale

mining. In 2014 alone, small-scale miners sold USD 40 million worth of gold to the Central Bank, which accounts for 16% of all gold sold to the Bank in that year and is indicative of the contribution of small-scale miners to the national economy. However, only 3,000 out of tens of thousands of small-scale miners are formally engaged in mining and have been allocated land to carry out their activities. For the majority of them, their rights to have legal access to land for small-scale mining and formalization of their activities are still not guaranteed.

THE MOST COMMONLY VIOLATED RIGHTS OF SMALL-SCALE MINERS:

- To live in a healthy and safe environment;
- To have access to clean water;
- To possess land;
- To access healthcare and social security services;
- To have an adequate standard of living;
- To be free from torture, cruel, inhumane and degrading treatment;
- To be equal before the law.

CHALLENGES

Although the Minerals' Law was amended to include provisions on the allocation of land for small-scale mining purposes, small-scale and artisanal miners still face difficulties in securing access to land. The denial of a land license to formally engage in mining has led to illegal extraction of minerals. And informal, unsecure employment entails work in dangerous conditions that fail to meet the required safety standards.

CASES, FACTS, COMMENTS

In the last 2 years, no land was allocated to small-scale and artisanal miners.

The police confiscate the tools and equipment used by small-scale miners on the grounds that they engage in illegal activities. There is vast evidence showing that artisanal miners are beaten by both the police and security guards of mining companies, and they suffer damages to health and property. Despite these abuses, the miners remain silent as they are engaged in illegal activities.

Two small-scale miners died in 2011 when force was used against them after trespassing into a licensed gold-mining site in Zaamar soum.

An inspection on the use of harmful chemicals and dangerous substances carried out by the State Professional Inspection Agency in 2007 established that 203,508.08 sq. meters of land on 53.3 hectares in a total of 120 areas were contaminated by harmful chemicals. This finding entailed a confiscation of 147 roller mills used by small-scale miners and prohibition of the use of mercury starting from 2008. In the wake of this ban, 2009 saw the introduction of a mercury-free ore processing technology and the opening of 4 mercury-free processing plants. However, these plants are still not operational as the relevant ministry has not yet approved the detailed environmental impact assessment report for the plants.

Artisanal and small-scale miners started to use mercury secretly at their homes by mixing it with the ores extracted from the ground to form an amalgam, which is then heated to evaporate mercury.

As of today, artisanal miners in 9 soums continue to use mercury to recover gold from its ores.

The healthcare workers in remote rural areas do not have the capacity to prevent, diagnose or treat mercury poisoning.

Child labor is prohibited under the “Regulation on Extraction of Minerals from Small-Scale Mines” as it involves work that is dangerous for children, including working underground, working with dangerous machinery and tools, transportation of heavy loads, and exposure to hazardous substances.

However, many children today are engaged in small-scale and artisanal mining to help their parents.

THE RECOMMENDATIONS SUGGESTED BY THE MONGOLIAN HUMAN RIGHTS NGO FORUM:

1. Recognize the existence of significant numbers of small-scale and artisanal miners in Mongolia; ratify the Minamata Convention and develop an action plan for its implementation.
2. Modify Article 11.1.23 of the Minerals’ Law as follows to formalize the activities of small-scale miners and guarantee their right to engage in mining: “establish whether the selected land [for small-scale mining purposes] overlaps either entirely or partially with the licensed land or land where prospecting, exploration and exploitation of minerals is restricted or prohibited.”
3. Amend the Minerals Law to include provisions that would provide for: a) the holders of exploitation licenses to allocate parts of their licensed land for use by small-scale miners free of charge; b) grant powers to local governments to authorize small-scale miners to conduct mining activities on mined-out or abandoned deposits.
4. Amend the Minerals Law to specify the roles and responsibilities of the central and local governments with respect to small-scale mining issues.
5. Amend Article 5.1 of the Law on Taxation of Personal Income Derived from Private Business and Service to reduce the current monthly income tax of MNT 53,000 imposed on small-scale miners to match taxes paid by others.
6. Establish a National Inter-Sectoral Coordination Committee to facilitate the fulfillment of obligations undertaken by relevant ministries and agencies with respect to small-scale mining.
7. Implement decisive measures to resolve the issue of mercury use in small-scale mining through introducing and approving a mercury-free technology.
8. Develop a health strategy to prevent and address mercury exposure in the small-scale mining sector and allocate sufficient funds for its implementation.
9. Adopt and implement an action plan to address the issue of child labor in small-scale mining sector.
10. Enable selling gold obtained through small-scale mining at the local level and develop and adopt a regulation to govern the sale of gold produced through small-scale mining.

DISCRIMINATION AND STIGMA AGAINST PEOPLE LIVING WITH HIV/AIDS



The Laws on Healthcare and HIV/AIDS Prevention enacted in 2011 and 2012 respectively, have stated a policy of non-discrimination in delivering healthcare service provisions to the population, and the newly-developed drafts of the Law on Crime and Labor Law contain progressive provisions prohibiting discrimination. Nevertheless, the implementation of the laws remains inadequate, and the National Committee

on AIDS in charge of this issue has, to this day, not been established. The shortcomings associated with inadequate knowledge, careless attitudes, insufficient information and frequent staff turnover among civil servants responsible for developing and implementing the policy guaranteeing and protecting the rights of people living with HIV/AIDS remain widespread.

The most commonly violated rights of people living with HIV/AIDS:

- To remain free from discrimination;
- To have one's health protected and receive healthcare service provisions;
- To have personal information kept private;
- To work;
- To receive a fair trial.

CHALLENGES

Mongolia does not have a stand-alone anti-discrimination law. Direct and indirect discrimination of people living with HIV/AIDS is commonplace. The grounds stated in Article 14.2 of the Constitution of Mongolia on which discrimination is prohibited do not mention health-based discrimination, which underscores the absence of a legal framework for people living with HIV/AIDS to remain safe from discrimination. The lack of the legal environment has led to a continuing practice of adopting rules and regulations discriminating against people living with HIV/AIDS. The practice of demanding mandatory testing for HIV/AIDS is extensive. For example, there are procedures requiring HIV/AIDS testing for persons applying for a job, wanting to use public swimming pools, and undergoing a surgery.

CASES, FACTS, COMMENTS

Article 11.5 of the HIV/AIDS Prevention Law which states that "the degree of working ability loss for a person with HIV/AIDS shall be determined under Article 30 of the Law on Occupational Safety and Hygiene and Article 5.1.5 of the current law" is a form of employment discrimination.

The spread of HIV/AIDS is considered a crime and is punishable by law. Provisions to this end are contained in Article 105.3 of the current Criminal Code and Article 15.6 of the draft Law on Crime.

Citizen "D" has resigned upon learning about the upcoming workplace HIV/AIDS testing. The resignation was prompted by fear of being discriminated against by co-workers who might find out about his/her condition.

There are widespread violations of the right of people living with HIV/AIDS to have their health protected and receive healthcare service provision.

An HIV-positive man "B" earns his living by running a small carpenter's shop. After having his finger cut off by a machine, he sought medical assistance at the Trauma Hospital, but had to wait for more than 2 hours as there was no HIV/AIDS specialist. "B" received treatment and had stitched put in his hand only after HIV/AIDS doctors from the National Center for Communicable Diseases (NCCD) arrived.

According to the decision of the Health Minister, pregnant women living with HIV/AIDS must give birth at the NCCD and, in rural areas, under the supervision of HIV/AIDS specialists from the NCCD.

The rights of people living with HIV/AIDS to have their personal information kept private, to live, and receive a fair trial are being violated.

45% of the participants in a survey on the "Status of Human Rights of Men who have Sex with Men (MSM) living with HIV/AIDS" said that confidential health information related to their condition is disclosed.

The perpetrator of a crime involving the brutal killing of citizen "E" in 2010 has received a mild sentence from the court.

The spouse wanted to appeal the court decision, but because he/she did not want the relatives to find out that "E" was HIV-positive, he/she decided not to pursue the appeal.

THE RECOMMENDATIONS SUGGESTED BY THE MONGOLIAN HUMAN RIGHTS NGO FORUM:

1. Ensure the review and repeal of the Health Ministry's policies and decisions discriminating against people living with HIV/AIDS.
2. Revise HIV/AIDS-related legal acts and take measures to ensure tangible participation of people living with HIV/AIDS in the implementation and outcomes evaluation of policies, programs and projects on HIV/AIDS.
3. Openly disseminate information about the policies and programs on HIV/AIDS through media and foster anti-discriminatory attitudes among the general public.
4. Urgently create a legal framework to ensure non-discrimination against people living with HIV/AIDS and restoration of their rights when incidents of discrimination occur.
5. Urgently establish a National Committee on AIDS with branches in rural areas.
6. Terminate the implementation of HIV/AIDS prevention programs on donor funding and start allocating budget funds for this purpose.
7. Create a legal environment and conditions for people living with HIV/AIDS to engage in employment.
8. Take measures to reduce double discrimination faced by sexual minorities as a group vulnerable to HIV/AIDS.
9. Provide state support to NGOs working with HIV/AIDS high-risk groups.
10. Ensure that the State Professional Inspection Agency effectively monitors the enforcement of relevant laws.

RIGHTS OF PERSONS WITH DISABILITIES

Mongolia has officially accepted the Asia-Pacific regional Incheon Strategy, and in partnership with the persons with disabilities (PWDs), is working to coordinate the Law on the Social Protection of Persons with Disabilities with the Convention on the Rights of Persons with Disabilities (CRPD). Furthermore, Mongolia has for the first time

adopted a “Plan of Actions to Implement CRPD in 2013-2016.” However, despite these progressive steps, there is a tendency for most of the legal regulations to remain on paper due to the inadequate implementation of the law and the unsustainable nature of the achieved outcomes.

The most commonly violated rights of PWDs:

- To remain free from discrimination;
- To have one’s health protected and receive healthcare services;
- To live independently;
- To move freely;
- Right to Education;
- To seek and obtain information;
- To work;
- To receive a fair trial.

CHALLENGES

There is a need to coordinate Mongolian laws with the CRPD, publish the CRPD in the “State Bulletin” magazine to ensure that the convention is used as the legal basis in court. Furthermore, the implementation of the regulations guaranteeing the rights of PWDs remains inadequate due to the lack of inter-sector coordination.

Mongolia does not have a stand-alone anti-discrimination law. The list of prohibited grounds for discrimination stated in the Constitution of Mongolia does not include a prohibition of discrimination based on disability, including physical disability. This has led to widespread adoption and enforcement of regulations discriminating against the disabled. For instance, establishing disability according to the “loss of working ability” is a regulation, which directly discriminates against them.

CASES, FACTS, COMMENTS

The responsibility to implement the quota to promote employment opportunities for PWDs as delineated in the Labor Law lies with the provincial and district Labor Divisions, while the authority to impose penalties for non-compliance is wielded by the State Professional Inspection Agency. Due to the lack of coordination between these organizations, it is common for the offenders not being held accountable for the breaches.

Article 111.7 of the Labor Law, which proclaims that “...the list of jobs that can be done and professions acquired by PWDs will be approved by the Cabinet Member in charge of labor issues,” and standard 5.8 of the “General requirements for public transportation, classification and services” (MNS 5012:2011), which proclaims that “... PWDs are only allowed when accompanied by a guardian” are provisions that discriminate against the disabled and deny them their right to live independently.

A wheelchair-bound woman named “G” was given the following advice by a doctor: “You should have an abortion because you are in a wheelchair.”

Inaccessible infrastructure causes the violation of the rights of PWDs to travel freely, receive education, seek and obtain information, and receive healthcare services. Despite the adoption of the standards enabling PWDs to use public transportation and access buildings, their implementation is inadequate due to an extremely weak implementation mechanism and vaguely defined accountability measures.

The assessment of the accessibility of 26 buildings along one of the most modern streets of a centrally located district in Ulaanbaatar City has revealed that 50% of the buildings were absolutely inaccessible to PWDs, 27% had wheelchair ramps which failed to meet the standards, 15% of the buildings had standard wheelchair ramps, but had too many stairs inside, and the remaining 8% of the buildings had usable wheelchair ramps, no stairs inside, and lacked toilets.

Healthcare facilities are inaccessible to PWDs. It was established that in the case of 52.2% of all hospitals in Ulaanbaatar, the road from the parking lot to the hospital building was not usable by the disabled, 18.2% of the hospitals did not have wheelchair ramps, 69.1% had wheelchair ramps which failed to meet the established standards, 71.9% of hospitals did not have elevators, and 94.7% did not have toilets for PWDs.

The public transportation and public transport stations remain inaccessible to PWDs. However, in Ulaanbaatar public transportation companies are compensated from the state budget for transporting PWDs, and in 2013 alone, this compensation amounted to 5.5 billion MNT (USD 3 million).

With the exception of the "Tsagiin Khurd" news program on the Mongolian National Public Broadcasting TV channel, which provides sign language interpretation, persons with hearing impairment do not have an opportunity to access information.

The employment rate among PWDs is extremely low. The policy aimed at preparing and training PWDs for employment has resulted in PWDs being engaged in the production of mostly handmade goods which are labor-intensive and have a weak competitive edge in the marketplace.

Only 19.9% of PWDs of 15 years of age and above are employed. Out of these people, 41.7% run private businesses, 35.7% are workers with wages, and 20.1% work in family enterprises without receiving any pay.

Providing education to children with disabilities in special schools is a predominant practice. Although the Law on Primary and Secondary Education obliges regular schools to create conditions for providing education to children with disabilities, shortages of infrastructure and qualified personnel persist.

Only one in two children with an inborn disability receives an education. A study conducted among 150 children with cerebral palsy living in Ulaanbaatar has revealed that 65% of the children do not attend any educational institution, 23% attend school, and 12% attend kindergarten.

THE RECOMMENDATIONS SUGGESTED BY THE MONGOLIAN HUMAN RIGHTS NGO FORUM:

1. Review all legal documents related to PWDs with the purpose of bringing them into conformity with the CRPD principles and content.
2. Publish the CRPD in the "State Bulletin" magazine.
3. Create an effective legal framework for eliminating discrimination against PWDs.
4. Abolish the method of establishing disability according to the "loss of working ability."
5. Establish a unit in charge of PWD issues at the Prime Minister's Office to manage inter-sector coordination and run a Council in charge of PWD issues at Governors' Offices at all levels.
6. Review standards for educational and health facilities to ensure their accessibility to PWDs.
7. Use technology to allow persons with hearing as well as speech and language impairments to access information.
8. Implement step-by-step measures to allow PWDs to use public transport.
9. Ensure that measures taken to prepare and train PWDs for employment and to foster work-related social skills are undertaken in a systematic and coordinated manner.
10. Increase the assortment of goods produced by PWDs who run private businesses and introduce technologies to boost their labor productivity.
11. Develop and enact a legal framework for the introduction of a system to provide advisory services as well as personal aides to PWDs to assist them in learning to live independently.
12. Devise a new list of categories of PWDs and properly align social welfare services with their individual conditions.
13. Develop and implement an inclusive education curriculum to ensure that young people and children with disabilities can enjoy their right to education.
14. Ensure the participation of PWDs in developing an inclusive education curriculum.
15. Prepare and provide necessary training to teachers and mentors on methods of engaging with young people and children with disabilities.
16. Implement a systematic policy aimed at fostering the right attitudes toward PWDs through media.
17. Conduct regular trainings for civil servants at all levels to raise their awareness of disability rights. Authorize the participants who have completed the training to work in the social services sector.
18. Conduct a nationwide survey on the social needs of women with disabilities.
19. Respect the distinct needs of women with disabilities and take concrete measures to develop and implement policies which reflect their capacities, potential and special needs.
20. Develop and implement a national plan and program aimed at promoting all rights of children with disabilities, participation and protection.
21. With a view to promoting the right of PWDs to vote, further clarify the legal provisions aimed at increasing the accessibility of polling stations and election campaigns, and ensure their sustained implementation.
22. Take special measures to protect the rights of PWDs to be elected to public office at all levels.

IMPLEMENTATION OF THE RIGHT TO FOOD

According to the results of the Household Socio-Economic Survey conducted in 2012 by the National Statistical Office of Mongolia, almost 30% of the overall population lives in poverty, unable to receive the required daily intake of essential nutrients from their diets. As a result of inflation and MNT depreciation food prices are constantly rising, thus negatively affecting the purchasing power of the

citizens from vulnerable groups and plunging them into hunger. According to the fourth national report on the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) submitted by the Government of Mongolia in 2011, the daily food intake of a person from a vulnerable group is 33% less nutritious than that of an average Mongolian at the national level.

CHALLENGES

There are few official documents and statistics to demonstrate the implementation of the recommendations issued by United Nations Human Rights Council regarding the right to food. It is impossible to assess the change in the situation since 2010 as no statistics or other information could be found on the main indicators used to measure the implementation of the right to be free from hunger.

In the Hunger Map 2011 issued by the UN, Mongolia was placed in the category of countries where 20-34% of the population is undernourished.

Monitoring the implementation of the citizens' right to adequate food, as well as of the quality of food products, food hygiene, packaging and expiration dates remains poor. The information about food, its quality and safety is mostly unavailable, while the information which has been made available raises doubts as to its authenticity. Despite the recommendations and repeated demands by the Mongolian People's Coalition for Food Sovereignty to establish an independent laboratory, no measures toward this end have been taken.

CASES, FACTS, COMMENTS

The fifth MDG National Progress Report by the Government of Mongolia submitted in 2013 likewise does not contain the post-2010 figures.

A survey of 42 randomly chosen households living in ger settlements at the outskirts of 6 districts of Ulaanbaatar City conducted by the Mongolian People's Coalition for Food Sovereignty in February 2014, showed that 96% of the households could not afford vegetables on a regular basis, while 85% of them only consumed meat and flour. 60% of these households spend less than USD 3 a day on food, take loans to buy their food, and live in debt.

In early 2014, the laboratory affiliated with the Health Sciences University (HSU) publicly announced that the amount of pesticides contained in vegetables exceeds the established safety standards. However, the state laboratory denied the announcement, and imposed restrictions on the activities of the laboratory to conduct prohibiting tests and make public statements.

Despite the Government taking steps to protect the core human right of being free from hunger, these steps fall far short of meeting the existing needs.

113,187 persons from 16,822 households receive food vouchers (equivalent to MNT 10,000 or USD 6 per adult and MNT 5,000 or USD 3 per child) each month. This scheme, however, covers only 6.5% of the poor population.

The ability of citizens to buy food is inevitably linked with the right to employment. Labor exploitation is becoming a common phenomenon as citizens' right to conclude an employment contract with an employer and demand its implementation is not guaranteed. The Labor Law fails to sufficiently protect the rights of employees and does not oblige the employers to respect the latter's right to form trade unions. As a result, the violation of employee rights is widespread, even concerning large mining companies with many employees.

In 2012, the employees of "South Gobi Sands" LLC formed a trade union and repeatedly demanded the improvement of labor conditions and fulfillment of their right to work and leisure as prescribed by law. After the employees went on strike to demand their rights, 45 of them were fired.

In 2014 Rio Tinto suddenly fired 300 of its employees from the Oyu Tolgoi project. However, not a single move has been made by the employees to fight for the protection of their rights.

A survey conducted by the Centre for Human Rights and Development (NGO) in 2012 among 100 members of the Community Saving Group in Yarmag revealed that 25% of the survey participants work without employment agreements, and 50% of those who have agreements said that employers do not abide by them.

THE RECOMMENDATIONS SUGGESTED BY THE MONGOLIAN HUMAN RIGHTS NGO FORUM:

1. Make an assessment of the food consumption of poor and vulnerable citizens and guarantee their right to be free from hunger. Improve access to the food voucher program.
2. Determine the percentage to which the food program designed for children of vulnerable groups meets the daily physiological nutritional requirements for children. Ensure coordination between this program and other measures taken to eliminate child malnutrition.
3. Take tangible measures to eliminate malnutrition in the population and systematically publish data to demonstrate the progress in this field.
4. Ensure that the food distributed within the framework of the "Afternoon Tea Program" to primary school students of general education institutions meets the nutrition standards and take steps to improve the quality of the food distributed.
5. Conduct regular food price surveys and assessments of whether the low income citizens can afford to buy food which meets a person's basic nutritional requirements.
6. Improve food control, by involving citizens and NGOs, strengthening their capacities and supporting measures by providing funds and creating a favourable legal environment.
7. Assess the capacity and accessibility of food control laboratories, increase their numbers and make improvements in terms of qualified personnel and supply of necessary equipment and materials.
8. Give accreditation laboratories affiliated with educational and scientific institutions to engage in food testing and authorize them to publicize the results of the tests.
9. Launch a regular TV program on Mongolian National Public Radio and Television to disseminate scientifically-based knowledge and accurate information to the citizens concerning food and nutrition.
10. Introduce and implement labor remuneration tariffs.
11. Create a legal environment requiring private sector employers to sign employment contracts with employees.
12. Modify the Labor Law and other relevant legislation to include a provision prohibiting employers from violating the right to establish an organization protecting employee rights.
13. Create a legal environment for accepting and resolving grievances in the instance of increased labor exploitation in the informal sector.

SEXUALITY MINORITY (LGBT) RIGHTS

Despite Mongolia's accession to a number of major international instruments which all expressly prohibit discrimination in any form, despite accepting the various recommendations from peer states under the Universal Periodic Review and the treaty bodies (CAT in 2010, CCPR in 2011) around the necessity for equal

protection of lesbian, gay, bisexual and transgender (LGBT) people, none of the recommendations have been implemented in the past period following the first cycle review, resulting in a situation of LGBT people are still discriminated against and violated widely.

The following rights of LGBT people are most frequently infringed upon:

- Right to life
- Right to bodily integrity and safety
- Right to equal protection
- Right to be free from discrimination
- Right to hold opinions and to express them
- Right to education
- Right to access to justice
- Right to take part in cultural life
- Right to access public spaces
- Right to adequate standard of living
- Right to highest attainable standard of mental and physical health
- Right to found a family
- Right to own property

ISSUES

Intolerance, discrimination of and violence against LGBT people in Mongolia take various forms, with the documented cases portraying interrelated and compounded nature of negative effects of discrimination in the lives of LGBT people. Because the right to be free from discrimination is not protected for LGBT people, one instance of discrimination leads to other instances of discrimination, resulting in a systemic oppression of LGBT people where most fundamental rights, such as the right to life, the right to liberty and security of person, the right to bodily integrity and safety, the right to equal protection, the right to access to justice, including access to fair trial and effective redress, the right to freedom of opinion and their expression (especially in relation to gender identity and expression) are denied.

CASES

A. O., an openly living gay man, was found dead sometime in early March in 2014 in the territory of 1st khoroo of Bayangol district, Ulaanbaatar. Prior to being found deceased, A. O. had filed a complaint of being raped in December 2013, later withdrawing the complaint. However, he filed a similar complaint of being raped in late January 2014. At the time, he was verbally derided by the Sukhbaatar district Prosecutor's Office personnel. The police didn't release any details of his death to the LGBT Centre, and closed the case as a suicide despite the indications that this may have been a murder.

There is a continuing pervasive discrimination against LGBT people by the law enforcement. This includes covert surveillance of known LGBT people, keeping files on known LGBT people, phone-tapping, arbitrary detentions, intimidation, threats, physical and sexual assaults either by law enforcement or by other inmates on LGBT people while in custody, refusal to register first instance reports by LGBT people if the reasons for being attack are quoted to the victim's sexual orientation or gender identity, and judicial mistrials where perpetrators of hate crimes are not given a sentence.

Gender identity and expression as the freedom to present one's gender through dress and behaviour are implicitly criminalised where all transwomen are treated as sex workers because of their choice of dress and presentation, and being in certain public spaces (streets) after certain hours.

LGBT people are denied housing rental accommodation or are evicted if suspected to be cohabiting with their same-sex partners. Familial violence is present and pervasive against LGBT people, resulting in inability to enjoy the right to the bodily integrity and safety, the right to adequate standard of living and housing, the right to found a family (where same-sex couples or couples where one is a transperson, are denied recognition of their relationship or their children by members of the family and are violated because of their relationship) and the right to own property.

The heteronormative framework of the health sector, the lack of information, skills and attitudes, non-coverage of each sub-community's specific health concerns under the universal healthcare insurance results LGBT people being denied access to complete medical care, including mental healthcare, affordable access to hormone replacement therapy, gender conformation surgeries, etc.

The culturally pervasive notion of heteronormativity is implicit in the education system, which serves implicitly promote discrimination and denial of access to education, cultural spaces and public spaces. The Government of Mongolia has not undertaken any efforts to educate the public on the equality of people regardless of sexual orientation or gender identity, with the exception of a call published in two daily newspapers on 10 December 2011, a television program and television spot produced by the National Human Rights Commission of Mongolia in 2012.

N. O., an openly living transman, was attacked with a knife by B.Ts., the mother of his girlfriend, on 18 May 2011 at his girlfriend's home. During the attack, B.Ts. maintained that N. O. was an abomination and that he had corrupted their daughter. The case was registered at the Bayanzurkh district police, however, at the bequest of his girlfriend N. O. withdrew the complaint despite the fact that the girlfriend's parents continued to threaten him on a daily basis up until September 2014.

N. A., an openly living transman, was attacked by E. G., a former boyfriend of his sister who knew N. A. before his transition on 25 February 2012. E. G. had punched N. A. in the face, inflicting a concussion and a fractured orbital bone. The case was first instance adjudicated on 4 September 2012 by the Chingeltei District Criminal Court, where E. G. was found to be guilty, but was not given a sentence due to the Prosecutor's Office losing the medical conclusion on the seriousness of the suffered injuries by the victims as well as due to the time that had elapsed since the first instance report filing to the trial date.

E. S, and E. M. openly living transwomen, were picked up by the Chingeltei police 28 March 2014 and taken into custody and charged with prostitution. While two women were making statements the next morning, a TV8 channel crew was ushered in by a police personnel, and the women were filmed on camera as prostitutes. The transwomen were followed by this television channel upon their release and were filmed again, with the footage broadcast two weeks later, endangering their lives and wellbeing, a situation that was a direct result of the actions by the police personnel.

A. Z., an openly living gay man and owner of the only LGBT night club in Mongolia, was attacked at his business around 3am on 1 June 2014 by 5 customers who refused to leave the club after the closing, breaking A. Z.'s nose and giving him a concussion. When A. Z. went to the Chingeltei district police immediately following the incident to register his complaint, the police on duty refused to register his complaint, maintaining alcohol intoxication as a reason to not register the case.

U. and S. are a lesbian couple living together for four years. The older brother of S. had denied her the share of their inherited property, saying that if she were to start living "normally", he would immediately buy her an apartment and a car as the share of their joint inherited property.

From August to September 2014, the LGBT Centre approached a number of state-funded cultural spaces and organisations run by the central and local government bodies to organise a visual arts exhibition and a film festival to promote non-discrimination and equality of LGBT people. The Centre was denied access directly and indirectly by a number of cultural spaces.

RECOMMENDATIONS FOR THE GOVERNMENT OF MONGOLIA

1. Implement the first cycle UPR recommendations through the enactment of an anti-discrimination law in order to provide immediate and effective legal protection for sexuality minority explicitly promoting supportive environment, including s State obligation to promote human rights education through necessary infrastructural, technical and funding support, as well as through the enactment of a hate crimes legislation for a provision of speedy criminal, administrative and civil remedies.
2. Enable the LGBT people to access culturally competent and needs-based healthcare through comprehensive efforts to identify and cater to the specific needs of each sub-community of LGBT people, through prescription of ethical standards of non-discrimination in healthcare provision, including equal coverage of LGBT-specific health concerns under the existing health insurance scheme.
3. Review the legislative frameworks to enable effective recognition and protection of same-sex couples and their children in line with Mongolia's international obligations to provide the widest possible protection and assistance to all consenting adults to marry and found a family without discrimination.

DOMESTIC VIOLENCE-VICTIM PROTECTION

The Law on Combating Domestic Violence was adopted in May 2004 and enforced from the 1st of January 2005.

It should be mentioned that the government took several positive steps to support implementation of the Law on Combating Domestic Violence, including the enactment of implementing regulations, sub-contracting the victim

protection and shelter services through professional organization, as well as the establishment of a police-affiliated temporary shelter house and a hospital based One-Stop Service Center for victims. Nevertheless, challenges faced in protecting the victims of domestic violence still remain.

CHALLENGES

Not only the number of crimes related to domestic violence has increased, but also the nature of crimes has become more serious and cruel.

Despite the existence of the Law on Combating Domestic Violence, the victims are not protected due to the gaps in the existing legislation, lack of coordination with other laws, and the overall inadequate legal framework for dealing with domestic violence cases.

According to the existing law, domestic violence is not treated as crime, but as a civilian dispute or a small-scale it is violation of the administration law.

CASES, FACTS, COMMENTS

Compared to the previous year, in 2013, the number of domestic violence crimes increased by 2.6-fold and the number of victims by 3.5-fold.

In the last 5 years, 61 persons have died due to domestic violence.

Every fifth family disintegrates because of domestic violence.

Only one out of 5 victims reports the case to the police.

On 4 May 2013, the police registered a case that 4-year old child was injured by his father's abuse using chopping knife. In 2012, in the period leading up to the incident, the man had been confined to the drunk tank on 10 occasions, as well as detained and fined 5 times in accordance with the Administrative Liability Law.

A 21-year old woman died on 10 December 2013 after being beaten by her boyfriend. As a result of the beating, all internal organs of the woman, including the spleen, were smashed. Prior to the incident the victim went to the police, but couldn't not receive assistance.

A 22-year old woman named G, died in April 2012 after being stabbed 12 times by her husband. Prior to the incident, the victim sought assistance from the police on several occasions, but couldn't get protection.

<p>The law holds the victim responsible for proving that he/she has suffered from domestic violence. Most of domestic violence cases are dismissed due to the lack of evidence.</p>	<p>In the last year, 5 cases were registered that victims of domestic violence being accused for allegedly “providing false information” to the law-enforcement organizations.</p>
<p>The penalties imposed on perpetrators of domestic violence are flawed, and incur an additional burden on the victim.</p>	<p>In line with the Law on Administrative Liability, the penalties for the perpetrator of the violence include an imposition of a fine, detention, confinement to a drunk tank if intoxicated with alcohol, etc. The expenses associated with these penalties are borne by the victim. On average, these costs amount to MNT 400.000 (over USD 200) a year.</p>
<p>Up until today, the legal regulation on who will implement the court decision limiting the rights of violence perpetrators as well as how the court decision will be implemented and monitored is lacking. Consequently, the court decisions on domestic violence cases are not implemented.</p>	<p>Since the adoption of the Law on Combating Domestic Violence, only 54 court decisions limiting the rights of violence perpetrators have been issued. Not a single of these decisions has been implemented.</p>
<p>It is still unclear that the mechanism and procedures for who and how will protect the victims of domestic violence, and where the victims should go to receive services.</p>	<p>Despite the establishment and operation of protection shelters for victims and witnesses of domestic violence, these services do not produce the expected results due to the lack of inter-sectoral and inter-organizational coordination.</p>
<p>The victims of domestic violence choose to commit a crime due to lack of legal protection.</p>	<p>38 women are serving prison sentences for killing perpetrators due to long term abuse and threat. 32.3 % of these women who experienced violence over extended periods of time reported about their situation to the police on many occasions and sought assistance from the law-enforcement agencies.</p>
<p>There are numerous cases when a victim of domestic violence often left with no place to live, but there are no special programs addressing this issue.</p>	<p>One in every 3 children live at the care or social service center ran away from home because of domestic violence.</p>
<p>There is no legal framework for providing legal assistance to victims of domestic violence who cannot afford paying for these services.</p>	<p>Although there is a law on providing free legal services to suspects and convicts who cannot afford to pay for the services, there is no legal framework for delivering these services to victims of domestic violence who find themselves in a similar situation.</p>

- THE RECOMMENDATIONS SUGGESTED BY THE MONGOLIAN HUMAN RIGHTS NGO FORUM:**
1. Improve the Law on Combating Domestic Violence, ensuring that an effective mechanism is put in place to prevent domestic violence, provide urgent protection as well as other services to the victims.
 2. Coordinate the Law on Combating Domestic Violence with other laws and regulations.
 3. Treat domestic violence as a crime and come up with commensurate penalties for perpetrators of violence.
 4. Abolish the regulation obliging the victim of domestic violence to pay the fines and other expenses related to the case.
 5. Implement a special program aimed at protecting and providing compensation to the victims of domestic violence.
 6. Introduce free legal services for victims who cannot afford paying for these services.