**Implementation of the civil and political**

**Rights in Mongolia**

**2016 hrc REview**

**Civil Society REport**

This report is prepared by the Human Rights NGO Forum of Mongolia.

**Article 2. Responsibility to ensure the human rights without discrimination**

1. 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.
2. 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 national currency depreciation, as well as in the subsequent drop in the purchasing power of the population and the accompanying deterioration of living standards.
3. The national mechanism for the protection of human rights and freedoms has not been strengthened and even worsened since 2012:
* 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.
1. 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.

**Articles 2 and 26**

1. In its precedent-setting communication to the Government of Australia in 1994, the Human Rights Committee included sexual orientation within the broader understanding of “sex”. However, to date the Government of Mongolia has not enshrined this principle in its Constitution so as to allow for the concept of “sex” to be inclusive of non-discrimination in relation to sexual orientation and gender identity. There is yet no Constitutional amendment prohibiting discrimination on the basis of sexual orientation or gender identity and expression despite the two cycles of UPR recommendations as well as treaty bodies’ recommendations to implement the same in order to provide full and equal protection to all. There is yet no broad-based anti-discrimination law in Mongolia despite the two cycles of UPR recommendations as well as treaty bodies’ recommendations to amend the Constitution and/or pass a stand-alone anti-discrimination legislation to provide full, equal and effective protection to all regardless of sexual orientation or gender identity.

**Article 3. Ensure the equal right of men and women to the enjoyment of all civil and political rights**

1. **Two months before the election date, the Mongolian Parliament was adopted the amendments to the Law on Elections, it has changed electoral system and reduced the quota for female candidates for the parliamentary elections from 30 percent to 20 percent. These amendments have negative effect on women’s enjoyment of political rights and it shows that Mongolian human rights policy is not sustainable.**
2. There has been no significant increase in the women’s participation at the executive branch and local decision-making levels.
3. 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…”
4. 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 April 12th of 2013.

**Article 7, 9 and 10. Prohibition of torture, inhuman or degrading treatment or punishment, right to liberty and security of person and treatment of persons deprived of their liberty**

1. Statements made by officials regarding the detention of Ms. Bulgan Banzragch[[1]](#endnote-1) show that there is still systematic torture and other cruel, inhuman or degrading treatment or punishment in Mongolia.
2. According to an inspection by the Sub-committee on human rights from the State Great Khural’s (the Parliament of Mongolia) has evidenced the following facts on the detention conditions of Ms.Bulgan. Firstly, she used the open toilet in her cell in the presence of others. Secondly, the curtain of the window was closed allowing no natural light to enter the cell. The cell had 24-hours of artificial lighting whichwas much brighter compared to other cells. Thirdly, Ms. Bulgan had no access to any paper or pensas well as not knowing her right to complaint.
3. However, prior to inspection of the Sub-committee on Human Rights, Prosecutors Office as well as National Human Rights Commission of Mongolia visited and monitored her detention conditions and they have not mentioned about the abovementioned facts in their public statements instead they stated that there was no human rights violation of any kind in relation of Ms.Bulgan.
4. The administration of the detention centers is done by the Court Decision Enforcement Office and is separate to the police. However, the inspecting organization is playing crucial role in the detention center. Ms. Ts.Oyungerel, former member of the Parliament, said that ‘after receiving a complaint from the mother of Ms. Bulgan, I visited the detention center where Ms.Bulgan is being held. When I was at the detention center, I saw that the Court Decision Enforcement Office is no longer capable of fulfilling its duty. In my assumption, they are working under the control of the General Intelligence Office (inspecting agency of Bulgan’s charges).[[2]](#endnote-2)
5. Torture and ill treatments still exist in Mongolia, despite of it, Special Investigation Unit under the State Prosecutor General, which is in charge of the independent investigation in torture cases was officially dissolved by the State Great Khural, dated 24th of January 2014. The Human Rights NGO Forum received a response to a questionnaire to the Speaker of the Parliament due to disbandment of Special Investigation Unit, the Parliamentary Standing Committee on Legal Affairs answered that “police investigators are investigating allegations of torture and fulfilling their duties in accordance with their duties under the law”. This shows that there is no independent investigative office in torture related cases in Mongolia.
6. The broad interpretation of Article 7 under the International Covenant on Civil and Political Rights is absent in the Constitution of Mongolia, the Criminal Code of Mongolia and the Criminal Procedures Code of Mongolia. All three laws expressly prohibit torture without defining what acts or omissions fall under such an act, furthermore acts of torture by private actors is not included. Furthermore, none of the legal acts proscribe torture that may arise due to “any reason based on discrimination of any kind”.
7. Discrimination against LGBTI people in Mongolia on the basis of sexual orientation and gender identity has been well documented by the LGBT Centre. No LGBTI person has escaped some form of violence and discrimination when their sexual orientation or gender identity became known, leading to the situation where LGBTI people are compelled to hide or suppress their sexual orientation and gender identity for fear of being targeted for extreme violence and discrimination. Extreme forms of discrimination tantamount to persecution against LGBT persons are acts such as verbal and physical assault, rape and gang rape, extreme beating resulting in broken limbs and extensive tissue damage, and domestic violence against young LGBTI people by their parents and siblings – all done with the view of imposing heteronormativity and stereotyped gender norms upon LGBTI people and delegitimising same-sex relationships or diverse gender identities and their expressions.

**Article 13. Expulsion of a foreign citizen**

1. There are allegations that ethnic Mongolian refugees and human rights activists have been targeted and they were forcefully and secretly deported to China where they are arbitrarily imprisoned. In every case, individuals claim to have tortured in some form by Mongolian authorities. Their rights to speak with supporters, seek legal counsel and appeal decisions are denied. Article 14 of the Constitution of Mongolia states: “All persons lawfully residing within Mongolia are equal before the law and the court”. Article 7.2 of the 2010 Law on the Legal Status of the Foreign Citizens states the foreign citizens residing in Mongolia shall exercise the same rights and freedoms as the Mongolian citizens.

**Article 19. Freedom of Expression**

1. The regime of exceptions of the Law on Information Transparency and the Right to Information law is problematical for the reasons that i) it both fails to protect key confidentiality interests and renders confidential some issues that should be open; ii) many exceptions are not harm based; and iii) there is no public interest override to ensure that information of significant public interest is disclosed. It also has no provisions concerning open meetings and protections for whistle-blowers. Implementation of the law is very weak and awareness of the citizens and public officials on the law is poor.
2. Number of the criminal defamation cases is radically increasing. The new Criminal Law which will be effective from 1 September 2016 still contains defamation provision. In accordance with Article 14.8.1, “In the case, if reputation of political parties, coalitions and candidates participating in the election defamed and clear false information disseminated, penalty of fine of MNT equal to 450-5400 unity shall be imposed and shall be imprisoned from one month to one year”. Strong defamation provisions are also in the new Election Law. The State Intelligence Authority is involved to the investigations of the journalists’ criminal defamation cases.
3. Safety of journalists is under danger.The Mongolian society is shocked by deaths of four well-know journalists in 2013 and 2015. The police has not investigated the cases in connection with their latest journalistic activities. The police has not officially produced any statements except saying “investigation is continued” on a case of a famous female journalist Luntan Bolormaa who died because of a brain hemorrhage caused by a concussion in the occipital bone.
4. Internet freedom is getting restrictive by filtering and licensing of the news and information web sites, and blockages of the news web sites, particularly during the election campaign.
5. The right to anonymity has not been guaranteed online and offline. The IP addresses of the users of news websites posting their comments must be open.
6. Mongolia is missing the legal protections of the whistleblowers and journalistic confidential sources and journalists often face demands to disclose their sources.
7. The regulatory body, Communications Regulatory Committee (CRC) is not independent and its chairman and commissioners are appointed by the PM and it shall report back to the government. The processes of licensing of broadcast media, its termination and control over the implementation of its procedures lack transparency and public participation. The rules and regulations adopted by the CRC overlap the national legislation and contradictory to the Article 19.
8. Mongolia is missing a general broadcast law, so broadcast media sector is regulated by restrictive regulations of the CRC
9. Content laws are very broad and have no narrow definitions and content is controlled by the public authorities, such as police, etc. Moreover, the procedures and rules adopted by the CRC overlap the national and international laws.
10. Election campaign is too short, 18 days in the Election Law and media’s rights are strictly limited by sanctions, for example, termination of the licenses of the broadcast and online media for six months. Media has no right to criticize the political parties and candidates. News and information web sites are blocked based on the statements of the government agency which encourages the string censorship.
11. Mongolia is missing laws on media ownership transparency and concentration.
12. Mongolia is missing policy regulatory and financial guarantees for the community media, so some community radios established for remote and national minority by the UNESCO and other international donors have died and others hardly strguuling to survive in the small market.

**Article 23. State protection of families**

1. 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.
2. Since 2012, criminal justice reform was initiated by the Government of Mongolia. Criminal Code, Offence Code and laws on law enforcement agencies were revised and passed by the Parliament. According to this legal reform, various progressive steps in relation to fight against domestic violence were put into newly adopted laws and draft laws. For example, domestic violence is criminalized by the new Criminal Code and law enforcement agencies functions related to fight against domestic violence are properly regulated and new agency such as Marshals (Takhar) Service Authority was established to protect crime victims, witnesses etc.
3. A new Criminal Code, Offence Code will entry into force in Sept. 1st, 2016. However, these laws are heavily dependent upon Criminal Procedure Code, Law on Law Enforcement Actions, unfortunately, these laws have not passed yet.
4. In addition, according to the Main Structure of the Government Agencies adopted by the new Parliament in July 21st, 2016, Marshals Service Authority (Tahar Service Authority) which is in charge of the crime victim, witness protection is dissolved.
5. In Mongolia, government policy and achievements in human rights field are not sustainable at all. Furthermore, it is still not clear whether or not the new parliament will adhere to the changes made by the previous parliament concerning the fight against domestic violence.
6. Despite of this situation, number of crimes related to domestic violence has increased, but also the nature of the crimes has become more serious and cruel.
7. Mongolia does not recognise same-sex unions, either in the form of marriage or any other legal structure (such as registered partnerships or cohabitation rights). Article 16(11) of the Constitution states, “Men and women enjoy equal rights in political, economic, social and cultural fields as well as in marriage. Marriage is based on the equality and mutual consent of the spouses who have reached the age determined by law.” This neither prohibits nor mandates the recognition of same-sex marriage. Article 3.1.3 of the Family Law of Mongolia defines “spouses” in gender-specific terms, as“husband and wife who are connected by marriage bonds and have equal rights and obligations”.
8. Mongolia failures to comply with Article 23 of the ICCPR. Mongolian LGBTI families continue to face discrimination both due to the non-recognition of same-sex couples and, in particular, the lack of family rights provided to such couples. Mongolia’s failure legally recognise same-sexrelationships results in same-sex couples not being able to access the rights, benefits andprivileges that married opposite-sex couples are entitled to. This not only prevents them from realising their right to have their families protected under Article 23, but also affects a range of other civil, social and economic rights. Same-sexpartners are not able to make medical decision on each other’s behalf. In practice, it is very common for parents and other family members to ignore and overrule a same-sex partner’s wishes, both in a medical context and in relation to estate and inheritance disputes.
9. In Mongolia, same-sex couples are unable to legally adopt. They are also unable to access other parenting-related rights: for example, the female partner of a woman who gives birth through IVF is not recognised as a co-parent even though she may play an equal role in raising the child as the biological mother.Many children of same-sex partners – whether adoptive or thebiological child of one partner – also face bullying and harassment, especially at school,due tothe sexual orientation or genderidentity of their parents.

**Article 25. The right to take part in the conduct of public affairs**

1. **According to previous Election Laws, amendments in Election Law must be adopted 6 months prior to election date. However, in 2016, two months before the election date, the Mongolian Parliament was adopted the amendments to the Law on Elections, it has changed electoral system and reduced the quota for female candidates for the parliamentary elections from 30 percent to 20 percent. This makes it hard for female candidates as well as minor political parties to be elected.**
2. **The newly passed Election law was extremely incumbent friendly and restrictive in encouraging new and independent candidates in terms of registration as well as time and forms allowed for campaigning. OSCE states “**in May 2016, the parliament changed the mixed electoral system to a solely majoritarian one, established 76 single-mandate constituencies and approved their boundaries through a process that lacked transparency, public consultation and adherence to established criteria. It resulted in profound population discrepancies among constituencies, which is inconsistent with the principle of equality of the vote provided for by paragraph 7.3 of the 1990 OSCE Copenhagen Document and other international obligations and standards”.[[3]](#footnote-1)

**Article 26. Prohibition of discrimination**

1. 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 theGovernment Action Plan of the measures to explore a mechanism to eliminate discrimination and initiate corresponding legislation. Despite these positive developments, however, discrimination still remains widespread.
2. 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.
3. 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.

**The Mongolian Human Rights NGO Forum**

1. Almost eight months have passed, since the arrest of B.Bulgan, better known as the wife of S.Zorig, who was one of the leaders of Mongolia’s 1990 Democratic Revolution. The authorities have still not given a reason of this action.B.Bulgan’s husband S.Zorig was an immensely important public and political figure. Born in 1962, he did much to end one-party rule and introduce true democracy to Mongolia. On the eve of being appointed as prime minister he was brutally murdered in his home in Ulaanbaatar’s Zaisan District on 2nd October 1998 under very mysterious circimstances.The authorities have still not given a reason of this action. [↑](#endnote-ref-1)
2. Daily News Newspaper,*Mr. Bold, Member of the Parliament****:*** *We need protect people in detention centers who have been forgotten about by the law*, 27 April 2016, , available at:<https://goo.gl/rCy2M8> [↑](#endnote-ref-2)
3. International Election Observation Mission: Mongolia – Parliamentary Elections, 29 June 2016, Statement of Preliminary Findings and Conclusions, page 1, annexed to this report. [↑](#footnote-ref-1)