

MONGOLIA

Civil Society Report on the Implementation of the ICCPR

(Replies to the List of Issues CCPR/C/MNG/Q/6)

For the Review of the Initial State Report of Mongolia
(CCPR/C/MNG/6)

At the 120th session of the Human Rights Committee
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Submitted by:

Human Rights NGO Forum Mongolia

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I. Introduction

This report is prepared by Mongolian Human Rights NGO Forum. It was established in January 2010 in the wake of a training organized for NGOs as a preparation for Mongolia's participation in the first UPR cycle. Since then, HR NGO Forum has united in its ranks over 40 NGOs which have consistently worked to improve the human rights situation in Mongolia, promote and protect human rights.

Member NGOs of the Human Rights NGO Forum:

1. All for Education Mongolia
2. Alliance for Development
3. Centre for Human Rights and Development
4. Global Meridian
5. Globe International Center
6. Government Citizen Partnership
7. Evt sain khursh
8. Human Rights Center for Citizens
9. Human Security Policy Studies Centre
10. Ikh Baga Bayansharga foundation
11. Law and Human Right Center
12. LGBT Centre
13. Mitchell foundation
14. MONFEMNET National network
15. Mongolian Gender Equality Center
16. Mongolian Men's Association
17. Mongolian National Federation Disabled People's organization
18. Mongolian Women's Employment Support Federation
19. National Center Against Violence
20. Open Society Forum Mongolia
21. Orkhon XXI Century Center
22. OT Watch
23. Psychological Responsiveness
24. Public Administration New Initiative
25. Sayanaa Wellbeing Association
26. Steps Without Borders
27. The Princess Center for the protection of girls and young women's rights
28. Threshold of the Future
29. Tuva Mother

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II. Civil Society Replies to LOI

a. Constitutional and legal framework within which the Covenant is implemented (art.2)

Issue 1. Please provide information on the practical application of the provisions of the Covenant in the domestic legal system, including examples of cases in which the provisions of the Covenant have been referred to by national courts and specific training for prosecutors, judges and lawyers. Please also indicate what procedures are in place, in law and in practice, for the implementation of the Committee's Views under the Optional Protocol.

Reply/Comments from Civil Society

Courts have made no real progress in applying international agreements to settle disputes. This is due to the fact that judges have not gained the skills to use international human rights instruments. The Judicial General Council (JGC) redefined policy and strategy on improving judicial education systems and developing continuous training. It adopted the Development Program for Court Human Resources and 'Judicial Training Curriculum' in 2014, which are under implementation. In organizing judges' training, the principles of judicial non-interference, meets the needs and professional requirements of judges' knowledge and skills, as well as following the principles of social and legal development processes and their trends.

Although this is praiseworthy, there has been no significant progress in the quality of training for judges, prosecutors and lawyers.

Please report on the status of the draft law aimed at expanding the mandate of the National Human Rights Commission. With reference to the Committee's previous recommendation (see CCPR/C/MNG/CO/5, para. 5) and the Committee's evaluation of its implementation (see CCPR/C/106/2, p. 22), please provide information on measures taken to guarantee that adequate funding and human resources are allocated to enable the National Human Rights Commission to fulfill its mandate effectively and to safeguard the Commission's independence.

In 2014, the National Human Rights Commission of Mongolia (NHRC) started to employ staff in all 21 aimags, enable it to work on a national level. Funding reached a maximum level of 953 Million MNT (574,300USD) in 2014, but reduced to 831 Million MNT (440,000 USD) in 2015 and then 731 Million MNT (366,300 USD) in 2016 respectively, due to the economic situation.¹ As funding reduced, domestic and international trips, as well as operation costs decreased, and its activities were limited.

Although draft laws to revise the Law on NHRC were under discussion, a new regulation on making nominations and appointments of Commission members open and transparent (and organizing them with public participation) was not included in the last draft law. Reports suggest that the Secretary of the Ministry of Justice and Internal Affairs has established a working group to revise the NHRC Law.

Human rights NGOs criticize circumstances where local community rights are violated due to development policy overemphasizing economic growth, the NHRC's initiative and capacity is weak in terms of providing a human rights assessment of laws and policy approved by the State Great Khural (Parliament) and making them meet with international human rights standards.²

¹ The National Human Rights Commission of Mongolia, www.nhrc-mn.org

² <https://www.forum-asia.org/uploads/wp/2016/11/ANNI-Report-2016-Full-Report.pdf>, p.165-174

b. Non-discrimination and equality between men and women (arts. 2, 3 and 26)

Issue 3. Please report on measures taken to: (a) eradicate deep-rooted patriarchal stereotypes regarding the roles and responsibilities of women and men that are prevalent in the media and in society; (b) increase the representation of women in the public and private sectors, including in Parliament and executive bodies, particularly in decision-making positions.

Reply/Comments from Civil Society

The Committee on the Elimination of Discrimination against Women' (CEDAW) 17th Recommendation³ on 16 March 2016 of the eighth and ninth Universal Periodic Review of Mongolia states:

“Committee urges the State party (a) to put in place, without delay, a comprehensive strategy, with proactive and sustained measures targeting women and men at all levels of society, to eliminate discriminatory stereotypes and patriarchal attitudes concerning the roles and responsibilities of women and men in the family and in society; (b) to use innovative measures targeting the media to strengthen understanding of the substantive equality of women and men and to enhance positive and non-stereotypical portrayals of women in all areas, with special emphasis on the education system.

Even though it has made progress in terms of establishing a working group to ensure effective implementation of the Convention under the Labor and Social Protection Minister's Order, no activity plans have yet been developed.

The Mongolian Government's measures to increase the representation of women particularly in decision-making positions are insufficient. The CEDAW Committee's 14th Recommendation states: “The Committee noted with appreciation that the Mongolian Government has re-established a minimum quota of 30 per cent for women candidates on the electoral lists of political parties in parliamentary elections”⁴ and, CEDAW Committee's 23rd recommendation states: “The Committee also recommends that the State party (article a) take measures to increase the equal participation of women in political and public life at all levels and sectors, in particular decision-making positions, in the parliament and the Government, by (b) effectively implementing the existing 30 per cent quota for women candidates on the electoral lists of political parties, and ensures that women candidates are given higher rankings on electoral lists and/or circumscriptions through its recommendation to the Mongolian Government on 16 March 2016.”⁵

But amendments to Election Law that required political parties to ensure political parties nominate a minimum quota of 20 per cent of female candidates for parliamentary elections was approved by the State of Great Hural (Parliament) on 5 May 2016.⁶ We view this as a violation of democratic human rights; a basic principle of equality. The Government of Mongolia reneged on its responsibilities and promises under the Mongolian Constitution, relevant articles of Convention, International Agreements and Sustainable Developments goals.

Government measures taken to increase the representation of women in public and private sectors, including Parliament and executive bodies, are insufficient. Even though, Article 10 of Mongolia's Law on the Promotion of Gender Equality clearly states that the minimum percentage of representation of any one sex among politically appointed civil servants such as a Head of Government, Ministries, Agencies, Offices and other public institutions, measures to enforce the law have not been made.⁷

³ CEDAW/C/MNG/CO/8-9, para. 17

⁴ CEDAW/C/MNG/CO/8-9, para. 14

⁵ *ibid*

⁶ <http://legalinfo.mn/additional/?lawid=12178>

⁷ <http://legalinfo.mn/law/details/253?lawid=253>

c. Discrimination on grounds of sexual orientation and gender identity (arts. 2, 7, 17, 19, 21, 22, 23, 26)

Issue 4. With reference to the Committee's previous recommendation (see CCPR/C/MNG/CO/5, para. 9), please report on measures taken to effectively address the prevalent discrimination and violence on the grounds of sexual orientation and gender identity. Please respond to allegations of verbal abuse, harassment and physical attacks against lesbian, gay, bisexual, transgender and intersex persons, including by police officers; domestic violence against young lesbian, gay, bisexual, transgender and intersex persons perpetrated by their parents and siblings; and reported impunity for such acts owing to fear of reporting on the part of the persons concerned and failure to register and investigate such complaints by the competent authorities. Please report on the measures taken to ensure respect for the rights of same-sex couples and whether any steps have been taken towards the legal recognition of same-sex couples. Please respond to reports of violation of the freedoms of expression, association and peaceful assembly by lesbian, gay, bisexual, transgender and intersex persons and activists in connection with the annual Equality and Pride Days from 28 August to 6 September 2015, when authorities denied and obstructed access to Chinggis Square on 28 and 29 August 2015, and forcibly removed walkers for equality from the Square.

Reply/Comments from Civil Society

The LGBT Centre is the first and only non-governmental, non-profit and non-partisan organisation working on a wide range of issues pertaining to the rights of LGBTI people in Mongolia. Since the Session 101 of the Human Rights Committee, the Government of Mongolia has fulfilled a recommendation to include a criminal clause to outlaw hate crimes and hate speech through codifying discrimination as a crime in Section 14 of its new Criminal Code passed on 3 December 2015, with protected grounds including, *inter alia*, sexual orientation and gender identity. This landmark Criminal Law has made Mongolia an Asian leader in relation to equal protection of all, regardless of sexual orientation and gender identity. However, the criminal justice framework alone is insufficient to address and eliminate social attitudes and prejudices still prevalent against LGBTI people. It is of further concern that the newly elected government of 2016 recalled a number of laws passed by the previous Parliament and amended the Criminal Code and Law on Misdemeanor before these laws came into force (originally the Criminal Code's enforcement date was set for 1 September 2016, with the date postponed to 1 July 2017), and it is not clear whether the new crime of discrimination will remain as worded and passed on 3 December 2015. It is seen as a huge drawback on the principles of rule of law and democracy. Through this submission, the LGBT Centre wishes to draw the attention of the esteemed members of the Human Rights Committee to cases of widespread and institutionalised discrimination, tantamount to persecution, against the members of Mongolia's LGBTI community on the basis of sexual orientation and gender identity, in relation to the rights as laid out under the Articles 2, 7, 17, 19, 21, 22, 23, and 26 of the International Covenant on Civil and Political Rights.

d. Non-discrimination, freedom of expression, equality before law (LGBTI)- Art 2, 19 and 26

Reply/Comments from Civil Society

In its precedent-setting communication to the Australian Government in 1994, the Human Rights Committee included sexual orientation within the broader understanding of "sex" under Article 2. However, to date the Mongolian Government 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. As yet, there is 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 amend the Constitution of Mongolia in order to provide full and equal protection to all and to develop and

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pass a comprehensive, broad-based anti-discrimination legislation to provide full, equal and effective protection to all regardless of sexual orientation or gender identity.

Due to the absence of a broad-based anti-discrimination legislation that explicitly includes sexual orientation and gender identity as protected grounds, many cases of discrimination are taking place against the personal, physical and psychological integrity of LGBTI people. The violation to be free from discrimination on the basis of sexual orientation or gender identity is, therefore, a denial of other closely inter-related rights such as *access to justice, access to effective remedy, freedom of association, freedom of expression, freedom to information and freedom to peaceful assembly*. The LGBT Centre has documented a worrisome trend of the apparent impunity enjoyed by perpetrators, even if and when victims report such cases and attempt criminal prosecution, leading to a loss of trust in the justice systems on the part of the LGBTI community. More worrisome is the trend documented by the Centre in 2015 and 2016, of the discrimination against LGBTI people by the Metropolitan Ulaanbaatar City Government and its districts during the Equality and Pride Days conducted from the last Friday of August until the end of the first weekend of September. In both 2015 and 2016, the LGBT Centre was denied right of passage for its public Equality Walk through the Chinggis Square, the main square of Ulaanbaatar city.

Below are some of the cases documented and assisted by the LGBT Centre involving individuals who were attacked on the basis of their sexual orientation or gender identity and expression:

Case: U. and B. are a lesbian couple in a long-term relationship. B's older brother had denied B. her share of the parental inheritance, saying that if she were to start living "normally", he would immediately buy her an apartment and a car as her part of the inheritance. In March 2015, B's younger sister attacked both women in their home. During the incident U. was concussed and B received cuts to her hands and arms. Property (table, chairs, mirror, music system) was broken or damaged in the attack. B's younger sister vilified them and threatened to kill the couple. As soon as they could save enough money for fares, the couple fled the country. They felt that if they were unsafe in their home, they had no assurance of safety anywhere in Mongolia, and wouldn't be protected by the State. This case would have been treated (as per previous experiences documented by the Centre) as only a minor domestic altercation between family members as the new Law on Combatting Domestic Violence was not yet in force. Furthermore, the two women were fearful of secondary police victimisation with a real threat of their identities being made public through an investigation that would have involved many police and prosecutorial personnel.

Case: N. A., an openly trans man, was attacked at the pub he ran at 11:40 pm on 25 February 2012 by his sister's former boyfriend, E. G. who knew N. A. before his transition. E. G. punched N. A. in the face saying "So they say you are handsome guy, are you? Since when did you become a man?" E. G. inflicted N. A. with a concussion and a fracture to his right orbital bone. N. A. filed a complaint with the Ulaanbaatar City Chingeltei District Police. The Chingeltei District Criminal Court heard the case on 4 September 2012. E. G. was found guilty, but was not sentenced as the Prosecutor's Office had lost the medical report on the seriousness of N.A.'s injuries. Also the District Prosecutor's Office did not inform the victim that the defendant may not be punished due to the length of time that had elapsed from the filing of the first instance report to the hearing (first-time criminal offenders are not sentenced if more than six months have passed after an incident that results in "minor injuries"). Due to the loss of evidence, the case was considered to involve only minor, rather than serious injuries. The case as adjudicated by the First-instance Criminal Court of Chingeltei District was tantamount to a dismissal, since no punishment was given to the perpetrator.

Case: A. O., an openly living gay man was found dead in a hotel room sometime in early March in 2014 in the area of the 1st khoroo of Bayangol district, Ulaanbaatar. The LGBT Centre had previously assisted A. O. when he filed a rape complaint in December 2013. He had also filed another rape complaint in late January 2014. During the initial stages of investigation, A. O. expressed his fear to the Legal Program Manager of the LGBT Centre about being persecuted by the perpetrators for filing the first instance report. Soon thereafter, he was

no longer reachable by phone. The victim had first accessed state protection through a trafficking victim protection program implemented by Human Security Policy Studies Centre NGO, when he became a human trafficking victim in Thailand in early 2013. A criminal investigation was launched in December 2013 as a result of A. O.'s rape allegations, however, the victim withdrew the case after he was verbally derided by the Sukhbaatar District State Prosecutor Tsengelmaa for being gay, for possibly being a sex worker and for working in a sauna. Upon the discovery of A. O.'s death, the police immediately closed the case ruling it a suicide despite the circumstantial evidence that the victim may very well have been targeted for murder due to his multiple vulnerabilities of the earlier rape complaints and being a victim of trafficking. There were allegations in the community that a retired, former high-ranking law enforcement officer was involved in the case, that he had harassed A. O. and made him withdraw the complaint, and may have even been involved in his death.

Cases involving institutional discrimination and infringement on the rights to freedom of information and expression against LGBTI community:

From early August 2014, the LGBT Centre approached a number of state-budget funded cultural spaces and organisations in Ulaanbaatar city about hiring their premises for public cultural events such as a visual arts exhibition and a film festival to promote non-discrimination and equality for all during the Equality and Pride Days. Despite the Government and Parliamentary resolutions presently geared toward improving the human rights situation of LGBTI persons, the Centre was both directly and indirectly denied access.

On 12 August 2015, the LGBT Centre sent an official letter to the Metropolitan city Governor's Office informing authorities of the planned Equality walk through the territory of Chingeltei and Sukhbaatar districts on 29 August 2015, as per the Law on Regulating Assembly, Section 9.1 that requires persons or legal entities planning such public assembly to inform territorial administrative bodies of any planned public gathering to district/soum governor's office if to be held on the territory of one district/soum, and to the metropolitan/province governor's office if to be held on the territory of two or more districts/soums. On 25 August 2015, the LGBT Centre was informed that it needed to send the same letter and content specifically to the Sukhbaatar district Governor's office. On the same day, the LGBT Centre sent a letter informing the Sukhbaatar district Governor's Office of the Equality Walk planned for the morning of 29 August 2015, with the route to pass through the main city square, the Chinggis Square. On 27 August 2015, the Sukhbaatar district Governor's Office's Deputy Governor L. Amarzaya sent an official written communication numbered 2/2543 to the LGBT Centre informing the Centre that the Sukhbaatar district refused to register (tantamount to prohibition of) the Equality Walk and that all responsibility for damages and negative consequences for holding the walk as planned must be borne by the Centre. The official letter did not indicate any reason as to why the authority refused registration. The LGBT Centre conducted the Equality Walk as planned, but the Sukhbaatar and Chingeltei district police personnel physically obstructed walkers the entry into the Chinggis Square. Police also engaged in brutality by physically shoving a few times the Executive Director of the LGBT Centre, who was walking at the head of the Equality Walk. At this show of force, walkers were intimidated and forced off the Chinggis Square. Following the incident, the LGBT Centre filed a petition to the First-instance Administrative Court on 16 October 2015 to obtain a ruling of unlawful interference by the Metropolitan City Governor's Office and the Sukhbaatar district Governor's Office, as well two district police officers who engaged in violence against walkers for Equality. The grounds of complaint were a denial of the right to be free from physical violence and discrimination, the right to hold an opinion, the right to express that opinion through a peaceful assembly, the right to freely associate and the right to pass through a public space during a peaceful assembly. The case was heard on 10 December 2015, with the First-instance Administrative Court finding that no discrimination against LGBTI people occurred and that police had a right to stop and force walkers out of the Chinggis Square because they did not obtain the necessary registration/permit from the Sukhbaatar district Governor's office. On 5 February 2016, the Centre appealed the decision citing that the First-instance Administrative Court failed to take into account the established international law on the freedom of assembly and freedom of expression and allowed for discriminatory and harmful practices by the

District and Metropolitan Governor's Offices and police from both districts. A ruling was made on 27 March 2016 by the Appeal Administrative Court upholding the lower court decision maintaining that no discrimination took place, indirectly promoting impunity among administrative and law enforcement bodies.

On 17 August 2016, the LGBT Centre sent an official letter informing the Metropolitan city Governor's Office of the planned Equality Walk through the territory of Chingeltei and Sukhbaatar districts on 27 August 2016, as per the Law on Regulating Assembly. On 24 August 2016, Ulaanbaatar city Metropolitan Governor's Office Staff Chief, M. Otgonbayar sent an official written communication numbered 3/2816 to the LGBT Centre in response to Centre's letter dated 17 August 2016, detailing a refusal to register the Equality Walk due a school-supplies sales on the Chinggis Square on that day, and that all responsibility for damages and negative consequences for holding the Equality Walk as planned would be borne by the Centre. This refusal to register the walk was made due to the Appeal Administrative Court decision of 27 March 2016 that held such refusals by administrative bodies to be lawful and permissible. This refusal attested to the institutionalised nature of discrimination against LGBTI people. A source inside the Metropolitan Police Department said both 2015 and 2016 refusals to register and allow Equality Walks as planned, were due to personal biases of public servants at the Metropolitan city Governor's Office and the Sukhbaatar district Governor's Office who believed that "deviants must not be allowed to walk on the square named after Mongolia's great father", "There will be children on the square, it is wrong to expose them to deviants". The source also said the appeal court judges were laughing among themselves, saying: "What is this nonsense?... What the hell is LGBT?" when entering the courtroom, which attests to their bias and unpreparedness to adjudicate the case.

In late 2016 and 2017, the LGBT Centre conducted a curriculum review of comprehensive secondary school subjects and found no mention of social diversity, LGBTI people and same-sex families, pointing to the situation where the right to information, an integral part of freedom of expression, remains unfulfilled for LGBTI children and adults. The curriculum and comprehensive secondary school subjects are devoid of any information on the diversity of sexual orientations and gender identities, which further acts as a legitimating factor in widespread discrimination, and its institutionalisation, against LGBTI people. The health subject introduced in 2002 carried a chapter on sexual orientation (without information on gender identity and expression); however, this subject was made defunct from the curriculum in 2015. Furthermore, relegating LGBTI issues to the context of health subjects furthers deeply seated misinformation and prejudice as LGBTI people are only seen as sexual beings. It is becoming increasingly clear that only through the education of children from the earliest age can society become more informed about different sexual orientations, and that no sexual orientation is inherently superior or inferior to others and as such must not be a ground for discrimination, stigma and violence.

Recommendations for Articles 2, 19 and 26:

- 1. We urge the Committee to include a concluding observation to mandate the judiciary to study and fully apply international law as per Articles 10.2 and 10.3 of the Mongolian Constitution, especially when adjudicating cases related to new or evolving areas of jurisprudence around freedom of expression. We urge the Committee to remind the Government of Mongolia of the many obligations it has been under in relation to LGBTI people since 2010, and to undertake concerted efforts to protect LGBTI people through administrative, judicial and other measures and to combat discriminatory attitudes, beliefs and practices in the executive, judicial and legislative branches of government.*
- 2. We urge the Committee to include a concluding observation to urgently amend the Constitution of Mongolia to include sexual orientation and gender identity as protected grounds so as to ensure the right of LGBTI people to be protected from discrimination. The need to include the sexual orientation and gender identity in the Constitution of Mongolia is in line with the principle of access to justice since all citizens study the Constitution as part of the school curriculum and the text remains the main source of jurisprudence in Mongolia. The amendment to the Constitution to include sexual orientation and gender*

identity is vital to the recognition and elimination of the widespread negative attitudes and societal discrimination that form the foundations upon which both State and non-State actors justify their acts of discrimination against LGBTI people. Acts and omissions tantamount to discrimination, persecution, torture and other cruel, inhuman and degrading treatment and punishment of LGBTI people, when engaged in by public bodies and judiciary, create a culture of impunity and explicit and implicit promotion of discrimination against LGBTI people, while an amendment to the Constitution will serve to create and promote a culture of equality for all.

3. *We urge the Committee include a concluding observation to urgently pass a comprehensive, broad-based anti-discrimination legislation since the failure of the Government of Mongolia to protect all citizens equally regardless of sexual orientation or gender identity is continually self-evident, and the criminal justice framework (put in place by yet to be enforced new Criminal Code) is not sufficient to eliminate the prevailing culture of prejudice and discrimination against LGBTI people. A broad-based, comprehensive anti-discrimination legislation that prohibits and is aimed at eliminating all forms of discrimination in public and private spheres on the basis of sexual orientation and gender identity as well as corresponding administrative, institutional and budgetary mechanisms are needed to create a comprehensive capacity to implement the anti-discrimination-related policies and legislations as well as to educate the public on equality and non-discrimination through publicly-funded media, namely through the Mongolian National Public Broadcaster Television and Radio, private media outlets. We urge the Committee to include a recommendation to the Government of Mongolia to develop and undertake regular specific and regular training programs for civil servants in education, healthcare and law enforcement and judiciary sectors, both development and delivery to be implemented in consultation and collaboration with specialised human rights civil society organisations such as the LGBT Centre.*
4. *We urge the Committee to include a concluding observation to review the comprehensive secondary school curriculum to include diversity, sexuality and gender equality issues in all subjects from earliest grade. Education is the first and foremost sector which helps form public opinion, and the continued erasure and invisibility of LGBTI people from education curriculum fosters the culture of discrimination on the basis of sexual orientation and gender identity.*
5. *We urge the Committee to include a concluding observation to avail publicly-funded cultural spaces such as city cultural palaces, district cultural centres, city and national art galleries to human rights organisations for the purposes of promoting human rights for free or for a reasonable, non-commercial fee-based rental opportunity (given the non-existing State funding for civil society organisations).*

e. Torture, inhuman and degrading treatment or punishment and access to justice (LGBTI) - Article 7

Reply/Comments from Civil Society

The LGBT Centre wishes to highlight that 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. None of the legal acts proscribe torture that may arise due to “any reason based on discrimination of any kind”.

Since 2011, cases of torture, degrading and inhuman treatment were mostly documented in the case of trans individuals, and depict an alarming situation:

Case: On 14 March 2016, Na., a trans woman, was beat her up and her head was shaved because of her

gender identity. The LGBT Centre documented the case and assisted her in filing the first instance report with the Chingeltei District Police Department. The Chingeltei Prosecutor's Office dismissed the case on 6 May 2016 despite the fact that the police didn't interrogate the perpetrators identified and named in the first instance report and neglected to obtain evidence from the CCTV cameras where the victim was attacked. Na. was denied the right to seek justice and remedy for physical and psychological torture at the hands of non-State actors.

Case: On 19 March 2016, E., a trans woman, was beaten up, burnt with a cigarette and threatened to be sold as a prostitute because of her gender identity in a number of locations in the span of one night. The LGBT Centre documented the case and assisted her in filing the first instance report with the Chingeltei Police Department. The Chingeltei Prosecutor's Office dismissed the case on 25 April 2016 despite the fact that the police didn't interrogate perpetrators identified and named in the first instance report and neglected to obtain evidence from the CCTV cameras where attacks occurred. E. was denied the right to seek justice and remedy for physical and psychological torture at the hands of non-State actors.

Case: On 31 March 2016, No., a trans woman, was abducted from the city and badly beaten by two people. The LGBT Centre documented and assisted her in filing the first instance report with the Chingeltei Police Department. The Chingeltei Prosecutor's Office dismissed the case on 19 April 2016, despite the fact that the police didn't interrogate the perpetrators identified and named in the first instance report, and neglected to obtain material evidence from CCTV camera locations where attacks occurred. No. was denied the right to seek justice and remedy for physical and psychological torture at the hands of non-State actors.

Case: On 6 May 2016, B., a trans woman, was physically attacked, punched in the face and tackled to the ground by the members of now defunct Takhar Agency (Agency in charge of providing witness and victim protection). As B. was getting out of a taxi outside the Bayanzurkh district court, she was derided by a Takhar Agency member standing nearby: "What are you, a man or a woman?" When she replied, "It's none of your business", the officer kicked her back into the taxi. When she started shouting, the officer said: "She must be drunk. We'll teach you to insult officers." He again punched B. and dragged her into the basement of the Bayanzurkh District Court. Three Takhar officers held and taunted her for about an hour. She didn't lodge a complaint because the officers took her home address and she was fearful of the retaliation. B. suffered physical and psychological torture at the hands of State actors.

Case: Two police officers picked up an openly trans man N.A. from Hanzo, the only LGBT club in Ulaanbaatar, on 19 October 2014 during a police raid on the club under the pretext that the club was selling alcohol after 12 am. While the Metropolitan Administrative resolution of 2011 (effective from 1 January 2012 until July 2014) prohibited sale of alcohol after midnight, the Hanzo Club was singled out and raided every other day because it was widely known to be the only club serving LGBTI people. When the music was shut down, N.A. asked the club staff to put the music back on in the presence of police officers. N.A. was then taken and held in a cell at the Chingeltei District Police Station for 14 hours, from 1 am to 3 pm. He had no access to drinking water or a toilet and was not given a warm blanket despite sub-zero temperatures and all windows being kept open that night. At 8 am, he was given a document to sign that stated he had obstructed police work and was held in the sober tank for unruly behaviour. He refused to sign and handed it back to the police officer, at which point he was dragged out of the cell and verbally and physically assaulted by a police officer who said: "Who do you think you are, you, a homo freak from Hanzo?" He tackled N.A. and kicked him to the ground, twisted his right arm and shoulder until he cried. After the attack, all other police officers on duty came one-by-one by the cell, until his release at 3 pm, taking turns to taunt and threaten N.A.: "We will book you for 72 hours; no one will miss you"; "You are nothing. You are scum. Who do you think you are?"; "We will arrest you for 14 days, who do you think you are?" N.A. has been a highly visible human rights activist since 2009, appearing regularly and openly in various television interviews on LGBTI rights. He chose not to report the police attack because the police took his address and they could easily come after him to retaliate.

Case: An intersex minor born in 2010 had been prescribed the wrong medical treatment between the ages of two and six. This resulted in the endocrine system failure and extensive damage to internal organs. Medical staff at the public hospital did not inform the parents of the exact nature of the child’s intersex condition as they were uncertain of the diagnosis since no chromosomal testing is available in Mongolia. Doctors advised the child’s parents to surgically remove the “extra” part. These uninformed and harmful practices constitute a grave violation of the child’s and the parents’ right to agency, choice and information. Given the child’s age, the wrongfully prescribed treatment is seen as torture in this case.

Recommendations for Article 7:

1. *We urge the Committee to include a concluding observation to review and amend the Mongolian Criminal Code and Mongolia’s Criminal Procedures Code to ensure that torture agents are defined as both State and non-State actors, and that any such public allegations by victims are taken seriously and promptly investigated. In order to prevent such crimes from re/occurring, the Government of Mongolia must take all appropriate action, including education programs and training for police, law enforcement officials, and other public providers such as healthcare and education professionals with a view to achieving elimination of prejudicial or discriminatory attitudes and behaviours related to the idea of the inferiority or the superiority of any sexual orientation, gender identity or expression.*
2. *We urge the Committee to include a concluding observation to mandate a creation of a special unit to handle hate crime allegations involving officials, since the majority of victims will not report cases, or appeal them where law enforcement personnel are implicated as there is sufficient evidence pointing to law enforcement personnel as perpetrators of hate crimes against LGBTI people.*

f. Peaceful assembly and freedom of association (LGBTI)- Articles 21 and 22

Issue 21. Please respond to reports of violation of the freedoms of expression, association and peaceful assembly by lesbian, gay, bisexual, transgender and intersex persons and activists in connection with the annual Equality and Pride Days from 28 August to 6 September 2015, when authorities denied and obstructed access to Chinggis Square on 28 and 29 August 2015, and forcibly removed walkers for equality from the Square.

Reply/Comments from Civil Society

In lieu of any efforts by the Government of Mongolia to abide by the recommendations received through two cycles of the UPR and various treaty bodies to ensure and promote equality and non-discrimination especially on the grounds of sexual orientation and gender identity through all means and for the wider public as well as public servants providing public goods and services, the LGBT Centre organises annual Equality and Pride Days from the last Friday of August until the end of the first weekend in September to promote non-discrimination and acceptance for all since 2013. 10-day Equality and Pride events feature arts, culture and human rights-oriented public social events such as the Voices-4-Equality public concert, Equality Walk, Arts-4-Rights exhibition and the Beyond the Blue Sky Queer Film Festival aimed at educating the broader public to negate the unscientific views and misinformation around LGBTI people in Mongolia. There were a number of grave violations of LGBTI and ally people’s rights preceding and during Equality and Pride Days in 2014, 2015 and 2016 as detailed below.

The Government of Mongolia, through its local municipal city and district administrative government bodies, police and judiciary, actively infringed upon the rights of freedom of association and assembly and the freedom to promote human rights of LGBTI and ally people by denial of access to the Chinggis Square on 28 August 2015 for the opening concert of the Equality and Pride Days; by obstructing access to, and physical removal of, walkers for Equality from this public space on 29 August 2015, as well as by a refusal to grant a

right of passage for the purpose of peaceful assembly, Equality Walk, through the Chinggis Square on 24 August 2016 (*please see the last two cases under Articles 2, 19 and 26*). The administrative court litigation process from mid-October 2015 through to the end of March 2016 as outlined in the above cases shows that any legal disputes with the District Governor's Office or Metropolitan City Governor's Office take many months to resolve and is contrary to the very principles of international law on freedom of association and peaceful assembly that prescribe registration of such public events be speedy and unbureaucratic, especially when these assemblies are proven to be peaceful and not harmful to public security, public health and safety in any way. The LGBT Centre regrets the fact that the Government of Mongolia continues to actively engage in acts of discrimination against LGBTI people and unlawfully infringes upon the freedom of expression, freedom of association and peaceful assembly of LGBTI people in Mongolia despite the UN Human Rights Committee recommendation of March 2011 that it no longer interfere with the freedom of association of LGBTI people, following the LGBT Centre's fight for an official registration as an NGO between March 2007 to December 2009.

It is of further grave concern that the Administrative Appeal Court ruled on the case on 27 March 2016 without adhering to procedural and substantive rules: photographic and video evidence of police physically forcing walkers out of the Chinggis Square were "lost" by the First-instance Administrative Court and did not constitute the evidence upon which an impartial examination should have been at the appeal-level adjudication despite the Centre submitting and listing the aforementioned photos and videos as material evidence in the first-instance and appeal petitions. The Administrative Appeal Court also failed to adhere to the substantive rules of administering justice by rigidly interpreting Section 7.1.4 of the Law on Regulating Assembly and by upholding the explanation from the Metropolitan Governor's Office that the Chinggis Square had sales at the time. This failure by the Administrative Appeal Court was a serious misapplication of the law since it failed to understand that the Chinggis Square is not a designated market place, but a public space first and foremost. Furthermore, the Administrative Appeal Court rigidly adhered to the interpretation of the right to remedy provided under the Law on Regulating Assembly claiming that the Centre should have lodged the case to the Administrative Court within three days of receiving the denial, which would have taken months to resolve. The judiciary's refusal and failure to apply the well-established international jurisprudence in relation to the concepts of public space and access to public space for peaceful assembly, points to the failure of the justice system, a full denial of access to justice and promotes impunity within the government bodies.

Of further grave concern on the implementation of the freedom of assembly are Sections 7.1.4 and 9.4 of the Law on Regulating Assembly, which are contrary to the Article 19 of the ICCPR. The Law on Regulating Assembly provides blanket powers to governors of districts/soums and cities/provinces to register/permit deny such assemblies, and gives these administrative bodies the right to change the route of the assembly under its Section 9.4. Also Section 7.1.4 of the Law on Regulating Assembly allows aforementioned administrative bodies to curtail the right to freedom of assembly if such assemblies are held at places designated as markets. While it is true that the Chinggis Square has been used for various commercial purposes such as school-supplies sales during the Equality and Pride Days in 2015 and 2016, the Chinggis Square is not a designated market place. If such loose interpretation of a market place continues to be upheld by administrative and judicial branches, the freedom of assembly will be nullified as the government will continue to rent out these public spaces for commercial purposes, therefore denying access to open spaces for such cultural or human rights purposes such as the Equality Walk. Section 7.1.4 of the Law on Regulating Assembly and its mechanical interpretation allowing a denial of public gathering in a non-designated market is extremely contentious as the Government continues to rent out this and other similar public spaces for commercial purposes and provides no access to such spaces for cultural or human rights promotion events/assemblies effectively nullifying the freedom of assembly in those public spaces. Therefore, Section 7.1.4 of the Law on Regulating Assembly and its mechanical application is seen as a direct violation of the Article 19 of the ICCPR.

Recommendations for Articles 21 and 22:

1. *We urge the Committee to include a concluding observation to ensure central government bodies' policies, legislations and other binding guidelines are informed in a constructive and regular manner to all its branches, especially local administrative bodies and law enforcement agencies so as to eliminate existing prejudices that lead to the discrimination and severe curtailing of the LGBTI people's rights.*
2. *We urge the Committee to include a concluding observation that the public's right to information must not be curtailed simply due to the prevailing ignorance and discriminatory attitudes and practices of public servants and to amend Sections 9.1 and 7.1.4 of the Law on Regulating Public Assembly to bring them in line with the Article 19 of the ICCPR.*

g. Marriage/same-sex couple recognition (LGBTI) - Articles 17 and 23

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 men and women who have reached the age determined by law." 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." Mongolia's failure to comply with Articles 17 and 23 of the ICCPR results in the situation where same-sex couples and families continue to face daily discrimination both due to the non-recognition of same-sex couples and, in particular, the lack of family rights provided to such couples, including the right to be recognised as a spouse for immigration purposes in the case of bi-national couples. Mongolia's failure to legally recognise same-sex relationships, results in same-sex couples not being able to access the rights, benefits and privileges that married couples are entitled to. This not only prevents them from realising their right to have their families protected under Articles 17 and 23, but also affects a range of other civil, social and economic rights. Same-sex partners are not able to avail immigration rights to their foreign partners in the case of bi-national couples, make medical decisions on each other's behalf, or on behalf of their children as non-biological parents are not legally recognised. 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. In Mongolia, same-sex couples are unable to legally adopt or access other parenting-related rights: for example, the female partner of a woman who gives birth through in-vitro fertilisation (IVF) is not recognised as a co-parent even though she plays a role equal to the biological mother, in raising the child. Many children of same-sex partners – whether adoptive or biological – also face bullying and harassment, especially at school, due to the sexual orientation or gender identity of their parents.

Recommendations for Articles 17 and 23:

1. *We urge the Committee to include a concluding observation to amend the Constitution of Mongolia and Family Law recognising the rights of same-sex couples, including parenting rights in order to protect all families regardless of spouses' sexual orientation.*

h. Violence against women and children, including domestic violence (arts. 2, 3, 7, 24 and 26)

Issue 7: In reference to the Committee's previous recommendations (CCPR/C/MNG/CO/5, para. 18), please provide information on measures taken and progress achieved to address effectively the prevalence of violence against women, including domestic and sexual violence, particularly efforts to: (a) raise awareness of women's rights, existing mechanisms of protection, including restraining orders, and redress and encourage reporting of such violence; (b) provide for sufficient and adequate State-run shelters and other victim assistance services

throughout the country; (c) ensure effective investigation, prosecution and sanctioning of perpetrators and reparation to victims. Please indicate whether measures have been taken to criminalize spousal rape. Please provide updated statistics on the number of reported cases of violence against women, the investigations carried out, the types of penalties imposed and the remedies granted to victims.

Reply/Comments from Civil Society

The Parliament adopted a revised version of the Law on Combating Domestic Violence along with other relevant laws' amendments on 22 December 2016. In addition, it recognizes 'Committing domestic violence' as an independent type of violation and considers its seriousness as a criminal offence, imposing an offender to a phasic and distinct penalty. This allows an opportunity to prevent recurrence and progression of domestic violence.

The newly adopted Law on Combating Domestic Violence includes detailed regulations on reporting violence against family and children. For example, anyone who becomes aware of violence against children must mandatorily report it. Furthermore, a joint team in charge of combating newly arising domestic violence, as well as, education, health and cultural institutions are obliged to improve public understanding regarding domestic violence and to prevent, detect and report domestic violence, according to the law.

In 2017, five state-owned shelters with a total of 46 beds are in operation nationally.⁸ Two non-governmental organization-run shelters with a total of 24 beds operate in the capital city and Orkhon aimag, respectively. A total of six 'one-stop service centers' run by government and non-government organizations are responsible for the provision of services to domestic violence victims. These shelters and service centers are insufficient to protect the number of domestic violence victims. Although relevant professional organizations have proven that state-run shelters do not meet health and safety requirements and for the last 15 years they have demanded police organizations close the shelters, they are still functioning due to lack of budget.

Certain progress has been made to combat domestic violence. For instance, Parliament adopted the Law on Combating Domestic Violence on 22 December 2015. This law provides inter-sectoral regulation in preventing and combating domestic violence and the provision of services to victims. Adoption of the revised version of the Law on Combating Domestic Violence is only one part of the process to create a comprehensive legal environment to address the issue. Although the revised version of this law was consistent with the Criminal Code, Law on Infringement, Law on Law Enforcement Procedure, Criminal Procedure code, Law on Executing court decision and Law on Prosecutors, the new Parliament (established following the 2016 election) adopted the Law on Combating Domestic Violence individually, separate to the above-mentioned laws. Furthermore, prolonging the date of effect of the Criminal Code and the Law on Infringement, the Parliament is working to make amendments to these laws.

Interim regulations made to the existing Criminal Code and the Law on Administrative liability, which impose the penalty of arrest to an offender committing violence, are ineffective and detention centers are full at present. The agency executing court decisions must conduct 'forced behavior modification training' for offenders as defined by law, however, court decisions are not enforced, because this obligation was not specified in the law.

Approval and enforcement of over 30 rules and regulations that must provide for full implementation of the law, is insufficient. In connection with the start of implementation of the Law on Combating Domestic

⁸ The 30-bed shelter at the Capital City Police office, the two-bed shelter at the Agency for Family, Youth and Child Development of Dornod aimag, the four-bed shelter at the Agency for Family, Youth and Child Development of Khentii aimag and the eight bed children's shelter were newly established in February 2017, under the Agency for Family, Youth and Child Development of the Bayanzurkh district.

Violence in February 2017, the Mongolian Government had its affiliate organizations draft the aforementioned rules and regulations and adopted them too quickly. Professional civil society organizations were not invited to participate, thus, those rules and regulations are incorrect and contradict the Law on Combating Domestic Violence.

In accordance with the Law on Combating Domestic Violence, the Subcouncil for Combating Domestic Violence (which is in charge of providing intersectoral coordination) operates at the Coordinating Council for Crime Prevention. Although the Subcouncil has already been established and includes a civil society representative in its composition, it is a step-back because it avoids having CSOs participate in activities to combat domestic violence and the Subcouncil has itself become the implementer.

Issue 8: Please report on measures taken to address and effectively punish violence against and abuse of children, and respond to reports that corporal punishment of children in the home is common despite its prohibition by law.

Reply/Comments from Civil Society

Chapter 4 of the newly adopted Law on Combating Domestic Violence regulates child protection from domestic violence. Additionally, the new Criminal Code recognizes that spanking one's own child (corporal punishment) as a crime.

i. Right to life, prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and the right to an effective remedy (arts. 2, 6 and 7)

Issue 9: In reference to the Committee's previous recommendations (see CCPR/C/MNG/CO/5, para. 12), and its evaluation of the follow-up information provided by the State party in 2012 (see CCPR/C/106/2, p. 22), please provide information on: (a) the outcome of the proceedings against police officers in connection with human rights violations committed during the state of emergency in July 2008 and reparations received by victims; (b) measures taken in respect of other cases of alleged human rights violations committed during the state of emergency.

Reply/Comments from Civil Society

Four former police chiefs were accused in the "1 July" riots and were sentenced to imprisonment for terms of 2-6 and 6 years. The two year sentence imposed on one of the police officers was cancelled under amnesty, and the three year sentences for the others officers were each reduced under amnesty. They were each imprisoned for terms from two and a half years to three and a half years. The politicians who were involved with this riot were not found to be responsible and the fair damage remedy principle did not apply. In the damage remedy stage, compensation was granted to four of the six victims, amounting to 50 Million MNT (37,925 USD); the families of two victims received compensation of 20 Million MNT (15, 170 USD) for loss of life. Reparation to organizations impacted by the riot was unfair. For example, whilst the state provided compensation for the cost for a Mongolian People's Party building destroyed by fire, cultural organizations that incurred considerable property damage received no compensation.

Although the 'State of Emergency' Civil Society Coalition documented many incidents of torture and other ill-treatment, a number of law enforcement officials who committed the crimes of torture were exempt from punishment and there was no remediation to victims due to the narrow definition of the crime in the Criminal Code.

Issue 10: In light of the State party's accession to the Second Optional Protocol to the Covenant, in 2012, and the abolition of the death penalty in the new Criminal Code that entered into force on 1 September 2016, please provide information on the situation of prisoners who were formerly on death row and measures taken to safeguard their rights in accordance with the Covenant.

Reply/Comments from Civil Society

The Criminal Code adopted by the Parliament in December 2015 abolished the imposition of death penalty from the available penalty categories. However, this Code has not yet been enacted. No single person has been executed since the issuance of the decision of the President of Mongolia suspending the death penalty. Although the court ordered the death penalty for two persons in the First Instance Court in 2015, an Appellate Court changed the penalty. No single person had the death penalty imposed in 2016.

Issue 11: Please provide information about the definition of the crime of torture in the new Criminal Code and its compliance with the Covenant and other relevant international standards. Please indicate whether measures are being taken to review the penalties for torture and related crimes to ensure that they are commensurate with the gravity of such crimes. Please clarify whether an effective enforceable right to reparation for victims of torture, including rehabilitation and adequate compensation, is guaranteed both in law and in practice.

Reply/Comments from Civil Society

The Criminal Code adopted by the Parliament in December 2015 provided its compliance of the definition of the crime of 'torture' by international standards. This Code has not yet been enacted. A compensation clause for physical damage to the victims of torture specified in the draft Criminal Procedure Code is the same as the existing Criminal Procedure Code. Mongolian criminal legislation does not comply with the international principles of rehabilitation and adequate compensation for the victims of torture is not paid.

Issue 12: Please respond to concerns that: (a) torture is still used, particularly to extract forced confessions; (b) no independent mechanism is in place to investigate allegations of torture and other ill-treatment committed by the law enforcement officials owing to the reported conflict of interest and lack of independence of the Investigative Division of the General Police Department and the Independent Authority against Corruption, which were vested with investigative powers following the dissolution of the Special Investigation Unit under the General Prosecutor's Office; (c) impunity for many allegations of torture and other ill-treatment persists. Please provide information on the number of reported cases of torture and ill-treatment since 2012, the investigations and prosecutions initiated, the number of actual criminal convictions and concrete sentences imposed on perpetrators and the nature and amount of the reparation granted to victims.

Reply/Comments from Civil Society

Torture and other forms of mistreatment are still used. For example, the NHRCM has received a total of 3,229 complaints since its inception, and 2,260 complaints (equal to 70 percent) are associated with criminal procedural issues. Out of the total, 13% of complaints are associated with torture committed by representatives of police units, inquiry officers and investigators, and 18% of complaints are associated with arrest and detention, code of conduct and attitude of inquiry officers and investigators.⁹

By Parliamentary resolution, The Investigative Division of the General Police Department was dissolved on 24 January 2014; its role and relevant budget, as well as its facilities, real and other assets, were transferred to the Authority Against Corruption. Allegations of the crime of torture that were being investigated by the

⁹ 13th Status Report on Human Rights And Freedoms In Mongolia, the NHRCM - <http://www.mn-nhrc.org/eng/main2/188/>

Investigative Division were transferred to the relevant Police Department of the area where the crime was committed, for investigation.¹⁰

Case: In a complaint to the NHRCM from a detention center detainee stated: “I submitted a complaint to the Internal Monitoring and Security Division of the General Police Department regarding my own torture and the health damage it caused, however, an investigator, Police Captain ‘B’, who shares the same office as the police officials who tortured me, came and informed me that he would investigate my complaint. Thus, I requested my complaint be investigated by another division” (extracted from the complaint submitted to the NHRCM by the citizen named ‘E’, 2014).¹¹

Three hundred and thirty complaints out of a total 710 complaints received by the NHRCM in 2014 (equal to 46.5%) were solely associated with complaints submitted by suspects, accused and convicts detained in prisons and detention centers under the General Executive Agency of Court Decisions. Out of those complaints, 171 highlighted false accusations and torture, and following investigation, the complainants were found to potentially be the victims of the crime of torture. Those complaints were then referred to the relevant jurisdictions of the General Police Department and the General Prosecutor’s Office, however, surveys and data submitted from the General Police Department and the General Prosecutor’s Office shows that initiation of investigation of criminal crime is rare due to Mongolian legislation being non-compliant with the Convention against Torture.¹²

j. Liberty and security of persons and humane treatment of persons deprived of their liberty (arts. 7, 9 and 10)

Issue 13: Please report on measures taken to address: (a) the reported large number of arrests without a warrant; (b) the reported failure to inform persons deprived of their liberty of their rights upon arrest, to provide them with a lawyer from the very outset of the deprivation of liberty, and the barriers for indigent accused persons in accessing free legal assistance from the very outset of detention owing to the requirement to notify the Mongolian Bar Association; (c) the reported prevalent use of pre-trial detention for lengthy periods, including beyond the time period prescribed by law; (d) reports that the right of detained persons to family visits is contingent upon confession to the alleged crime; (e) reported instances of intimidation and deception against suspects and their families by police and prosecutors. Please provide information on non-custodial alternative measures to pre-trial detention and their application in practice. Please clarify whether the time spent in pre-trial detention is included in the total time of a sentence of imprisonment.

Reply/Comments from Civil Society

Few arrests without warrant have been reported since 2008; however, the rights of detained and arrested people have been violated.

Amnesty International Mongolia issued a statement urging a guarantee of the rights of B.Bulgan (arrested 13 November 2015) to family and attorney visits, necessary medical care, and the right to a fair trial complying with international human rights norms. The statement highlighted several issues including the condition of the detention center and not receiving appropriate medical care, legal assistance the right to family visits.¹³

Human rights were violated in accordance with article 70 of the Criminal procedure code, due to the failure of the inquiry officer, investigator and prosecutor to gain judge’s approval to immediately cancel or change the measures of constraint under guard for the term of investigation.)

¹⁰ 14th Status Report on Human Rights And Freedoms In Mongolia, the NHRCM - <http://www.mn-nhrc.org/eng/main2/188/>

¹¹ ibid

¹² ibid

¹³ It is worrying whether the rights to medical care and fair trial are provided to suspects or the accused’ <http://www.amnesty.mn/mn/aim-news/20160311-sejigten-yallagdagchiin-emnelgiin-tu>

Extract from an interview conducted with a citizen kept in Detention center 461.

Case: I have been in a detention center for five months. The expired date of the term for investigation with confinement under guard coincided with a weekend, thus I was sent to the drunken persons' recovery center (a place where drunken persons are kept for a night so as to prevent them from possible external danger, or protect their life until they're no longer under the influence of alcohol) for one night under personal surety and was returned back to the detention center.

Case: It is reported that complainant Mr B, spent 40 months in pre-trial detention (after being accused of a crime as defined in article 145.4 of the Criminal Code) which exceeded by 10 months the term specified by law. Mr C spent a total of 13 months and 14 days in pre-trial detention for the crime defined in article 145.3 of the Criminal Code, which exceeded by 44 days the term specified by law; Mr Z spent a total of 13 months and 1 day in the pre-trial detention for the crime as defined in article 145.3 of the Criminal Code, which exceeded by 31 days the term specified by law.¹⁴

Issue 14: Please provide information on measures taken to address overcrowding and poor living conditions in detention facilities, in particular at the Denjiin Myanga police detention centre. Please report on the progress made in concluding the construction of new detention centres, including in Dornod, Uvs and Dundgobi aimags.

Reply/Comments from Civil Society

The General Police Department's Detention Center previously located in Denjiin Myanga was referred to the jurisdiction of the General Executive Agency of Court Decisions ongoing since 2014, and the center was moved to the detention center building located in the former Gants Khudag area. Clause 2.2 of the 'regulation on executing arrest under the administrative process' adopted by the Capital City Prosecutor, specifies that 'a designated wooden board and bed shall be put in a public room and placed no closer than two square meters from another person'. However, 50-60 people are kept in a room where a total of 22 double beds are kept close to one another. Although many people are detained in this small space, those who with previous experience of detention in the Denjiin Myanga '111' center proved that the conditions have improved since moving the detention center to the jurisdiction under the General Executive Agency of Court Decisions. Although the center is located in the city center, it uses portable water and a boiler for heating. Although regulations specify that: 'detained persons shall have a shower no less than once a week', detention center personnel try to shower them depending on staff capacity. Besides, regulations do not specify a morning wash; washing 300 people daily requires a lot of man-power and uses a vast amount of water.¹⁵

When the center was controlled by the General Police Department, its budget was for a maximum of 114 people. However, approximately 250 persons were regularly detained in the center, thus complaints about meal quality and the inadequacy of the budget were common. Even after the center was referred to the jurisdiction of the General Executive Agency of Court Decision, budget and funding remained the same. Detainees are provided with a hot meal (usually bantan¹⁶) once a day, with bread and hot tea twice daily.

District Prosecutor's offices conducted inspections for relevant legal compliance of the activities of the Police Detention Centers of Ulaanbaatar City and the Chingeltei, Bayanzurkh, Sukhbaatar, Bayangol, Khan-Uul and Songinokhairkhan districts of the Capital city. Inspections found that Districts' Police Detention Centers did not meet minimum health and hygiene standards, there was a lack of natural lighting and ventilation, and as the centers were located in the basements of police office buildings, there was no possibility for detainees to eat, shower and have medical examinations. Cell overcrowding was an issue and a substantial number of persons had been falsely detained.

¹⁴ <http://www.mn-nhrc.org/eng/main2/188/>

¹⁵ <http://static.mminfo.mn/content/68243.shtml?alias=society>

¹⁶ Mongolian traditional cream soup

Detention centers that do not meet legal requirements are likely to create circumstances where citizens' rights are violated. The Capital City Prosecutor's Office submitted a demand to the Ulaanbaatar City Police Department, that it comply with laws and regulations and ensure remediation of hygiene and sanitary conditions.¹⁷

k. Elimination of slavery and servitude (art. 8)

Issue 15: Please provide information on measures taken to combat trafficking, including: (a) establishing formal procedures for the identification and referral of victims of trafficking; (b) ensuring that victims are not punished for unlawful acts committed as a direct result of being trafficked; (c) improving protection efforts and allocating adequate funding to both State-run shelters and those run by non-governmental organizations and to support other victim-assistance services; (d) providing specialized training on the application of criminal law provisions, in particular article 113 of the Criminal Code, in countering trafficking and ensuring that trafficking offences are properly investigated and prosecuted and that perpetrators are adequately sanctioned. Please provide information on the number of cases of trafficking that have been reported, the investigations and prosecutions initiated and actual criminal convictions, in particular, and the reparation granted to victims. Please report on efforts to combat effectively the use of child labour, particularly in rural areas, including dangerous and hazardous work such as traditional horse racing and mining, and to ensure that exploitation of children is properly sanctioned.

Reply/Comments from Civil Society

Although a legal environment for combating human trafficking has been created in Mongolia, through the adoption of the Law on Combating Human Trafficking, and the Law on Witness and Victim Protection, these types of crimes are committed internationally in a hidden, secret and organized way. Thus, victim detection and correct identification have dropped to their lowest level in the past three years. For example, whilst two criminal police representatives in charge of victim detection were employed by the Criminal Police office in 2014, only one representative was employed for this role in 2016.¹⁸ Whilst enquiries were made and over 10 cases were investigated annually from 2008 to 2013, only eight cases were investigated in 2014, six cases in 2015 and three cases in 2016, respectively.¹⁹ While there has been a reduction in the number of cases, the number of victims has increased, indicating that this type of crime has become more organized. For example, while 26 victims were identified in six cases during 2015, 29 victims were identified in three cases in 2016. It is not, as stated by the General Police Department on Mongol HD TV on 12 October 2016, that the reduction in the rate of human trafficking is the result of hard work by government organizations. On the contrary, the apparent reduction in crime is due to the above-mentioned factors.

To date, the State is yet to fund salary and incentives for staff who work with victims and victim-assistance services and there are no state-run shelters specializing in the provision of assistance to human trafficking victims. Although there are four or five NGO-run shelters operating, the State budget only provided 4000USD for operating costs in 2013 and the Gender Equality Center's only shelter was allocated 2500USD in 2014.²⁰

The victims of human trafficking receive substantial fines and are arrested on charges of prostitution for terms

¹⁷ <https://goo.gl/KAKeOy>

¹⁸ Presentation of D.Ochgerel, a Police Lt and a head of Department on Combating Organized Crime of the General Police Office before a consultative meeting on 'Implementing the Law on Combating Human Trafficking' organized by the Center for Human Security, 9 Apr 2015, Ulaanbaatar.

Meeting with n.Tumurbaatar, a senior representative of the Criminal Police Authority organized during discussion meeting on legislation on combating human trafficking, 15 Feb 2017, The National Legal Institute, Ulaanbaatar.

¹⁹ Annex of the official letter No1313/720 referred by the Criminal Police Authority to the Human Rights Center for Citizens' Assistance on 1 Feb 2017.

²⁰ Report on 'Human Trafficking' made by the State Department of the USA, 2016, <https://www.state.gov/documents/organization/258880.pdf>

of 7-30 days. Furthermore, there is no guarantee of eventual reparation for victims. In the six cases court settled from 2014-2016, although victims claimed damages totaling more than 190 Million MNT, court awarded only approximately 11 Million MNT (equal to 6%) recognizing health and transportation costs; meal and accommodation costs were covered if necessary.²¹

Although government, non-government and international organizations conduct specialized training on the application of the Criminal Code in the investigation of human trafficking cases and the sanction of perpetrators, training is irregular - and personnel attending these courses don't always remain in the same jobs. This of course reduces training outcomes. Whilst court recognizes and settles cases of human trafficking and sexual exploitation, courts do not recognize slavery and labor exploitation, such as the herding of livestock and horse racing using children, as crimes of human trafficking. There have been no reported cases of these crimes being recognized as human trafficking.

I. Right to a fair trial and independence of the judiciary (art. 14)

Issue 16: With reference to the Committee's previous recommendation (see CCPR/C/MNG/CO/5, para. 17) and the Committee's evaluation of its implementation (see CCPR/C/106/2, p. 23), please provide information on the investigation of allegations of corruption in the judicial system. Please respond to concerns that the abolishment of courts in a number of aimags (provinces) may hinder access to justice owing to geographical distance and that access to legal aid centres remains limited in rural areas. Please report on progress made in providing sufficient and adequately equipped facilities for courts. With reference to the information contained in the State party's report (see CCPR/C/MNG/6, paras. 89-90), please provide information on the status of investigations into the reported cases of interference (impact statements) in the activity of judges and courts.

Reply/Comments from Civil Society

There have been no reports on the investigation of allegations of corruption in the judicial system. There has been criticism that some of the reforms made in the judicial system hindered access to justice in some aimags (provinces).

In terms of court jurisdiction, the 27 soums of Tuv aimag have been divided into five areas and 10 soums in this soum have been transferred to the court jurisdiction of another aimag, thus allowing the court budget to be reduced by over 50%. As a result, costs for petroleum and trip per-diem have been twice reduced, limiting opportunities to organize mobile courts and public promotion of court activity. Furthermore, there has been a reduction in post costs and the submission of case files to appellate courts are being organized once a certain number of case files is completed, hindering prompt settlement of those cases before court.

Courts are formed into a district system and several administrative and territorial units have been scheduled under the same district, hindering the work of police and prosecutors. Delays are caused and costs increased due to police and prosecutors being required to cooperate outside their respective administrative and territorial units who are operating under a different structure. This situation causes frustration to both law enforcement bodies and citizens.

Citizens were not informed about the impact and implications of judicial system reform. The court costs to be borne, the process of compiling evidence and testimony, coordination of court and prosecutors and associated costs of cases being heard by courts located in different territorial units were not realistically estimated, nor explained to citizens.²²

²¹ Gender Equality Center, Research on particular type of crime: Costs associated with the crime of human trafficking, 2016.

²² J.Bariashirsuren, J.Ariuntsetseg and B.Dorjpagma, Implementation of policy decision to reform the judicial system (in the example Tuv aimag), Open Society Forum, Policy issue, No20.

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A study into judicial organizations in March and April of 2016 found that Ulaanbaatar city courts' facilities are adequately equipped.²³

No information on this issue has been found. An official letter requesting information was sent to the Judicial General Council. They responded that they had requested the police investigate two cases of attempting to interfere with a judge's decision and one case of attempted assassination of a judge but the police refused to press charges.

Five packages of judicial laws were adopted in 2012 and came into force from 2013. The Open Society Forum made an assessment on the implementation of these laws.²⁴ Below are the key outcomes:

1. Since the implementation of the package of judicial reform laws, the Constitutional Court issued a total of 15 resolutions associated with the above laws, and out of them, only four (4) resolutions found no violation of the Constitution, whilst the remaining 11 resolutions made several amendments to relevant laws, such as clauses regarding the district court system, mandate of courts' citizens representatives, the process of selection of judges, as well as transparency of disclosure of special rulings.
2. Measures to abolish the Takhar Agency that played an important role in ensuring court security and executing court orders became a substantial step-back within the scope of the judicial reform.
3. Having paid thorough attention to the increase in the number of judges and improving access to court and court services, relevant changes have been made. However, criticism about judge's ethics and level of skill still remains same.
4. The selection and adoption of independent and professional models of court administration aims to reduce pressure and influence on head judges in terms of administration issues. However, it became apparent those changes were superficial, as proven by problems that arose following nomination, selection and appointment of judges.

Judges' ethics and the independence of judges and court still remain doubtful during settlement of mining-related and public interest cases. The new structures formed as a result of reform are not functioning well.

In 2009, the Tuya bag's herders of Burenkhaan soum in Khuvsgul aimag (province) submitted a request to cancel phosphorus mining licenses in order to prevent negative impacts on herd pastureland and water supply. Furthermore, scientific research concluded that extraction of phosphorus deposits would cause irrecoverable environmental damage to Mongolia's key freshwater resource of Khuvsgul Lake, and the initiative to extract deposits was ended in the 1980s.

The claim's main argument was that the license was issued when there was no approved environmental impact assessment for Talst margad LLC. After three stages of court from 2009 to 2013, the Supreme Court made a decision to cancel the licenses in June 2013.

However, the case was referred by the Supreme Court to the First Instance Court in 2014 on the grounds of newly discovered evidence, or until the company's environmental impact assessment was found. The Center for Human Rights and Development requested the Supreme Court review its decision, based on witness testimony proving that: "his archive registry records prove the defendant company bought its environmental impact assessment after the date of license issuance in 2015, and additionally, the follow-up work report and assessment were not made. According to the relevant regulation, the assessment becomes invalid if the

²³ GIZ project on Securing legal environment on economic sustainable development, research report on "Judicial Integrity Scan", p 16.

²⁴ Open Society Forum, Portfolio Review: Strengthening independence of the judiciary (2014-2016).

follow-up report and assessment are not made for two consecutive quarters (thus the company's assessment was invalid), however, the Supreme Court would not review its decision.

The Center for Human Rights and Development then lodged a complaint about Chief Judge of the Supreme Court, Mr M.Batsuuri, to the Judicial Ethics Committee at the Judicial General Council, specifying he was extremely partial and worked in favour of the company. However, the Judicial Ethics Committee refused to initiate any disciplinary action against M.Batsuuri.

Additionally, another complaint was submitted to the police authority against acting head of the Public Administration and Governance Department of the Ministry of Environment and Green Development, N.Dugersuren, citing that 'he misused his power in the office of a state official (as stipulated in article 263 of the Criminal Code), because he illegally received the company's environmental impact assessment. However, the District First Prosecutor's Office resolved not to initiate any criminal action.

Later in December 2014, a trial in the First Instance Court resolved the case, recognizing that the issuance of the mineral license did not violate citizens' interest and cause actual damage. The courts of Appellate and Supervisory Instance declined to overturn the decision of the Court of First Instance.²⁵

m. Right to privacy and family life (art. 17)

Issue 18: Please respond to reports of the risk of forced eviction of residents in the ger districts in Ulaanbaatar owing to development plans, and a risk of homelessness for former residents of building No. 3 in the 10th khoroo of Sukhbaatar district in Ulaanbaatar, following stalled redevelopment plans. Please report on measures taken to ensure adequate safeguards against forced evictions and the provision of alternative accommodation.

Reply/Comments from Civil Society

Within the scope of projects on re-planning accommodation that does not meet operational requirements of ger (traditional dwelling) districts in connection with redeveloping Ulaanbaatar city, there are still risks of forced eviction of residents and a risk of homelessness.

During the research named: 'Insufficient implementation' conducted by Amnesty International with respect with the right to housing, it raised the issue of hundreds of households becoming homeless due to re-planning.²⁶ Further information was submitted after the conclusion of the research period. Amnesty International has been informed that, since then over 500 residents in 85 households in 4th khoroo of Bayanzurkh District signed tri-party agreements in July 2014 and moved from their respective accommodation. Those residents have become homeless and have been living in their relatives' accommodations for 2.5 years.

It's been several years since the implementation of the redevelopment project in Ulaanbaatar, relevant regulations have not been approved in a timely manner. Although re-planning started in Ulaanbaatar in 2004, the Law on Urban Planning was not adopted until 2008 and the Urban Redevelopment Law in 2015, respectively. The adoption of subsequent regulations has also been slow. For example, the regulation that must be approved following enactment of the Urban Redevelopment Law has not yet been approved.

Research conducted by Amnesty International for the period September 2015 to August 2016 found the following violations:

²⁵ The case note made by the Centre for Human Rights and Development.

²⁶ www.amnesty.org

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- Laws and policy documents do not recognize the rights of residents, who do not legally own residential land and accommodation, to be consulted in activities to around replanning;
- There are shortcomings in measures to protect citizens from the risk of forced eviction and homelessness;
- Due to the fact that government agencies and private companies do not provide complete information and clarification, residents usually obtain misinformation or do not obtain information regarding whether their resettlement will be voluntary or compulsory;
- Owing to regular changes to the legal and policy environment, replanning activities and residents' rights have become uncertain, and the right to adequate housing that meet requirements is in risk of violation;
- Law, regulation and policy regarding the restoration of violated rights are unclear and dispute resolution for the victims of re-planning are not clearly specified.

n. Freedom of expression, peaceful assembly and association (arts. 19, 21 and 22)

Issue 20: Please provide information on the status of the law on freedom of the media. Please report on measures taken to address the reports of harassment, threats and assaults against media workers and human rights defenders, and self-censorship owing to fear of legal reprisals. Please respond to concerns that: (a) defamation provisions are widely used to criminalize journalists and individuals, including social media users; (b) websites publishing information deemed critical of State authorities are obliged to remove such content or are blocked; (c) online anonymity is restricted arbitrarily; (d) content regulations allowing control over the content of news and information websites are broadly formulated; (e) The law on Information Transparency and Right to Information provides for broad exemptions to disclosure.

Reply/Comments from Civil Society

Mongolia has taken a progressive step towards guaranteeing its citizens freedom of expression and information by enacting the Law on Information Transparency and Right to Information in 2011. The President of Mongolia submitted the draft Law on the Amendment to the 1998 Law on Media Freedom to the Parliament in 2004, which included positive provisions guaranteeing media freedom. These included protection of a journalist's confidential sources, regulation of media ownership transparency and concentration, and public support of media self-regulation. However, the President withdrew the draft from the first discussion in Parliament preventing the possible change of the legal concept. In January 2016, the Government Office submitted to the Parliament the draft Law on Broadcasting that Mongolia lacks.

There has been some progress in the decriminalization of defamation, but consistent political commitment is still needed. It is positive that Parliament adopted a new Criminal Law on 3 December 2015 (which should have been effective from 1 September 2016) decriminalizing libel and insult making it part of a New Law on Administrative Measures. However, defamation remains part of the new Criminal Law and Article 14.8 says: In cases where providing false information defames the reputation of a political candidate, a fine equal from 450 to 5400 units (1 unit equals 1000 MNT) shall be imposed, or the offender shall be imprisoned for a period of one month to one year". The Criminal Law is on hold in the current Parliament and the draft law is under discussion.

Mongolian NGO, Globe International Center, conducts permanent monitoring of court hearings on cases against media and journalists. In 2007-2011, Mongolian courts heard 15 criminal defamation cases. The number increased to 52 in 2012-2016 and more than half of the plaintiffs were elected authorities and high

ranking officials, including the Speaker of the Parliament, Prime Minister and Ministries. In 2016, a total of 47 civil defamation cases were heard by the courts and the amount of demand is increasing. For example, in 2015, MP Kh.Battulga launched two civil defamation cases against two daily newspapers; his demand from the Daily News was one billion MNT and 960 mln. MNT was demanded from National Post.

One of the notable changes in the media legal framework is the Election Law passed on 25 December 2015. The Election Law contains strict restrictions on free expression. For example, it is prohibited to “call for people not to vote and to violate the Election Law or other laws (70.5.7); “to libel and insult others during an election campaign, or to disseminate false news and information in any form (70.5.13). The Election Law also imposes harsh obligations on traditional and online media. For instance, it prohibits “conducting any type of activities with the purpose of determining political ratings using media, messages or an online space, and to libel and insult others, and disseminate false information” (70.1.6). The Election Law also imposes sanctions if legal provisions are breached: “website licenses shall be terminated for six months” (83.7) “Radio and Televisions stations who breach the law shall be warned once and activities stopped until voting day” (82.19) and, or, their license shall be terminated for six months (82.21). In implementing these provisions, the Communications Regulatory Commission (CRC) will make determinations based on the decisions of the Government Authority for Fair Competition and Consumer Protection and conduct censorship as legislated.

During the 2016 Parliamentary election, 11 news websites were blocked for 24 hours following a complaint from a female candidate.

By May 2017, a total of 552 websites were blocked for allegedly breaching Intellectual Law, following a statement from the state inspector responsible for copyright.²⁷

The case of amjilt.com evidences such measures are not only copyright issues, but it confirms government censorship is revoked. After a legal battle of 10 months, amjilt.com won the case in the Supreme Court in May 2015.

Case: In 2014, the site posted a photo and story alleging the Khaan Jims Company, owned by Prime Minister N.Altankhuyag, was responsible for polluting a river. After the PM complained, CRC staff called the website and demanded removal of the post and an apology. Within three hours the website was blocked in Mongolian territories.

Mongolia regulates website filtering, comments, and restricts the right to anonymity. Following on from the Government’s 2010 policy on new and broadcast media, the CRC approved: “General Conditions and Requirements for Digital Content” and “General Conditions and Requirements for Television and Radio Broadcasting” in 2011, and it was consequently amended in 2012, 2014 and 2015. The Government also approved Resolution No1 on 5 January 2013, titled: “Unified System on Website Comments.” In accordance with CRC procedure, IP addresses of the persons posting comments must be visible. Licensed News and information websites must use the filter, ‘Happy Words’.

The program filters 770 words in Cyrillic and Latin and prevents the publication of obscene content, or that which insults or promotes riots. Asterisks are used to replace words such as ‘gun’, ‘knife’ and ‘sadist’ in Cyrillic, and, ‘sex’ or ‘terrorist’ in Latin.

The CRC is an instrument of the government agency, ‘Information Technology, Post and Communication’ (ITPC) and has the power to issue and withdraw licenses. CRC’s Chair and seven Commissioners are appointed by the Prime Minister and reports to the Government.”

²⁷ <http://black-list.mn/?p=2>

The safety of Mongolian Journalists is a public concern. During the period, in 2011-2016, GIC recorded 332 violations of journalists' professional rights. These included the deaths of four prominent journalists. We are doubtful their cases were ever fully investigated in relation to their journalism activities.

Case: The famous female investigative report Bolormaa Luntan was found dead late at night sometime 20-21 November 2015. The National Institute of Forensic Science conducted an autopsy on her body and concluded that her death was the result of a brain hemorrhage caused by a concussion to the occipital bone. Police launched an investigation, but closed the case, saying: 'there were no signs of outside interference'. Before Ms. Bolormaa's death, she wrote a series of articles about corruption among powerful authorities.

o. Rights of indigenous peoples (art. 27)

Issue 22: Please report on measures taken to protect the rights of Tsaatan (Dukha) reindeer herders to pasture, hay, land and water resources and to ensure that meaningful consultation aimed at attempting to obtain their free, prior and informed consent is held for any mining projects that may have an impact on their rights and interests.

Reply/Comments from Civil Society

Tsaatan (Dukha) reindeer children are not provided with Tuvan language classes, even though the right to study in their native language is guaranteed by the Constitution of Mongolia as well as following legal documents. For example, Clause 12.2.2 and Clause 12.2.3 of the "The Program on Restoring Reindeer Husbandry and Improving Reindeer Herders' Livelihoods" is passed by Government Decree No255 of 2007, states that "to include Tuvan language classes for Primary School students, within the scope of the school curriculum", "support the translation of textbooks and some training tools into Tuvan language and cooperate with Tuva State Pedagogical University in Kyzyl of Russian Federation in this field". In addition, Clause 6 of the Presidential Decree of Mongolia, (No 42/2013) specifies "in order to implement Article 8.2 of the Constitution of Mongolia guaranteeing the right of national minorities to study in their native language, the Tuvan language curriculum has been approved by order of the Minister of Education (No 387/2005) and shall be included in the early grade class curriculum of the Primary School of Tsagaannuur soum, Khuvsgul aimag, and be organized for implementation". However, it has not been introduced.

Tengis-Shishged river basin, where reindeer herders reside in a nomadic way, was recognized as a state-protected national park, by Parliamentary resolution No18 of 2011, which limited reindeer herders' pastureland and prohibited them from entering the area by threatening to impose criminal or administrative sanctions. This negatively impacted on way of life associated with the use of land resources. Reindeer people do not really face mining-related problems due to their land conserved. According to Land Conservation Law, mineral prospecting, exploration are prohibited.

p. Right to participate in public life (arts. 25, 26 and 27)

Issue 23. Please respond to concerns that the electoral legal framework, in particular the 2015 Elections Act, is not in line with the Covenant owing to disproportionate restrictions imposed on: (a) the right to stand for election, such as disqualification of candidates for overdue debts or taxes, not having completed compulsory military service or having a criminal record regardless of the crime committed, and the requirement that civil servants planning to stand for election must resign from their posts by 31 January, i.e. several months before the nomination process starts; (b) the right to vote, such as the blanket denial of the right to vote to persons declared incompetent by a court and persons serving prison sentences, irrespective of the gravity of the crime; (c) campaign freedom, such as prohibiting any sort of campaigning that is not expressly authorized by the Elections Act and requiring the prior approval of all campaign platforms by the State Audit Office.

Reply/Comments from Civil Society

The election system²⁸ was changed less than two months before the election date violating a Parliamentary resolution²⁹, the voting rights of citizens residing overseas³⁰ was eliminated, and the women's quota³¹ was reduced. It became a backward step and prevented the State from fulfilling its obligations under the ICCPR. This was comprehensively specified in conclusion³² made by the OSCE Office for Democratic Institutions and Human Rights (ODIHR).

Financial influence in politics is significant and it creates inequality among candidates. The legal environment on election funding³³ is not greatly established, internal movement dramatically increases³⁴ during elections, taking advantage of the fact that voter registration is not transparent, causing substantial sale of votes. This led to the death of a new-born baby when parents took him on an overcrowded bus to a polling station 250 kms away. The baby died from respiratory failure due to lack of oxygen.³⁵

In the meantime, the confidentiality of votes was lost³⁶ during the election and all these violations contradicted the principles of a democratic election. The General Election Committee accepted criticism from civil society organizations regarding the loss of confidentiality of votes and the committee approved regulations ensuring that ballot papers are put in a folder before being scanned, during the upcoming Presidential election in June.³⁷

²⁸ The Parliament made amendment to article 7.1 of the Election law on 5 May 2017 changing proportional representative system to majority system.

²⁹ Clause 2.2.1.2 of the Parliament resolution No41 of 2003 prohibits amending the Election law within 6 months before a primary election is held.

³⁰ Amendment was made by the aforementioned law.

³¹ Amendment was made to clause 126.2 by the aforementioned law.

³² Page 1 of the report by (ODIHR).

³³ Open Society Forum, Funding monitoring of the Parliament election 2016, 2016, page 57-58.

³⁴ Information link on dramatic increase of 'Human grasshoppers' in Bayankhongor, Khuvgsul and Uvs aimag, <http://www.medeel.com/news/item/2474> <http://www.medeel.com/news/item/2475>
<http://www.news.mn/r/307608>

³⁵ Information link on a new-born baby death due to lack of air, <http://mgltimes.com/news/4/single/2230>

³⁶ Extract from case note obtained from interview with a voter: 'in 1st khoroo of Bayanzurkh District, after a voter wrote down in a ballot paper, it was put in a special folder and then into a ballot box. However, it was changed, thus political parties can appoint scrutinisers to ensure procedural fairness.

³⁷ Clause 2.3.5 of the regulation on 'guiding preparation of a polling place and approving the sample size and design of a ballot box and a voting booth' adopted by resolution No1 by the General Election Committee issued on 14 March 2014.