

MONGOLIA

Civil Society Report on the Implementation of the ICCPR (Replies to the List of Issues CCPR/C/MNG/Q/5)

Centre for Human Rights and Development (CHRD)
Child Protection NGO Network
Conscience and Peace Tax International (CPTI)
Globe International
Kazakh Womens' Arular Center
LGBT Centre
Mining NGO Network
National Center Against Domestic Violence
NGO Forum
Open Society Forum
Princess Center

Geneva - Ulaanbaatar, 4 March 2011



**COMMENTS FROM
CIVIL SOCIETY ACTORS IN MONGOLIA
ON THE LIST OF ISSUES**

**REVIEW OF THE FIFTH PERIODIC REPORT OF MONGOLIA
(CCPR/C/MNG/Q/5)
101st session of the Human Rights Committee
New York – March 2011**

Drafting Team:

T.AYUSHJAV (Globe International), P.BADAMRAGCHAA (Open Society Forum), P. BRETT (CCPR), R.BURMAA (Voter Education Center), R. GARNER (LGBT Centre), B.KHISHIGSAIKHAN (UPR Coalition), Ch.MUNKHZUL (Globe International), P. MUTZENBERG (CCPR), H.NARANJARGAL (Globe International), Kh.NARANTSETSEG (Globe International) D.URANTSOOJ (CHRD), J.ZANAA (Center for Citizens' Alliance).

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

1. What is the status of the Covenant under domestic law? Can provisions of the Covenant be directly invoked before domestic courts? If so, please provide details on all cases in which this was done and with what results.

Article 10 of the Constitution of Mongolia states:

1. Mongolia shall adhere to the universally recognized norms and principles of international law and pursue a peaceful foreign policy.
2. Mongolia shall fulfil in good faith its obligations under international treaties to which it is a Party.
3. The international treaties to which Mongolia is a Party, shall become effective as domestic legislation upon the entry into force of the laws on their ratification or accession.
4. Mongolia shall not abide by any international treaty or other instruments incompatible with its Constitution.

This means that the Covenant can, in theory, be directly invoked. However there is anecdotal evidence that judges consider that defence lawyers who cite international treaties are trying to look smart and feel insulted. It is essential that higher courts pay attention to cases in which the invocation of international standards was ignored.

There is no systematic training for judges and lawyers on international treaties (see also reply to question 11 on the training of judges and lawyers).

Case: My minor client was tried at the Khan-Uul District Court with group of demonstrators who was charged for instigating the public disorder and robbery, I have cited CRC Article 40 (on juvenile justice) and was condemned publicly by judge Ichinhorloo. At the end of trial my client was sentenced 6 months longer imprisonment than the other adult defendants. When a parent asked judge Ichinhorloo why had she ruled this way, the Judge said to ask the reason from her defence lawyer.

Testimony by defence lawyer Ms. Tsend-Ayush 2008

Recommendations:

- **The State party should systematically provide training, including in service training, on the Covenant and other International treaties for judges and lawyers.**
- **The State party should, as a matter of priority, ensure that the invocation of international law is not grounds for imposing a harsher sentence on a defendant. Cases in which this has occurred should be investigated.**

2. Please indicate how the State party has ensured that following the declared State of Emergency of July 2008, perpetrators of human rights violations were brought to justice, and victims of human rights violations committed by law enforcement officials had access to an effective remedy and received adequate reparation.

[Annex 2 provides a detailed account of human rights violations during the State of Emergency and the State's responses]

Ten police officers and four senior officers were investigated in connection with deaths during the State of Emergency. The cases against the ten police officers were suspended due to lack of evidence and the four senior officers were released from prosecution under the Amnesty Law of July 2009. In November 2010 investigations into the senior officers were reopened. (See response to question 9). No other police officers or authorities have been charged for human rights violations.

Provision of compensation:

Compensation of 50 million tugrik (around 40 000 USD) for each family member was given to the families of the murdered individuals. One of the families refused to take the compensation and is still demanding justice.

No compensation has been given to the individuals illegally detained for between 24 hours and three months. 810 individuals were illegally detained.

Over 270 individuals were illegally sentenced on charges of instigating/organising public disorder. Although the majority of the convicts were released under the Amnesty law of July 2009, they still have criminal records. The NGO coalition insists that Court decisions were unlawful and demands that these criminal records should be removed.

Although many demonstrators were injured there is no comprehensive record and the injured demonstrators have not requested compensation for fear of being arrested and sent to prison.

358 police officers suffered physical harm. The police officers claim that their rights were violated and so they should receive compensation. The human right activists consider that they were injured in the course of their duty and so should be compensated by their employer, the General Police Department. The Government should also provide the necessary equipment and tools for police to deal with violent situations and train the police officers in proper conduct in emergency situation.

The total cost of material damage done during the State of Emergency was 11.236.971.101 tugrik (around 9 million USD). The victims received compensation for the damage without any delay, but there was no proper accounting of the compensation paid. The Mongolian People's Revolutionary Party who won the parliamentary election received compensation from the State budget to reconstruct an 11-floor building in place of the 6-floor building which was burnt down.

Recommendations:

- **The State party should ensure that all allegations of human rights violations during the State of Emergency of July 2008 are adequately investigated and the perpetrators brought to justice. The violations of judicial procedure and the right to a fair trial during the State of Emergency should be thoroughly investigated by an independent authority. The State party should ensure that the legislation provides sufficient guarantees of the right to a fair trial at all times, including during a State of emergency, and take steps to ensure that these rights are guaranteed in practice.**
- **The State party should provide full and adequate compensation to the victims of human rights violations during the State of Emergency.**

Non-discrimination, and equal right of men and women (art. 2(1), 3, and 26)

3. Please indicate whether plans exist to adopt a comprehensive anti-discrimination legislation, covering all rights recognized in the Covenant and providing for effective remedies in cases of violations of those rights.

Article 14, Constitution of Mongolia prohibits discrimination on the grounds of ethnic origin, language, race, age, sex, social origin and status, property, occupation and post, religion, opinion or education.

However, there is no broad-based anti-discrimination law in Mongolia and existing laws do not include all grounds of discrimination. There is no mechanism which provides an effective remedy for victims of discrimination.

For instance, no law includes a prohibition on discrimination on the grounds of sexual orientation or gender identity and the Constitution has not been amended to include discrimination on these grounds. This is particularly troubling given the negative social attitudes to LGBT people.

The prohibition of discrimination based on disability is not codified in the Constitution or in other legislation. People with disabilities, who constitute about 10 per cent of population, are discriminated against in all spheres of social life. Mongolia ratified United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol in 2009; nevertheless, national legislations and public policies are still based on the old notion that regards persons with disabilities as “objects of social welfare” rather than “rights holders”. This notion is also very common among the general public. According to a survey, 46.6% of children with disabilities face difficulties in school because of bullying and intimidation by other children. The implementation of legal documents and national programs enacted to protect the rights of people with disabilities lack effectiveness.

Facts:

50% of children with disabilities enrol in secondary schools; only 14% receive primary education. There are only two schools in the Capital City that provide access for children in wheelchairs. Some schools have one special class for all children with disabilities regardless of their disability and age.

According to a survey conducted in 2004, only 26.4% of people with disabilities are formally employed. The minimum standard of living is set at \$60.48 per month; but the average pension persons with disabilities receive is \$47 and the social benefit is \$29. The household income of persons with disabilities is 2.5 to 3 times less than the average household income. Caregivers of persons with primary disabilities receive \$17.5 per month.

85 per cent of eligible disabled voters have never participated in the election.

The physical environment, except for some very steep ramps outside a few buildings, is still not accessible to persons in wheelchairs. Private micro-buses do not provide service for persons with disabilities. Persons in wheelchairs do not have access to public transport. Persons with severe to profound disabilities are forced to live without ever leaving their homes.

Nothing has been done so far to facilitate access to information by persons with disabilities except for one audio dictionary and one news programme with a sign language interpreter broadcast on National Broadcasting Television.

As a consequence of the abovementioned issues people with disabilities have no option but to live dependently on their family members and caregivers.

Case: In 2009, a child with a severe disability was left in a desolate place, but was later rescued. Another child was left outside in the winter by his father and froze to death.

Recommendations:

- **The State party should introduce a comprehensive anti-discrimination law, prohibiting discrimination on any grounds and providing effective remedies for victims of discrimination.**
- **The State party should strengthen its efforts to address discriminatory attitudes through education and awareness-raising campaigns.**
- **The State party should ensure that persons with disabilities are able to access education, information, and public services. The State should take steps to improve the integration of persons with disabilities into political, social and economic affairs and to enable them to live independently.**

5. Which steps have been taken or are foreseen to increase the representation rate of women in Parliament, as well as in decision-making positions in the public and private sphere? Does the State party intend to re-install the 30 percent quota for women candidates for nomination by parties and coalitions, abolished by

The recently adopted Law on Gender Equality states the following:

- Article 10.1.1: *“Not less than 15% of decision makers at the government, capital city and aimag levels, not less than 20% at sum level, and not less than 30% at khoroo levels shall not be persons of same sex.”* (Law on Gender Equality, 10.1.1).
- Article 10.1.2: *“Not less than 15% of State Secretary and Government Agencies, not less than 20% of other central state organizations, and not less than 30% of heads of ministries departments shall not be persons of same sex”.*
- Article 10.1.3: *“Not less than 40% of state special officers except of military, army of borders and domestic combatant, CIA, police, court decision executive and anti-corruption office shall not be persons of same sex”.*
- Article 10.1.4: *“In case of visible prevalence on same sex in the state service agencies the policy and special measures will be taken to balance percentage of both sex in 40:60”.*

Provision 10 named Guarantee of Gender Equality at the State Institutions Law will be in force from 2014 which has raised questions about why these provisions cannot come into force at the same time as the other provisions.

The 30% quota of women candidates for parliamentary elections has not been restored. Mr. Ochirbat MP, head of the Standing Committee on Social, Culture and Science Policy and Working group on the Gender Equality law said during the parliamentary session of January 31, 2011 (at which the Law was adopted) that: *“the quota issues can be discussed during the discussion of the Election law that will be discussed at the fall session according to its system.”* It is, however, troubling to note that at the parliamentary session at which this quota was abolished certain parliamentarians pushed the voting buttons of absent parliamentarians. The parliament also refused to accept the President’s veto on the abolition of the quota.

In 2008 Ms. Zanaa Jurmed in assistance and cooperation with the Mongolian Women NGO network (MONFEMNET) complained to the Mongolian Constitutional Court on the case of “Women’s Quota” in 2007-2008, but the Constitutional Court refused to hear her Complaints.

This demonstrates that despite the introduction on the law on Gender Equality there remains deep inequality, particularly in regard to the representation of women in parliament.

Recommendations:

- **The State party should consider reintroducing the 30% quota for women candidates for nomination by parties and coalitions in order to address the persistent imbalance in the number of representatives elected to parliament. It should adopt other measures to increase the representation rate of women in decision-making positions in the public and private sphere**

6. Have investigations been conducted during the last five years with regard to allegations of attacks, harassment and threats against lesbian, gay, bisexual and transgender people (LGBT), including those committed by law enforcement officials. Have any cases led to prosecution and sanctions for the authors of such actions? What is done to improve the access to justice of LGBT victims, and to raise the awareness of LGBT issues among law enforcement and detention personnel?

Despite its pledge during the UPR working group on 2 November 2010 to end discrimination on the grounds of sexual orientation and gender identity, the State has not introduced laws or amended the Constitution to prohibit discrimination on these grounds. There are no provisions on hate crimes in the criminal legislation.

There is still widespread and institutionalised discrimination against LGBT people, who are frequently threatened and assaulted. LGBT people are reluctant to report these assaults to the authorities for fear of secondary victimisation.

Case:

On 6 October 2009 Three transgender women - Enkhriimaa, Khulan and Burmaa (their transgender names) - were abducted by members of the Dayar Mongol ultra-nationalist movement from Ulaanbaatar (two from near the State Department Store and one from near the Central Cultural Palace) in daylight and were taken to a cemetery outside Ulaanbaatar where they were severely beaten and gang-raped for being “a disgrace to Mongolian manhood”¹. The ultra-nationalists then warned the victims that they would be killed if they were seen again in female clothes. One of the transgender women was 15-years-old at the time. One of the victims gave testimony about the incident to the LGBT Centre, which was used in a documentary made by the LGBT Centre in 2010 entitled “The Lies of Liberty”², in which she stated that her attackers belonged to the Dayar Mongol movement and described some of the acts committed by them. The documentary was publicly screened on 8 March 2010, after which Dayar Mongol ordered that she and other victims be found and killed for “daring to attack the honour of the movement”. Two of the transgender women subsequently fled Mongolia and were granted asylum outside the country. The victims did not report the incident to the police at the time as they feared secondary victimisation. To date the Government has not taken any measures to fully and impartially investigate this case.

It should also be noted that Dayar Mongol, despite being an organisation which enforces its extreme xenophobic, racist and heteronormative views through violence directed against foreigners, sex workers and LGBT people, has been registered as an NGO.

Recommendations:

- **The State should amend the Constitution and introduce legislation specifically prohibiting discrimination on the grounds of sexual orientation and gender identity.**
- **The State party should ensure that all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity are thoroughly investigated. It should also carry out awareness-raising activities aimed at the police and law enforcement authorities to prevent the secondary victimisation of LGBT individuals who report attacks.**
- **The State party should carry out awareness-raising campaigns to address discriminatory attitudes to LGBT persons in the wider public.**

States of emergency (art. 4)

7. Please explain the lack of reference in article 19(2) of the Constitution to the rights guaranteed in articles 8 (paragraphs 1 and 2), 11, 15 and 16 of the Covenant.

The events of July 2008 demonstrated vividly that article 19(2) of the Constitution does not provide adequate protection of human rights during a State of Emergency (see annex 2 for details of human rights violations during the State of Emergency).

The existing Law on State of Emergency (1995) is outdated, open to abuse by the state and omits many mechanisms available for resolving a state of emergency. It fails to specifically protect human rights, or require measures to protect human rights and prevent abuse of restrictions in a State of Emergency.

Recommendations:

- **The State party should amend article 19(2) of the Constitution and the Law of State of Emergency to ensure that national law prohibits derogation from the provisions of the ICCPR which are considered non-derogable. The laws should also specify the minimum measures needed to guarantee that human rights will be protected.**

¹ See Fridae article from 8 July 2010: “Mongolia’s LGBTs face hate crimes and discrimination”, <<http://www.fridae.com/newsfeatures/2010/07/08/10121.mongolias-lgbts-face-hate-crimes-and-Discrimination>>.

² See the shorter version of the documentary film at [<http://vimeo.com/15146153>]

Right to life (art.6)

8. Please indicate whether, following the January 2010 moratorium on executions, the State party intends to ratify the Second Optional Protocol to the ICCPR and amend the Criminal Code, with the aim to abolish the death penalty.

Some progress has been made despite public opinion in favour of the death penalty, but a complete abolition is unlikely as this is opposed by some members of parliament. However, due to recent severe crimes, the tension over the moratorium is increasing. More work on awareness raising is needed in order to change public perceptions and support for the death penalty. It should also be noted that information on the death penalty is covered by the State Secrecy laws.

The Committee might like to ask the State:

- *What, if any, measure has the Government taken to prevent negative reaction from the public?*
- *Has the Government commissioned any survey or research in order to diagnose the existing tension*
- *What measures has the Government taken to raise awareness with regard to abolishing death penalty?*

Recommendations:

- **The State party should establish a timetable for the abolition of the death penalty. It should carry out awareness raising activities with a view to changing social attitudes and the public support of the death penalty. However, the abolition of the death penalty should not be dependent on popular support for this decision.**

9. Please clarify why the charges against ten police officers and four senior officials were dropped in February 2010 by the State General Prosecutors Office, following its investigation into the use of live ammunition in suppressing the July 2008 demonstrations.

The case was transferred to the Investigation Unit on 6 July 2008, five days after the incidents. The investigation team collected evidence that the shooting was carried out with police firearms and submitted the case for prosecution under Articles 263 (Abuse of power or of office by a State official) and 272 (Neglect of duties by a State official) of the Criminal Code. Seven months were then allowed for the accused senior officials and their legal counsels to read the 25 folders.

The cases against the ten police officers have been suspended due to lack of evidence and the four senior officials were released from prosecution under the Amnesty Law of July 2009. However, in November 2010 the newly appointed General Prosecutor reopened the cases of the senior officials and commenced investigations under Article 294 (Abuse, excess or omission of power) of the Criminal Code. This provision is not covered by the Amnesty Law.

Article 294. Abuse, excess or omission of power

294.1. Abuse by a head or official person of powers or official post, excess of power or competence, omission of powers, if they have caused a substantial damage shall be punishable by imprisonment for a term of up to 5 years.

294.2. The same crime if it has caused damage in a large amount shall be punishable by imprisonment for a term of more than 5 to 10 years.

294.3. The same crime committed at wartime or in a war situation shall be punishable by imprisonment for a term of more than 10 to 15 years.

This investigation is ongoing, despite an active PR campaign against the investigation by the Association of Police Families.

Recommendations:

- The State party should ensure that the shooting during the July 2008 demonstrations is fully investigated by an independent body and that those responsible are prosecuted.

Prohibition of torture and cruel, inhuman or degrading treatment or punishment, right to liberty and security of person & treatment of persons deprived of their liberty (art. 7, 9 and 10)

10. Please provide detailed and updated information, from 2006 onwards, on: (1) the number of complaints received by the Investigation Unit of the General Prosecutors Office against law enforcement, detention and judiciary personnel related to cases of torture and ill-treatment; (2) the number of cases dismissed and the reasons for their dismissal; (3) the number of officials sentenced and the sanctions imposed; and (4) concrete measures taken for the rehabilitation and compensation offered to victims.

1) The number of complaints received by the Investigation Unit of the General Prosecutors Office against law enforcement is the following:

Year	Complaints Registered	Complaints Dismissed
2006	576	
2007	614	288
2008	517	275
2009	526	240
2010	512	302

Source: Annual reports of Investigation Unit under General Prosecutor. www.epmba.gov.mn

2) These figures show that almost 50% of the total registered complaints were dismissed without any meaningful procedure. The cases which were verbally dismissed by the registry officers are not included in these figures as they were not registered. No analysis of the reasons and justifications for dismissal has been made public.

The Investigation Unit did not receive any complaints after the incidents of July 2008, although there were numerous cases of ill-treatment of detainees (see report by the documentation team, Annex 2). Many of the detainees were afraid of reporting ill treatment by police officers and the few cases which were brought were rejected.

One reason the Investigation Unit tends to reject reports of ill-treatment by police officers is that they lack the financial capacity, tools (such as investigative authority), and power needed to stand against police autonomy. The police on the other hand have all the necessary tools to erase evidence against its employees. As a result the Investigation Unit only deals with minor offences that involve lower ranking police officers and traffic cases.

3) Prosecuted cases almost always involve low ranking police officers. In this respect it would be interesting to ask the State about the number of complaints and convictions against high-ranking police officers.

One reason for the extremely low number of prosecutions is the vague wording of Article 100 of the Criminal Code, which defines the crime of torture³:

Article 100. Torture

100.1. Systematic battery or other actions having the nature of torture if they have not entailed the consequences specified in Articles 96 and 98 of this Code shall be punishable by incarceration for a period of more than 3 to 6 months or by imprisonment for a term of up to 2 years.

Article 251. Forcing of testimony

*256.1. Forcing of testimony by an **inquirer or investigator** by threat, violence, torture, humiliation, deception*

³ See also the Concluding Observations of the UN Committee Against Torture (CAT/C/MNG/CO/1) from November 2010 <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.MNG.CO.1.pdf>

or other illegal methods shall be punishable by imprisonment for a term of up to 5 years with or without deprivation of the right to hold specified positions or engage in specified business for a term of up to 3 years.
251.2. The same crime if it has entailed a less serious or severe bodily injury or has caused damage in a large amount shall be punishable by imprisonment for a term of more than 5 to 10 years with or without deprivation of the right to hold specified positions or engage in specified business for a term of up to 5 years.

The Investigation Unit therefore only investigates criminal offences committed by the inquirer and investigator. But in the Mongolian police system there is an officer called “*eruugiin tuluulugch*” or “*criminal delegate*” who commissions intelligence acts for the purpose of discovering evidence in support of the investigation process. These officers often use threats, violence, torture, humiliation, deception or other illegal methods. As Article 251.1 names specifically and only the inquirer or investigator this provision does not apply to the criminal delegates. Cases involving criminal delegates are usually dismissed at trial stage, unless the damage inflicted is severe. If the damage is severe the accused are charged on the lesser offences of:

Article 97. Infliction of a severe bodily injury by negligence

- *97.1. Infliction of a severe bodily injury by negligence shall be punishable by imprisonment for a term of up to 2 years.*

Article 98. Intentional infliction of a less severe bodily injury

- *98.1. Intentional infliction of a less severe bodily injury which has caused a long-term detriment of health or a loss of the working ability for not less than one third shall be punishable by 251 to 450 hours of forced labour or imprisonment for a term of up to 3 years.*
- *98.2. The same crime committed repeatedly, in a group, by torturing the victim or by a recidivist shall be punishable by incarceration for a period of more than 3 to 6 months, or imprisonment for a term of more than 3 to 5 years.*

Article 99. Intentional infliction of a minor bodily injury

- *99.1. Intentional infliction of a minor bodily injury, that is, the one that has caused a short-term detriment to health or a slight loss of the working ability shall be punishable by a fine equal to 5 to 20 minimum salary amounts or by incarceration for a period of 1 to 3 months.*
- *99.2. The same crime committed repeatedly or in a group shall be punishable by a fine equal to 51 to 100 minimum salary amounts, 251 to 350 hours of forced labour or by incarceration for a period of more than 3 to 6 months.*

(4) The legal framework for the protection of victims is inadequate and there is no mention of rehabilitation and compensation in the legislation. The rehabilitation services which are available are provided by NGOs.

Recommendations:

- **The State party should fully implement the recommendations of the UN Committee against Torture, by, inter alia, adopting a definition of torture with all the elements of article 1 of the Convention against Torture in its national criminal legislation, including torture as a separate crime in its legislation, in line with article 4 of the Convention against Torture, ensuring that penalties for torture are appropriate for the gravity of this crime.**
- **The State party should also amend Article 251 of the Criminal Code to ensure that the prohibitions contained in this article apply to anyone using illegal methods to extract testimony.**
- **The State party should ensure that the Investigation Unit has the necessary authority as well as the human and financial resources to investigate all offences committed by the police.**
- **The State party should provide rehabilitation and compensation services for victims. It should not rely on the services provided by NGOs, although it may choose to support the NGOs who provide valuable services to victims.**

11. Please indicate whether human rights training, covering the topics of prohibition of torture, effective interrogation techniques, conditions of detention and the treatment of detainees, is a standard component of curricula in the training of law enforcement, prison and judicial officials. Also indicate whether video and audio monitoring and recording of all interrogations has been introduced.

The National Legal Institute, a legal training institution under the Ministry of Justice and Home Affairs, is in charge of legal training for judges, prosecutors and attorneys. However there is no systematic training for judges and lawyers on the application of international treaties.

The police and judicial decision execution authority are in charge of conducting their own trainings despite the fact that there is evidence of torture and ill-treatment by these bodies. These trainings are not formal and not systematized and there is no synchronized curricula or training module specifically designed for police or prison personnel. In fact many of the trainings are provided by Amnesty International, NHRC or, occasionally, donor projects. It should be noted that during the State of Emergency in July 2008 police officers frequently informed detainees that the State of Emergency gave them the authority to do anything they needed to, including killing the detainees.

There is no legal requirement for video or audio monitoring of interrogations and so interrogations are rarely recorded. There are no specific regulations on maintenance of the equipment and budgets for the necessary tapes, batteries and discs are often inadequate.

Recommendations:

- **The State party should ensure that all law enforcement, prison and judicial personnel receive training on the prevention of torture and ill-treatment by integrating the Istanbul Protocol of 1999 (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) in all training programmes.**
- **The State party should also establish an independent body to investigate all allegations of torture and ill-treatment. The State party should ensure that allegations of torture and ill-treatment are effectively investigated and that alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions.**
- **The State party should introduce systematic video and audio monitoring and recording of all interrogations and provide the necessary financial, material and human resources to that end.**

12. Please comment on reports that, following the 2008 riots, confessions signed by detainees and obtained through torture and other ill-treatment were used as evidence in court rulings.

Annex 2 'Coalition of Monitoring and Protection of Human Rights under the State of Emergency: Report of Documentation' provides a detailed analysis of the use of threats, physical force and ill-treatment (including against children, pregnant women and disabled persons) by police during the July 2008 State of Emergency. Some of the police officers interrogating detained demonstrators had been among those suppressing the demonstrations. It should also be noted that on several occasions police officers informed detainees that the State of Emergency gave them the right to shoot detainees.

At least forty-four individuals were sentenced to between two and four years imprisonment based only on self-incriminating testimonies given without legal counsel during the first interrogation. The Legal aid team⁴ reported that testimonies given at pre-detention centres without a lawyer present were used to accuse over 80% of the defendants. Twenty-seven minors were also interrogated without a legal representative being present.

⁴ Human rights lawyers formed a team of 11 lawyers and provided legal aid to 60 defendants on 28 case in all instances of Trial

In addition to self incrimination, defendants were forced to testify against each other and these testimonies were presented as secondary evidence. In many cases videos and photos (confiscated from the media) were used as evidence of criminal activities although in fact they only showed that the individual had been among the demonstrators.

Case of Mr. Zandankhuu illustrates the 'evidence' used to convict demonstrators:

Mr. Zandankhuu took part in the demonstration and later was arrested. He was charged for 4 years of incarceration based only on photo showing him standing among demonstrators. He was beaten up by policemen and forced to falsely confess that he had thrown 2 stones.

Testimony by Mr. Zandankhuu himself

Demonstrators were also charged for group offences, which carry more severe penalties, although the 'groups' were artificially created. In at least twelve cases adults were grouped with one or two minors so that the trial of the entire group could be carried out in closed session (the Criminal Procedural Code stipulates that minors should be tried in closed session). In other cases minors were tried and sentenced as adults.

Case:

A 15 years old minor defendant was sent to Court with indictment under Article 155 (Acquisition of property knowingly obtained by way of crime) and Article 179.1 (instigating and organizing public disorder). Minors under 18 years old cannot be subjected to Article 179.1. Prosecutors have neglected this fact and the case was submitted to Court hearing.

Indictment # 276, Songinokhairkhan District Court 2008

Recommendations:

- **The State party should carry out a comprehensive, impartial, and independent investigation into the prosecutions and trials resulting from the State of Emergency in July 2008. The violations of court procedure and of domestic law during these trials should be treated as a matter of grave concern and those responsible removed from their positions and prosecuted.**
- **The State party should ensure that any statement or confessions made by persons in custody ascertained to have been made as a result of torture or ill-treatment should not be admissible as evidence against the person who made the confession. Such statements and confessions should only be invoked as evidence in proceedings against the person accused of torture or ill-treatment. It should further ensure that all detainees can have immediate access to a lawyer of their choice and that a lawyer is present during all interrogations.**
- **The State party should ensure that the Constitution and the Law of State of Emergency guarantee the right to a fair trial in all circumstances.**

14. Has a system been established for regular and independent monitoring of places of detention, besides those visits carried out by prosecutors and the National Human Rights Commission of Mongolia? Please specify which measures have been taken to address the problem of overcrowding at detention centres, particularly at Denjiin Myanga detention facility.

Although there is no legal provision prohibiting NGOs from visiting prisons, they do not have access for monitoring purposes. However, the prisons are open for charity events and attorneys can attend interrogations and visit clients.

Recently a Court decision welcomed the possibility of joint monitoring by the Court Execution Office and NGOs. In this context the NGOs need to develop their expertise on independent monitoring, so that they are able to use this opportunity.

Recent information suggests that Denjiin Myanga detention centre is going to be closed down due to the

poor conditions and a new facility constructed. It is however not clear what will happen to the detainees currently held in Denjiin Myanga when the facility is closed.

Recommendations:

- **The possibility of joint monitoring of places of detention by the Court Execution Office and NGOs should be fully developed and implemented. However, this should not be used to limit the possibilities of the National Human Rights Commission of Mongolia, NGOs and other bodies to monitor places of detention through independent and unannounced visits.**

Elimination of slavery and servitude (art. 8)

17. Please provide information as to whether comprehensive national legislation on trafficking is in place or is foreseen. Please also clarify why, despite the increase in the incidence of trafficking, most trafficking cases are dismissed. Explain why article 124 of the Criminal Code (organized prostitution) is frequently applied in adjudicating human trafficking cases, rather than article 113 (human trafficking) of the Criminal Code. Furthermore, has the State party established a mechanism to ensure rehabilitation and social reintegration for victims of trafficking, as well as a witness protection program?

Information related to the comprehensive national legislation on trafficking

A new anti-trafficking law has been drafted as result of 2-3 years of collective work under the coordination of the Human Security Policy Studies Centre with financial support from the Swiss Agency for Development and Cooperation. The draft law has been discussed by law enforces and a range of different audiences. In addition, in September 2010, the Centre for Human Rights and Development organized a one day workshop for advocates (practicing lawyers) to discuss the draft law. The advocates involved in this workshop had attended 2 step trainings on providing legal assistance to victims of trafficking. Each of these trainings was a 2-3 day intensive program which provided 2 credits to advocates. Some of the advocates had previous experience of providing legal assistance to victims of trafficking, while others were interested in providing legal assistance to them. They were therefore all well aware of the legalisation on trafficking and the challenges faced by victims. The advocates made wide ranging comments on the draft. The draft law was submitted by the Government to the Parliament in September 2010. It is still pending before the Parliament, with no clear agenda for its adoption.

Adoption of appropriate anti-trafficking legislation was the most frequent recommendation made during the UPR of Mongolia in November 2010 (see A/HRC/16/5 Report of the Working Group on the Universal Periodic Review of Mongolia⁵). The government has accepted these recommendations. At this stage, the NGOs are concerned about how effectively this new law will ensure the protection of victims during the investigation and trial processes. It is also not clear how the law will provide redress for their psychological and emotional damages, meet their needs in terms of reintegration, and establish adequate funding for compensation/restoration/reintegration of victims. The way these issues are dealt with is particularly crucial as current laws and practice do not provide for the protection of victims and witnesses.

Why, despite the increase in the incidence of trafficking are most trafficking cases dismissed?

Most trafficking cases are dismissed due to the lack of an appropriate legal framework for the protection of victims and witnesses of human trafficking cases.

1. There is no protection in criminal procedure law for victims of trafficking. The Criminal procedure law does not ensure that victims are free and safe from threats. During investigations they may be threatened by perpetrators and influenced by the lawyers defending the perpetrators. Although investigators approach victims/witness to get testimony to convict perpetrators, they usually do not protect victims/witness.
2. Many law enforcers, including investigators and prosecutors, are not free from prejudice and

⁵ <http://www.ohchr.org/EN/HRBodies/UPR/5CPAGES/5CMNSession9.aspx>

blame the victims, believing that they “knowingly” went through such circumstances. The conditions for taking testimonies in police custody are not appropriate (for instance, several investigators, suspects or victims of different cases may appear simultaneously in one room).

3. Victims may not have access to legal assistance due to fee. There are no legal regulations ensuring free legal service for victims.³ NGOs (Centre for Human Rights and Development, National Centre against Violence and Gender Equality Centre) provide free legal assistance (supported from foreign funded projects), but they do not have the resources to help all the victims.

4. Although the article 19 (1) of the Constitution declares: “The State shall be responsible to the citizens for the creation of economic, social, legal and other guarantees ensuring human rights and freedoms, to fight against violations of human rights and freedoms and to restore infringed rights”, the Government has not taken any steps to protect or assist victims by compensating their damages, restoring their reputation, or providing rehabilitation services.

5. According to the data from the Gender Equality Centre victims threatened by perpetrators were forced to take their statements back and were charged for providing false testimony.

6. Victims of this crime suffer emotional and psychological damages, and there are no mechanisms or legal instruments to measure those damages and compensate.

7. Frequently cases are dismissed by the prosecution. According to the Survey by the Capital City Intelligence Department conducted in 2009, 85%-90% of investigated cases were dismissed by the prosecution due to “lack of evidence proving that the person was forced into prostitution or sold” or to “lack of grounds to consider that the victim was deceived or forced to prostitution because the victim knew that services as a singer or a dancer imply sexual intercourse, if the client so requests”.

Why article 124 of the Criminal Code (organized prostitution) is frequently applied in adjudicating human trafficking cases, rather than article 113 (human trafficking) of the Criminal Code

In 2002 Mongolia added article 113 “Sales and Purchase of Humans” to the Criminal Code. In 2008 this article was amended and, in March 2008, the Supreme Court issued an interpretation of the provision which was a significant step forward in criminalizing human trafficking in accordance with the norms of international treaties and conventions. However, in practice, Courts tend to apply Article 124 of the Criminal Code (organised prostitution) in human trafficking cases. The punishment for human trafficking under Article 113 is 5-15 years of imprisonment, whereas the punishment for the crime of “Inducing others to engage in prostitution and organizing of prostitution” as stated in Article 124 of the Criminal Code is fining, incarceration for 3-6 months, forced labour or imprisonment for a lesser term. Therefore defence lawyers always try to use article 124 instead of 113 so that their clients receive a lighter sentence. This is possible because article 124 includes an element of the definition of trafficking “to involve into prostitution through means of force, threats of force or deceive” which is also in article 113. This kind of confusing provision is not only in article 124 but also in articles 115, 121, 125 on abnormal satisfaction of sexual desire, forced labour, involvement of minors into prostitution. There is therefore a need to amend these articles with distinct provisions to ensure that all trafficking offences are charged under article 113 and do not receive lighter sentences.

Has the State party established a mechanism to ensure rehabilitation and social reintegration for victims of trafficking, as well as a witness protection program?

The state has not established any mechanism for rehabilitation and social reintegration of trafficking victims/witnesses. A few NGOs with support of foreign funds provide victims with shelter for the first month after rescue, medical examination and treatment, psychological counselling and legal assistance. There are 2 shelters for trafficking victims, both run by NGOs with the support of foreign funders. The Government has been asked to allocate budget for these shelters but no progress has been made.

Therefore the new legislation should provide funding for these shelters from state budget. There is a Government programme on “Protection of Women and Children from Human Trafficking and Sexual Exploitation” with a National Council to monitor its implementation. Although the programme is named “protection” its does not include activities for protection. The Government Program for 2008-2012 includes

two clauses relating to combating human trafficking. However the Ministry of Labour and Social Welfare (the body mainly responsible for implementing the program) has not been efficient in fulfilling its mandate. The Government activities are limited to organizing meetings and seminars. Only the combined efforts of international and foreign donors and of the NGOs and the civil society of Mongolia have led to tangible results in combating human trafficking. It is clear that without donor assistance and the combined efforts of NGOs the activities to combat human trafficking will not be sustained.

Recommendations:

- **The Parliament should adopt the law on trafficking taking into consideration the comments made on the draft law by advocates, law enforcement personnel and others. The State party should ensure that this law protects victims and witness at all stages of the investigation and trial process. The State party should also ensure that sufficient resources are dedicated to provide compensation and rehabilitation services to victims of trafficking. The State party should amend existing legislation to ensure that perpetrators of trafficking offences are always charged under article 113 (sale and purchase of humans) of the Criminal Code and that those convicted receive sentences compatible with the severity of the crime.**
- **The State should also:**
 - a) **Provide protection for victims and witnesses during investigations and trials on trafficking and ensure that victims are able to bring accusations without fear of reprisals by the perpetrators;**
 - b) **Ensure that there the circumstances in which victims and witnesses give testimony are in line with international standards and do not contribute to their retraumatisation. In particular victims should not be obliged to provide their testimony in the presence of the perpetrators;**
 - c) **Provide free legal aid to victims who are unable to pay for lawyers;**
 - d) **Train judges and law enforcement personnel to ensure that they do not blame the victims and apply the full force of the anti-trafficking laws to perpetrators;**
 - e) **Provide compensation and rehabilitation and social reintegration services for victims, including shelters, medical treatment and psychological counselling. The State must assigning sufficient financial resources to ensure that these services are not dependent on NGOs and foreign donors;**
 - f) **Fully implement the Palermo Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children which it ratified in 2008.**

Right to a fair trial (art. 14)

18. Please provide information on concrete steps taken to fight corruption, in particular among the judiciary, on investigations into corruption cases, and on disciplinary action taken over the past three years against judges. Please also clarify the conditions under which judges may be granted loans for the construction of private apartments, as mentioned in paragraph 132 of the State party report.

The Independence of the Judiciary has been repeatedly questioned over the last few years. In the public perception survey it was seen as the most corrupt sector, although only a few corruption cases have been brought. Wide spread corruption in the judicial system cannot be documented, but researchers from the Open Society Forum (a local NGO which has researched strengthening judicial independence) concluded that there is a systematic problem related to influence from the Executive as well as hierarchical influence in court decisions. The problems with the judicial system were highlighted in the trials relating to the State of Emergency of July 2008; the Courts violated their own rules of procedure and condemned all 287 defendants for the same offences (11 billion tugrik material damage and health damage of 357 policemen) despite proof that the evidence presented was invalid. [See answer to Q.2 and Annex 2 on the State of Emergency for further details]

In 2009 the President of Mongolia initiated a reform process to make the judiciary more transparent and

independent, but the results of this process have not yet been seen.

In relation to the trials of July 2008 the Committee might ask the State:

- *Why did trials for the same offences take place in different courts?*
- *What were the criteria for grouping individuals during the trials?*
- *Was it true that all 287 people were condemned for very same damage of 11 billion tugrik material damage and health damage of 357 policemen?*

Due to lack of adequate housing there is special regulation granting public officers, journalists and judges loans for the construction of apartments. This regulation allows superior judges to make recommendations on the granting of a loan to junior judges, and so gives the superior judges additional influence over their juniors.

Recommendations:

- **The State party should thoroughly investigate allegations of corruption in the judiciary and ensure that corrupt judges are removed from their positions and prosecuted. It should also implement measures to guarantee the independence of the judiciary.**

19. What is done by the State party to raise the awareness of detainees on the availability of legal aid? Please also provide information on steps taken to improve access to justice for persons with disabilities and to guarantee their right to a defence in line with article 40 (1) of the Criminal Procedure Code.

The Government of Mongolia has made progress in this area by establishing with the assistance of international local donors and partners a framework for State provided legal aid. This system provides legal aid through Legal Aid Centres established in all provinces and districts. However, the system does not have sufficient resources to respond to the needs of the population. For instance, in Bayanzurkh district with a population of 260 000, the majority of whom are migrated indigent people (and so a group likely to have need of legal aid) there is only one lawyer under the State legal aid system.

There is a general shortage of licensed lawyers in all provinces and districts, and so others are unable to make up the deficiencies of the State Legal Aid system. For instance, in Khuvsgul province which has a population of 40 000, there are only 5-6 lawyers, all of whom are based in the provincial capital, Murun. These shortages severely limit access to legal aid for those living in rural areas and at the early stages of a case.

Although the development of the State Legal Aid system is welcome, the legislation on the right to legal aid is not adequate as the existing Law on Advocates is an institutional law and does not provide a guarantee of legal aid. The Government should, therefore, consider systematic reform in Legal aid area.

Recommendations:

- **The State party should ensure that the State Legal Aid system has adequate financial and human resources to respond to the needs of the population, including those living in rural areas.**
- **The State party should ensure that the right to legal aid is guaranteed in the legislation, and not only through institutional provisions.**

Freedom of religion and belief (art.18)

20. Please provide information on (1) the arrangements in place for conscientious objectors to military service to perform alternative services; (2) the number of persons that have used these arrangements; and (3) the duration of alternative service, as compared with military service.

Although military service is obligatory for male citizens, the indications are that less than a third of those reaching the relevant age actually perform such service. Obviously, only those who are passed fit medically

are called up, and there are exemptions or deferments for those with two or more children, with care responsibilities for elderly parents, or who are studying. It is however also possible to be excused from the military service requirement by paying a fee to the Ministry of Defence, but this fee is set at a level which is beyond the resources of much of the population, with the effect that military service is compulsory for the poor but optional for the rich.

Recommendations:

- **The State party should ensure that the alternative service for conscientious objectors to military service is completely under civilian control, including the decisions on who is a conscientious objector, and that it is not of a punitive nature or duration.**

21. Please comment on reports that religious institutions seeking to register and re-register face considerable difficulties and delays in obtaining a permit to conduct religious activities.

On 15 July 2010 the Parliament approved the National Security Policy by its resolution No 48 Article 3.6.1.4. This states that the content of information promoting foreign religion, culture, and State policy shall be restricted at the appropriate level. However 'foreign religion and culture' are not defined. Similarly article 144.1 of the Criminal Code prohibits cruel religious activities/conducts, but there is no explanation of what is meant by 'cruel religious activities'.

Recommendations:

- **The State party should amend article 3.6.1.4 of the National Security Policy to define 'foreign religion and culture' as well as specifying what restrictions might be applied in this context. The State party should also define the term 'cruel religious activities' in article 144.1 of the Criminal Code. In defining these terms the State party should ensure that they cannot be applied in a discriminatory fashion or used to incite national, racial or religious hatred.**

Freedom of opinion and expression (art. 19)

22. Please explain why the Freedom of Information Law, drafted in 2002, apparently has not been adopted yet. Also comment on reports that national and local media continue to be subjected to government and political party harassment, extensive use of libel cases and frequent tax audits.

In 2002, Globe International launched a program to disseminate the concept, principles, and international standards on Freedom of Information with support from the Mongolian Foundation for Open Society (the present Open Society Forum), the US Embassy and AUSAID. In 2004, the first draft law was submitted to the Ministry of Justice and Home Affairs. The draft law was included in the Parliament's agenda in October 2005. In October 2006, Cabinet discussed submitting the draft law to Parliament, but postponed it due to the need to include the issue among information-dissemination and information-security issues. In May 2007 four Members of Parliament drafted and submitted the Law on Freedom of Information. This law is still pending in Parliament. Meanwhile, on 21 January 2011, the Government submitted its draft law on Information openness and Right and Freedom to Access Information to the Parliament. It is on the agenda for the spring session of the Parliament.

It is common practice in Mongolia for politicians, officials and public servants to use provisions of the Criminal Code and Civil Law for media censorship. The courts, when making decisions about libel cases, do not take into consideration the legitimate right of the public to receive objective information, and instead generally support the authorities, creating doubts about the independence of the judiciary. Those in power use their authority and official positions to quash the truth in order to suppress fair criticism and to cover up their wrongdoings.

Globe International reports that according to its survey among 200 journalists at the end of 2009, one in six journalists had received an improper reaction from those affected by critical material and most journalists had been threatened and/or attacked, 81% of them by authorities and/or public officials. Almost 20% of

journalists had received severe threats, including violence and even death threats to themselves or their family members. This alone demonstrates the difficulty of journalism in Mongolia. 50.8% of reported problems concerned threats, 40% were also pressured and defamation cases were started against 23% of journalists.

As to the content of threats, 42.3% were told they would be prosecuted, 33% were threatened with loss of their jobs, 7.7% with imprisonment, 6.9% with death, 5.4% with beatings and 5.4% had threats made against family members. Of threats against journalists, 70.8% were made by telephone, 33.1% at individual meetings; 16.1% were called to an office, while 3.8% were physically attacked. 77% of threats were received after publication or broadcast of material, 14% while information was being gathered, and 9% during production of materials. 69.2% of defamation complaints were brought by the authorities, 21.4% businessmen and 9.4% international organizations or NGOs.

The prevalence of threats and prosecutions of journalists leads to significant self-censorship.

There are also problems with regard to the legislation restricting freedom of expression (according to an analysis by Globe International and Article 19 there are 91 laws or provisions of laws limiting freedom of expression or information) and the broad scope of the State Secrecy Law and Law on the Privacy of Organisations as well as the lack of transparency with regard to ownership of the media.

[See annex 3 for a detailed analysis of the implementation of article 19 and examples of defamation cases]

Recommendations:

- **The State party should adopt a Law of Freedom of Expression which ensures that journalists and media outlets are not subjected to harassment and prosecution as a consequence of expressing their critical views and that any restriction on press and media activities is strictly compatible with the provisions of article 19, paragraph 3, of the Covenant. The State party should also review its State Secrecy Law and the Law of the Privacy of Organisations to ensure that these laws are compatible with article 19 of the Covenant.**
- **The State party should ensure that all allegations of attacks and threats against journalists are thoroughly investigated and the perpetrators prosecuted. When the attacks are motivated by the journalists' professional activities this should be seen as an aggravating factor in any prosecution.**

Freedom of movement, Marriage, family and measures for the protection of minors (art. 7, 12, 23 and 24)

23. Please clarify whether children born in Mongolia to stateless asylum-seeking and refugee parents can obtain the Mongolian nationality upon reaching the age of 16. Please also clarify how the State party ensures citizenship to those ethnic Kazakh Mongolians who moved to Kazakhstan in the early 1990s and have since returned to Mongolia, but who are left stateless as a result of their initial emigration.

The current process for reinstating Mongolian citizenship is very bureaucratic and takes between 9 and 13 years (contravening article 22.5 of the law of Mongolia on citizenship which states that "*a time limit for receiving, examining, and deciding on matters related to Mongolian citizenship shall not exceed six months*"). As of 2008, only 10% of the Kazakh citizens who returned to Mongolia in 2001 have reinstated or are in the process of reinstating their Mongolian citizenship.

Kazakh Mongolians who did not emigrate to Kazakhstan, but who lost their Mongolian citizenship due to mass requests for tribal members to drop Mongolian citizenship have also been rendered stateless.

Recommendations:

- **The State party should expedite the reinstating of Mongolian citizenship for ethnic Kazakhs who have been rendered stateless as a result of migrations or the renunciation of Mongolian citizenship in the early 1990s.**

24. Please provide information on legislative and other measures taken or foreseen to prohibit, prevent and end all forms of corporal punishment of children as a method of discipline in all settings, including in schools, penal institutions, and alternative childcare system.

The Law on Education and the Law on Primary and Secondary Education prohibit corporal punishment in educational settings and a complaints mechanism related to corporal punishment in educational settings has been established. In the most serious cases, a teacher may be denied the right to teach for 1-3 years. However, very few cases have been reported and resulted in the teacher being penalised.

The Family Law does not have specific reference to corporal punishment, but states that any cruel treatment shall be prohibited in family settings and the childcare system.

Despite these laws the general public including teachers, parents and children, still consider corporal punishment a normal way of discipline.

Recommendations:

- **The State party should:**
 - **a) Explicitly prohibit corporal punishment in all settings by legislation;**
 - **b) Run public awareness campaigns to change societal attitudes to corporal punishment;**
 - **c) Encourage people, including children, to use the complaints handling mechanism.**

25. Please provide detailed information on: (1) the extent of domestic violence, including child abuse and violence in the family; (2) the number of complaints submitted, investigations carried out and sanctions imposed on perpetrators; and (3) measures in place for the protection and rehabilitation of victims. Also clarify as to whether steps are foreseen to make marital rape an offence under the Criminal Code.

(1) Some progress has been made on preventing domestic violence. In 2009, Three One Stop Service Centers (OSSC) for victims of domestic violence or rape were established by the joint decree of the Ministry of Justice and Home Affairs, Ministry of Health, and Ministry of Social Welfare and Labour with technical support of the UNDP Access to Justice and Human Rights project, WHO, and UNFPA. Several NGOs supported the establishment process. However, the OSSCs are understaffed and underfunded. The current staff also lacks professional training. As a result, the OSSCs are not operating at full capacity, and urgent action is needed to ensure their effectiveness and sustainability.

(2) The Law against Domestic Violence (2004) is too general and lacks procedural regulations on the enforcement of court orders. Other relevant laws have not been amended to reflect the new standards set by this law.

For example, Article 16 on Restraining order was incorporated into the Law against Domestic Violence to protect victims with the following clauses:

16.1. The following measures may be taken to restrict perpetrator's rights:

16.1.1. to request perpetrator leave the household;

16.1.2. to prohibit access to victim in shelter or another places stated in provision 15.1.3 of this Law

16.1.3. to prohibit possession, use and disposal of jointly owned properties;

16.1.4. to prohibit temporarily contact with minor children in custody;

16.1.5. to involve in mandatory training influencing perpetrator's behaviour;

16.1.6. to involve in mandatory alcohol/substance abuse treatment or work in accordance with administrative procedures stated in legislations if necessary;

16.2. A person pressed with charges stated in provision 16.1 of this law shall not be freed from responsibilities to take care and support victim.

Since the adoption of the law, 41 court decisions on restraining orders have been issued, but none of them have been implemented. According to a survey 76.4% of court decision enforcement officers stated that

current procedure does not allow for immediate action to protect victims of domestic violence. In 2009, 8 women requested restraining orders against perpetrators, but 6 of them withdrew their complaints due to the lengthy prosecution process.

The mandatory training in order to change the behaviour of perpetrators of domestic violence stipulated in Article 16.1.5 has not been conducted yet. The development of this programme only began in 2009. These facts demonstrate that the provisions related to restraining order are only in declarative form and far from reaching the initial purpose.

(3) The ineffective enforcement of court decisions on restraining orders leaves victims without protection and vulnerable to further physical, emotional and material damages. For instance, Perpetrator R was issued a restraining order to leave the household for 10 months. However, during the restraining period he followed victim B home, harassed her, beat up their child and caused serious injuries.

According to Article 11.1 of the law against Domestic Violence, Non-governmental organizations can be contracted to provide victims with shelter. Since 2002 the Ministry of Social Welfare and Labour has contracted with National Center against Violence to cover operational costs of the Ulaanbaatar based shelter house. But its fund only covers 10 per cent of the total budget of the shelter house. The rest of the funding is received from donor organizations. Fundraising for the shelter houses is a constant problem for NGOs, and this renders the sustainability of the shelter houses uncertain.

Marital rape is not currently included as an offence in the Criminal Code despite the previous recommendations made by the Human Rights Committee⁶. A survey of 150 people aged 18-70 by the National Centre against Violence showed that 80% of the respondents admitted that marital rape existed in family life and 50% had been victims of marital rape.

The legislation on rape also has the following weaknesses:

- Serious sanctions apply to perpetrators who raped child aged under 14. This should be raised to 16, the legal age for citizenship identity (Article 126.3 of the Criminal Code).
- Under the current regulation, evidence must be provided by the victim and, if there is no trace of injuries, the case is usually dismissed.
- The prosecution process usually takes 5-9 months, and victims often withdraw their complaints due to the lengthy process.

Rape crimes are on the increase with 33 cases reported in 2008, but double this number in 2009. Many cases go unreported, particularly rapes conducted by family members or relatives. In recent years several incidents of rape have occurred in school environment, but there have been no sanctions imposed on the school administrations. There is currently no legislation to protect victims' rights; therefore, victims of rape crime do not receive effective remedies and their emotional damage is never compensated.

Recommendations:

- **The State party should:**
 - **a) Strengthen the Law of Domestic Violence to fully protect victims and ensure that other legislation is amended to reflect the new standards introduced by this law;**
 - **b) Ensure that the provisions of the Law of Domestic Violence on restraining orders are fully implemented and ensure that measures are put in place to effectively protect victims of domestic violence;**
 - **c) Bring the programmes to change the behaviour of perpetrators into use as soon as possible;**
 - **d) Provide the One Stop Service Centres and other shelters for victims of domestic violence with sufficient financial and human resources to carry out their work. The staff of these shelters should have access to training to develop their capacity to assist victims of domestic violence.**

⁶ CCPR/C/79/Add.120 para.8 (g) (March 2000)

- **The State party must amend the legislation on rape to: criminalise marital rape; to extend the severe sanctions for child rape to all those under the age of sixteen; to ensure that the prosecution process is not unduly prolonged; to remove the burden of proof from the victims and ensure that cases are not dismissed when there is no proof of injury; and to provide effective remedies and compensation for victims.**

Rights of persons belonging to minorities (art. 27)

28. Please provide detailed information on steps taken to improve the accessibility of children of the Kazakh minority to education in the Kazakh language, including within the Program to Support the Education of Kazakh Children.

Around 90% of the Kazakh population live in Bayan-Ulgii aimag and in this region Kazakh children have access to education in the Kazakh language. These children should be taught Mongolian, the official state language, in school, but the quality of this teaching is poor. The Kazakh citizens are therefore unable to access official documents, including laws, which are only available in Mongolian.

There is no access to education in the Kazakh language in other regions, even where there is a significant Kazakh minority (for example in Nalaikh district, Ulaanbaatar, where 30% of the population are Kazakhs).

There is also a shortage of public broadcasting in the Kazakh language; only 30 minutes of radio a week, on average.

Recommendations:

- **The State party should:**
 - **a) Extend access to education in the Kazakh language to all Kazakh children, wherever they live;**
 - **b) Ensure that children educated in the Kazakh language receive adequate language instruction in the national language;**
 - **c) Translate official documents including relevant legislation into Kazakh and other minority languages to ensure that individuals who do not speak Mongolian are able to access services; and**
 - **d) Promote public broadcasting in minority languages.**

Annex 1: Issues of concern not raised in the List of Issues

1. Article 16.14 of the Constitution of Mongolia stipulates that a citizen has **the right to appeal** to the Court to protect his/her rights if he/she considers that the rights or freedoms laid out in the Mongolian law or an international treaty have been violated. However in practice this cannot be done because the provisions of the ICCPR have not been incorporated into national laws and judicial personnel lack knowledge of human rights standards. Although judicial reform programs and projects have been implemented for many years with significant amount of funds (tens of mlns of USD) from US IAD, GTZ and World Bank, the human rights knowledge of judges has not improved. There are no adequate training programs or manuals for judges on international human rights standards and their use in court practice has not been developed. The National Legal Centre is the only body authorized to train law enforcers. Lawyers and advocates have criticised its monopoly of accredited trainings which have become a source of profit.

Recommendations:

The State party should incorporate international treaties into domestic law and ensure that the provisions of international treaties can be directly invoked in Courts. It should improve the standards of training of judicial personnel to ensure that they are able to apply international standards in domestic courts.

2. Individuals whose rights under the Constitution have been violated cannot apply to the courts. This means that constitutional rights are just declarations. This fact has been noted in the National Human Rights Action Programme and its Section 1.1.3.1.3 says that “The functions of the Constitutional Court shall be strengthened to enable it to serve as an effective mechanism to address human rights violations”. One of the UPR recommendations to the Government of Mongolia addressed this issue and recommended that it enable citizens to apply to the Constitutional Court. Unfortunately according to the latest information this recommendation is the only recommendation which was not accepted by the Government of Mongolia.

Recommendations:

The State party should carry out Section 1.1.3.1.3 of the National Human Rights Action Programme and ensure that the rights guaranteed in the Constitution can be protected in the Courts.

3. The oversight capacity of the Human Rights Subcommittee (HRS) of the State Great Khural (parliament of Mongolia) should be strengthened so that it can review and evaluate laws, decisions and development policy documents approved by SGK for compliance with provisions of the Constitution and international human rights instruments; The HRS needs to build its capacity to analyze the impact of legislation on the status of human rights and freedoms.

Recommendations:

The State party should ensure that the Human Rights Subcommittee has the capacity to review and amend all laws, decisions and development policy documents to ensure that they are compatible with the international human rights instruments ratified by Mongolia and with the highest standards established in domestic law.

4. The National Human Rights Commission of Mongolia is an important part of the national human rights protection mechanism. Unfortunately its enabling law does not comply with the Paris Principles. The independence of the Commission is not ensured by the law, which does not require open, transparent inclusive nomination and appointment procedures of commissioners. The selection criteria of commissioners does not require high knowledge and experience in human rights, instead it requires high professionalism in laws and politics but only adequate knowledge in human rights. Nomination of candidates for commissioners has become a deal organised by the two political parties. Appointed commissioners are therefore dependent on those nominators in parties or government. The funding of the Commission is very low. Only around 5 or less mln MNT (1250 MNT is equivalent to 1 USD) was budgeted for its training activities for one year. During the last financial crisis the Ministry of Finance cut its already small funds.

Recommendations:

The State party should amend the law establishing the National Human Rights Commission of Mongolia so

that it is in full compliance with the Paris Principles and provide adequate budgetary funding. This funding should be guaranteed and neither the Ministry of Finance nor any other government body should have authority to cut the budget of the Commission.

Mongolian herders' case as an internally displaced people

With the current boom in the mining industry mining licenses have been issued covering 90 per cent of some 300 soums (small administrative unit), even in human settlements such as Janchivlan, Zaamar, Hongor and Tsogttsetsii soums, without consulting the land use plans approved by local authorities in consultation with local residents as the Minerals Law does not carry the stipulation incorporated in the Land Law. In the case of Tsogttsetsii soum, 90 per cent of the land has been licensed for mining. As a consequence, there are now only 300 herders' households and 32'000 livestock, half of the 500 households with 70'000 livestock in 2000.

Customary law has regulated nomadic lifestyle as well as ownership and bestowment of pastureland for thousands of years in Mongolia. However, national law does not recognise the rights recognised under customary law. There is neither mechanism for valuation of nomadic households' properties nor a compensation system if the land is taken for public purposes. In addition, there is no effective mechanism to ensure implementation and enforcement of citizen's right to participate in decision-making processes regarding their livelihood.

Nomadic households who are forced to move from their pastureland and leave their traditional nomadic lifestyle due to mining activities encounter further difficulties as there is no rehabilitation system in place for them to adapt to a new way of life.

Recommendations:

The State party should recognise the land ownership established in customary law and ensure that the nomadic owners receive full compensation if the land is taken for public purposes. It should also provide compensation and reintegration services to nomadic households forced to leave their traditional lands and lifestyles.

The State party should develop mechanisms for involving the nomadic population in decision-making processes which effect them and their livelihood and ensure that their rights are protected.

Article 22. Freedom of Association

The Constitution of Mongolia guarantees its citizens' freedom of association.

However, the Trade Union of Mongolia (TUM) reports that the citizens' right to association is limited in practice by the public institutions and big private companies. The number of people who suffer discriminated, are pressured or loose their jobs because of initiatives to establish TU branches at their work places and became TU members, is increasing.

TUM considers that article 15.1.2 of the Law on the Public Service⁷ and article 122.1 Law on Labour⁸ restrict public officials' freedom of association in practice. The law provisions prohibit strikes, but in reality it is used against public officials who want to join a TU.

The entities and organizations refused to include some issues in the collective bargaining agreement on the grounds of organizational privacy. Even if the parties succeed in signing an agreement, it will be impossible to impose responsibility on the parties because the Law does not have narrow regulation.

In accordance with the Law on Labour disputes are solved in three stages. Employees' representative deliver

⁷ It shall be prohibited for the public officials/ civil servants working in the sectors of public administration and special services to plan, organize, and participate in strike and other activities that interrupt normal functioning of the state organizations, 15.1.2/Law on the Public Service

⁸ It shall be prohibited to organize strike at organization with purpose to provide defence, national security and ensure public order, 122.1, Law on Labour

a proposal to the employer, mediate and invite an arbitrator, and organize strikes, if the parties cannot come to an agreement, the dispute can be appealed to a court. The process is complicated and it takes time, so the employees' rights are often violated during the process.

Recommendations:

The State party should ensure that the right to association, including the right to form and join trade unions is guaranteed in law and in practice. It should also guarantee the right to a remedy for violations of these rights, and so ensure that any violations and be appealed to a Court and be investigated without undue delay or punitive expense.

Annex 2: Information on the events of July 2008

Coalition of Monitoring and Protection of Human Rights under State of Emergency

Report of Documentation

Report Prepared by: P. Badamragchaa

Report Editors: D. Tsend-Ayush
T. Undarya
J. Zanaa

Foreword

Draft

It is certain today that July 1, 2008 will go down in history of Mongolia as the day that has tested authenticity of the Mongolian democracy and guarantees of human rights. Mongolia was credited for being one of the most successful democracies in Asia for the past eighteen years, for guaranteeing very crucial human rights under its Constitution as well as ratifying most international human rights treaties and conventions.

However, the events of this one day clearly demonstrated the inability of these numerous documents of national and international legislation to guarantee human rights as fundamental principles of democracy, that there are deep underlying barriers, reasons and factors hindering the cultivation of democracy in Mongolia. History will also take down this day as the first ever declaration of a state of emergency triggered by social disorder. At the time of announcing the state of emergency no one had imagined the impact that this decision would entail and the wide range of events that would send shock waves through every cell of the Mongolian society.

This event has tested not only the true quality of the Mongolian state but also the strengths and capacity of its civil society. Have conscience and solid mechanisms for the true protection of human rights developed in the past 18 years? Has the civil society, mainly concentrated in urban areas, developed sufficient capacity?

The history of mankind has abundant evidence that under the state of emergency there is always a high likelihood and high occurrence of violation of human rights. Based on this premise over 20 human rights-watch organizations formed a coalition to work together on monitoring the process of implementation of the state of emergency. The state of emergency was declared at around 11:30 pm to become effective at 12:00 at the turn of July 1 and July 2, 2008 and stayed in force for four days.

The Coalition has defined its objectives as follows: Document and prevent, where possible, human rights violations during mass arrests and detention at detention centres; provide legal aid and support to victims; disseminate reliable information to the public and exercise civil society monitoring of the process of administration of the state of emergency.

The fact that monitoring activities are aimed at watching for violation of law by public and law enforcement officials and organizations entails the risk of arousing suspicion and distrust. Given the need to win time this monitoring project was carried out utilizing existing limited resources of the civil society organizations.

This group of civil society organizations has previous experience of documenting the process of forced dispersing of the demonstration of crop growers. While this minor event provided opportunity for monitoring there is no experience in performing a wide range monitoring and documenting human rights violations on an emergency basis. Therefore this monitoring and documentation process has become not only an important lesson for members of the Coalition but also a reminder to be vigilant and prepared for anything.

We take this opportunity to express gratitude to all those who set aside care for personal security, health, job and family safety to devote their hearts, time and resources to carrying out this monitoring at the time when fear and alarm were thrust in the minds of the people by the declaration of a state of emergency.

Documentation Team

**DECLARATION OF STATE OF EMERGENCY
PRESIDENTIAL DECREE⁹**

July 1, 2008, Ulaanbaatar

Number 194

In accordance with authority defined in Provision 33.1.12¹⁰ of the Constitution of Mongolia and basing on Provisions 5.3 and 5.6 of the Law on State of Emergency¹¹, I hereby Decree to declare a state of emergency in the capital city of Ulaanbaatar effective from 24:00 hours on July 1, 2008 to continue for 4 days in order to normalize situation for the population and eliminate consequences of the social unrest, which developed on July 1, 2008 in the Sukhbaatar district territory of the capital city as result of unlawful act of use of force by a group of individuals, which led to social disorder, life threatening attacks on law enforcement officers, setting fire and looting.

Implement the following measures within the frame of the state of emergency:

- Protect special and essential to human livelihood objects with enforced protection;
- **Use force and measures defined by law to immediately disburse** demonstrations, meetings and other public events organized in violation of law.
- Limit movement and inspect transportation vehicles in the centre of Ulaanbaatar;
- **Utilize force to disburse groups of people who used or are using force to cause social disorder, arrest and seize their transportation vehicles and weapons;**
- **Set curfew from 22:00 to 8:00 in the centre of Ulaanbaatar (Baga Toiruu). Police and military guard to arrest individuals in violation of this curfew until the end of curfew time or until establishing identity of those without citizen ID or equivalent document but detain for no more than 72 hours;**
- Prohibit use of audio enhancement equipment, with temporary confiscation where necessary; **stop activities of broadcast media, radio and TV except for the MNPRTV (national public radio and TV) until the end of state of emergency;**
- Prohibit sale and distribution of alcoholic beverages;
- Establish control over fire and cold arms and ammunition in possession of the population; explosives, chemical and radio-active substance supplies utilized for production by economic entities and industries; combat arms and technical devices used for training;
- Charge the Minister of Justice and Home Affairs with responsibility to mobilize relevant organizations and forces necessary to implement activities defined in this Decree and carry out within the authority assigned by this Decree and the Law on State of Emergency and other relevant legislation.

President of Mongolia

N. Enkhbayar

⁹ www.legalinfo.mn

¹⁰ Provision 33.1.12: ... to declare a state of emergency or a state of war on the whole or a part of the national territory in the emergency situation described in paragraphs 2 and 3 of Article 25 of this Constitution in circumstances of urgency where the State Great Hural is in recess and to issue ordinances commencing military operations. The State Great Hural shall consider within 7 days the presidential decree declaring a state of emergency or a state of war and shall approve or disapprove it. If the State Great Hural does not make a decision on the matter, the Presidential decree shall be void.

¹¹ Law on State of Emergency:

Ç. If a state of emergency as defined in Provision 2 of Article 25 of the Constitution occurs during recess of the State Great Hural and its development requires immediate declaration of a state of emergency the President of Mongolia shall issue a decree declaring a state of emergency.

6. If the development of an emergency situation requires declaration of a state of emergency such state of emergency shall be declared without taking measures to warn of its declaration.

At 23 hours on July 1, 2008 the President of Mongolia announced declaration of state of emergency transmitted over radio and television¹². The state of emergency was announced in reaction to the demonstration of public protest in the wake of June 28, 2008 parliamentary election and public violence following these demonstrations. These events, which occurred for the first time in Mongolian's recent 19 years' history came as a shock to the whole society hindering its ability to evaluate realistically the causes and consequences of the situation, the measures taken by the state and thus failing to find a resolution, which is in line with the democratic principles of humane society and is in accord with the interests of the society.

In presenting our report of documenting human rights violations we aim to draw attention of the public to the democratic principles and human rights guaranteed by the Constitution of Mongolia developed and ratified with the goal of developing a humane society as well as international treaties and conventions, which Mongolia joined and ratified as manifestation of its membership of the world community. In doing so we will focus attention on the role of the state in a democratic society as well as base our analysis on principles and standards of both international and national legislation related to announcement and implementation of state of emergency measures. Basing on the fact that the Constitution of Mongolia provides for use of provisions of international treaties and conventions in the case when provisions of national legislation are found in conflict with those in international treaties and conventions our analysis was informed by the international standards. However, in addition to documenting violation of provisions of national legislation by officials during state of emergency we observed the fact that some provisions of national legislation, especially provisions related to arrest and detention procedures are not in compliance with both national and international legal standards.

The State and Violence

The fundamental role of the state in any society is to protect its citizens from external and internal threat and ensure the security of the nation. In a democratic society protection of human security is understood as protection of inherent human rights and freedoms. The state therefore is entrusted with the monopoly right to use force (through such institutions as judiciary, police, military) in order to ensure this security. The state is therefore financed by the taxpayer to ensure fulfilment of this role as well as social security, welfare and other services, which came as more recent additions to its role and responsibilities.

However, there is abundance of situations where instead of ensuring the security of its citizens the state abuses the monopoly of power to violate their rights and freedoms, especially in societies where the civil society control is weak, democratic institutions are immature and distribution of social wealth and power is uneven. This is evident from the history of not only Mongolia but many nations of the world.

That is precisely the reason why international conventions and constitutions of nations provide legal guarantees for inherent rights and freedoms to protect human life, health, rights and freedoms from arbitrary and irresponsible actions of the state.

That is precisely why international and national legislation include provisions setting high criteria for declaration of the state of emergency, reminding to resolve each situation not resorting to state of emergency and requiring special focus on protection of human rights when a state of emergency is declared.

State of Emergency and Human Rights

The International Covenant on Social and Political Rights (1966) provisions that in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the state may take measures derogating from their obligations under the present Covenant. The state of emergency shall be declared to the extent strictly required by the exigencies of the situation and shall not involve any form of

¹² While the announcement of the declaration of a state of emergency made at 23 hours on July 1, 2008 was transmitted by broadcast media it is unclear who it reached those participating in the demonstration and parallel riot as well as those who did not have access to TV and radio at the time.

discrimination.

Measures limiting human rights within the legal framework shall also adhere to the following principles:

- Limitation of human rights and freedoms not to affect legal guarantees of inherent human rights (right to life, freedom from torture, freedom from slavery, etc.);
- To have a lawful purpose of ensuring social good, public safety and security;
- Aimed at preventing greater negative consequences (state of emergency measures to be taken and their consequences to be calculated in detail before its declaration);
- To be of temporary nature (to have a specific timeframe not to be extended without real need).

While the Decree of the President of Mongolia set limitations on several human rights it is regretful that it has failed to remind of the need to respect human rights and freedoms, to prevent excessive use of force.

On the other hand, there was opportunity to take measures aimed at preventing damage and destruction at the time when the direction of events became evident to all. Unfortunately the state of emergency was declared at midnight to catch up with the events or as if it had been waiting for the fall of dark.

We knew from experience of other countries that declaration of a state of emergency entails profound negative consequences. International conventions and in compliance with these the national legislation contain provisions regulating this matter. International law documents specify the following principles for the state of emergency:

International Covenant on Social and Political Rights, Article 4¹³:

- 1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.*
- 2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.*
- 3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.*

While the Covenant requires a state party to inform the UN of availing itself to the right of derogation and of the provisions it has derogated and the reasons by which it was actuated, Mongolia has not fulfilled this requirement. There is also a following provision aimed at preventing misuse of the right to derogate:

Article 5

- 1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.*
- 2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.*

Declaration of a state of emergency opens opportunity for the state to encroach on human rights. This

¹³ International Covenant on Civil and Political Rights

encroachment should be appropriate and limited. International law in particular lists rights vulnerable to violation during a state of emergency:

- Right to life;
- Liberty and security of person;
- Right not to be subjected to arbitrary arrest;
- Right not to be subjected to torture, inhuman and degrading treatment;

The state often is the party violating human rights and thus presents a serious threat. That is why the ICCPR in Article 4, Provision 2 above reminds not to violate inherent rights and freedoms during a state of emergency.

Provision 2 of Article 19 of the Constitution of Mongolia regarding declaration of a state of emergency stipulates that: *“in the case of declaration of a state of emergency or war, human rights and freedoms guaranteed under the Constitution and other laws may be limited solely by law. Such law limiting human rights and freedoms shall not affect legal guarantees of the right to life, freedom of conscience and religion, not to be subjected to torture, inhuman and degrading treatment”*.

Article 3 of the 1995 Law on State of Emergency defines a state of emergency as: *a state of emergency is a state of legal condition which is declared for a specified period of time in the case an emergency situation in the whole territory of Mongolia or parts of it, as defined in Article 25.2 of the Constitution of Mongolia, and is aimed at remedying the emergency situation and its consequences, normalizing social order and living conditions of the population, which sets limitations on rights and freedoms of citizens and legal entities, limitation on activities of public and private entities through additional duties as prescribed by this Law.*

In particular, Article 9, provision 1.1 stipulates that the **National Security Council** *“shall have the authority to organize, cause to implement and monitor implementation of the state of emergency based upon the decision of the State Great Hural or the Decree of the President.*

In internationally accepted documents the state of emergency is mainly referred to in relation to the priority need to protect human rights. While national legislation of Mongolia, the Law on State of Emergency specifically states that:

“The purpose of this Law is to regulate the relationships arising from declaration of a state of emergency; define justification for declaration of a state of emergency, its rules and special measures, define the authority and duties of the organization responsible for the implementation”. Human rights are addressed in a separate article which, however, does not specify protection of human rights or ways to protect human rights. The fact that the requirement to protect human rights is not mentioned or stipulations preventing abuse of restrictions set by the state of emergency are not mentioned in the law is an example of limitations of this law. In other words, the law and procedures do not specify need to protect human rights other than pro forma copying of the language from international legal documents.

In the future it is important to address protection of human rights and freedoms during a state of emergency through special legislation based on Provision 19.2 of the Constitution of Mongolia. The existing Law on State of Emergency is outdated, open to abuse by the state and omits many mechanisms available for resolving a state of emergency.

Activities of the Coalition: Documentation

In accordance with the Presidential Decree the following state of emergency measures were implemented:

- **Disbursing demonstrators with use of force:** attempts were made to disburse rioters and demonstrators with the assistance of armed internal military force. Due to this there were many citizens who afflicted injuries of varying by combat and training bullets.
- **Arrest:** mass arrests of demonstrators and rioters and any citizens who happened to be in the area

started immediately. Mass arrests expanded its boundaries beyond the area specified in the Decree and affected people not engaged in the demonstrations.

- **Closure of all broadcast media other than the National Public Radio and TV:** NPRTV was forced to broadcast censored information, which started the process of transmission of incriminating, accusing and convicting materials through TV.
- **Curfew in specified areas:** use of police force to exercise psychological pressure on the population in areas under curfew.

These measures resulted in considerable amount of fear and confusion among the population.

The coalition was fully formed and begun its activities on July 2, 2008. The first action was a protest statement reacting to closure and censorship set on mass media instruments¹⁴. This statement was followed by a joint statement of civil society organizations protesting against arrest of over 700 citizens, killed and missing persons¹⁵.

Beginning July 3, 2008 over 100 volunteers comprising of advocates, lawyers, psychologist, social workers, students and human rights activists began monitoring conditions under which mass arrests of alleged participants in riot was carried out. In the process of monitoring and documenting violation of human rights the Coalition also provided some legal aid, consulting and information dissemination to those arrested and their families.

The process of documenting human rights violations included use of survey questionnaires as well as documenting verbal witness testimonies of arrested and their family members, photographing, video and audio taping as requested by victims and their family members. Documentation process covered:

- Questionnaires to arrested – 71 persons
- Questionnaire to family members – 126 persons
- Audio tape – 8 persons
- Video taped – 9 persons
- Photo documenting – 11 persons
- Medical examination, lab test – 2 person

A considerable number of individuals called in for information and with request for emotional support and legal advice through call in services provided by Citizens' Alliance, National Centre against Violence and the Nisora Fund.

Information and data collected during this documentation exercise reveals violation of many human rights provisions of national law, international treaties and conventions. The documentation process concentrated on collecting evidence of specific type and nature of human rights violation cases rather than the number of direct and indirect victims affected by these violations.

International treaties and convention provisions violated during implementation of state of emergency in Mongolia during July 1-4, 2008:

Universal Declaration of Human Rights – an internationally accepted fundamental document of human rights, while it is a declaration it has significant power in the process of protection of human rights

International Covenant on Civil and Political Rights – monitoring has revealed gross violation of provisions of this Covenant. The Covenant set protection of inherent human rights and is one of important documents that should have the same effect as national law¹⁶.

UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – Mongolia has joined this Convention in 2002, which defines torture, inhuman and degrading treatment.

¹⁴ See attached statement

¹⁵ See attached statement

¹⁶ Mongolia joined this convention in 1968 and ratified in 1974. Since then it has submitted four human rights reports to the Human Rights Council.

UN Convention on the Rights of the Child – monitoring reveals violation of the rights of many under age individuals (minors), which indicate the need to look at the issues in relation to the rights protected by this Convention. Mongolia ratified this Convention in 1990.

UN Convention against enforced disappearance – joined in 2007.

National legislation violated in the process of implementation of state of emergency:

Constitution of Mongolia, 1992

Criminal Code, 2002

Criminal Procedure Code, 2002

Law on Procedure for Execution of Arrest and Detention of Suspects and Accused, 1999

“Internal Procedure of Detention Centres”, approved by Ministerial Order (MOJHA) dated January 28, 2005

“Internal Order and Procedure for Administrative Detention Facility” established by Government Resolution #91 dated April 25, 1996.

“Procedure on Use of Special Police Gear and Technique” approved by Order #76 dated March 31, 1994

“Procedure on Use of Fire Arms, Unit Gear, Unarmed Combat Techniques and Dogs by Security and Guard Personnel” approved by joint Order #15/05 of Prosecutor General and Minister of MOJHA dated September 1, 2003.

On Activities of Ensuring of Human Rights in the Process of Inquiry and Investigation (Joint Order of Chief of Police and President of Federation of Mongolian Advocates dated September 30, 1997).

Above legal acts guide the conclusions of this report and due to in process state of development there may be other legal acts that have been omitted in this list.

Common forms of Violation of Human Rights during State of Emergency

Our findings reveal occurrence of many forms of violation of human rights, which we group below for the benefit of readers of this report:

1. The right to life:

As was reported five (5) individuals have lost their lives during the state of emergency. While it has not been yet established whether police or the state violated their right to life, human life was affected during time and in the area taken under internal military and police control. This evidences the fact that the state has failed its duty to protect human life. Live TV reports evidence the fact that no attempt was made to remedy the situation, on the contrary there is evidence that the situation was let to aggravate to the state of risking more lives of citizens and police officers, which is seen as an act for which top echelons public officials should be held accountable.

The documenting team of the HR Coalition has not focused on this issue and since the matter is under criminal investigation carried out by the Investigation Department of the State Prosecution there is not enough information for further conclusions. However, since we do have cases of loss of life under state of emergency it is deemed necessary to mention the fact that the right to life was not ensured.

2. No one shall be subjected to arbitrary arrest, detention:

The Presidential Decree authorized utilization of force to disburse groups of people who used or are using force to cause social disorder; arrest and seize transportation and equipment; set curfew from 22:00 to 8:00 in the centre of Ulaanbaatar (Baga Toiruu); arrest and detention individuals in violation of this curfew by police or military guard until the end of curfew time or until establishing identity for those without citizen ID or equivalent but not to detain for more than for 72 hours; Therefore in the process of implementation enforcement should have concentrated on the following:

- **Who?** – groups used or using force to cause social disorder;

- **Where?** - in the centre of Ulaanbaatar (Baga Toiruu);
- **When?** –between 22:00-8:00
- **What grounds?** - lack of citizen ID or equivalent ID to be detained until identification is established but not for more than 72 hours.

Enough evidence is collected on the fact that no measures have been taken to deliver information on declaration of state of emergency to those people, who had no access to radio and TV (at midnight), which led to mass arrest of people who were unaware of the situation. There is also evidence that people have been arrested with valid IDs and in areas of the city not under the curfew. This resulted in violation of:

- Provision 16.18 of the Constitution of Mongolia guaranteeing its citizens **“Right to freedom of movement within the country”**;
- Provision 16.13 of the Constitution of Mongolia **“No person shall be searched, arrested, detained, persecuted or deprived of liberty save in accordance with procedures and grounds determined by law.**

Majority of the people arrested - 91 percent of respondents - did not know of or have not heard the warning that a state of emergency was declared. 94 percent have not heard of details and warning about the state of emergency measures and requirements.

Most of the arrested people claimed that they were arrested while “talking a walk”, “observing the events”, “saw someone similar to spouse in the camera so went out to meet”, etc.

Most of the people were arrested between 23.30 m – 02.00 am around Sports Palace, Central Post, Flower Centre, Grocery Store #4 and Pedagogical University area, 28 of which were arrested from areas far from the riot site or the Sukhbaatar Square.

...mass arrested. People I have talked with all had no knowledge of the state of emergency. Two were arrested in Bayanzurkh District, not far from their work place (6-7 km east of SB square). All were sober at the time of arrest and identification documents were not checked. *From lawyers’ reports.*

International treaties and conventions:

International Covenant on Civil and Political Rights, Article 9:

1. *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

The fact that there were children and underage young people among those arrested evidences violation of the Convention of the Right of the Child, Article 37 (b) *“No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”*; In particular, these basic standards of CRC should have been considered in carrying out arrest of children.

Constitution of Mongolia (1992)

- Provision 16.13 of the Constitution of Mongolia *“Right to personal liberty and safety. No person shall be searched, arrested, detained, persecuted or deprived of liberty save in accordance with procedures and grounds determined by law.*

Criminal Procedure Code (2002)

- Article 8. Criminal investigation process shall be lawful
- 8.1 Inquiry officer, criminal investigator, prosecutor, court shall carry out criminal procedure activities in compliance with the provisions of the Constitution, this Law and other laws.

8.2 If a person carrying out criminal procedure activities violates provision 8.1 of this Law, the decision made by the person shall be voided based on legal grounds provided in law and procedures and shall be held accountable for violation.

- Article 10. Ensuring personal liberty of a person

10.1 *No one shall be subjected to arrest as suspect without legal grounds and justification and due process;*

10.2 *...no one shall be detained without a judicial order;*

10.3 *Prosecution shall have the obligation to release persons arrested, detained, convicted or confined in hospitals in violation of law or detained for a period beyond the specified time in law or judicial order.*

The above evidences that mass arrests of citizens were an act of violation Mongolia's obligations under the international treaties and conventions and the Coalition denounces these acts as profound violation of human rights.

3. Not to be subjected to torture, inhuman and degrading treatment:

Many arrested have complained that in the process of arrest and transportation to the detention site they were subjected to inhuman and degrading treatment:

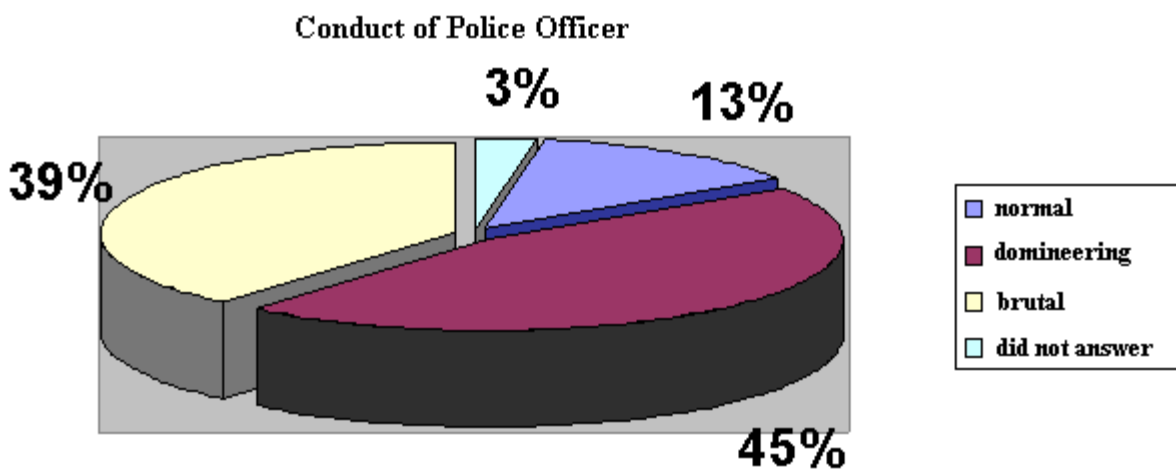
I have been buried under many others. There three layers of people above me. ...they also stepped on and kicked those above me – *Video tape*

...While I was walking policemen called me. When I walked up to them they hit me with their sticks and demanded that I show what's in the pockets. They took away my mobile as soon as I took it out. When I looked up in surprise they yelled: "What you staring at?" Hit me in the face with the stick and threw me in the car.

It was a station-wagon. We were transported in it to 111. They pushed people out of the wagon. They transported us as if we were meat carcasses. People simply fell out of the wagon.

...First four policemen beat us and put in a white car full of people. Some people were sticking out of the window. I was at the very bottom, could not breathe without air. –*Video tape.*

Survey data:



The Universal Declaration of Human Rights, Article 5 states: *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*

ICCPR, Article 7 states: *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or*

punishment.

Thus it is evident that the inhuman and degrading treatment, use of force exercised by police officials represents many of the forms of torture. Torture is defined as follows in the Amnesty International manual on combating torture:

- Torture
- Cruel treatment or punishment
- Inhuman treatment or punishment
- Degrading treatment or punishment

The ICCPR definition does not provide a more specific definition in order to avoid opportunity to regard as “permitted” other forms of torture not mentioned in the definition.

However the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment specifies the most widely used definition of torture as cited below.

For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Constitution of Mongolia, Provision 16.13 states that “...No one shall be subjected to torture, inhuman, cruel and degrading treatment”.

The Criminal Procedure Code, Article 10:

10.4 No one shall be subjected to torture and other cruel, inhuman and degrading treatment;

Article 3 of the Law on Implementation of Decision to Arrest and Detain Suspects and Accused:

3.1 The process of implementation of decisions to arrest and detain shall adhere to principles of rule of law, respect of human rights and freedoms.

3.2 It is prohibited to torture or use other methods to inflict physical pain or emotional pressure on person arrested or detained.

Basic elements of torture include:

- Torture is not limited to inflicting physical pain once but includes recurrence of distress and pain;
- Torture is deliberate;
- Torture has a specific purpose or is linked to reasons of discrimination of various forms;
- Torture is performed as result of explicit or implicit permission, goading or encouraging by a public official and executing officer;

Persons arrested, detained and/or imprisoned are most vulnerable to torture – Amnesty International

The Human Rights Commission and the Special Rapporteur on torture in their reports include the following in their definition of torture:

- Threat and intimidation: fear inflicted by physical pain entails additional psychological/emotional torture

Over 77 percent of respondents of the survey confirmed “use of force or special equipment by police”. 52.1 percent of surveyed respondents have received physical injury of varying degree. 66 percent admitted that they were under psychological distress inflicted by threat and intimidation.

...“we have authority to shoot you...; “you will receive 3 years of imprisonment”- *extracts from the report of documenting team working in Chingeltei District Police.*

An underage detainee developed a strong degree of emotional distress, which was caused by statements “there is proof of your involvement in criminal offence”, “you will receive 20 years of imprisonment for this offence” used in the process of interrogation. *Extracts from the report of documenting team at the NCIA.*

We can kill all of you. We have the authority. Do you understand this? They said. People there were very afraid. The only thought was to get out of this place alive. – *video tape*

While we were being interrogated, one man came up to the inspector and said that all these people will receive 5-10 years of imprisonment – *video tape*

In the process of arrest and upon arrival in the detention centre the police beat us a lot; police beat us in the streets, then upon arrival every single one of them beat us with whatever they had in their hands. We were not allowed to look up. If anyone attempted to look up they yelled: who are you to look policeman straight in the eye? There is a Presidential decree. The President authorized us to shoot you. People who were here called out and were put in cars and taken away in groups of 10-20. They did not come back. We feared that they were shot as threatened by them. Is it true that president decreed to shoot us? I spent 3 days under great fear. Your discussion with me reduced this fear a little. –*from a report of team member monitoring in detention centre*

- According to the Rome Statute of the International Criminal Court 7.1.i, **“forced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.**

Documentation teams monitoring outside police stations and detention centers on July 4, 2008 registered numerous requests from family members to assist with finding missing relatives, who disappeared on the night of July 1-2, 2008. Teams have provided support were possible to find missing persons but as of July 8, 2008 there were 72 persons still missing. Continuing work with families of missing persons and investigation reduced the number to 49 persons missing as of July 23, 2008. While there may be persons with incomplete identification information due to inability to contact family members, there are still many persons missing, which do not appear in the lists of names made public by police. The list of missing persons is submitted to the General Police Department as information and action requiring cooperation with Police. As of July 23 the monitoring teams had no information on 49 missing persons.

While there may be situations where a person found or family has not updated the missing status, there are still many who are not listed in the list of detainees issued by police. The list of missing persons was submitted to the relevant officer of the General Police Department as a matter requiring cooperation with GPD.

In particular, the Procedure and Rules of Administrative Detention Centre state that:

30. The detention centre shall carry out detention solely in implementation of decision authorizing detention and it shall be prohibited to refer to the Detention Centre administration and its duty officer responsibilities

of other organizations and officials related to informing family and lawyer of detained person and issue a written record of where, for what reasons, under what authorization and for what time period a person is being detained. Thus lack of clear information on where to go for information has affected considerable amount of psychological and emotional pressure on family members. Family members with connections have been able to find their children and relatives but the process was painfully difficult for those who did not know where to go for information especially for those from rural areas and the disabled.

The above facts evidence lack of appropriate organization and management as well as the tendency to disregard the rights of the arrested, tendency to disregard an arrested person as a human. In particular, none of the organizations in this case adhered to the requirement to prevent violation of human rights and freedoms, to reduce emotional pain and bureaucratic red tape for families of arrested persons.

Article 35 of the Criminal Procedure Code stipulates that:

35.4 Inquiry officer, criminal investigator shall inform the suspect immediately, his/her family member or lawyers within 48 hours of the substance of suspect charges.

Article 61 of the Criminal Code stipulates that:

61.1 Inquiry officer, criminal investigator shall inform an adult family member, relative or defense lawyer of the arrest and location of detainee within 24 hours or shall provide opportunity to the arrested individual to deliver such information.

That night I kept waiting for my child. Police at that Unit 111 are very bureaucratic. So first night I spent sleepless, still waiting. The next day I called all places looking for my child and they all said they don't have him. Then I found a number and called Unit 111 at Denjiin Myanga and they said they do not have anyone by this name. I could not sleep, kept crying in my bed. I begged the police at Unit 111 that I cannot sleep at nights worrying about my child, that if would look and see if he is there, I just need to know where he is. He just said there he may be there. Did not give any specific information. I am very upset. I am sure they do this on purpose. They are using this event to harass family members. – *video tape*.

Then I went to criminal investigation department to look through the list of names, which did not have his name. So after three days I had no information. Then went to Denjiin Myanga and again his name was not there. Duty officer stated he would not know if there is one by name ... from so many people. His name was not listed in any of those lists. Then yesterday I went to the investigator, went into his room and asked. And there it was - the investigator had his name. - *video tape*

Then I thought he may be detained at Unit 111 and went there. They promised to release information at 4 pm but did not provide it, then promised again to inform us at 10 pm and there was no information again. This red tape continued for 2-3 days. And only on Saturday I found his name among those detained at Gants Hudag detention. –*video tape*.

...was arrested on July 1st but we did not have any information until July 5th when we learned about the arrest – *video tape*

...I borrowed a phone to send a SMS and asked to pass on the message to others. Then asked a policeman how I can get in touch with family and let them know, they will be worried if I disappear like this. He said in 48 hours they let us get in touch with family. I didn't know if this was true or not. – *video tape*

...his sister called the next day to learn that he was arrested while walking with friends past a gas station. Yesterday they released all his friends. His friends came out but my son did not come out, was still missing. Then he wrote a SMS, so now I know where he is and sitting here waiting for him. –*video tape*

...I was calling my wife, when police saw this. I explained that I am calling my wife. But they yelled "this thief is taping with phone" and took me out of the crowd, beating and kicking. –*audio tape*

While the above fact of not informing families in some cases may be related to the fact that those arrested did not provide true name and contact information, many family members searching for their relatives were subjected to excessive bureaucratic tape. This evidences the fact that police officers have violated basic principles of human rights and freedoms.

Use of excessive force in the process of enforcing law: in order to ensure respect of dignity of persons arrested use of force beyond the established measure shall be deemed as use of excessive force.

The Procedure on Use of Special Police Equipment and Methods states that:

1. *Police officer shall **not use police equipment on minors and pregnant women**, in conditions other than conditions threatening human health and life such as armed assault or resistance, social disorder or group assault where opportunity for differentiated treatment is not presented. It is allowed to use police techniques;*
2. *Article 26, Provisions 1, 2, 3 of this Procedure defining conditions for use of police rubber sticks prohibit use of these on the head, areas below waist, bladder and kidneys; prohibit use of electric (stun) sticks on the face and uncovered parts of the body;*
3. *In situations other than that specified in Provision 26.8 of this Procedure, it is prohibited to use individual aerosols, gas sprays, rubber and plastic bullet guns aiming at the face from a distance less than 1 meter;*

In process of documentation we came across numerous complaints and information related torture mostly caused by police retribution in the process of arrest resulting in serious physical damage and injury, which were documented on audio, video tapes and photographs.

The fact that among the tortured were large numbers of minors and underage persons evidence violation of Article 37 of the Convention on the Rights of the Child stipulating that: *(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;*

There were three kids, one 13 year-old died. A 13 year-old boy died. Mother took him, crying. It is said that he was beaten on the head and died of beating. It is said that he was secretly taken out from this Unit 111 – *audio tape.*

Had a big wound on the head. Blood all over. Could not even stand on his feet. – *audio tape*

The documenting team also documented facts of cruel and inhuman treatment of women, including inhuman and degrading treatment of a pregnant woman.

There were women. One woman was screaming that she is pregnant. She was badly beaten. – *audio tape*

One pregnant woman was beaten close to death. We screamed and yelled to stop them – *audio tape*

Police beat us with the sticks. The two of us were hit several times. “Stand aside puppies! You can’t do anything (against me)! – beating with police stick. They beat one pregnant woman with the stick.

My kid sister was laid in the middle of road and 4 policemen kicked her heartless. We told that we are just going home, done nothing -we cried. They said “shut up you prostitutes. We can do anything, we can kill you. We have the authority” - and hit me twice on the back. *Video tape*

Another element of torture documented is use of intimidation and threat causing physical and emotional

distress in arrested persons, creating intolerable state through deprivation of the right to eat, drink, sleep and use bathroom.

Compliance of the detention facility standards with the standards defined in international legislation is an important factor for prevention of human rights violations. Inability to ensure these standards leads to numerous opportunities for torture and inhuman treatment. Detention standards have not been met in the following areas. Registration of arrested and detained omitted the following information:

- Name
- Justification for arrest
- Date of arrest
- Name and title of officials arresting and admitting to detention facility.

Efficient registration of arrested persons in accordance with the requirements is an important process which should not be omitted or delayed. The process of ensuring human rights and freedoms in sorting detainees, informing family and legal representatives is dependent upon the quality and efficiency of the registration process.

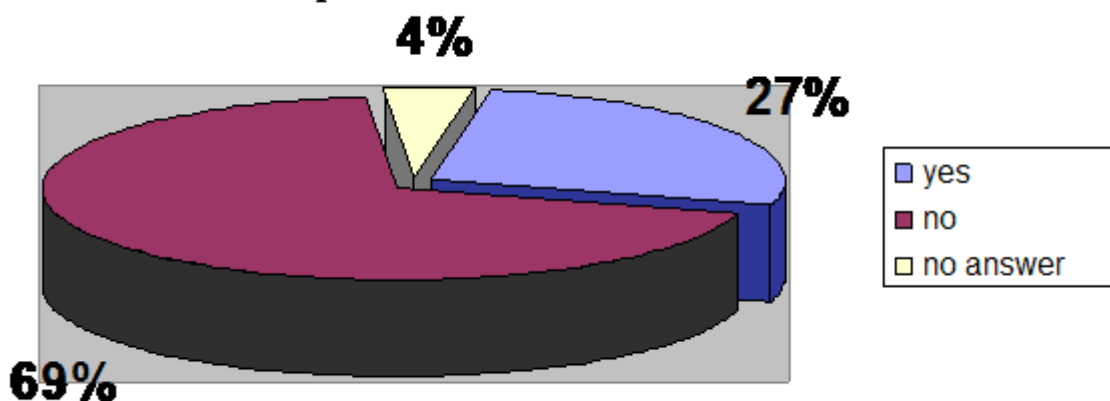
Categorization of detainees:

- Where possible provide separate detention facilities for women and men;
- Where such separate detention facility is not available, ensure separate cells for women and men;
- Detain underage persons (minors) separately from adults;
- Detain persons in pre-trial detention separately from those serving sentence;
- Sort by age and offence type, previous criminal record in sorting for detention.

Such categorization sorting for detention protects detainees from causing physical and emotional distress to each other and is an important step in ensuring and protecting human rights and freedoms.

Survey data:

Do conditions for protection from detainees exist?



Sufficiency of food supply:

5. The demand for drinking water shall be met;
6. Food shall meet the calorie intake and health safety requirements;

Deprivation of food represents violation of inherent human rights and freedoms and causes deep physical and emotional distress.

Nothing but one bucket of tap water. ...they gave bread and tea when some MPs visited. *Audio tape.*

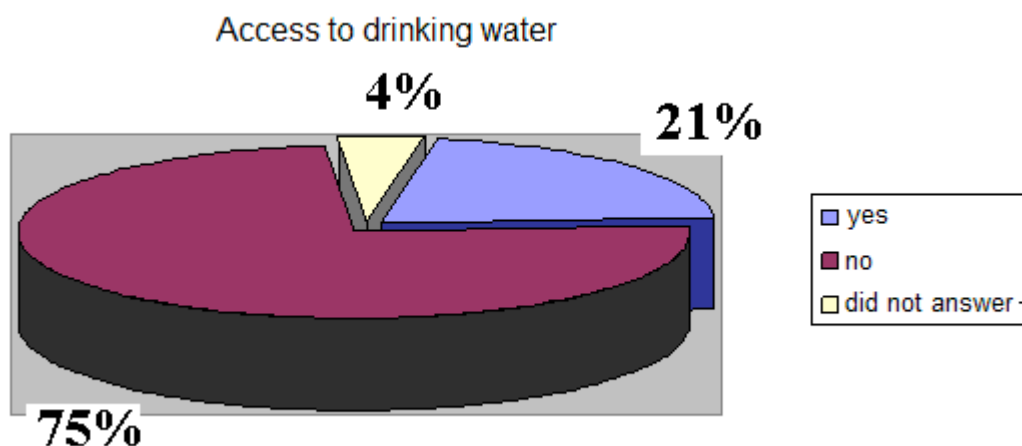
People were thirsty but there was no water. Overseer gave some tap water in a small Pepsi bottle, which some people shared. I was thirsty but did not get water because there were too many people. *Video tape*

...did not eat anything for three days. –audio tape

One meal in 48 hours. This consisted of one fried dough and three cups of tea. Audio tape

When we asked for water, they told us that they will bring water if we be quiet. We hushed down but they still did not bring water. Then they brought 2-3 bottles of water, which was not enough for over 100 people, getting drinking water was a big problem – *video tape*

Survey data:



Conditions of detention facility

- Access to lighting and fresh air shall meet the required standards of not affecting human health
- It is prohibited to limit inherent right and freedoms, specifically to limit opportunity to use bathroom facilities;
- In cases of detention in common cells access to beds and adequate per person space shall be met;

Detention of too many arrested persons in one facility, poor lighting and access to air, too hot or cold environment are forms of violation of security and safety of detainees. In particular detention of persons whose guilt has not been established by court with those serving sentence is deemed a serious violation of personal security.

International practice confirms that poor conditions of detention facility serve as a form of use of threat and torture.

We sat in groups of 50, 60 people in one place. ...outhouse outside the building. Policemen lined up all the way to the outhouse. Policemen beat you all the way to the outhouse and back to the place of seating. I did not drink the tea in the morning fearing the need to go and being beaten. *Audio tape*

They kept us outside under the sun and rain and then sent back to the garage. The garage had lots of machinery in it. People were kept in big numbers in one facility. Because there were over 100 of us there was no air. Although they opened the three very small windows at the ceiling it was not easy to breathe. I was close to suffocating. *Video tape*

First day spent the night outside. We were kept all day outside in the hot sun. No water. Some people

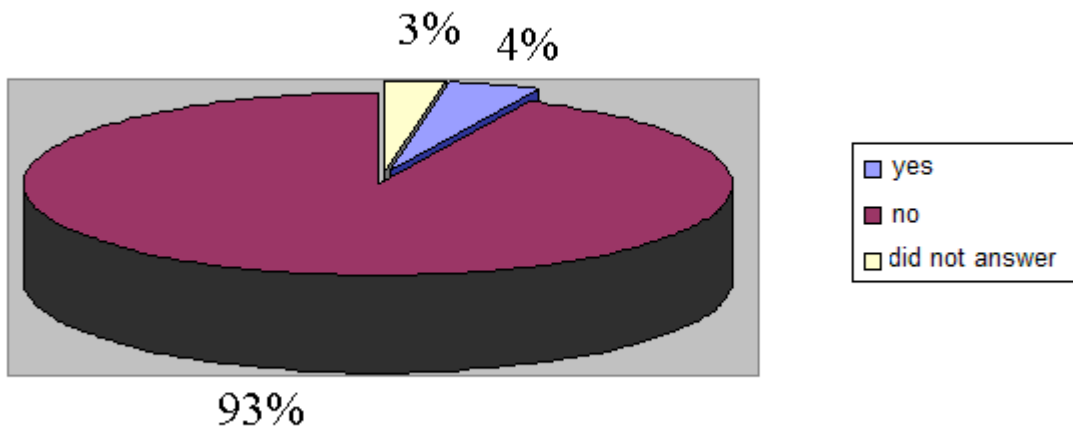
fainted, some had fits. I fainted the first day. *Video tape*

Those wanting to go to the outhouse were divided into two groups and were given 3 seconds to pee. Those who failed to finish in this prescribed time were dragged out and beaten. Meal came only once a day. Almost no water. We collected rain water to drink. *Video tape*

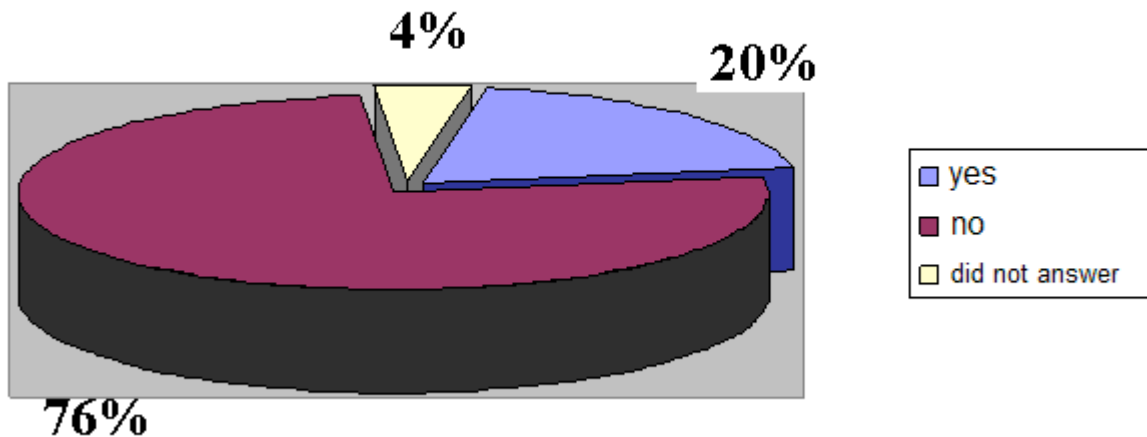
There were many of us in one room. We fit in it only in standing position. When some people sat then there was no space enough for all. There was no air at all. Two small windows were open. People were thirsty of heat. We asked to keep the door open but police refused. *Video tape*

Survey data:

Access to and sufficiency of air



Access, adequacy of lighting and air temperature



The requirement to ensure certain standards were violated by poor supply of drinking water, provision of low calorie food below required sanitary standards as well as forced inability to intake food due to fear and distress.

Many children and youths were arrested and received the same amount and quality of beating as adult men. We have documented a case of a 16 year-old disabled boy who received head injury, which is certified by medical examination as well as video taped evidence.

Along with this there were many children who became victims of mass arrests and due to inability of parents

and guardians have not received legal or medical aid.

4. Reading the rights of arrested persons and right to a lawyer

Provision 10.5 of the Criminal Procedure Code:

10.5 At the time of arrest the suspect shall be informed of justification of the arrest, of the right to a lawyer, self-defense, file a complaint to court and the right not to disclose self-incriminating evidence.

The survey of witnesses and victims of mass arrests evidences that 88 percent have not been informed of their rights.

When interrogating you, have they reminded you of any of rights and responsibilities?
...No. Nothing at all, not even their name. None of the policemen arresting or the officer interrogating said nothing about it. At the time of interrogation they gave a form to complete where it had the name of the officer interrogating – that is how I found out his name. *Video tape*

Article 18: *18.1 Suspect, accused, defendant, victim shall have the right to self-defense, defense by lawyer, other forms of legal aid.*

18.2 In the case specified under Article 40 of this Law, it shall be the duty of inquiry officer, investigator, prosecutor, court to provide opportunity for suspect, accused, defendant, victim to have a defense lawyer.

Article 40 *40.1 A lawyer shall be present in the process of filing criminal offence, interrogation, court hearing of the suspect, accused, defendant as listed below:*

40.1.2 Underage persons;

40.2 In the case specified in Article 40.1 the suspect, accused, defendant or his/her legal representative, family member, relative have not selected a lawyer as per his/her will or consent, inquiry officer, criminal inspector, prosecutor, court shall be responsible for ensuring participation of a lawyer into the case.

...there was no lawyer at the interrogation. –*video tape*

Underage youths were interrogated during night time without presence of lawyers, parents or legal guardians – *from report of a lawyer*

Article 37: *37.1 A legal representative of underage suspect, accused or under trial shall be included in the investigation process*

Article 35:

35.2 A suspect shall have the following rights:

35.2.1. the right to know of the substance of the suspect charges;

35.2.2. to see the resolution on filing criminal offence case, to arrest, detain and take other restraining measures;

35.2.3 to provide documents, request permission to examine evidence documents.

Every time we showed the Tenghis Cinema tickets as evidence they'd say, "that has no relevance" and beat us again. -*video tape*

35.2.4 The right to give testimony or refuse to give testimony;

35.2.5 The right to give testimony in mother tongue or language he/she knows; right to take

a translator, interpreter;

35.2.6 *The right to reject and request exclusion of inquiry officer, investigator, prosecutor, translator or expert;*

35.2.7 *The right to self-defense, right to employ services of a lawyer as prescribed in Article 39 of this Law;*

35.2.8 *The right to a private meeting with the lawyer;*

35.2.9 *The right to participate in the process of investigation with the permission of inquiry officer, investigator;*

35.2.10 *The right to complain about the performance, decisions of inquiry officer, investigator, prosecutor;*

35.2.11 *The right to receive compensation for damages caused by unlawful acts of inquiry officer, investigator, prosecutor.*

35.3 *Suspect shall not testify against his/herself, shall not carry responsibility to provide proof of innocence and evidence on the case.*

- Article 59:
- 59.1 *Inquiry officer, investigator shall prepare a resolution of arrest and deliver to prosecution. Prosecution shall present it to court for approval.*
 - 59.2 *The resolution shall contain substantiation, justification, place, time (with hour and minutes), result of personal search and the time of preparation of the protocol.*
 - 59.3 *The suspect shall be acquainted with resolution and explain the rights stipulated in Article 35, including the right to give testimony in presence of a lawyer and shall include this in the protocol.*
 - 59.4 *The protocol shall be signed by the author and the person arrested.*
 - 59.5 *In case of urgency inquiry officer, investigator shall arrest the suspect and deliver arrest warrant to prosecution and court within 24 hours of such arrest.*
 - 59.6 *The court, within 48 hours upon receipt of the warrant, shall issue a permit to continue detention or order release of the arrested.*
 - 59.7 *Time under arrest will be included in the count of time in detention.*
 - 59.8 *Count of time under arrest shall start from the moment the arrest warrant is presented to the suspect.*
- Article 60:
- 60.1 *The Judge shall issue an order to release a suspect in below specified cases:*
 - 60.1.1 *Lack of sufficient evidence of committing crime;*
 - 60.1.2 *Lack of justification for detaining ... the arrested individual;*
 - 60.2 *Upon expiration of 72 hours, if court decision to detain the arrested is not delivered, the inquiry officer, investigator, prosecutor shall inform the judge and detention facility director shall release the detainee.*
- Article 81:
- 81.1 *A suspect shall have the to testify on the substance of suspect charges and justification for detention and the case for which he/she are considered suspect;*
 - 81.2 *It is prohibited to demand, treat in inhuman and degrading manner to force a suspect to testify.*
- Article 92:
- 92.1 *Inquiry officer in the process of criminal investigation shall gather proof of evidence through interrogation, face to face interrogation, identification, confiscation, and search and testing, examination and analysis and other methods of criminal investigation specified in this Law.*
 - 92.4 *In the process of gathering proof of evidence it is prohibited to use unlawful methods such as threat, deceit, force testimony or comment through unlawful, life threatening, cruel, inhuman and degrading methods.*

Youths sitting with me were fairly afraid of interrogation. When I asked why, they said there will be beating.

They beat less those older. But those of 14-20 years of age were brutally beaten. – *audio tape*

...they forced on me yelling – “You were there, we saw that you were there in the camera”.
...at the arrival at Denjiin Myanga they beat us outside at night. Next day they started interrogation. They interrogated us outside seated on the ground with hands behind the head. -*video tape*

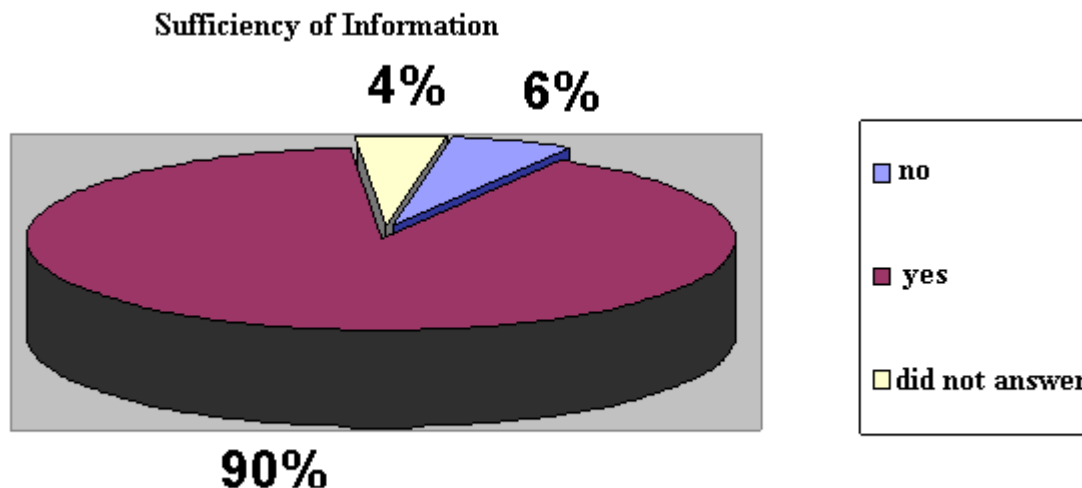
When they interrogated, I told them I do not hear well. They said it was not relevant. When I tried to present Tenghis Cinema ticket they again said it was not relevant and beat me. In grade 5, I had surgery on both ears. Both ears do not hear well. I have pain in my ears now. At the time of interrogation when they beat me I fainted. –*video tape*

...They spit in one boys face. They called one boy to sit closer, kept demanding. When he moved closer they kicked him in the balls. When he moved away they made him move closer again and again kicked him in the same place. Women taking finger prints also called us thieves and bit on the hands. Photographers also yelled at us for sitting on the ground, demanded that we sit squatting with hands on the back of the neck. –*video tape*

66 percent of respondents covered by our survey were forced to admit offence or provide proof of innocence; 62 percent responded that they were treated in cruel and brutal manner.

- Article 144: 144.1 *At the beginning of interrogation identification of the person interrogated shall be taken.*
144.2 *Person summoned for interrogation shall be informed in advance of the purpose of interrogation, inform and document process of informing of rights and responsibilities.*

Survey data:



It is concluded that the above violations also violate the many reiterations of provision included in the Ministerial orders of MOJHA and GPD procedures for arrest and temporary detention and arrest and temporary detention for administrative cases approved following the Criminal Procedure Code.

5. Economic rights

Another human right that was violated in the process of mass arrests is the right of citizens to possess property obtained through just means. There were numerous cases of taking away possessions, including mobile phones and money without registration of their confiscation.

The procedure for detention for administrative cases states that:

3.16 At the time of first admission to detention and every time a detainee is released from detention the arrested person shall be searched, objects not permitted for entry shall be confiscated and documented in a protocol and a copy of the protocol issued to the officer delivering arrested person.

31. The detention centre shall have files containing following documents:

- Report of duty officer;
- Registration of admission of arrested individual;
- Registration of items confiscated from arrested individual;
- Registration of complaints and petitions filed by arrested individual;
- Registration of persons entering detention centre;
- Registration of temporary release of detainees;
- Registration of medical examination and hospitalization of detainees.

Most people who lost money and possessions have not filed complaint due to fear and psychological distress as well as lack of knowledge of the above provisions thus letting officials performing illegal acts go free of accountability.

There is a Resolution of the Supreme Court of Mongolia, which interprets some law provisions on compensation for damages caused by unlawful performance of inquiry officer, investigator, prosecutor, judge. It states that:

In addition to unlawful act as specified in Provision 388.1 of the Criminal Procedure Code it shall mean cases of loss of life, damage to health, emotional, psychological distress resulting from torture and inhuman treatment and cites the convention against torture and other forms of cruel, inhuman and degrading treatment.

The same interpretation includes provision on the state as subject responsible for damages caused by unlawful act of an official. However, the process of documentation revealed that most arrested and detained, including those whose rights were violated are afraid to even inform us about these cases let alone filing complaints.

Conclusion

Thus we have carried out a process of monitoring and documenting violation of human rights in the process of implementation of the state of emergency declared for the first time in Mongolia. We have defined the boundaries of our activity narrowly focusing it on documenting violation of human rights associated with the declaration of State of Emergency and its implementation, reminding public officials to prevent violation of human rights and establishing monitoring that is free of any political influence.

We would like to list some of the challenges faced in carrying our activities:

- Suspicions of political nature;
- Lack of methodological experience of documenting;
- Refusal to participate in the documenting process due to fear and distress;
- Insufficient number of volunteer human rights lawyers available for legal aid;
- Insufficiency in financial and other resources of civil society organizations.

In addition, there is criticism on part of those negating our work based on suspicion of being biased in protecting only the rights of detainees and not protecting the rights of injured policemen. Explanation to this is in the fact that we are defining violation of human rights as violation of these rights by the state.

Based on the observations the Coalition concludes that the state and entities acting on behalf of the state, especially police who pledge to protect human rights and freedoms, have applied excessive force and exercised arbitrary violation of human rights. While it is right to punish for causing damage to the property of many citizens it is unfortunate that many innocent citizens were affected in the process through mass arbitrary arrests violating the human rights and freedoms, became victims of cruel and inhuman treatment, which was document here. We conclude that it is now in the interests of not only civil society organizations, volunteers and activists but the society as whole to fight for putting a stop to abuse of power by public officials and violation of law and other legislation aimed at guaranteeing human rights and freedoms.

In addition, the fact that underage and disabled persons have become victims of this process has been documented in this process. The fact of disability of persons not only served as grounds for subjecting them to greater physical torture but also for forcing them to give testimony without the presence of a lawyer, legal representative, sign language interpreter is a grave violation of law.

Since occurrence of such unlawful acts in the process of criminal investigation have been proven by evidence it is in the interests of those in detention to make public the true state of the situation in order to affect positive impact on their case. It is a matter of great concern that most financially capable citizens were released on bail while those unable to receive legal aid continue to be detained.

The Human Rights Monitoring Coalition has sent an official letter to the relevant officials of MOJHA to consider provision of legal aid to poor citizens within the framework of the national programme of free legal aid to marginalized and vulnerable citizen groups. Since MOJHA has not replied to the letter of the Coalition and continued application of citizens for legal aid to the Coalition provision of legal aid to over 60 poor citizens has been initiated and this matter is considered a priority for future activity.

While the Coalition was established on an urgent basis it has been able to carry out some advocacy action. In particular:

- Briefing provided on July 7, 2008 to the session of the Human Rights Sub-committee of the SGH was instrumental in establishing state oversight over human rights issues.
- It is considered that the press statement made by the Coalition on July 8, 2008 has served as reminder to the police and court decision enforcement organizations not to violate human rights in future operations.

The Coalition takes this opportunity to express gratitude to the detainees and their families for overcoming fear and risking themselves to provide the information and reiterates that we will adhere to our ethical responsibility not to disclose to public their names and addresses without their permission.

As continuation of the work of this Coalition the Globe International, with financial support of the Open Society Forum, carried out monitoring of violation of freedom of press as well as monitoring of mass media coverage of violations of human rights during state of emergency in the period July 1-9, 2008. Law - Human Rights Centre continues to provide legal aid to detainees arrested on July 1.

We express gratitude to all those who worked with us during this vulnerable period of violation of human rights. We hope that human rights lawyers, researchers and activists will unite amongst themselves to work together with the state to prevent new mistakes, to remedy the impact of these mistakes. The Coalition considers this activity as an act of its social responsibility and thanks the civil society for coming together to protect the citizens and the society for responsible and accountable state.

Finally, human rights have universal and individual characteristics and therefore it is appropriate to mention that violation of the rights of one is equal to of the rights of 10, 100 and 1000 individuals. The efforts of this Coalition and other civil society organizations, the way this terrifying event is viewed and handled by the state and society will set the standard for the future and it is therefore essential to remedy the situation

basing on democratic principles and rule of law. We conclude that it is important to set goals for the future to improve the accountability of public officials, public institutions and the state, which are responsible for documenting violation of human rights and freedoms, protecting against repeat violation of these rights, compensating victims of human rights violation and holding accountable those responsible for violation.

JULY 1: TEST OF MEDIA FREEDOM

During the democratic transition, the Mongolian people have fought for their rights and freedoms through demonstrations, strikes and hunger strikes. But July 1, 2008 was a day which has gone down in history of Mongolia as a day that tested the authenticity of democracy and guarantees of human rights. Mongolia has been credited as one of Asia's successful democracies for the last 18 years, guaranteeing very crucial human rights under its Constitution as well as ratifying most international human rights treaties and conventions.

Mongolia's 2008 general parliamentary elections were held on June 29, 2008, when 12 political parties and one coalition contested 76 seats. On the next day, June 30, 2008, the Mongolian People's Revolutionary Party (MPRP) convened a press conference, at which they claimed to have won the election with an absolute majority. However, the General Election Commission had not yet officially announced the final results. The opposition parties protested, claiming that the elections had not been fair, and demanded a re-count of the vote in some electoral districts.

On July 1, 2008, the Civic Coalition held a public demonstration in front of the MPRP headquarters building. After several hours, the demonstrators attacked the building. The rioters started to vandalize and loot the MPRP building. The police were unable to control the situation, and the MPRP building was entirely burnt out. The rioters then attacked the City Cultural Palace complex near the MPRP building; B Block was completely burnt out and C and G Blocks also suffered arson damage.

On July 1 at 23.00 the President of Mongolia proclaimed a State of Emergency.

During the events, five people died and over 800 arrested. The courts heard 50 cases against 261 individuals, including 17 youths, 13 of whom were found guilty by the end of 2008.

What Happened to the Media?

Globe International highlights the following in this report.

Case 1: The Presidential Decree on the State of Emergency banned the operation of all broadcasting channels except the National Broadcaster for four days.

Prohibition on the operation of audio enhancement equipment, with temporary confiscation where necessary; stopping of the activity of all broadcast media except for Mongolian National Public Radio and Television until the end of the state of emergency

Provision No 6, Declaration of the State of Emergency.
Presidential Decree No 194,

Case2: The government of Mongolia invoked strong censorship and government officials censored news content of Mongolian National Public Television during the State of Emergency.

Globe International conducted media monitoring of the July 1 event and there is some evidence that the government controlled the national broadcaster during the State of Emergency.

Mongolian National Public Television, July 5, 2008, 00:11-00:21, 618 second

...State of Emergency terminated. During the past period, Mongolian National Public Television operated under the Law on the State of Emergency and direct leadership of the Emergency National Security Staff, and we disseminated news based on their information...

During the time of government control, 51.1% of sources appearing on the public television service of the national broadcaster were official (i.e. government representatives), while only 4.1% of airtime was occupied by citizens and 3.2%- by NGO representatives. Independent sources such as experts, professionals and observers received only 0.1% of the airtime.

- 51.1% Official/government
- 25.4% Media/archival materials of July 1 live coverage
- 8.3% Political parties and civic movements
- 4.1% Citizens
- 3.2% NGOs/federations
- 2.9% Foreign sources/ Russian or other media reports
- 2.3% Art workers
- 1.6% Health workers
- 0.9% Business representatives
- 0.1% Experts/observers/professionals
- 0.1% Religious representatives

The following chart shows how much increase was for different reasons for the riot. On July 1, it reported polls that 25.3% believed the cause was MPRP electoral fraud; this fell to 0.3% during the time of government control, but increased to 15.6% after the control period ended.

The second most numerous belief was that “it was because of provocation by Elbegdorj, DP leader (14.4%)” which was then reported under government control to be 0.2%, but slightly increased when government control ended.

Reasons	July 1	During State of Emergency	After State of Emergency
Result of election fraud by the MPRP	25,3	0,3	15,6
Provocation/incitement of Elbegdorj, Democratic Party leader	14,4	0,2	1,8
Contradiction between election results and public anticipation	9,0	7,1	10,4
It was MPRP's own organized action to burn its building etc	7,1	0,0	12,7
Bad work of Election Committee	5,6	1,0	0,0
Accumulated social problems	3,9	0,7	3,4
H. Enkhbayar (President) guilty	3,1	0,4	0,1
S. Bayar (Prime Minister) guilty	1,7	0,3	1,7

The following chart shows how much decrease was for different reasons for the riot. On July 1, it reported polls that 5.5% believed the cause was organised by the Civil Movement leaders O.Marnai and G.Batzandan; this went up to 22.6% during the time of government control, but decreased to 8.1 % after the control period ended.

The second most numerous belief was that “it was organised by the Civil Coalition and Republican Party (2.7%)” on July 1, but under government control it reached 18.4%, but it decreased to 4.1% when government control ended.

	7 сарын 1	МҮОНТ - Онц байдлын үеэр	Онц байдлын дараа
It was organised by O.Marnai and G.Batzandan (civil movement leaders)	5,5	22,6	8,1
It was organised by the Civil Coalition and Republican Party	2,7	18,4	4,1
O.Magnai and B.Jargalsaikhan (Leader of Republican Party) lost their control/their provocation	0,2	13,4	0,2
Mongolian Democratic movement is guilty	0.3	7,1	0,8
B.Jargalsaikhan (former MP and chairman of the Republican Party) guilty	0,4	5,7	0,5
Eagle television is encouraging/inciting	0	6,3	0,1
D.Enkhbat, B.Lhagvajav and J. Batzandan (civil movements’ leaders organised it	0,6	6,2	0

On July 1, the MNB allocated 0.2% of the time to reason that O.Magnai and B.Jargalsaikhan (Leader of Republican Party) lost their control/their provocation, during the control it increased to 13.4%, but when it ended, the figure turned down to 0.2%

The following shows how much airtime the MNB allocated to topics related to July 1 consequences during the state of emergency:

- 18.6% Policemen injured
- 14.5% Cultural heritage burnt
- 11.2% People killed
- 8.8.% National Gallery burnt
- 8.2% Citizens injured
- 6.8% Cultural Palace burnt
- 5.2% Journalist injured

Less than five percent was allocated to each piece of information on the burning of the MPRP building, art workers unable to work, policemen lacking weapons and tools etc, impact on business, fire extinguishing equipment damaged, decrease in tourist numbers, vandalism such as stealing, damage to vehicles of the police, army and ambulance service etc.

Case 3: Six journalists were assaulted. The most seriously injured was B. Byamba-Ochir Byambasuren, a photo reporter for the daily Onoodor (Today) newspaper. He was admitted to the Trauma Orthopaedic Center in Ulaanbaatar, where he underwent surgery on an epidural haematoma and to remove bone fragments in his brain. He underwent a second surgical operation in Seoul, for which Globe International raised funds. We are very grateful to the IFJ, Norwegian Journalists Union, Danish Journalists Union and Canadian Journalists for Free Expression for their donations.

“I received a serious head injury on July 1 when covering the post-election demonstration in Ulaanbaatar. The head wound was classed as severe. I was admitted to the Orthopaedic Trauma Centre in Ulaanbaatar, where I underwent immediate epidural haematoma surgery to remove bone fragments lodged in my brain. Thanks to urgent surgery by doctors and nurses at the Trauma Center, my life was saved. Then I needed a second stage treatment - further surgery available only abroad. I underwent a second surgical operation at the Anam Hospital, Seoul Medical University in the Republic of Korea. This was made possible thanks to the help and assistance



B. Byamba-Ochir, photo reporter, Onoodor daily newspaper

From kind-hearted people who contributed towards the cost of my urgent medical treatment and surgical expenses.

My special sincere thanks go to director B. Nandintushig and colleagues at the Mongol News, where I work, who helped me with all kinds of sincere assistances in mind and material form. Also I would like to extend my heartfelt thanks to the following organizations and individuals who stretched out a helping hand for my recovery:

Kh. Naranjargal (Globe International NGO President), Kh. Battulga (Minister of Roads, Transport, Construction and Urban Planning and Chairman of the Mongolian Democratic Association), Dr J. Oyuntugs (Head of the Department of National Trauma), G. Shiilegdamba (former Minister of Environment and Tourism) and T. Ghandi (former journalist and Minister of Social Welfare and Labour).

I also offer special gratitude to Reporters without Borders, the International Journalists' Organization, the International Federation of Journalists, the Norwegian Union of Journalists, the Danish Union of Journalists and the Canadian Free Expression Network.

I also thank Mr Zorigt (Mongol News Co representative in the Republic of Korea), E. Nomin (MN-25 Channel Television journalist) and her family, P. Jargal (Eagle Television reporter) and my friend J. Zoljargal (living in the Republic of Korea) and his family.

I will never forget your boundless kindness and help that restored my health.

Case 4: The General Police Authority and the General Investigation Authority demanded from television channels video materials filmed at the event and used episodes as irrefutable evidence against people, frequently showing them with commentary on newscasts of government-controlled public television.



B. Boldbaatar, reporter, NTV

“It was my first ‘hot’ experience on reporting conflict - it was the same for all other television reporters. We had live coverage on NTV. It was risky for journalists, and especially hard for our cameramen. No ordinary citizens and no policemen seemed aware of that journalists were working to show the truth. When we interviewed demonstrators, they wanted to beat us: maybe they thought we were in cahoots with the police. The police did not want us shoot them beating people, so they tried to beat us with their sticks.

When the State of Emergency was declared, I had to take off my identifying tie and jacket, and our cameraman took off his jacket with an NTV logo. We hid our camera and shot whenever possible. Young people with clubs threatened to smash our camera, but I am very proud that I delivered the real situation to the public as a witness of the historic moment. I am happy that I was able to carry out my duty as a member of the responsible profession called journalism.

It is sad that many people do not properly understand our profession. It would be better if people could be more aware that journalists want to tell and show the objective truth of any event so they have more ability to report fully.

I think we have to educate the public on the role and duties of journalists. Indeed, we are here to serve the public.

The police took our filmed records. I very much regret that they used them against the people. We were not working for that aim. Our profession and our work are not for any other purpose than to tell the truth.”

Case 5: During the July 1 event, several television cameras and other mobile equipment of the Mongolian National Public Television were damaged.

Case 6: The offices of the daily Ogloonii Sonin newspaper and the weeklies Humuus and Humuusiin Amidral were entirely burned down after the burning of B Block of the City Cultural Palace complex.

Case 7: Seven FM radio stations were damaged during the riot; two of them (FM 107.5 and FM 102.5) were unable to operate. Operation of the biggest national portal (Olloo.mn) was interrupted for 48 hours.

Case 8: During the extraordinary parliamentary session, some MPs accused EBC (Eagle Television) of encouraging the riot; there was some opinion expressed on a claimed need for a law prohibiting foreign ownership of the media.



Ts. Soyolmaa, reporter, EBC

“Journalists of EBS (Eagle Broadcasting Company) tried our best to provide a balanced coverage when the two big political parties (MPRP and DP) announced their claimed results of the 2008 parliamentary elections on June 30, 2008. We had five filing groups and three live links. We reported from the General Election Committee and interviewed observers, and our news anchors in the studio contacted the audience by telephones.

Mongolians had never before experienced such rioting, so the public, police and the media did not know how to react to protect themselves. There was no journalistic experience or tradition of how to cover such a conflict situation in such hard circumstances. There was no way media outlets could protect their journalists.

I reported on the events from the morning of July 1, 2008, when demonstrators moved from Sukhbaatar Square to the MPRP building. I wondered later how I found the courage to work and report. At the time I was just thinking how to present the most objective picture of the event. I worked for the news, and EBC leaders enabled us to work without censorship. At EBS, we showed the whole process of the July 1 event. I am proud of my professionalism as journalist and of my employer.

We have kept all the records of our coverage. The police demanded that we make copies of our filming and I was also once called on by police as a witness. They wanted me to give evidence on the situation and what instructions were given by demonstration organizers.

It is very regretful that the Presidential Decree on the State of Emergency banned all television broadcasts except for that of Mongolian National Public Television. Unfortunately, during the State of Emergency, MNPT news was fully censored, so the news was very one-sided and biased.

I was doing a ‘stand-up’ in front of a burning car, which MNPT News showed and claimed that EBC was inciting the riot. They claimed that I said, “citizens are protesting the election results.” I actually said they “protested the preliminary results of the elections.” I am truly frustrated and I think they violated my professional rights.

It is evidence that censorship in Mongolia is still real. My conclusion is there is no true media freedom in Mongolia.”

Case 9: The government did not allow journalists from other television channels to enter Parliament House to report on the extraordinary parliamentary session, or government meetings relating to issues raised by the extraordinary national situation.

Globe International in a statement on July 2, 2008, said, “Globe International deeply regrets that the authorities intentionally abused media freedom by using provisions of the 1995 Law on the State of Emergency.” Globe International demanded that the President and Parliament urgently reverse this decision and allow other broadcasters to operate immediately.

“The provision of the Law on the State of Emergency is very old and overlaps the 1998 Law on Media Freedom and 2005 Law on the Public Radio and Television. It is shameful that the government determined to censor news from Mongolian National Radio and Television,” said Globe International President Mrs. Kh. Naranjargal in an interview published by Odriin Sonin (Daily News) on July 2 and by EBC television news channel on July 3, 2008.

Government action to resolve the problems of the July 1 event showed how fragile was media freedom in Mongolia.

Annex 3: Additional information on the Article 19 ICCPR

- **Background**

According to the Press Institute monitoring report entitled Mongolian Media Today, in first quarter 2010 there were 3,840 media practitioners working in 383 media outlets throughout Mongolia. There were 1,709 journalists and contributors; 34% of media outlets operate in the provinces. Six newspapers are published in a foreign language, while there is one newspaper in the Kazakh, national minority language.

In the last two years, there has been an increase from two to three in the number of on line media; the Press Institute has registered 10 on line newspapers and five on line magazines. Also available on line are three daily newspapers, six radio stations and 11 television stations, while 24 newspapers can be read on a popular website, www.sonin.mn.

Despite the existence of laws and regulations that provide protection for a free media, in reality violations of freedom of the press and the professional rights of journalists continue to occur. When the professional rights of journalists are violated, it leads to restrictions of media freedom and prevents journalists from disseminating the truth, and thus causes serious harm to democracy and the public's interest. Even though it is prohibited by the law, censorship exists in open or hidden forms in Mongolia. Restraints placed on media outlets, and the necessity of journalists to serve individual interests, are intolerable actions that are contrary to the nature and principles of democracy.

It is common practice in Mongolia for politicians, officials and public servants to use provisions of the Criminal Code and Civil Law for media censorship. The courts, when making decisions about libel cases, do not take into consideration the legitimate right of the public to receive objective information, and instead generally support the authorities, creating doubts about the independence of the judiciary. Those in power use their authority and official positions to quash the truth in order to suppress fair criticism and to cover up their wrongdoings.

Mongolian journalists still cannot obtain information from government agencies, officials or employees, and they cannot access government documents. It is violation of democratic principles of governmental openness and transparency and citizens' rights to receive objective information. If journalists' rights are violated, even in the pursuit of the most basic information, it is extremely difficult for them to provide the public with accurate and in-depth information.

The lack of transparency of media ownership in Mongolia is contrary to the concept of pluralism and serves to foster hidden agendas and the provision of partisan information to the public, creating societal distortions and confusion. As a result, it is very difficult for the Mongolian public to discern who is telling saying the truth and much confidence is lost in the media and journalists.

Journalists experience a range of pressures and interrogations that force them to disclose the identity of their sources, which in turn laces their sources of information under threat. As a result, the media cannot fulfil its role as a government watchdog. Society will never function effectively if the value of investigative journalism is undermined.

Attacks and threats to journalists' lives and property based on their pursuit of the truth should be considered a serious offence and a crime. Unfortunately, Mongolian police and the courts are unable to carry out their duties to determine the truth and impose proper punishments.

- **Legal Framework**

Legal Guarantees of Free Expression

Freedoms of thought, opinion, expression, speech and publish, and to seek and receive information are

guaranteed by articles 16 and the Constitution of Mongolia, which states:

The right to seek and receive information is restricted by the state and its bodies are legally bound to protect as secret. In order to protect the human rights, dignity and reputation of persons and to ensure national defense, security and public order, the information which is not subject to disclosure must be classified and protected by law.

The Mongolian Parliament passed the Media Freedom Law on August 28, 1998 with purpose of this law is to guarantee freedom to freely express, freedom of speech and freedom to publish stated in the Constitution of Mongolia.

Article 2 of this law prohibits adopting any laws restricting media freedom and freedom of media outlets. Article 3 bans censorship and obliges media outlets to take responsibility for their publications and programs, and Article 4 prohibits the government to own its media.

The establishment of the public broadcaster is the most important step taken by the Mongolian authorities towards consolidating media freedom in recent years. The Mongolian Parliament passed the Law on Public Radio and Television on January 27, 2005. The Law on Public Radio and Television came into force on July 1, 2005. The former Mongolian National Radio and TV was dissolved and a new public broadcaster, Mongolian National Broadcasting (MNB), was registered with the Ministry of Justice and Home Affairs on February 8, 2005.

The Criminal Law passed in 2002 states that it is a crime to interrupt lawful professional activities.

Article 139, the Criminal Law of Mongolia

- *Subject that prevented journalists from their lawful, professional activities to disseminate or not to disseminate any information, which affects his or her own or other's interests, shall be fined for 31 - 50 times increased amount of the lowest level of salary, or shall be arrested for a period of 1- 3 months*
- *If the above crime was committed using official position shall be fined for 51 – 100 times increased amount of the lowest level of salary, or shall be arrested for a period of 3 and more up to 6 month.*

The 2006-2008 Action Plan of the “National Human Rights Program” included the joint issuing by the Supreme Court and Globe International NGO of the Supreme Court Interpretation of the above provisions of the Criminal Law. However, the Supreme Court of Mongolia, without consultation with the NGO, issued an interpretation on December 21, 2007.

Globe International’s lawyer concluded in his commentary that in some respects the interpretation did not meet requirements.

- In general, this interpretation is not sufficient to provide uniform understanding and correct application of Article 139 of the Criminal Law. It contains mere interpretations of some terms and is therefore simply a glossary.
- In order to be objective and correct, the Supreme Court interpretations of crimes defined in the special provisions of the Criminal Law should use a criminal-law study approach, i.e. explain each element of the crime’s composition. It would be extremely useful if the interpretation would explain crime composition, such as in regard to Article 139, social rights and interests suffered, forms of guilt (actual malice or carelessness), reasons for sentencing, and crimes committed by action or non-action.
- There are several logical mistakes in the interpretation. Article 139 stipulates that “*Subject that prevented journalists from their lawful, professional activities to disseminate or not to disseminate any information, which affects his or her own or other's interests*”. We see here actual malice, but clause 1.3 of the interpretation says, “shall be understood action and non-action that prevented

without reasonable cause". The actual malice cannot be done "without a cause", or aim, as we understand.

- In clauses 1.4 and 1.5 of the interpretation, the terms "disseminate to the public" and "not to disseminate" are explained, but they do not provide a legal meaning. Article 139 of the Criminal Law defines the term "disseminate to the public" in context with the act of forcing the journalist to disseminate information that is not objective that the journalist did not want to disseminate. However, the Supreme Court interpretation did not mention anything about this matter.

Restrictions of Freedom of Expression

State Secrecy Legislation

In Mongolia, State secrets are protected by a general Law on State Secrecy and a Law on the List of Secret Information. The Law on State Secrecy was passed in 1995 and it was last amended on January 2, 2004.

Article 3, entitled "The perception about state secrets", provides the following definition: "State secrets" shall be reports, documents, substances, items and proceedings which were defined as state secrets according to Mongolian legislation, and contain in themselves information, divulgence of which will cause harm to national security in forms of definitions, illustrations, signs, technological solutions and are related to matters of foreign policy, economics, science, technology, defence, intelligence, counter-intelligence and secret operations of Mongolia.

Article 11 states: "The category of confidentiality of state secrets shall depend on the seriousness to harm state security and interests that occur as the result of their divulgence", and state secrets fall into the following categories: Most confidential, confidential and classified.

Article 5 sets out five areas of secrecy – national security; defence; economy, science and technology; secret operations; and counter-intelligence; and procedures on the execution of criminals charged with capital offences, and the Law on the List of State Secrets protects 59 types of information (for instance, national-security related 19 items, defence 14, economics, science and technology 5, intelligence 15). 69.5 percent of the information is protected for 40-60 years and for indefinite periods.

Six types of information are categorized as most confidential, 24 as confidential and seven as classified, but 25 types of information do not belong to any of the categories.

The amendments made in the law about the List of State Secrets on April 23, 2004, provides for an indefinite period of protection for "entire information and documents related to the terrorism".

It is a crime, punishable by up to eight years' imprisonment, if the disclosure of state secrets is especially harmful (Criminal Law provision 87.2).

In 2007, Globe International carried out a comparative study on secrecy laws and access of government information in order to revise the Law on State Secrecy. A new draft of the law was submitted for consideration to the Central Intelligence Authority (CIA) and the Ministry of Justice and Home Affairs (MJHA). Globe International's proposal was welcomed by the CIA, and the agency is working on the new versions of state secrecy legislation.

Globe International research team made a request to obtain 15 types of information from 13 government agencies. Of the 15 documents, 12 were of the open-to-the-public category and three were classified secrets. The research team was able to obtain just four documents: three that were open to the public and a secret document that had been declassified.

Government agencies refused to provide nine documents on the basis that six were state secrets, one on the basis that it was an organizational secret and one because it had not been previously accessed by citizens. One document was denied for no particular reason. The team was also unable to obtain two other documents: one that was not on the website as instructed by the government and another one because the

fee to access it was too high.

The research team requested from government agencies information that did not contradict with the principles of the Constitution of Mongolia, the Universal Human Rights Declaration and Article 19 of the International Covenant on Civil and Political Rights. But the study results revealed that in Mongolia ordinary citizens' right to access information is highly limited. State secrecy legislation unnecessarily keeps under secrecy sealed information that is vital to the public interest and of their concern. The team observed that even ordinary types of information that should be open to the public were kept out of people's reach.

The right to information is not equal for all, and secrecy laws are not consistent with modern development trends and contradict the principles of democracy and human rights. Therefore, there is a need for rapid change.

Globe International backs up this conclusion with the following case studies.

From October 17-31, 2007, 10 daily newspapers ("Ardiin Erkh", "Century News", "Century Post", "Mongolian News", "Niigmiin Toli", "Daily News", "Onoodor", "Onoodriin Mongol", "Ulaanbaatar Times", "Unen") published information about the Mongol Bank (Central Bank) scandal.

On October 16, 2007, the Parliamentary Standing Committee on Economics was discussing the 2006 Mongol Bank financial report and the results of the work of the oversight working group (head: D. Gankhuyag; members: J. Batkhuyag, M. Zorigt, Ch. Radnaa) that had conducted the bank's audit. The scandal began when, during the meeting, Member of Parliament B. Batbayar made a statement about a large amount of money that had gone from Mongol Bank.

This scandal attracted our attention because it involved provisions of laws involving state secrecy (the Law on State Secrets and the Law about the List of State Secrets). For instance, the aforementioned working group distributed its report to members of the Standing Committee with the seal "Secret". The working group obtained copies of the documents necessary for their audit from the secrecy office of Mongol Bank. Mongol Bank management assumed that the Parliamentary working group report would be a secret document. As the bank's legal department head G. Erdenebayar stated: "Documents related to currency reserves and money supply are state secrets." The Law about the List of State Secrets, provision 1.4 says: "Draft projects of contracts and agreements, information, documents, artifacts, objects and activities in the preparation stage of thereof, of the Mongolian Government and the Mongol Bank with foreign countries and international organizations" shall be deemed state secrets.

Despite a warning by D. Gankhuyag that matters of state secrecy were about to be disclosed, Batbayar unveiled the report that was scheduled to be discussed behind closed doors. Mongol Bank representatives requested that the report be discussed confidentially because of its relation to state secrets, but members of the Standing Committee voted 10:3 in favour of an open debate. Most astonishing is the fact that the results of the full text of the audit by the working group appeared in the newspaper "Century Post" (October 18, 2007) under the title "The debt of the gold-mining company was paid from state funds".

This demonstrates how important public information is kept secret via secrecy legislation.

Organizational Privacy

The Law on the Privacy of Organizations, adopted on May 16, 1995, extends the regime of secrecy to private organizations. This law effectively requires organizations to establish a regime of secrecy and to develop internal procedures to protect such secrets (Article 5.1). The impact of this is somewhat mitigated by Article 6 of the law, which lists a number of areas which may not be kept confidential. It is prohibited to withhold information if the information pertains to activities, products, services, techniques and technologies which affect the public health or environment, or contains information on poisonous or radioactive substances held by an organization which may cause public harm or harm the environment should its procedures on

storage and protection be breached. The information also cannot be protected if it is about a crime or if it should be revealed to the public in accordance with law.

Article 164 of the Criminal Law makes it a crime punishable by a fine or arrest for a period of three to six months if financial secrets or secrets on activities are unlawfully obtained or disclosed. If the harm is substantial, it is punishable by up to three years' imprisonment.

National Defamation Law

Article 16.17 of the Constitution, protecting the right to seek and receive information, allows for restrictions on these rights, including the need "to protect ... the dignity and reputation of persons."

Reputations are protected in both the civil and criminal laws of Mongolia. Criminal Law effective since September 1, 2002, in provisions 110 and 111, defines a crime of dissemination of libel through the media.

Article 110: Insult, the Criminal Law of Mongolia

A criminal charge of a fine for 20-50 times of an increased amount of the lowest level of salary or arrest for a period of 1-3 months shall be imposed, if others' honour and reputation is insulted in the public or through media

Article 111: Libel, the Criminal law of Mongolia

7. A criminal charge of a fine for 20-50 times of an increased amount of the lowest level of salary or arrest for a period of 1-3 months shall be imposed, if a clear statement on libel is distributed with a purpose to defame a person's honour and reputation.

8. A criminal charge of a fine for 51- 150 times of an increased amount of the lowest level of salary or arrest for a period of over 3 months or up to 6 months shall be imposed, if libel is distributed through media or if the crime on insult and libel is committed by a person who was criminally charged before

The aforementioned provisions of the Criminal Law were interpreted on October 29, 2007, by the Supreme Court of Mongolia through the provision of explanations to terms such as reputation and honour, insult and disgrace, libel, public, and previously convicted for crime. According to the Supreme Court:

The term "**reputation**" in provision 110.1 of the Article 110 of the Code shall mean evaluation by others of an individual's personality and ethics, business capabilities and his/her level of professionalism.

The term "**honour**" in the same provision shall mean the related individual's self-evaluation based on the evaluation of this individual by others.

The term "**insulting**" in the same provision shall mean actions contradicting with standards of human relations and ethical norms, national traditions and customs established in the society, and deliberately discrediting the related individual's reputation and dignity. This shall be related to speech, actions, written forms, gestures and images discrediting the person in connection with the person's nationality, language, race, age, sex, social origin and status, wealth, occupation, health, religion, opinion, education, appearance, developmental disabilities or family status. Clause 1.6 of the interpretation states: "Insult is a crime of form, and therefore after the transaction it is considered as a completed crime". Clause 3.1 of the interpretation states: "If insult was caused by means of disclosing privacy, it shall be considered as a combined crime and additionally charged according to Articles 110 and 136 of the Criminal Code".

Globe International does not accept the above interpretation as being sufficiently advanced. Our lawyer undertook a review of the interpretation and concluded that the terms of reputation and honour do not

consist with the international standards, and that the definition of insult and libel as a crime is not acceptable. Specifically, the statement that “libel is the crime of form” means that if the libellous information is found to be false, the case will be considered a crime.

The Civil Law was amended in 2002 and protects a citizen’s name, honour, reputation and business reputation.

Article 21.2, the Civil Law of Mongolia

If a person who distributed information defamed a citizen’s name, honour, reputation and business reputation cannot prove its truth he or she shall be imposed to correct it through forms or means that such information was distributed, or other forms or means as demanded by a person whose right was violated.

Civil Law Article 497, provision 1, states that “if due to illegal, malicious or careless action or non-action, harm was done to other’s rights, life, health, reputation, honour, business reputation and property, the guilty person shall be responsible and restore the damage”.

The Civil Law also states that a person has the right to highlight the damage caused if a citizen’s image was published or shown to the public through photo, film, video, painting or other forms without permission (21.5).

There are no legal acts in Mongolia that provide for the higher degree of vulnerability of public officials to criticism. However, before the Criminal Law was passed in 1994, the Supreme Court of Mongolia issued a Suggestion on the Usage of Articles 7 and 392 of the Civil Law. Provision 13 of the suggestion states: “Public criticism on the concept and activities of state and government institutions and its officials does not mean defamation of the institutions and officials, but it can be considered if the criticism is over standards concerning the defamation of another’s honour or if it leads to such a situation.”

At present, there is no information available on whether the suggestion is valid in relation to the 2002 Civil Law.

Other Restrictions

In Mongolia, there are numerous laws restricting freedom of expression and information. According to the Legal Analysis jointly conducted in 2001 by Globe International and international London-based NGO Article 19, there were 91 such laws and law provisions. Below are a few examples by which journalists can be criminally charged for breaches of the Criminal Law:

In accordance with the Criminal Law, a criminal charge of a fine and arrest for up to three months shall be imposed, ‘if privacy is disclosed’ (136.1), ‘if obscenity is advertised’ (123), ‘if citizen’s correspondences are violated’ (135), ‘if cruel religious ideas are advertised or distributed’ (144.1), and ‘if facts of criminal cases are disclosed without the permission of inspectors, detectives, prosecutors and judges’ (257.1).

There are no definitions of obscenity, or cruel religious idea.

231: Insulting state officials and public inspectors for social order

231.1 A criminal charge of a fine for 5-50 times of an increased amount of the lowest level of salary, or forceful works for 100-150 hours, or arrest for a period of 1-3 months shall be imposed, if state officials and public inspectors for social order are insulted before the public in relation to their duties.

Criminal Law

State officials, as defined in this law, are judges, prosecutors, inspectors, detectives, policemen, customs and

tax officers, and other state inspectors who have special powers by law.

Freedom of Information

Even though state secrets and the secrets of organizations are protected by law in Mongolia, the country does not yet have a Freedom of Information law. According to a 2007 Globe International study, 33% of the reviewed 360 laws oblige to make information open to the public while there numbers of restrictions of access to information hold by public institutions.

In 2002, Globe International launched a program to disseminate the concept, principles and international standards of Freedom of Information with support from the Mongolian Foundation for Open Society (the present Open Society Forum), the US Embassy and AUSAID. In 2004, the first draft law was submitted to the Ministry of Justice and Home Affairs. The draft law was first included in the Parliament's agenda in October 2005.

In October 2006, Cabinet discussed submitting the draft law to Parliament, but postponed it due to the need to include the issue among information-dissemination and information-security issues.

In the aftermath of World Freedom of the Press Day on May 2, 2007, four Members of Parliament drafted and submitted the Law on Freedom of Information. While it is still pending in Parliament, the Government of Mongolia has submitted its draft law on Information openness and Right and Freedom to Access Information to the Parliament on 21 January 2011. It is in the agenda of the spring session of the Parliament.

Protection of Sources

Mongolia is missing legislation to protect confidential journalistic sources. There are no laws protecting whistle-blowers. The Confederation of Mongolian Journalists adopted protection of sources in its Code of Conduct in 2005, but it is not efficient in practice.

Globe International conducted a survey in 2007 among 200 journalists who are actively cover news and political and social issues to evaluate forms of interaction between reporters and confidential sources, the obstacles in protecting them, the effects of criminal defamation law on protection. Thirteen percent of those surveyed said they regularly used confidential sources: 40 percent in most of publications/programs, 43 percent only occasionally as needed. Only four percent never used confidential sources. The use of confidential sources is double in Ulaanbaatar compared with rural media. Classified by the type of media, newspaper reporters use confidential sources more frequently. Male journalists use confidential sources more than females. It is common that journalists with two to three years of professional experience use confidential sources more often than others.

Of the 195 journalist who used confidential sources, 45.6 percent said the information they obtained was reliable in any circumstances; 43.1 percent only use them if no other sources are available. For journalists who frequently use confidential sources, the reliability of the information is most important, whereas those who use them less frequently are doing so only because they lack other sources. Of those 195 journalists who use confidential sources, 53 percent have regular contact with their sources.

The use of regularly established relations with confidential sources increases with the length of time they have been working in the media. Of the 195 journalists who use confidential sources, 62 percent trusted the source but verified the information from other sources; 9 percent fully trusted the source and did not verify the information; 20 percent immediately published or broadcast the information if the issue related to public interest; and 4 percent used the information even though they did not trust the sources, believing that it was necessary.

Seventy percent of those 195 journalists never made any promises to their sources; 52.3 percent interacted with

their sources based on mutual trust; and 12.8 percent signed agreements with their sources.

Of those journalists who regularly used confidential sources, 69 percent asked about the purpose of disclosure; 31 percent did not.

Forty-one percent of journalists were not sure that they would be able to protect their sources. This breaks down to 37 percent of 174 journalists from Ulaanbaatar, and 71 percent of the journalists from rural areas, revealing that local journalists face more pressures.

Journalists fear that disclosure of confidential sources will cause: loss of job (56.4 percent), danger to health, body or life (39 percent), loss of reputation (32.8 percent), risk for their family (16.4 percent), damage to property (7.7 percent). Of the surveyed journalists, 38 percent were required to reveal their confidential sources. This percentage represented 37 percent from Ulaanbaatar and 48 percent from rural areas. For 74 journalists, the pressure to reveal their sources came from police (39.4 percent), courts (29.7 percent), politicians and government entities (43.2 percent), CIA (10 percent), and individuals, political parties or movements (35.2 percent). Requests came also from NGOs and international organizations (6.8 percent).

Forty-five of the journalists were required to reveal their sources (23 percent). Many of them (40.9 percent) did so through demands from the courts. The reasons for disclosure were: safety (28.9 percent), pressures and threats from the courts (24.4 percent), not to be dismissed from job (20 percent). A small number of journalists disclosed their sources because they believed that the courts would not reveal the name of the source or that they would not be imprisoned.

In relation to information from confidential sources, 29 percent of the journalists surveyed were involved in civil or criminal cases. The plaintiffs filing suit against the journalists were individuals who were mentioned in the publications/programs (49 percent), their lawyers or trusted persons (30 percent), political parties or movements (four4 percent), and other subjects (nine percent).

31 journalists (15 percent) were summoned to appear at court proceedings and testify as witnesses.

Globe International initiated the drafting Law on the Protection of Journalistic Sources in October 2007 and delivered to the Ministry of Justice and Members of the Parliament. The concept and principles of the draft law were included to the draft law on Amendment to the Law on Media Freedom initiated by the President of Mongolia in 2010, but it is delaying until now.

Meanwhile, the government agencies are working on several drafts of laws such as Law on the Media organizations, Law on Cyber Security, Law on data Protection, E-signature and regulations on Internet and Mobile Content and Radio Television Services.

- **Violations of Rights of Independent Media and Journalists**

Globe International reports that according to its survey among 200 journalists at the end of 2009, one in six journalists received improper reaction from those affected by critical material; most journalists had been threatened and/or attacked, 81% of them by authorities and/or public officials. Almost 20% of journalists had been received severe threats, including violence and even death threats to themselves or their family members attacked. This alone demonstrates the difficulty of journalism in Mongolia. 50.8% of reported problems concerned threats, 40% were also pressured and defamation cases were started against 23% of journalists.

As to the content of threats, 42.3% were told they would be prosecuted, 33.% were threatened with loss of job, 7.7% with imprisonment, 6.9% with death, 5.4% with beatings and 5.4% had threats made against family members. Of threats against journalists, 70.8% were made by telephone, 33.1% at individual meetings; 16.1% were called to an office, while 3.8% were physically attacked. 77% of threats were received after publication or broadcast of material, 14% while information was being gathered, and 9% during production

of materials. 69.2% of defamation complaints were the authorities, 21.4% businessmen and 9.4% international organizations or NGOs.

Even though censorship is banned and the interruption of the professional activities of journalists is a crime in accordance with the law, it does not work that way in Mongolia. The various violations of journalists' rights such as attacks, pressure to reveal sources, threats, insults, detainment and assaults are evidence that Mongolian journalists work in difficult conditions and complicated situations.

Globe International has been monitoring free expression violation since October 2005. In total, 79 cases of violations of journalists' professional rights were registered between 2005 and 2009. In 60% of 2008 cases, authorities violated the journalist's rights. Of seven 2009 registered cases, six were caused by paid publications.

Some journalists do not want Globe International to draw attention to their cases. They are highly self-censored and are afraid of further possible attacks and assaults. Bearing this in mind, we were not able to publicize the cases of violations. Few cases is mentioned below:

In 2005, a female TV producer who was producing a documentary on child sexual exploitation and was shooting in the Korean-invested Seoul restaurant, threatened by Korean businessmen. Later the TV managers forced her to clean up her edited tapes. A female television reporter produced a news story on an automobile incident committed by rich Koreans who were returning from the Golf Course. She was threatened and forced to remove her story.

In 2006, a male journalist from Erdenet provincial newspaper was beaten by unknown people and his photo camera broken. His kidney and liver were seriously damaged, but he has refused to raise attention to this incident. He reported his case to the police next morning.

On the night of December 19th, 2005, an unknown individual vandalised the vehicle of television journalist G. Batjav near his home in Ulaanbaatar. All of the windows were broken, both mirrors were torn apart and the interior of the car was destroyed. However, no valuables or car parts were taken. Previously, on November 9th, three individuals assaulted Batjav while he was having lunch in a small restaurant in the Sukhbaatar district of Ulaanbaatar.

On July 6th, 2006, B.Tsevegmid, the editor of Nomin television station in the northern Mongolian province of Orkhon, was beaten at the entrance of her building and had to be hospitalized for treatment. Before being attacked she had received many threats by telephone concerning an investigative television program, "Forbidden to Watch," which covered the Erdenet mining industry employees' privatization vouchers.

On June 11th, "Forbidden to watch" aired the fate of privatization vouchers for 9,000 employees of the Erdenet mining industry. After the television program, unknown people threatened her over the phone. The director of the Erdenet brokerage company, which held the vouchers, also warned the journalist, "It is a very complicated issue, you could be killed".

Unfortunately, none of the incidents have been investigated by the police.

In 2006, B.Bold, a reporter of the daily Odriin Sonin, was detained for 2 hours by the police while he was collecting information about the public demonstration protesting against Boroo Gold, which is a 100% Canadian invested gold mining company. B.Bold introduced himself as a journalist and demanded to know who produced an order to block and detain the rebels. His reporter's identification that was shown to the policeman was confiscated and he was detained for two hours along with others.

On the night of May 8th, 2006, a television of the independent Eagle TV channel, were assaulted by policemen in the centre of Ulaanbaatar, the capital of Mongolia, in Sukhbaatar Square, while covering actions by Mongolian police who were breaking and tearing down the gers (traditional Mongolian dwellings) of the protesters. Several civil movements have been protesting against the current government since March 2006, the pending stability agreement with Ivanhoe mines (a Canadian mining company), corruption, and

the 2006 budget revisions. Starting mid-April, traders of the burned-down SAPU shopping centre who had lost all their stock and were being denied compensation, joined the protesters. Because of an official visit by the South Korean President, city authorities demanded that the protesters remove their gers. However, the protesters did not comply and the police came in the middle of the night to break them down.

The Eagle TV reporters were roughed up by police when they tried to shoot footage for the morning news. Police demanded ID from the journalists before they were allowed onto Sukhbaatar Square (a public place) and then told the journalists that they had no right to record the events, forcibly preventing the Eagle TV crew from taping. One police officer repeatedly smashed his fist into the camera and damaged it. Another officer took journalist T.Orgil by the collar and dragged him away from the area controlled by police. T.Orgil said that none of the senior police at the scene would answer his question, "Why do journalists need to get advance permission to record events on a public place like the central Sukhbaatar Square?"

Mongolchuudyn Amidral, a weekly tabloid, published news about the personal life Mrs. Arvin, MP. In the early morning of March 30 2006, Mrs. Arvin went to the post offices together with the policemen and confiscated all the issues of the newspaper. The next day she returned all the copies of the newspaper.

A Mongolian National Broadcasting news crew was attacked near the Students hostel in the western district of the capital city Ulaanbaatar on April 19th 2006. The journalist Sh. Aruintsetseg and cameraman G.Delger were filming a bus where students were getting in on their way to support a demonstration organized by the civil movements "Healthy society" and "Mongolian Homeland". The crew had just finished interviewing one student who confirmed that he was given 5000 Mongolian Togrogs (about 4\$) by the leaders of civil movements to support the demonstration. The three staff suffered minor injuries and the camera was permanently damaged. They escaped after a UBS television crew arrived soon afterwards and approached while grabbing stones. The UBS crew left their own camera in their van.

Mr. L. Gansukh, Governor of North western Zavkhan province of Mongolia, called to his office all staff of the weekly "Zavkhan" newspaper, including editor-in-chief Mr. B.Ider and the Governor's Office Media Information Department head and spokeswoman D. Natsagmaa, on December 31st, 2005, and yelled at them for some time. His anger was at a notice published in the newspaper's 35th issue (December 20, 2005) regarding a request from the Court General Executive Department (Zavkhan branch) on the compulsory auction of the "Uliastai" hotel. The governor accused D. Ider of publishing the announcement without permission from him and demanded to publish an immediate correction. He also accused his spokeswoman of not censoring the newspaper's content. He further threatened, "If you do not rectify your mistake immediately, I will dismiss you and I can close down your newspaper." He said that he was deeply concerned that confidential information was nationally distributed because the Zavkhan newspaper has a national subscriber network.

Female journalist S.Enkhtuul of the national newspaper Udriin Sonin (Daily news) has been threatened for her published serial articles relating to the sensational bankruptcy of some private savings and credits associations. On June 13th, 2006, after her published article entitled "Are the bankrupted financial associations guiding police to a mafia network?", she was called for the meeting by Mr. B.Tamir, whose name was mentioned in the article, at her office. B.Tamir, together with two young men, invited her to sit in their car and asked her to publish an immediate correction. The journalist refused to sit in the stranger's car. Furthermore she told them that the published article was the result of considerable investigative work. According to journalist Enkhtuul, they said that, "If you do not rectify your mistake immediately, we'll solve this problem our own way". Since then someone has started to call her mobile phone and threatening that, "We have been watching you. The article you published on us was based on false information". Along with these threatening calls, she feels as though she is regularly being followed. The executives of the Udriin sonin (Daily news) helped change her cell phone number and informed the Police Department of the Sukhbaatar district of the capital, Ulaan Baatar. The Police Department provided a police guard to the journalist on the newspaper editors request. Two days after this, the chairman of the Government's Financial regulatory committee, who had closely examined all issues relating to private savings and credit associations, was murdered in his office on June 15th, 2006. According to the media, the killer was the owner of a private

saving and credit association which was in severe financial trouble. Thus, the Police Department filed a criminal suit against Mr. B. Tamir, who had threatened the journalist to publish a correction on her published article.

The female journalist M.Odgerel of the "Dornod" newspaper, which has a national subscriber network, has been threatened by Mr. D. Sukhbaatar, the former deputy head of the Dornod province branch of the National Emergency Management Agency, after she published an article headed "Slander worth a million: unlawful action by Mr. Sukhbaatar" on December 25th, 2005, in this newspaper. Since its publication, D.Sukhbaatar has been sending threatening messages to her mobile phone and demanding her to publish a correction. D.Sukhbaatar was informed about the article before its publication and called the editor-in-chief of this newspaper, Mrs. B.Tuya, demanding that it not be published. Other aimag officials repeatedly rang Tuya with the same demand.

On October 27, 2006 daily newspaper reporters G.Erdenebat, B.Khajidmaa, photographer Ya.Aranjinbaatar of "Udriin sonin" and photo reporter Sh.Gerelsaikhan of "Ardiin erk", who were covering a civil society demonstration, were detained around two hours by policemen. During the mass arrest policemen assaulted the journalists, destroyed a photo camera, confiscated documents, and didn't give any chance for the journalists to explain their purpose. One of the detainees, Mr. G.Erdenebat of "Udriin sonin", said, "No policemen asked us to show documents, instead they disregarded them and threw them away. Ms. B.Khajidmaa, a female journalist, was beaten by policemen with batons, and her face and body were severely injured. The photo camera was destroyed while the policemen were trying to confiscate it. Policemen packed us in the car and brought us to the police station."

Mr. G.Davaakhuu, head of the public relations office of the General Police Department, said, "We dispersed the demonstration according to the law and we didn't use any force. Yes, we agree that the journalists were detained, but how can we differentiate journalists from the demonstrators?"

On January 18, 2007, the head of the Bayan-Ulgii aimag Intelligence Agency, Kh. Enkhsaikhan, demanded that the local branch of the MNPRT, the local public radio station, read an obituary in Mongolian by an agency employee. Staff at the radio station suggested that the obituary be read in Kazakh or in Mongolian by a radio station professional broadcaster. In response, the head of the Intelligence Agency called the director of the station to his office on January 23, 2007, and threatened him with detention. In addition, he repeatedly asked: "Who gave you permission to broadcast in Kazakh?" And: "What is the Kazakh language?" He continued in the same vein, saying: "Why do you have a right to broadcast in the Kazakh language in the territory of Mongolia? In future, you should inform us about the content of your programs."

The director of Dornod aimag local TV program "Shine Suvag", journalist S. Delger, broadcast a paid program by the Citizen's Will Party about its moves to make the local governor resign. On May 4, 2007, at 11.30pm, when the journalist returned home, she noticed a threatening note on her door saying: "We will kill you." The next evening, insulting words were spray-painted on the walls of her apartment hallway. Delger informed police about the incidents, but no action was taken.

At 10.28pm, on June 19, 2007, L. Munkhbayasgalan, a reporter with "Daily News" newspaper received a threat call from U. Khurelsukh, MP 'I'll kill you, you'll see' after publication of article about firemen who had died in a helicopter accident while on duty.

B. Aasuren, a reporter with Dundgobi aimag local newspaper "Goviin Amidral" was called to the office of local administration department head B. Enkhtuya on March 13, 2007, and was told that: "No news about the People of the Year appeared in your newspaper. The activities of the aimag governor were not covered properly and government event was not sufficiently covered."

During a press conference on January 11, 2007, B. Jargalsaikhan, MP and Minister of Trade and Industry pointed to a television cameraman and said: "You are filming too close to my face, and you stand in an improper pose in front a of Member of Parliament on government premises." He refused to answer a

question of TV5 reporter. He also said that the “Daily News” newspaper had insulted him for 16 years, and that he could prove it issue by issue. A confused journalist tried to interrupt the Minister by asking a question about the Asgat silver deposit license, but was halted by the Minister, who said: “This is not a proper question for journalists.” The journalist subsequently left the press conference accompanied by accusations from the Minister.

J. Chimidtseren, a reporter with the Khuvsgul aimag newspaper “Erkh Chuloo”, wrote an article entitled “Do we have democracy in the aimag court?” in issue No. 8, March 20, 2007. Critical article was based on a case related to the reporter and addressed to judge N. Sarangun. Aimag chief judge Z. Khosbayar and inter-soum chief judge M. Narmandakh called Mss. Yu.Gereltuya the editor-in-chief of the newspaper to the court’s office and threatened her, saying that they would ‘sue the newspaper in order to restore the court’s good name”.

Ch. Lodoi, a photo journalist from the newspaper “Century News”, was taking photos of a car just outside Government House. He was approached by a State Special Security guard, who escorted the reporter to the security post, then forcefully took his camera and destroyed his photos. When Lodoi asked him why, the guard said: “It is prohibited to take pictures of someone’s property”, and added: “If you do it again, we will confiscate your camera.”

On October 10, 2007, Khuvsgul aimag newspaper “Erkh Chuloo” published an article in its column “Tsookhor Bogts” that criticized land issues. Sh. Yanjindulam, the head of aimag’s administrative department accused the journalist of defaming her reputation and demanded the newspaper to punish journalist and publish a denial in the next issue of the newspaper.

Editor of Orkhon province newspaper “Shine Medee”, D. Tsend-Ayush, was beaten by a group of four to five young people at around 11pm on his way home on March 22, 2007. His attackers took documents from his briefcase, but not his identification. He was unable to go to work the next day. Tsend-Ayush said: “I can’t tell if this attack was related to my work. But why didn’t the attackers take my expensive cell phone and only my documents?” He did not report the assault to police.

Based on citizens’ information that “Chinggis 3” restaurant, located in the Sukhbaatar district of Ulaanbaatar, was serving food containing insects, “Niigmiin Toli” photo journalist S. Tuul went to the restaurant to investigate. She was able to enter the kitchen and take pictures of the dirty environment and dishes crawling with insects. When she was about to leave, the restaurant manager stopped her, saying: “You entered my organization in secret and took pictures in the private restaurant without permission”. He then broke her camera and hit her in the head. Tuul told the coordinator of the Globe International network that she had suffered recurring headaches since the incident. She went to the Sukhbaatar district police on three successive days to register a complaint, but was denied by police officer Gankhuu, who allegedly told her: “You journalists don’t know where and what you should do. Why did you take pictures at your will without permission?” Based on the “Niigmiin Toli” report and citizens complaints’, Capital City Professional Inspection agency inspector N. Valia investigated the restaurant and concluded that it did not comply with sanitary standards, that food quality was poor and the cooks were not professionals. The restaurant’s operations were suspended.

On 16 January 2008, a meeting was held at the State Center for Civil Registration in Bayan-Ulgii to discuss printing equipment that had been out of commission for a month. During the meeting, responsibility for the problem was placed on I. Lazat (officer in charge of passport issues) and finance officer B. Saule. Journalist Khuangan Ainur wrote a two-minute report on the incident and submitted it to the local radio station; however, the bulletin was not broadcast. It transpired that B. Saule had approached the station and falsely told staff there that the laying of responsibility had been revoked.

On 27 August 2010 host computer of the daily newspaper “Niigmiin toli” (Public’s mirror) based in Ulaanbaatar, capital city of Mongolia, has been confiscated by the officers of General Authority for Implementing Court Decisions (GAFICD). Journalists of the newspaper were offering other computer instead of confiscated computer which wasn’t allowed to be sealed, but they didn’t consent. Above computer

contains all of information of the newspaper activities, including many confidential sources. Journalists of the newspaper are considering current case as a violation of their rights.

In order to enforce the decision of Chingeltei District Court decision, the officers of GAFICD have carried out above action.

On 1 September 2009 the newspaper had published letter received from citizens of Bayan-Olgii, far western kazakh province, in which they criticized wrong doings of their government officials.

After the publication, Mr.S.Khaval, Governor of Bayan-Olgii province, and other 7 public officials affected by the citizens' letter, brought civil defamation case to the court and demanded 13 million MNT (about 10.000 USD).

On 24 December 2009 the Chingeltei District Court found the newspaper guilty of slander and defamation and ordered to publish retraction with apologize and pay 1 million 700,0 MNT (about 1300 USD) to the complainants. The newspaper disagreed with the decision and applied to the Capital City Court. Unfortunately, the Capital City court to be held from 1 to 3 March 2010 affirmed first instance court decision.

"Citizens of Bayan-Olgii province have been announcing hunger strike requiring Mr.S.Khaval (above mentioned complainants) from his position and over 3000 people have signed the petition. Therefore, the newspaper considered that the publication was not groundless." said Ms.B.Yondonduichir, Head of Administration Department of "Niigmiin toli" newspaper.

In 2009, The General Policy Authority initiated a document titled Cooperation Agreement, addressed to Ulaanbaatar-based television channels by Under this document, "...Parties have a duty to report urgent police action to maintain social order during mass disorder, and police shall provide all relevant information and secure conditions for reportage." The Agreement says that the police will provide "safety for television stations that have signed the Agreement and for their journalists working at flashpoints." The Cooperation Agreement obliges television stations to comply with the following:

- True and objective information must be disseminated urgently.
- No media outlet shall disseminate incorrect information and propaganda that encourages mass disorder during public demonstrations.
- Delivered information must be balanced.
- No media outlet shall distribute information compromising public or organizational privacy and state secrecy.
- When reporting, media outlets shall regularly contact Central Headquarters for information on the current situation.
- If a public demonstration becomes mass disorder, the media shall cooperate with the police and broadcast propaganda to defuse and resolve the situation.

Article 4, entitled Responsibilities, says "...if a Party does not execute, or inappropriately executes, their duty, the other Party shall have the legal responsibility to remove the damage." Most television channels signed this Agreement, with duration of one year. We believe that this Agreement affects the media's rights, especially in several provisions that oblige that information must be 'true'; that the media must carry propoganda; that safety is provided only for journalists and television stations that are party to this Agreement; and that there must be urgent reports on police actions. The Agreement mandate that the media shall only report favourably on police action during mass disorder is censorship. A free and independent press is not compelled to propogandize; the media has the right to criticize police action during mass disorder. The Agreement contains terminology such as *true*, *objective* and *wrong information* without definition and also makers no reference to clear legal provisions.

Use of Defamation Laws

Criminal defamation charge was imposed first in 2002 against Mss. B. Hand-dolgor, 26, the editor of an opposition newspaper "Ug" (Word) who was sentenced to one year imprisonment by Sukhbaatar district court of Ulaanbaatar city on July 31 of 2002 and was sent to the detention center "Gants hudag". B.Handdolgor was accused for publishing an alert about possible spread of AIDS in the territory of Altanbulag sum of Selenge province which locates at the Northern border of Mongolia. In the news-alert of "Ug" published on March 5th, 2002 a woman called B. was suspected as if she was infected with HIV and was causing serious concern because she had had numerous numbers of affairs including with soldiers at the Northern border.

An average more than 30 civil and criminal defamation cases against media and journalists are reviewed by the Mongolian courts. In election years, the number increases.

For example, in 2008, when Parliamentary election took place, the Mongolian courts considered five criminal defamation cases, brought by 6 plaintiffs. 62.5% of plaintiffs were politicians, authorities and public officials. In three of the cases, the media lost; in two they won. While there were no imprisonment penalties in the lost cases, the maximum award against a journalist was 5,508,000 MNT (about \$3,780), which is a very large amount for a journalist earning about \$US200 a month. In 2008, the courts heard and ruled on 21 defamation cases against media and journalists; 65% of plaintiffs of civil cases were authorities, politicians and public officials. In 71.4% of these cases, the media/journalist lost, winning only 9.5%; the other cases were reconciled. The maximum award was 200 million MNT, though the actual maximum award defined by the courts was one million MNT; the minimum was 500,000 MNT.

Under the 1998 Media Freedom Law, the media shall be responsible for all publications and programs. However, the journalist takes responsibility for their material when they sign a work contract. Although some media pays the fines for lost cases, a journalist must reimburse the amount from their salary.

According to a Globe International survey among 203 journalists from central and local media, 25 percent were accused under the criminal provisions on defamation and insult. The percentage represents 25 percent from Ulaanbaatar and 27 percent from rural areas. Of all the cases, 56 percent were dismissed during the investigation, 22 percent during court proceedings, and 6.1 percent at the procurator's stage. 42.9 percent were convicted. 70.9 percent of the plaintiffs were politicians, government officials or government agencies. The following are illustrations of cases against journalists and media.

Only in November and December 2010, three criminal cases were launched against three female journalists. Their cases are attached to this report.

Impact of Media Ownership on Freedom of Expression

In Mongolia, there are no laws regulating cross-media ownership or media concentration, transparency of ownership in Mongolia. There is also no general broadcast law to guarantee the editorial independence on the commercial broadcast channels. In recent years, there has been growing speculation among the public about the hidden owners of radio and TV channels, namely influential politicians and wealthy businessmen closely associated with the politics.

Although censorship is banned and government ownership of media is prohibited by the 1998 Law on Media Freedom law, in reality, the picture is different. In Mongolia, private media ownership is dominant; however, as claimed by the Press Institute media monitoring report, state control is operative over 33% of newspapers, 42% of magazines, 10% of television channels and 46% of radio stations.

Ownership impacts the editorial independence. In the Globe International survey, 66% of journalist respondents identified the existence of editorial censorship. This manifests in control of journalistic content (57.7%), prohibition of critical material about advertisers(42.9%), refusal to publish or broadcast journalist-generated material (38.7%), demands to cut material (28.9%), spiking journalists' own stories (22.5%), and punishment or salary reduction (7.7%).

Mongolian journalists are highly self-censorial; almost half of journalist respondents (48.8%) said they self-censored. The reasons offered varied: over half said they were deterred by threats and insults, and about 50% said they did not want to risk prosecution; one in every three journalists is afraid of losing their job. Journalists said they were also afraid of imprisonment or of physical violence to themselves or their families.

The only nationwide news agency Montsame is still government-owned, even though in accordance with the 1998 Media Freedom Law and Parliament Resolution on the Media Freedom Law Implementation, it should have been converted into public media. Montsame continues to publish the newspapers “Mongol Messenger” (an English-language newspaper), “Novosti Mongolii” (a Russian-language newspaper), “Mongu Siasibao” (a Chinese-language newspaper), “Mongoru Tsushin”, “Khumun Bichig” (in Mongolian old script), and a daily news bulletin “Montsame”.

On December 15, 2005, the Cabinet decided to transfer Montsame, which is a government agency, to the Ministry of Foreign Affairs and present the decision to the Parliament for discussion. As yet, no decision has been made regarding the status of the Montsame news agency.

In 2007, an interesting dispute occurred in relation to media ownership and editorial independence. The following is a brief review of the content analysis conducted:

Content analysis was carried out on nine daily newspapers in the period from July 25 to and October 1, 2007, and covered 28 articles related to the dispute between Mongolian President N. Enkhbayar and MP U. Khurelsukh.

The controversy started at the Mongolian People’s Revolutionary Party (MPRP) parliamentary caucus meeting on July 23, 2007, when the Member of Parliament said: “President N. Enkhbayar is a man who should be in the prison.” On August 1, 2007, Khurelsukh published in the daily newspapers an open letter to the President of Mongolia. In response to this, the President’s press representative made a public statement. The national movement “Soyombo” also issued a statement.

In his open letter, Khurelsukh wrote that “TV-9 television and “Century News” newspaper are owned by N. Enkhbayar and his wife O. Tzolmon. They are registered in the name of his wife’s relative, wrestler Ganbold. The policies and direction of those organizations are provided from the top.” Khurelsukh asked the President following questions:

- Is it your position when TV-9 and “Century News” are publicizing libel and insulting people’s reputations?
- If TV-9 and “Century News” are your property, would you explain to the public how you acquired them?
- An article published in your private newspaper “Century News” was entitled “People can enjoy their right to govern well without MPRP”. This statement disappoints thousands of MPRP members.

“Century News” journalists responded to this on July 25 and August 1, 2007, with their own statement entitled “To conscience policeman U. Khurelsukh”, in which they wrote: “We stated very clearly that ‘Century News’ newspaper will continue to protect the interests not of politicians, but of citizens; not of political parties, but of the public; and will be a free forum for civil society ... Our journalist expressed his own view as a citizen that ‘People can enjoy their right to govern well without MPRP’ and we will not let his views be censored by a mentally ill policeman”.

Of all information included in the content analysis, 46.4 percent stated, albeit with no proof, that the media outlets mentioned were property of the President and his family, 14.4 percent denied it, and 39.2 percent did not mention the issue at all.

Reacting to the statement by U.Khurelsukh, the President’s press representative wrote that the President

had never hidden the fact that he was among the founders of TV-9 and "Century News". "These media were legally registered and operated within the law, have independent information and editorial policy, and are not the private property of President N. Enkhbayar".

Former Speaker of the Parliament Ts. Nyamdorj spoke out in support of U. Khurelsukh's statement at the Mongolian People's Revolutionary Party parliamentary caucus meeting on July 23, 2007, saying: "It is true that Enkhbayar does this. He cheats, along with Mongol Bank's Chuluunbat. I've got a proof of what I once said about the President controlling the media. The President personally tells his newspaper what to write about government and Ministers."

In its statement ("Daily News", August 10, 2007, No.188) supporting Khurelsukh's letter, the national movement "Soyombo" wrote: "President N. Enkhbayar until now did not disclose to the people where he got the capital sources for his private companies TV-9 and Century News, which are valued at billions of tugrugs'. An article in the newspaper "Ardiin Erkh" (July 30, 2007, No.146) mentions that the head of the MPRP caucus, D. Idevkhten, ordered U. Khurelsukh to apologize to President Enkhbayar, and the head of the Government Chancellery, Su. Batbold, said that U. Khurelsukh's statement did "not present the position of the government" and demanded from that U. Khurelsukh apologize. The content analysis revealed that 85.6 percent of the information did not present the opinion of a third party, while 14.4 percent did.

Recent defamation cases against media and journalists

1. "Ogloonii Sonin", Daily
Kh. Namuun-Uyanga, Journalist

Journalist Ms.Kh. Namuun-Uyanga, of the "Ogloonii Sonin" (Morning News) daily, has been threatened and urged to stop reporting on an alleged embezzlement by Lieutenant Colonel M. Bayarmagnai, deputy chief of the Patrol and Special Defense Department. The threat was made in a phone call by Bayarmagnai's lawyer to the journalist on 27 April 2010.

The journalist heads the paper's Investigative Department. She published an article in the paper's 11 September 2008 edition, issue #175, entitled, "Police Colonel Embezzles MNT 20 million". The article was based on information provided by Lieutenant Colonel Ts. Batbold, head of the Investigation Department of the State General Prosecutor's Office. Batbold explained that his department was investigating a swindling case involving Bayarmagnai.

At the time, a number of daily newspapers, including "Zuunii Medee" (Century News), "Ardchilal" (Democracy) and "Ardyn Erkh" (People's Right), also published articles on the investigation. But Bayarmagnai named only "Ogloonii Sonin" in his lawsuit, as it was the first paper to report on the alleged embezzlement. The lieutenant colonel accused the paper of defaming him and asked for 10 million MNT (over US\$7,000) from the journalist to "redeem his reputation". The journalist earns about US\$200 a month.

After reviewing the case on 19 October 2009, the Bayanzurkh District Court found the paper guilty of slander and defamation. "Ogloonii Sonin" was ordered to pay 2 million MNT in damages to the plaintiff and publish a retraction. The paper subsequently filed an appeal with the Capital City Court. The first instance court's ruling was upheld on 18 December 2009, when the newspaper was once again found guilty of defamation. However, the Capital City Court reduced the amount payable to the plaintiff from two million to one million MNT.

Unhappy with the decision, Namuun-Uyanga appealed to the Supreme Court. While her appeal was pending, a criminal case involving Bayarmagnai was re-opened. The journalist then wrote to the Supreme Court asking that review of her appeal be postponed until the case was finalized by the State General Prosecutor's Office. Nevertheless, the Supreme Court upheld the court of appeal decision.

Based on a request by Namuun-Uyanga, Mr.G. Davaakhuu, an attorney for Globe International, submitted a complaint to Supreme Court General Judge S. Batdelger in accordance with Article 1761 on the review of civil cases, opposing the decisions of the court of first instance, the court of appeal and the supervising court, all three of which found "Ogloonii Sonin" guilty of slander and defamation.

Mongolian public servants in order to conceal their wrong doings, bring civil defamation case to the court against journalists and the court ignores freedom of expression, right of journalists to criticize, social interests and makes unfair decisions.

2. Ogloonii Sonin, daily
B. Tsoojchuluuntsetseg, Journalist

A defamation case has been brought against B. Tsoojchuluuntsetseg, a female journalist and Investigative Department editor of the "Ogloonii Shuudan" (Morning Post) daily newspaper.

Since December 2010, Tsoojchuluuntsetseg has been publishing a series of articles entitled "Billionaires Who Swindle Banks". The stories focus on individuals who have taken out large bank loans and are not making repayments. In her third article in the series, dated 9 December 2010, the journalist wrote about debtors of the Khadgalamj Bank. The article was subheaded, "Does General Prosecutor D. Dorligjav owe US\$827,000?"

On 10 December, the General Prosecutor's assistant, Enkhtur, called the newspaper's Responsible Secretary and threatened him with prosecution. On 17 December, another assistant to the General Prosecutor and the head of the Supervision Department of the State General Prosecutor's Office, Mr. B. Bold, filed a criminal complaint at the Criminal Police Department on behalf of Dorligjav.

The Sukhbaatar district Police Department decided that there was insufficient evidence to justify prosecution of Tsoojchuluuntsetseg on criminal defamation charges. However, on 23 December the Sukhbaatar District Prosecutor opened a criminal defamation case against the journalist.

Globe International (GI) believes that the action of the General Prosecutor has breached the Media Freedom Law, which bans any kind of censorship or disturbance of journalism that complies with the law. A breach of the Media Freedom Law is a crime under Article 139 of the Mongolian Criminal Law.

On 13 January 2011, GI sent an official letter to State General Prosecutor Dorligjav about the criminal prosecution of the journalist. In the letter, GI expressed concern that while Dorligjav may have been able to file a civil defamation lawsuit, he chose to file a criminal defamation case against Tsoojchuluuntsetseg. In addition, the head of the Supervision Department filed a complaint on behalf of the General Prosecutor relating to his personal reputation. GI is not confident that the investigator will follow due process and is concerned that the journalist may be pressured to reveal the identity of her confidential source.

GI is concerned about the increase in the number of such actions by public servants and wealthy people who use criminal defamation provisions to censor the work of journalists and the media that expose wrongdoing.

3. Onoodor, Daily
A. Baatarkhuyag, Journalist

A. Baatarkhuyag, journalist of Onoodor, daily has been under investigation for criminal defamation since 8 July 2010, following a complaint by Minister of Nature, Environment and Tourism L. Gansukh. The minister complained that he had been defamed by the following sentences: "Many suffocate from their embezzling" and "Gansukh from Democratic party and Otgonbayar from Revolutionary Party become neighbors in their houses costing million dollars". These statements were contained in an article by Baatarkhuyag entitled "From solidarity to demoralizing", which was published in the 1 March 2010 edition of the daily newspaper "Udriin Sonin".

In his complaint, the minister argued that Baatarkhuyag should be severely punished for defaming him and accusing him of corruption in a nationwide publication.

The first hearing scheduled on 11 February 2011 was postponed.

4. Zuunii Medee, daily

D.Bolormaa, investigative reporter

An investigation is being conducted in a civil defamation case against the "Zuunii Medee" (Century News) daily newspaper. In addition, a criminal case has been launched against "Zuunii Medee" journalist Bolormaa Damdinsuren over the publication of the same article for which the newspaper is being sued.

Since August 2010, "Zuunii Medee" has published a series of more than 20 articles on human trafficking and sexual violation of teenaged Mongolian girls. The paper's investigative office, via Bolormaa, has claimed that an organized criminal group has been engaged in trafficking virgin teenagers for US\$500 per girl.

In addition, the newspaper and Bolormaa claim to have verified from confidential sources, including a witness and a victim, that privileged and affluent persons have been involved in the crime group. Using these sources, Bolormaa published an article in the newspaper on 8 November, in Issue #267, claiming that well-known businessman Mr. B. Narankhuu, a director of the Mon-Uranium company, had been involved in buying teenaged girls.

A few hours after the distribution of the issue of the newspaper, three attorneys and legal advisers for Mr. Narankhuu gave a press conference, saying that "Zuunii Medee" had slandered their client and that he was not involved in any such criminal activity.

On 10 November, they filed criminal charges against Bolormaa with the State Investigation Office (SIO). The SIO transferred the case to the Sukhbaatar District Police Department, which is the department covering the area in which *the* journalist resides.

Bolormaa was called four times to the police department and informed of the charges against her.

After the publication of the article, the journalist received a number of threatening phone calls and information which she says amounted to slander was published in the media.

On 24 November, Mr. Narankhuu filed a civil defamation case against "Zuunii Medee", accusing the newspaper of defamation and demanding compensation in the amount of 3 billion MNT (approx. US\$2.4 million).

There is no legal protection for witnesses or victims in Mongolia, so it is possible that threats could be made against the witness and the victims and that slanderous accusations could be made against them and their families, or bribery could be resorted to. The female witness claims she was beaten unconscious by people involved in child trafficking as punishment for approaching the police.

"Zuunii Medee" has written to Globe International (GI) for legal assistance and protection for the journalist. GI is planning to organize a number of activities to protect her, including a press conference. GI also joins with the UN in calling for no criminal charges to be brought against journalists in relation to information they may publish.

"Zuunii Medee" has been publishing for 20 years and is the nation's biggest daily subscription newspaper.