

**REPORT SUBMITTED TO THE**

**55<sup>TH</sup> SESSION ON COMMITTEE OF ECONOMIC SOCIAL AND  
CULTURAL RIGHTS ON IMPLEMENTATION OF THE ECONOMIC,  
SOCIAL, CULTURAL  
RIGHTS IN MONGOLIA**

**PREPARED AND SUBMITTED BY**

**THE HUMAN RIGHTS NGO FORUM OF MONGOLIA**

## Human Rights Protection and Legal Reform

1. Reform of domestic legislation is underway but participation of citizens and civil society organizations in this process is limited and not enough is being done to inform the public about the ongoing changes. Furthermore, the need to protect human rights defenders continues to be ignored and, regrettably, harassment and threats targeting them has not stopped.
2. Providing open legal standing for CSOs on public interest cases has been promised for long and not been realized yet.
3. Judicial reform does not bring expected results in dealing with public interest cases, especially environmental cases caused by mining activities. Mongolian Supreme Court may review its early decision in 2013 which protected local community's right to live in safe, healthy environment and sustainable livelihood and make a new decision, which is totally opposite to the previous decision, denying the right of local community.
4. There is a pressing need for creating a legal environment to guarantee citizen participation in the process of formulating Mongolia's development goals, objectives, and strategies, as well as for safeguarding citizens' right to development. As the country's economy mainly depends on the performance of the mining industry, people's livelihoods are being directly affected by the market demand for and prices of mineral resources. This dependence has resulted in the continuing high rate of inflation and national currency depreciation, as well as in the subsequent drop in the purchasing power of the population and the accompanying deterioration of living standards.
5. The national mechanism for the protection of human rights and freedoms has not been strengthened and even worsened since 2012:
  - The recommendation of the International Coordinating Committee of **National Human Rights** Institutions to bring the activities of the National Human Rights Commission (hereafter the Commission) in compliance with the Paris principles has not been implemented; The Commission has not built the capacity to express an independent opinion on major human rights violation cases or to deliver human rights-based conclusions, criticisms or recommendations on development plans and policies.
  - Since the dissolution in 2012 of a secretariat in charge of implementing the National Human Rights Program, no information has been available on the implementation status of the program.
  - The lack of a legal framework and financial support to ensure the sustainability of civil society activities has resulted in the inability of some NGOs to continue their work.
  - The objective to upgrade the status of the Parliament's Sub-Committee on Human Rights to that of an independent committee and to expand its mandate to include, among others, the delivery of human rights-based conclusions to Members of Parliament (MPs) regarding international treaties and conventions to be ratified by the Parliament as well as the implementation monitoring of enacted treaties and conventions included in the National Human Rights Program still remains an empty declaration.
  - The status of the National Committee on Gender Equality went down. The Committee chaired by Prime minister and lead by Secretary with Secretariat has functioned independently to implement the newly adopted law on gender equality. It has been

- funded by Prime minister's budget. Unfortunately with the government reform taken place in the end of 2014 Secretary and Secretariat was separated. Secretary left under the prime minister, Secretariat was transferred to the Ministry of Population Development and Social Welfare. Secretariat team has been reduced twice, planned activities have left without budget funding.
- It is necessary to create a legal framework for strengthening human rights and freedoms protection mechanism. The funds allocated by the state for human rights related activities are insufficient and the implementation of current laws and regulations on human rights protection is inadequate.
6. The Government continues to ignore the recommendation to create legal framework and mechanisms essential to protecting human rights defenders and persons engaged in environmental protection. Instead, attempts to harass and punish them are on the increase. Ts. Munkhbayar, the Goldman Environmental Prize winner who led the fight to protect the environment from adverse effects of mining was sentenced to 7 years in prison. Throughout the lawsuit he was denied enjoyment of the rights pertaining to pre-trial and trial processes. The Government influenced judicial independence by waging a widespread public smear campaign and high-level statements intended to damage civil society activists' reputation.

**Recommendations:**

- a) *Create a legal environment for strengthening the human rights and freedoms enshrined in the Constitution and protected under international treaties and conventions:*
- Produce official translations of newly ratified treaties and conventions, ensure their widespread dissemination among the public and create conditions and build the capacity for using these documents in court.
  - Adopt the laws necessary for the exercising of human rights, including the Law on Non-Governmental Organizations, Law on the Protection of Human Rights Defenders, the Law on Citizen Participation Right, the Law on Combating Gender-Based Violence, and the Law on the Editorial Independence of Media Outlets; amend relevant laws to include provisions on improving the accountability of MPs and ensuring civil society participation in public interest litigation and the monitoring of implementation of laws.
- b) *Strengthen the national human rights protection mechanism:*
- Boost the activities of the Parliament's Sub-Committee on Human Rights to implement the international treaties, conventions and constitutional provisions on the protection of human rights and freedoms; strengthen the capacity of the Sub-Committee to deliver human rights-based conclusions on laws, decisions and policy documents enacted by the Parliament.
  - Build the capacity of the National Human Rights Commission to operate freely and independently, and revise the Law on the National Human Rights Commission to ensure its conformity with the Paris principles for the purpose of expanding the Commission's mandate for human rights protection.
  - Ensure multi-stakeholder participation in implementing the National Human Rights Program, allocate sufficient funds for its implementation and provide for civil society participation in the monitoring of the implementation of the Program.
  - Insure effective work of the National Committee on Gender Equality and its Secretariat in dealing with gender issues and implementing the law on Gender

Equality through reviving and strengthening its structural, financial independence and providing with professional leadership.

- c) Attach special attention to the realization of the right to development by building and strengthening the capacity for applying a human rights-based approach to drafting, implementing, monitoring and evaluating development policies and programs; organizing trainings for civil servants to improve their understanding of their duty to respect and protect human rights; fostering an attitude of right-holders among citizens and building their capacity to claim their rights.
- d) Seek technical and financial assistance from international organizations to build capacity for formulating human rights-based development policies and program planning, as well as forming conclusions on policies, programs, content of laws and their implementation from a human rights-based perspective.
- e) Reform the Constitutional Court to mandate it to accept and resolve individual complaints involving violation of Constitutional human rights and acts to restore them.
- f) Protect human rights defenders and create a legal environment to support their activities.
- g) Invite the Special Rapporteur on Human Rights Defenders for assessing and suggesting recommendations on the situation of human rights defenders in Mongolia.

### **Equality and Non-Discrimination**

- 7. Mongolia adopted the Gender Equality Law and the Law on Witness and Victim Protection, thus legally prohibiting both direct and indirect discrimination based on gender. The civil society organizations approve of the submission to Parliament of a revised version of the Law to Combat Domestic Violence and inclusion of provisions defining discrimination as a crime in the draft Law on Crime. Furthermore, we applaud the inclusion in the Government Action Plan of the measures to explore a mechanism to eliminate discrimination and initiate corresponding legislation. While only 3 women were elected to Parliament in 2008, this number increased to 11 in the wake of the 2012 parliamentary elections, which constitutes tangible progress toward increasing women's participation in high-level decision-making. Despite these positive developments, however, discrimination still remains widespread.
- 8. Mongolia does not have a stand-alone anti-discrimination law and work to develop the new legislation has not yet commenced. Although the Gender Equality Law prohibits discrimination based on gender, efforts to publicize the legislation are insufficient. In practice, discrimination based on age, sex and appearance is widespread. The real damage caused by discrimination is not considered, an effective complaint handling mechanism is lacking, and the existing mechanism is weak. Implementing the recommendations issued by the UN human rights mechanism is impossible due to the lack of unified policy planning as well as budget shortages.
- 9. One in every two newly advertised vacancies on the job market specifies an age preference, while one in three vacancies discriminates on the basis of gender.

10. A female employee of the Millennium Challenge Account of Mongolia lodged a complaint to the National Human Rights Commission (NHRC) in 2013 about workplace sexual harassment by a project manager named ᠣᠪᠪᠦ. The investigation uncovered evidence that ᠣᠪᠪᠦ sexually harassed the woman on three occasions. The NHRC issued an official demand regarding the incident, which resulted in a punishment of only 10 percent salary reduction for the duration of three months, imposed by Decision No.13/81 from 12 April 2013.
11. There has been no significant increase in the women's participation at the executive branch and local decision-making levels.
12. The discrimination and mistreatment of women and girls in society persists. Although rising birthrates as a result of the government policy to encourage women to have more children is a positive development, due to the shortage of kindergartens, young women have to stay at home and therefore, are deprived of the possibility of work.
13. The prevailing practice of registering movable and immovable property in a man's name prevents women from obtaining loans on collateral and participating in economic life. The economic participation of women who are of working or reproductive age decreased from 59.4% in 2013 to 57.3% in 2014. Citizen ᠣᠳᠦ living in Zuunkharaasoum of Selenge province: ᠎ᠠ I am divorced with two children, and suffer from back pain. Because I am over 40 years old, I can't find employment. With the assistance from the World Vision international organization, I keep chicken and pigs to earn my bread. As winter is approaching, I need to build a chicken coop, but because I don't have collateral, the bank won't give me a loan. The only property I have, which can be used as collateral is my land, but because it is registered in my ex-husband's name, I can't use it. ᠎ᠠ
14. There is a widespread negative perception in society that only women engage in prostitution. Prostitution is banned by law in Mongolia, and administrative liability is only imposed on those who sell sexual services. Article 4.1 of the Mongolian Law against Pornography and Prostitution states that ᠎ᠠprostitution is prohibited᠎ᠠ, and Article 13.2.1 reads that ᠎ᠠthe violation of Article 4.1 shall entail a confiscation of income earned through prostitution as well as detention for a period of 14-30 days᠎ᠠ.

#### **Recommendations:**

- Establish a long-term development policy and planning to ensure the sustainability of state policy.
- Urgently adopt the Family Law, Law to Combat Domestic Violence, Labor Law, and Law on Crime submitted to the Parliament without compromising the provisions in the proposed legislations that are intended to improve the human rights situation.
- Adopt a stand-alone Law on the Elimination of All Forms of Discrimination in the near future, establish an accessible mechanism for lodging discrimination-related complaints and reclaiming one's rights, and ensure citizen participation in developing the draft of the above-mentioned legislation.
- Allocate sufficient funds for the measures aimed at combating and preventing all forms of discrimination.
- Implement an effective and consistent advocacy aimed at the general public as part of the effort to eliminate discrimination and prejudiced attitudes toward women and girls.

- Terminate the practice of hiring and dismissing employees based on their beliefs, include relevant provisions to this end in the Law on Civil Service, and monitor implementation, and impose liabilities for non-compliance.

## **Right to Food**

15. There are few official documents and statistics to demonstrate the implementation of the recommendations issued by United Nations Human Rights Council regarding the right to food. It is impossible to assess the change in the situation since 2010 as no statistics or other information could be found on the main indicators used to measure the implementation of the right to be free from hunger.
16. In the Hunger Map 2011 issued by the UN, Mongolia was placed in the category of countries where 20-34% of the population is undernourished.
17. A survey of 42 randomly chosen households living in ger settlements at the outskirts of 6 districts of Ulaanbaatar City conducted by the Mongolian People's Coalition for Food Sovereignty in February 2014, showed that 96% of the households could not afford vegetables on a regular basis, while 85% of them only consumed meat and flour. 60% of these households spend less than USD 3 a day on food, take loans to buy their food, and live in debt.
18. Monitoring the implementation of the citizen's right to adequate food, as well as of the quality of food products, food hygiene, packaging and expiration dates remains poor. The information about food, its quality and safety is mostly unavailable, while the information which has been made available raises doubts as to its authenticity. Despite the recommendations and repeated demands by the Mongolian People's Coalition for Food Sovereignty to establish an independent laboratory, no measures toward this end have been taken.
19. In early 2014, the laboratory affiliated with the Health Sciences University (HSU) publicly announced that the amount of pesticides contained in vegetables exceeds the established safety standards. However, the state laboratory denied the announcement, and imposed restrictions on the activities of the laboratory to conduct prohibiting tests and make public statements.
20. Despite the Government taking steps to protect the core human right of being free from hunger, these steps fall far short of meeting the existing needs. 113,187 persons from 16,822 households receive food vouchers (equivalent to MNT 10,000 or USD 6 per adult and MNT 5,000 or USD 3 per child) each month. This scheme, however, covers only 6.5% of the poor population.
21. The ability of citizens to buy food is inevitably linked with the right to employment. Labor exploitation is becoming a common phenomenon as citizen's right to conclude an employment contract with an employer and demand its implementation is not guaranteed. The Labor Law fails to sufficiently protect the rights of employees and does not oblige the employers to respect the latter's right to form trade unions. As a result, the violation of employee rights is widespread, even concerning large mining companies with many employees. In 2012, the employees of "South Gobi Sands" LLC formed a trade union and repeatedly demanded the improvement of labor conditions and

fulfillment of their right to work and leisure as prescribed by law. After the employees went on strike to demand their rights, 45 of them were fired. In 2014 Rio Tinto suddenly fired 300 of its employees from the Oyu Tolgoi project. However, not a single move has been made by the employees to fight for the protection of their rights. A survey conducted by the Centre for Human Rights and Development (NGO) in 2012 among 100 members of the Community Saving Group in Yarmag revealed that 25% of the survey participants work without employment agreements, and 50% of those who have agreements said that employers do not abide by them.

### **Recommendations:**

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

## **Right to Land**

22. Article 16.3, Chapter 2 of the Constitution of Mongolia enshrines the citizen's right to the "possession and inheritance of movable and immovable property." The Article further reads that "Illegal confiscation and requisitioning of the private property of citizens shall be prohibited. If the State and its bodies appropriate private property on the

basis of exclusive public need, they shall do so with due compensation and payment.ö

23. In accordance with the Ulaanbaatar City Urban Development Master Plan 2020, the Ulaanbaatar CitizensøRepresentative Khural (City Council) has decreed to launch a project in 21 locations to redevelop ger areas<sup>1</sup>. These locations consist of 13,524 plots of land covering an area of 1325.8 hectares and accommodating 69,000 residents<sup>2</sup>.
24. The redevelopment of ger areas is implemented in accordance with the öGer Area Redevelopment Regulationö adopted by the City Council Presidium Decree No. 23 from 2014. The regulation includes a provision 4.16, which states that öthe land and immovable property owner or possessor who has not concluded a tripartite agreement<sup>3</sup> shall relinquish his/her land and receive a compensation based on the valuation of his/her land or immovable property.ö This provision demonstrates an infringement on the citizensøright to land ownership enshrined in the countryø Constitution by means of passing a regulation.
25. The above-mentioned regulation neither contains provisions defining the rights and responsibilities of land and immovable property owners and possessors who are affected by the ger area redevelopment nor references on providing them with services, such as legal assistance and counseling in dealing with the matter.
26. The regulation ignores the rights of the citizens who live on the land subjected to redevelopment in the capacity of renters as well as the rights of citizens who do not have land/immovable property ownership or possession certificates. The regulation also does not reflect the specific needs of vulnerable groups.
27. Furthermore, the regulation assigns the task of freeing up the land for redevelopment to the companies implementing the project, and has no provisions delineating human rights principles.
28. According to the regulation, the project is to start if an agreement is reached with 75 percent of land and immovable property owners or possessors who reside on the lands planned for redevelopment, thus making it unnecessary to strike a deal with the remaining 25 percent of the stakeholders. The latter may be forced to relinquish their lands in return for a compensation even the owner does not accept. In other words, 25 percent or more than 4000 households<sup>4</sup> face the possibility of being forcibly evicted and not receiving a just compensation.
29. The companies participating in the ger area redevelopment are only given one weekø time to introduce their reconstruction plans to local residents-- a condition, which limits the opportunities for the latter to obtain sufficient information about the project and make sound choices<sup>5</sup>. While the citizens have to make their decisions in this short period of

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<sup>1</sup> öGerö is a round, white, traditional dwelling of Mongolians. Ger areas are the areas on the periphery of Ulaanbaatar City, which have extended in recent years as a result of high levels of migration from rural areas.

<sup>2</sup><http://ger.ub.gov.mn/index.php/2014-04-16-05-52-14/2014-04-02-09-09-10/item> (Accessed on 2014.11.01)

<sup>3</sup> The tripartite agreement is an agreement between a land owner, a company and the Ger District Development Department of the Capital City. The tripartite agreement is signed, after a consensus between the Company and the Land Owner.

<sup>4</sup> 69,000 was divided by 4 on the assumption that there are on average 4 members in 1 household.

<sup>5</sup> Provision 3.13 of the Ger Area Redevelopment Regulation adopted by the City Council Presidium Decree No. 23 in 2014.



time, the companies whose projects were selected for implementation have to negotiate an agreement with land owners and possessors within a mere 30 days if they were assigned to redevelop an area covering up to 301 plots of land. If the area is larger, the timeframe for reaching an agreement is similarly tight, constituting 60 days<sup>6</sup>.

30. There is no state regulation on just compensation. According to the current regulation, it is solely the company implementing the project, which negotiates the compensation with land owners and possessors. The settlement of the compensation in this manner fails to guarantee a participation on an equal footing for the parties involved and thus, cannot be considered just. The land is valued according to the price set by the Government in 2003, which is well below the current market value.
31. Citizens are being offered a one-room apartment of 25-28 square meters or two-room apartment of 30-34 square meters for vacating the land with a high market value, located in the distance of several kilometers from the city center, and with access to social services, such as educational and medical institutions (schools, kindergartens, hospitals)<sup>7</sup>. In the case when the citizens ask for a larger size apartments, they are told to pay for the extra square meters.
32. The ger area redevelopment program in Ulaanbaatar funded by the Asian Development Bank (ADB) violates the principles which have to be observed by ADB in circumstances of relocating populations:
  - The population relocation program has to be developed on the basis of consultations and negotiations with the households affected by the program which in advance have to be provided with sufficient information to engage in the negotiations. These principles have been breached.
  - Regardless of whether a person has a land possession certificate, he/she is entitled to receiving a compensation in the case he/she resides on the given land in accordance with the culturally accepted right deriving from a tradition (Example: adult children who have started their own families and live in a separate ger on the same plot of land with their parents or parents who similarly live on the same plot of land with their children). The program does not take account of these situations.
  - The valuation of the land and immovable property located on this land is carried out in breach of the market principles.
  - The principle of preserving the living standards of the households affected by the relocation was not observed, and is not reflected in the regulation.
  - The assessment of the compensation provided to the relocated households does not take into account the expenses incurred from moving away from social service providers, including hospitals, schools, kindergartens, etc.
  - There is no program to support the households affected by the relocation until their living standards normalize.
33. The ger area redevelopment policy pushes the citizens into the situation where they have to give up a low-cost Mongolian ger suited to their means and move into high-cost residential houses or else, move to the city outskirts away from infrastructure and social services.

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<sup>6</sup>Provision 3.16 of the above-mentioned regulation.

<sup>7</sup>According to the construction standards, a one room apartment has to be 30 square meters, and a two-room apartment has to be 36 square meters.

34. People who have not agreed to conditions on which they have to vacate their lands are coming under widespread criticism in the media and by the authorities as "selfish," "irresponsible" and "greedy."
35. The following are the excerpts from an article entitled "The failure to vacate the lands will lead to forced evictions," which was published in the "Unuudur" daily newspaper:
- "If they give money, I'm ready to vacate my land. I don't have any other property except for this land. If I give my land, I'll become homeless. I filed a claim to the City Property Relations Authority for MNT 70 million, the price of a one-room apartment, but they've refused to pay. We've agreed that I'll vacate half of my land and receive MNT 50 million, but the decree hasn't been issued yet. I will live in a ger set up on the remaining half of my land. My land is 245 square meters. The state's valued the land at a little over MNT 3 million (about 1,600 USD), and the house at MNT 24 million. The private company's valued the land and the house at MNT 38 million." says citizen B.Sangi. The authorities are planning to forcibly evict citizens like B.Sangi who refuse to agree on the size of the compensation.
  - "Although our land and immovable property were valued at a lower cost than we had expected, we had no option but to agree to the proposed price. We ran a small food store and rented out rooms. We also ran a carpenter's shop and had a 2-storey house. Overall, we are vacating 183 square meters. It's a pity to think that all of this will vanish. Nevertheless, we didn't demand the re-evaluation of our land to obtain a higher price, and were among the first residents to agree to the relocation conditions and vacate the land. But there are also irresponsible people!" said citizen T.Barkhas.
  - "There are 10 families left who act in a socially irresponsible, selfish manner and ask for an above the market price! The regulation on land acquisition passed by the City Council includes a provision on forced eviction of citizens who don't respect public interests," says E. Enkhtuya, a senior officer from the Land Acquisition Department of the City Property Relations Authority.
36. An online land allocation program allegedly intended to improve land privatization for citizens drew public criticism for two reasons: 1) the majority of the population lacks access to computers and high-speed internet and skills necessary for filing the online application; 2) the allocated lots of land are located in remote rocky areas away from infrastructure and public services, not suitable for construction of housing or other livelihood uses.
37. There is no mechanism to guarantee and restore the rights of herders to traditional pastures, hayfields, winter and spring camps they may own according to customary law. The herders affected by relocation, economic displacement or simply driven out of their lands are left with no infrastructure to herd their livestock, no patrimony to bequeath and, having lost all sources of income, turn into internally displaced persons.
38. Government Resolution No. 111 prescribing to complete the preparations for building the UkhaaKhudag-Tsagaan Khad railroad within 2 months triggered a rush for the extraction of conventional minerals e.g. construction materials. Pastures and winter camps are being destroyed by the railroad construction infrastructure, and temporary roads.

#### **Recommendations:**

- Adopt legislation to equally protect the constitutionally guaranteed rights for urban

- and rural residents to own and possess land, to own property, to earn a livelihood and to access pastures.
- Invite the UN Special Rapporteur on Internally Displaced Persons to a) seek legal solutions for the protection of the right of pasture-dependent, nomadic populations to use traditional natural resources; b) develop and implement a program to enable the preservation of the nomadic lifestyle and culture, as well as restoration of the livelihoods of herders.

## **Mining and Human Rights**

39. Mongolia, which has earned the name "Saudi Arabia of Asia" has been working on its promise to become the star of the extractives market, a destination for foreign investors seeking profits and a country with the fastest-growing GDP. However, this process has triggered adverse effects as the country is located in an arid, high altitude region with a fragile ecosystem, where the climate is changing at a pace three times faster than the global average. Thus, the desertification is advancing at a rate of 4 km per year, 70% of the land is degraded, and 16.6% of all rivers, 24.4% of springs and 31.5% of lakes and ponds have dried up. While water is contaminated by mining activities and its reserves are fast depleting, the government is designing river diversion projects. The pretext of creating a favorable legal environment for promoting a rapid development of the mining sector was used to weaken the coordination among investment, minerals and environmental laws. The inadequate legal regulation coupled with a lack of implementation monitoring has resulted in environmental, air and water pollution, all of which leads to violation of basic human rights. The expansion of the areas occupied by mining and mining infrastructure has inflicted a change in traditional land use patterns by stamping out lands previously used for animal husbandry, crop production and tourism, and prompting increased migration to the city. Mongolia has failed to fulfill its obligations under the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, and other human rights conventions such as the Kyoto Protocol, the UN Framework Convention on Climate Change, the Ramsar Convention, Convention concerning the Protection of the World Cultural and Natural Heritage, and the Convention on Biological Diversity. The Government has retreated on its promise to implement MDG # 7: "to increase the proportion of special protected areas up to 30 percent by 2015" and launched a policy to expand the mining sector, disregarding the land use classification system
40. Parliament has impaired the legal framework for environmental protection, by passing laws governing the mining sector which contradict each other, which weakened the implementation and monitoring of natural resource use standards, which do not address the issues of accountability and dispute resolution. In violation of the Environmental Impact Assessment Law, the new law on Conventional Minerals, the amended Minerals Law further support already rampant practice of avoiding Environmental Impact Assessment (EIA) or doing it after obtaining a mining license. And Government has not created Legal environment for holding mining companies responsible for the protection of the rights of local communities to access traditional natural resources and clean drinking water.
41. The Government refused to abide by the Supreme Court's decision ordering implementation of the Law to Prohibit Mineral Exploration and Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas (also

known as the "Law with the Long Name"). Instead, the authorities submitted to Parliament a draft amendment, which changed the procedures of implementing this law. On September 16, 2013, Parliament discussed legally controversial decisions to amend the Law with the Long Name, to renew extraction licenses and permit extraction by granting strategic deposit status; and to reopen the mines that were shut down by court ruling. These decisions contradict MDG # 7, Target 15: "Prevent depletion of rivers and streams by protecting and rehabilitating their sources."

42. Companies engage in mining without doing environmental and social impact assessments, which has resulted in the absence of EPPs, resettlement, compensation and livelihood restoration programs.
43. No measures have been taken to disseminate to relevant parties and implement recommendations suggested by the UN Human Rights Council and Working Group on Business and Human Rights in its report entitled, "Mining and Human Rights in Mongolia."
44. The government's plan to use waters of Selenge, Orkhon by collecting in dams, diverting down to support mining activities in the south has triggered an expression of concern from the World Heritage Committee due to potential negative trans boundary impact on its protected sites.
45. The recommendations suggested by the Mongolian Human Rights NGO Forum:
  - a) Fulfill all obligations undertaken under all UN environmental conventions, including the commitment stated under MDG # 7, Target 14b.
  - b) Eliminate gaps in laws regulating environmental protection and mining sectors.
  - c) Develop and implement a national program to enact the UN Guiding Principles on Business and Human Rights.
  - d) Implement the recommendations issued by the World Heritage Committee to the Government of Mongolia on the protection of drinking water basins and water supplies (WHC-14/38, COM/16, page 130, 7B 76).
  - e) In implementing the afore-mentioned recommendations, seek technical assistance from the international community to apply the International Union for Conservation of Nature World Heritage Advice Note on Environmental Assessment.

### **Business Rights: Small Scale Mining**

46. Small-scale mining emerged in Mongolia in the 1990s when widespread poverty pushed thousands of people to seek alternative forms of livelihood and income generation. The majority of small-scale miners are herders who lost their livestock to harsh winters. During the last decade, the first steps were taken to regulate artisanal and small-scale mining, including the government's adoption of Resolution No. 308 entitled "Regulation on Extraction of Minerals from Small-Scale Mines", which became the first legal document to formalize small-scale mining. In 2014 alone, small-scale miners sold USD 40 million worth of gold to the Central Bank, which accounts for 16% of all gold sold to the Bank in that year and is indicative of the contribution of small-scale miners to the national economy. However, only 3,000 out of tens of thousands of small-scale miners are formally engaged in mining and have been allocated land to carry out their activities. For the majority of them, their rights to have legal access to land for small-scale mining and formalization of their activities are still not guaranteed.

47. Although the Minerals Law was amended to include provisions on the allocation of land for small-scale mining purposes, small-scale and artisanal miners still face difficulties in securing access to land. The denial of a land license to formally engage in mining has led to illegal extraction of minerals. And informal, unsecure employment entails work in dangerous conditions that fail to meet the required safety standards. In the last 2 years, no land was allocated to small-scale and artisanal miners.
48. An inspection on the use of harmful chemicals and dangerous substances carried out by the State Professional Inspection Agency in 2007 established that 203,508.08 sq. meters of land on 53.3 hectares in a total of 120 areas were contaminated by harmful chemicals. This finding entailed a confiscation of 147 roller mills used by small-scale miners and prohibition of the use of mercury starting from 2008. In the wake of this ban, 2009 saw the introduction of a mercury-free ore processing technology and the opening of 4 mercury-free processing plants. However, these plants are still not operational as the relevant ministry has not yet approved the detailed environmental impact assessment report for the plants.
49. Artisanal and small-scale miners started to use mercury secretly at their homes by mixing it with the ores extracted from the ground to form an amalgam, which is then heated to evaporate mercury. As of today, artisanal miners in 9 soums continue to use mercury to recover gold from its ores. The healthcare workers in remote rural areas do not have the capacity to prevent, diagnose or treat mercury poisoning.
50. Child labor is prohibited under the Regulation on Extraction of Minerals from Small-Scale Mines as it involves work that is dangerous for children, including working underground, working with dangerous machinery and tools, transportation of heavy loads, and exposure to hazardous substances. However, many children today are engaged in small-scale and artisanal mining to help their parents.

#### **Recommendations:**

- Recognize the existence of significant numbers of small-scale and artisanal miners in Mongolia; ratify the Minamata Convention and develop an action plan for its implementation.
- Modify Article 11.1.23 of the Minerals Law as follows to formalize the activities of small-scale miners and guarantee their right to engage in mining: "establish whether the selected land [for small-scale mining purposes] overlaps either entirely or partially with the licensed land or land where prospecting, exploration and exploitation of minerals is restricted or prohibited."
- Amend the Minerals Law to include provisions that would provide for: a) the holders of exploitation licenses to allocate parts of their licensed land for use by small-scale miners free of charge; b) grant powers to local governments to authorize small-scale miners to conduct mining activities on mined-out or abandoned deposits.
- Amend the Minerals Law to specify the roles and responsibilities of the central and local governments with respect to small-scale mining issues.
- Amend Article 5.1 of the Law on Taxation of Personal Income Derived from Private Business and Service to reduce the current monthly income tax of MNT 53,000 imposed on small-scale miners to match taxes paid by others.
- Establish a National Inter-Sectoral Coordination Committee to facilitate the fulfillment of obligations undertaken by relevant ministries and agencies with respect

- to small-scale mining.
- Implement decisive measures to resolve the issue of mercury use in small-scale mining through introducing and approving a mercury-free technology.
- Develop a health strategy to prevent and address mercury exposure in the small-scale mining sector and allocate sufficient funds for its implementation.
- Adopt and implement an action plan to address the issue of child labor in small-scale mining sector.
- Enable selling gold obtained through small-scale mining at the local level and develop and adopt a regulation to govern the sale of gold produced through small-scale mining.

### **Rights of People Living with HIV/ AIDS**

51. The Laws on Healthcare and HIV/AIDS Prevention enacted in 2011 and 2012 respectively, have stated a policy of non-discrimination in delivering healthcare service provisions to the population, and the newly-developed drafts of the Law on Crime and Labor Law contain progressive provisions prohibiting discrimination. Nevertheless, the implementation of the laws remains inadequate, and the National Committee on AIDS in charge of this issue has, to this day, not been established. The shortcomings associated with inadequate knowledge, careless attitudes, insufficient information and frequent staff turnover among civil servants responsible for developing and implementing the policy guaranteeing and protecting the rights of people living with HIV/AIDS remain widespread.
52. Direct and indirect discrimination of people living with HIV/AIDS is commonplace. The grounds stated in Article 14.2 of the Constitution of Mongolia on which discrimination is prohibited do not mention health-based discrimination, which underscores the absence of a legal framework for people living with HIV/AIDS to remain safe from discrimination. The lack of the legal environment has led to a continuing practice of adopting rules and regulations discriminating against people living with HIV/AIDS. The practice of demanding mandatory testing for HIV/AIDS is extensive. For example, there are procedures requiring HIV/AIDS testing for persons applying for a job, wanting to use public swimming pools, and undergoing a surgery.
53. Article 11.5 of the HIV/AIDS Prevention Law which states that "the degree of working ability loss for a person with HIV/AIDS shall be determined under Article 30 of the Law on Occupational Safety and Hygiene and Article 5.1.5 of the current law" is a form of employment discrimination. Citizen "D" has resigned upon learning about the upcoming workplace HIV/AIDS testing. The resignation was prompted by fear of being discriminated against by co-workers who might find out about his/her condition.
54. There are widespread violations of the right of people living with HIV/AIDS to have their health protected and receive healthcare service provision. An HIV-positive man "B" earns his living by running a small carpenter's shop. After having his finger cut off by a machine, he sought medical assistance at the Trauma Hospital, but had to wait for more than 2 hours as there was no HIV/AIDS specialist. "B" received treatment and had stitched put in his hand only after HIV/AIDS doctors from the National Center for Communicable Diseases (NCCD) arrived.
55. According to the decision of the Health Minister, pregnant women living with

HIV/AIDS must give birth at the NCCD and, in rural areas, under the supervision of HIV/AIDS specialists from the NCCD.

56. The rights of people living with HIV/AIDS to have their personal information kept private, to live, and receive a fair trial are being violated. 45% of the participants in a survey on the "Status of Human Rights of Men who have Sex with Men (MSM) living with HIV/ AIDS" said that confidential health information related to their condition is disclosed.

**Recommendations:**

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

**Rights of Persons with Disabilities**

57. Mongolia has officially accepted the Asia-Pacific regional Incheon Strategy, and in partnership with the persons with disabilities (PWDs), is working to coordinate the Law on the Social Protection of Persons with Disabilities with the Convention on the Rights of Persons with Disabilities (CRPD). Furthermore, Mongolia has for the first time adopted a "Plan of Actions to Implement CRPD in 2013-2016." However, despite these progressive steps, there is a tendency for most of the legal regulations to remain on paper due to the inadequate implementation of the law and the unsustainable nature of the achieved outcomes.
58. There is a need to coordinate Mongolian laws with the CRPD, publish the CRPD in the "State Bulletin" magazine to ensure that the convention is used as the legal basis in court. Furthermore, the implementation of the regulations guaranteeing the rights of PWDs remains inadequate due to the lack of inter-sector coordination.
59. The responsibility to implement the quota to promote employment opportunities for PWDs as delineated in the Labor Law lies with the provincial and district Labor Divisions, while the authority to impose penalties for non-compliance is wielded by the State Professional Inspection Agency. Due to the lack of coordination between these

organizations, it is common for the offenders not being held accountable for the breaches.

60. Mongolia does not have a stand-alone anti-discrimination law. The list of prohibited grounds for discrimination stated in the Constitution of Mongolia does not include a prohibition of discrimination based on disability, including physical disability. This has led to widespread adoption and enforcement of regulations discriminating against the disabled. For instance, establishing disability according to the "loss of working ability" is a regulation, which directly discriminates against them. Article 111.7 of the Labor Law, which proclaims that "the list of jobs that can be done and professions acquired by PWDs will be approved by the Cabinet Member in charge of labor issues," and standard 5.8 of the "General requirements for public transportation, classification and services" (MNS 5012:2011), which proclaims that "PWDs are only allowed when accompanied by a guardian" are provisions that discriminate against the disabled and deny them their right to live independently.
61. A wheelchair-bound woman named "Gö" was given the following advice by a doctor: "You should have an abortion because you are in a wheelchair."
62. Inaccessible infrastructure causes the violation of the rights of PWDs to travel freely, receive education, seek and obtain information, and receive healthcare services. Despite the adoption of the standards enabling PWDs to use public transportation and access buildings, their implementation is inadequate due to an extremely weak implementation mechanism and vaguely defined accountability measures.
63. The assessment of the accessibility of 26 buildings along one of the most modern streets of a centrally located district in Ulaanbaatar City has revealed that 50% of the buildings were absolutely inaccessible to PWDs, 27% had wheelchair ramps which failed to meet the standards, 15% of the buildings had standard wheelchair ramps, but had too many stairs inside, and the remaining 8% of the buildings had usable wheelchair ramps, no stairs inside, and lacked toilets.
64. Healthcare facilities are inaccessible to PWDs. It was established that in the case of 52.2% of all hospitals in Ulaanbaatar, the road from the parking lot to the hospital building was not usable by the disabled, 18.2% of the hospitals did not have wheelchair ramps, 69.1% had wheelchair ramps which failed to meet the established standards, 71.9% of hospitals did not have elevators, and 94.7% did not have toilets for PWDs.
65. The public transportation and public transport stations remain inaccessible to PWDs. However, in Ulaanbaatar public transportation companies are compensated from the state budget for transporting PWDs, and in 2013 alone, this compensation amounted to 5.5 billion MNT (USD 3 million).
66. With the exception of the "Tsagiin Khurd" news program on the Mongolian National Public Broadcasting TV channel, which provides sign language interpretation, persons with hearing impairment do not have an opportunity to access information.
67. The employment rate among PWDs is extremely low. The policy aimed at preparing and training PWDs for employment has resulted in PWDs being engaged in the production of mostly handmade goods which are labor-intensive and have a weak



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

68. Providing education to children with disabilities in special schools is a predominant practice. Although the Law on Primary and Secondary Education obliges regular schools to create conditions for providing education to children with disabilities, shortages of infrastructure and qualified personnel persist. Only one in two children with an inborn disability receives an education. A study conducted among 150 children with cerebral palsy living in Ulaanbaatar has revealed that 65% of the children do not attend any educational institution, 23% attend school, and 12% attend kindergarten.

**Recommendations:**

- Review all legal documents related to PWDs with the purpose of bringing them into conformity with the CRPD principles and content.
- Publish the CRPD in the "State Bulletin" magazine.
- Create an effective legal framework for eliminating discrimination against PWDs.
- Abolish the method of establishing disability according to the "loss of working ability."
- Establish a unit in charge of PWD issues at the Prime Minister's Office to manage inter-sector coordination and run a Council in charge of PWD issues at Governors' Offices at all levels.
- Review standards for educational and health facilities to ensure their accessibility to PWDs.
- Use technology to allow persons with hearing as well as speech and language impairments to access information.
- Implement step-by-step measures to allow PWDs to use public transport.
- Ensure that measures taken to prepare and train PWDs for employment and to foster work-related social skills are undertaken in a systematic and coordinated manner.
- Increase the assortment of goods produced by PWDs who run private businesses and introduce technologies to boost their labor productivity.
- Develop and enact a legal framework for the introduction of a system to provide advisory services as well as personal aides to PWDs to assist them in learning to live independently.
- Devise a new list of categories of PWDs and properly align social welfare services with their individual conditions.
- Develop and implement an inclusive education curriculum to ensure that young people and children with disabilities can enjoy their right to education.
- Ensure the participation of PWDs in developing an inclusive education curriculum.
- Prepare and provide necessary training to teachers and mentors on methods of engaging with young people and children with disabilities.
- Implement a systematic policy aimed at fostering the right attitudes toward PWDs through media.
- Conduct regular trainings for civil servants at all levels to raise their awareness of disability rights. Authorize the participants who have completed the training to work in the social services sector.
- Conduct a nationwide survey on the social needs of women with disabilities.
- Respect the distinct needs of women with disabilities and take concrete measures to

- develop and implement policies which reflect their capacities, potential and special needs.
- Develop and implement a national plan and program aimed at promoting all rights of children with disabilities, participation and protection.

### **Rights of Sexual Minority (LGBT)**

69. Despite Mongolia's accession to a number of major international instruments which all expressly prohibit discrimination in any form, despite accepting the various recommendations from peer states under the Universal Periodic Review and the treaty bodies (CAT in 2010, CCPR in 2011) Around the necessity for equal protection of lesbian, gay, bisexual and transgender (LGBT) people, none of the recommendations have been implemented in the past period following the first cycle review, resulting in a situation of LGBT people are still discriminated against and violated widely.
70. LGBT people are denied housing rental accommodation or are evicted if suspected to be cohabiting with their same-sex partners. Familial violence is present and pervasive against LGBT people, resulting in inability to enjoy the right to the bodily integrity and safety, the right to adequate standard of living and housing, the right to found a family (where same-sex couples or couples where one is a transperson, are denied recognition of their relationship or their children by members of the family and are violated because of their relationship) and the right to own property.
71. The heteronormative framework of the health sector, the lack of information, skills and attitudes, non-coverage of each sub-community's specific health concerns under the universal healthcare insurance results LGBT people being denied access to complete medical care, including mental healthcare, affordable access to hormone replacement therapy, gender conformation surgeries, etc.
72. The culturally pervasive notion of heteronormativity is implicit in the education system, which serves implicitly promote discrimination and denial of access to education, cultural spaces and public spaces. The Government of Mongolia has not undertaken any efforts to educate the public on the equality of people regardless of sexual orientation or gender identity, with the exception of a call published in two daily newspapers on 10 December 2011, a television program and television spot produced by the National Human Rights Commission of Mongolia in 2012.
73. U. and S. are a lesbian couple living together for four years. The older brother of S. had denied her the share of their inherited property, saying that if she were to start living normally, he would immediately buy her an apartment and a car as the share of their joint inherited property.
74. From August to September 2014, the LGBT Centre approached a number of state-funded cultural spaces and organisations run by the central and local government bodies to organise a visual arts exhibition and a film festival to promote non-discrimination and equality of LGBT people. The Centre was denied access directly and indirectly by a number of cultural spaces.

#### **Recommendations:**

- Implement the first cycle UPR recommendations through the enactment of an anti-

discrimination law in order to provide immediate and effective legal protection for sexuality minority explicitly promoting supportive environment

- Enable the LGBT people to access culturally competent and needs-based healthcare through comprehensive efforts to identify and cater to the specific needs of each sub-community of LGBT people, through prescription of ethical standards of non-discrimination in healthcare provision, including equal coverage of LGBT-specific health concerns under the existing health insurance scheme.
- Review the legislative frameworks to enable effective recognition and protection of same-sex couples and their children in line with Mongolia's international obligations to provide the widest possible protection and assistance to all consenting adults to marry and found a family without discrimination.

### **Domestic Violence-Victim Protection**

75. There are numerous cases when a victim of domestic violence often left with no place to live, but there are no special programs addressing this issue.
76. One in every 3 children lives at the care or social service center ran away from home because of domestic violence.



AIVUUN



Alliance for Development



Association for Protection Population Drug and Opium



Center for Child Rights



Хувий Эрх Аюулгүй Төл СӨБД



Global meridian



GLOBE INTERNATIONAL CENTER



Government Citizen Partnership



HSPSC  
HUMAN SECURITY POLICY STUDIES CENTRE



Kazak Women's Arular Federation

Law and Human Right Center



LGBT Centre  
Human rights, justice and dignity for all



MonAme scientific research center



МОНФЕМ-НЕТ үндэсний сүлжээ  
MONFEMNET National Network  
Жендерийн шударга ёсны төлөө! Towards Gender Justice



ЭМНЕСТИ  
ИНТЕРНЭШНЛ



Mongolian Men's Association



МОНГОЛЫН ЭРЭГ ИСЭГЭЙН ҮЙЛЭГЧИД  
MONGOLIAN NATIONAL FEDERATION OF WOMEN'S ORGANIZATIONS



MNFPO



MONGOLIAN WOMEN'S EMPLOYMENT SUPPORTING FEDERATION  
non profit, non government organization



Хүнмүүдийн эсрэг үндэсний төв  
NATIONAL CENTER AGAINST VIOLENCE



OT WATCH



МОНГОЛЫН ТҮҮХАА-АЖЛААН ТӨРӨӨ ЭРЭГЧИД  
MONGOLIAN NATIONAL FEDERATION OF LABOR UNIONS



SWB  
Steps Without Borders NGO



Princess Center



"Threshold of the Future" NGO



ТУЛГАТ ЗАЛУУ ГЭР БҮЛ  
ТББ

Tulgat Young Family



UNIVERSAL PROGRESS



Young Women for Change



YOUTH FOR HEALTH



ZORIG FOUNDATION

## **Participating Civil Society Organisations-**

1. Aivuun
2. Alliance for Development
3. Association for Protection Population Drug and Opium
4. Centre for Child Rights
5. Centre for Human Rights and Development
6. Consumer Foundation
7. Global Meridian
8. Globe International Center
9. Government Citizen Partnership
10. Human Security Policy Study Centre
11. Kazak Women's Arular Federation
12. Law and Human Right Centre
13. LGBT Centre
14. MonAme Research Center
15. MONFEMNET National network
16. Mongolian Amnesty International
17. Mongolian Federation of Disabled Persons
18. Mongolian Gender Equality Center
19. Mongolian Men's Association
20. Mongolian National Association of the Deaf
21. Mongolian National Federation Disabled People's organization
22. Mongolian Women's Employment Support Federation
23. National Center Against Violence
24. OT Watch
25. People's Coalition on food sovereignty of Mongolia
26. Psychological Responsiveness
27. Steps Without Borders
28. The Princess Center for the protection of girls and young women's rights
29. Threshold of the Future
30. Tulgat Zалуу Ger Бул
31. Universal Progress & Independent Living Center
32. Water hole Rapid keep in foundation
33. Young women for Change
34. Youth for Health
35. Zorig Foundation

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