

НЭГДСЭН ҮНДЭСТНИЙ БАЙГУУЛЛАГЫН ХҮНИЙ ЭРХИЙН ЗӨВЛӨЛД ИЛГЭЭСЭН ХҮНИЙ ЭРХИЙН ТӨЛӨВ БАЙДЛЫН МЭДЭЭЛЭЛ

ХҮНИЙ ЭРХИЙН ТӨЛӨВ БАЙДЛЫН ЭЭЛЖИЛТ ДҮГНЭЛТ ХЭЛЭЛЦҮҮЛЭГ (UPR – UNIVERSAL PERIODIC REVIEW) ГЭЖ ЮУ ВЭ?

Хүний эрхийн төлөв байдлын ээлжит дүгнэлт хэлэлцүүлэг (UPR - Universal Periodic Review) нь НҮБ-ын гишүүн 192 орны хүний эрхийн төлөв байдлыг 4 жил тутамд дүгнэн хэлэлцэх цоо шинэ механизм юм. НҮБ-ын Ерөнхий Ассамблейн 2006 оны 3-р сарын 15-ны өдрийн 60/251 тоот тушаалаар НҮБ-ын Хүний Эрхийн Комиссыг Хүний Эрхийн Зөвлөл болгон өөрчлөн байгуулж, “бүх гишүүн улсынхаа хүний эрхийн талаар олон улсын өмнө хүлээсэн үүрэг, амлалтын биелэлтийг олон талын үнэн бодит мэдээлэлд үндэслэн цогцоор нь дүгнэн хэлэлцүүлэх” эрх олгожээ.

UPR нь ямарваа нэг гэрээ конвенциор хязгаарлагдахгүйгээр хүний эрхийн бүхий л асуудлыг нэг дор авч хэлэлцэх боломж олгож байгаагаас гадна НҮБ-ын бүх гишүүн улсыг хамрах болсноороо хүний эрхийн бусад олон улсын механизмуудаас илүү ач холбогдолтой юм.

UPR-ийн туйлын зорилго нь дэлхийн бүх хүний тусын тулд улс орнуудын хүний эрхийн нөхцөл байдлыг газар дээр нь сайжруулахад оршино. Энэ зорилгодоо хүрэхийн тулд улс орнууд дахь хүний эрхийн төлөв байдлыг үнэлэх, хүний эрх зөрчигдөх тохиолдол бүрд анхаарлаа хандуулах боломжийг эрэлхийлдэг. Түүнчлэн Хүний Эрхийн Зөвлөлөөс бүх улс оронд ялгаваргүй, тэгш хандах, гишүүн орнууд хамтран ажиллах зарчимд үндэслэн улс орнуудад техникийн туслалцаа үзүүлэх, хүний эрхийн салбар дахь сайн туршлагаа хуваалцах, харилцан суралцах боломжийг олгох, хүний эрхийн асуудлаа нааштайгаар шийдвэрлэх чадавхийг бэхжүүлэх чиглэлд анхааран ажиллаж байна.

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МОНГОЛЫН ТӨРИЙН БУС БАЙГУУЛЛАГУУДЫН ФОРУМ

MINING, ENVIRONMENT AND HUMAN RIGHTS¹



The ecosystem of Mongolia, with its nomadic culture, is very fragile, because it is susceptible to a 300 percent higher climate-change impact compared to the global average due to the country's location in high altitude regions. Land degradation has affected 72 percent of Mongolia's total territory; the deterioration of water quantity and quality is increasing at an alarming pace with 852 of 5,128 rivers and streams, 2,277 of 9,306 springs, 1,181 of 3,747 ponds and 60 of 429 spa resources completely dried out. Recent development and economic benefits in the mining sector have brought environmental, air, and water pollution, which results in violation of human rights and freedoms due to a lack of coordination between minerals law and other related laws and their

ineffective implementation. The rapid growth in the mining sector has also caused forced migration of rural populations previously employed in the livestock, crop and tourism sectors to urban areas. The Government is negligent in fulfilling its obligations taken under the Kyoto protocol, human rights treaties, Ramsar Convention on Wetlands, Convention on climate change, world heritage, biological diversity, and others. Moreover, it has breached its Millennium Development Goals commitment «7a. to take under environmental protection 30 percent of land by 2015» and freed up a total of 62,256.58 hectares of land from 25 protected areas for a period of 2.9-6.3 years for mineral explorations to be funded by the central budget.

The most commonly violated rights of citizens are:

- To live in a safe environment, to be protected from loss of ecological balance
- To preserve their cultural heritage, to choose and protect their source of livelihood income
- To own and possess land
- To be provided with a clean water resource
- To work
- To take part in decision making, to restore violated rights

CHALLENGES, THEIR CAUSES AND CONSEQUENCES

Contradictions exist between environmental laws. There is also a lack of standards for natural resource use, standard parameters to analyze implementation of related laws, implementation of standards for environmental protection, and regulation of dispute resolution procedures.

- Environmental impact assessments are carried out after licenses have been issued, as the Law on Environmental Impact Assessment is not coordinated with land and minerals law. Therefore, it lacks force to influence decision making.
- Licenses for extraction are issued in areas with limited access to water and where researchers have concluded that mining causes irreparable damage.
- The stipulation of the right to claim environmental damage by the State is not implemented due to conflict of interest.
- The control over storage, transportation and use of toxic chemical substances is weak.

CASE²

203,508m³ of soil in 120 units covering a total area of 53.5 hectares of land of 10 soums in 4 aimags have been contaminated with cyanide and mercury. 14,565 hectares of land nationwide have been damaged by extractive industry since 1992, of which only 3,708 hectares were simply leveled as a form of technical restoration.

Exploitation of phosphorus deposits near Lake Huvsgul, which contains 74 percent of Mongolia's fresh water resources, has been allowed despite scholars' conclusion that the mining process will adversely impact the environment, human population and wildlife surrounding the lake, and consequently will pollute Lake Baikal. Projects are moving forward to divert rivers Orkhon, Onon and Herlen in order to exploit Oyu Tolgoi and Tavan Tolgoi deposits regardless of protests by local residents.

Tavan Tolgoi coal mine is transporting raw coal through sensitive and fragile desert soil, trucking it 240 km along 32 separate (parallel) soil roads using 80-100 ton open dump trucks with no standard cover. Soil and vegetation along this "coal road" are severely damaged, and the level of contamination is so high that it is forcing out herders, thus creating a new group of "refugees".

¹ This factsheet is based on the report submitted by NGOs to the UN Human Rights Council. The full report is available at www.upr-mongolia.mn.

² Cases and data are based only on the information provided in the NGO report.

<ul style="list-style-type: none"> Violations such as non-rehabilitation of mines after extracting the minerals, use of obsolete exploitation technologies, transportation of the extracted minerals using heavy open dumptrucks with no standard cover, and blazing multiple trails through pastures to every mine are damaging the environment, causing pollution of water resources, their basins and surrounding areas, and consequently, their extermination. This brings a negative impact far beyond Mongolia, damaging the environment and biodiversity in the whole region. 	<p>Gold extraction for the past 15 years, diverting and drying up rivers, and use of toxic chemical substances in rivers and streams are affecting the quality and quantity of 50 percent of the water that flows from Mongolia to Lake Baikal.</p>
<p>There is no mechanism to secure, protect and restore the rights of nomadic herders to their pasture and hay land, and winter camps.</p> <ul style="list-style-type: none"> Citizens and herders who have lost their land or have been forced to move, are left without any livestock, with no assets for patrimony and with no possibility of succession of the nomadic cultural heritage to future generations. As a result of losing their source of livelihood, they are now turning into domestic migrants. 	<p>Mongolia has over 300 soums, 90 percent of which have mining and almost third of which have lost over 50 percent of soum territory to mining licenses. For instance, 90 percent of the territory of Zaamar, Khongor, Khanbogd, and Tsogttsetsii soums has been licensed for mining.</p>
<p>Issuance of mining licenses often breaches international treaties and national laws, and lacks any control.</p> <ul style="list-style-type: none"> Land Law stipulates that land shall be utilized based on land use plans coordinated at all levels of government. The Minerals Law, on the other hand, does not carry this provision, and thus, mining licenses are issued without consideration of the land use plans. This in turn violates citizens' rights to live in a safe and secure environment, protect their source of livelihood income, and protect their health. 	<p>Licenses are issued permitting mining/exploration in protected areas, natural, cultural and historical sites, and in close proximity to human settlements. For example, a license for uranium exploration was issued for Janchivlan located just 70 km outside Ulaanbaatar where 50 percent of the entire population resides. Licences have been issued in Zaamar, Hongor, Tsogttsetsii, Tsenhermandal, Khanbogd and Murun for mining gold, copper and phosphor deposits.</p>
<p>There is no mechanism to ensure the citizens' right to participate in decision making; NGOs and CSOs have no right to claim damage to public interest.</p> <ul style="list-style-type: none"> Citizens are not entitled to participate in the decision-making process even when their rights are seriously violated through eviction, deportation and forced resettlement. 	<p>The Minerals Authority, despite protests of Tsogttsetsii soum residents, has issued exploration and extraction licenses on the soum center, pasture, crop and hay land.</p>
<p>The rapid development of the mining sector has brought new challenges.</p> <ul style="list-style-type: none"> There is an automatic increase in population of some soums and settlements, which results in further violations, as the budget for health, education and other public service delivery is based only on the number of registered residents. There are over 100,000 artisanal or so-called "ninja" miners, and this number is expected to rise because of an increasing population of herders who lost their livestock, as well as the poor in urban and rural areas. It also includes citizens who lost their land due to issuance of exploration and exploitation licenses. Soums, which have been transferred to a new system of self-financed budgets through collection of land and water use fees from mining companies, are now entirely dependent on the gold extracting companies. 	<p>There are 2,800 registered residents in Tsogttsetsii soum; however, 5,800 people now reside there. The local government struggles to deliver public services with a budget accounting for only 2,600 people, and this in turn creates an additional workload on soum staff and violates their basic rights.</p> <p>The "ninja miners" suffer from violation of their basic rights to life, to be free of slavery, child labor, prostitution and violence, to work in safe working conditions, to social benefits and services, and to own and bestow property.</p> <p>In 2009, an exploration license was issued by Citizen Representative Hural of Eruu soum in Selenge aimag on land set aside as a local special needs land resource in return for US\$20,000. The case is now being investigated.</p>

THEREFORE THE MONGOLIAN NGO FORUM RECOMMENDS FOLLOWINGS:

1. Join the UN Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters;
2. Incorporate into national legislation the principles of the UN Declaration on the Rights of Indigenous Peoples, ratify and enforce ILO Convention 169;
3. Amend Article 57.2 of the Minerals Law to disclose mining contracts and related documents for public scrutiny and compliance monitoring by civil society organizations and the local population;
4. Improve the legal framework of artisanal mining to ensure protection of human rights of citizens engaged in this sector;
5. Incorporate in national legislation and enforce human rights protection, public litigation, redress and remedy mechanisms;
6. Extend the definition of Special Needs Land to explicitly include sites designated under multilateral environmental agreements and natural sacred sites;
7. Return land made available for mineral explorations under Cabinet Resolution 86 to environmental protection jurisdictions, take real measures to increase percentage of land taken under protection as per the MDGs commitment, and report to the UN on measures taken;
8. Suspend licenses issued for mining activities in close proximity of human settlements; carry out detailed environmental and social impact assessments audited for compliance with international standards and re-issue licenses upon open public discussion;
9. Develop and implement policy to include Lake Huvsgul in the list of natural resource sites of international significance;
10. Apply for technical and financial assistance to international donors in introducing environmentally friendly technological know-how, developing advance technologies for nature restoration, mining and renewable energy;
11. Introduce Water Disclosure as a requirement for companies mining strategic mineral deposits in arid and water-stressed areas;
12. Require audited, international standard assessments and evaluation of economic and social impact of mining as pre-condition for investment contracts and mining permits; develop and implement policy for mitigating and preventing adverse impact;
13. Create and enforce mechanisms for monitoring and evaluation of compliance with ISO 14000, Company Social Responsibility policies.

THE RIGHTS OF PERSONS WITH DISABILITIES¹



The Government of Mongolia ratified the United Nation's Convention on the Rights of Persons with Disabilities and its Optional Protocol, and enacted legal documents and national programs to protect the rights of persons with disabilities. Persons with disabilities, however, still cannot fully enjoy their human rights and live independently due to inadequate implementation

mechanisms currently in place. In addition, most policies aimed at persons with disabilities are dominated by the attitude that regards them not as rights holders, but as objects of social welfare. Furthermore, soft and hard infrastructure such as public places and buildings, roads and streets, health care, the educational system, and information, still lack accessibility.

The most commonly-violated rights of persons with disabilities are:

- To live independently
- To participate in society fully and effectively
- To work
- To receive education and information
- To travel freely and independently
- To live in a safe, secure environment
- To receive health care services

CHALLENGES, THEIR CAUSES AND CONSEQUENCES

The principle of "Accessibility" in the UN Convention on The Rights Of Persons With Disabilities is not wholly incorporated into any national legislation.

- There is still a lack of unified standards responsive to the needs of persons with disabilities.
- In the city, except for taxis, persons with disabilities have the right to travel free of charge by public transport, but in practice this right still cannot be realized.
- There are no legal provisions regulating travel between cities.
- Access to information by persons with disabilities is still a very new concept among policy makers.

Implementation of legislation providing for the right of persons and children with disabilities to education is inadequate.

- There is no suitable environment for children with disabilities to study.
- Teachers are not trained to work with children with disabilities; teachers' training curricula does not include such training programmes.
- There is not a sufficient number and choice of books accessible to children with disabilities.
- There is a discriminatory tendency to exclude children with disabilities from public schools. Special needs schools are regarded as suitable by many.
- Access to tertiary education is still very limited.

CASE²

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 in rural areas 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 sign-language dictionary and one news programme with a sign language interpreter broadcasted on National Broadcasting Television.

Although 50 percent of children with disabilities enroll in secondary schools, only 14 percent 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.

¹ This factsheet is based on the report submitted by NGOs to the UN Human Rights Council. The full report is available at www.upr-mongolia.mn.

² Cases and data are based only on the information provided in the NGO report.

The methodology and accountability system to implement legislation that supports the right of persons with disabilities to work is not clear.

- The work environment is not accessible, and the system to support employers of persons with disabilities is highly bureaucratic. Therefore, they are exposed to the risk of labor exploitation and servitude by family members.

There is no comprehensive study on employment of persons with disabilities. According to a survey conducted in 2004, only 26.4 percent are formally employed.

There is no governmental policy to support self-employment and entrepreneurship of persons with disabilities.

- The government activity to support self-employment is limited to involving persons with disabilities in trainings on making a few types of handicraft. This forces them to be engaged in low-productivity employment.

Bank and financial organizations refuse to issue loans to persons with disabilities. Handicrafts made by persons with disabilities are time-consuming, non-competitive in the marketplace and generate little profit.

The pensions and social benefits provided for persons with disabilities are very low.

- With the pensions and benefits they receive, persons with disabilities cannot be self-sufficient, and must depend on others for support.
- Family members and caregivers discriminate against them and regard them as a burden.

The minimum standard of living is set at US\$ 60.48 per month; but the average pension persons with disabilities receive is US\$47 and the social benefit is US\$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 only US\$17.5 per month.

There are no reliable sources of information and data on persons with disabilities.

- Government policies fail to effectively respond to the interests of persons with disabilities, and to protect their human rights and freedoms.

There are 79,000 persons with disabilities registered according to official statistics and 121,000 according to unofficial data. While there are 6,897 children with disabilities registered in official data, the Ministry of Education, Culture and Science claims the number is 35,899.

The issue of persons with disabilities is regarded as the sole responsibility of the Ministry of Social Welfare and Labour.

- There is no effective cooperation among responsible organizations.
- Legislation and regulations lack coordination. As a result, the implementation of legislation is adversely affected.

The National Committee to support persons with disabilities does not have a full time staff. Some years, the Committee conducts no meetings.

The Social Welfare Law's provision on "Community-based welfare service" lacks effective implementation.

- Persons with disabilities are dependent on their caregivers and are discriminated against.
- They face pressure, derogation, and hate by family members. They are even exposed to the risk of losing their lives.

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.

There is a discriminatory attitude among public and governmental officials which regards persons with disabilities as mere objects of social welfare and as an inactive group in society.

- This negative attitude leads to the violation of human rights of persons with disabilities, restricts their opportunity to fully participate in the society, and adversely affects implementation of international human rights treaties and national legislation.
- Families of persons with disabilities also face discrimination.

According to a survey, 46.6 percent of children with disabilities face difficulties in school because of bullying and intimidation by other children.

THEREFORE THE MONGOLIAN NGO FORUM RECOMMENDS FOLLOWINGS:

1. Develop and implement legislation based on the human rights approach to provide for and protect the rights of persons with disabilities, introduce international practice and experience, establish an independent body with a sustainable operation to address the issue of persons with disabilities as a whole;
2. Introduce international practice and the latest technological achievements and take unified action to make public transport, buildings, facilities, roads, streets, and information accessible by persons with disabilities;
3. Implement legislative provisions on professional and methodological support for teachers to provide them with the skills to work with children with disabilities, take action to enhance teachers' capacity, legalize the learning of Braille, audio books, and sign language and set standards, provide guideline and support to facilitate the learning process;
4. Improve the mechanism to support employment of persons with disabilities, establish a legal framework to address the issue of caregivers, pensions, benefits, and employment to prevent persons with disabilities from being subject to labour exploitation;
5. Set different pension standards depending on the disability type and take action accordingly; incorporate in the Housing Programme the issue of persons with disabilities and finance it from the State budget in order to support independent living and individual autonomy of persons with disabilities;
6. Ensure accessibility of medical service, hospitals, devices, and equipment by persons with disabilities, finance drugs used on a permanent basis from the State budget.

THE RIGHT TO ELECT AND TO BE ELECTED ¹



The majority of principles and standards of the right to elect and to be elected, endorsed by international conventions, have been translated into the Constitution of Mongolia and election-related laws. However, inadequate implementation has resulted in public criticism of election processes, protests and demonstrations, and invalidation

of election outcomes due to insufficient voter turnout. For instance, on July 1, 2008, a state of emergency was declared for the first time ever as a result of public protest over election results for the State Great Hural (Parliament).

CHALLENGES, THEIR CAUSES AND CONSEQUENCES

The right to equal suffrage is not articulated in the Constitution or in the election-related laws of Mongolia.

- This leads to loss of principle of equality: One Person One Vote One Value, the requirement to set equal number of voters for each electorate.
- Candidates do not have an equal opportunity to compete.

One of the most important components that ensure the principle of universal and equal suffrage is registration of all eligible voters in the voter register. The registration process, however, lacks implementation as required.

- There have been cases of illegal exclusion of voters from registration, overlapping, increasing and decreasing the number of voters. This violates and denies the right of voters to elect and to be elected, and some citizens are left unable to cast their vote.
- Independent monitoring of voter registration is restricted as voter registers are not released in the time prescribed by law.

The principle of fair elections is violated at all stages of election process (e.g. during casting and counting of ballots).

- The polling station committees are composed only of representatives from two big parties with no representation of smaller parties and independent candidates. This leads to distrust and suspicion in election processes.
- During the 2008 Parliamentary elections, the General Election Commission knew that ballot casting and counting would occur long hours before the elections commenced.

CASE²

Depending on the size of the electorate, a voter may cast ballots for 2-4 candidates. Thus, while one member of Parliament is represented by 39,617 voters, the other can be represented by only 13,398 voters. Election campaigns for incumbent public officials usually last longer, candidates from ruling parties use public resources despite its being banned by law. Registration criteria set for independent candidates are stricter than for those from prominent parties. After the 2008 parliamentary elections, 3 candidates from smaller parties were detained while under election candidate immunity before election results were announced and without approval of the District Election Committee.

- Three institutions assigned to accomplish voter registration registered very different numbers of voters, with the discrepancy equaling 20-24 percent of the total number of voters.
- The number of voters registered for the 2008 Parliamentary elections and elections to local parliaments that took place in less than 4 months differed by 237,272 voters or 14-18 percent of the total number of voters.
- During the by-elections held in October 2009 with an electorate of 98,747 voters, the polling station committee managed to omit 27,043 voters from the register using the excuse of reviewing the list.
- Polling station committees consist of 13-15 members for average stations with 2,000-6,000 registered voters. The increased workload leads to long queues with some voters not getting to vote.
- During the 2008 Parliamentary elections, polling station committees worked continuously for a total of 87 hours with actual vote-taking lasting 15 hours and counting of ballots lasting 72 hours. The efficiency and reliability of people who have continuously worked for 4 days and nights is obviously questionable.

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<p>There is a lack of court control over election processes, and there is no mechanism to restore the violated rights of citizens.</p> <ul style="list-style-type: none"> • This allows election committees to take “arbitrary action” with no punishment, and prevents citizens from claiming and restoring their right to elect and to be elected in case of violations. 	<ul style="list-style-type: none"> • Courts often drop complaints and cases for restoration of violated rights. • Although election committees are prescribed by law to resolve election disputes before they are brought to courts, they refuse to receive and resolve complaints, adjudicate cases, and take no responsibility for their inaction.
<p>There is no legal framework that provides for independent monitoring of election processes on behalf of voters.</p> <ul style="list-style-type: none"> • Initiatives taken by civil society organisations to conduct independent monitoring of election processes encounter restrictions. 	<p>The election laws provide for openness of all election processes with the exception of balloting. However, election processes continue to be closed with no access for civil society and other independent monitors.</p>
<p>The provision in the Law on Parliamentary Elections on “no less than 30 percent women candidates” quota was annulled prior to the 2008 elections.</p> <ul style="list-style-type: none"> • Women have a limited right to be elected in the legislature. 	<p>Mongolian women, who represent 51 percent of the total population, have only 3.9 percent representation in the legislature.</p>
<p>The Law on Parliamentary Elections entitles only citizens living in the country to cast their votes.</p> <ul style="list-style-type: none"> • This violates the right of voters residing overseas to participate in elections. 	<p>250,000 voters, representing 18 percent of the total number of voters, are denied their right to elect and to be elected.</p>
<p>Persons with disabilities have limited opportunity to exercise their right to elect and to be elected.</p> <ul style="list-style-type: none"> • Access to objective and impartial information becomes limited, depending on their disability. • Polling rooms are not accessible for persons with disabilities. 	<p>85 percent of eligible disabled voters have never cast their vote.</p>
<p>There is negligence on the Central Election Commission’s part to fulfil its responsibility to improve voter education and information.</p> <ul style="list-style-type: none"> • Citizens have poor knowledge of the principles of election processes and their right to elect and to be elected. 	<p>Citizens are participating less actively in elections; and due to low voter turnout, election outcomes are often affected by money and goods promised and handed out to citizens.</p>

THEREFORE THE MONGOLIAN NGO FORUM RECOMMENDS FOLLOWINGS:

1. Incorporate the equal suffrage principle in the Constitution and election laws; establish a legal environment for independent monitoring by civil society organisations, and allow civil society and voters to participate in the process;
2. Revise the polling room standards in accordance with the principle of secret balloting with due regard to the special needs of disabled voters;
3. Change the composition of election committees and create favourable working conditions, as they play an important part in guaranteeing free and fair elections;
4. Establish procedures to enable voters residing overseas to exercise their right to vote;
5. Re-establish the “no less than 30 percent women candidates” quota provision set for political parties;
6. Incorporate in the election laws provisions regulating election disputes, their jurisprudence and procedures, and their enforceable accountability system.

FOOD SAFETY, SOVEREIGNTY AND HUMAN RIGHTS¹



Mongolia is predominantly an agricultural economy with a unique nomadic livestock-herding tradition. Despite the vast territory, small population, and millions of livestock, the citizens' right to food is seriously violated. Due to poverty, 1 out of 4 children less than five years old is stunted, 1 out of 8 is underweight, 32.1 percent suffer

from rickets, 43.2 percent suffer vitamin D deficiency, 37.1 percent of pregnant women and 30.5 percent of women in the post-natal period suffer from vitamin D deficiency. Nationwide, 57.9 percent of households are unable to consume calorie-rich food.

The most commonly violated rights of citizens include the right to:

- Adequate food
- Safe food
- A sufficient amount of food
- Affordable and adequate food
- Be free from hunger
- A traditional diet

CHALLENGES, THEIR CAUSES AND CONSEQUENCES

The fulfillment of obligations taken under international treaties and conventions is unsatisfactory.

- The report on the implementation status of International Covenant on Economic Social and Cultural Rights was not submitted on time.
- Actions undertaken by the Government in line with UN recommendations and questionnaire are inadequate and lack tangible results.

During re-drafting of the Law on Food in 1999, many important provisions guaranteeing the basic rights to adequate food, including implementation methods, policies, and government functions were eliminated. There is no holistic legal environment to date which guarantees and protects the citizens' right to adequate food, rectifies damages, obtains compensation, and files complaints.

- Current laws only address the issue of food supply and safety.
- The National Human Rights Action Programme does not include any provisions on the citizens' right to food.
- There is no mechanism to ensure the citizens' right to access safe, nutritious food satisfying traditional dietary needs at reasonable and affordable prices. These rights are still very much violated.

CASE²

The UN Special Rapporteur, mission to Mongolia in 2004 concluded that Mongolia has become dependent on imported food, leading to the loss of food sovereignty. However, no measures have been taken by the Government. Food importation continues to rise. Now, almost 80 percent of food products consumed in Mongolia are imported.

- 60 percent of households are undernourished with minimum daily intake of calories.
- Households from vulnerable groups consume small amounts of 2-3 types of low-calorie, non-nutritious food products for extended periods of time.
- While there is a sufficient supply of food products, the majority of the population is unable to consume the recommended intake of food due to high food product prices which exceed their income. In order to achieve adequate daily intake of calories, at least US\$4.20 a day or US\$126 a month is to be spent on food. However, the minimum wage level, set at US\$60.80 (net amount), is far too low to cover the cost.

¹ This factsheet is based on the report submitted by NGOs to the UN Human Rights Council. The full report is available at www.upr-mongolia.mn.

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Food-safety monitoring and inspections are weak, personnel lack necessary skills and capacity, and the technical capacity of laboratories is low. In addition, corruption and unethical behavior of public servants hinder any improvements.

- The right to safe food is exposed to serious violation.
- Diseases of the digestive system are on the rise, contributing to fatal cases.
- Veterinary centers lack capacity to diagnose and treat diseases such as brucellosis, tuberculosis, leucosis, and other diseases contracted from affected animals.

Implementation of food supply and agricultural programs is unsatisfactory.

- These programs lack any tangible improvements that can ensure the citizens' right to food.

The government policy to support domestic production and family businesses is insufficient because it lacks favourable conditions on taxation and interest on loans. Also, the supply chain does not provide equal access.

- Citizens are denied the right to a traditional diet suited to the environmental and weather conditions.
- Individual herders and farmers do not have an opportunity to directly access the market and to improve their livelihood.

Use and ownership of land and mining activities are not controlled.

- Large companies have come to own large plots of land, which are usually leased to small businesses, reducing their profit.
- Water sold at low cost to large companies for irrigation and mining purposes has resulted in excessive and uncontrolled use of water sources.

There is a lack of effective programs and policies providing: independent monitoring of international funds by CSOs, public participation, disclosure of information to the public, and protection of the right of households to adequate food.

- Households from vulnerable groups continue to face severe food shortages, and domestic production remains low despite the high level of financial assistance.

The National Human Rights Commission has not taken any measures to establish a legal framework to guarantee and protect the right to safe and adequate food and redress mechanisms.

Tests and inspections at the State Special Inspection Agency (SSIA) determined that 17 percent of 97,451 samples tested and 39 percent of 463 raw food materials were contaminated. Of a total of 70,926 samples of food products tested at the bacteriological laboratories of SSIA, 9.6 percent were contaminated with bacteria, 4 percent were determined to be poisonous, and 10 percent to contain heavy metal. A mere 40 percent of imported food products are tested at laboratories at border zones and central customs.

About 10 programs, such as "Milk", "Combating Iodine Deficiency", "Ecologically Clean Products," are now being implemented.

Domestic flour plants, meat processing shops, poultry processing houses, dairy producers, and family businesses, not capable of competing with cheap imported food products and not capable of working at their full capacity. Herders and farmers supply their products to the market through middlemen because they lack direct access to the market. Both producers and consumers lose because of this situation.

Herders left with no pasture land and water source are forced to give up their traditional lifestyle and move to the outskirts of cities. 38.5 percent of citizens living in population centers use poor quality water, according to 2007 statistical data.

- According to 2009 data, US\$114.2 millions worth of projects have been implemented by the food and agricultural sector.
- Loans amount to US\$550 per capita. This exceeds the average income of the population and is driving the country into dependency on external financial assistance.

In 2005, the National Human Rights Commission reported on the Status of the Right to Adequate Food and issued recommendations. However, it has not taken any measures in line with its recommendations.

THEREFORE THE MONGOLIAN NGO FORUM RECOMMENDS FOLLOWINGS:

1. Amend the Constitution to include provision guaranteeing the "right to food", and incorporate such provisions in the National Human Rights Action Program;
2. Develop legal provisions to allow public interest litigation;
3. Develop procedures to guarantee the right to adequate food, right to claim compensation for damages, and define obligations of the government in the new draft Law on Food;
4. Establish a legal framework that ensures the independence of human rights protection mechanisms, and builds their capacity to implement the right to food;
5. Submit the 4th UN report on the status of implementation of ICESCR upon open discussion with all stakeholders (The report was not submitted by the time, when this submission to HRC was sent);
6. Improve food safety monitoring and inspection capacity through technical improvement of laboratories and other inspection facilities;
7. Establish an independent laboratory for inspection of sample food products;
8. Provide technical assistance to private veterinary centers; monitor and support the operations of these facilities;
9. Develop a suitable supply chain system for direct delivery from herders and farmers to consumers;
10. Support family businesses and provide technical assistance;
11. Establish a legal framework that will enable the participation of civil society organizations in monitoring and evaluating external financial assistance and funds to ensure efficient and effective use.

“JULY 1” AND HUMAN RIGHTS VIOLATIONS¹



The declaration made by a political party of its «apparent win» during the 2008 Parliamentary elections before the official results were announced, triggered protests by the electorate and civil movements, which later escalated into a riot. A State of Emergency was imposed, and under the pretext of its implementation over 700 people were arrested and detained as «organizers of the July 1 riots». Of these, 450 were investigated, of

which approximately 300 were charged and 270 sentenced to 6 months to 5 years imprisonment. In addition, about 20 persons were injured by firearms, 4 were shot dead, and 1 suffocated in a fire. The protests demonstrated the dissatisfaction of society with years of injustice, corruption, unfair elections, political ineptness, and inaction by the ruling forces.

The most seriously-violated rights of citizens involved in the “July 1 riots” were the right:

- To life
- To personal liberty and safety
- To peaceful assembly
- To legal defense
- To a fair and independent trial
- Not to be subjected to torture

CHALLENGES, THEIR CAUSES AND CONSEQUENCES

The Mongolian citizen’s right to life was seriously violated.

Little has been done so far to bring national legislation into conformity with international treaties and conventions ratified by the Government.

- The legal framework to prevent torture and impose accountability on officials involved in torture still lacks effectiveness.
- Under the provisions of the Law on Demonstration, peaceful assemblies and demonstrations “not registered” with local authorities are treated as unlawful. This limits the right of citizens to peaceful assembly.

CASE²

While it has been established that death was caused by police fire arms, the case against police officers was dismissed in the pre-trial stage on the grounds that no criminal offence was committed. The head police officers were exonerated under the 2009 Presidential Amnesty.

- The Government fails to submit its ICCPR reports promptly and public education and awareness activities on UN recommendations are unsatisfactory.
- Human rights activists and families of detainees protesting mass arrests were detained for 14 days on the grounds that the assembly was not “registered” with the local authorities.
- Allegations made by a mentally-handicapped youth that he was paid 1 million MNT to participate in the riot were broadcast repeatedly through the public media.

¹ This factsheet is based on the report submitted by NGOs to the UN Human Rights Council. The full report is available at www.upr-mongolia.mn.

² Cases and data are based only on the information provided in the NGO report.

Provisions of international treaties and conventions to which Mongolia is a party, the Constitution, Criminal Code and Criminal Procedure Code, were seriously breached.

- Violations occurred: the right to defense and legal assistance, statutory provision of police to notify family members upon arrest, arrest and detention procedures to be under the control of the court, and not informing the duty of witnesses.
- The principle "if collecting and documenting evidence are not complied with or are violated, the evidence shall lose its probacy value and may not serve as a ground for court decision" was breached.
- The UN Convention on Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice were violated.

- The initial interrogations were all conducted without advocates present. Subjects specifically prescribed by the law to be in the presence of advocates were interrogated without advocates.
- From 3 to 7 days after the arrests, over 70 families did not know where their family members were.
- Police officers threatened and beat up detainees, coercing them to testify against themselves, and many of these detainees were convicted for crimes they did not commit. Files of witnesses' statements and evidence materials were photocopied to charge other detainees with criminal offences.
- Minors were sentenced to imprisonment for long periods of time.

Inquirers and investigators were involved in activities to maintain public order.

- The provisions of the Criminal Procedure Code were violated.

An Inquirer who was interrogated as a victim interrogated suspects to obtain evidence.

The Human Rights Sub-committee (HRS) of the Parliament, the National Human Rights Commission (NHRC) and the Constitutional Tsets, which constitute the human rights protection mechanisms, failed to fulfil their obligations.

- There are mechanisms neither to restore infringed-upon rights nor to hold accountable offenders in the event of violation of rights by State institutions.

- The activities and decisions of the HRS depend a great deal on the composition of its members and to what party the majority of its members belong, and serve the interests of those members.
- The absence of authority by the Constitutional Tsets to review decisions of the Supreme Court makes it possible for courts to issue decisions contradictory to Constitutional provisions.
- The NHRC does not concentrate its activities on establishing an effective mechanism for ensuring human rights, for protecting and restoring infringed rights, or for compensating damages suffered, because its regulatory law does not provide for its independent activities and does not conform to the Paris Principles. The HR Commissioner and members are composed of political appointees without experience or expertise in human rights issues. This explains why the NHRC made the irresponsible statement that "human rights were not infringed" during July 1-4 state of emergency, which led to the arrest of innocent people who were consequently charged with criminal offences.

Court proceedings failed to be fair and impartial.

- All three instances of the Mongolian judiciary violated the basic rights of citizens arrested during the July 1 events; specifically, their right to life, their right not to be subjected to torture, their right to freedom of thought, opinion and expression, to the presumption of innocence, and to legal assistance. Additionally, it failed to restore the infringed rights.

- Court sessions were closed under the pretext of protecting the rights of involved juveniles, thus breaching the right of citizens to fair, independent, and open court proceedings.
- The principle of issuing court decisions based on thorough and objective examination of existing evidence was violated; the approach based on "prove the guilt" prevailed.
- A statement given by a witness, who was interrogated as a suspect, was admitted to court as evidence.
- Clients of advocates who referred to international treaties and conventions in their statements were convicted for longer terms.

THEREFORE THE MONGOLIAN NGO FORUM RECOMMENDS FOLLOWINGS:

1. Amend provisions of the Criminal Procedure Code based on the human rights approach;
2. Join the Optional Protocol of the UN Convention Against Torture, create a legal framework for implementation of independent monitoring by NGOs that meet specific requirements;
3. Amend the Law on the Constitutional Tsets and create human rights protection mechanisms;
4. Take action to improve human rights understanding, knowledge, and capacity of judicial employees;
5. Conform the Law on NHRC to the Paris Principles, and select people with experience and expertise in human rights issues;
6. Set performance evaluation procedures for law enforcement officers based on protection of human rights.

MIGRANTS AND REFUGEES' RIGHTS¹



While Mongolia, within the framework of its national legislation, has procedures regulating international and internal migration, violations of the fundamental human rights and freedoms of migrants provided for in the Constitution of Mongolia and in the

Universal Declaration of Human Rights still occur. There is a lack of unified policies addressing refugees' needs, and an absence of a legal framework addressing their rights. This also creates obstacles in dealing with issues concerning foreign citizens seeking asylum in Mongolia.

The most commonly violated rights of migrants and refugees are:

- To live in safe and secure environment
- To adequate housing
- To health care
- To education
- To elect and be elected
- To work
- To own land
- To live in their native place
- To engage in traditional husbandry

CHALLENGES, THEIR CAUSES AND CONSEQUENCES

There is no legal framework dealing with the issue of immigrants and refugees. Mongolia has not ratified international conventions addressing their rights.

- There is no legal framework to protect the rights and interests of refugees, which in turn results in violations of international customary law. Lack of information and data on refugees prevent human rights organizations from dealing with their issues.
- The rights and freedoms of immigrants and their families are exposed to violation.

There are no mechanisms to monitor the implementation of bilateral employment agreements.

- Labour safety regulations are poorly implemented, and people working overseas are exposed to the risk of enduring health problems, and even losing their lives.

CASE²

- In 2009 an Inner Mongolian seeking asylum in Mongolia was deported whilst his applications were being processed.
- The issue of refugees coming from North Korea is dealt with only by the support of international organisations, not by the Government.
- There is no data on refugees leaving Mongolia.
- As of 2008, about 38,000 foreign citizens, including stateless persons, resided in Mongolia.

Although only healthy citizens are recruited abroad, they endure some form of health problem in 3-5 years. 326 Mongolian citizens working in South Korea died between 2004 and 2007.

¹ This factsheet is based on the report submitted by NGOs to the UN Human Rights Council. The full report is available at www.upr-mongolia.mn.

² Cases and data are based only on the information provided in the NGO report.

Mining licenses are issued for areas with fertile soil and pasture land, and along the main water sources.

- It causes serious violations of the rights of herdsmen to lead traditional nomadic livestock husbandry and to live in their native place.

The occurrence of natural disasters and the amount of damage and loss they cause are increasing. In addition, the fertility of pasture lands is decreasing due to desertification, as well as soil and water degradation.

- Rural populations which lost their source of livelihood are forced to move to urban areas.

There is no unified policy, nor economic and social programs and services aimed at internal migration.

- Rights and freedoms of migrants provided for in international human rights treaties and conventions and the Constitution of Mongolia are under the risk of violation.
- 39.1 percent of migrants settling in the Capital outweigh the capacity of local authorities to provide basic social and economic services.
- The rapid population growth is followed by negative impacts such as increased workload of local kindergartens and schools, inability to work with all pupils, low education quality and accessibility, and discriminatory attitude among teachers.

As a result, the rural-to-urban migration in search of better education, health protection, and opportunity to improve one's life is rising at a rapid pace.

- Migrants are living in inadequate housing conditions with no access to clean water, electricity, sanitation, and waste removal services.
- The lengthy and bureaucratic registration process with its high fines results in migrants not being able to obtain residency IDs in a timely manner. This in turn leads to violation of the right to own land, live in decent housing conditions, participate in elections, and receive basic medical services, primary education, and work.
- Most migrants end up serving as entrance guards for their living
- One third of the migrants are not covered by health insurance.
- Classroom capacity at schools in suburban areas overcrowded with migrants is overloaded. Schools work in 3 shifts with 40-53 pupils per class in each shift. 33.3 percent of migrant children are drop-outs due to lack of registration documents. Children living in remote areas walk 3-4 km to reach their school.

There is no thorough policy addressing the issue of outbound immigrants and their children.

- Families are forced to lead separate lives, and children are denied the chance to live under the love and care of their parents.

Children living without parents' supervision are exposed to the risks of dropping out of school and getting into trouble and crime.

There is no policy to assist migrants voluntarily returning home from overseas and for those deported back to Mongolia.

- They face difficulty in re-adjusting to society and finding employment.
- The rights and freedoms of deported people are frequently violated.

People who could not re-adjust usually try to go overseas again, and frequently choose illegal ways of doing so. Thus, they expose themselves to the risk of becoming victims of human trafficking and drug smuggling.

THEREFORE THE MONGOLIAN NGO FORUM RECOMMENDS FOLLOWINGS:

1. Develop and implement a unified policy addressing the issues of internal and outbound migration, including means of preventing its unfavorable consequences, protection, restoration, and creating favorable conditions for rehabilitation;
2. Improve existing legislation to protect the rights of outbound immigrants and to create a unified registration system and database of citizens living abroad;
3. Study the possibility of conducting consular conventions on dual citizenship to migrants in countries where a considerable number of Mongolian citizens reside and appoint Human Rights Attaches to embassies in those countries;
4. Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
5. Make information and statistics on refugees open to human rights organizations and to the public.

MINORITIES' RIGHTS¹

Ethnic minorities, sexual minorities, people living with HIV/AIDS, and sex workers, form an inseparable part of Mongolian society. However, they face discrimination and violation of their human rights and freedoms as they still are not fully accepted within the broader society due to social misconceptions and negative attitudes towards them. There is no legal framework to provide for, protect, and restore the rights of minority groups; the existing laws are not accessible to them, and

there is no legal mechanism that ensures their right not to be discriminated against. Therefore, minority groups are not able to enjoy their right to education, health care, and employment. Instead, they are exposed to intimidation, harassment, discrimination, violence, hate crimes, sexual exploitation, and human trafficking; they cannot protect their privacy and are often discriminated against on the basis of health status and sexual orientation.

The most commonly violated rights of minorities are:

- To non-discrimination
- To personal liberty and security
- To health care
- To a nationality
- To receive education and information in one's mother tongue
- To preserve and bestow one's cultural heritage
- To freely choose employment

MINORITY GROUP

CHALLENGES, THEIR CAUSES AND CONSEQUENCES²

Ethnic minority

Ethnic minorities are under-represented at the policy-making level, and are entirely absent from it in the case of the Dukha.

- Public policy does not effectively respond to the interests of ethnic minorities; initiatives aimed at them are poorly designed and fail to be implemented.
- The Government still projects an ascribed cultural identity on ethnic minorities that is reminiscent of the socialist era.

Implementation of the National Programme to provide for the right to receive education in one's mother tongue is inadequate.

- The absence of minority-centred education policy causes violation of the right to education and hinders educational achievement.
- There is a lack of sufficiently-trained minority-language educators and a shortage of minority-language textbooks and resources.

Regulation of the right to receive and disseminate information in the mother tongue lacks sufficient implementation.

- There are no print periodicals or regular media broadcasts in minority languages such as Kazakh.
- The Public Broadcasting Law which includes a section on the necessity of editorial programs targeting ethnic minority populations is not effectively implemented.

Current laws are destroying the subsistence methods of the Dukha.

- The Dukha, a reindeer-herding minority who fully qualify under international guidelines as Indigenous or Tribal Groups, are provided no special rights or protections, and their subsistence reliance on hunted wild game for food is threatened by aggressive hunting laws.

The right of Kazakh people to a nationality is violated.

- There are currently many stateless Kazakh individuals as a result of their migration to Kazakhstan in the 1990s.

¹ This factsheet is based on the report submitted by NGOs to the UN Human Rights Council. The full report is available at www.upr-mongolia.mn.

² Cases and data are based only on the information provided in the NGO report.

Sexual minorities	<p>There is no anti-discrimination law aimed at the sexual minority and there is no legal protection.</p> <ul style="list-style-type: none"> • Sexual minorities are discriminated against at all levels including the police, judiciary, health care services, education, the media, and in their own families. • The right to liberty and security, to freedom of association and peaceful assembly, to education and freedom of information, to an adequate standard of living, to work, to enjoyment of the highest attainable standard of health care, and the right to marry and have a family are denied. • Sexual minorities often fall victim to workplace harassment, physical and sexual violence, and hate crimes.
People living with HIV/AIDS	<p>The confidentiality of an HIV-positive person's status or identity is not upheld, non-discrimination on their "health status" is not referred to in the Constitution, and contradictions exist among the Health Law, Law on HIV/AIDS Prevention, and Law on Confidentiality.</p> <ul style="list-style-type: none"> • Pre-employment HIV testing, which is mandatory, violates the rights of HIV-positive people to freely choose their employment. At present, 27 percent of HIV-positive people are employed, 20 percent run private businesses and the rest are unemployed. • The Health Law states that infectious diseases that pose a threat to the public are not included in health status confidentiality, but it is unclear whether HIV/AIDS applies to such diseases. • Articles stipulating that HIV-positive people should immediately tell their spouse or partner and inform medical and health organisations about their HIV status when receiving health service directly contradict the Law on Confidentiality, which states that "an individual shall protect his own secrets". This results in discrimination and violation of privacy, confidentiality, and the human rights of HIV-positive people.
Sex workers	<p>Sex work is prohibited in the Law on Combating Prostitution and Pornography, and there is a widespread negative attitude towards sex workers in society. Therefore, they are forced to lead hidden lives due to the risk of discrimination, verbal, physical, and sexual abuse.</p> <ul style="list-style-type: none"> • Sex workers face the risk of being verbally and physically abused by clients, which at times has led to deaths, and of being trafficked for forced sex work. • They get fined and detained by police; they also suffer physical and sexual violence in detention • The psycho-social impacts of sex work can be seen in women losing confidence in their futures through guilt, shame and depression.

THEREFORE THE MONGOLIAN NGO FORUM RECOMMENDS FOLLOWINGS:

1. Draft and enact an Anti-discrimination law, and establish a monitoring mechanism of its implementation;
2. **Ethnic minority:** Develop mechanisms to ensure the participation of ethnic minorities in the policymaking process; establish and implement education policy aimed at them; ratify ILO Convention 168, which provides and protects the special rights of ethnic minorities; immediately address issues of statelessness; within the framework of the National Human Rights Action Programme and the Public Broadcasting Law, ensure that a minimum number of minority-language publications and media broadcasts are supported through State funding on a permanent basis; translate public documents and information, particularly pertaining to policy, and make them available to ethnic minorities in their mother tongue;
3. **Sexuality minority:** Ensure marriage equality and provide legal recognition to same-sex marriage in line with obligations taken under international human rights treaties; enact anti-hate crime and provide for speedy and effective criminal, administrative and civil remedies; ensure privacy and confidentiality of information, emphasize education and conciliation; end surveillance of LGBT persons on the basis of their sexual orientation and/or gender identity and disclose the criteria on which persons may be surveilled as such surveillance interferes with LGBT persons' rights to privacy, life, liberty and security both directly and indirectly; amend the Domestic Violence Law to include specific references to domestic violence against LGBT persons;
4. **People living with HIV/AIDS:** Amend Labour Law on non-discrimination in the workplace based on HIV status; establish a legal framework that ensures privacy and confidentiality of persons;
5. **Sex workers:** Decriminalize sex work; impose penalties on the clients of sex workers; undertake initiatives to inform sex workers of their rights and help protect those rights; provide assistance to them to find alternate sources of income.

HUMAN RIGHTS STATUS IN MONGOLIA

NGO Forum joint submission on human rights ¹

The Government of Mongolia has ratified key human rights conventions of the UN, but it fails to fulfill its obligations taken under the international human rights treaties, to report on the status of implementation in due course, and to take action on recommendations of treaty bodies. A Mongolian citizen has the right to

appeal to the Court to protect his/her right if he/she considers that the rights or freedoms as spelled out by the international treaties have been violated. However, lack of incorporation of convention provisions into national laws and lack of human rights knowledge of judicial personnel make it impossible to exercise this right.

CURRENT ISSUES

Constitutional and legislative framework

Many laws and mechanisms essential protecting human rights and freedoms do not exist. In particular:

- Law on protection of victims and witnesses, protection of human rights defenders, provisions ensuring a citizen's right to participation, Law on gender equality, Law on combating gender-based violence, Law on ensuring independence of publishers, Law on accountability of parliament members and Member of Parliament Code of Conduct, Law on civil society's right to participation in public interest litigation and monitoring compliance.

There are laws that have an adverse effect on human rights. In particular:

- Law on State Classified Information, Law on Public Finance and Administration, Law on State of Emergency, Law on Courts, Law on Registration of NGOs, provisions on taxation and social insurance of NGOs, Law on Submitting A Draft Parliamentary Resolution, the package of election laws, the law on political parties and the administrative procedures and their guidance has been produced in a very arbitrary manner.

Some laws lack effective implementation. In particular:

- Law on Public Radio and Television, Law on Combating Domestic Violence, provisions of the Criminal Code on crimes of human trafficking, Administrative Procedure Code and the Law on Public Service.

Human rights institutions and mechanisms

National human rights institutions and mechanisms fail to guarantee the realisation and protection of human rights.

- The Parliamentary Subcommittee on Human Rights (PSHR), responsible for oversight and monitoring the implementation of human rights at the Parliamentary (SGH) level, does not effectively fulfill its obligations, does not review adopted laws, resolutions, development documents, and other decisions, for compliance with human rights standards. It does not show political will and lacks the capacity for such action.
- The National Human Rights Commission (NHRC) has not been able to do anything substantial in terms of protecting human rights because its law does not comply with the Paris Principles.
- The National Human Rights Action Program (NHRAP) was developed and approved with broad participation of the public, the National Committee in charge of its implementation is headed by the Prime Minister, and its working unit and branches are operating in all provinces. The Program, however, is not producing much effect due to its weak implementation, lack of facilitation of oversight mechanisms built in the Program, insufficient budget allotted for its implementation, and absence of a mechanism for evaluating its operation.
- The State is responsible for providing for, protecting, implementing and supporting human rights as prescribed by international law and the Constitution. However, but it does not review its activities in relation to their impact on human rights, and there is no law provision that assigns local governments responsibility to protect and provide for human rights and freedoms. As a result, the human rights-based approach is not penetrating government policy and planning, monitoring, and evaluation activities. Law monitoring implementation still omits the issue of human rights.
- The Judiciary's independence is not secured due to its flawed organizational structure and system, and judicial ethics. In addition to losing independence due to the pressure of the system and the authorities, judges display unethical and corrupt behavior.

	<ul style="list-style-type: none"> There is no legal, financial, and informational environment to ensure the sustainable operation of human rights civil society organizations (CSO) which play an active role in promoting human rights. In addition, there are no formal policies to support their work. Therefore, CSOs are only engaged in implementation of short-term projects funded by foreign donors, thus restricting their effect at the legislative and policy levels. Also there is no legal environment providing for CSOs right to claim public interest and monitor implementation of laws with binding effects.
Violated rights	<ul style="list-style-type: none"> Citizens are not able to fully and equally exercise their civil and political rights, and the right to democratic participation in running the state. Poverty and mining operations are leading to serious violations of human rights on a wide scale. 35.2 percent of the population is poor, of which "working poor" compose a significant percentage. The most commonly violated rights include the right: to adequate housing, to work, to a salary sufficient to cover the basic needs, to live in a safe environment, to preserve traditional culture, to an adequate living standard, to choice of occupation, land and property, to information, to participation in decision making and benefiting from development, to social services and benefits, to education, to water, to a fair and independent trial.
Other issues	<ul style="list-style-type: none"> Development credit and assistance worth hundreds millions of USD aimed at reducing poverty are not achieving visible results due to the lack of a human-centered approach and participation, especially of poor people, in the design and implementation of development projects and programs. Information related to development credit and assistance, not always available in the Mongolian language, and not readily accessible, makes it difficult for people to participate in the implementation and monitoring of development projects. Denied the ability to exercise their right to development, they are unlikely to benefit from such projects. The area of local civil society monitoring of corruption, as well as of unethical and illicit activities among public officials, is not developing due to lack of access to information and financing for monitoring. This allows assistance programs implemented at the local level to go unwatched by the public and thus achieve little to no results.

THEREFORE THE MONGOLIAN NGO FORUM RECOMMENDS FOLLOWINGS:

- Create laws and legal provisions essential to the implementation of human rights, amend the laws that are having an adverse impact on human rights, establish mechanisms based on the human rights approach for evaluation of laws that are lacking sufficient implementation, ensure participation of human rights civil society organisation in the process, build knowledge and capacity of judges to use human rights and freedoms provisions provided for in international conventions and the Constitution in their practical work;
- Strengthen the oversight capacity of the Human Rights Subcommittee of SGH to review and evaluate laws, decisions and development policy documents, conform the NHRC Law to the Paris Principles, revise commissioner selection criteria and include knowledge and experience of human rights as essential criteria, create a legal environment to enable CSOs to conduct public interest litigation and monitor implementation of laws with binding effects, ensure participation of all stakeholders and improve coordination and cooperation among all parties in implementing the NHRAP, reform the judicial system to ensure independence of the judiciary and create mechanisms for enforcement of judicial ethics, reform the process of selection and appointment of judges;
- Recognize poverty as a violation of human rights, take appropriate measures to regulate employment in order to reduce poverty; study and employ methodologies for developing human rights-based development programs and policies with participation of all stakeholders, especially poor citizens, develop SMEs, target development credit and projects at vulnerable groups, create mechanisms for monitoring foreign aid by citizens, improve the implementation of ICESCR, implement the recommendations from the Committee on ESCR and the recommendations and requirements issued by the UN Special Rapporteurs;
- Undertake the following measures to guarantee the citizens' right to environmental balance and to prevent its violation: Join the Aarhus convention, incorporate principles of the UN Declaration on the Rights of Indigenous People in national and environmental laws, include provisions on public participation in the decision-making process in the laws and procedural rules, conduct an independent monitoring of projects to reduce city air pollution,, annul Cabinet Resolution #86, establish a legal environment to carry out social, economic and environmental impact assessments in accordance with international standards in development projects and programs, establish environmental courts, establish environmental departments in police and prosecution authorities, provide legal provisions to pursue public interest litigation on environmental damages, immediately conduct an independent evaluation of claims on health, property and environmental damage by Hongor soum residents and compensate them;
- Technical and financial assistance will be needed to implement the above recommendations.

HUMAN TRAFFICKING AND HUMAN RIGHTS¹



In 1990 Mongolia turned from a one party system with a centralized economy to a democratic, market-oriented society. While the shift brought many new opportunities enabling Mongolian citizens to freely travel abroad, it also triggered negative trends such as new types of crime. Crimes of trafficking in persons, specifically of young girls and women, started to occur, and this type of crime has been on the increase in recent years taking the form

of sexual exploitation, labor exploitation and fraudulent marriage. In 2008, 300 cases of human trafficking were recorded and investigated, whereas only 1 case was recorded in 2001. Mostly young girls and women become the victims of human trafficking. According to a legal survey, 30 percent of victims are 18-21 years of age, 20 percent are 21-26 years of age and 11 percent are minor girls.

The most commonly-violated rights of victims of human trafficking are:

- To be free of slavery
- To marry with free and full consent
- To work
- To personal liberty and safety, restoration of violated rights, and compensation for damages suffered
- To a fair trial

CHALLENGES, THEIR CAUSES AND CONSEQUENCES

The Palermo Protocol lacks effective implementation. Its legal framework does not provide for the protection of victims and witnesses of human trafficking cases. There is no mechanism to measure and compensate for emotional and psychological damage.

- Measures taken by the Government to protect victims and witnesses as well as to assist them with restoring their reputation and rehabilitation are unsatisfactory.
- Since victims and witnesses are not provided with legal protection, they face the risk of falling under the threat of retaliation by the perpetrators and suffering further from emotional and psychological damage.

In the amendment to the Criminal Code in 2008, an interpretation on "Sale and Purchase of Humans" was issued by the Supreme Court which criminalized human trafficking, complying with the norms of international treaties and conventions. However, in practice, there is a tendency to misapply articles of law and to dismiss human trafficking cases.

- Victims face the risk of suffering from further damage, and perpetrators in human trafficking cases have the chance of exemption from criminal charges.

CASE¹

Two victims of human trafficking cases were forced to take their statements back under the threat of perpetrators and were charged with providing false testimony.

Article 124 of the Criminal Code "Inducing others to engage in prostitution and organising of prostitution" with lenient punishment is usually applied instead of Article 113 "Sale and purchase of humans". 85-90 percent of investigated cases during 2004 and 2008 were dismissed on the grounds of "lack of evidence proving that the person was forced or sold into prostitution", "lack of grounds to consider that the victim was deceived or forced into prostitution because the victim knew that services as a singer or a dancer imply sexual intercourse, if the client so requests". A total of 139 victims of sexual exploitation have received assistance of The Gender Equality Center from 2003 to 2009.

¹ This factsheet is based on the report submitted by NGOs to the UN Human Rights Council. The full report is available at www.upr-mongolia.mn.

² Cases and data are based only on the information provided in the NGO report.

Implementation of the UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage is poor. There is no legal provision that regulates marriage intermediary activities, and legislation on licensing does not foresee any authority responsible for these matters.

- The marriage “mediation” taking place in Mongolia contradicts the UN Convention.
- Women who use the services of marriage intermediary companies are obliged to sign strict marriage agreements which put them at risk of falling under control of others, and of intimidation and harassment, even when their rights are seriously violated.
- Any company or individual providing match-making services is free to place advertisements through any mass media channels and to profit from it.

The number of Mongolian citizens married to foreigners has increased by 54.1 percent from 2003 through 2007. 90-95 percent of those were women, out of which 70 percent were married to citizens of South Korea. Citizens who use the services of intermediary companies are required to sign a very strict agreement with clauses of penalties of 10,000 USD for fictive marriage or divorce without any specific reason, 4,000 USD for rejection of marriage after submitting the application, and a penalty of 3,190 USD imposed on their parents if they run away after arriving in Korea.

A total of 47 persons who fell victim to human trafficking in the form of marriage mediation have received the assistance of the Gender Equality Centre and Human Rights Development Centre.

The current law on Sending out Workforce and Bringing in Workforce from abroad only regulates workforce intermediary activities conducted by companies, but not by “individual citizens” who are engaged in such activities.

- This loophole allows individuals to conduct workforce intermediary activities without any requirements imposed on them, and increases the risk of citizens to become victims of “slavery” or labor exploitation or/and human trafficking.
- Companies which recruit workforce to send abroad mostly select men, reducing opportunities for women to find jobs abroad. As a result, women are exposed to the danger of becoming engaged in risky, even illicit, activities.

Mongolian citizens are trafficked to countries such as the Republic of South Korea, Czech Republic, Turkey, Kazakhstan, and other countries through intermediaries of neighboring countries. As of January 1, 2010, 92 victims of labor exploitation received the assistance of the Gender Equality Centre. Not a single case of labour exploitation has been prosecuted so far.

Implementation of the International Labour Organisation Conventions 29 and 105 lack effectiveness, and monitoring instruments, information and data on its implementation are absent.

- There are numerous cases of exploitation of Mongolian citizens by Mongolian and foreign companies operating on the territory of Mongolia, forcing them to work in inadequate working conditions with pay barely enough to live.
- Other forms of labor exploitation frequently occur as well.

Employees of some cafeterias in Ulaanbaatar earn 21,3-35,4 USD per month, which is far below the minimum wage of 76,6 USD. Workers in a block production company with Chinese investment are locked up during their workday.

There is a lack of sufficient funds to implement the Government Programme on combating human trafficking. The Ministry of Labour and Social Welfare, in charge of implementing the Programme, has not been efficient in fulfilling its mandate.

- Activities to combat human trafficking are likely to cease without the assistance of international and foreign donors.

International and foreign donors are the main providers of funding. The Government activities are only limited to organising meetings and seminars.

THEREFORE THE MONGOLIAN NGO FORUM RECOMMENDS FOLLOWINGS:

1. Develop and implement sound Government policies to reduce unemployment and poverty which form one of the main causes inciting human trafficking;
2. Set standards for labor cost and increase salaries/wages;
3. Establish an anti-trafficking law, revise and harmonise other related laws;
4. Revise the National Program on “Protection of Women and Children from Human Trafficking and Sexual Exploitation” adopted in 2005, incorporate the issue of vulnerable women and men, and allocate sufficient funds in the State budget for its implementation;
5. Appoint human rights consuls in countries where a considerable number of Mongolian citizens reside and work;
6. Finance the 2 shelter houses for victims and witnesses of human trafficking from the State budget starting from 2011;
7. Conduct advocacy and awareness-raising activities for the general public on issues such as preventing human trafficking, restoration of rights, compensation claims, etc.;
8. Enhance the capacity of NGOs engaged in combating human trafficking.

2010 оны 11 сарын 2-ны өдөр НҮБ-ын Хүний Эрхийн Зөвлөлийн Хүний эрхийн төлөв байдлын ээлжит дүгнэлт хэлэлцүүлгийн үеэр Олон улсын хамтын нийгэмлэг Өнөөдөр Монгол Улсад хүний эрхийн төлөв байдал ямар байна вэ?, Хүний эрх зөрчигдөхөд сэргээх баталгаа байна уу? гэх зэрэг асуултуудыг Монгол Улсын төр засагт тавих болно.

Энэхүү хэлэлцүүлэгт зориулан Хүний эрхийн чиглэлээр үйл ажиллагаа явуулдаг 40 гаруй ТББ нэгдэн 2010 оны 4 сарын 19-нд хүний эрхийн төлөв байдлын талаар мэдээлэл боловсруулж илгээгээд байгаа ба дараах хүний эрхийн асуудалд анхаарлаа хандуулахыг Хүний Эрхийн Зөвлөлөөс хүссэн. Үүнд:

- Монгол Улс дахь хүний эрхийн хэрэгжилт – ТББ-уудын нэгдсэн мэдээлэл
- Уул уурхай, Байгаль орчин, Хүний эрх
- Сонгох, сонгогдох эрхийн хэрэгжилт
- 7 сарын 1 ба Хүний эрх
- Хүнсний тусгаар тогнол, аюулгүй байдал ба Хүний эрх
- Шилжин суурьшигсдын эрхийн төлөв байдал
- Хүн худалдаалах гэмт хэрэг ба Хүний эрх
- Монголын цөөнхийн тайлан
- Хөгжлийн бэрхшээлтэй хүмүүсийн эрх

Дээрхи мэдээллийг тухайн асуудлаар ажилладаг ТББ-уудаас бүрдсэн ажлын хэсгүүд боловсруулж ТББ-ын нэгдсэн Форумгаар хэлэлцүүлэн баталж Хүний Эрхийн Зөвлөлд илгээсэн болно.

Монгол Улсад амь бөхтэй оршсоор байгаа дээрх хүний эрхийн эмзэг асуудлууд, эрсдэлт нөхцөл байдлыг ТББ-ууд үнэлж, тодорхой санал зөвлөмж гаргасныг нэгтгэн энэхүү мэдээллийн багцыг боловсрууллаа. Уг багц нь Монголын ТББ-уудаас илгээсэн мэдээллийн хураангуй бөгөөд дэлгэрэнгүй мэдээллийг www.upr-mongolia.mn сайтаас авна уу.



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