

United Nations Country Team in Mongolia

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I. INTRODUCTION

Mongolia has a strong commitment to human rights, freedom and justice. As a member of the United Nations since 1961, it has ratified over 30 international instruments relating to human rights. The most recent step forward in Mongolia's legacy of human rights was the announcement by President Elbegdorj Tsakhia of a moratorium on the death penalty in January 2010.

However, Mongolia still lags behind in implementing some basic principles of human rights and freedom. Despite an annual average of 8% growth in the GDP between 2002 -2008, 35.2 percent of Mongolians live in poverty, manifested in low income levels, food inaccessibility, job insecurity, low participation in democratic processes, and poor social service delivery. In the coming years the Government of Mongolia will need to strike a delicate balance between economic growth and human rights, and utilize more effectively the increasing wealth generated from mining

This brief report highlights the main human rights issues addressed by the United Nations in Mongolia. Please refer to the separate UNHCR submission on refugee protection and asylum rights implementation in Mongolia.

II. BACKGROUND AND FRAMEWORK

1. Constitutional and legal framework

The Constitution of Mongolia (1992) proclaims fundamental human rights and freedom, including civil, political, economic, social and cultural rights. Efforts to make laws consistent with the Constitution and the international human rights treaties and conventions are ongoing through successive revisions of legislative acts.

2. Institutional and human rights infrastructure

The three main institutions dealing with human rights in Mongolia are:

- **Sub-Committee on Human Rights of the State Great Khural (Parliament)**, which held its first open hearing in 2009, on human rights issues related to the July 1st events.
- **National Human Rights Commission of Mongolia (NHRCM)**, established in 2001, which publishes an annual report on the state of human rights and freedom in Mongolia and submits it to Parliament. The NHRCM also reviews citizens' complaints of violations of their rights and provides recommendations to relevant authorities. The NHRCM does not have branch offices in aimags (provinces) and treaty bodies have expressed concerns about its accessibility to residents in rural areas, who seek legal redress for violations of their rights and freedom.
- **Committee for Implementation of the National Human Rights Action Plan**, which was established in 2005 to report bi-annually on the implementation of the National Human Rights Action Plan (NHRAP) adopted in 2003.

In addition, central and local government agencies are responsible for implementing international treaties, conventions and national legislations on human rights through sectoral and local level policies and programmes.

3. Policy measures

A number of important government strategy documents have been developed in the area of human rights protection. The MDG-based long term National Development Policy (2007-2021) reiterates the commitment to respecting human rights, emphasises national capacity for protecting human rights and freedom, the legal environment for compensation for damage caused by illegal acts of others, the rights to healthy and safe environment, the rights of people with disabilities and children. In 2005, the Parliament of Mongolia approved the MDG9 which includes the goal to "Fully respect and uphold the Universal

Declaration of Human Rights, ensure the freedom of media, and provide the public with free access to information". In 2008, Parliament approved six indicators to measure progress in achieving MDG9, and developed specific MDG9 target indicators.

Sectoral policy documents on enhancing human rights include: the National Programme on Combating Domestic Violence (2005-2015); the National Programme on Protection from Trafficking in Children and Women for the Purpose of Sexual Exploitation (2005-2014), the National Legal Aid Programme to the Indigent (2006-2010); the National Programme on Gender Equality (2003-2015), and the National Programme on Supporting People with Disabilities (2006-2015).

Despite these positive steps, UN Human Rights Treaty Bodies - the Committees on CEDAW (42nd Session 2008) and the CRC (53rd Session 2010) - point to weak implementation and lack of systematic collection and analysis of disaggregated data by age, sex, socio-economic background and geographical and minority group. Such data are essential tools for assessing the actual situation of women, boys and girls, measuring the impact of laws, policies and action plans, the progress of implementation and the need for additional budget allocation at national and local levels.

III. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

a. Civil and political rights

Right to life, liberty and security of the person: Though civil liberties are protected in Mongolia, the NHRCM has frequently reported areas of concern. Arbitrary arrests and detentions still take place. Around two thirds of pre-trial arrests and detentions take place without court orders and the right of suspects to have a lawyer when subjected to arrest and detention at court is not reflected in the Criminal Code. A maximum of eight months for pre-trial detention, while substantially shortened, is still long¹. Human rights training for police has increased, but 43% of respondents to a 2008 survey², claimed to have been victim of illicit actions of the police.

In recent years, the UN has criticized both the use of the death penalty and the conditions in Mongolia's prisons³. Prison conditions have improved thanks to substantial government investment in the infrastructure and the capacity of the Court Decision Enforcement Agency. On 14 January 2010, the President of Mongolia announced a moratorium on the use of the death penalty, which will be replaced by a 30-year prison sentence. The UN High Commissioner for Human Rights encouraged Mongolia to promptly ratify the second Optional Protocol to the International Covenant on Civil and Political Rights to draw a permanent line under the nation's commitment to end the death penalty⁴.

Right to freedom of expression and peaceful assembly: The 2008 Household Socio-Economic Survey revealed that 63.6% of Mongolians believed that they could express their views freely. However, the same survey results show only 28.5 per cent believe the media to be independent of political, economic and financial interests. Both national and local media continue to be subject to sporadic violations of freedom of expression including physical harassment and threats, extensive use of libel cases, financial pressure and unjustified obstructions. Media outlets have increased, but ownership is not always transparent.

While the Constitution states that "every citizen has the right to seek and obtain information from the State and its organs on matters which do not belong to secrecy protected by the State", in reality, access to information is restricted. Since the Freedom of Information Law was first drafted in 2002, it has not been adopted and the Law on Secrecy has not been reviewed. The establishment of the Mongolian Public Radio and Television Authority as a public broadcasting corporation in January 1999 was an important step forward in enhancing access to information by all and the independence of media. However, due to legal and technical issues, transmission in some local areas has been problematic.

The right to peaceful assembly was seriously violated in July 2008, when a demonstration after the parliamentary elections turned into a confrontation between protesters and the police, in which 5 lives were lost and a state of emergency declared. Demonstrations since July 2008 have been peaceful.

¹ NHRCM, Report on the State of Human Rights and Freedom, 2009, p.131, 138, 139

² Sociological survey "Changes in the state of democratic governance 2007-2008", Ulaanbaatar, 2008

³ Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, UN Economic and Social Council, 20 December 2005, Geneva

⁴ OHCHR Press Release, 15 January 2010

Right to participate in public and political life: Mongolia's Constitution and election laws guarantee the right to elect and be elected. However, allegations related to management of elections, including voter registration and ballot counting, express concerns that some citizens are denied these rights. People with disabilities encounter difficulties in exercising their right to vote due to lack of special devices to assist them. Mongolian citizens residing abroad do not participate in elections due to the absence of relevant procedures⁵.

An amendment to the Civil Service Law in 2008 prohibiting civil servants to be members of political parties, represents a step forward in reducing politicization.

b. Economic, social and cultural rights

Economic rights

Adequate living standards: According to the 2007/2008 HSES¹, about 35.2 percent of all Mongolians are poor, with an increasingly higher level of poverty in rural areas (46.6 percent) than urban areas (26.9 percent).

Right to food: At national level, the availability of main food staples such as wheat, meat, milk and vegetables is adequate, reflecting the recent recovery of the agriculture sector and increased food imports. However, unemployment and underemployment result in some urban families not being able to afford basic food staples, especially in winter months with high heating expenses and fewer employment opportunities. The right to food of rural populations is more severely affected. Micro-nutrient deficiencies are observed because of poor diet. In particular, herders and farmers are the most vulnerable due to the high risk of extreme weather, as well as global food crises and soaring food prices, particularly of agricultural inputs.

Access to shelter with adequate water and sanitation utilities is another basic human right. However, it is out of reach for middle and lower income populations. In Ulaanbaatar, home to almost one half of Mongolians, 78 % of residents live in traditional housing (gers), which are not connected to drinking water or sewage systems. Indoor coal stoves, widely used for heating and cooking, consume about 600,000 tons of coal per year (JICA, 2007), and coal ash from stoves constitutes more than half of the solid waste (World Bank, 2004), resulting in acute respiratory diseases which are the primary cause of child mortality. Households unable to afford coal burn whatever they can find including tires and plastics. Living conditions in the peri-urban areas causes heavy pollution of air, soil, and ground and surface water within the city limits.

Right to work: Article 16.4 of the Constitution of Mongolia, 1992, clearly states "the right to free choice of employment, favourable conditions of work, remuneration, rest, and private enterprise. No one may be unlawfully forced to work". Mongolia has ratified 15 ILO conventions on labour rights, and since 2008, the Government has been making efforts to meet its reporting obligations. The Occupational Safety and Health Law was approved in May 2008, while the Minimum Wage Law, the Labour Law and Employment Promotion Law are currently being revised.

However, enforcement of the laws remains problematic. Discrimination on the basis of age, sex and social status still exists. Some job announcements in local newspapers specify age and sex, and sometimes even require physical appearance. In many cases, employers use civil contracts instead of employment contracts.

Work conditions: The law declares a 40-hour working week with a minimum rest period of 48 hours, and the right to annual and maternity leaves. The current minimum wage in the public and private sector is MNT10,8000 (USD 79) per month, which is insufficient for decent living. Health and safety standards are poor, particularly in building and road construction and informal mining. In 2009, 366 work related accidents were recorded, 54 of which were fatal. Throughout Mongolia, only 73 labour inspectors are operating, in spite of the increasing number of businesses.

Right to organize and collective bargaining: The law provides for freedom of association, and the government generally respects this right. A National Tripartite Committee on Labour and Social Consensus headed by the Minister for Social Welfare and Labour has been established and is operational. National tripartite partners sign a tripartite agreement on labour and social consensus on a biannual basis. The right to strike is provided by the law and workers exercise this right in practice. The law protects workers' rights to participate in trade union activities without discrimination. The Confederation of Mongolian Trade unions has 35 sub unions - one in each aimag including Ulaanbaatar.

⁵ NHRCM, Report on the State of Human Rights and Freedom in Mongolia, 2007, p.24-25

Child labour: Children over 14 may be employed, with parental consent, only for the purpose of orientation for future work. Children over 15 may work with parental consent, and over 16 they may work without parental consent. The Government has issued a list of dangerous and hazardous work, prohibited for children under the age of 18. However, children are observed working informally in street vending, begging, scavenging in dump sites, informal mining and herding. They are also used in income generating activities such as horse racing and circus performances.

Labour migration: In 2009, nearly 130,000 migrant workers sought work abroad, mainly in the Republic of Korea, the Czech Republic, the United States and other developed countries. Violations of rights of those working abroad include not being paid for work performed, industrial accidents and injuries and loss of health. According to an NHRCM survey on the rights of people working in the Republic of Korea, only 24.5% of respondents⁶ reported satisfactory work conditions and 21.2% reported the company owner holds their foreign passports to guarantee their work.

Social rights

Right to a healthy and safe environment: According to the Constitution, land is the property of the State. The rights of indigenous nomadic people to use the pastureland are recognized in customary law but there are no individual rights to pasture use or ownership. Mining licenses are issued by the Ministry of Mineral Resources and Energy and local stakeholders are barely consulted in the decision making process. In recent years, 40% of the land has been conceded to mineral licenses. As from April 2010, the President has stopped the mineral affairs authorities delivering new mining and exploration licenses for an indefinite period, until a legal environment has been created. In 2009 a law was introduced to prohibit mining near important natural resources. Mining is prohibited within Protected Areas, which cover 14 percent of the Mongolian territory.

The law requires mining companies to rehabilitate the environment, but it is not adequately enforced. People's right to a safe and healthy environment is threatened by exhausted deposits which leave the land damaged, soil and water sources extensively polluted, especially with mercury⁷, and altered or dried up waterways. Some Mongolians who have lost their livelihoods engage in artisanal mining activities, harmful both to themselves and the already damaged land. There is no legal framework for artisanal mining and the government must take urgent action to prevent human rights violations.

Right to health services: The right to health is covered in the MDG based National Development Strategy (2008-2021) and the Health Sector Strategic Master Plan, which reflect the provisions of the relevant global human rights treaties. However, challenges remain in implementing these plans and policies. One is the discrepancy in the health status of the urban and rural populations, reflected in key health indicators, such as infant and under five mortality, which are significantly lower in rural than in urban areas⁸. The maternal mortality ratio in remote areas is twice the national average.

Hardship caused by the dzud⁹ resulted in several maternal and childhood deaths in rural and remote areas due to lack of timely access to emergency and essential health services. A case study on reproductive services¹⁰ revealed that women encounter dismissive and discriminatory attitudes of medical personnel, and are subjected to long periods of waiting and lack of respect for privacy and confidentiality. There is a lack of counselling on nutrition, breastfeeding and breast care, fitness, sex, partner relationships and conception.

The transition from a nomadic to a sedentary lifestyle has created health risks, especially for the urban population. Heart diseases, cardiovascular diseases, diabetes, strokes, hypertension and preventable cancers result in premature deaths. Excessive use of alcohol and tobacco, unhealthy diet and lack of physical exercise are especially prevalent among men resulting in a higher mortality rate than that of women¹¹. People affected by HIV/AIDS, STIs and tuberculosis still face discrimination by the health system as well as the community. Systematic and appropriate public information, education and communication programmes on health are insufficient and should be increased.

⁶ The study included 330 people working in the ROK.

⁷ UNDP assessment in 2007 revealed that local people collect mercury from the abandoned mining sites

⁸ Khuvsgul, Uvs, Dornogobi, Uvurkhangai, Khentii and Gobi-Altai Aimags have much higher Infant Mortality Rates (IMR) and Under 5 Mortality Rates (U5MR) compared to country average (IMR is 19.6 per 1000 live births and U5MR is 23.39 per 1000 live births)

⁹ 'Dzud' is a naturally occurring phenomenon resulting from continuous heavy snowfall combined with extreme cold, preceded by dry summers, resulting in the insufficient production of grazing pastures

¹⁰ MONFEMNET /Nisora Foundation, Qualitative Study of Health Services for Women During Pregnancy & Before & After Child Birth (Ulaanbator2008),

¹¹ Department of Health, Health Indicators 2008 (Ulaanbaatar, Munkhiin Useg, 2009), 41

Safe water supply and improved sanitation are basic human needs and closely linked to health. The Third MDG report (2009) indicates that only 54.5 percent of the population has access to safe water and 43.1 percent to improved sanitation facilities. There is a large urban-rural disparity and the 2005 WHO and MoH survey showed that only 25% of soum schools and hospitals had access to improved water and sanitation. Rural schools, with dormitories housing children of nomadic families, almost universally lack safe water sources, adequate sanitation and hand-washing facilities. Unsafe water and hygiene practices are the main causes of infectious diseases such as viral hepatitis A, typhoid fever, dysentery and diarrhoea.

Social health insurance (SHI) coverage has fallen continuously in recent years, especially among the self employed, herders, migrant populations and students. Information on procedures for enrolment and informal payments is incomplete and vague. The quality of services at all levels of the health system needs continuous attention.

Access to social welfare benefits: The Ministry of Social Welfare and Labour is responsible for social welfare, social insurance and employment issues. It is also responsible for developing national policies on women, children, youth, disabled, and elderly. The type of social welfare assistance provided includes: 1) in-kind services (e.g. residential care) for the elderly and disabled people and the poor, homeless persons, and children. 2) subsidies to the elderly and disabled related to housing, health care and devices (e.g., wheelchairs and hearing aids); 3) short term cash benefits for pregnancy, and delivery, child care, multi-children families, support for adopting orphans and infant care, and pensions for those not eligible for assistance.

Since the 1995 Social Welfare Law established the legal basis for the current social welfare system, the number of benefits provided has grown substantially. In 2005, the Child Money Programme (CMP), was introduced, designed as a conditional cash transfer (CTT) programme for poor households with children aged 0-18. To obtain the benefit households were required to meet specific conditions, including immunization, living with parents, not being engaged in intolerable forms of child labour and complete a proxy-means test for the identification of the poor. In July 2006, the Government gave all families with children under 18 years the right to receive the benefit. Once-off allowances for newly weds and newborns were also introduced.

Dependency on welfare is increasing and less than 20% of recipients are poor. While in 2004, 378,700 persons were receiving benefits, the number reached 1.6 million in 2008. In January 2010, all newly created benefits were abolished and a new universal benefit from the Human Development Fund was introduced, covering all citizens of Mongolia. However, recently the Ministry of Social Welfare began discussing the re-introduction of a child benefit adjusted to use existing logistical mechanisms but targeting only families with 3 or more children.

Right to Education: The Constitution of Mongolia guarantees every citizen the right to education. The Education Law emphasises people's right to education and basic education is free and compulsory. In addition, pre-school, upper secondary and technical and vocational education is free of charge.¹²

In 2009, net enrolment rates in primary and basic education were 93.5 and 91.2 respectively, and a high enrolment rate has been sustained for the last five years. However, a significant proportion of children in rural areas still do not attend primary or secondary school, with 8% of children aged 7 to 15 never having enrolled in school, and 19% dropping out before completing grade 8. Only 55% of students (45% in rural areas) complete upper secondary education. The State budget for education has remained steady at around 20% despite the recent economic growth. Meanwhile, population increases in Ulaanbaatar, and great distances combined with poor infrastructure and seasonal challenges in rural areas, make it more and more difficult to provide quality education to all children. Access to kindergarten remains a challenge, despite creative practices such as mobile "ger" kindergartens for herders' children.

Children with disabilities, ethnic minority children and "street" children cannot fully enjoy their right to education. According to the 2004 Census of Disabled People, only 41 percent of children with disabilities aged 8-11 years are enrolled in primary school and more than half of children and youth with disabilities are not enrolled in any school. Bayan-Ulgii, the province of Kazakh minorities, has the highest dropout rate and the lowest preschool participation rate in the country as well as an illiteracy rate of 6.8%, compared to the national average of 4.6%. Children from the Tuva ethnic minority in the north of Mongolia have limited access to any level of education. There is no progress in official reporting of "street" children.

¹² Policy documents supporting implementation of the right to education include the Law on Primary and Secondary Education (2002), Law on Higher Education (2002), Law on Vocational Education and Training (2008), Law on Pre-school Education (2008), Law on Social Welfare (2005), Law on Social Welfare of the Disabled (2005), Government Programme on Literacy, the Policy on Child-Friendly Schools, and the Education Master Plan for 2006-2015.

Cultural rights

Right to Intellectual Property: Mongolia ratified the Convention Establishing the World Intellectual Property Organization (WIPO) in 1978 and has been taking steps to ensure compliance of national legislation in connection with its accession to the WTO in 1996, the ratification of the Berne Convention for the Protection of Literary and Artistic Works in 1997 and its accession to the Hague Agreement Concerning the International Deposit of Industrial Designs in 1997. While appropriate laws and institutions exist, many violations of intellectual property rights in branding, movies and music sectors occur, due to lack of implementation.

c. Access to justice and administration of Justice

Implementation of laws: Currently in Mongolia, there are 418 laws, many of which, according to 47% of the respondents of a 2008 survey¹³, are not implemented. Most respondents cited corruption and bribery as the main causes, closely followed by weak oversight, decision making based on cronyism and inadequate systems for accountability.

Access to justice: Progress has been made in realizing the right of access to justice for all citizens. In 2006 the Ministry of Justice and Home Affairs together with the UNDP and Open Society Institute established Legal Aid Centres in all 21 aimags and 9 districts of Ulaanbaatar, which render legal assistance to poor citizens involved in criminal, civil and administrative cases. In 2008, the number of people receiving legal assistance increased by 48.6 percent¹⁴. Accordingly, the government budget to finance the centres has increased and capacity of the attorneys has been strengthened.

However, the quality, availability and affordability of legal defence remain a major area of concern despite the Government's achievements. According to the Supreme Court of Mongolia, over 20,000 citizens are criminally convicted each year, 11,000 in UB and 9,000 in the provinces. Approximately 80% are unable to pay for legal services. In addition, many avoid the legal system due to fear, weak enforcement of laws, long delays and a sense of futility. The State Budget allocates USD 8,500 for the provision of legal defence services, which is totally inadequate to cover expenditure.

Implementation of court orders: The Law on Enforcement of Court Decisions was passed in January 2002. The General Court Decision Enforcement Agency was mandated to enforce court decisions on civil, administrative and criminal cases. A performance rate of 73.4% was achieved in 2008, indicating a significant increase in court enforcement.

A National Programme on increasing damages for convicted persons and supervising payments of debts for 2008-2012 was developed that aims to provide convicted persons with jobs, to enable them to pay damages. The current law allows individuals and legal persons in debt to transfer their immovable and movable properties to other persons or to conceal them. Therefore, it is important to legalize asset security and seizure procedure for criminal cases. In a 2009 survey, 30.5 % of respondents saw red tape and personal connections as the most common impediments to having cases resolved by the courts. A public perceptions poll indicated that citizens' confidence in the fairness and effectiveness of the court is declining¹⁵.

Corruption in judicial and law enforcement institutions: The Mongolian Parliament passed the first-ever Anti-Corruption Law in 1996, and ratified the UN Convention against Corruption (UNCAC) in 2005. Due to growing concerns about its implementation, a new Anti-Corruption law was adopted in 2006 to comply with the UNCAC, reflecting important elements such as investigation and intelligence gathering, public education and awareness, asset and income disclosure

The Corruption Index Survey conducted by the Independent Authority against Corruption of Mongolia in 2009 indicated considerable corruption in political, judicial and law enforcement bodies. The degree to which police, prosecution, and internal security forces are accountable for their actions and corruption and impunity exist throughout the forces is a matter of serious concern¹⁶. Respondents in the most recent Corruption Benchmark Survey (Asia Foundation and Sant Maral Foundations) perceived judges and police as the second and third most corrupt agencies.

¹³ Changes in the state of democratic governance: 2007-2008, Ulaanbaatar, 2008

¹⁴ MDG 9 indicators and the state of democracy in Mongolia, Ulaanbaatar, 2009

¹⁵ MDG 9 indicators and the state of democracy in Mongolia, Ulaanbaatar, 2009

¹⁶ www.iaac.mn MDG-9 Indicators and the State of Democracy in Mongolia, 2009, Ulaanbaatar, p. 125-131.

Juvenile justice: While the protection of the rights of children is ensured through an improved legal framework, domestic legislation, including the juvenile justice system, is not in full conformity with the principles and provisions of the Convention on the Rights of the Child and there is no comprehensive policy framework on juvenile justice.

The guiding principle that young people must be held accountable for their actions in a way that promotes their rehabilitation and reintegration into society, emphasized by the CRC¹⁷ and UN, is being addressed through the introduction of a community-based diversion model programme as an alternative to the formal justice system. Since 2006 UNICEF has assisted the Government in developing twelve juvenile justice committees (JJC) that are based on the principles of restorative justice and rehabilitation. All are now operational and being replicated throughout Mongolia. It is recommended that the scope of the current JJCs is broadened to address the protection needs of victim and witness children.

The Government has limited the legally allowed duration of pre-trial detention for children, reducing the mandatory minimum sentences for first time offenders. However major concerns include inadequate conditions in pre-trial detention centres; increasing complaints about forced-confessions and police violence during detention; children often not separated from adults in police detention; lack of specialized juvenile courts and trained juvenile judges in many regions and a punitive approach focusing on sanctions for detained children without reintegration, assistance or educational provision.

Illegal arrest and detention: A 2002 amendment in the Criminal Procedure Code transferred authorization of preventative action warrants and sanctions from the prosecutor to the court. While the 2003 study “Human Rights situation in custody and detention facilities” stated that court supervision had halved the number of detained and incarcerated persons, recent reports reveal that suspected and accused persons are detained and incarcerated without court authorization. Supreme Court data records that Ulaanbaatar courts issued authorizations to arrest 1,569 suspects in 2007-2009. However, the Court Decision Enforcement Agency reported that 4,369 suspected persons were arrested and detained in pre-trial detention centre # 461 in 2007 – 2009¹⁸. This indicates that two thirds of the suspects were detained without court authorization in Ulaanbaatar

Condition in detention: Most detention facilities fail to meet the requirements of the International Standard Minimum Rules for the Treatment of Prisoners and the Law on Warrant Execution for Arrest and Detention of Suspect and Accused Persons. It is often reported that the treatment of suspects by wards and guards is inhumane. Cells in urban and provincial detention facilities have no windows and there are no special ventilation systems. Water supply and sanitation are inadequate in most of the facilities. Such conditions, combined with overcrowding, spread infectious diseases.

d. Gender

The National Committee for Gender Equality coordinates policy and women's interests among Ministries, International Organizations and NGOs. The Ministry of Social Welfare and Labour has a division for women and youth issues and several other Ministries have gender focal points. The National Programme for Ensuring Gender Equality was approved in 2002 and the National Programme on Gender Equality was revised in 2007 to include a more rights-based approach. However, this has not yet been approved. This, together with poor implementation of existing legislation, is the evidence of lack of political will.

In October 2008, after considering the combined fifth, sixth and seventh Mongolian periodic report, the CEDAW Committee issued the following recommendations.

Lack of gender disaggregated data: There is a continued lack of capacity to collect gender-disaggregated data, conduct gender-sensitive analyses, assess gender-specific impacts of policies, and develop gender-responsive policies.¹⁹

Gender based violence: The passage of the Law and the National Programme on Combating Domestic Violence in 2004 and 2008 respectively represents a significant achievement in the effort to strengthen women’s rights and reduce violence against women. However, women continue to face social, economic and procedural barriers to accessing state protection.²⁰ According to the Reproductive Health Survey of 2008, the level of domestic violence is extremely high: 74% of women stated they know families in which husband and wife verbally insult each other, 69% reported knowing families in which a

¹⁷ Articles 37, 39 and 40 of the Convention on the Rights of the Child

¹⁸ Report on Human Rights and Freedoms in Mongolia, 2009, p 131

¹⁹ Excerpts from the Common Country Assessment, conducted by UN Mongolia, 2010

²⁰ 2009 Report on Human Rights Practices: Mongolia, Bureau of Democracy, Human Rights, and Labour, US Department of State, <http://www.state.gov/g/drl/rls/hrrpt/2009/eap/136001.htm>

spouse slaps, hits or beats his/her partner, and 18% reported knowing a couple in which one is subjected to forced sexual intercourse. Over 70% of women reported knowing families in which psychological violence is experienced and a similar percentage reported knew families with experience of physical violence. Few women answered questions about abuse by their current or former partners, which suggests that domestic violence is still a taboo subject in Mongolia.²¹

Rape and domestic abuse are illegal, but there is no law that specifically prohibits spousal rape. According to the Supreme Court research centre, 223 persons were convicted of rape in 2009.²² However, NGOs allege that many rapes go unreported and claim that stressful police and judicial procedures, and the fear of social stigma discourage victims to report the crime. In addition, police referred only a minority of rape cases for prosecution, claiming insufficient evidence. Post-rape medical examinations were available and results occasionally used as evidence but were not always available in remote areas.

The Law on Combating Domestic Violence requires police to accept and file complaints, visit the incident site, interrogate offenders and witnesses, impose administrative criminal penalties, and take victims to refuge. It also stipulates sanctions against offenders, including expulsion from the home, prohibitions on the use of joint property, on meeting victims and access to minors, and compulsory training aimed at behaviour change. However, the police lack sufficient funding and are reluctant to intervene in what they view as an internal family matter. In 2009 only 20 cases were tried under the 2004 law.

In December 2009, the government, with assistance from international organizations, established a care facility for victims of domestic violence and rape in the National Centre for Trauma Treatment and Sukhbaatar District Hospital. However, technical and material resources allocated for this national initiative remain inadequate.

There are no laws against sexual harassment. NGOs alleged a lack of awareness on what constitutes inappropriate behaviour, making it difficult to gauge the actual extent of the problem. In a recent NHRCM survey one in two employed women under 35 identified herself as a victim of workplace sexual harassment.

Human trafficking and commercial sexual exploitation: The government takes limited steps to prevent trafficking, identify and prosecute offenders, and assist victims and continues to rely heavily on NGOs and the international community to provide victim services and prevention activity. In 2009, the International Organization for Migration and NGOs provided trafficking-related training to government officials and local police.²³ Article 113 of the Criminal Code specifically prohibits the "sale or purchase of humans" and covers the recruitment, transportation, and harbouring of trafficking victims. By the end of 2009, police reported investigating 11 cases of trafficking in persons under Article 113. However, prosecutors prefer file charges under Article 124 prohibiting "organized prostitution", which is easier to prove and carries lighter sentences, rather than the more severe Article 113.

Women between 18 and 25 years of age are most vulnerable to trafficking, particularly those with low incomes or unemployed. Mostly trafficked abroad, they become victims of commercial sexual exploitation. Local NGOs cited an increase in internal sex trafficking, including cases of 13 – 17 year old girls abducted, largely from rural areas, and forced into prostitution. There are reports of law enforcement officials directly involved in or facilitating trafficking crimes.

Participation in political and public life: The participation rights of Mongolian women to participate in decision making is not being realised, despite their high level of education and active participation in the labour market and civil society. They are grossly under-represented in political decision-making at all levels. Women's share in the national unicameral parliament has plunged from a low 11.8% in 2000 to 3.9% in 2008, contrary to the MDG target of achieving 30% women's representation in parliament by 2015.²⁴ Currently there are 3 women MPs out of 76 and 2 female vice-ministers in a Cabinet of 15.

Party politics is heavily influenced by money - in 2008, parties required potential candidates to pay MNT 20 million (USD 14,630). This is a formidable barrier for women, who often lack financial resources due to significant gender gaps in control of economic resources. While largely excluded from formal politics in the aftermath of democratic institutionalisation, women play an active role in the development of civil society, leading the most prominent human rights and pro-democracy NGOs.

²¹ 2008 Reproductive Health Survey, UNFPA and National Statistical Office, Ulaanbaatar, 2009

²² 2009 Report on Human Rights Practices: Mongolia, Bureau of Democracy, Human Rights, and Labour, US Department of State, <http://www.state.gov/g/drl/rls/hrrpt/2009/eap/136001.htm>

²³ Ibid

²⁴ Excerpts from draft Country Gender Assessment, ADB, draft of September 2009

Women's employment: Women constitute 51% of the total workforce and are often the primary wage earners for their families. Female employment rate is 61.2% and female Labour Force Participation (LFP), at 63.2% in 2007, is higher than the world average (52.5%). The rights of men and women to equality in all areas, including equal pay for equal work and equal access to education is provided in the Constitution. However, women earn less money than men for the same work, despite their higher educational background, especially in IT and mining.²⁵ Many women occupy midlevel positions in government and business or are involved in the creation and management of new trading and manufacturing businesses. Women's businesses are usually registered under the husband's name, and ownership is increasingly transferred automatically to the former husband.

Women are concentrated in low-paid jobs in the agriculture, sales, manufacturing and service sectors as well as in education and health²⁶. The number of women working in the informal sector, without access to social protection is a particular concern. Many survive at subsistence level and/or adopt high risk survival strategies through labour migration, engagement in the still largely unregulated artisanal mining sector and the illegal sex industry. The government adopted a State Policy on Informal Employment in 2006, but the implementation of this policy needs extra attention.

e. Minorities

Mongolia's Constitution guarantees equality before the law and court, and non-discrimination on the basis of ethnicity, language, sex and religion²⁷. Despite these guarantees and the ratification of international human rights instruments²⁸, Mongolia continues to apply discriminatory policies towards ethno-linguistic, religious, sexual minorities, or other minorities such as people living with HIV/AIDS or people with disabilities. Currently Mongolia has no anti-discrimination legislation or a designated institution to enforce non-discrimination.

People living with disabilities: The Labour Law of Mongolia prohibits discrimination in employment of people with disabilities as long as their condition is no impediment to fulfilling the work duties²⁹ and provides for people with disabilities to work shorter hours³⁰. In organizations with more than 50 employees, at least 3% must be people with disabilities.³¹

Following a National Programme to Improve the Livelihoods of Disabled People (1998 -2003) the government passed the National Programme on Supporting People with Disabilities in 2006. The goal was to ensure participation of the state, civil society and people with disabilities, in creating a social environment which respects the rights of people with disabilities, and in increasing opportunities for disabled citizens to live comfortably and to develop themselves. The Ministry of Education, Culture and Sciences has also been involved in providing inclusive education for all children, including the disabled. An estimated 38.5 thousand children attended special needs schools in 2007³².

The number of people with disabilities in Mongolia was estimated 69,000 in 2005³³. However, the classification of disabilities currently used is not in line with the international health standards of WHO. There are reports that children with learning disabilities (attention deficit, hyperactivity, dyslexia) are enrolled in special schools for children with special mental needs³⁴. Their socio-economic and political participation rights are indirectly violated, as people in wheelchairs are unable to access public buildings. There are no building regulations for ramps or Braille buttons/signs, and no Braille voting ballots for blind voters. No Braille or audio textbooks are available in universities and colleges for blind students wishing to attend tertiary education institutions³⁵. The State provides only a small monthly benefit to disabled people unable to work.

²⁵ 2009 Report on Human Rights Practices: Mongolia, Bureau of Democracy, Human Rights, and Labour, US Department of State, <http://www.state.gov/g/drl/rls/hrrpt/2009/eap/136001.htm>

²⁶ *Gender Assessment. Draft* (September, 2009); Draft Country Gender Assessment, ADB

²⁷ Article 14 (1) and (2), the Constitution of Mongolia, 1992.

²⁸ Mongolia is a party to the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, Convention on Elimination of Racial Discrimination, and other international human rights documents pertinent to the rights of minorities in this submission.

²⁹ Section 111.5, the Labour Law of Mongolia, 1999.

³⁰ Section 71.5, the Labour Law of Mongolia, 1999.

³¹ Section 111.1, the Labour Law of Mongolia, 1999

³² Jadamba Myagmar, Samdan Bolormaa and Yadamsuren Tsevenlkhaazal (2007) "Country report: inclusive education in Mongolia", *UNESCO Regional Preparatory Workshop on Inclusive Education, East Asia*.

³³ The National Programme on Support to People with Disabilities (2006).

³⁴ From the reports of the Association of Parents with Disabled Children and VSO Mongolia.

³⁵ Only one blind graduate recorded in the history of the State Education University in 2006

Ethno-linguistic minorities account for approximately 5% of the population. The rights of minorities to education and information in their mother tongue and, to preserve their heritage of native language, scripts, customs, history, and cultural traditions is emphasized in specific provisions in the National Human Rights Action Programme. In December 2005 the Government adopted a Tuva language programme aimed at supporting the desire of the Tsaatan people to preserve their native language, culture and unique way of life, especially among the younger generation. Schools in the Kazakh province of Bayan Ulgi, mainly instruct in the Mongolian language. Some textbooks are imported from Kazakhstan, but are insufficient. The political rights of ethno-linguistic minorities remain inadequately represented in national and local legislature.

Lesbian, gay, bisexual and transgender people (LGBT): The right to non-discrimination based on sex, which includes sexual orientation, is stated in the Constitution. However, the LGBT community reports widespread human rights abuses perpetrated by both public and private sectors. Discrimination includes being denied fundamental human and civil rights such as employment, housing, healthcare, freedom of association and peaceful assembly.³⁶ The Ministry of Justice and Home Affairs and the State Registration Agency refused to accept an application for registration from the first LGBT human rights NGO.³⁷ Hate crimes of random violence against LGBT people have been reported and physical and sexual attacks against transgender persons were perpetrated by ultra-nationalists in late 2009 and early 2010³⁸. LGBT victims often don't report hate crimes in fear of victimization by the police. There is a refusal to acknowledge that this community exists in Mongolia.

People living with HIV/AIDS (PLWHIV): As of March 31st 2010, this minority consists of 65 people registered as living with HIV/AIDS. They report harassment and discrimination at their workplace, virtually no privacy, lack of access to or denial of healthcare, verbal abuse and threats of physical abuse, homelessness and a denial of the right to employment due to HIV-tests prior to employment offers. The human rights violations are more serious in cases of gay men and MSM³⁹ whose sero-status is positive. As over 80% of male PLWHIV are gay men or MSM, they face double victimization by society⁴⁰.

IV. RECOMMENDATIONS

- Ratify the 2nd Optional Protocol to the ICCPR and provide technical and legal advice from OHCHR to support the abolition of the death penalty in Mongolia, following the President's moratorium in January 2010.
- Increase compliance between national legislation and international standards and to ratify the following outstanding treaties and protocols: Convention relating to the Status of Refugees (and its 1967 Protocol); Convention on the rights of Migrant Workers; Convention against Torture.
- Strengthen national capacity for treaty body reporting compliance.
- Raise awareness among government officials on their role as duty bearers and to build capacity and independence of the judiciary and law enforcement agencies. Corruption is a major impediment and must be addressed.
- **NHRPA:** Take the necessary steps to effectively implement the National Human Rights Action Plan (NHRPA) and all existing laws, policy frameworks and national strategies relating to human rights. Prioritise action points in the NHRAP, especially impact of national budget on human rights, and strengthen national capacity to implement the NHRAP.
- **Statistics:** Strengthen and harmonise disaggregated data collection, analysis and monitoring systems at national and sub-national level, the lack of which was noted by the Committees of CEDAW and CRC, in order to effectively assess how far the rights of all Mongolians are being realised.
- **Social Protection:** Reform and revitalize the Social Health Insurance to target the most vulnerable, including the self employed, herders, migrant populations, and students.
- Reform the social welfare system and develop more effective social security and insurance schemes that address problems of equity and specifically target disadvantaged groups.
- Increase systematic and appropriate public information, education and communication programmes on health.

³⁶ See CEDAW shadow report submitted on the status of lesbian and bisexual women and transgender persons in Mongolia at the OHCHR website http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/Coalition_Mongolian_LGBT_Rights_Activists_Mongolia41.pdf

³⁷ Human Rights Watch press release <http://www.hrw.org/en/news/2009/07/09/mongolia-rebuffs-lesbian-gay-bisexual-and-transgender-organization>; International Gay and Lesbian Human Rights Commission press release <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/1049.html>; and Mongolian newspaper coverage of the non-registration by UB Post <http://ubpost.mongolnews.mn/index.php?option>

³⁸ Newspaper article on the violence faced by one transgender woman at <http://www.ubtimes.mn/index.php>

³⁹ "Gay", as a term, is different from "MSM", as gay implies identity as a whole, including self-identification, coming out, homo-social interactions and sexual behaviour, while men who have sex with men or MSM is a term that denotes sexual behaviour alone.

⁴⁰ Booth, William (2009) Community capacity building strategy of the MSM groups, UNAIDS Mongolia.

- **Livelihoods and Employment:** Take measures to expedite revisions of the minimum wage law, labour law and employment promotion law, and extend protections and opportunities to those working in the informal sector.
- Intensify efforts to strengthen gender equality laws, particularly as they relate to employment.
- Enact a law on harassment and establish/reinforce mechanisms for monitoring and reporting harassment.
- **Non-discrimination:** Establish non-discrimination legislation and a designated enforcement/complaints mechanism.
- Recognize the existence of minorities and ensure their rights to access information and participate in public life.
- **Access to justice:** Ensure that legal representation is made available to arrested persons.
- Reform legislation permitting pre-trial detention, including reduction in maximum duration for pre-trial detention
- Continue and further measures to improve detention conditions, remedy overcrowding and establish an independent monitoring system.
- Provide legal assistance to juveniles at the earliest stage of procedures and ensure access to basic services
- Broaden the scope of the current JJs to address the protection needs of victim and witness children.
- **Children:** Designate a Commissioner exclusively for child rights and create an accessible child-friendly complaint mechanism.
- Prohibit corporal punishment as a disciplinary method in all settings, including family and alternative care systems
- Improve the availability and quality of educational and living facilities for children from herding communities.
- Improve hygiene practices in rural areas, especially schools and increase access to proper water and sanitation.
- Ensure children with disabilities, ethnic minority children and street children exercise their right to education at all levels, to the maximum extent possible, including vocational training.
- **Environment:** Establish a system to monitor environmental pollution.
- Ensure availability of design and materials to build improved environmentally friendly stoves and consider extent to which promotion of alternative fuels would lessen pollution.
- Develop safe, appropriate and affordable systems for water and sanitation and safe disposal of household waste, as well as an infrastructure for recycling municipal waste and the recovery and disposal of hazardous waste.
- Promote knowledge of environment and proper behaviour and awareness of the impact of pollution.

V. ANNEXES

Annex 1. Key National legislative framework	
<p>Constitutional rights and freedoms (Chapter 2 Mongolian Constitution: “human rights and freedom”)</p>	<ul style="list-style-type: none"> • equality before the law and the courts, • non discrimination on the basis of ethnic origin, language, race, age, sex, social origin and status, property, occupation and post, religion, opinion and education, • right to life (with the exception of capital punishment), • right to healthy and safe environment, and to be protected against environmental pollution and ecological imbalance, • right to fair acquisition, possession and inheritance of movable and immovable property, • right to free choice of employment, favourable conditions of work, remuneration, rest and private enterprise, right to material and financial assistance in old age, disability, childbirth and childcare and in other cases as provided by law, • right to the protection of health and medical care, • right to education, • right to engage in creative work and copyrights, • right to take part in state affairs, to elect and to be elected, • right to freedom of association, • equal rights for men and women, • right to submit a petition or a complaint, • right to personal liberty and safety, • right to appeal to the court to protect his/her rights, • freedom of conscience and religion,

	<ul style="list-style-type: none"> • freedom of thought, opinion and expression, speech, press, peaceful assembly, • right to seek and receive information, • right to freedom of movement and residence
<p>Civil and political rights</p> <p>Constitution of Mongolia Law on Public Radio and Television Law on State Secrecy Anti-Corruption Law Law on Civil Service Law on freedom of information Criminal code Law on warrant execution for arrest and detention of suspect and accused persons</p>	<ul style="list-style-type: none"> • Right of self-determination • Equality before the law and the court • Gender equality • Right to life • Limitation of human rights during a state of emergency • Prohibition of torture and inhuman and cruel treatment • Prohibition of slavery and forced labour • Right to liberty and security • Right of detainees to be treated with humanity and dignity • Right to freedom of movement within one's own country and right to leave and return to one's own country • Security of privacy and the home • Freedom of religion and belief • Freedom of thought, opinion and expression • Right to peaceful assembly • Freedom of association
<p>Economic social and cultural rights</p> <p>Constitution of Mongolia Law on social welfare Law on occupational safety and health Law on Labour Law on employment promotion Law on minimum wage Law on health Law on education Law on protection of child rights</p>	<ul style="list-style-type: none"> • Right to work and favourable conditions (including remuneration: fair wage, safe and healthy working conditions, equal opportunity for promotion, rest, leisure, working hours and holidays) • Rights to social security including social insurance • Care, protection and education of children • Standard of living – adequate food, clothing and housing • Food, nutrition and food security • Right to the enjoyment of the highest attainable standard of physical and mental health: reduction of still-birth rate and infant mortality, healthy development of the child; improvement of all aspects of environmental and industrial hygiene; prevention, treatment, and control of epidemic, endemic, occupational and other diseases • Right to education • Right to health
<p>Access to and administration of Justice</p> <p>Constitution of Mongolia Law on courts Law on legal defence Law on enforcement of court decisions Anti-corruption law Criminal Code Criminal Procedure Code Law on warrant execution for arrest and detention of suspect and accused persons</p>	<ul style="list-style-type: none"> • Effective implementation of laws • Separation of powers • Legal defence for the poor • Effective implementation of the court orders • Corruption in judicial and law enforcement institutions • Prohibition of illegal arrest • Conditions in detention • Juvenile Justice • Public participation in legal reform programmes • Civil society as a watchdog to strengthen justice system accountability • Legal awareness and empowerment for the public • Victim and witness protection

Gender Constitution of Mongolia Law on combating domestic violence Criminal code Law on labour Law on election Law on welfare	<ul style="list-style-type: none"> • Data, laws and policies • Women and poverty • GBV, Human Trafficking, sexual exploitation, • Participation in political and public life • Women's employment • Health of women and girls
Minorities Constitution of Mongolia Law on Labour Law on welfare	<ul style="list-style-type: none"> • Ethno linguistic minority • Religious minority • Sexual minority • People living with HIV/AIDS • People with disabilities
Key National Plans/ Strategies	
<ul style="list-style-type: none"> • National Human Rights Action Plan • National Action Plan on Gender Equality (2003-2015) • National Programme on Combating Domestic Violence (2005-2015) • National Legal Aid Programme to the Indigent (2006-2010) • National Action Plan on Child Protection and Development • National Action Plan on CSEC and Trafficking • National Action Plan on Support to People with Disabilities (2006-2015) 	

¹ Statistical Yearbook 2008, NSO

List of Abbreviations

AIDS	Acquired Immunodeficiency Syndrome
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CMP	Child Money Program
CTT	Conditional cash transfer
GDP	Gross Domestic Product
HDI	Human Development Index
HIV	Human Immunodeficiency Virus
HSES	Household Socio-Economic Survey
HSSMP	Health Sector Strategic Master Plan
IACM	Independent Authority against Corruption of Mongolia
ICCPR-OP1	International Covenant on Civil and Political Rights – Optional Protocol
ILO	International Labour Organisation
JJC	Juvenile justice committees
LFP	Labour Force Participation
LGBT	Lesbian, gay, bisexual and transgender people (LGBT)
MDG	Millennium Development Goal
MoH	Ministry of Health
MSM	Men who have sex with men
NDS	National Development Strategy
NHRAP	National Human Rights Action Plan
NHRCM	National Human Rights Commission of Mongolia
NHRAP	National Human Rights Action Plan
NHRCM	National Human Rights Commission of Mongolia
NDP	National Development Policy
NGO	Non governmental organisation
NHRAP	National Human Rights Action Plan
NHRCM	National Human Rights Commission of Mongolia

OHCHR	Office of the United Nations High Commissioner of Human Rights
PLWHIV	People living with HIV/AIDS
STIs	Sexually transmitted diseases
SHI	Social health insurance
UNCAC	United Nations Convention Against Corruption
UNCT	United Nations Country Team
UNCC	UN Convention on Anti-Corruption
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UPR	Universal Period Review
WIPO	Convention Establishing the World Intellectual Property Organization
WHO	World Health Organisation
WTO	World Trade Organisation