

Challenges to get environmental cases settled by court

Center for Human Rights and Development NGO (CHRD) has conducted public interest strategic litigation to the environmental and human rights cases caused by improper mining activities, since 2005. To date, CHRD has worked on 22 cases in total, and out of them, it has been working in 11 cases since 2010. The conclusion regarding the challenges faced during the litigation of those cases is as follows:

- 1. An opportunity to local people, particularly, to local herders to receive legal assistance and appeal to the court protecting their rights is limited.** There is no opportunity to get legal assistance in a soum level, because there are no advocates in soums. A head of a soum governor's office performs a duty of a notary at a soum level. In total, 29 soum and inter-soum courts operate in Mongolia settling civil and criminal cases. Out of them, 21 soum and inter-soum courts are located in the aimag centers. All of the 20 administrative courts are located in the aimag centers as well. Thus, it is limited to local people to receive legal assistance at the lowest local level. In order to protect their infringed rights, local people have to go to their respective aimag centers. It shows impossibility of getting the environmental problems and cases often occurring at the local level in Mongolia solved by courts.

Recommendation: Create publicly accessible legal services and improve access to court.

- 2. Legal environment on litigating public interest is absent:**

Although the only NGOs whose charter purpose is to protect the environment is entitled to appeal to the court claiming the environmental damages, they do not appeal to the court due to the lack of their legal knowledge and skills. At the same time, the NGOs that are specialized in human rights and legal matters have not been authorized to sue for public interest /Case example: CHRD made a lawsuit on its behalf aiming at canceling the mining licenses that were allegedly issued in the Burenkhaan phosphorus deposit in Khuvsgul aimag. However, the court rejected CHRD's standing to sue, emphasizing an absence of a word 'Environmental protection' in its charter/

Recommendation: Promptly create legal environment that allows NGOs to sue for public interest

- 3. Costs related to getting public interest cases settled by court:**

- State stamp duty:** The quantity of state stamp duty on environmental cases is high; hence, claimant-NGOs are unable to pay it. For this reason, NGOs often have no other choice to cooperate with local governors who are legally exempted from paying state stamp duty. Moreover, there were instances that the government officials are ignorant and inconsistent to public interest matters, and therefore they withdrew their consent from the NGOs that they cooperate with. Its examples can

be seen from the CHRD's cases regarding Bayandun soum of Dornod aimag, Tsenkher soum of Arkhangai aimag and Zaamar soum of Tuv aimag.

- **Costs associated with experts:** Expert's participation is inevitably required in environmental cases, and it is challenging to find the cost for an expert. Although the court is authorized to pay the cost, it is often reluctant to do so. This slows court process waiting for delayed expert's conclusion. For example, the Capital city administrative court, in the case associated with cancellation of a uranium license issued in Sukhbaatar aimag, appointed an expert in its own initiative. However, the expert refused to work on the case, because the court did not pay the expert's cost for his/her previous case. Nine months have already left during which the court had not been able to do anything except for waiting for the expert.
- **The cost related to collecting evidences:** NGOs are responsible for all of the costs to collect necessary evidences, such as notary fee, the costs to work on the ground, processing video and photos and doing research.
- **Advocate's fee:** Noeffective policy and regulation that supports public interest advocates exists in Mongolia.

Recommendation: Exempt public interest claimants from paying state stamp duty. Courts should promptly pay expert's cost. The government should be responsible for the costs related to public interest litigation and its evidence collection. The advocates who provide free legal advice and litigation should be supported and rewarded. The activities to introduce and support Pro bono should be undertaken among the Mongolian advocates.

4. **Courts are incapable of settling environmental cases in due course.** In particular, getting expert's conclusion and the court decision regarding the search of a defendant is not enforced without delay, and therefore the court process is extensively delayed.
 - In the process of getting expert's conclusion, appointment of an expert takes long time. In the environmental cases, the inspectors from the Inspection agency, the specialists from the Environment Ministry and relevant special agencies such as water and forest are appointed as experts. Moreover, there is another challenging issue related to expert's independence. Expert's fee is next hurdle. In case the court did not pay an expert previously, the expert reluctantly works, and consequently, it makes other interested parties to the case work on the data processing that is necessary to the expert's conclusion. In this way, the procedure of appointment of an expert, making expert's conclusion and arranging expert's cost continues for a long time and it delays the court procedure for months. /Case examples: Khongor, Shariin gol and Dariganga soums' cases/
 - Courts are incapable of finding the environmental cases' defendant. Court decision regarding the search of a defendant is not enforced. There is an extensive

possibility for the police office not to enforce such decisions for a long time. In order to get this type of court decision enforced, greater effort is needed from a claimant. Due to this reason, the court procedure is delayed for many months.
/Case examples: Burenkhaan case of Khuvsugul soum and Khongor case/

Recommendation: Undertake relevant measures to promptly enforce the court decisions concerning the search of a defendant and make expert's conclusion without delay. Form an independent team of environmental experts. Establish an environmental court.

5. Judges do not comply with the independence principle when they settle environmental cases.
 - It is clearly observed that the courts work dependently from the government organizations. For example, in the Khushuut case, the court hearing schedule was postponed many times directly depending on a Government representative's work schedule. Also, the court did not oblige anything to the Government in its decision.
 - Although the Supreme Court made a decision to cancel the licenses issued in the Burenkhaan phosphorus deposit in 2013, after a year, it referred the case to the first instance court citing the legal ground of 'newly discovered circumstances'. In doing so, the Supreme Court did not impose liability to the Ministry of Environment even though it gave conflicting statements to the court saying in its previous statement that the project did not have an environmental impact assessment and later it testified that the assessment was done for the same project.
 - None of the court decisions by which CHRD's 22 environmental cases (worked since 2005) settled contains the provision that imposes liability to the government authorities. The point is that those cases would not have been filed if those government authorities enforced laws.

Recommendation: In order to ensure that the courts impose liability to government authorities and independence of judiciary, undertake measures to free dependence of judge's appointment process and court decision-making process from political and high level authorities.

6. There is no guarantee that experts and laboratory staff who make a conclusion and testing in environmental cases work independently from the government. For example, an expert, who is capable of making a conclusion in the case concerning claiming of citizens' health damages caused by air pollution, was not available at all. Furthermore, it was impossible to get the arsenic-heavy metal defining test to the soil, water and hair of the residents at Khongor soum done by the state-owned laboratories.

Recommendation: Ensure independence of experts and scientific laboratories.

7. Bureaucracy and liability: The courts delay the case procedure misusing conduct of court examination. For example, the court examination of the Khushuut case documents took 3 months.

Recommendation: Hold judges accountable and make them comply with their code of conduct.