

## **Mining-Environment-Human Rights**

1. The Mining-Environment-Human Rights thematic group reported through its Working Group (WG) to the first UPR review in March 2010. Issues raised in the report have triggered the UN HRC recommendations 84.16, 84.106, 84.108, 84.109, 84.113 and 84.118 accepted by Government (GoM). This WG expresses gratitude to the governments of Hungary, Iran, Malaysia, Pakistan, and Slovenia for these as well as for the recommendations 86.1, 86.2 and 86.3 not accepted by GoM but most importantly for hearing the concerns of people hurt by mining companies' impacts on environment essential for continuing traditional nomadic livelihoods in rural Mongolia.
2. This submission raises issues not addressed by GoM in its Action Plan for Implementing UPR Recommendations, focusing namely on 1) lack of protection from loss and remedy for violation of the right to access traditional pasture and water for nomadic population; 2) Constitutional right to land endangered by development projects<sup>1</sup>; 3) continued neglect of recommendations to introduce human rights accountability mechanisms for mining and other industries and 4) retribution on human rights defenders, environmental and human rights activists.
3. This submission<sup>2</sup> is informed by joint discussions of the Human Rights NGO Forum (hereinafter HR Forum) held on August 22 and September 4, 2014 as well as meetings and online exchange of information and data collection by the report writers. Current government reports on the status of implementation of ICESCR and other conventions, donor and international NGO reports, most recent Mining and Human Rights in Mongolia report of the Working Group on Business and Human Rights (2013) were reviewed and channels kept open for submission of information for this submission by any willing organization or individual.
4. Positive development in implementation of UPR Recommendations: The GoM April 2014 UPR Mid-term Progress Report cites several packages of laws passed by the State Great Hural (SGH - Parliament) aimed at improving environmental protection, stricter resource management and legislating "polluter pays" principle in law. While positive in general, these laws are evaluated as being not coherent, unclear and not addressing legislative gaps with the added practice of ignoring the implementation and enforcement mechanisms. In addition, the

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<sup>1</sup> According to ADB studies about 50% of Ger District residents arrived after 2000. The Ger district poor and UB homeless consist mostly of herders who lost livelihoods due to loss of access to pasture in their ancestral lands; <http://www.adb.org/projects/45007-001/main>

<sup>2</sup> As part of the HR Forum this WG continued engagement with the government on the issues covered in our first submission as well as status of implementation of the abovementioned UPR and other UN recommendations through two channels: 1) the UPR specific consultation process with the relevant government agencies which is described in detail in the Legal Reform submission; 2) each NGOs own activity results brought together to inform this submission.

old practice of changing the initial intent of law by benign sounding amendments, implementation guidance and procedures has taken greater ground since 2012.

**Status of implementation of the UPR Recommendations: 84.16, 84.105, 84.106, 84.108, 84.109, 84.113, 84.118.**

*84.106. Continue taking appropriate measures to provide a healthy and safe environment for its citizens; 84.108. Step up efforts to improve and conserve the environment, including by strengthening the relevant laws and providing the public with the necessary information, education and awareness regarding the impacts of environmental pollution and degradation;*

5. The GoM April 2014 UPR Mid-term Progress Report is silent on measures taken to ensure safe and healthy environment in mining affected areas. The new Law on Conventional Minerals Mining passed in January 2014 is a clear example of how policy and legal gaps identified in 2008 report<sup>3</sup> are created by change of initial intent of laws passed previously. In contradiction with the 2012 Law on Environmental Impact Assessment (ESIA) the new law requires only a protection plan (instead of ESIA report) filed with the relevant office in the local administration. The law does not stipulate a procedure for carrying out an ESIA before moving into extraction phase. At the same time, the mandate for permitting construction materials mining was delegated to local administrations, where there is no technical capacity to assess impact of large quarries on the environment and population.
6. The 2013 Cabinet Resolution #111 setting a 2-month timeline for preparing foundation for the Ukhaa Hudag - China border railroad triggered a rush of mining for road construction materials in South Gobi aimag<sup>4</sup>. Herders here are already extensively impacted by mega size Tavan Tolgoi and Oyu Tolgoi mines. In addition to fragmenting pastures by the railroad and temporary roads, dozens of companies are mining in pastures and river beds without environmental and social impact assessment (ESIA). No ESIA translates into absence of protection in form of resettlement, compensation and livelihood restoration programs for hundreds of nomadic households. GoM sets no standards for protection from loss of access to traditional natural resources, including right to drinking water in mining areas.
7. In September 2013 GoM submitted a draft amendment to the Law on Prohibiting Mining and Exploration in Headwaters and Forest Resources Areas (also known as “the law with the long name”). Instead of enforcement it proposes derogation from implementation and restoration of mining operations in headwaters contradicts the MDG 7 “Target #15: Protect and restore river and stream source territories to reduce drop in water levels” commitment.

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<sup>3</sup>Assessment of Environmental Laws, Final Report, Ian Hannam, 2008, page 36

<sup>4</sup> This private mine to market road runs through Khanbogd, Tsogttsetsii and Bayan-Ovoo soums to Tsagaan Khad.

8. While civic action of UMMRL leader Ts. Munkhbayar stopped its approval by Parliament, MEGD<sup>5</sup> in the meantime is revising cadastral zoning of mining licenses to allow mining in headwater protection zones established in collaboration with local government and community since 2009. MEGD is implementing a new procedure that has not been approved<sup>6</sup>. The draft procedure and methodology developed by MEGD excludes NGOs and local administration from the decision-making on the headwater zones. This trend of excluding local communities from decision-making process on local land and water use contradicts GoM commitment to join the Aarhus Convention.

**Recommendation:** 1. Implement all commitments taken under the UN environmental conventions, including the MDG Goal 7 and Target 14b. 2. Eliminate gaps in legal framework governing environmental protection and minerals extraction sectors.

*86.3 Mandate the Constitutional Court to act upon the violation of individual rights guaranteed under the Constitution. This should help to remedy the violations of land and environmental rights of indigenous and herder peoples, including right to safe drinking water.*

9. While NOT accepting this recommendation, GoM did make commitment to further study this issue. However, current development trends raise serious concern over violations of land rights guaranteed by the Constitution. A draft land eviction law debated by SGH in 2013 was returned for improvement. CSO criticism of the draft law includes but is not limited to the following: cash compensation, lack of livelihood restoration program, legalization of land eviction and forced eviction without disclosed procedures and a lack of provisions for independent monitoring. It was resubmitted with a changed “land acquisition law”<sup>7</sup> name and is waiting for SGH adoption. Meanwhile, Ulaanbaatar Municipality has moved on with resettling people without adequate compensation, applying all means of persuasion to clear land for construction of private housing and municipal infrastructure. The principles applied include: use of 2003 land prices set by government rather than current market rates, appointment of mediation council and property valuation companies by government, consultation process with the purpose of informing of options without prior information and/or acceptance of community opinion. In the absence of a law there is no legal framework and opportunity to protect land rights of citizens. In addition, it is reported that the companies are using threat to apply forced eviction clause of the draft law. The population to be affected consists of Ger districts and old 1950s housing residents, which together will comprise over 50% of total population<sup>8</sup>.

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<sup>5</sup> Ministry of Environment and Green development

<sup>6</sup> SGH created a working group to discuss this draft procedure. SGH has no mandate to approve procedural guidance and methodology level documents

<sup>7</sup> 46469-001: Preparation of Regulations and Capacity Development Plan for Involuntary Resettlement  
<http://www.adb.org/projects/46469-001/details>

<sup>8</sup> According to latest census over 60% of population resides in UB. Over 60% of UB residents reside in Ger districts and half of housing residents live in old 1950s buildings up for demolition and reconstruction.

10. GoM propaganda about opportunities of streamlined online process for land application has two key faults: 1) overwhelming majority of population does not own PCs or have access to high speed internet access<sup>9</sup> required for performing online land application; and 2) land made available is in remote locations away from infrastructure and public service, on rocky terrain not suitable for construction of housing or other domestic uses.

**Recommendation:** 1) Legislate to protect fundamental rights to land and access to livelihood earning property and pasture for both urban and rural population guaranteed by the Constitution. 2) Reform the Constitutional Court to protect constitutional rights of citizens. 3) Develop National Action Plan for implementation of UN Guiding Principles on Business and Human Rights.

*84.109. Take further appropriate measures, including the adoption of a national plan of action to tackle challenges resulting from global warming or climate change and adverse human activities,....( Iran);84.118. Seek technical cooperation at the international level in order to respond to the challenge of providing a healthy and safe environment for its citizens*

11. Mongolia's location in high altitude arid region results in 3 times higher or 2.14°C increase and 4 km per year desertification spread compared to global average. This condition paired with dams and diversion of waters to the south to support mega mines in the Gobi Desert and mineral processing could have irreversible impacts on fragile ecology and global climate change. However, GoM is yielding to corporate demand for infrastructure and use of water in areas taken under protection or where there is potential for irreversible impact on the environment.

12. GoM, with technical assistance of the World Bank MINIS<sup>10</sup> project, is preparing plans to implement large scale hydro engineering projects with potential to cause negative impact on water resources not only in Mongolia but also international water resources in neighboring Russia and China, on two Ramsar Convention sites essential for global environmental conservation. The World Heritage Committee's 38th Session in Doha (2014) expressed<sup>11</sup> concern regarding the Shuren hydro-power station, Orkhon-Gobi and Kherlen-Gobi water transfer projects that are all designed to support the rapidly expanding mining sector.

**Recommendation:** 1) Implement recommendations of the World Heritage Committee, WHC-14/38, COM/16, page 130, 7B 76; 2) Seek technical assistance for application of IUCN's World Heritage Advice Note on Environmental Assessment.

*84.113. Provide adequate minority protection for indigenous and tribal groups (Slovenia)*

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<sup>9</sup> In 2012-2013 government closed internet cafes under the pretext of closing game centers to protect youth from addiction problems.

<sup>10</sup> Mining Infrastructure Investment Support, <http://www.worldbank.org/projects/P118109/mn-mining-infrastructure-investment-supp?lang=en>

<sup>11</sup> World Heritage Committee, WHC-14/38, COM/16, page 130, 7B 76.

13. It is unfortunate that this WG has to reiterate word for word what it has reported in its 2010 submission that “*Law does not reinstate pastoralists’ rights recognized under customary law. National legislation does not protect the rights of nomadic herders to their pasture, hay land and water sources, winter camps as their home property as is recognized under customary law. There is no mechanism for valuation of these assets, compensation in case of taking land for public purpose or extraction of minerals*”. No action taken by GoM.

14. the most recent report of the HRC Working Group<sup>12</sup> on Mining and Human Rights in Mongolia was not disseminated to relevant stakeholders. Public officials met by HR Forum members during UPR consultation process in 2013-2014 demonstrated a complete lack of knowledge about this report. Discussion with public officers, legislators and political leaders revealed a profound lack of knowledge of the role of government in ensuring that corporate sector complies with respect and remedy norms and standards.

15. Mining and infrastructure construction are the two sectors which have significant negative impact on land under livestock, crop and tourism sectors. Herder households are the carriers of livestock sector representing 25% of total population and which produces all raw materials of the light industry. Nomadism and virgin nature are key assets of tourism sector. Nomadic population is helpless against corrupt government and corporations.

16. Mongolia’s compliance with the EITI reporting requirements are questioned based on the fact that the vast gap in reported numbers is not unreconciled. EITI reports reveal that GoM decision-making bodies such as the Chancery of the President, the State Special Inspection Agency have received “donations” from mining companies. Criminal investigation process of the chief of Minerals Authority (2013), the death of former Uranium Authority chief in prison (2014) accused of corruption suggest lack of protection of not only victims but also suspects in GoM custody. Grave challenges remain in building public sector governance and accountability; including the MDG Goal #9 “zero tolerance to corruption” still face grave challenges.

**Recommendation:** 1) Invite the Special Rapporteur on Indigenous Peoples’ and Special Rapporteur on Internally Displaced Persons to a) find legal solutions to recognize customary rights to traditional resources of land-based nomadic population; b) develop and implement livelihood restoration standards for nomadic herders that will ensure preservation of nomadic tradition and culture.

*A CASE: A pediatrician, Bagh governor, kindergarten director and a cooperative manager – four residents of Tseel soum in Gobi-Altai aimag were accused of committing a “grave, organized criminal act of defamation” by Altain Khuder LLC for briefing a MEGD working group on the mine’s impacts on local community. This is one of hundreds of cases of local police and prosecution harassing community members for attempting to protect their rights. After 5 months of investigation and 4-8 interrogations on May 11, 2013 aimag inspector dismissed the case for lack of substance. Company refiles in the capital city using the same prosecutor. After many months of investigation and trial the four community members were finally acquitted in May 2014. Tseel soum is located in 400 km from the aimag centre and 1,300 km from the capital city. There are no courts, notaries or legal aid available in Tseel. The accused carries the burden of proof. Human rights defenders in rural areas do not have access to courts or non-judicial remedy. A joint CSO fact-finding mission report is due to be released in October 2014. CEE Bankwatch, SOMO, OT Watch and Lawyers for Environment carried out a joint fact-finding mission in August 2014 (report pending in October 2014).*

84.16. *Adopt laws and mechanisms essential to protecting human rights and freedoms, particularly in the following areas: protection of victims and witnesses; protection of human rights defenders...*

17. The UN recommendations to legislate protection of human rights defenders (HRDs) reiterated in many documents addressed to GoM, including the most recent UPR and Human Rights Working Group reports, continue to be unacknowledged by public officials. There is no knowledge or political will to open up public discussion on who are human rights defenders and what they do. A fact-finding mission by CSOs<sup>13</sup> reported in 2012 on threats and intimidation, judicial harassment, vilification and smear campaigns against HRDs and most importantly the absence of an enabling environment. However, only in 2014 the debate over controversy of UMMRL's use of threat to stop revision of law with long name triggers the NHRC to plan to survey the situation for its annual human rights status report.

*A CASE: A former herder from Onggi River basin Tsetsegee Munkhbayar receives prestigious Goldman Environmental Prize for his work on protecting rivers from mining impact*  
<http://www.goldmanprize.org/search/node/Munkhbayar>. In 2009, they succeed in passing through parliament a law prohibiting mining in headwaters and forest resource areas. GoM resistance to implement the law causes a court claim by UMMRL. In 2012, the Supreme Court rules that GoM must enforce the law. In 2013, GoM initiates a draft law essentially eliminating the law by derogation from implementation. This is a short note of an 11-year long history of herders' struggle exhausting the legal ways to defend their living environment from harm.

*On September 16, 2013 when parliament was due to discuss the draft amendment law, having used up all other options, including a Supreme Court Order to implement the law, a team of activists led Ts. Munkhbayar entered the government compound and allegedly fired a shot to demand that the draft be recalled from parliament. They were charged with "grave organized offense of an act of banditry\terrorism" and convicted for 22 years of imprisonment on January 20, 2014. After several months of advocacy by civil society of all walks, on April 8, 2014 the Appellate Court decision reduced the sentence to 7 years of imprisonment for the two charges brought against him. The team has not enjoyed fair and open judicial process. Government waged a public brainwashing and pressure on judiciary through media during the period of trial.*

18. Government has not ensured access to judicial and non-judicial redress<sup>14</sup> to the population living in remote soums, especially nomadic herders impacted by mining and construction industries. Non-judicial redress is also non-existent for local communities as there is no CSR corporate culture that recognizes justice for customers or affected communities. The "suggestions & complaints" box existed since socialist times, which in 99% cases is not accessible, no feedback to complaints and generally all means are used to stop a complainant. A

<sup>13</sup> Mongolia: The situation of human rights defenders working on mining issues. <http://www.forum-asia.org/?p=15662>

<sup>14</sup> See HR Forum report on Judicial Access to UPR, September 2014

very nascent mediation process exists within courts only. But courts are not accessible to rural population and HRDs. Redress is not available for those deported from Mongolia on alleged crime of working against national interests.

*A CASE: Eugene Simonov, International Coordinator of Rivers without Boundaries (RwB), was “deported” from Mongolia on August 12, 2014 for asking to see the preliminary reports produced by the World Bank MINIS project.*

*The RwB is a coalition of over 30 environmental NGOs in Russia, Mongolia and China concerned with negative impact of development projects on international rivers and communities dependent on the river basin resources. Eugene Simonov was not deported in the sense of involuntary physical deportation by authorities. A “DEPORTED until August 2024” stamp was sealed in his passport by the Zamyn-Uud border immigrations office when he was leaving Mongolia upon completion of his research visit. Because the immigrations officials did not provide any explanation for holding up his passport Eugene Simonov had no knowledge of the fact of deportation until several days after return home and accidental discovery of an unusual stamp in his passport. The relevant authority of the Government of Mongolia has not provided any response to the request to explain its action.*

*This is a most recent case of arbitrary deportation decisions and violation of the procedures of deportation prescribed by law continued used by Government to harass and repress environmental and human rights activists.*

**Recommendation:** 1) Create legal framework for protection of human rights defenders; 2) Ensure effective access to judicial and non-judicial remedy and legal aid to population in remote settlements; 3) Invite the Special Rapporteur on Human Rights Defenders to assess the situation in Mongolia.

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