



**THE SUBMISSION OF THE NATIONAL HUMAN RIGHTS COMMISSION OF
MONGOLIA (NHRCM) TO THE SECOND CYCLE OF UNIVERSAL PERIODIC
REVIEW (UPR) OF THE UNITED NATIONS HUMAN RIGHTS COUNCIL**

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The National Human Rights Commission of Mongolia is an independent national human rights institution with A status accreditation of The International Co-ordinating Committee of National Institutions for the Promotion and Protection of Human Rights and has a mandate provided by the Law of Mongolia on the National Human Rights Commission adopted in 2000.

Introduction

1. In 2013, the NHRCM submitted its 12th status report on human rights and freedoms to Mongolian Parliament. The report included the status of the implementation of recommendations from the 1st cycle of the UPR and other human rights treaty bodies, and recommendations to Government on how to implement recommendations which were yet to be acted upon. Following a review of the NHRCM's report, the Standing Committee on Legal Affairs passed a resolution which obliged the Government to review the status of the implementation of these recommendations every six months and report to the relevant government departments.¹

2. The NHRCM has assessed the situation of human rights and freedoms in Mongolia during the period 2011-2014 and submits, according to the United Nations Human Rights Council resolution 16/21, relevant information to the 2nd cycle the Universal Periodic Review.

3. The NHRCM compliments the Government on its attempt to implement many of the recommendations put forth in the 1st cycle of the UPR. Despite the Government initiating a work plan for the relevant government departments to implement the UPR recommendations, they have yet to be fully implemented. The Government has not ensured that the rights and freedoms guaranteed under the international human rights treaties which Mongolia is a signatory to, as well as the rights contained within Mongolian Constitution, are fully protected. While the Government has undertaken significant legal and judicial reform, this reform has been done on an ad-hoc basis which has caused a lack of harmonization between new legislation passed by Parliament. Further, a problem exists with the judiciary not applying international human rights treaties when making judicial decisions.

I. PREVENTION OF TORTURE

4. The Commission is concerned about the closure of the Investigation Unit under the Prosecutor General which was responsible for investigating acts of torture committed by law enforcement officials. In January 2014, all of the Unit's budget and resources were transferred to the Independent Authority Against Corruption. This has resulted in a system whereby law enforcement officials, who are accused of committing acts of torture, are being investigated by their peers.² This is an unacceptable mechanism for investigating and preventing acts of torture

¹ Parliamentary Standing Committee on Legal Affairs, Resolution No.13, 3 July 2013.

²Case#1: Mr. Ts, Mr. B, and Mr. O, were detained in the pre-trial detention center of Arkhangai province and lodged a complaint to the Commission in February 2014 stating that lieutenant M, criminal police agent in Khotontsoum, Arkhangai province, assaulted them. During the inquiry into the complaint, the Commission received various evidence indicating Lieutenant M likely committed acts of torture by electrocuting the fingertips of Ts and B, who were suspected for theft. It was also found that the Lieutenant extracted testimony through the use of a stun baton, as well as hit the back of the neck and heads of the complainants with a rubber baton. It was also found that the Lieutenant electrocuted the hands, chest, shoulder, and head of another suspect "O" with a stun baton, as well as cuffed the complainant to the radiator in his office, as well as incarcerating him for 6 days without food. He is said to have put the meal given by O's family at the corner of the room and pressured him to plead guilty so that he could eat. Thus, the Commission needed to refer the case to the relevant investigation agency under the law. However, according to the amendment to the Criminal procedure code, the Police department of Arkhangai province was to investigate this case, so the Commission referred the complaint to the Prosecutor General's Office in order to settle the issue of jurisdiction of the case.(NHRCM 13th Annual Report on Human rights and Freedom in Mongolia, page69)

as it does not allow an independent investigation into such crimes. In 2005, the UN Special Rapporteur on Torture, Mr. Manfred Nowak visited Mongolia where he recommended the Mongolian Government strengthened the capacity and independence of the Unit. Mongolia has taken a backward step in preventing torture by closing this Unit.

Recommendation 1: That the Government establish an independent and effective office to investigate alleged acts of torture by law enforcement officials.

5. The Commission is concerned about the process surrounding criminal investigations in Mongolia. There appears to be a tendency by criminal investigators to arbitrarily detain suspects during pre-trial investigation periods.³ Under current Mongolian law, judges and prosecutors are given powers that are too broad in their scope as they allow officials to detain suspects in pre-trial investigation periods without appropriate levels of evidence as a first measure. There have been incidents whereby suspects have been detained for periods over 30 months, despite investigators having insufficient evidence to proceed the case to the Court.

Recommendation 2: That the Government ensures that law enforcement officials do not always detain suspects during pre-trial investigation periods, but look to other less restrictive measures.

6. At present, people who are in detention are unable to speak privately to their lawyer as they are forced to meet in public meeting rooms within the prison where guards are present and which are captured on CCTV. This presents a problem for lawyer-client confidentiality and restricts the prisoners from speaking about their case as there are often external influences preventing lawyers from having frank discussions. This breaches the prisoners' rights guaranteed under international and national legislation.

Recommendation 3: That prison authorities ensure that there are appropriate environments for prisoners to be able to speak to their lawyers in private.

7. The Commission has received a number of complaints from suspects who have been repeatedly transferred from one detention center to another, often in locations remote from the

Case#2: Inmate E, who has been detained in Pre-trial detention center 461, lodged a complaint to the NHRCM on G, an investigator of the Songinokhairkhan district, who beat and tortured him during investigation. As the NHRCM examined the case and met him, it was confirmed by the diagnosis of the physician of the pre-trial detention center that he was injured. Thus, the NHRCM referred the case to the Prosecutor's Office for criminal investigation, but the Prosecutor's Office referred the case to the Police Division where the investigator who committed torture works. The complaint was assigned to investigator B, who sits in the next door to the investigator G. As a result, E told NHRCM officer, "Investigator B exerts pressure on me to withdraw my complaint," and requested the case to be investigated by different authority. Unfortunately, it is impossible to grant his request due to the dissolution of the independent and autonomous institution that is competent to investigate torture crimes. (Complaint lodged to the NHRCM)

³Case#3: Complainant B is suspected and accused of theft and has been detained for 39 months and 28 days from 11 October 2009. The Commission's successive attempts to stop this violation have been ignored by the Prosecutor's Office; as a result, his detention period has exceeded the maximum period of confinement under guard during investigation by 10 months, as set out in the Clause 63.3 of the Criminal Procedure Code. (NHRCM 13th Annual Report on Human rights and Freedom in Mongolia, page71)

suspect's family, lawyers and investigative body.⁴ This is in contravention to the minimum standards for the detention of suspects contained within international law as well as in Mongolian legislation.

Recommendation 4: That the Government amends the Law on Criminal Procedure to ensure that prisoners are not repeatedly transferred between detention centers without basis.

8. That the Government needs to ensure that laws such as the Law on Criminal Procedure and the Law on Civil Procedure, as well as the Criminal Code and all relevant domestic laws comply with international human rights instruments.⁵ Unfortunately, there does not exist within the current Mongolian legislation which allows victims of torture to be able to seek compensation for psychological damage done as a result of such crimes.

Recommendation 5: That the Government improves legislation which clarifies compensation amounts to be paid to victims for psychological damage, caused as a result of torture.

II. FORCED LABOUR

9. An inquiry conducted by the NHRCM in 2013 confirmed that it is common practice for military conscripts to be forced to carry out non-military activities, including labour. Prisoners are also forced to carry out unpaid or low paid labour without consent.⁶

Recommendation 6: That the government ensures that legislation on the employment of conscripts and prisoners complies with ILO Convention No.29 on Forced Labour, and ILO Convention No.105 on Abolition of Forced Labour;

III. RIGHT TO A HEALTHY AND SAFE ENVIRONMENT

Mining

10. While the mining sector makes a substantial contribution to the economic development of the country, the right to live in a healthy and safe environment, the rights to health and land rights are being violated due to a lack of effective state policies which regulate irresponsible mining activities.⁷ According to the findings of inquiries conducted by the NHRCM, these violations are

⁴Case#4: "...As the Independent Authority against Corruption transferred Mr. A through pre-trial-detention centers of three provinces while they investigated him, his urgent medical treatment was interrupted. He lost 14kg and could not enjoy his right to medical care. He said he had a red eye with slough when he was detained in the pre-trial detention center in Mandalsoum, Selenge province..."(NHRCM 13thAnnual Report on Human rights and Freedom in Mongolia, page72)

⁵Study#1: The Commission has filed lawsuits in court claiming 1,021,322,000 MNT on behalf of complainants for compensation relating to the non-material damage incurred as a result of false charges being laid and for acts of torture since the Criminal Procedure Code was adopted in 2002. The Court resolved the lawsuits by compensating 209,475,149 MNT or only 21% of what was claimed. ..."(NHRCM 13thAnnual Report on Human rights and Freedom in Mongolia, page79)

⁶ NHRCM 13thAnnual Report on Human rights and Freedom in Mongolia, page 28.

⁷ NHRCM 12thAnnual Report on Human rights and Freedom in Mongolia, page 7.

caused by a lack of human rights based policies and effective coordination among government agencies, which poorly regulate mining companies and their impact on the environment.⁸ There is insufficient monitoring by the relevant government agency and Governors of soums and districts, with regards to mining companies. These companies are responsible for rehabilitating land and environment which has been destroyed by mining exploration and excavation.⁹

Recommendation 7: Establish remedy mechanism, in the event of a loss of life, and where psychological and physical damage has occurred due to mining activities and accede to the Aarhus Convention;

Labour safety and healthy working conditions in the construction sector

11. During the period 2011-2013, there were approximately 1209 industrial accidents in the construction sector throughout Mongolia involving 1280 people. Of this amount, 213 people lost their lives¹⁰ and a further 285 people were left disabled¹¹. These accidents were a direct result of inadequate enforcement of current occupational, health and safety regulations within the construction industry. Labour safety and health standards, national legal regulation must be renewed and conformed to international and universal norms.

Recommendation 8: That the Government becomes signatory to the ILO conventions No.167 and No.187 and incorporates these conventions into domestic laws.

IV. GENDER EQUALITY

12. The Law on Gender Equality was passed in 2011, with the Government adopting a Mid-Term Strategy and Action plan in 2013 which sought to implement the provisions contained within the law.¹² But the information and promotion of the law has been limited and the capacity of those in charge of gender issues is not sufficient.¹³ According to the Law on Gender Equality, the NHRCM is responsible for resolving complaints relating gender-based violence and

⁸ Case#5: “Drivers scoop water with gasoline cans. Then water is contaminated and unfit for drinking. But there are no other drinking wells around and we have to use the water.” Interview with a herder in Gурvantes soum, Umnugobi province. 2012 (NHRCM 12th Annual Report on Human rights and Freedom in Mongolia, page 14.)

⁹ The Mineral Law of Mongolia obligates mineral companies to rehabilitate destroyed land and environment after mining exploration and excavation.

¹⁰ Case #6: On September 17th 2012, a 22 year old man was killed while he was crossing a public street when a steel support post fell from a construction site commissioned by named citizen, in the territory of Chingeltei district’s 5th micro-district to the west of the Independence square next to Tengis cinema theatre. (NHRCM 13th Annual Report on Human rights and Freedom in Mongolia, page 11.)

Case #7: On September 3rd 2012, a concrete pumping crane fell, causing the death of a 12 year old girl on the construction site of the building contracted by named company, which is located in the territory of the Bayangol district’s 6th micro-district to the west of P.N.Shastin’s commemorative State’s Third Central Hospital. (NHRCM 13th Annual Report on Human rights and Freedom in Mongolia, page 11.)

¹¹ NHRCM 13th Annual Report on Human rights and Freedom in Mongolia, page 8.

¹² NHRCM 13th Annual Report on Human rights and Freedom in Mongolia, page 96.

¹³ NHRCM 13th Annual Report on Human rights and Freedom in Mongolia, pages 94-96.

discrimination¹⁴, and carrying out monitoring the implementation of the Law¹⁵. However, most complaints¹⁶ relating to sexual harassment within the workplace, officials found to have committed sexual harassment were either not held accountable, or were only fined a minimal amount of their salary, making the accountability system ineffective.¹⁷

Recommendation 9: Improve mechanisms which hold offenders who commit sexual harassment accountable;

Recommendation 10: That the Government of Mongolia provide adequate funding and human resources for the proper implementation of the Law on Gender Equality;

13. Mongolia is not fully complying with its obligation under article 2 (c) and (e) of CEDAW to provide for the immediate protection of women from violence. Shelter houses for women and children seeking protection from domestic violence only exist in Ulaanbaatar, which means the victims of domestic violence in the provinces are left without protection.¹⁸

Recommendation 11: that the Government provides additional funding from the state budget in order to establish shelter houses in each province.

14. Domestic violence occurs within every section of society. This is because of an absence of a comprehensive legal framework which protects domestic violence victims and legislation which holds offenders to account.¹⁹

15. Even though the Law against Domestic Violence was passed in 2004, some provisions are vague in their terms, and other relevant laws have not been amended in order to ensure harmonization between the laws. As a result of this, there is not an effective protection for

¹⁴ Article 21.1 of Law on Gender Equality of Mongolia

¹⁵ Article 15.1.4.b of Law on Gender Equality of Mongolia

¹⁶ Since the implementation of the law, NHRCM received 5 complaints in 2011, 9 in 2012, 16 in 2013, and 9 complaints by mid-2014 a total of 39 complaints.

¹⁷ Case #8: During the investigation of a complaint, NHRCM found that sexual harassment had occurred at named organization, but the organization's executives did not impose any disciplinary measures on citizen named B. The Commissioner issued a demand that the organization must impose disciplinary measures. B. then applied to the Court to appeal this finding. The Supreme Court of Mongolia upheld the actions of the NHRCM, and found that the NHRCM had conducted appropriate and necessary investigations resulting in the finding that B had committed sexual harassment.

¹⁸ The CEDAW Committee has also determined that the unavailability of shelters to women and children seeking protection from domestic violence, constitutes a violation of the State party's obligation under article 2 (c) and (e) of CEDAW to provide for the immediate protection of women from violence, including domestic violence. See CEDAW Committee, Views: Communication No 20/2008, 49th sess, UN Doc CEDAW/C/49/D/20/2008 (17 August 2011) (V.K v Bulgaria).

¹⁹ NHRCM 13th annual report on human rights and freedoms in Mongolia, page 50. In the last three years, there were 1486 crimes relating to domestic violence in Mongolia, as well as 1381 administrative breaches. 277 received services from the National Institute of Forensic Studies with regards to domestic violence. 955 people received treatment from National Trauma Center. 435 people received services from the single-window service center of Sukhbaatar District, and 4334 received services from National Center against Violence. 76% of total recipient were women, and 24% were children

victims of domestic violence. The NHRCM presented its facts and findings, including statistics to the Mongolian Parliament in its 13th annual report.

Recommendation 12: That Mongolia improves the Law against Domestic Violence so that it provides immediate and effective protection for victims; creates adequate mechanisms to hold offenders responsible for their crimes; and harmonises it with other relevant laws.

Recommendation 13: That Mongolia takes comprehensive measures aimed at eliminating child corporal punishment at all levels including family sphere, orphanage, nursery, and dormitory.

V. HUMAN TRAFFICKING

16. In 2012, the Parliament passed the Law on Fighting Human Trafficking and in 2013 passed the Law on Protection for Victims and Witnesses. This legislative framework allows victims of human trafficking to claim compensation including for psychological harm. However, there is no mechanism contained within this legislative framework which provides judicial guidance for judges when quantifying compensation for victims. Consequently, the amounts of compensation that have been awarded to victims are decided based upon the subjectivity of judges.

Recommendation 14: That the Government improves civil legislation regulating compensation for victims of human trafficking and creates a method to quantify compensation amounts to be paid to victims for psychological damage, caused as a result of human trafficking.

VI. HUMAN RIGHTS EDUCATION

17. Even though there are various training manuals and handbooks for employees of law enforcement and inspection agencies, developed in conjunction with international and civil society organizations, there is not an effective human rights programme within public service, nor are there human rights criteria contained within public service recruitment and performance guidelines. Under article 1.1.2 of the National Human Rights Action Plan, the Government should have developed and implemented a sub-plan to incorporate informal and formal human rights education curriculums into all levels of education as well as training sessions for public servants. However, the Government has yet to implement this plan.

Recommendation 15: That the Government creates a national human rights education mechanism including performance assessment criteria, placement testing and regular training, etc of public service employees;

Recommendation 16: That the Government of Mongolia integrates a human rights programme throughout all levels of the formal education system (general education and tertiary education, etc);

18. The Government is trying to implement education programmes for every child in Mongolia.²⁰ However, it is not taking effective measures to ensure the quality of education, school facilities and equipment, as well as the capacity of dormitories for children from ethnic minorities, herder families, and children with disabilities whose special needs must be given importance²¹. The NHRCM is concerned that the Government distributes funding from the state budget for private schools and kindergartens, who are already adequately funded by high tuition fees, while state budget schools and kindergartens lack the necessary investment to provide adequate facilities.

Recommendation 17: That the Government of Mongolia accommodates the best interests and special needs of the child when providing education for all; and to ensure that the educational budget is spent efficiently.

VII. RIGHT TO BE FREE FROM DISCRIMINATION

19. There is no over-arching anti-discrimination law which prohibits discrimination on the grounds of sex, disability, race, age and other grounds of discrimination covered by international treaties, including grounds in relevant ILO conventions. Therefore, the current legal framework for preventing discrimination in Mongolia is inadequate.

20. For example, The NHRCM is concerned of discrimination on the basis of one's political view. Often after an election is held, public servants are either dismissed or promoted based on their political views. Officials who unreasonably dismiss public servants and who intentionally ignore decisions of the court to reinstate public servants who have been unfairly dismissed are not held accountable.

Recommendation 18: That the Government introduces anti-discrimination legislation, which includes a definition of 'discrimination', and which ensures that Mongolia conforms with its obligations under international human rights law.

Persons with disabilities

21. The NHRCM has been especially concerned with the rights of persons with disabilities and has included this issue in its 2nd, 3rd, 6th, 9th and 10th Annual Reports to Parliament. In addition, the Parliament ratified the UN Convention on Rights of Persons with Disabilities in 2009 as a result of many years of advocacy of the NHRCM. The Government has obligations to ensure protection from discrimination of any kind on the basis of disability, as well as provide accessible environments for all persons with disabilities and to take all appropriate measures to provide opportunities for full participation in social life under the Convention.

22. The Government has still not established accessible environments for children with disabilities so that they can attend school like other children. There is a lack of professional teachers with specialist training in working with children with disabilities. These children are

²⁰ NHRCM 12th annual report on human rights and freedoms in Mongolia, pages 31-41.

²¹ NHRCM 12th annual report on human rights and freedoms in Mongolia, pages 22-45.

victims of discrimination as they do not enjoy equal education rights as other children. Most children with disabilities are precluded from attending school, often staying at home and receiving no formal education. Unfortunately, there is a lack of statistics available that highlight the numbers of adults and children with disabilities in Mongolian society. Finally, there is a lack of public awareness with regards to the rights of children with disabilities and the obstacles they face in receiving equal education.

23. Mongolia must fulfil its duty to protect the rights of persons with disabilities according to national legislation and international treaties. This includes establishing disability infrastructure and learning environments which addressed the needs of people with disability.

Recommendation 19: That the Government takes efficient and effective measures to provide accessible environments for people with disability as well making it easy for them to access information and education.

Elderly people

24. The NHRCM is concerned about discrimination faced by elderly people in Mongolia²². The government needs to ensure equal opportunities for the full participation of elderly people in both the cultural and social aspects of society. There needs to be the establishment of a legal environment that makes elderly people equal with other members of society. Furthermore, the Mongolian government should take the initiative by advocating for the UN to adopt an international covenant which guarantees the rights of elderly people.²³

Recommendation 22: That the Government provide all necessary measures which allow elderly people to participate equally in the social, economic, political and cultural life.

LGBT people

25. Currently, Mongolia has no legal protections to protect LGBT people from discrimination and harassment. There is no legislative or policy framework which seeks to eliminate the stigma which exists within Mongolian society towards LGBT people.²⁴ While the Government of Mongolia has drafted a new Criminal Code which includes a definition of “discrimination”, there is no definition of ‘hate crimes’ which prevent LGBT people from becoming victims of hate crimes. This results in people who commit such acts to do so with impunity.

Recommendation 21: That the Government promotes effective educational and promotional activities which seek to remove the negative stigma attached to LGBT people in Mongolia society.

²² An elderly person Ch. requested to be registered in the elders' committee of the place where he had worked a number of times. However, the committee denied his request the committee set criteria for membership including minimum 20 years employment in the organisation and retirement from managing position. Thus, he lodged a complaint to the NHRCM. The Commission recommended the elders committee to amend its rules for membership in compliance with international human rights instruments. (Complaint lodged to the NHRCM)

²³ NHRCM 10th Annual Report on Human Rights and Freedom in Mongolia, page 87.

²⁴ NHRCM 12th Annual Report on Human Rights and Freedom in Mongolia, pages 52-55.

VIII.HUMAN RIGHTS DEFENDERS

26. The NHRCM is concerned about reports from local NGOs regarding threats made to human rights defenders and advocates. Human rights defenders are vital in promoting and protecting human rights and freedoms in Mongolia. This includes ensuring that both the government and the private sector are held accountable for their actions. Unfortunately, there have been a number of instances whereby human rights defenders have been threatened or discriminated against for advocating for the advancement of human rights protections in Mongolia.

27. Under the UN Declaration of Human Rights Defenders, States have a responsibility to take all necessary measures to ensure the protection of human rights defenders from threats and acts of violence.²⁵ At present, no legal protections exist which protect and support human rights defenders as they carry out their work in promoting and protecting human rights in Mongolia.

Recommendation 22: That the Government establishes a legal environment which strengthens protections for human rights defenders in Mongolia, in line with the obligations under the UN Declaration on Human Rights Defenders.

²⁵ UN Declaration on Human Rights Defenders, Articles 2, 9, 12, 14 and 15