

National Human Rights Mechanism

1. Mongolia is presenting its national report on the human rights situation for the third cycle of Universal Periodic Review (UPR) at the 36th regular session of the UN Human Rights Council on 5th of May, 2020. On this occasion the National Human Rights Mechanism report was developed by the Centre for Human Rights and Development and Global Meridian NGO, member organizations of the Mongolian Human Rights NGO Forum (HRF). Scope and content of the report were identified and approved by the meeting of the HRF Working Group. The draft report was presented and discussed at the Ex-officio Council meeting at the Ministry of Justice and Home Affairs (MJHA) and during the National Consultation meeting. Recommendations and comments generated during these meetings were incorporated into the final draft report in collaboration with the HRF Working Group members.
2. This report is developed, using the submissions of HRF for the first and second UPR: “The implementation of human rights in Mongolia”ⁱ and “Legal Reform”ⁱⁱ, Recommendations from two UPRⁱⁱⁱ, the Government Action Plan on implementation of the Recommendations^{iv}, UPR Mid-Term Review Report on the implementation of the UPR recommendations produced by the Government and HRF, meeting minutes of discussions organized by the HRF members in different provinces and districts.
3. The National Human Rights Mechanism report is developed within the framework of the recommendations given by UN Human Rights Council from the first and second cycle of UPR to strengthen the national human rights structure and mechanism.
4. The report includes themes such as the structure and collaboration for implementation of the UPR recommendations; new legislations to advance human rights implementation in Mongolia and their implementation; and legal changes negative consequences on human rights implementation; actions with high risk to affect human rights – attack on private property, publicly informed corruption cases.

Progress Made Towards Implementation of the UN Human Rights Council’s Recommendations

5. It was recommended to the Government of Mongolia to explore a possible way of creating a structure that avails synchronized accomplishment of the UPR Recommendations along with Recommendations from the International Human Rights Treaty Bodies.^v Accordingly, the Government of Mongolia has established an Ex-officio Council represented by different stakeholders of the government and non-government organizations with mandates to monitor the implementation of Recommendations pursuant to its Resolution #204 of 2016. The Minister of Justice was appointed as a Chair of the Ex-officio Council. Many encouraging changes took place in collaboration between the Ministry of Foreign Affairs (MFA), Ministry of Justice and Home Affairs (MJHA) and HRF within this structure. For example, the Human Rights Department of MFA worked with members of HRF to agree on translation of the recommendations to set up common understanding and formulation. HRF has defined actions

for and expectations from implementation of every recommendation, developed indicators for evaluation and monitoring and presented to Ex-officio Council members and other representatives of relevant government bodies. As a result, many actions proposed by the HRF have been incorporated into the Government Action Plan on implementation of the Recommendations.

6. Furthermore, the HRF has produced a Mid-Term review report on the implementation of the UPR recommendations and organized a whole-day consultation to present the report results to the Ex-officio Council members and government officials. High-level government officials in charge of policy development such as Deputy Minister of Justice, Heads of the Legal Policy Department and Department of Treaties, Legislation and Cooperation of MJHA, Head of the Human Rights Department of MFA, Head of the Department on Population Development of Ministry of Social Welfare and Labour, and others had open discussions during this consultation.
7. Finally, successful exchange of opinions around the content and scope of reports to be sent by the HRF member organizations for the III cycle of UPR has been organized by the MJHA and MFA in the form of National Consultation Meeting. The meeting shared contributions of the State Secretary of MJHA, Heads of Legal Policy Department and Department of Treaties, Legislation and Cooperation of MJHA, Chairs of Crime Prevention Council, Head of Human Rights Department of MFA, Head of Department on Population Development of Ministry of Social Welfare and Labour, Police, Prosecutor's Office, National Human Rights Commission and civil society representatives. During the meeting serious discussions took place on the recommendations that are not yet implemented.
8. 13 Recommendations were given by the UN Human Rights Council to the Government of Mongolia from the compiled report on *"The implementation of human rights in Mongolia"* and *"Legal Reform"* developed by the HRF member organization for the I and II cycles of Mongolia Universal Periodic Review. Out of them, 12 Recommendations relate to the adoption of new laws and legislative measures essential to protecting human rights and, the remaining one relates to improving the implementation of the National Program on Protection and Promotion of Human Rights. Within the framework of strengthening the legislative environment, Recommendations were given on protection of victims and witnesses, ensuring gender equality, establishing public interest litigation, combatting all forms of discrimination, ensuring public participation including rights of women and people with disability to participation in decision-making and protecting human rights defenders, strengthening the independence of the National Human Rights Commission. The annex table shows that 5 Recommendations, out of all on legislative changes have been implemented.^{vi}
9. It is encouraging to see adoption of many laws and legislative mechanisms aimed at ensuring human rights and implementation of public participation rights. As of 4th of February 2016, 105 laws out of effective 459 laws in Mongolia contain provisions pertinent to the right to information, right to participation in decision-making processes, right to monitor activities of public offices, etc. guaranteeing active participation of citizens.^{vii} Since 2015, a substantial number of vital laws have been adopted in this area. For example: the General Administrative Law (2015) provided to organize discussions and hearings among affected citizens before delivering an administrative decision and/or regulation and/or standards applicable to general public; in line with the Law on Administrative Proceeding (2015) created a possibility for

NGOs to file a court case on matters related to protection of environment, child's right, public health, and public property; pursuant to the Law on Consented Query (2017), to make proposals and suggestions in determination, classification, and identification of solutions with regards to social emerging issues, in selection of the projects and activities to be implemented from the local development funds and in ascertaining partial urban planning processes; pursuant to the Law on Public Hearing (2015), citizens can make a request or a demand to organize a general monitoring and/or budget review or other hearings on emerging development matters; to contribute comments and suggestions on draft legislatures pursuant to the Law on Legislations (2015); and to be involved in state activities by monitoring budget expenditure and procurements pursuant to the Law on Glass Account (2014).^{viii}

10. In addition, laws with objectives to ensure and protect certain group of people's rights have been adopted successfully. Here, we can name the Law on Protection of Rights of the Child (2016), Law on Rights of Persons with Disabilities (2016), Law on Elderly (2017), and Law on Youth Development (2017). A significant upgrade was made towards identification of the purposes, principles and provisions of these laws in conformity with human rights' norms, applying human rights terminologies in definitions.

Emphasis on Non-Implemented Recommendations

11. Emphasis should be given to the fact that 4 out of 10 Recommendations given by the Human Rights Council on strengthening the human rights' legal environment have been implemented whereas 6 Recommendations are not implemented. For example, the implementation of 2 Recommendations, namely on adoption of the law protecting human rights defenders and on revision of the Law on National Committee on Human Rights in conformity with Paris principles, are ongoing. However, 4 Recommendations, namely on adoption of the law against all forms of discrimination, law attesting parliament members' accountability, and law against gender-based violence, and on implementation of National Program on Human Rights, are left with zero implementation^{ix}.
12. In 2017, the National Human Rights Commission (NHRC) proposed to implement a Recommendation on adoption of the law on protection of human rights defenders. Based upon NHRC's initiative, the working group was established completing the first draft law. The draft law was introduced to some members of the Parliament and received strong support. The working group was formed by HRF members, lawyers and academics. Applicable studies and analysis were made on the draft law after which the draft was revised, based on findings and suggestions of studies. In February 2019, the Minister of Foreign Affairs, who is the member of the Parliament and the Government minister, presented the draft law to the Government of Mongolia for approval to submit to the Parliament. However, the Government denied the request, urging revision to meet the requirements. Therefore, it is necessary for stakeholders to liaise on further improvement of the draft. Then again, this task should be expedited. Because, we mustn't forget those from Ongi River Movement, whose freedom, health and lives have been deprived during their imprisonment for their illegal actions to protect their land and water from mining activities as there was no legal approach to act otherwise. Disappearance then discovery of the body of 20 years old environmental protector, who was fighting to annul the mining licenses that were issued in the territory of the country inhabited

by world-extinct leopards and who was threatened many times before his disappearance, later determined by law enforcement agencies to be a “suicide”. A reporter’s death at home who was writing on corruption cases was determined and closed by the investigator’s conclusion as to be “an accident caused by falling off without any external influence”. Later, these ordeals triggered public chaos, demanding justice for all these cases. Recurrence of such unjust phenomenon cannot be tolerated further. Precedence of these ordeals indicates that the law that obliterates risks, protects and supports the human rights defenders should be adopted urgently.

13. The UN member countries have issued a Recommendation during the Human Rights Council session to increase the NHRC budget, make arrangements to ensure open nomination and appointment of the Commissioner of NHRC as well as the participation of civil society in the processes, incorporate greater ethical standards, professional and human rights expertise in the requirements for the Commissioner, ensure transparency and openness, and, revise the law governing the National Human Rights Commission and develop its capacity to bring it in line with the Paris Principles.^x Nonetheless, the implementation is in slow process. The revised draft law^{xi} and the draft concept note of the law^{xii} were sited on the MJHA website to collect comments and feedbacks. Now, these documents are ready to be proposed to the Government. The draft law contains many progressive provisions aimed at resolving issues related to uncertain timeline for submission and discussion of the NHRC annual report on Situation of Human Rights and Freedoms in Mongolia to the Parliament and the Government, decisions related to implementation of Recommendations, eradicating hindrances caused by the Standing Committee on Legislature during discussion, delivering applicable resolutions on ensuring implementation of activities, etc. Furthermore, the draft law contains changes pertinent to ensuring sufficiency of the NHRC budget, eliminating likelihood of reducing the NHRC budget from the Government, and ensuring open and transparent nomination and appointment of the Commissioner of NHRC as well as the participation of civil society in the processes. However, some provisions should be looked more closely. For example, a criteria “high degree of legal expertise” for the Commissioners limits candidates other than lawyers and law professionals therefore, nonconforming with the international standards. In addition, a regulation to abolish current lengthy practices of nomination and appointment of the next Commissioner, after the termination of the previous one, is still absent.
14. Following a Recommendation on enhancement of the implementation of the National Program on Human Rights, many efforts were taken effectively such as conducting the implementation assessment of the Program and delivering recommendations and proposals to revise certain aspects of it. But, after the 2012 election, the Secretariat of the National Program on Human Rights Implementation was dissolved by the resolution of the Minister of Justice and, activities and implementation of the National Program have been withdrawn. Since then, there was no initiative to restore the activities.
15. 3 Recommendations related to adoption of a comprehensive anti-discrimination and anti-gender-based violence legislations and to create regulations on accountability and withdrawal of the Parliament members are left out, without any performance.

16. Whereas, the general legal atmosphere to ensure human rights in Mongolia is refining, the progress is still stagnant with regards to implementation. Inadequate public legal awareness and applicability of laws in practice are key factors only exacerbating impediments. Such conditions are common especially in country sides. Accountability mechanism for non-compliance with the law is also lacking. Particularly, public offices and officials faintly execute their responsibilities on promotion of new laws and raising public awareness and organizing training. The Revised Law on Criminal Proceedings which was adopted on 18th of May 2017 and became effective from 1st of July, same year, is an example of such misconstruction. An accelerated training of officials on the new law, for the duration of 6 weeks, could not sufficiently build a platform to implement the law.
17. The UN Human Rights Council II cycle has given a Recommendation to continue its efforts in the field of education and human rights training particularly for law enforcement officers, training on application of international treaties for judges, and training on human rights at all levels of government functionaries^{xiii}. Following the Recommendation, necessary steps are made towards mainstreaming human rights into the educational curricula however, processes such as evaluation, assessment, improvement and budgeting are left behind. We are anticipating a positive outcome on some of the relevant issues, since the recent effect of the National Program on Legal Education.^{xiv}

Additional Cautionary Matters

18. Amendments to the Law on Legal Status of Judges, Law on Prosecutors and Law on Anti-Corruption were recently adopted based on initiative of the President of Mongolia and backing of the Government. Based on amendments, these laws denote the National Security Council (NSC) may propose to remove judges^{xv}, Attorney General and Deputy Attorney General^{xvi} and Chief and Deputy Commissioners of the Anti-Corruption Agency^{xvii}. Indeed, Mongolian courts and prosecutors have been reluctant to resolve countless mining license, land sell, government procurement and corruption related cases. However, rather than making efforts to improve the legislations, the chosen method of removing leaderships of these organizations based on NSC's view, which consists from the President, Prime Minister and the Speaker of the Parliament, may endorse incoherent practices in the future.
19. The UN Human Rights Council II cycle has given Recommendations to continue to take steps to prevent and fight corruption to bring about equitable and sustainable growth for its people and investigate all cases of corruption in the judicial system.^{xviii} The Government of Mongolia has accepted these Recommendations for adoption. Regardless of that, a considerable step forward insofar needed has not been made. For example, a MNT60 billion tugrug case, where Mongolian People's Party leaders allegedly planned to raise in campaign financing from public officials, is about to fade though has been discussed since 2017. Media spread the news about reinstated investigation for a MNT60 billion tugrug case by the Anti-Corruption Agency (ACA), General Police Department (GPD) and Intelligence Agency (IA) based on new facts and transferred the case to the Prosecutor's Office with the proposal to convict the respondents.^{xix} Still, establishing justice for this case is doubtful as the faith of any other corruption cases. Similarly, members of the Parliament, formed as a result of 2016 Parliament

election, and many other public high-level officials abused their powers to acquire low-interest concessional loans from the Small and Medium Enterprises Development Fund (SMEDF), diverting genuine SME entrepreneurs' chances to advance their businesses. The case was revealed in late 2018, building people's outrage and frustration. Following the scandal, actions such as to dismiss the Minister of Food, Agriculture and Light Industry from the office, revise the SMEDF's loan procedures^{xx}, recollect loans from those who have illegally obtained, dismiss public officials, and make Parliament members to publically apologize were taken consequently. After the inspection of SMEDF loans, the ACA has transferred cases of 4 Parliament members to the Prosecutor's Office. The Parliament dismissed the Attorney General's request to revoke these members' parliamentary immunity. Thus, high-level public officials and members of Parliament who are involved in corruption scandals are not punished yet. They are not bound by political ethics to seek forgiveness from the people for their wrongdoing and leave the office and the appointed duties. Furthermore, code of ethics and legal regulations for the matter of ethics cease to exist.

20. Such turmoil in Mongolia are directly associated with the fundamental weaknesses in the democratic institutions. Practices, such as manipulating elections in favour of wealthy, disregarding people's right to vote and to be voted for; fund raising by political parties fostered by private sector's financing and kickbacks for the public office appointments^{xxi}; lacking expertise to develop the development policy; inability to disseminate democratic values to the people; failing to be detached from corrupt people at the government; and lacking determination towards establishing democratic and human rights principles and ethical accountability and dismissal regulations of the Parliament members in laws, have exacerbated the societal distortion.
21. Corrupt officials are dodging punishment as corruption cases they are involved typically closed based on statute of limitation provision. According to the study conducted by the ACA, 29 corruption cases were closed during the period from 2016 to 2018 on a basis of statute of limitation.^{xxii} For example, statute of limitation has completed for cases related to 2 former Parliament members, Governor of the Capital City and his son, Head of Customs Restriction Monitoring Department of Export and Import and relevant senior-level officials of the Customs Authority, Department Director of Ministry of Road and Transportation, etc., which involve high-level politicians and public officials and accordingly, they have been discharged from any punishment for their wrongdoings. This "dodging punishment" mechanism has been created by the Revised Criminal Code of Mongolia, which was adopted by the Parliament 2 years earlier. The Law states the term "**STATUTE OF LIMITATION**" of the case as "to calculate from the day of a crime committed until the day of a primary court decision is enforced". Grand corruption and abuse of power/official duty, misuse of power by public officials' cases require a substantial investigation time hence, creating such legal loophole distorts the justice system in whole.

Forced Attack on Private Property by the Government

22. The Intelligence and Police Special Forces, together with the military unit of the Armed Force of Mongolia, held a special operation under the supervision of the provincial prosecutors at

the Salkhit Silver and Ore Deposit, located in Gurvansaikhan soum of Dundgobi province and suspended the deposit use licenses which were valid up to 2043 and 2047. The deposit use licenses were held by 100 percent Chinese investment company that allegedly concealed MNT930 million tugrug from taxes, evaded MNT13 billion tugrug royalty payments, misstated financial reports, involved in corruption of judiciaries who were working on the investors' dispute related case, and breached applicable laws while restricting entrance to the local law enforcers and public officials^{xxiii} upon arrival to hand over legitimate notices. Even if, several provisions of the Minerals Law and Taxation Law have been violated by the company, organizing a special intelligence operation to resolve issues is thoroughly inappropriate, especially when the operation is led by the Minister-cum-Head of the Cabinet Secretariat of the Government.

23. Beyond mining, intelligence special operations continued attacking private properties. By another special operation, a warehouse of a Chinese investment, meat supply company "Sayan-Uul" LLC was unexpectedly inspected. Media spread the statement made by the Head of the Cabinet Secretariat, saying "The Intelligence Agency has undertaken an investigation in relation to the assumption that the abrupt meat shortage and price increase may have had caused by certain companies' organized plot^{xxiv}". Such repeated attack on small or large private properties through a special operation, using force, forms a precaution that the government might misuse its powers and become attached to human rights violations.

Conclusion and Recommendations

24. The national human rights mechanism is not adequately formed in Mongolia. Therefore, the following actions are required to be undertaken:
- a) To improve the draft Law on Human Rights Defenders and enact immediately;
 - b) To accelerate the work to revise the law governing the National Human Rights Commission in line with the Paris Principles;
 - c) To restore the implementation of the National Program on Protection and Promotion of Human Rights.
25. Regardless of adoption of laws ensuring civil engagement, public awareness on these laws and ability and willingness of public officials to apply them are weak. Therefore, public awareness raising with regards to their rights, and a systematic capacity building training for public officials is needed with budget and mobilizing civil society organizations' resources.
26. Amendments made in the Law on Legal Status of Judges, Law on Anti-Corruption and Law on Prosecutors on 27 March 2019 by the Parliament of Mongolia have damaging effects on human rights implementation, stimulating social disruption, conflict and jeopardize

independence and autonomy of judges, prosecutors and Anti-Corruption Agency. Thus, these legal amendments need to be annulled.

27. Involvement of public officials in corruption cases through use of power or by creating advantage for personal interest is widespread. This is a reflection of systemic weaknesses within the Parliament, political parties and election systems. The remedy for it is: a) to create accountability measures for Parliament members and regulations on removal from office for ethics' rule breach; b) to make the political parties' financing transparent, and to support their capacity building to develop and consistently implement the policy for country development; c) to take specific legal measures to terminate the vote buying and gift giving attempts, support voters' educational activities of the General Election Commission, eliminate unproductive election campaign expenditure, and enhance voters' awareness and education to vote based on capacity to develop and implement appropriate policies; and d) as a priority, legal regulations must be conceded into the applicable laws to restrict hiring public officials, involved in corruption cases for serving public offices and running for elections
28. Due to inability of Taxation, Professional Inspection, courts and prosecutors' offices to implement the laws and perform their mandated duties and obligations, the government held special operations, using force, at Salkhit mine and Meat supply company's warehouse to resolve problems. This, unfortunately, demonstrates amplified powers by the Government. It is worth paying attention to avoid such actions in future and adapt a mechanism to apply legal accountability for responsible officials or to re-examine the applicable laws and make appropriate amendments.

ⁱSituation of Human Rights and Freedoms in Mongolia. HRF report. 2010. <http://www.upr-mongolia.mn/images/xupld/Negdsen%20iltgel.pdf>

ⁱⁱLegal Reform. HRF compiled report. 2014. <http://upr-mongolia.mn/images/2LegalReformSepUPR.pdf>

ⁱⁱⁱ <https://www.upr-info.org/database>

^{iv} General Plan on Implementation of UN Human Rights Council Recommendations in 2016-2019.

<https://www.legalinfo.mn/annex/details/7344?lawid=12001>

^v Recommendation given by Paraguay during HRC 2 cycle.

^{vi} Table. Implementation of HRF Recommendations. Compiled by CHRD. 2019.

^{vii} <http://www.irgen-tur.mn/mn/tags/иргэдийн-оролцоо>

^{viii} <https://www.legalinfo.mn/law/?cat=27>

^{ix} Table. See Implementation of HRF Recommendations.

^x Recommendation given by Sierra Leone, Chili, Australia, Nepal, Namibia, Nigeria, and Pakistan.

^{xi} The revised draft Law on National Human Rights Commission. <https://mojha.gov.mn/wp-content/uploads/2019/03/NHRC-tusul.pdf>

^{xii} Concept of the revised draft Law on National Human Rights Commission. <https://mojha.gov.mn/wp-content/uploads/2019/03/NHRC-Uzel-Barimtlal.pdf>

^{xiii} Recommendations given by Mexico, Morocco, Pakistan.

^{xiv} HRF report. Routine discussion on human rights. Mid-term report. 2018. Page 15-17. http://upr-mongolia.mn/images/UPR_Midterm_report_MON_Jun2018Final.pdf

^{xv}Law on Legal Status of Judges. Article 17, sub-clause 17.1.8. <https://www.legalinfo.mn/law/details/8660>

^{xvi}Law on Prosecutors. Article 46, sub-clause 46.6.4. <https://www.legalinfo.mn/law/details/12702>

^{xvii}Law on Anti-Corruption. Article 22, sub-clause 22.4. <https://www.legalinfo.mn/law/details/8928>

^{xviii}Recommendation given by Litvia and Singapore during HRC 2nd cycle.

^{xix}Article on MNT60 billion case transfer to the Prosecutor's Office. <http://www.olloo.mn/n/66992.html> 2019.08.12

^{xx}Press conference. ACA. April 2019. <http://zarig.mn/d57/> 25 April

^{xxi}The case, allegedly planned to raise MNT60 billion tugrugs after 2016 election from the MPP from its newly appointed public officials, is under investigation by the law enforcement agency.

^{xxii}The major "ACQUITTED" cased based on statute of limitation? 2019.09.30. <https://news.zindaa.mn/2wia>

^{xxiii}Press release. Government Cabinet Secretariat, Media and Public Relations department.

<https://zasag.mn/news/view/21513>(2018.12.29)

^{xxiv}Article on a special operation held at Meat Company. 2019.05.17 <https://gereg.mn/news/22156>