

LEGAL REFORM

1. The second round of HRC Universal Periodic Review of the status of human rights in Mongolia is due April 2015. Within the framework of the Human Rights NGO Forum (hereinafter HR Forum) a submission: “Legal Framework” is prepared for this review by four members of the HR Forum: Gender Equality Centre, Centre for Human Rights and Development, National Centre against Violence and Global Meridian NGOs. The draft submission was discussed 3 times by the HR Forum Working Group, members and a multi-stakeholder consultation meeting¹.
2. This submission was informed by the recommendations of the first HR NGO Forum joint submission to UPR “Status of Implementation of Human Rights in Mongolia”, conclusions and recommendations of the UNHRC review, UPR Action Plan of Mongolia and the Government mid-term report on the implementation UPR recommendations as well as 6 rounds of meetings with government officials and individuals.
3. “Legal Reform” submission discusses challenges addressed in recommendations 84,16; 84,18; 84,31; 84,38; 84,50; 84,52; 84,79; 84,80; 84,107 given by Brazil, Ghana, Malaysia, Indonesia, Spain, United Kingdom, Netherlands, Slovakia, Slovenia and Hungary² including the right to development, public participation, “right to personal safety”, access to justice.

Short summary of outcomes of “Status of Implementation of Human Rights” submission

4. The joint submission consists of four sections discussing Mongolia’s human rights protection legal framework; national institutions and mechanisms; status of implementation of human rights protection; and recommendations. Many recommendations were developed for each of the section. In particular, in order to improve the legal framework 21 recommendations suggested development of 9 new laws, amend 7 and improve implementation of 5 laws. A total of 14 recommendations aimed at strengthening national human rights institutions and mechanisms pertaining to specific institutions were issued: 2 recommendations pertaining to the Human Rights Sub-committee of the SGH, , 2 addressed to the national Human Rights Commissions, 3 recommending a national human rights program, 3 to judiciary and 4 pertaining to CSOs. In terms of protection and implementation of human rights there were 5 recommendations pertaining to poverty and unemployment; 2 on human rights based development policy, 1 on ensuring adequate housing, 3 on improving aid effectiveness, 2 on implementing economic, social and cultural rights, and 8 on environmental issues. In addition, recommendation to the Cabinet to seek international technical assistance in building its capacity to review through the human rights prism all priority policies and programs; to use human rights based approach and methodologies in all phases of development, planning and implementation of policies and programs; improve and strengthen national human rights mechanisms; create fund to support independent and sustainable activities of civil society.

¹“Second round of Universal Periodic Review Discussion” National Consultation meeting was held on August 20-22, 2014 in Ulaanbaatar. The meeting was co-organized by two members of Asia Forum for Human Rights and Development in Mongolia: Centre for Human Rights and Development and Globe International together with the Open Society Forum.

²See enclosed table of recommendations of the HR Forum’s joint submission on Status of Human Rights incorporated in the UN HRC recommendations.

5. The submission contained altogether 62 recommendations of which 19 were incorporated in one or other way in the UNHRC conclusions and recommendations. 11 of these were related to legal framework. Specifically, 8 of the 9 recommendations for a new law, 2 of 5 on improving implementation and one related to judiciary proposed in our Joint Submission were included in the recommendations delivered to GoM. Remaining 8 recommendations were related to: 3 on the improvement of implementation of the national human rights program; 1 legislating the CSO right to public interest litigation; 4 were related to reducing poverty, improving implementation of the rights to food, adequate housing, health, drinking water and the environmental right. Thus 30% of recommendations of the Joint HR Forum submission were incorporated in to recommendations of UN HRC member states.³

Status of implementation of UNHRC recommendations related to legal reform

6. Numerous recommendations to reform legal framework by joining optional protocols of human rights conventions and bringing national legislation in conformity with the ratified conventions were extended to the Mongolian Government by members of UN HRC. We commend the fact that based on these recommendations Optional protocol II for ICCPR and Optional protocol for ICESCR were ratified, that preparatory work is underway to sign ratification documents for the International Convention for the Protection of All Persons from Enforced Disappearance and Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
7. However, not enough measures are being taken to translate and promulgate the ratified conventions, to educate the law enforcement to understand and apply them in practice. Therefore there is need to apply effort in this direction.
8. We commend ministers and officials of relevant ministries who accepted the HR Forum proposal and worked together to eliminate discrepancies in the translation of UNHRC recommendations, differences of their interpretation (understanding), developing criteria for measuring implementation, delivering and explaining those to the relevant ministry officials, for building common understanding on expectations from the implementation of these recommendations. However, not all ministries displayed such positive reaction; many demonstrated high degree of bureaucratic arrogance resulting in many months of wait.
9. The GoM Action Plan on implementing the UNHRC recommendations includes plans to develop legal framework for protection of witness and victims, human rights defenders, ensuring participation of citizens in decision-making process, independence of publishers and public interest litigation by CSOs. However it does not include the recommendation on combating gender based violence and improving accountability of SGH members. The implementation status report is silent on the status of independence of publishers and improving accountability of SGH members. The fact that ‘the right of citizens to participate in decision-making process is included in the Law on Procedure for Developing Legislation and the Administrative Code Law does not reflect true status. It has only been included in law DRAFTs. Also it should be publicly discussed whether the Law on Crime, Article 14.1 stipulation: ‘any demand or threat to act or inaction restricting the rights and freedoms, discriminating on basis of ethnic origin, language, race, age, gender, social status, wealth, job, employment position, religion, opinion, education, sexual orientation and health

³Ibid

condition shall be subject to criminal punishment” is sufficient protection from gender-based violence.

10. The fact that the report on protection of human rights defenders does not address the issue is evidence of no action taken in this direction. There are numerous fact pointing at growing violation of human rights by mining operations and increased pressure, harassment and threats on human rights defenders working in this direction⁴. Public officials, law enforcement and general public do not understand who human rights defenders are and why in some instances they go breaking law to defend human rights. A key example is the case of criminal punishments ruled to human rights defenders, an environmental group led by Ts. Munkhbayar. We reiterate the urgent need to legislate to protect the human rights defenders and create environment conducive to their work.

***Issues not included in the UN HRC recommendations
which still need to be brought to the attention of HRC***

11. The law on Information transparency and right to information has made one step forward in ensuring the citizens’ right to information. However, the Law on Classified Information and Minerals Law for example contain blanket provisions, which contradict with exercising the right to information. Laws on election, Law on Political Parties are preventing just implementation of citizens’ right to elect, be elected and hold accountable. Therefore there is need to reform these laws.
12. The Law on Mongolian National Public Radio and Television, Administrative Procedure Law, Public Service Law needs to be revised to include participatory monitoring by civil society of their implementation.
13. Measures taken to strengthen the national human rights protection mechanisms are not sufficient. The national Committee tasked with implementation of the human rights program has been in stagnant status since 2012. The elimination of the working unit that existed within the Ministry of Justice resulted in termination of exchange on information, discussions on planning, implementation and reporting of the program by Committee members.
14. The power and technical capacity of the Subcommittee on Human Rights of SGH have not been strengthened. The SGH continues to lack capacity to advise and review decisions through human rights prism. There is continued need to improve human rights knowledge and capacity of MPs. There is extensive media coverage of public statements lacking basic human rights knowledge made by members of SGH and Cabinet. MPs are not applying principles of protection of human rights in selecting policies and solution to interests of multiple stakeholders and conflicting development agendas. An example of such behavior is the amendment of the Minerals Law. SGH passed the amendments disregarding public criticism of violation of the interests of local communities, the local mandate to determine its development priorities and violations of national interests.
15. The recommendation of the International Consultative Committee to bring the National Human Rights Commission (hereinafter the Commission)’s activities in compliance with the Paris principles has not been implemented. In order to secure free and independent activity of the Commission it is necessary to nominate members through an open, transparent and participatory process. It is important for the Commission to have adequate budget. Regrettably, legal framework namely the law governing the Commission has not changed.

⁴Mongolia: The situation of human rights defenders working on mining issues. <http://www.forum-asia.org/?p=15662>

Ministry of Finance continues to cut the Commission's budget.⁵The Commission has not been able to build its capacity to express independent opinion on major human rights violation cases, deliver conclusions, criticism and recommendations to improve development policies based on human rights approach.⁶

16. Civil society organizations are important independent components of human rights protection mechanism. However, there is lack of legal, financial and tax framework conducive to support sustainable CSO activities. The few human rights CSOs are forced to close due to pressure of rent, tax, fund raising constraints and loss of experienced staff to other sectors. There is no development of human rights CSOs able to work in rural areas.

Emerging issues

17. A pressing necessity to develop legal framework for ensuring participation of citizens in defining Mongolia's development goals, strategies and objectives, building capacity to secure their right to development is emerging as priority challenge. The country's economic development based solely on mining sector has led to direct dependence of livelihoods of population on minerals market demand and price fluctuations resulting in constant high inflation and depreciation of national currency which trigger loss of purchasing capacity and reduction of living standards. In addition, mining sector's significant negative environmental impact brings challenges difficult to resolve at the local level, namely to find development solutions for co-existence of traditional livelihoods based on livestock herding with mining operations. Under such circumstances there is need to develop legal framework, mechanisms and capacity for citizens to exercise their right to development by participating in determining their own, local and national development policies.
18. One of big changes of the legal reform is legislating public participation in law enforcement activities. Article 21 of the Law on Police passed on July 5, 2013⁷ legalizes public participation in law enforcement through creation of a Citizen Council. Laws on Combating Human Trafficking and Crime Prevention provides for incentives for preventing crime, supplying information for uncovering and preventing crime⁸. However, there are shortcomings such as lack of implementation procedures and disclosed statistics.
19. The Law on Immunity is preventing investigation of members of SGH and Constitutional Court. Investigation of MP Yo. Otgonbayar and CC member D. Sughar⁹ has started off with much sensation but then died away without trace.
20. Citizens not accepting the decision of first instance courts had the right to appeal to courts within their aimag. However, reform of judicial system into regional structure has moved the appellate mandate to regional courts. This results in additional cost due to huge

⁵In 2014 the Ministry of Finance cut the NHRC budget by 200 million MNT.

⁶NGO Submission on the Activities of the National Human Rights Institution

⁷ www.legalinfo.mn

⁸ Article 14 of the Law on Combating Human Trafficking, Incentives, protection to citizens for providing information 14.2. Based on Article 14 of the Law on Crime Prevention police may buy information on human trafficking from citizens.

⁹Zuuny Medee daily paper August 15, 2014 issue published an article reported on how the case of SGH MP Yo. Otgonbayar's wife's money laundering 500 billion MNT through her 20 bank accounts was silenced. Case Anti-corruption Agency not being able to hold responsible member of Constitutional Court D. Sughar's for non-disclosure of assets and placement of large amounts of money in offshore accounts. He got away with a fine amounting to 30% of his salary.

transportation and other costs and reduction of access to judicial remedy for rural population.

Recommendations:

21. Create legal framework for implementation of human rights and freedoms protected under international conventions and the Constitution:

- ✓ Translate and publish in the State Bulletin the texts of newly ratified conventions. Carry out widespread public promulgation and create conditions and capacity for their application by judiciary.
- ✓ Develop the following laws and law provisions necessary for implementing human rights: law nongovernmental non-profit organizations, law on protection of human rights defenders, law on combating gender based violence, law on independence of publishers, law accountability of SGH members, and provisions on citizens' right to participation in decision-making, public interest litigation and monitoring by civil society implementation of laws.
- ✓ Revise legislation such as Law on Classified Information, Law on Submitting SGH Resolutions, package of election laws, Law on Political Party, legal provisions on NGO tax and financing and arbitrary administrative procedures hindering implementation of human rights.
- ✓ Include citizens in monitoring and evaluation of such laws as the Law on National Public Radio and TV, Administrative Procedure Code, Public Service Law inadequate implementation and application of which lead to violation of human rights.

22. Strengthening national human rights protection mechanisms:

- ✓ Build capacity for and mandate the SGH Human Right Subcommittee to review legislation, decision and development policies and documents for compliance with human rights conventions and Constitutional rights.
- ✓ Develop capacity of NHRC to free and independent activity, revise the law on NHRC to comply with the Paris principles to ensure full mandate to protect human rights. Set greater priority to human rights knowledge in the selection criteria for HNRC commissioner.
- ✓ Ensure multi stakeholder participation in the implementation of National Human Rights Program, improve coordination and cohesion, budget sufficient funds for its implementation, evaluate implementation, initiate monitoring mechanisms and ensure broad participation of CSOs. Create enabling legal, informational, and financial and tax environment for HR CSOs to conduct sustainable and independent activities. Create legal framework permitting initiation of public interest litigation by CSOs, participation in monitoring of law enforcements with legal consequences.
- ✓ Create joint donor-GoM fund to support sustainably civil society activities nationwide.

23. Government to attach special attention to implementation of the right to development:

- ✓ Build and strengthen its capacity to develop, implement, monitor and evaluate development policy, programs with the human rights based approach; carry out training

of public officers to understand the state responsibility to respect, protect and fulfill human rights; instill knowledge and understanding of citizen as “rights-holder”, build their capacity to demand the rights.

24. In order to implement these recommendations the GoM will need to seek the following technical and financial assistance:

- ✓ Streamlining human rights based approach at all levels
- ✓ Learning methodologies to apply human rights based approach in policy and program development
- ✓ Develop capacity to carry out human rights assessment of policy, programs, law content and implementation with
- ✓ In improving national human rights protection mechanisms
- ✓ In creating a fund for support of sustainable civil society activity
- ✓ In improving law implementation mechanisms