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**Mongolian Human Rights NGO Forum**

The Mongolian Human Rights NGO Forum (hereafter HRF) was established in January 2010 in the wake of a training organized for NGOs as a preparation for Mongolia's participation in the first UPR cycle. Since then, HRF has united in its ranks over 50 NGOs which have consistently worked to improve the human rights situation in Mongolia, promote and protect human rights. For the purpose of energizing the implementation of UPR recommendations, HRF has also organized regular consultative meetings among governmental and non-governmental organizations and engaged in advocacy work.

**Mongolian Gender Equality Center NGO**

## THE CRIME OF SEXUAL ABUSE AND RAPE

### **Crimes against sexual inviolability of girls and women has increased by 30%.**

To mention some data related to crimes against sexual freedom and sexual inviolability, during the last three years, a total of 947<sup>i</sup> cases of sexual abuse were reported to police, which means one case was reported each day. 80% of all victims were girls and young women between 10 and 29 ages, 46.8% of them were girls between 8-17 ages, and 87%<sup>ii</sup> of all underage girl victims were students of secondary schools. In 2017, the number of reported cases of rape increased by 30%<sup>iii</sup>. However, this number could not fully represent the reality of sexual abuse and rape cases. Most cases are unreported, dismissed when reported, cases left unsolved when victims return the claims, compromised or negotiated with the offenders etc. These include:

- 1. The number of rape cases against children and minors, especially incest cases, has been increased. There is lack of adequate legal environment to protect the rights of children, especially girls who has become victims of rape.**

Victims don't report to legal organizations after becoming a victim of rape or sexual abuse by a family member, a relative or someone they know. When reported, adults "compromise" on the issue and children are left victimized. It is a concern if the government is fully representing and protecting the interest of the victim according to the report by the General Prosecutor's Office as one it's research conducted in 2019<sup>iv</sup>. However, one out of 2 cases (43,2%) investigated by police have been successfully prosecuted by court. As of during the last two months, 6 cases were reported to police, where minors were raped and one child died from rape.

According to the data by the National Institute of Forensic Science, "out of all examined people due to sexual abuse and rape, 45.6% of them, in other words, 881 people were children between 0-19 ages<sup>v</sup>. The National Child Emergency Hotline 108 received 46 calls in 2014, 131 calls in 2015, 169 in 2016, and 75 calls during the first 5 months of 2017 related to cases of children under sexual abuse<sup>vi</sup>. These numbers show the high risk of children becoming victims of sexual abuse and rape. These are only data known to us. It is impossible to know or calculate the cases and victims who didn't report, can't get assistance. There are dismissed, returned and hidden cases as well.

Rape crime increases by around 30% each year (290 in 2016, 376 in 2017, 516 in 2018). The general public is worried about minors are increasingly becoming victims of rape, but the government hasn't been taking concrete, effective, and sustainable measures to combat this crime. Few organizations are fighting without coordination based on their own resources and with the assistance from international donor organizations, which is not being effective enough as well.

- 2. Rights of victims of sexual abuse to be protected and the right to have their privacy protected are being violated during prosecution process.**

"The services provided to victims of rape is not clear and not centralized. Every time the victim needs to pay for the separate services and it is causing pressure<sup>vii</sup>". For instance: "A 5-year-old rape victim couldn't get medical examination because the service cost was 10 000 MNT. This case became viral on social media, and citizens got information on the service charges and actively protested"<sup>viii</sup>. After this case, the Ministry of Justice Home Affairs decided to free children from 0 to 18 from these charges. However, victims over 18 years old still need to pay

service fee or if not able to pay then the victim needs to get an official description from the local administration to prove the financial inability status<sup>ix</sup>, which is conflicting with the basic principles to protect the victim's reputation and safety.

### 3. There is lack of adequate legal environment to fight against sexual abuse.

Due to an amendment to the Criminal Code, the cases committed sexual intercourse with children between 14-16 ages has increased by 70% from previous year as of October 2010<sup>x</sup>. Article 12.5 of the revised Criminal Code (2015)<sup>xi</sup> says "a person who has attained the age 18 and has sexual intercourse with a person whom he or she knows is younger than 16, whether the person could have known the age of the child, shall be punished by a fine equal to 450,000-5,400,000 penalty units, or restriction of freedom of movement for between 1 month and 1 year, or by imprisonment for between 6 months and 1 year". The official age allowed to have sexual intercourse is not mentioned in the Criminal Code. The sentence for the offender has decreased from the previous law (the fine has decreased 22 times<sup>xii</sup>, the minimum amount of fine has decreased 5 times<sup>xiii</sup>). Therefore, if the victim became pregnant or is infected by sexually transmitted diseases as a result of rape, it is punishable by imprisonment for between 6 months and 3 years. In the previous law the sentence had to be aggravated in such cases. This is a step back in protecting the sexual freedom of the child. *For instance, a case in Umnugobi province in January 2018, "26-year-old Zoloo committed sexual intercourse with 14-year-old Tuvshuu knowingly that the child was not reached 16 years yet. The victim became pregnant. The victim miscarried the baby at 5 months of pregnancy"*. The accused was sentenced by 6 months of imprisonment according to part 2.1. of Article 12.5 in Special part of the Criminal Code. The general public expressed their frustration that the imposed sentence was not appropriate enough for the damage he caused to the victim. According to Article 15 in the Civil Law, "Civil legal capability to acquire rights and obligations by own conduct or full legal capacity emerges with reaching 18" and "minors under age of 14-18 shall have partial civil legal capability." Looking at the article related to minors may exercise some legal rights with and without their legal proxy consent, 14-years-old child can be physically look like a 16-year-old and above. However, in terms of sexual intercourse, they are unable to fully express their willingness by looking at their legal capability status<sup>xiv</sup>. These legal grounds can be used by perpetrators to accomplish their intentions by using some easy tricks, deceiving or convincing the adolescence child whose sexual maturity hasn't developed yet.

The crime "**to impose sexual pressure**" has been voided with the revised Criminal Code of 2015. Also it is one of the step backs where it was previously mentioned to aggregate the sentence if the crime was committed against children<sup>xv</sup>.

In the Article 12.2. of the revised Criminal Code, the characteristics of the crime of "**satisfaction of sexual desire in an unnatural manner**" as been defined not properly. "Obtaining satisfaction of sexual desire against the will of the victim in an unnatural manner by use of violence, threat, or humiliation during sexual intercourse when any permission from the victim is withdrawn..." It can be explained that the satisfaction of sexual desire in unnatural manner in other conditions can not be considered as crime. For example, it is not clear how to classify when obtaining satisfaction of sexual desire against the will of the victim in an unnatural manner by use of violence, threat, or humiliation without having sexual intercourse. In other words, criminals who committed sexual abuse, but not defined in the actions of **rape** and **satisfaction of sexual desire in an unnatural manner** can take advantage of these definitions<sup>xvi</sup>.

#### **4. The services are not sufficient for rehabilitation of victims of sexual abuse and rape.**

There is no one-stop center that provides all required services for victims of sexual abuse and rape. Victims are re-victimized financially and psychologically, and wasting their time, because they must go through all separate services at different organizations by themselves. The court decides to reimburse financial expenses only based on the financial receipts. The psychological damage caused by sexual abuse and rape and the rehabilitation expenses are not being assessed or calculated through financial means. The victims need to pay the service fees by themselves first, and it is dependent to their financial and economic status of his/her family. In the law, it is regulated to prove financial inability first to receive free services. Unfortunately, victims don't refer to the local authorities to prove their financial inability in practice, because it is related to their privacy, reputation and future.

Therefore, there is a lack of professionals in the government organizations. For instance, social workers say, "this girl liked it herself", "this person gets charged because of this complicated girl" etc. It is a matter of unethical behavior by service providers. There are no trauma-informed or post trauma stress disorder services (PSDS) by professional psychologists. Special socio-psychological rehabilitation service needs to be provided for the victim, but there is lack of experienced professionals in Mongolia. Current professionals lack understanding about the trauma-informed system/care. That's why it is not able to adopt PSDS-based services and systems. The PSDS based system should include education, health and legal components.

At all levels of service providers, victim-blaming attitude is commonly observed. This include, among police, teachers, lawyers, health practitioners etc. They have less knowledge about trauma, psychological damages, characteristics of survivor and it is common to misuse their power over victims and blame them.

#### **Recommendations to prevent from and to suppress the crime of sexual abuse:**

##### **1. Improve the legal environment:**

- Make changes in Article 12.5 of the revised Criminal Code in compliance with the Child Right Convention, Civil Law of Mongolia, Child Right Law of Mongolia, Child Protection Law of Mongolia and reconsider the penalties.
- Restore the article about crime "**to impose sexual pressure**" into the revised Criminal Code.
- Develop and approve a standard on investigation and prosecution of rape and sexual abuse cases. (The standard need to contain/regulate regular training for investigators, same investigator/prosecutor to work on a case until the end, instruct investigators on how to work with minor victims and minor perpetrators, set standards on how to treat child victims during health check-ups and examinations, set investigation standard for thorough inspection of sexual abuse and rape crimes against children, prosecute cases promptly, protect victims' life, health and security/safety, create the condition for victims not to coincide the accused etc.);

##### **2. Rehabilitation of victims of crimes:**

- Create the legal mechanism to calculate and compensate the non-materialistic damages such as psychological damages of the victims of sexual abuse, and the rehabilitation treatment expenses to be distributed by the criminals.

- Develop and approve approaches to assess, calculate and identify the psychological damages due to crimes of rape and sexual abuse, and create regulative mechanism to compensate the damages;
  - To prevent from sexual abuse, and to prevent victims from psychological re-victimization, training modules need to be developed and trainings organized regularly for health practitioners, teachers and other related specialists on working methods with victims, optimal consistency of required services and assistance, gender equality, discrimination, victim's rights, characteristic of sexual abuse etc.
3. **Protect the rights of victims of sexual abuse to have privacy and the right to be protected during the prosecution process:**
- Free the medical examination and check-ups for victims of sexual abuse of all ages, who refer to forensic science organization. Improve the reporting system and data analysis approach, release data on the crime openly to the public except the private information of the victims, and provide with required equipment and human capacity.
4. **Enhance knowledge about prevention from sexual abuse among the general public:**
- Enable childrens' (both girls and boys) participation in all levels of the activities in disseminating knowledge and information, educate the general public to change victim blaming attitude and to suppress sexual abuse and conduct these activities country wide in formal and informal means.
  - Enhance sexual education among boys and girls: stop treating impolitely to the reputation and safety of the girls in secondary schools under the name of girls' health check-up.

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<sup>i</sup> Police crimes statistics

<sup>ii</sup> Police crimes statistics

<sup>iii</sup> Police crimes statistics

<sup>iv</sup> Baseline research on sexual abuse against minors, Crimes Cause and Effect Research Institute, Research and Training Center of the General Prosecutors Office, 2019

<sup>v</sup> Research report on Assessment of sexually transmitted diseases and HIV among girls and women due to rape, Ministry of Health, Gender Equality Center, Ulaanbaatar, 2018, page 10.

<sup>vi</sup> Research report on analysis of prosecuted criminal cases of sexual abuse against children, Development Academy NGO, Ulaanbaatar, 2017, page 1

<sup>vii</sup> <https://www.legalinfo.mn/annex/details/7807?lawid=12614> Regulation of the services and fees of forensic health centers

<sup>viii</sup> <https://dnn.mn/%D1%85%D2%AF%D1%87%D0%B8%D1%80%D1%85%D0%B8%D0%B9%D0%BB%D1%8D%D0%BB%D0%B4-%D3%A9%D1%80%D1%82%D1%81%D3%A9%D0%BD-%D1%82%D0%B0%D0%B2%D0%B0%D0%BD-%D0%BD%D0%B0%D1%81%D1%82%D0%B0%D0%B9-%D0%BE%D1%85%D0%B8%D0%BD%D1%8B%D0%B3-%D1%85%D0%B0%D0%BC%D0%B3%D0%B0%D0%B0%D0%BB%D0%B0%D0%BB%D1%82%D0%B0%D0%B4-%D0%B0%D0%B2%D0%BB%D0%B0%D0%B0/>

<sup>ix</sup> <https://www.legalinfo.mn/additional/details/3247?lawid=12614>, Joint order No. a/263, a/406, 321

by Minister of Justice and Home Affairs, Minister of Health and Finance Minister, dated 2017.10.31

<sup>x</sup> Research report on the crimes against sexual freedom of children, causes and influencing factors, 2019, Academic Institute of The Law Enforcement University, Gender Equality Center, MONES

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<sup>xi</sup> <https://www.legalinfo.mn/law/details/11634?lawid=11634> Article 12.5 Sexual intercourse with children under 16 years old

<sup>xii</sup> Article 122 of the Criminal Code. Sexual intercourse with a person under 16 years old .... Sexual intercourse with a person who knowingly is under the age of 16 shall be punishable by a fine equal to 51 to 150 amounts of minimum salary, 251 to 300 hours of forced labor or imprisonment for a term of up to 3 years

<sup>xiii</sup> As of 2015 , the minimum salary rate is 192,000 MNT (In 2015, it equals to 9,792,000-28,800,000 MNT)

<sup>xiv</sup> /Article 16 and 17, Civil Law,2002/

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