

**PREPARED WITHIN THE FRAMEWORK OF  
MONGOLIAN HUMAN RIGHTS NGO FORUM**

**UN HUMAN RIGHTS COUNCIL**

**UNIVERSAL PERIODIC REVIEW (UPR)**

**36<sup>th</sup> Session**

May 2020

**Country: MONGOLIA**

**Submission:**

**Human trafficking**

**Submitted by: Mongolian Gender Equality Center NGO**

**Contact address:**

E-mail: [gendereqcen@magicnet.mn](mailto:gendereqcen@magicnet.mn); Phone: 976-11-311512; 7011-1112

**GENEVA, October 2019**

### **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.

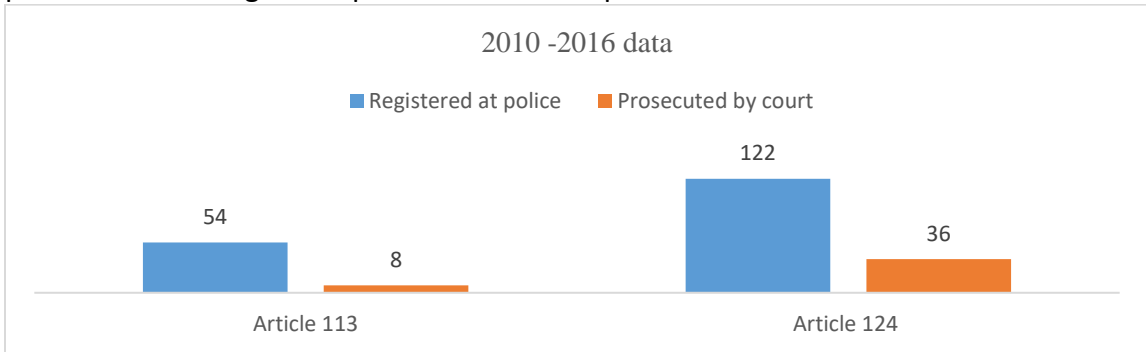
### **Mongolian Gender Equality Center NGO**

## HUMAN TRAFFICKING

- 1.** 8 recommendations<sup>i</sup> from the previous universal periodic review were directly related to human trafficking, 6 of them were related to laws and regulations, other two were related to comprehensive services to victims, compensation and budget.
- 2.** Even though there is a stand-alone law against Human Trafficking, the implementation is being insufficient. The state's effort to combat against human trafficking is being limited by organizing conferences and workshops<sup>ii</sup>. Madina Jarbussynova, the Special Representative and Coordinator for Combating Trafficking in Human Beings of the Organization for Security and Cooperation in Europe (OSCE)<sup>iii</sup> said "The issue in combating against human trafficking can't be solved without the active involvement of the government." Therefore, she emphasized it is required for governments to put as priority to combat against human trafficking<sup>iv</sup> in its main programs.
- 3. It is required to build sufficient human capacity and other resources to fight against and prevent from human trafficking.** The National Sub-Council to provide technical guidance on trafficking prevention and coordinate interagency efforts to implement relevant legislation was established in 2013 next to the Minister of Justice and Home Affairs. However, the National Sub-Council operates as unofficial status next to the Coordination Council of Crimes Prevention as part of the Ministry of Justice and Home Affairs, where only one full-time staff is in charge of the council. The Anti-Human Trafficking unit at the Criminal Police Department has one head and 4 investigators and operates only in Ulaanbaatar city. There is no unit or investigator specialized in combating human trafficking in rural provinces. Due to insufficient human capacity, only not more than 4-5% of all investigated human trafficking cases were from rural provinces. Thus, it shows the need to build capacity and increase the number of specialized human resources specialized in investigation of human trafficking crimes. There is no specialized unit or trained officials at judicial and prosecutor's offices. There is no trained official or specialized unit that provides services to victims of trafficking at social welfare and social protection sectors.
- 4. All stakeholders of the prosecution process need to be trained.** In 2017 the four-year National Program Combating against Human Trafficking has been approved.<sup>v</sup> As part of a project implemented by the Asia Foundation funded by the Department of States<sup>vi</sup> a total of 709 law enforcement officers, police, judges, prosecutors, border protection and immigration officials were trained to investigate and prosecute human trafficking cases based on victim-centered approach. As part of this project 34 national trainers were trained. Therefore, a total of 2000 cadets, who are the future law enforcement officials, at University of Internal Affairs received 8 times half-day training on basic understanding of human trafficking and prosecution of trafficking cases based on victim centered approach. The Unbound, a non-government organization, organized anti-human trafficking training for 68 criminal investigators and prosecutors in the capital city and rural provinces. Therefore, the Gender Equality Center (GEC) organized two capacity building trainings on current condition of human trafficking in Mongolia and specific characteristics of victims of trafficking for 50<sup>vii</sup> lawyers in 2018 in cooperation with the Coordination Council of Crimes Prevention (CCCP). Majority of capacity building

trainings are organized with the support from international organizations. An image can be seen that the government officers' capacity building trainings stop after the project is closed. Anti-human trafficking trainings are not included in the compulsory training agendas for government officers and judicial organizations. There is no planned or approved budget for capacity trainings by the government. Thus, there is still existing need to create a system to train officials regularly.

- 5. Human trafficking cases need to be identified and criminals need to be punished.** According to the statistics released by law enforcement organizations between 2010 and 2016, 15 people punished for 8 human trafficking cases prosecuted and 54 people punished for 36 organized prostitutions cases prosecuted.<sup>viii</sup>



20<sup>ix</sup> out of 29 victims of human trafficking who referred for assistance from the Gender Equality Center, referred to police for investigation in 2017. However, there is no information on prosecution of those cases. Prevention activities were organized by the Unbound NGO at Zamiin-Uud border crossing in June of 2017, 159 girls were identified as under risk, and 11 girls were safely repatriated back to their homes.

- 6.** 12 cases were investigated by the police under human trafficking case defined at the Article 13.1 of the Revised Criminal Code and 7 cases were actioned as criminal case according to the 2018 Trafficking in Persons Report by the U.S. Government. Prosecutors lacked training on the implementation of the new criminal code and fully dismissed 26 pending trafficking cases under article 124 of the previous criminal code, rather than conducting assessments of each case to determine whether the relevant allegations fell under new provisions of the criminal code. According to the report, authorized government officials and organizations decreased the number of penalties for human trafficking and no trafficking case was successfully prosecuted by the court in the year of 2018. Thus Mongolia downgraded the Tier-2 watch list category in 2018 Trafficking in Persons Report and returned back to Tier-2 category in 2019.
- 7.** According to the Article 12.3 of the Criminal Code, the sexual exploitation is defined as “Compelling a person to have sexual intercourse by use of violence or threat of violence, or taking advantage because of official position, property dependence or other condition without limiting the freedom of movement.” “Sexual exploitation” (Article 12.3. of Criminal Code) is different from “human trafficking” (Article 13.1. of criminal Code) by without restricting the freedom of movement characteristics. However, it is conflicting with the statement on the Article 3 of Palermo Protocol, where it says the consent of the victim of trafficking to intended sexual exploitation shall be irrelevant

and the Article 13.1 of the Criminal Code, the commentary of human trafficking where it says the consent of the victim of trafficking will not affect the classification. Therefore, prosecution of human trafficking cases under sexual exploitation article creates misconception and risk of dismissal of human trafficking cases. Also, the increased punishment when crime is committed against underage children and minors for profit through prostitution is conflicting with the Article 3 of the Palermo Protocol and the definition of human trafficking in Article 13.1. of the Criminal Code<sup>x</sup>. Here, only sexual exploitation issues were reflected and labour exploitation issues need to be further studied deeply. For instance, it is time to pay attention to pregnant women crossing border and labour exploitation cases.

- 8. All forms of child trafficking need to be considered as crime:** As of today there is no other type of trafficking cases prosecuted other than sexual exploitation. The new criminal code defines **Child trafficking** /Article 16.6./ as “trafficking of a biological or adopted child, or a child under guardianship or care, is punishable by a fine equal to 12,000-40,000 penalty units, or by imprisonment for between 2 and 8 years, if the crime does not comprise the characteristics of crime as in Article 13.1 of this Law.” For now there is no research conducted on the use and effects of the new criminal code. Further needs to be studied. Besides child sexual exploitation issues, forced labour, labour exploitation, worst forms of child labour are still issues to be considered. For instance, criminal cases such as labour exploitation by forcing children to work in informal sectors, force them to horse racing, work as contortionists, housemaids, beggars and herders have been registered at police, and never prosecuted by court. None of the cases were considered and sentenced as one type of human trafficking.
- 9. Allocate budget for enhancing the services provided for victims, such as legal assistance, protection and rehabilitation for victims and witnesses:** Most percentages of services for victims and victim protection activities were funded and implemented by non-government and international organizations. Two protection shelters for the security of victims of human trafficking at national level have been established and operated by the Gender Equality Center since 2010. There has been no financial support by the government during the last 5 years. In 2019, the government has funded the GEC with 20 000 000<sup>xi</sup> MNT (7,540 US\$) to support victim protection activities for one year, however the support is not directed to the operation expenses for the shelter, but to support rehabilitation of 15 victims of trafficking. Until today, there is no established referral system in protecting victims, organizations have separate programs and activities, not stabilized, no stable funding resources, non-government organizations are operating with support from donor organizations.
- 10. Compensation for victims of trafficking:** Compensation for damages of victims of trafficking is not solved yet. It is stated in Article 15 of the Law Combating Human Trafficking that victims of trafficking has the right to demand the accused to compensate property, reputation and moral damages. However, the conflicting article of Criminal Code and the Civil Law makes it impossible to be implemented fully in reality. There is no case where victims received compensation by the court in both criminal and civil cases. Mental damage is still not considered in judicial practice. According to the analysis conducted on criminal files in 2016, even though victims

claimed all damages to be compensated, only 6% of claimed amounts have been compensated by court due to victims lack evidence and illegal income cannot be compensated<sup>xii</sup>. Therefore, when approving the Revised Criminal Code in 2015 an amendment has been added to the Government Special Fund<sup>xiii</sup>. However, victims of human trafficking defined in Article 13.1 of the new criminal code have been excluded and voided to receive compensation, which was a major step back in protecting victims and providing compensation.

### **Recommendations:**

1. Thorough assessment needs to be conducted in the implementation of the Law against Human Trafficking (2012), implementation guaranteed and improved.
2. The operation of the National Sub-Council need to be extended, permanent structure needs to be created, stabilized and activated by improving the coordination among sectors, separate working groups created for different types of human trafficking, participation of affiliated and professional organizations ensured.
3. Develop annual national report on fighting against human trafficking, conduct annual assessment and conclusion, and reflect on the next year's plan.
4. Conduct research and analysis on emerging trends of human trafficking methods, impose appropriate sentences for human trafficking cases distinguishing from other similar crimes. For instance, labour exploitation, sexual exploitation in mining areas, хөдөлмөр мөлжлөг, control over pregnant women crossing border etc.
5. Increase the number of specialized officials to fight against human trafficking. Specially, increase the number of investigators at police, build their capacities regularly, pay attention in development of cooperation among affiliated government organizations.
6. Create a permanent structure to train law enforcement and judicial organization officials in fighting against human trafficking through training centers in each organization, support permanent operation of the training centers and monitor the results regularly.
7. Conduct assessment in Mongolian laws and regulations on compensation to victims, investigate duplications and loopholes in the laws, reflect, rationalize and implement conditions in criminal and civil laws to fully compensate damages for victims of human trafficking.
8. Create opportunity to provide comprehensive and permanent assistance and services for victims of human trafficking.
9. Approve annual government budget specifically for direct assistance and rehabilitation program for victims by the government.
10. Reflect Human Trafficking defined in Article 13.1. in the Compensation Fund for Victims of Crimes<sup>xivxv</sup>

---

<sup>i</sup> Recommendations from 5.116 to 5.123

- 
- ii “Research Result Report on the Analysis on the Implementation of Coordination of Mongolian Laws and Regulations on Citizens Engagement” as part of the “Citizen’s Engagement 2” Project, Ministry of Justice and Home Affairs in cooperation with the Swiss Development Agency, 2018
- iii Partly mentioned in the official letter No.7/1726 by Ms. D.Nyamgerel, Head of the Coordination Council for Crimes Prevention in Mongolia, 2019
- iv In Mongolia on the October 4-6<sup>th</sup>, 2017
- v Government Resolution Number 148, 2017 [торгоол/https://www.legalinfo.mn/law/details/12751?lawid=12751](https://www.legalinfo.mn/law/details/12751?lawid=12751)
- vi The Asia Foundation, Country Representative office in Mongolia, September 9<sup>th</sup>, 2019
- vii Activity Report on activities implemented in 2018 as part of National Anti – Trafficking Program
- viii Annex to Government Resolution Number 148, 2017 The general provision of the National Anti – Trafficking Program
- ix 2018 Human Trafficking Report /<https://mn.usembassy.gov/mn/our-relationship-mn/official-reports-mn/2018-trafficking-persons-report-mn/>
- x “Comparative Review of Mongolian Laws and Policies Related to Trafficking in Persons, Analysis of Training Materials, Handbooks, Manuals and Studies and Assessment Survey of Understanding, Knowledge and Capacity of Law Enforcement Officers” Research Report conducted by Gender Equality Center by the request of Ministry of Justice and Home Affairs and The Asia Foundation, 2017, page 29
- xi <https://www.tender.gov.mn/mn/result/detail/1554394ажиллаж 900>
- xii The cost of crimes investigation of a certain crime: Analysis conducted on human trafficking cases files, 2016, Open Society Forum, Gender Equality Center
- xiii State information magazine, 2006, Number 27