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FOREWORD

The Report on Human Rights and Freedoms in Mongolia is submitted to the State Great Khural in accordance with the Law on the National Human Rights Commission of Mongolia.

The present report is based on the operations of the National Human Rights Commission since it's foundation more than a year ago, on independent and joint investigations, and with reference to thematic and selective studies, surveys and inspections carried out by public institutions and non-governmental organizations.

An important input to the present work was concurrence of the Commissions operations with the baseline study on human rights conducted in May – August 2001 by the National Human Rights Action Plan Development Project sponsored by the UN. The National Human Rights Commission was actively involved in this exercise starting from the first workshops. The Commission staff had been engaged in the workings of all five central research teams, and Commissioners had lead the work of two research teams, and actively participated in the drafting process.

The baseline study covered the capital city and all aimags, 127 soums, 8,822 households, 579 businesses and nearly 60, 000 residents. Jointly with the administrators of the endeavourer, the report was compiled into a handbook "Human Rights Situation in Mongolia", published and offered for public attention on the International Human Rights Day, 10 December 2001.

The baseline study serves as a foundation for the present report, and most important findings and formulations our drawn from it.

In addition, results of inspections carried upon citizens' petitions and complaints, materials from relevant studies and workshops, human rights statements and briefings of the Government, internationally recognized resources and works of independent researchers were used in the production of this report.

The report is divided into four generally accepted classifications of human rights – individual rights and freedoms, political rights and freedoms, economic rights, and common rights and freedoms.

CHAPTER ONE. INDIVIDUAL RIGHTS & FREEDOMS

Individual rights and freedoms are supreme values of democracy.

The shape of democracy in a given country may be measured by looking at the implementation and the state of this group of rights and freedoms.

1.1. The Right to Life

The constitutional guarantee of the right to life is in compliance with international norms and standards.

In the case of Mongolia, though present in the list of countries that not abolished the death penalty, it's criminal legislation had long restricted the scope of subjects to capital punishment.

In accordance with the 1961 Criminal Code, it is prohibited to impose capital punishment on women, men over the age of 60 and persons who had not reached the age of 18 at the time of commission of crime /Article 18/. This provision has been abidingly administered until present.

The revised 1993 Criminal Code used to impose the death penalty to five categories of crimes, whereas the new Code to be enforced from September 1, 2002 allows for assigning it to six categories. The law adds a new category of crime previously not punishable by death penalty /"Armed Robbery" Article 177.2/.

Moreover, the previous Criminal Code prescribed 14 aggravating circumstances of violent homicide, whereas the new law adds three more circumstances bringing the total number to seventeen. In other words, capital punishment may be imposed to three more charges of crime.

From present judicial practice, the death penalty is imposed only upon violent homicides as defined in Article 86.2 of the Criminal Code. It has not been imposed on other offenses since 1990.

The courts of first instance imposed the death penalty on 259 persons during the years of 1990-2000, and during 1996-2000 the rate of sentencing to death penalty had reduced by approximately 60 percent from that of the period 1990–1995.

From 1993 a procedure has been followed on mandatory review by the Supervisory Division of the Supreme Court of capital punishment sentences imposed by lower courts, regardless of it's review by an appellate court /The Law of Courts, Article 24.3.10/. This procedure is in compliance with the provision of the International Covenant on Civil and Political Rights, stating, "…this penalty can only be carried out pursuant to a final judgment rendered by a competent court."

Authorized to grant a pardon to or commute a death sentence, the President of Mongolia considers grounds for pardoning after the judicial review of the case by the Supreme Court.

Though legal guarantees protecting from unlawful sentencing of death penalty exist, such practices as serious judicial errors in imposing capital punishment on suspects and accused based on extorted confessions, forged under coercion of physical and emotional duress by certain police and investigation officers, has not been fully eradicated.

For example, the Aimag Courts of Zavkhan and Gobi-Altai had sentenced citizen "E" to death for intentional murder of another person three times when the elements of the crime had not been established and the guilt of the defendant had not been proven beyond reasonable doubt. A court of higher instance had quashed the sentences on each occasion /criminal file No. 609003/.

In 2002, the Appellate Division of the Supreme Court reversed 3 and quashed 2 death penalty sentences issued by courts of first instance.

1.2. Inviolable Rights and Freedoms

The Constitution had guaranteed personal dignity and reputation, privacy in corporeal, property, private and marital matters, inviolability of correspondence and domicile as inviolable rights and freedoms of citizens.

The most significant and major guarantee of "inviolable rights and freedoms" is the restriction to arrest, detain, search and restrain the liberties of persons without legal grounds and probable cause by state authorities and officials.

The Constitution, Criminal Procedure Code /1963/, the Administrative Law /1992/, the Police Law /1993/, the Law on Warrant Execution for Arrest and Detention of Suspects and Accused /1999/, and provisions of other legislation defines the grounds and procedures for compulsory appearance, apprehension, arrest, detention, physical search and inspection, or on it's domicile, of persons suspected or accused of certain criminal acts or administrative offenses.

In order to discuss the above contentious and complex issue, an outline of relevant procedures for apprehension, arrest and detention as well as the procedures determining authorization, grounds and periods for detention in Mongolia was compiled. Legislative review within the frames of inviolable rights and freedoms reveals the following.

1.2.1. Custody

- The police may take into custody a person suspected in committing crime or an administrative offense for a period of up to 6 hours with the purpose of verifying identification and address as well as for establishing grounds for arrest /The Police Law, 1993, Article 24/.

- A Soum governor, authorized police officer, border representative, it's deputy or assistant may take into custody an offender according to administrative procedures, if

necessary, to terminate the act in-progress or for filing purposes of the committed offense. The period for "custody according to administrative procedures" shall not exceed 6 hours /The Administrative Law, 1992, Article 13/.

- An authorized police officer may take into custody for a period of up to 48 hours a child under the age of 16, whose address of residence, names of parents or guardians are not identified and there is a potential threat to it's life or health due to lack of supervision /The Law on Provisional Custody of an Unsupervised Child, 1994, Article 1/.

- Custody of a crime suspect under the jurisdiction of the Central Intelligence Office without a specified time period /The Law on Intelligence Service, 1999, Article 12.1.5/.

- An authorized inquiry officer may take into custody a person who violated the state border or border-zone regime for a period of up to 3 hours with the purpose of filing the violation /The State Border Law, 1993, Article 33/.

These provisions demonstrate that different officers from a number of agencies are authorized to take into custody a citizen according to their jurisdiction, and that a period for "custody" may last from 3 to 48 hours, and for an indefinite period of time according to the Law on Intelligence Service.

1.2.1.1. A serious problem identified in all respective agencies is lack of specified provisions and procedures for custody facilities, and absence of established standards on the legal status of the apprehended. Thus a person may be put into custody on whichever grounds in any available storage space, room or compartment.

According to the results of the investigation made by the National Human Rights Commission at custody facilities (*note:* facilities where a person can only be held for up to 6 hours) of Bayangol, Bayanzurkh, Songinokhairkhan, Khan-Uul, Chingeltei and the Sukhbaatar District Police Stations in Ulaanbaatar city, only within the first quarter of the year 2001, an estimated 7, 595 persons were put into custody.

For example: A serious breach of law and human rights was established on an inspection conducted in April, 2001 when 9 persons were found to be held for more than six hours and some from 12 to 22 hours among the 45 persons held under custody at the above six stations */Investigation Paper on Metropolitan Police Detention Centers and Custody Facilities, NHRCM, 2001/.*

1.2.1.2. Another serious violation was inadequate conditions for custody – lack of proper windows, air-conditioning and lightning, cells had cement flooring and even chairs were absent /except for the Sukhbaatar District/, and overall insufficient space per person. The investigation at custody facilities of Bayangol, Bayanzurkh, Songinokhairkhan, Sukhbaatar and Khan-Uul Districts' revealed that average space per person was 0.66-1.8 square meters. Though almost 10 years has passed since the enactment of the Police Law, no single procedure on custody facilities /until May 2001/ has been established, neither any control of their operations conducted.

For example, the custody cells of the Ulaanbaatar Railway Authority Police Office has an area of 2.8 by 2.7 meters, without windows and working airflow pipes, which causes poor air circulation, stifling environment and repulsive odors. During a prosecutor's inspection of this facility, it was discovered that 8 males and 1 female had been put into custody in the same cell for 2-14 hours, that 7-10 people had been held for 8 consecutive days preceding the date of the inspection, and that 20 persons had been placed in that cell /an area of 0.3 square meters for each person/ in a single day */Prosecutor's Inspection Report, 10 April 2000/.*

1.2.2. Apprehension

According to the Criminal Procedure Code / Article 137/ an Inquiry Office, investigator or prosecutor may apprehend a suspect for a period of up-to 72 hours on the following grounds:

1. The person concerned has attempted to flee;
2. The person concerned has no permanent domicile;
3. The person concerned has not been identified or there is a probable cause to believe in commission of capital or severe crime.

The Administrative Law allows for apprehending an offender for a period of up to 72 hours during the administrative review of the case upon notice to the court of jurisdiction, when such action deemed necessary to prevent further serious damages. In another case, a violator of State border regulations with missing identification documents may be apprehended for up to 10 days with a prosecutor's warrant.

Peculiarities when apprehension of a criminal suspect is notified to the prosecutor whereas apprehension of an administrative offense suspect is notified to the court, a prosecutor may invalidate an apprehension warrant upon finding no probable cause, or when the action of the judiciary after receiving notification on apprehension is uncertain, and worse of all, in some instances its not even necessary to notify a prosecutor or court of an apprehension of up to 72 hours, - all these facts suggest that the legislators have not approached this important personal inviolability issue in a consistent manner.

In fact, according to international norms accepted and ratified by Mongolia, only an authorized judicial officer should decide issues of arrest or detention, and only the court should consider and decide on petitions relating to unlawful arrest and detention.

1.2.2.1. However, the new Criminal Procedure Code /2002/ establishes the issues of apprehension (arrest) and detention to be decided by the court, which is in conformity with recognized international best practices. The new law had changed the term "apprehension" to "arrest", and though time limits for arrest are not specified, calculations made from Article 59 provides for 72 hours (24 hours plus 48 hours).

The following conclusion may be drawn from Chapter Eight "Arrest" of the new code from a personal inviolability perspective.

1. The legislators had given importance to the issue of arrest of a Suspect, and devoted a whole chapter to related matters. The previous criminal procedure legislation has been criticized from a human rights perspective, and such chapter was not present at all.

2. Article 58.1 declaring "arrest of a suspect when there is a probable cause for attempt to flee or suspicion in committing a capital or grave crime" inclines that arrest is the only legalized measure for any person considered as a suspect.

   "Attempt to flee" is usually established by a subjective judgment made by an inquiry officer or investigator. A suspect in a petty offence may also be arrested under this ground.

   Article 17.4 of the Criminal Code /2002/ describes "severe crimes" as an offence punishable by "a fine in the amount equal to the multiple of two hundred fifty one to five hundred times the lower monthly salary rate or imprisonment from above five to ten years". For example, suspicion in tax evasion /Article 166.2/ leads to arrest.

3. The provision on arrest directly contradicts with the principle in the International Covenant on Civil and Political Rights stating that detention may not be a common measure of restraint.

4. While arrest is compulsory for crime suspects, the risk to be further detained, as the next step in preventive measures, is high.

1.2.2.2. The purpose for arrest is directly related to the final outcome of the adjudication, whether it be a criminal case or an administrative offence. However, the results of investigations and inspections reveal that it has become common practice for the police to restrain personal inviolable rights without legal grounds, thus exceeding their authority to exercise arrest and detention.

During the inspection under the State Prosecutor-General's Directive conducted in all Aimags and cities /1st quarter 2000/ it was established that a total of 1,081 persons had been arrested under the Administrative Law in the first two months of the year 2000 from which 57 had been subsequently released for lack of legal grounds.

Moreover, in the year of 2000, 36 persons arrested without warrants and 102 persons with excess time limits for arrest were released upon prosecutor's orders */Prosecutor's Report, 10 April 2000/.*

It became common practice among police officers to exercise arrests without legal grounds, to fail to examine the alleged offence, and to exceed time limits (72 hours) for arrest during filing of administrative offenses.

The practice of conducting arrests on Friday afternoons shows that apprehending a person as a suspect has largely became an instrument for extortion of confessions and intimidation. Of 51 persons at the Bayanzurkh District Police Office /as of 9 April 2001/, 16 were arrested on the previous Friday night of April 6th. An official from the Metropolitan Prosecutor's Office in a newspaper interview commented "some police officers find whatever excuse to arrest a

suspect for the 72-hour apprehension period. It's true that among the public and legal profession, the 72-hour period is widely known as "the three days for the police to mock people"*/"The Century News", 2 August 2001, Issue 178/*

1.2.3. Detention

Detention is the most severe preventive measure used at the stages of inquiry and investigation. The measure is classified into two types on the basis of the legal status of the detainee:

a) detention as a suspect;

b) detention as an accused.

1.2.3.1. Detention of a Suspect

According to Article 88 of the Criminal Procedure Code, it is permissible under extraordinary circumstances to take preventive measures on a crime suspect before it has been indicted. A notice on the criminal charges against the suspect must be given within 14 days from the date of detention, or the person must be released if no charges are brought within that period.

Examination of inquiry and investigation practices illustrates overall ignorance on the part of the police officers and prosecutors of the term "extraordinary circumstances" as defined in Article 88 of the Criminal Procedure Code, as well as their propensity to directly resort to detention over other possible preventive measures.

The provisions in Article 9 of the International Covenant on Civil and Political Rights articulating that "it shall not be a general rule that persons awaiting trial shall be detained in custody", and Paragraph 13 of Article 16 of the Constitution of Mongolia proclaiming that "no one shall be arrested and detained except on the grounds and according to the procedures determined by law" are directly violated by assuming a person as an suspect, vigorously pursuing it's arrest and detention without even verifying it's participation in the committed crime, by failing to determine the occurrence of the alleged act, or if one actually occurred, without establishing the person's involvement, and in presence of ambiguity in the nature of charges to be pressed.

For years an abnormal trend in police practice persists when charges against a detained suspect are brought, or follow-up measures undertaken, right at the end of the 14-day time limit. If properly done by the book, a detainee could be notified on the charges or otherwise released at any day within the 14-day time limit.

1.2.3.2. Detention of an Accused

According to Article 95 of the Criminal Procedure Code, after the indictment of a suspect or after presenting the written accusation, the period of detention of the accused may be prolonged by 2 months after the date of the indictment /the 17-day detention described in Articles 88 and 137 of the Criminal Procedure Code not included/, and in case of an accused

charged with capital or severe crime by 8 months in total by a Soum, Inter Soum and District prosecutors as well as the Metropolitan and other specialized prosecutors, and for a period of up to 26 months by the Prosecutor-General, if considered necessary.

At the pre-trial stage of the proceeding a person may be detained for a period of 3 years and 17 days /17 days + 2 months + 8 months + 26 months = 36 months and 17 days/. If the case had been submitted to a court and remanded several times /persons detained for long periods usually have their cases remanded for further investigation/, the accused could be detained again by court order or judicial motion for days and months. However, detention at the trial stage does not include the pre-trial detention period prescribed by Article 95 of the Criminal Procedure Code.

Detaining a person not conclusively found guilty in harsh and tough conditions for such a long period of time by decision of an investigator and without a court order is an acute expression of ill treatment, and in fact could be seen as imposing a punishment without sentencing.

The new Criminal Procedure Code /2002/ prescribes 24 months for pre-trail detention on capital, severe crimes and felony, and a 30 month detention may apply to some types of capital crimes. Though these time limits are in general less by six months compared to the present criminal legislation, however detaining a person without proving it's guilt for 2 years and 6 months is an inhumane and ill-treating practice.

A further concern is that the new law allows 24 months of pre-trial detention for felony /Criminal Code, Article 69.3/. However, the present law prescribes extension of detention periods only for severe and capital crimes.

The new law describes "felony" as crimes punishable by imposing a fine and arrest, thus the pre-trial detention periods for felony would be increased by 12 times, which is a serious human rights issue.

1.2.4 Another serious issue worth of particular attention is the grounds for detention. An overview of the provisions of the Criminal Procedure Code and Administrative Law illustrates that grounds for custody, apprehension and pre-trial detention are too vague, thus prone to multiple interpretations, such that officers authorized with those rights may manipulate them to arrest and detain any person at anytime, thereby violating human rights.

The law permits to detain a person that committed felony, severe or capital crime, or a suspect with previous convictions, recidivist, or if there are reasonable grounds to believe that further crime may be committed or a danger to flee from justice */The Code of Criminal Procedure, 1993, Article 94/.*

The present Criminal Code /1993/ has 301 articles in total, and criminal charges may be imposed on 446 acts from which 34 are considered as capital crimes, 124 as severe crimes, 153 as felony and the remaining 135 as petty offences */Political, Individual Rights and Liberties Research Team Report, 2001/.* This shows that application of time limits for detention to majority of persons involved in crime could be established merely according to the above classification. In fact, assignments of time limits are usually set for the full

duration. The acts classified as capital, severe crimes and felony constitute 70 percent of the total number of acts. However, an accused, even a seriously ill patient, pregnant or breastfeeding female, charged with petty offence may be detained if there is sufficient grounds to believe that the accused might repeat a criminal act or flee from justice.

Non-differentiation of detention periods for minors and women conflicts with relevant international standards.

The new Criminal Code /2002/ prescribes 1 month as the main term and 18 months as an overall time limit for pre-trial detention of minors.

1.2.5. An investigation conducted by the National Human Rights Commission in first quarters of the years 2000 and 2001's at police stations and investigation bureaus of six Metropolitan districts and at railway police on 1,948 dismissed cases related to 2,287 persons found that 497 people were taken into custody as suspects and accused for a period from 1 to 210 days.

A similar study of dismissed cases in all except four Aimag Police Departments in the first two quarters of the years 2000 and 2001 revealed that an estimate of 2,450 people were investigated in relation to 2,626 cases, and 483 people were detained for 5,878 days in total.

This shows that an estimate of 987 /497 + 486/ persons were wrongfully detained for either short or long periods of time during the first halves of 2000 and 2001, thereby seriously violating "the inviolable rights and freedoms" guaranteed by the Constitution.

1.2.6. As an integral part of inviolable rights and freedoms, and particularly at this period of time when practice of arbitrary detention has become endemic, conditions and sanitary requirements at custody and detention facilities' had become a human rights issues to be urgently addressed.

The first Law on Execution of Arrest Warrants was adopted in Mongolia in 1999. Although this law does not fully meet international standard, it is a significant step towards guaranteeing the rights of suspects and accused, as well as improving the conditions and procedures of detention.

Disappointingly, after three years since its adoption substantial work has not been done to enforce this law and, particularly, to guarantee and protect the rights of detainees. The law prescribes that "detention cell shall have a window with lattice screen; ventilator for air circulation; wooden floor or wooden bedding; with a level of humidity between 55 and 60 degrees; temperature of no less than 18°C in the winter season; and an area of 2.5 or more square meters per person; each detainee shall be provided with a mattress and a blanket".

The results of an inspection conducted in April 2001 at the "Gants Khudag" Central Detention Center and Metropolitan custody facilities revealed that their conditions and resources were far inadequate.

The detention facility at the Bayanzurkh District Police Station is located in the basement and has 7 cells - one is intended to be used for custody /6 hours/, one for female detainees,

one for juveniles and four for male detainees. Each cell has an area of 2.5 by 3.4 meters, or 8.5 square meters, and cemented floors with 6-square meter low-rise timber layer.

An indirect light penetrates into the cells as the bulbs are located outside in the hallway. Because there are no windows, when the electricity goes out all the cells become pitch black. Therefore, there is almost no possibility to write, or read books or newspapers. Since there is no air circulation, all cells have a stifling atmosphere and an unpleasant smell. All detainees share a single toilet in the facility, and are allowed to go to the toilet twice a day. In two of the cells, minors were mixed with adults */Political, Individual Rights and Liberties Research Team Report, 2001/.*

Detainees are fed with a small meal that consists of cooked millet and offal with no spices. They are not given mattresses or blankets, so clothes are used for covering themselves.

It is common knowledge that the General Police Department's Detention Center /"Gants Khudag"/ serves as a maltreatment hub with no better conditions than those above-mentioned, which by usual standards are clearly detrimental to health.

The number of bacteria found in 1 cubic meter space of air in a typical cell at this center was from one to four times higher than in normal conditions. The number of hemolytic staphylococcus bacteria is 7.2 times the acceptable norm, and mildew was detected in the air of the cells where the test was performed /The Sanitation and Hazard Inspector's Report No.60, 30 April 2001/.

The following examples illustrate that conditions at custody facilities in other Aimags are no better.

- Prisoners are given cooked offal broth thickened with flour and millet only, which makes up a daily diet of 1,800 calories per person. As people are not provided with mattress and blankets, they cover themselves with their own clothes instead. They are no provisions to take showers, which eventually causes spread of head lice. People are kept in conditions that do not meet basic sanitary requirements */Uvurkhangai Aimag Research Team Report/.*

- The building of the Aimag Police detention facility was initially constructed for storage purposes. It is very humid and has no proper lighting. Despite the demands of the Aimag Prosecutor's Office to cease its further use, it remains in operation today as a detention facility */Dornogovi Aimag Research Team Report/.*

- 1.6 square meters is the area allotted to each detainee, 14.4 degrees is the level of humidity in a cell and 619 calories is a diet for each detainee, and 50 percent of detainees are not provided with blankets */Khentii Aimag Research Team Report/.*

- The custody cells have no lights at all, and the air conditioning systems are not working. The detainees are not presented with an opportunity to communicate with the outside world, and for meals they are given only broth thickened with flour in the morning, afternoon and evening. None of the detainees have blankets or felt mats. They must ask

their families to provide them. The quality of food is poor. The winter is cold and the summer is stifling in the facilities */Dundgovi Aimag Research Team Report/.*

- The custody cells have no windows or air-conditioning equipment, and thus are stifling hot. There are no blankets or sinks */Bayankhongor Aimag Research Team Report/.*

1.2.7. The Constitution of Mongolia, and relevant international standards, clearly provides, "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." This provision is an important guarantee for ensuring inviolable rights.

In the year of 2000, the Mongolian Parliament ratified the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The term torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

According to the above definition, the majority of custody and detention facilities in our country may be described as an instrument for ill-treatment, coercion and infliction of mental and physical suffering to detainees. There were cases referred to court of innocent people with confessions being extorted under intimidation and coercion at the investigation stage.

- To the question on occurrence of "convictions imposed to innocent people", from a questionnaire distributed among 96 people, 45 percent responded "yes" and 40 percent responded "occasionally" */Khenti Aimag Research Team Report/.*

- According to a survey of 29 people who were previously detained, 9 answered that investigators threatened them, 18 that investigators coerced them and 8 that investigators had assaulted them */Khovd Aimag Research Team Report/.*

- Fifty percent of respondents answered that instances of torture, infliction of emotional and physical pain and suffering do take place; 71.4 percent responded that detainees are intentionally not let out for a walk in fresh air */Bulgan Aimag Research Team Report/.*

Findings in the State Great Khural Legal Standing Committee Decree #02 from 08 January 2002 indicate that transfer of apprehended suspects and accused to detention facilities without legal grounds and prosecutor's warrant, changing cells to have them beaten up by recidivists and long-time offenders had become instruments to extort confessions used by criminal investigators.

1.2.8. The constitutional principle, which states that no one shall be subjected to torture, cruel and other inhuman treatment equally pertains to convicted prisoners serving their sentence in penitentiary facilities.

The requirements and standards of detention facilities, prisoners' rights as well as the mechanism and methods of protecting those rights are well described in the UN Standard Minimum Rules for the Treatment of Prisoners, the Basic Principles for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Our country has the Law on Judgment Execution, and a number of other procedures and ordinances related to penitentiary authorities. However, a study has proven that their enforcement has taken a rather miserable path. It was determined by the 1994 Directive No. 25 of the Minister of Justice that a meal containing 3,500 calories and worth of 480 MNT at the current rate (current Mongol Bank rate is 1 USD = 1,115 MNT) should be allocated daily to each prisoner. In fact, today the prisoners are given a meal with an estimated cost of 310 MNT.

Enabling prisoners to work is an important guarantee to ensure their rights. In the year 2000, 2,642 prisoners (or 41.1 percent) in the summer season and 1,914 prisoners (29.8 percent) in the winter were working on a regular basis nationwide.

An estimated 279 prisoners passed away during the years of 1999-2000, and 81 percent of 97 prisoners in the year of 2000 died from illness; 90 percent of them died from pulmonary tuberculosis.

35 prisoners were delivered to the General Prison Hospital on malnutrition and starvation basis alone during first quarters of the years 2000-2002. Presence of malnourishment cases in state penitentiary institutions raises legitimate concerns.
Serious violations of prisoner and detainee rights due to inadequate conditions have become common scene in rural areas.

- The penitentiary is no different from a farmstead, except it was built by construction workers and has flooring. Although it has a capacity to hold 50 people, it has 70 prisoners at present. Prisoners are not provided with clothing, and must even bring along their own blankets and felt mats. Their caloric intake does not meet the required norms. Prisoners are showered only once during wintertime */Uvs Aimag Research Team Report/*.

- Inspection at Zunkharaa Maximum Security Penitentiary revealed that two people commonly share the same blanket, felt mat and work uniform. Prisoners' health is harmed by their extensive work under sun exposure, many suffered from sunstrokes, or in cold rain and snow, which causes arms and legs to freeze */Selenge Aimag Research Team Report/*.

- Prisoners in Maanti Maximum Security Penitentiary who work at the white plaster factory are exposed to hazardous chemicals. They are not given milk, which supposedly dilutes the toxins that could cause serious damage to their health. For meals, prisoners get only cooked millet and broth thickened with flour. Most of them do not have blankets and felt mats. The prisoners are prohibited to go to the toilet after midnight. Old

inmates have their wastes disposed by newly imprisoned inmates */Tuv Aimag Research Team Report/.*

The results of these studies clearly demonstrate that in comparison with other types of individual rights in our country guarantees for inviolable rights and personal liberty has seriously depleted.

1.3. The Right to Lodge Complaints to Court

The Constitution of Mongolia declares the right to appeal to court in order to protect violated rights and freedoms prescribed by laws and international treaties of Mongolia. The Civil Procedure Code also provides for bringing action in court to seek remedy for violated rights and interests prescribed by laws and international treaties of Mongolia. These provisions establish the right to bring a claim to court and its legal guarantees.

1.3.1. Although the right to bring an action to court is open to everyone, substantial number of disputes that should be under the jurisdiction of courts are actually decided through administrative proceedings of public authorities, which cause excess burden on citizens.

To the question "Does the court resolve issues of a claim according to procedures prescribed by law?" 35.4 percent of respondents of the survey on the right of court action responded "yes", and 11.4 percent replied "no." To the question on judicial attitude, 53.3 percent of respondents believed their action were unjustly returned. A total number of 96 people had participated in this survey, and approximately 80 percent had previous experience in filing actions */Khenti Aimag Research Team Report/.*

Another issue is absence of a specialized court with jurisdiction over petitions challenging unlawful acts and decisions of public officers. Even urgent petitions drop into the courts' "gigantic boiler" and must travel through a long bureaucratic trail. This results in grave ignorance of the rights for effective remedies. In recent years, the number of claims and demands submitted to the court has proliferated substantially, thereby significantly increasing the judicial caseload and the number of civil cases and disputes allotted to each judge.

According to judicial statistics, courts decided 77,863 cases over the years 1998 to 2000.

However, there are many incidents when citizens were denied their rights by having their claims "suspended," delayed or incorrectly decided and by continually being referred to other authorities. The time period for court proceedings was exceeded in 675 out of 3,127 unresolved cases in the year of 2001.

Review of cases at appellate and supervisory instances indicates poor quality of court proceedings.

In addition to being overwhelmed with their caseloads, the situation stems from the fact that majority of judges lack the appropriate knowledge and expertise to fully comprehend the nature of new dispute situations and legal issues. The budgets of rural courts in particular are

clearly insufficient. In the year 2000, an average of 237 civil and criminal cases were allotted to each judge serving in courts of first instance.

Eight courts including the Darkhan-Uul Aimag Court are still operating in rented premises. Due to the fact that court budgets are determined with great emphasis on trimming down real costs and with no reflection of inflation rates and price fluctuations, a significant number of courts are "in-default". In the year of 2000, the Metropolitan Court accumulated 50.2 million, Tuv Aimag Court 16.2 million, Selenge Aimag Court 15.1 million MNT and Uvs Aimag Court 10.2 million of debt.

According to the estimates of the General Council of Courts, the total debt of all courts reached 167.9 million MNT in the second quarter of the year 2001 */Political and Civil Rights and Liberties Research Team Results/.*

1.3.2. Interestingly enough, not a single claim or complaint has been filed according to the 1992 Constitution, which recognizes the rights of citizens to file a claim in court to protect violated rights and freedoms prescribed by international treaties to which Mongolia is a party.

1.4. The Right to Claim Compensation

Citizens protect the present right provided for in the Constitution by filing claims with the courts or arbitration tribunals to recover claims and tort damages caused by others.

In addition to monetary claims, inclusion of the right to claim damages to personal dignity, standing or professional reputation caused by defamation in Article 7 of the revised 1994 Civil Code was a significant development in protection of human rights.

1.4.1. The right to take action in courts is open to citizens for damages caused by wrongful conduct of others, including government agencies or public officials.

According to 2000 judicial statistics, approximately 50 percent of civil disputes brought to courts are related to recovery of damages.

Still, it is not an easy task for a person to protect it's rights by initiating a compensation lawsuit and proceeding through the cumbersome multiple stages of a civil suit to finally obtain the desired outcome. Enjoyment of this right becomes a fallacy, particularly when the execution of judicial decision cannot be effected as a matter of law. Only 36.9% of all court decisions rendered on civil cases in November 1999, 36.8% in 2000, and 35.8% in 2001 were effected. The main reason for judicial decisions remaining un-enforced is insolvency of respondents *(Press Release of the Ministry of Justice and Home Affairs).*

At the end of the first seven months of the year 2001, there was an unpaid balance of 31,463,2 million MNT on 17,806 out of 28,883 official collection orders issued by the Metropolitan Judgment Execution Office to recover judgment monies totaling 55,355,5 million MNT.

A report on monitoring and evaluation of the judgment execution office contains responses from a survey conducted among judges, such as "the professional qualification of judgment collectors is not adequate enough," "they are influenced by the judgment debtors," "they are bad at securing judgments of small amounts," "there are rumors that they take five to ten percent of the total amount of the judgment money." Same responses are found in the content of complaints and petitions filed by citizens in relation to the judgment recovery process */ General Judgment Execution Office Monitoring and Evaluation Report, 2000/.*

The judges who participated in the survey further explained that the average judgment collector has 7 to 10 superiors starting from a senior judgment collector, and that those superiors issue contradicting orders which negatively influence the normal performance of duties.

The Bayangol District Judgment Collection Unit has 8 collectors and is considered to be one of the top performers of the metropolitan judgment execution services. In the first seven months of the year 2001 only 21.7 percent of the judgment monies in the amount of 14,191,3 million MNT on 5,686 judgment collection orders have been recovered, and a total of 9,690,100 MNT on 3,139 judgment collection orders remain uncollected.

Moreover, a heavy workload averaging 446 orders per judgment collector negatively influences work performance.

1.4.2. The "valuation" of human life and body organs is an issue that has not been reflected in national legislation, which cause great frustration among people, and must be urgently addressed by research and development to attract legislators' attention.

Personal representatives of deceased victims often complain, for example, "when a stallion is struck and killed by a car, the courts can immediately order compensation, whereas they can't order even a penny to relatives of a victim killed in traffic accident". To this day, the denial of compensation for wrongful deaths has been justified by the lack of laws to govern it. In 2001, 476 people lost their lives, 520 people suffered serious injuries, 726 people suffered moderate injuries and 2, 482 people minor injuries as a result of crime */Supreme Court Bulletin/.*

It seems implausible to justify the fact that the life or physical well being of a person has no value. These are incomparable with any damage to the dignity or reputation of an individual or corporate person, but in the latter case damages are recoverable. It is necessary to incorporate appropriate provisions on this issue into the Civil Code and other relevant laws.

1.4.3. Frameworks determining procedures and legal means for recovering damages caused by wrongful acts of public agencies and officials are absolutely inadequate. Although two laws were adopted in 1990 that establish procedures for recovery of damages and losses caused by unlawful acts of state administrative, judicial, prosecution, investigation and inquiry offices, recovery has been always limited to the lost salary income only.

In some instances, police and investigation officers obstruct the filling and processing of related claims. There are many reasons and circumstances that hinder the abused to lodge complaints.

To a question “why not recover damages for unlawful acts,” people, especially those who were “tortured alive” by unlawful criminal proceedings and sentenced on false charges respond that “why go by the law again for a few salary tugrugs? Who is going to bear responsibility for health injuries and emotional suffering? The police will probably start harassing on some other issue” /from a speech of an attorney/.

Inclusion of a special chapter on recovering damages caused by unlawful acts of inquiry, investigation, prosecution and judicial officers in the new Criminal Procedure Code is an important development in ensuring and protecting human rights.

However, consistency for recovering damages has not been found in the provisions of the chapter.

Agencies and officials representing the state should not posses any privileges in the classification of damages. Thus, the clause that the “state should not bear any responsibility for indirect damages” contradicts with the provision in the Constitution on damages. By not assuming responsibility for indirect damages the state breaches the equality of law, and imposes violation to civil rights.

1.5. The Right to Not Testify Against Oneself, Family Members, Parents and Children.

The above provision in the Constitution defines that an accused will not be made to testify against itself or to prove it’s innocence or other circumstances of a case. A suspect will not be held responsible to testify against itself or to prove it’s non- involvement in the criminal act and other circumstances of a case. A witness has the right to refuse to testify against the members of it’s family, parents and children. It can be said that despite the fact that this Constitutional provision was established reasonably well in the Criminal Procedure Code, however, it was reflected in the Civil Procedure Code with great divergence from the standards. For example, the code provides that a spouse, parents and children of the parties in a civil proceeding may be questioned only with their permission. In this case, they shall exercise all the rights and duties of a witness.

Different definitions of the term **“family members”** are one of the weaknesses in the law drafting and endorsing process.

Article 34 of the Criminal Procedure Code defines family members as “jointly living spouses, born and adopted children and relatives of a suspect, accused and defendant”, where relatives are “born or adopted parents, born or adopted children, siblings, grandparents and in-laws”.

Article 3 of the Family Law defines family members as “spouses, born, adopted and step children, and relatives”, where relatives are “parents, grandparents, grandchildren, great grandchildren”, and relations are “siblings, their spouses and children”.

This illustrates that according to the Civil Procedure Code not only spouses, children and parents, but also born or adopted parents, born or adopted children, siblings, grandparents

and in-laws are considered as family members, and should enjoy the above Constitutional right.

Another concern is that the Civil Procedure Code prescribes "questioning of family members upon their consent".

The term "consent" is closely related to mental coercion and lack of rights-based knowledge.

The concept in the Constitution provides for free and continuous enjoyment of the right to not testify. Thus, "consent" undermines this right and as such may lead to illegal actions.

1.6. The Right for Self-Representation and to Seek Legal Aid

The Criminal Procedure Code, Civil Procedure Code and the Law on Advocates had accommodated most issues related to the right for self-representation and to seek legal aid.

1.6.1. Adverse implications on the right to obtain legal aid has the long-established practice of accepting advocates in a formal role with rare participation in pre-trial proceedings, and in-active on their own behalf.

Research and inquiries clearly demonstrates the limited power of advocates, particularly in criminal proceedings, thus leading to serious violations of the rights of suspects and accused to legal aid at the inquiry and investigation stages.

According to an examination conducted at the "Gants Khudag" Detention Center in April 2001, approximately 80 percent of 619 pre-trail detainees were not provided with an advocate. Questioned on the reasons for this, most responded with unawareness of the right to seek legal aid, families had no knowledge on the detention, investigator never advised to seek assistance or no money to pay advocate's fees. On 9 April 2001, no single detainee at the Bayanzurkh District Police Station detention facility had obtained the assistance of an advocate, and the criminal proceedings of 524 persons, or 27 % of all 1,967 people detained in the month of April, were conducted without the presence of an advocate.

1.6.2. An important issue relates to the procedures for implementing rights of indigent clients to seek legal aid.

According to the Law on Advocates, fees of an indigent person shall be paid out of the national budget. Upon recommendation of the General Council of Courts and the Mongolian Advocates Association, the members of the Cabinet in charge of legal affairs, finance, population policy and labor shall jointly determine on financial procedures to cover these expenses.

The Law on Courts provides that in case a defendant cannot afford advocate fees, the state shall render assistance.

In order to implement the legislations, a joint directive of the Ministers for Justice and for Population Policy and Labor on "Procedure on State Funding and Accountability of Advocate Fees of Indigent Persons" was enacted in 1995. According to the directive, the

General Council of Courts has a duty to apportion and transfer necessary funds to judicial authorities, an arrangement that worked well during the first years. For this purpose, four million MNT were allocated from the state budget in 1997, 2 million MNT in 1998 and 7 million MNT in 1999, which amounts to 30,000 MNT to 200,000 MNT per court. However, these funds did not reach their designated beneficiaries due to administrative burdens imposed by endorsement actions of District, Soum, Bagh and Khoroo Governors under the "Procedure on Fund Raising and Disbursement to Aid Indigent Citizens and Low Income Families," adopted by the 1993 directive of the Ministers for Population Policy and Labor and for Finance.

According to the Chair of the Advocates Council, indigent citizens suffer greater losses for their inability to retain an advocate and that no funds are allocated for this purpose to their Aimag */Darkhan-Uul Aimag Research Team Report/.*

Improvements in organizational structure, staffing and work performance of the advocate institution are of top priority. From available data, there are 400 advocates working at 42 bureaus and 21 legal councils nationwide. The professional examination for advocates has not been administered in the last four years. Presence of weak practitioners, and offenders of codes of ethics and professional conduct among them, results in violation of clients' rights. The issues of rights and duties, and ethics of advocates have to be reviewed.

- Advocates are ineffective in protecting the interests of their clients after judgments of the court have been rendered. The Aimag is in extreme need of qualified legal professionals. The Advocate Council has 2 advocates, 2 legal aid interns and another advocate reinstated after his disbarment. All of them are of ages between 40 and 60 */Bulgan Aimag Research Team Report/.*

- The advocate's institution is in shortage of highly qualified practitioners of working age */Dundgovi Aimag Research Team Report/.*

- Several days after I shared my situation with an advocate who previously agreed to represent me, he said "Sorry, I will not proceed as your defense. The case seems to favor your opposing party, and because it is better for me to represent the side that is most likely to win the case, I agreed to serve as the other party's advocate" */Khenti Aimag Research Team Report/.*

The above demonstrates that violations of the right to legal assistance are not uncommon. Therefore, incorporation of provisions in the new criminal legislation for strengthening the position of advocates at pre-trail proceedings, including presence and submission of an opinion while the issue for custody, arrest and detention is decided at the court is an advancement.

1.7. The Right to Have Evidence Examination

The Criminal Procedure Code provides that "the accused has a right to request production and the examination of the evidence; an advocate has a right to request production of the evidence significant in the outcome of the case; a suspect has a right to request production

and examination of evidence; a plaintiff has a right to request production and examination of evidence".

These provisions of the Criminal Procedure Code on "request for examination" contradict with the provision in the Constitution that states on the "rights to have evidence examined." Specifically, Article 204 of the Criminal Procedure Code providing that "a suspect, accused and advocate have a right to request only; and an investigator after reviewing the request issues an order satisfying or dismissing the request with a valid reason, and communicates on the decision to the accused or it's advocate", demonstrates that this Constitutional right is decided on arbitrary basis.

In practice, investigators after the end of an investigation proceeding, in most instances, dismiss requests submitted by the accused and their advocates on the basis of the Article 204 of the Code of Criminal Procedure certain and close the case. The major reasons for quashing, reversing and remanding cases for additional investigation is related to the fulfillment of the right to have the evidence examined.

According to the State Supreme Court Research Center handbook, "major reasons for quashing appellate court decisions are failure to examine contradictory evidence, failure to examine and verify the circumstances essential to the outcome of the case at hand, and decisions based on evidence that does not meet the requirements of law."

The 12 May 2000 ruling No. 99 of the State Supreme Court Appellate Division remanded a case on the grounds that "the judge of the court of the first instance after reviewing the case related to citizen "K" did not grant the defendant "K" his motion to have the evidence examined after "K" invoked an alibi defense that he did not murder "G" and that he was in Arhust Soum of Tuv Aimag at the time the crime occurred."

The philosophy of the Constitution on the "right to have evidence examined" must be accompanied with a "duty to examine", and not "to review", requests of citizens by inquiry and investigation officers.

1.8. The Right to a Fair Trial

A just and the independent court system that is only ruled by law is one of the most debated and controversial issues in contemporary Mongolian society.

Criticism of the judiciary, especially facts considered to be very serious, have been long publicized and in some cases proven.
The confidence in the right to a fair trial by an independent court is very low, especially when courts render unlawful judgments by accepting bribes, favoring connections, or unduly burdening citizens through non-action or delays in trying cases.

According to a survey "Public Opinion and Attitude on Corruption in Mongolia" conducted by the UNDP in co-operation with the Government of Mongolia, among the institutions considered to be most corrupt, the Customs ranked first at 73.5%, banking institutions second at 63.8%, and the judiciary ranked third with 48.8%. Although the results were not tested by auxiliary data, it does reflect lack of public confidence in the judiciary.

In the year 2000, 5 judges resigned after repeated breaches of the code of judicial ethics and conduct, and in 2001 disciplinary actions were taken against 24 judges /Judicial Authority Magazine, 2000, Issue 4; 2001, Issue 2/

The General Council of Courts submitted a proposal to dismiss 8 judges from official duties in early 2000 due to allegations on crime related activities and serious deficiency in trial proceedings.

Chief Justice "B" of Dornogobi Aimag Inter-soum Court committed an act resulting in losses to state revenue in the amount of 4,220,000 MNT. While 211 kilograms of washed cashmere, seized as physical evidence, was valued at 7,385,000 MNT (35, 000 MNT per kilo), the Chief Justice signed a collection order at the rate of 15,000 MNT per kilogram, which totaled 3,165,000 MNT. The Darkhan-Uul Aimag Inter-soum Court judge "T" reviewed a criminal case, submitted in 1996, only in the year of 2000, and according to trail records seriously violated the law by allowing participation of another person in place of the defendant "G" */"Century News", 23 April 2001, Issue 97/.*

As acknowledged by the Chief Justice of one of the metropolitan district court, "the fact of erosion of public confidence in the judiciary's reputation and integrity should be admitted. This is caused by professional incompetence and poor communication skills of judges. The courts are not economically independent. The government does not provide the conditions for the normal functioning of the courts, and judges do not receive their salaries on time and have their electricity cut and telephones disconnected." He openly stated that the principles of the judiciary declared in the Constitution are nothing but empty words /"Century News", 23 April 2001, Issue 97/.

According to a study of civil cases reviewed at the appellate instance of the Metropolitan Court, some courts proceed in violation of relevant provisions of the Civil Procedure Code; cases were heard without lawful quorum and composition of the panel; the bench fails to render deliberations in consultation chambers; judgments are issued outside the scope of the claim, or that fail to fully dispose the issues of the case; appellate orders of superior instances are ignored /Metropolitan Court Review, 2000/.

1.9. The Right to be Tried in Presence

The Criminal Procedure Code provides mandatory presence of a defendant at the hearings of first instance. However, in case the defendant resides outside the borders of Mongolia and unlawfully flees from prosecution, the court can proceed without the defendant.

The issue of particular attention here is how a case involving a person residing outside national borders can be argued. Reviewing the case and rendering a judgment in defendant's absence contradicts the core principles of the Constitution.

A malpractice of refraining from taking measures to ensure presence of defendants in detention awaiting appellate hearings has become common.

As declared in the Constitution, the term "judicial proceedings" covers all stages of first, appellate and supervisory proceedings, however, Article 368 of the Criminal Procedure Code does not provide for the right of the defendant to be present at appellate hearings.

The Civil Procedure Code states that "the parties have a right to be present at hearings" /Article 24/.

Furthermore, "if a plaintiff and it's representative or advocate fail to appear at the trial for a legitimate reason, the court proceeding shall be adjourned. However, the claim shall be remanded upon lack of such legitimate reason."

The Code also provides "if parties, their representatives, advocates or third persons desire to be present at the appellate proceedings, the court has a duty to inform them of the date and the venue of the hearing" /Article 169/.

However, as in the Criminal Procedure Code, the law does not provide for the rights of the parties to be present at supervisory proceedings.

The incidents of violation of the right to be present in court during civil proceedings can be observed from a review of court practices conducted during the study.

The Metropolitan Courts' 1999 decision No.217 quashed judgment No. 885 of the Songinokhairkhan District Court, issued in the same year, with a statement that: "the review of the case file revealed that respondents were not served with official summons, and the court after adjournment for 3-4 times on the grounds of "non-appearance" proceeded with the hearing in violation of the law" */Political, Civil Rights and Freedoms Team Report/.*

1.10. The Right to Appeal

In order to protect this right guaranteed by the Constitution, the Criminal Procedure Code entitles a person to file a notice of appeal within 10 days after the date of judgment issued by the first instance court and, if held in custody, since the date of service with a copy of the judgment. Equally, in cases of a civil judgment, the notice of appeal may be filed within 10 days after the date such judgment was rendered /Civil Procedure Code/.

The new Criminal Procedure Code is considerate by providing persons entitled to appeal, petition or protest to enjoy these rights after receiving or being notified on the judgment.

Though the legislation does not impose restrictions on the content of an appeal, an issue controversial among legal practitioners is that the Civil Procedure Code /Article 166.3/ provides that new evidence shall not constitute grounds for submitting an appeal or protest.

The above provision restricting the appellant to protect it's rights and interests by introducing evidence not available during the first instance trial distorts the aim of justice to decide cases upon reviewing all relevant facts.

One out of every five cases decided by the courts of first instance is appealed. According to 1998-2000 statistics, 52.2% of the total number of criminal case judgments reviewed on

appeal were affirmed whereas 45.3%-47.8% were either quashed or reversed. In contrast, a notice of appeal was filed on one out of every ten civil cases decided by the courts in the years 1999 and 2000. Thus, the number of appeals in criminal cases was twice as high as in civil cases. Judgments were reversed or quashed mostly on the grounds of "incorrect application of charges," "non-consideration of the personal character of the accused," "disproportionate sentence," "failure to consider that the defendant's act was provoked by the victim," and "excessive use of force in self-defense."

Of the total of 249 aimag and metropolitan court judgments reviewed by appeal at the State Supreme Court in the year of 2000, 29.7%, or 74 judgments, were reversed and in 62.1%, or 46 judgments, the sentence was commuted. Thus, the procedural faults and substantive mistakes of the appellate courts are no less prevalent than those of first instance courts.

1.11. The Right to Seek Pardon

Only the President, the Head of State, is empowered with the right to grant pardon.

Regardless whether a person sentenced to death requests a pardon, the case shall be delivered to the President, who shall decide upon it within 30 days after receipt of the case. If necessary, this period may be prolonged for up to 30 days */The Judicial Judgments Execution Law, Article 102/.*

These provisions concern not an ordinary petition or request but the question about a person's life. If the period of considering complex petitions has been set at 6 months, 2 months is far too short to decide the question of the life of a person.

It would therefore seem necessary to amend the law to specify a six-month period of consideration for granting a pardon in death penalty cases.

The President of Mongolia granted pardon to 17 of 142 requests submitted by prisoners in the year 1998, to 15 of 135 requests in 1999 and to 24 of 140 requests in 2000. However, information on the number of persons among them sentenced to the death penalty was not obtained. The official reason given that this number is classified appears dubious.

1.12. Freedom of Religion

The adoption of the Law on the State and Religious Institutions by the State Ikh Khural in 1993 and the National Security Councils' recommendation on "the Concept of State Policy on Religion and Religious Institutions" in 1994 had a tangible impact on the realization of freedom of religion.

1.12.1 According to Article 9 of the Law on the State and Religious Institutions, a person may submit a request to establish a religious institution, along with the founding agreement, to the Citizens Representative Khural. After obtaining permission, the religious institution may be established upon registration with the state central administrative authority in charge of legal affairs.

Great changes occurred in public conscience since the 1990s have caused immense commotion in respect to freedom of religion.

Currently, there are about 270 churches and temples of different religious worship including Buddhism, Christianity, Islam, Baha'i, Shamanism and Yazuu. Of those, 186 are active and registered with the Ministry of Justice and Home Affairs. Representing the so-called "traditional" religions, there are 112 Buddhist monasteries /28 in the capital city/, 2 Islamic mosques /1 in the capital city/, 1 Shamanist monastery /in the capital city/, and from the so-called "non-traditional" religions there are 65 Christian churches /39 in the capital city/, 5 Baha'i temples /1 in the capital city/ and 1 Yazuu temple open for worship.

1.12.2. Hindrances and refusals to register churches and temples without legitimate reason should be treated with criticism and disapproval.

Examples of illegal contravention exist, such as expelling a Christian church from the territory of Jargalant Soum in Tuv Aimag, disbanding a Christian church located in Argalant Soum by the police, and closing operations of a humanitarian kindergarten financed by the Vatican mission upon alleged engagement in religious activity */Research of the Status of Religious Freedom Draft Report/.*

Some public officials interpret Article 7.7 of the Law on the State and Religious Institutions, prohibiting "attraction of atheists or people from other religious beliefs by means of pecuniary interest," as incompatibility of religion with charity; however, some religious ideas are based on giving.

State policies and actions in building relationships with religious institutions by means of examining new developments and trends in traditional and non-traditional religions are important to guarantee freedom of religion.

Since 1996, Aimag and Metropolitan Citizens Representative Khurals grant permits for religious activity for a period of one year, and extends it each subsequent year. However, negligence and avoidance on the part of newly elected members of Citizens Representative Khurals in granting permits is not uncommon.

The right of religious freedom is effectively restricted by unwillingness in granting religious activity permits, and even if granted, the permit's short life itself is discriminatory.

1.13. The Right to Free Movement Within the State Territory

With the abolition of travel permissions for movement from one administrative unit to another within Mongolia, the right to free movement has been guaranteed.

According to statistical data, 93 million people by redundant numbers transported 10,643,400 tons of freight, and passenger turnover /the indicator that multiplies the total number of passengers by the total distance traveled in kilometers/ was 1,946,000 people per kilometer.

Restrictions on the right to free movement imposed by the Law on States of Emergency, Criminal Procedure Code, Criminal Code, Crime Prevention Law and the Law on Borders can be considered as legitimate.

1.14. The Right to Choose Place of Temporary or Permanent Residence

By the mandate of the Law on Citizens Registration and Information, the Government of Mongolia had issued decree No. 47 "General Procedure on Record-keeping and Releasing Information on Citizens' Migration on the Territory of Mongolia" in 1996.

The procedure conforms to the relevant laws that legitimately suspends migration on grounds such as for the convicted serving commuted sentences and persons engaged in correctional labor, as well as for detained suspects or accused until their further release.

In 1995, the Citizens Representative Khural of the Capital City adopted ordinance No. 69 /amended by ordinance No. 46, 2000, and ordinance No.8, 2001/ the procedure imposing the so-called "service fee" of 50,000 MNT on adults and 25,000 MNT on minors under the age of 18 moving to and settling in the capital city of Ulaanbaatar. This procedure clearly violates the right of free movement. According to this procedure, migration expenses for a 5-member family with 3 children will make up to 200,000 MNT on average, and there is no public information and accountability on such revenue expenditure. All arguments lead to a conclusion that this act is equal to strangling the rights of a free movement by economic means.

Similar practices observed in aimags and soums should be ceased as well.

- The Board of the Kherlen Soum Citizens Representative Khural imposed by its 2001 ordinance No.15 a fee of 10,000 MNT on adults and 5,000 MNT on minor new residents */Dornod Aimag Research Team Report/.*

- The 2000 order No. 69 of the Board of Citizens Representative Khural of the Capital City imposed a service fee of 50,000 MNT on adults and 25,000 MNT on minors under the age of 18 moving to and settling in the capital city of Ulaanbaatar */Ulaanbaatar City Research Team Report/.*

- The 14 April 2001 order No. 25 of the Board of Darkhan-Uul Aimag Citizens Representative Khural imposes an one-time fee of 25,000 /twenty five thousand/ MNT per each person of the age of 19 and above as well as a monthly temporary residence fee of 2,000 MNT for each adult */Darkhan-Uul Aimag Research Team Report/.*

Furthermore, citizens who temporarily or permanently reside on the territory of the country of their citizenship are burdened with massive paperwork.

1.15. The Right to Travel and Reside Overseas, to Return Home

The Law on Private Overseas Travel and Law on Immigration comprehensively cover related issues, and the Law on Citizenship, Law on Civil Registration and other legislation regulates some aspects of this right.

The exercise of this right is contingent upon meeting interests of national security, public order, public health and the rights and freedoms of others.

There is no restriction from the Mongolian Government on the right to overseas travel except for procedures determined by the legislation of the country admitting Mongolian citizens intending to visit, reside in and to immigrate to that country. Although some of the destinations countries have strict laws and procedures on visas and financial guarantees, some have less strict rules and these are the issues of an exclusive domestic authority. Obviously, Mongolian citizens may not arbitrarily infringe their procedures and laws. Therefore, no condemnatory comment could be made on the non-fulfillment of desires of many citizens to travel and immigrate to foreign countries.

In 2000, 508,821 Mongolian citizens traveled to 83 countries and 495,285 returned home. A total of 1,041,000 people crossed the Mongolian customs borders. A simple subtraction of these figures equals to 13,536 people, who remained in other countries. Year by year foreign travel of Mongolian citizens is increasing, and this is evidence of good enforcement of their rights of free travel and movement.

CHAPTER TWO. POLITICAL RIGHTS AND FREEDOMS

2.1. The Right to Participate in State Affairs

The citizens enjoy the right to participate in state affairs in three main ways: 1) by running for state office, 2) through their elected representatives or representative organizations, and 3) by working as a public servant.

2.1.1. The most important rights affecting the participation of citizens in state affairs are the rights to vote and to be elected. Elections are a means by which citizens can express their views and make an impact on local and national policies. Only when elections are conducted according to the accepted international standards in a truly free and fair way can the political rights of citizens be assured.

The new Constitution of Mongolia (1992) established the principle of universal, free and fair elections by secret ballot. The parliamentary elections of 1992, 1996, and 2000 and the presidential elections of 1993, 1997, and 2001 were conducted according to this principle.

The MPRP gained 69 out of 76 seats in Parliament in 1992, and 72 seats out of 76 in 2001.

In 1996, The "Democratic Union" coalition of MNDP and MSDP gained 50 seats out of 76, MPRP gained 25, and MTUP (Mongolian Traditional United Party) gained one seat.

In the parliamentary elections of 2000, 1 seat was won by the CCP (Civic Courage Party), 1 seat was won by the "Democratic Union" coalition MNDP-MRDP (coalition of Mongolian National Democratic Party and Mongolian Religious Democratic Party), 1 seat was won by the "Motherland – MDNSP (Mongolian Democratic New Socialist Party)" coalition, and another seat was won by an independent candidate.

Mongolian citizens had participated in the presidential elections and local elections of sum, district, aimag and capital city Citizens' Representatives' Khurals on a democratic basis.

Voter Turnout

Election	Year	Number of Registered Voters	Number of Voters	Percentage
Mongolian State Great Khural elections	1992	1,085,129	1,037,392	95.60
	1996	1,147,260	1,057,182	92.15
	2000	1,247,033	1,027,985	82.43
Mongolian Presidential Elections	1993	1,106,403	1,025,970	92.73
	1997	1,155,228	982,640	85.06

	2001	1,205,885	1,000,110	82.94
Citizens' Representatives' Khural Elections	1996	1,028,216	739,946	71.96
	2000	1,066,147	647,616	60.74

The table shows a decrease in voter turnout over time in every type of election. The reasons for this might include voter fatigue from the increased number of elections and serious problems in electoral laws and organization of election campaigns.

There have been many cases in which human rights related to elections have been violated.

In 1998, the government stock of national passports was depleted. This delayed the process of issuing citizenship cards, and as a result many voters were not able to participate in the 2000 parliamentary and local legislature elections for lack of appropriate documentation.

An aimag election commission reported that 2.1% of the voters could not vote in the State Great Khural 2000 elections for lack of appropriate documentation and 1.5% of the voters could not vote in the Presidential 2001 elections for the same reason /*Khovd Aimag Research Team Report/.*

2.1.2. In 1994, the State Great Khural of Mongolia adopted a law on the Public Service and established for the first time a legal basis, principles and guarantees for ensuring an adequate level of professionalism and competence of state employees, and protecting the rights of public servants.

From a human rights perspective, this law took the important step of providing citizens with equal opportunities to become state employees. According to this law, recruitment for public positions must take place on the basis of merit, and all discrimination on the grounds of nationality, ethnicity, race, gender, social origin and status, property, occupation, position, religious beliefs, political convictions or party or NGO affiliation, was henceforth prohibited.

According to official data, there were a total of 135,391 state employees in the year 2000. Of those, 1.9% or 2,615 persons held political positions, 5.8% or 7,809 held public administrative positions, 15.3% or 20,662 held special public positions, and 77.0% or 104,305 were in the public service sector. There were 85,625 state employees on local budget payrolls /*Manual and Statistical Review on Mongolia's State Employees, 2000).*

The Public Service Council, an independent organization that reports to the State Great Khural, manages the standards of public service within its executive power. One of the functions of the Council is to monitor and resolve disputes involving an alleged violation of the rights of state administration employees. According to the Council, it received 165 complaints between July 1995 and June 2001 of unjustified lay-offs of state employees and unjustified refusal to hire persons who had passed the Public Service qualification exams. Of the complaints, the Council was able to re-institute or provide with new jobs 56.3% of the plaintiffs (93 persons). In addition, the courts considered the cases of 9.7% of the plaintiffs (16 persons), who were re-instituted them in their previous jobs by court decision.

2.2. Establishing Parties and Civic Organizations, Freedom of Voluntary Association.

2.2.1. Political Parties. The Law on Political Parties (1990) laid down the main principles and regulations governing the formation, registration, and dismantling of political parties.

Based on this right, a number of new parties have been formed in Mongolia. This is one indication that citizens are enjoying their right to freely associate. Currently, there are 18 political parties in Mongolia.

One important guarantee of the right to freely associate is the constitutional provision forbidding discrimination against a person based on his or her affiliation or membership in a party or other civic organization.

However, in recent years there have been many cases of dismissal or failure to hire persons by reason of overt or covert discrimination on the basis of party affiliation. There has been a rising number of large-scale lay-offs of civil servants, particularly following the last two /1996 and 2000/ parliamentary and local legislature elections.

Although these trends are not openly precipitated by official decisions of the leadership, the research documenting these cases calls for serious attention.

According to the above-mentioned report of the Public Service Council, "the two elections since 1996 led to an abrupt shift of power from one political coalition to another and many changes in government, which has had a highly negative effect on public servants."

The number of people who have been fired from work due to discrimination on the basis of their party affiliation since 1992 amounts to 850 *(Khovd Aimag Research Team Report).*

2.2.2. Trade Unions

Currently, in Mongolia, there are 12 Federations of trade unions with a membership of 105,300 workers in 709 sectors, and 22 trade union federations organized by geographic territory. Of the 220,000 people who are members of 2,300 trade unions, 48.6% work in the public services, 26.5% work in the private sector, and 25% work in state-owned enterprises. The status of trade unions was strengthened by the Law on the Rights of Trade Unions adopted in 1991 and has become an important guarantee for the realization of the right to join or form trade unions.

2.2.3. Non-Governmental Organizations/Civic Organizations

Citizens of Mongolia may exercise their right to voluntary association pursuant to the Law on Non-Governmental Organizations (1997) and the relevant provisions of 80 other laws. Currently, there are 2,200 non-governmental organizations registered nationwide.

The following contradictions were revealed in a comparative analysis of the Law on Non-Governmental Organizations and other related legal documents:

1. Article 16 of the Law on Non-Governmental Organizations requires that a request to register an NGO should contain:

a) the name and address of the organization,
b) the names and addresses of board members, the board chair and the executive director,
c) the NGO by-laws signed by the board chair, and
d) a receipt testifying to the payment of the service fee.

However, the "Regulations on Registering and Issuing Certificates to National NGOs" approved by the 2000 order #50 of the Minister of Justice and Internal Affairs requires that NGOs submit 3 more documents apart from the service fee receipt, and the "Regulations on Issuing Permits to Establish Foreign and International Organizations' Representative Offices" approved by the order #72 requires that 5 more documents be submitted.

2. The Law on regulations regarding compliance with the NGO Law (1997) does not have provisions for harmonizing and coordinating the NGO Law with other relevant laws. As a result, there are inconsistencies in that, while not insurmountable, are causing considerable confusion.

   For example, some of the provisions of the Law on the Legal Status of Trade Unions conflict with those of the NGO Law. In particular, Article 16.6 of the NGO Law states that the state agency responsible for legal issues shall issue its decision to accept or refuse the registration of an NGO within 30 days of receiving the request for registration, while Article 4.2 of the Trade Union Law states that registration of trade unions should be settled within 14 days.

3. Article 7.2 of the NGO Law states that when an NGO ceases to function, the property remaining after the payment of all the outstanding bills shall be transferred to an NGO with a similar purpose or, in case such an NGO does not exist, to an activity with a similar purpose. This provision contradicts the Civil Code and other laws and harms ownership interests.

   Article 21.4 of the Civil Code providing that "entities financed by the owners shall be legal entities wherein the founders or participants shall keep their particular ownership, property rights and responsibilities" should cover NGOs /advocate bureau, apartment ownership council, etc/. Also, there is a need to allow NGOs to establish branches that run economic activities to provide certain services (hotels, restaurants, resorts, training centers, sanatoria, etc.) and to create a legal framework for such activities.

4. Article 8.2 and Article 21.1 of the Law on Children's Rights (1996) recognize the right of children to form and/or join only children's non-governmental organizations, which contradicts other laws (Article 5.1 of the NGO Law).

Because of the difficult socio-economic situation of the country, many young people under 18 years of age are working at various jobs. Article 109 of the Labor Law specifies the lowest age at which children under 18 can start working. According to Article 12 of the Civil Code, children should have a right to form or join children's and other NGOs after their civil, legal capacity has been declared. On the other hand, the above-mentioned Provision 2 of the Law on Children's Rights contradicts the relevant provisions stated in the Convention

on the Rights of the Child (1989), the Convention on the Protection of the Right to Free Association and to the Forming of Voluntary Organizations (1948). Therefore, there is a need to harmonize this provision of the Law on Children's Rights with the Constitution of Mongolia and the NGO Law.

2.3. Equality of Rights of Men and Women

2.3.1. The principle of gender equality is drawn on to balance the responsibilities on men and women, honoring the common interests of men and women in family and social relations.

According to court statistics, in the last 2 years, the violent crime rate has increased to 25.2% of all crimes and women account for the majority of the victims of the violent crimes. The National Center against Violence (NCAV), an NGO, conducted a survey on issues such as domestic violence, rape, and trafficking within the framework of a project entitled "Violence against Women in Mongolia," covering courts and forensic hospitals of the capital city and city districts, detention center #5, the Epidemics Hospital's department in charge of fighting against AIDS and STDs, and the women's prison.

Instances of violence against women are classified by type such as sexual, physical, psychological, and economic and by site such as home, public place, work place, abroad, etc.

In 1998-2000, there were 326 registered incidences of domestic violence in one of the city districts, 42.6% of which were reportedly due to a family dispute and 18.7% were due to jealousy. The rest of the cases were reportedly caused by ownership and economic factors, or were due to hooliganism. The violators in domestic violence cases were husbands, ex-husbands, living partners, boyfriends, neighbors, but also parents, relatives, siblings, and children. Violent crimes committed against women in homes accounted for 20.6% of crimes in 1998, 28% in 1999, and 25.2% in 2000.

In the last 5 years, 639 women (with 641 children) came to stay in the NCAV's shelter house. Of those women, 82.2% were under pressure and 28.9% of them had injuries.

2.3.2. The difficulties faced by society have a greater negative impact on women. According to 2000 data, 42% of women of working age were unemployed, which is 0.4% higher than the corresponding percentage for men.

In 1997, the Women's Information and Research Center (now Gender Center for Sustainable Development) conducted a survey on gender equality in 5 zones – Ulaanbaatar, and Khovd, Khentii, Bulgan, Dornogovi aimags. The survey covered 800 women in remote rural areas, 800 in aimag centers, and 1500 from the capital city. The results indicate that 3.8% of all women work at home (housewives), 87.8% of them are married, 82.4% are aged between 20 and 34 years, 98.2% have children under 15 years of age. Most of them reported that they lacked the possibility of working outside the home due to heavy responsibilities within the home, particularly housework, childbirth and childrearing; 28.1% of them receive subsidies from the Social Welfare Fund, while 15.8% engage in some sort of activities to raise family income. Of the women working at home, 58.9% have no income whatsoever, and 64.9% are

supported by their husband's income. They are furthest removed from the reform activities conducted in the country and are most concerned about their employment prospects.

2.3.3. The continued low representation of women in senior decision-making positions in all spheres of activity - economic, social and political - shows that the progress made in the implementation of the National Platform of Action on Improving Women's Status is inadequate. The contribution of women to national development continues to be undervalued, evidenced by the jobs and positions held by women, compared to their generally high levels of education, professionalism and knowledge of the situation of Mongolians. At the same time, it should also be noted that there is a lack of concerted efforts on the part of women to seek out and assume positions of leadership.

The current percentage of women serving in parliament is 10.5%, which is almost 3 times lower than the percentage in the 1980s. In contrast, it is generally recognized that the capabilities of the current women parliamentarians to contribute to state affairs at the decision-making level is much higher than that of women who served in the 1980s.

The participation of women at the highest level of executive power is nearly non-existent. During the previous government, there was one woman Minister (of Foreign Relations) and in the current government there is one women Vice-Minister and one woman Ambassador serving in a foreign country. In the legal profession, 23.5% of the Supreme Court Judges and nearly 90% of judges of aimag, capital city, district and inter-sum judges are women. Thus, despite wide representation of women in this branch of Government, the positions at the highest levels continue to be mostly occupied by men, while the judges of the lower districts are overwhelmingly women.

2.4. The right to File Requests and Complaints to Public Agencies and Office-Holders and have those Complaints Addressed

The citizen's right to submit requests or complaints to public agencies and office-holder is regulated by the Law on the Resolution of Citizen's Requests and Complaints Filed With Public Agencies and Officers, adopted in 1995.

The term 'request' refers to a petition from a citizens addressed to state agencies and office-holders about national, social or personal issues whilst the term 'complaint' shall refer to a petition from a citizen addressed to state agencies and office-holders that pertain to the violation of a citizen's rights or legal interests and demand a remedy.

Citizens may submit their requests or complaints either verbally or in writing.

In order to implement the above law, the Mongolian government issued resolution #222 'On some issues pertaining to the implementation of the law.'

This resolution established regulations for developing and implementing internal procedures for receiving and resolving citizens' requests and complaints to ministries, special agencies, aimag and capital city governor's offices, and their subsidiary organizations according to their jurisdiction. It established an obligation to submit semi-annual and annual reports to the Government containing a summary of the requests and complaints, information on how

those requests and complaints were followed up, how the state agency reflected those requests and complaints in the internal policy and activities.

In 2000, 8,612 requests and complaints were submitted to 11 ministries, of which 7,788 requests and complaints were resolved and responded to within the legally specified time period (30 days) and 233 requests and complaints were resolved later than the specified time. Of the requests and complaints that were not resolved on time, 94.8% (or 221) were addressed to the Ministry of National Defense and 5.1% (or 12) to the Ministry of Environment.

In 2000, aimag and capital city governors' offices received 79,069 requests and complaints, 24% of which were directed to the Capital City Governor's Office. Most of the requests and complaints were resolved within the specified time limit. However, in Arkhangai, Khentii, Selenge, Dakrhan-Uul, and Uvurkhangai there were cases when requests and complaints were not responded to on time.

In 1996-2000, the State Great Khural received nearly 6,400 requests and complaints from citizens (an average of 1,600 submissions per year) concerning approximately 7,400 issues. The main subjects of the requests and complaints were:

- requests for loans and other material assistance for household matters or to resolve personal economic difficulties (38.6%)
- requests for assistance on issues related to housing (9.5%)
- requests for local government support for small and medium size businesses (manufacturing and services) (16.2%)
- requests for financial assistance for child education (15.2%)
- requests for assistance in finding employment (8%)
- complaints on health deterioration and requests for assistance with medical expenses, including sanatorium services (2.54%)

However, the significance and effectiveness of the right to submit requests and complaints is still insufficiently recognized.

The majority of the requests and complaints sent to the State Great Khural protest that 'the state is not properly protecting the rights of the citizens and not properly restoring the rights that have been violated.'

Letters from citizens for the most part complain about the heavy bureaucracy and injustice of the courts, police, and investigative agencies and how these institutions violate citizens' rights and interests.

The disparity between the government agencies' official findings on the timely resolution of citizens' requests and complaints and the data from the project study reveals that the right of citizens to file requests and complaints with state agencies and office-holders is covertly violated. According to government reports received from the Govisumber, Dornod, and Orkhon aimags, all requests and complaints from citizens were resolved on time. However, the special research team found several citizens' requests and complaints where the legal deadline for a response was exceeded by as much as 2 to 6 months.

About 40% of citizens that come in person to the Office of Receiving Citizens, express concern about the inability of "courts to provide truth and justice." In general, it can be stated that the main reason for this is that a judicial mechanism of protecting citizens' from illegal acts of state agencies and officials has not yet been established.

The right to have complaints addressed should be accompanied by the duty of office-holders to resolve issues raised in the complaint. However, violation of citizens' rights by non-action and referrals are common.

2.5. The Rights and Freedoms of Conviction, Information, Expression of Opinion and Belief, Press, and the Right to Organize Peaceful Demonstrations.

As the rights and freedoms specified in the Constitution are inseparably linked and one cannot exist without the other, they have been considered together in one section.

People form and express their opinions by seeking out and obtaining information, publishing them in the press, and speaking at meetings and demonstrations. Without freedom of speech and the press, people would be unable to make public their opinions; without the right to freely express one's opinion, freedom of press would be meaningless.

2.5.1. Although the right to free expression is an inalienable right of a person, it is permissible to put appropriate restrictions to the freedom of expression of a state office-holder in connection with his or her duties. In particular, as stipulated in the Law on Offices that Require Renounciation of Party Membership, the Law on Police, the Law on Courts, the Law on the Constitutional Court, and the Law on the Prosecutor's Office, people elected or appointed for certain offices are required to renounce their party membership. When expressing their opinions, they are required to respect their professional duty to serve in an impartial manner.

However, there have been widespread cases in recent years of discrimination based on personal convictions, particularly through layoffs from work and involuntary transfers. This commonly occurs in the public sector, where the suspension or dismissal of large numbers of public officials following parliamentary and local legislature elections has now become a Mongolian 'tradition' dating back nearly ten years.

2.5.2. According to official data, as at 2000, there were 220 newspapers and magazines with a combined circulation of 1.2 million copies, 4 independent TV stations, 16 cable channels, 50 TV studios, 8 AM radio stations, 14 FM radio stations, 6 radio studios, 11 information agencies, and 6 Internet on-line information service providers.

The adoption of the Law on the Freedom of Press and Media in 1998 was an important step towards guaranteeing the above rights.

This law the state is prohibited from censoring the content of media and press releases, establishing and/or funding an organization that would do so, and from having its own media.

About ten more branch laws also contain provisions regarding the media and related freedoms in addition to the right of free expression and the ban on state ownership. However, there remain many obstacles to the actual implementation of these laws and there have been many cases where these provisions are violated.

The implementation of the Media Law is inadequate, and there are many unjustified restrictions in these laws. In addition, a television broadcasting service, radio station and 52 newspapers are owned by the state or are under the control of the state or a subsidiary agency.

An analysis of the laws relevant for these rights and freedoms indicates that:

a) The laws still contain some authoritarian provisions. For example, there are provisions that enable the state to impose certain responsibilities on private media as is done to state-owned media, resulting in legal sanctions if the private media do not perform as required.

   The amendment made to the Law on Presidential elections in 2001 stating that 'information and publication media have a duty to promptly inform the citizens about preparations for elections and election results' is an arbitrary imposition *(B. Chimid on the Freedom of Expression, Ulaanbaatar, 2001).*

b) Some restrictive provisions raise concerns from the perspective of human rights.

   "It shall be forbidden to conduct public opinion polls during the last week prior to the election date. Newspapers other than those that belong to parties and coalitions are forbidden to consistently advertise on a favored basis" *(Law on State Great Khural Elections, 1992, Articles 5 and 21).*

   Mongolian Radio and Television are forbidden to run paid or unpaid programs outside the schedule approved by the General Election Commission" *(Law on Presidential Elections, 1992)*

c) The Government Resolution #267 on "Regulations for Registering Media," adopted in 1991, sets the legal framework for coordinating the registration of media organizations, for issuing permits to operate, and for monitoring their operation. Also, in order to implement the above resolution and to coordinate the process of national registration and monitoring of media organizations, the Ministry of Justice issued "Instructions on Registering and Monitoring Media Organizations" enforced by the order #A/352 issued in 1991. By order #50 of the Minister of Justice and Internal Affairs, issued in 2000, the model of the certificate to be issued to media organizations was approved, and it was established that the registration and issuance of a certificate shall be considered by the Administration Boardl of the Ministry of Justice and Internal Affairs, to be confirmed by the Minister's signature.

An analysis of these regulations and instructions suggests that:

1. State institutions have unilateral authority to ultimately determine whether a media organization can be established, operate, or be dismantled. This openly violates the statements of the Constitution that every person shall be a legal person and shall have a right to form and voluntarily join organizations to further their interests and opinions.

2. In order to monitor the implementation of the 'appropriate' restrictions mentioned in Section 1 of these regulations, a copy all regular press must be delivered to the Ministry of Justice and Internal Affairs immediately after the newspapers have been printed, which violates the legal provisions that prohibit the State from censoring the content of media information.

3. These regulations also authorize the Ministry to take measures to close a media organization if the latter violates any relevant laws and legislation. However, the precise meaning of 'relevant laws and legislation' has not yet been clarified, which presently leaves it open to arbitrary interpretations. The model certificate approved by the Minister of Justice and Internal Affairs stipulates that the Ministry shall receive the media organization's main goals and objectives of the founder and shall monitor the implementation of those goals and directions. This violates a provision of the Media Law that prohibits the state from censoring the content of information broadcast or printed by the media, establishing state agencies that will do so or funding activities that will do so.

2.5.3. The State Great Khural adopted the Law on Peaceful Demonstrations and Meetings, aimed at guaranteeing freedom of expression. Although it introduced some improvements, there remain many provisions that need further improvement and revision.

On March 21, 1996, the Constitutional Court of Mongolia discussed the request of citizen D. Lamjav to review the Law on Peaceful Demonstrations and Meetings, particularly its consistency and compliance with the Constitution of Mongolia. Citizen D. Lamjav included in his request accompanying explanations that Article 3.5 of the Law on Peaceful Demonstrations and Meetings stated that "The meeting organizer shall not admit small children to participate in the meeting" and that Article 12.5 of the same law stated that 'Meeting participants shall not bring along small children.' Citizen Lamjav claimed that these provisions contradicted Article 15.1 of the Convention on Children's Rights, according to which 'participants shall recognize the right of children to organize or participate in peaceful meetings and demonstrations.'

Upon reviewing this request, the Constitutional Court determined that the above provisions of the Law on Peaceful Demonstrations and Meetings concerning children were inconsistent with Article 16.16 of the same law, Article 10 of the Constitution, and Article 6 of the Constitutional Appendix Law. The State Great Khural, on April 26, 1996, rejected this conclusion. However, the Constitutional Court, upon reviewing the above decision of the Khural, determined to uphold the initial court ruling, thereby invalidating the provision in question.

Article 9.19 of the Law on Peaceful Demonstrations and Meetings requires organizers of peaceful demonstrations or meetings to notify the soum and district governors of their intentions to organize a demonstration or a meeting in the streets or other public place and to

obtain permission to do so. Provision 3 of the same article requires that soum and district governors announce their decision to issue or not to issue such a permit within 6 days of receipt of a notification. The period for resolving requests for permits is excessively long.

2.5.4. The Constitution of Mongolia only mentions the right to seek and receive information but does not mention the right to publicize that information. There are legal restrictions on the exercise of the right to seek out information. The Law on State, Organizational and Personal Secrets, and the Criminal Code define these restrictions.

However, the list of classified information considered as State Secrets is excessively long. Often, the heads of organizations arbitrarily decide what information they will classify, and a coherent network and tradition whereby information on the activities and operations of state agencies is accessible to the public has not been established. This creates obstacles for citizens seeking information, especially journalists, who, in addition, often face reprimand or punishment.

CHAPTER THREE. ECONOMIC RIGHTS

- The State shall recognize public and private ownership, and protect the rights of owners by law.
- The rights of an owner shall be restricted only on grounds prescribed by law.
- Citizens of Mongolia may own Land, other than pastures or lands for public use or special purposes.
- Citizens of Mongolia shall have the right to legitimately acquire, own, use and inherit movable and immovable property.
- It shall be prohibited to unlawfully confiscate private property. Owners of private property, confiscated due to a public exigency, shall be compensated or reimbursed.
- Economic rights have been secured by legitimizing civil rights for private entrepreneurship, production and to enjoy benefits of creative work.

3.1 Right of Legitimate Acquisition, Use and Ownership of Property

In 1991 the State Baga Khural, had adopted a Law on Privatization that legalized all forms of private or public ownership in Mongolia. The first steps to thoroughly securing economic rights was the founding and implementation of fundamental laws related to the transition to market economy, e.g. on privatization and the establishment of business entities and commercial banks.

The initial phase of private ownership of property was implemented for Citizens of Mongolia through the distribution of investment vouchers on a “fair go” principle. The first stage of privatization was completed in the mid-1990’s when some 1.9 million people were provided with these vouchers. The opening of the stock exchange marked the second stage. Currently more than 1.2 million people have become stockholders of more than 470 companies through the stock exchange, and have the right to receive dividends. Enjoying the yields of private entrepreneurship and self-employment has become common.

In the past 10 years, more than 960 state owned small and large enterprises, commercial livestock and immovable property, exclusive of housing, by the total value of 49,820.0 million MNT was privatized by citizens of Mongolia, foreign citizens, private businesses, joint ventures and direct investment companies at their fair market value.

Statistical reports show that the deposits of citizens in bank accounts in 1992 totaled 2,783.3 million MNT. This rose by 13.2 times when savings reached 36,818.0 million in 1995. In 1999, it reached 45,052.3 million MNT. It rose by 2.3 times from its 1995 level when it reached 86,367.9 million MNT in 2000.

A Law on Privatization of Housing was passed, and during the work on housing privatization from 1997 to 2000 from 84.0 thousand units of state-owned housing 81.0 thousand or 96.4 percent was privatized almost free of charge to citizens. Of the citizens that privatized their housing units, 89.3 percent had certified by registering for immovable property ownership permits.

However the fact that the railway authority had not privatized their housing is an infringement to the principle for equality of citizens before the state and law */Economic Rights Survey Special Team Report/.*

The above figures reveal that the process of ownership of immovable and movable property by citizens accelerated within a short period of time.

3.1.1. Continued protection of the right to immovable property and to engage in private entrepreneurship is contingent broadly on possession and ownership of land.

Article 6.3 of the Constitution states that "land other than pastures, of public use or for special purposes may be owned exclusively by citizens of Mongolia". Although this article provides the grounds and opportunities for citizens to possess the most reliable and valuable immovable property, the matter of land ownership remains a controversial issue that has yet to be resolved in a comprehensive legal framework for land ownership. Some citizens are obtaining permits for lands at prime locations for resale at a higher price. This is becoming a widespread practice. Announcements in newspapers, periodicals and radio for sales of land permits had become common. These ads show that citizens and organizations had started to dispose of occupied lands even prior to the entry into force of the law on land ownership, pointing to the urgent need for the establishment of a legal framework for land ownership.

The issue of possessing land within the Capital City by citizens and organizations is complicated.

According to articles 22 and 23 of the Law on Land, the Capital City Governor, acting on proposals from District Administrators, may issue decisions on land possession to " citizens and organizations that shall engage in the production of goods that are important" to the development of the City. At the same time, District Administrators also have the right to issue decisions on possession and use of land. In addition to its potential for conflicting interpretations, this law fails to distinguish among public land by state, capital city, district, aimag and soum jurisdictions, giving rise to "competition" and other impediments to the effective realization of its intended objective. Furthermore, the number of bureaucratic stages of processing and red tape are enormous for the issuance of decisions on land possession.

According to the procedures established within the Capital City, eight bureaucratic stages of processing must be passed, which takes on average at least 6 months to obtain permission to occupy and use land in Ulaanbaatar. After the necessary permit is secured, inspections must be passed and approval obtained from a number of Government agencies in order to commence on construction or renovation and subsequently begin to produce goods or services.

Stages in the Process of Applying for Use of Land

Application for Land Possession
/to the City Development and Land Regulation Department at the Capital City Governor's Office/

Survey by Architects and Land Administrators
/conducted in compliance with general and partial plans/

Proposal Drafting
/preparation of land allotment sketches, obtaining approval from 7 specialist in the department, and preparation for submission to the meeting of the technical board/

Hearings at the Technical Board Meeting
/at this meeting suggestions from general engineers of the Central Heating Department, Electricity Department, Water Supply Department, Radio Cable Network, Housing and Communal Services Department, Environmental Protection Department, Health Inspection Office and Fire Department are obtained/

Conclusion from the Meeting of the Professional Commission
/suggestions from 17 members of the City Development and Land Regulation Commission, and records made in the protocol/

Submission of Materials & Obtaining Governor's Order
/determining location and land allotment permits/

Notice of the City General Architect, Accepting Planning Commission from the District Architect & Construction
/Obtaining Certification, Making Land Possession Contract with District Land Organizer and Collection Inspectors and to Pay Fees; approval of sketches at the drafting stage, obtaining technical requirements, drafting working sketches, agreement with relevant specialized bodies, obtaining expert opinion, approval to start construction work, laying the red line, construction work, submission to acceptance commission and obtaining approval/

Registering the Immovable Property

The situation with several stages of the process for approval of land possession and use are the same in Aimags and in the countryside. In the period of 1998-2000, the City Development and Land Regulation Department of the Governor's Office received 11,670 applications related to land possession from citizens and businesses, and took decisions on 660, or 7 percent of them. No records on how the rest was resolved were available. The authorized time limits for consideration of applications and requests was not uniformly respected, taking between 60 and 354 days. Construction without approval became widespread due to untimely consideration, with 123 such constructions recorded */Economic Rights Survey Special Team Report/.*

Serious damages are caused to citizens by the Governor annulling land allotment decisions of the District Administrator, or a newly appointed Administrator annulling a long-term permit approved by his or her predecessor. As a result of such practices, citizens are increasingly avoiding land possession contracts. The need for protecting property rights by developing a legal framework for land regulations in more detail is clear.

3.1.2. One recent development that brought anxiety to urban dwellers, especially medium to low income families operating kiosk businesses, was a campaign for compulsory dissolution of kiosks initiated by a decision of the District Administrators, even while the state

administrative authorities continued to approve kiosk operations through the complex procedures outlined above. The sudden campaign violates the right of citizens to private ownership. By failing to compensate the persons affected for costs and damages, it also violates the Constitution, which allows for the seizure of citizens' property by state authorities in exigent circumstances, but requires compensation to be paid.

Vesting a number of organizations and official posts with decision-making authority in this area, pursuant to Mongolian legislation, has led to serious human rights violations.

The following infringements and inefficiencies were recorded during a survey on the situation of state appropriation of privately owned property. The retention of a certain percentage of the proceeds gained from fines collected due to infringements defined by administrative inspection authorities, such as the customs and tax authorities, had become more a mechanism that encroaches on human rights rather than a mechanism to enforce the law.

Article 172.1 of the Criminal Law establishes illegal trafficking through state borders of large amounts of foreign currency, foreign currency notes, minerals and other items as a criminally responsible act and requires the seizure of the trafficked goods. Offenders prosecuted under this article are usually illegal traffickers of spirits, cashmere, marmot fur and vehicles that evade taxes and fail to obtain licenses. From 1996 to 2000, courts seized assets and imposed additional sentences on 478 persons convicted under this provision. Some citizens suffered enormous losses from the confiscation of their raw materials, in some cases valued at millions of MNT.

Article 32 of the Criminal Code provides that confiscation of property refers to appropriation by the state, without compensation, of articles created illegally or obtained for criminal purposes, criminally acquired income and other such items.

Courts are guided by this article when confiscating items mentioned above. It should not apply, however, to items that are obtained by legal means.

The provision of Article 134 of the Civil Law, which states that "the property of an offender shall be confiscated," is also general and broadly defined.

Property confiscation under administrative regulations is a common violation of citizen's rights.

These practices point to a need to review the legal grounds and procedures in the legislation for confiscating private ownership items. The compatibility of the nature of an offence with the grounds for punishment must also be carefully reviewed.

3.1.3. The Laws on States of Emergency (1995), State of War (1998), and Mobilization (1998) provides that under exigent circumstances in order to ensure national and public security and to maintain public order, the property, vehicles, buildings, technical and fodder reserves of organizations, business entities and citizens, irrespective of the form of ownership, may be mobilized with provision of compensation.

Government resolutions (1999, 2000) provide that the amount of compensation to be provided to private sector entities for mobilized assets shall be calculated by the registered value for immovable property, by the insured value for vehicles and by market value for all other property.

These calculations are only applicable to compensation provided on assets mobilized under the provisions of the Law on Mobilization.

The Law on States of Emergency has indications in respect of amounts of compensation but provides no guidance for assessing value. Thus the requirement of the Constitution for legal regulation of issues related to compensation on mobilized private assets had not been fully addressed.

3.1.4. The recording of immovable property in the state registry is one basis for the protection of ownership rights. The registration of immovable property is implemented by the immovable property registration agency. The agency charter, the "Procedures for State Registers", and the "Procedures for Service Fees and Their Disposal," which were enacted in law and by Government Resolutions 11 and 40 from 2001, determines the legal status of the registry.

The imposition of a service fee is collected on top of a fee of 0.01 percent from the total value of assets, the latter prescribed by Article 172 of the Law on Stamp Duty, in the initial registration of immovable property and certification of rights on privatized housing. Corrections should be made on the imposition of these different taxes and levies on the registration of contracts relating to the transfer of immovable property.

For the initial registration of a building valued at 15,6 million MNT, a citizen pays 1,560 MNT in stamp duties, a 10,000 MNT fee for services, and a 2,000 MNT fee for notary services, totaling 13,560 MNT in fees. If the property is to be sold, then an additional 4,680 MNT must be paid for notary fees, 25,000 MNT for service fees and taxes for the sale of immovable property in the amount of 312,000 MNT, totaling 431,600 MNT, or 2.3 percent of the value of the building.

In addition, an annual tax on immovable property of 0.6 percent of the value of the property, in this case 93,600 MNT, and a considerable fee for the assessment of the value of the building by an evaluation agency must be paid.

Due to high taxes, many citizens have cloaked their immovable property transactions as gift contracts, in which they can transfer property without incurring such high tax obligations. In the past 5 years, 15,689 gift contracts and 13,860 transaction contracts were registered. This situation gives grounds for consideration whether the number and amount of taxes, levies and fees associated with immovable property transactions do not pose great burden on the concerned parties
/Economic Rights Special Team Report/.

3.2. Ability to engage in entrepreneurial activity

The adoption of the Law on Business Entities by the State Baga Khural in 1991 had opened possibilities for entrepreneurship by private persons through founding of a business entity. Subsequently, the State Great Khural of Mongolia passed Laws on Cooperatives /1995/, Partnerships /1999/, and on Companies /1999/.

3.2.1. Today a citizen of Mongolia has the right to engage in entrepreneurial activities, either by founding a business entity or as a private person not founding such.

Private enterprises by citizens are established by an application indicating the name, address, registration number of a business and the type of services to be rendered. This form of business is most suitable for private persons, as they must pay only personal income taxes.

While the revised Civil Code from 1995 indicates that "the conditions and procedures for citizens to engage in business without founding a business entity shall be determined by law", such laws have not been drafted yet, and the State Registry Office at the General Tax Department has ceased to register new applications for private enterprises. Thus, the number of private enterprises is declining each year.

3.2.2. The revised Law on Cooperatives, approved on 8 January 1998, requires cooperatives registered prior to the validation of the law to register anew within 1 year from its entry into force and requires at least 9 members to form a cooperative. However, many cooperatives try to avoid re-registration, and although some have registered a membership of 9, in fact most members do not have personal involvement in the cooperative business and maintain only a formal presence. New cooperatives must register a membership of 9 persons, but there are cases of fictitious persons being registered.

According to a survey conducted in Nalaikh District in March 2001, 14 cooperatives of 44, or 31,7 percent in the district, had less than 9 members, and 24 cooperatives, or 50%, had 9 members. The membership in cooperatives in the countryside is even lower. In the Darkhan Uul Aimag, 42 out of 81 cooperatives, or 42%, had fewer than 9 members, and most they had 3 to 5 members. This situation should be reviewed. The volunteers engaged in this survey suggest that a reduction in the required membership numbers in cooperatives be considered */Economic Rights Special Team Report/.*

3.2.3. The Company Law approved in 1999 regulates the legal status of Stockholding Companies (SHC) and Limited Liability Companies (LLC).

Citizens purchasing company stocks with investment coupons established most SHC after 1990. While these companies were founded by thousands of shareholders, those shares were eventually consolidated in the hands of a few investors who accelerated the process of their conversion to LLCs

The need for protecting the rights and statutory interests of shareholders and increasing their supervisory powers are emerging in this process of conversion from SHC to LLCs.

From reports of the Mongolian Stock Exchange, only 202 SHC, or half of all SHC, had distributed dividends since 1993. The number of stockholding companies that distributed dividends has been steadily declining; 111 companies did so in 1993, 86 in 1994, 69 in 1995,

51 in 1996, 54 in 1997, 22 in 1998, 16 in 1999 and 20 in 2000. The lack of increases in the dividends paid per share, already are low in value, is related to the lack of experience in monitoring the performance of companies and protecting ownership rights, as well as lack of proper knowledge of business management.

3.2.4. The dissolution of dozens of businesses each year, and the inability of operating businesses to distribute dividends indicate that the legal and economic environment is not conducive to the establishment and operation of businesses in Mongolia.

The results of a survey among 60 businessmen in Ulaanbaatar city reveal the following about the operating environment for businesses. 58 percent responded that favorable conditions for the conduct of businesses in Mongolia had not been established, that they were subjected to too much red tape and too many bureaucratic processes; 78,4 percent considered that the tax burden, which was imposed, in such forms as customs, excise, value added, on immovable property, was heavy and that social security guarantees restrained company growth and the accumulation of reserves; 30 percent responded that the interest rates charged were too high and thus had never applied for a loan; 45 percent responded that they had applied unsuccessfully and believed that the loan process was too complicated */Economic Rights Special Team Report/.*

3.2.5. Citizens must register with the State Registry Office at the General Tax Department when establishing partnerships, cooperatives and companies. Although no separate legislation is in force, the laws on partnerships, cooperatives and companies have provisions that specify the documents to be attached to the registration application. They specifically prohibit requiring documents other than those listed in their respective provisions.

Business entities are registered at the State Registry Office of the General Taxation Department. The procedures of this office are biased in that they are oriented toward payment of taxes. Thus a conclusion is made to change the present jurisdiction of the registering body, and to recognize the need for drafting a law on registration of legal persons.

3.2.6. The restrictions on basic entrepreneurship rights in relation to a certain category of public servants deserves some attention. A summary of the relevant legal provisions shows such restrictions to be: firstly, conducting business activities, managing a business, or membership in governing board or directors board is prohibited for MPs of the State Great Khural of Mongolia, state administrative servants and customs officers; secondly, holding a position or concurrent employment in a field not related to one’s duties prescribed by law is prohibited for the President, judges, prosecutors, members of the human rights commission and intelligence service officers; thirdly, there are no specific provisions for employees of the judgment enforcement agency, military servants and governors. Moreover, the Law on the Constitutional Court specifically prohibits the members of the court to be engaged in trade. Article 24.8 of the Law on Government prescribes that "members of the cabinet shall declare to the cabinet secretariat the income from private business or property on an annual basis”.

The above illustrates that merits for restricting entrepreneurship rights of public servants are fairly different, and are structured in an inconsistent manner. This should be reviewed in view of the specifics of each service and on the human rights standards of equality.

3.2.7. The approval process for permits to conduct production of goods and provision of services in the first floor of common housing apartments is based on the "Procedures on requirements, approval and inspection of changes to functioning and planning of common housing apartments" approved by Order 93 from 2000 by the Minister for Infrastructure and Development, the "Procedure to change functioning of apartments for the conduct of production and provision of services" approved by Decree 341 in 2000 by the capital city mayor. An approval is obtained after the 9 different stages of the approval process. At the end, a contract is made with the city general engineer and the Chair of the Citizens Representative Khural, and a fee of 150,000 MNT is payable to the Governor's office.

In standard contract papers the latter provision has a reference to Article 7.2.4 of the Law on Housing, though the legislation does not mention any charges payable by citizens and essentially only lays down the sphere of competence of Governors.

Prior to 2000, contracts were concluded after the principal value of the apartment was paid, however this procedure has been annulled. The process for approval involves several stages. Permission must be obtained from 9 authorities, usually on the basis of blueprints, and after the completion of construction a commission of 12 should sign admission documents.

The fact that a citizen should pay 150,000 MNT to use his or her own private property and establish a contract with an state administrative official is effectively a direct violation of rights for free possession and use of property. These contracts are valid for one year and must be extended each year.

3.2.8. The procedures for establishing requirements, conducting inspections and granting approval for activities relating to the production of goods, provision of services and conduct of trade are approved and implemented by decisions of the Ministers for trade and industry, for the environment and for food and agriculture, as well as the City Governor and District Administrators. Overlapping procedures and regulations on some types of services are found.

The specific requirements, the average time necessary for obtaining approvals and level of fees to be paid for citizens to engage in production, provision of services or conduct of trade varies among districts. Coherent procedures at the national level are lacking. The Capital City Citizens Representative Khural, for example, had approved procedures for opening wholesale markets, for granting secured loans, for supplying alcoholic beverages and for providing paid cultural events.

The business permit procedure entailing extended proceedings and a short-term licensing period was abolished after the enactment of the Law on Business Licensing.

3.2.9. The Capital City Citizens Representative Khural, the State Supervision Service on Trade and Industry, the Capital City Governor and District Administrators issue numerous procedures and instructions involving regulations on production, trade and services that

overlap and to some extent violate citizen's rights for private enterprises. Some are even patronizing on matters that individuals should be able to decide on their own.

According to the above procedures, permits for pawn-shops, manufacturers, retail shops, places serving alcohol, food and wholesale markets, and cafeterias are granted only to business entities. Private persons may not conduct such businesses.

This is a direct restriction on rights for private enterprise of citizens declared in the Constitution.

The procedures for business permits were developed at the discretion of the above institutions, without backing by appropriate legislation until February 2000, when the Law on Business Licenses was adopted. The impact of that Law could not be assessed for the present study, as it has not yet entered into force. It is due to enter into force on 1 July 2002.
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Article 5.2 of this Law states that "any type of business other than those requiring a license shall be freely conducted in conformity with the standards and requirements set out in law, and by registering with relevant authorities." Article 7.2 states that "the conduct of any type of food manufacturing and service activities for profit shall require a permit to be granted following inspection by the relevant authorities of manufacturing conditions, technological process and product samples." However the work to implement the law has not yet started.

3.2.10. The following authorities, nearly 20 in all, conduct investigations and inspection of businesses.

- Health inspection board /state, capital city and district health inspection agencies/
- Standardization and metrology inspection
- Industry and trade inspection /trade, industry, services, geology, mining agencies/
- Tax inspection
- Customs control
- Education and cultural inspection
- Infrastructure inspection board /transport, energy, communications, roads, construction and tourism/
- Labor and social security inspection board
- Food safety, and agricultural inspection board /veterinary, breeding, vegetation, quarantine, grain and food/
- Fire inspection
- Professional Inspection Division of the City Mayors Office
- Professional Inspection Division of the Aimag Governor
- District inspection authorities
- Consumer Protection Society, and its aimag and city branches

Along with the above inspection authorities at the capital city, aimag, soum and district levels, the Citizens Representative Khural and Presidium monitor the implementation of their decisions.
In a survey conducted among 60 businessmen, 20 percent of the respondents replied that overlapping inspections are common, that authorities with identical duties often impose

requirements that are impossible to implement and that the authorities often seek inducements.

A review of the charters and competence of the above authorities shows that some inspection boards have overlapping or even identical responsibilities and competence. This is especially true of the inspection boards of the Ministries for healthcare, food and agriculture, and trade and industry. For example, a state healthcare inspector has the responsibility of inspecting food manufacturing, transport, storage, retail, sanitation and contamination protection, whereas state food manufacturing inspectors have responsibility for ensuring compliance with food technologies, standard requirements and safety of product quality. A trade, industry and services inspector has a duty to monitor the implementation of laws related to industry, services, storage, conservation and trade of goods, and compliance by businesses and private citizens with the standards, procedures and instructions issued by the competent authorities.

In the Capital City, the health, labor and social security inspection authorities perform inspections in 3 stages, through their district, metropolitan and state boards.

Therefore, the composition and duties of inspection authorities should be revised to eliminate duplication.

3.3. Right to produce and enjoy benefits of creative work

Issues related to intellectual property rights are regulated by the Law on Copyright /1993/, Patents /1993/, Trademarks and Business Names /1996/, Restriction of Unfair Competition /1993/, Transfer of Technology /1998/, Civil Law and around 10 instructions, regulations and procedures approved by various ministries and agencies.

In 1979, Mongolia became a member of the World Intellectual Property Organization, an independent specialized organization of the UN system, and joined ten of thirty international treaties adopted by the organization and related to legal regulation of intellectual property, such as the Paris Convention on Protection of Industrial Property /1985/ and the Agreement on Patent Cooperation /1991/.

By ratifying the above treaties, Mongolia expanded its possibilities to cooperate and protect its rights with other countries in the field of intellectual property at the international level.

The numerous problems faced in this field require solutions not only by adopting laws, however, but also through proper implementation of those laws in practice, presentation and fair assessment of intellectual products on the international and local markets, creation of a favorable environment for intellectual creation, and by developing a state policy in this field compatible with national specificities.

3.3.1. Since the first case of protection of intellectual property rights was registered in 1960, Mongolia has recorded in the state registry, and granted patents for, 1,670 inventions, 1,090 product designs, and 2,980 trademarks upon direct application, and 24,150 industry designs. In addition, more than 18,000 marks delivered from the international trademark registry have been recorded in the state registry.

The establishment of the Intellectual Property Office in 1996 has allowed communication on coordinated policies and directions with the WIPO, regional and international intellectual property organizations and with foreign countries; contributed to the implementation of coherent actions domestically in the protection of intellectual property, statutory rights and interests of authors, inventors, creators and patent holders; as well as became an appropriate step to deliver better services to authors, creators and citizens.

3.3.2. Around 30 non-government organizations working in the field of intellectual property, and registered with the Ministry of Justice and Home Affairs, are presently active. Although most of them are striving to develop intellectual property, train personnel and protect member interests, the impact of their activities has been inadequate.

Through amendments of the Law on Copyrights allowing authors and artists to establish non-governmental organizations to protect their intellectual property, a MOSRAK federation was established in 2000 and is operating to protect the rights of Mongolian composers and lyricists.

Within a year, 51 authors and artists had become members of the MOSRAK federation, and registered through it more than 3,000 of their works. They made contracts with around 30 businesses, organizations and citizens for the use of their creations */Economic Rights Survey Special Team Report/.*

Although legal frameworks for the protection of intellectual property have been established, the number of infringements of intellectual property rights, in violation of the Constitution, is not declining but on the contrary is increasing. A supervisory system to curb infringements and restore violated rights has now been established and has now been operating for about a year.

The Intellectual Property Office has received and acted on over 120 complaints alleging violations of intellectual properity rights. Of these complaints, 50 percent dealt with alleged violations of the Copyright Law, 25 percent of the Trademark and Business Name Law, and 25 percent of the Patent Law.

Among the infringements that were detected by state inspection officers of the Intellectual Property Office, 17 percent claimed violations of rights regarding the use of trademarks and business names, which are guaranteed under Article 13 of the Law on Trademarks and Business Names. There is therefore an urgent need to publish an official registry of trademarks accessible to the general public in Mongolia, and to establish criteria to determine common recognition */Economic Rights Survey Special Team Report/*

From the survey and the situation of decided cases, it is clear that the courts have established a practice of imposing fines among other selective charges brought against offenders violating intellectual property rights. However, the amount of fines in the patent and copyright laws does not exceed amounts prescribed by the Administrative Law.

A survey on decisions in civil actions in which of intellectual property, patent and copyright laws were applied during the past 5 years, based on the consolidated judicial reports of

Mongolia, revealed that 266 claims were received nationwide during the period of 1996-2000, of which 169, or 63.5 percent, were rejected and 97, or 36.5 percent, were decided */Economic Rights Survey Special Team Report/*.

During a study on judicial decisions on cases related to the application of intellectual property, protection of infringed rights of parties to contract was ensured in a case, which involved use of patented inventions by contract. The inventor was not awarded the economic benefits generated by the invention, and the design patent, owned by a holder for a limited period of time, was copied without the knowledge of the patent holder. The contract obligations to the latter were fulfilled with the granting of a certain percentage of the earnings from the unauthorized transaction.

3.4. Labor Rights

3.4.1. The emergence of a new economic environment led to the adoption of the Law on Labor of Mongolia /1999/, which is compatible with the contents and concepts of the Constitution of 1992. The law is compatible with contents and concepts in the human rights treaties adopted by the UN and the conventions of the International Labor Organization.

However, a survey of the substantial provisions of 13 conventions adopted by the ILO, to which Mongolia is a party and the related national legislation reveals that the mechanisms for implementing the provisions of these conventions have yet to be established, that there is low awareness of these provisions, and that local laws had not fully reflected those provisions.

3.4.2. The provision of the Constitution to guarantee "the right of free choice of employment and profession" signifies, besides working for oneself, that persons must be hired with an "employment contract" jointly concluded with the employer, as prescribed by the Law on Labor.

It is the nature of in an employment relationship that one party (the employee) financially dependent on the other (the employer). A survey was conducted to explore how this dependence affected the balance of the rights and interests of the former, which revealed numerous infringements in relation to proper hiring, dismissal, payment, labor conditions and workplace safety.

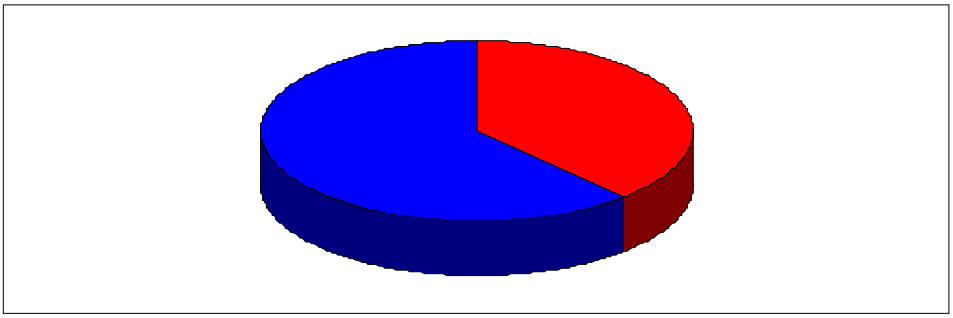
Failure to meet the minimum requirements of workplace safety and hygiene is not only a breach to employment relations, but endangers human life and health and violates the provisions of the Constitution of Mongolia on the right to be ensured with favorable working conditions and to live in a healthy and safe environment. It is therefore important to closely consider suggestions and petitions from trade unions and workers to indicate in employment contracts provisions aimed at improving the state employment inspection system and internal monitoring within the workplace.

In a survey conducted among 588 workers in Dornod Aimag, of the 64.9 percent of respondents who replied to the question of whether the employer had ever used duress 26.2 percent were affirmative. 49,9 percent of the workers believed they were under duress but

never considered to pursue a lawsuit. Most were afraid of losing their jobs and were not confident that law enforcement agencies would deal with their cases fairly.

In addition, respondents from textile outlets with foreign investments, such as "Tian Pen Garment", "Good Luck Garment" and "Northern Mench," referred to infringements of the legal provision requiring payment of overtime wages for extended work shifts of 9-12 hours.

Overtime Payment



The fact that 62.0 percent of overtime workers had not been properly remunerated is a serious violation of human rights.

The survey also explored the possible impediments to free choice of employment and profession. The results show that the main obstacles confronted in the capital city are firstly, a need for personal connections to get a job (18.9%), secondly, low salary levels (14.4%), and thirdly, lack of qualifications (11.2%). Moreover, certain practices and attitudes critically affect the enjoyment of this right, such as employers taking bribes from new applicants (10.0%), and discrimination by age and gender (5.6%).

Out of 180 respondents, 77.8 percent replied that the level of salary and allowances received was not enough to live on. This points to a need to develop special policies to make salary scales and payments commensurate with the cost of living.

With 65.6 percent of all respondents expressing the belief that inadequate salaries and payments are a violation of human rights by the state, it may be concluded that people generally are aware of their right to receive adequate remuneration but have been unable to benefit from these rights. The correlation between salaries and costs of living becomes more unbalanced the further one travels away from the center.

3.4.3. An inspection conducted in 2000 by the labor inspection division of the State Labor and Social Security Inspection Board on 982 businesses discovered 2,599 violations.

The Board has 82 state inspectors. Each aimag and district branch is represented by 2 inspectors that hold the positions of state labor and social security inspector and state labor hygiene inspector.

The small number of inspection officials in relation to the number of employers points to a strong possibility that not all violations were recorded.

In the first half of 2001, the capital city court received 239 complaints of unlawful dismissal from work and reached a verdict on 153. The Khan Uul District Court resolved 13 disputes during this period, of which 10 cases or 77.7% had claimed unlawful dismissal from work.

The above observations give reason to conclude that unlawful interference and other restrictions on the rights of workers are common tactics used by employers, whose interests are better protected through legal and economic advantages.

CHAPTER FOUR. SOCIAL AND CULTURAL RIGHTS

In recent years, legislation regulating social and cultural matters has been reformed in conformity with the international human rights treaties and the new Constitution. In addition, a variety of measures were taken to guide the provision of social services through the natural development of a market economy. As a result, improvements have been made to ensure human rights in this sector

4.1. Right to Social Security

The Package Law of Social Security and Social Insurance regulates the constitutionally guaranteed rights to material and monetary assistance in old age, the right to protection in case of loss of earning capacity or loss of the main source of family income, the rights of persons with disabilities, the right to assistance in relation to childbirth and childcare, and in other circumstances provided for by law.

4.1.1. The social welfare system of the country consists of social insurance and social security, and a separate fund was established for systems administration. As provided by law, the funds are financed through two channels – by voluntary subscription and a compulsory insurance. As mentioned in the interim document "Strategy for Poverty Reduction," 91.8 % of those working on employment contracts were compulsorily insured while 22.5 % of livestock breeders and those engaged in private businesses were voluntarily insured. In all, 92.2 % of the population was covered by health insurance. There are about 250 thousand beneficiaries of the Pension Insurance Fund, and their pension average is 18,000 MNT per month as of 2001. Such a pension level is insufficient to meet the basic needs.

Some enterprises deduct premiums for social and health insurance from the salaries of their workers but fail to transfer them to an insurance fund. At the same time, insurance funds are acquiring residential accommodations, buildings, machineries, and even goods, which when coupled with the deteriorating income levels of the population is resulting in violations of the rights of the insured.

It is provided by law that the social security fund is to be formed from the central and local budgets, interest earned on account balances, and donations and aid from organizations and individuals. This fund aims to provide assistance and services to households, members of vulnerable groups, including over 30,000 persons who are elderly, handicapped or disabled, and the survivors and main pension beneficiaries of a deceased person that had been the main family income earner. Approximately 200,000 persons, including mothers of four children and above, persons caring for infants, and orphan children were granted benefits and aid, and over 400,000 persons from vulnerable groups of society were provided with services.

The above indicators show that the state is attentive to social services. But the following examples show some downsides. As of 2001, approximately 1200 mothers were entitled to child-care benefits from the Social Security Office of Bayangol District. However, the 22 million MNT set aside from the budget have been allocated to only 900 mothers for child-

care, and the source for such benefits is unclear for the remaining 300 mothers /Social and Cultural Rights Team Report/.

According to Munhtsetseg, an accountant at the Aimag Center for Social Security Services, security pensions and benefits are not disbursed in a timely manner. The reason is that, of the 740,000 million MNT needed by the Aimag for pensions and benefits in the year 2001 only 545.0 million MNT had been approved. The funds were still unavailable when 5 categories of benefits were added from October 1. Pensions and benefits have therefore not been paid in the Uyanga sum since April 2001 /Report of Uvurhangai Aimag Report/.

Miscalculations and inadequate budgets for social welfare prevents some citizens from obtaining their pensions and benefits, a problem which is compounded by contradictions in the law. There is a provision in the Law on Social Security which states that the "cost of one-way transportation to the Capital City shall be reimbursed once a year to a disabled member of an extremely poor family provided that: the Professional Medical Commission of an Aimag certifies that he/she must receive treatment in the Capital city; that he/she comes to the Capital City for treatment and then departs; that his/her permanent residence is located at least 1000 kilometers from the Capital City; and he/she is not entitled to pension, benefits, or payment for industrial accidents or occupational diseases from the Social Insurance Fund". As provisions for this benefit are not reflected in the budget, it cannot be disbursed.

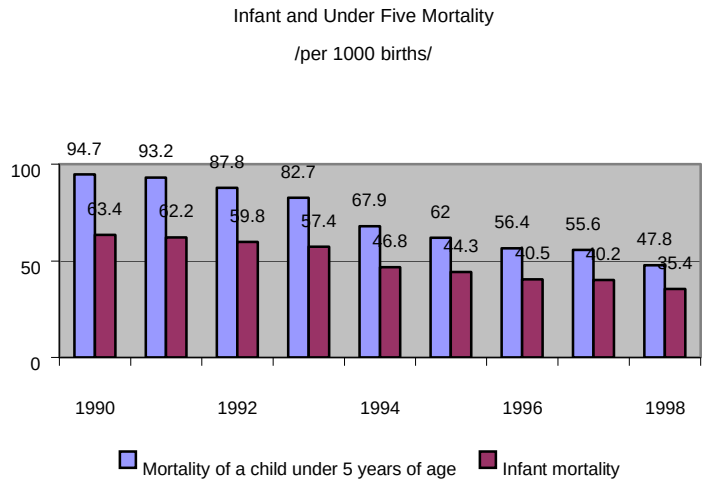
Although a law provides that medical check-ups, tests, and treatment to be given under direction of a doctor shall be free in times of pregnancy, childbirth, or post-childbirth, in actuality, all of them have become paid services. For example, in the past four years, 59 residential apartments with 1 to 4 rooms valued 493.3 million MNT were acquired as deductions for social insurances and they are mainly occupied by top officials free of rent /Labor and Social Welfare Inspection Service Report, 2000/.

4.1.2. As of 1998, 35.6% of the population was living below the poverty line, and the number of people unable to benefit from social security is increasing. The government therefore needs to pay special attention to this situation. In particular, persons who have changed their residence and whose civil registration of their new residence has not been filed face particular problems requiring redress. People are resettling in urban areas for a variety of reasons, and those from poorer backgrounds cannot register their change in residence due to inability to pay the registration fee. As a consequence, they are unable to claim and enjoy their rights to work, education, health, social security, adequate housing and food, among others.

4.2. Right to Health Protection

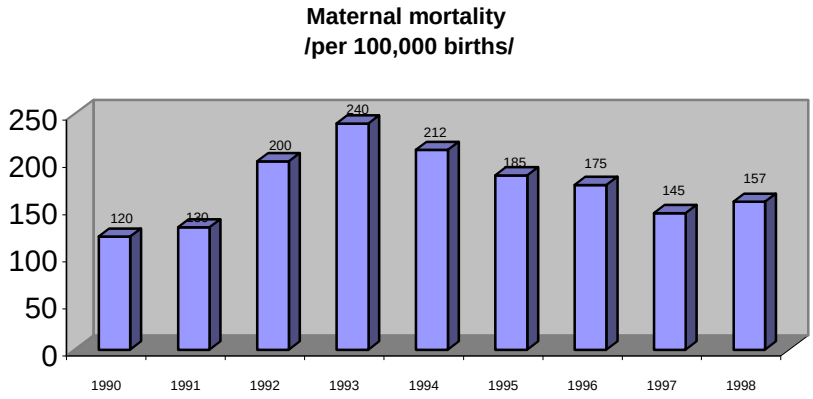
Although improvements have been made in securing a favorable legal environment of the health sector in the last 10 years, there are many things that need to be addressed.

4.2.1. Reduction in Child Mortality



The mortality rate of infants and children under five, which was 60.4 per cent in 1989 fell to 31.2 per cent in 1990. Under a Government Program implemented in cooperation with the World Health Organization and UNICEF, the traditional method of child care of breast-feeding was successfully promoted.

4.2.2. Reduction in Maternal Mortality



In the past 10 years, maternal mortality sharply increased until 1993, decreasing gradually since then. Experts suggest that the shutting down of many of the facilities where mothers had received pre- and post-natal care, and the growing tendency of women to stay away from professional medical supervision as reasons for the sharp rise in maternal mortality. By organizing trainings, and improving the quality of treatment, diagnosis, medical facilities,

necessary equipment, and supply of medications under the Maternal and Child Health Improvement Program, maternal mortality rates began to decline since 1993. However, poor communication and ambulance services are the chief reasons why a consistent decrease in maternal mortality has not been recorded /Human Development Report, 2000/.

In addition, it is necessary to strengthen the professional skills of doctors and nurses from the soums.

4.2.3. The prevention of infectious, indigenous, professional and other diseases is central to the right to health.

Number of persons

Name of a disease	1990	1995	1996	1997	1998	1999	2000
Hepatite viridae	14,278	7877	8198	9394	8042	5249	9235
Measles	296	558	123	4	8	10	925
Mumps	240	255	436	736	1287	426	874
Menengitis	776	2781	881	533	303	242	223
Varicello zoster	810	401	386	253	375	297	569
Solmonellosis	866	360	323	256	239	243	284
Disenteria	1930	1589	2294	2146	1261	1383	1657
Brucellosis		850	1158	1122	1308	1482	992
Syphillis	705	718	810	1291	1329	1093	1647
Gonorrei	2234	3308	3274	2934	3486	2207	5488
Scabies	3822	11,023	6660	2695	1232	893	530
Tuberculosis	1664	2543	3104	2723	2806	3221	2983
Others	408	450	466	1206	6614	6800	1150
Total	28,029	32,713	28,113	25,293	28,290	23,546	36,911

The number of persons contracted with infectious diseases amounted to 28,000 in 1990 and rose to 36,900 in 2000. Meanwhile, the number of patients suffering from sexually transmitted diseases has doubled. This signals a strong possibility that AIDS infections might increase in the future. The reason for the consistent growth of infectious diseases is related to the deepening poverty of the population, and the worsening hygienic conditions of food.

The number of hospitals, which equaled 1868 in 1990, fell to 1434 in 2000, and the number of beds in in-patient hospitals decreased from 26,400 to 17,900 over the same period. This reveals a clear deterioration in medicare services. The number of medical practitioners per 10,000 persons has been stable since 1990, while the number of nurses and support personnel has decreased by nearly 61 % from 1995 to 1999, although that figure has also been stable since 1996. The inadequacy of budget expenditures on the health sector was one of the key reasons for the decline of basic indicators in this sector.

4.2.4. Although the budget for the health sector has been sharply cut, compared to the period under the socialist system when public health expenditures were borne by the state, a major step was taken directed at creating a reliable financial source, namely that half of the health

insurance had to be covered by the citizens themselves. Nevertheless, the performance of this system is much poorer compared to those of developed nations, and citizens are unable to enjoy the full benefits of the system. The rights of the citizens are being infringed when in-patients with health insurance must pay the cost of their treatment and medication, when their insurance fails to reimburse them for such expenses and when additional costs are incurred when patients must be transferred to other hospitals.

In addition, the following example reveals the type of misconduct that has been caused by the budget stringency.

The Governor of Uvurkhangai Aimag issued order # 18 in 1999 approving a model form of a contract to be made between the governor of a sum and the head of a sum hospital. The model contract stipulated that: The head of a sum hospital who saved funds shall be rewarded by one third of the saving, the reward not to exceed 12 months' salary, another one third shall be given to the hospital workers as a reward, and the remaining third shall be spent on measures designed to improve the quality and benefits of the medical services provided an mutual understanding exists. The cost of treatment is covered by health insurance when a patient is hospitalized for treatment. The health insurance coverage is 22,500 tugrugs regardless whether one or ten days are spent in the hospital.

As the responsibility of being free of debt by minimizing expenditures is assigned by higher administration, it thus becomes a chief indicator of an institution's operational efficiency. In order to attain a good evaluation of their work and to benefit from the rewards, the budget administrators of institutions shorten the period of heating, give one person the work of two persons, provide only one meal for every two meals that should be provided, provide three types of medications when five are required, and send patients who are required to stay in hospital for treatment back to their homes with prescribed medications. The budget saved in this way is severely curtailing the right of the people to health protection and assistance /Uvurkhangai Aimag Team Report/.

Thus, the savings accrued from a hospital's operation benefit only the head of the hospital and is achieved at the expense of the right of the people to quality and adequate medical services. Saving on the already low budget can only damage the right to health protection. Although some of the health services are paid for and many types of medical services are being introduced, providing the possibility of choice from among them, there is less opportunity for the poor to benefit from such services. A study held to determine living standards shows that health expenditures of the higher-income groups is 9 times higher than that of the poor. Medical services, supplies of medications and medical facilities are insufficient and are of poor quality for the poor, livestock breeders, and the people living in remote areas. This is evidence of widespread inequality.

Study reports show that common problems shared by most of the aimags are that doctors of a bagh have no place to work, that ambulance services reach livestock breeders only when they can pay the cost of fuel, that patients must obtain their own medications without reimbursement. In addition, the professional skills of rural doctors are poor, medical facilities and test equipments are inadequate, and therefore people must travel to urban areas for tests or diagnoses, which is very costly.

4.3. Right to Education

The Law on Education (1995), the Law on Primary and Secondary Education (1998), and the Law on Higher Education (1995) were enacted by the State Great Hural in conformity with the Constitution.

4.3.1. Formal Education

A. Pre-school education

An institution that provides a pre-school education is defined as "kindergarten" in the Law on Education. Resulting from the economic crisis of the past ten years, the number of kindergartens decreased from 909 to 653, and the number of children attending kindergartens fell from 97,212 to 79,294 over that time. As of 2000-2001, 70.4 % of all the children of 3 to 7 years of age (171,942) were not enrolled in pre-school education. In the sums, the percentage is 84.1 %, or 114,731 children. The quality of the buildings, heating conditions and basic hygienic are sub-standard in 17.9 % of the kindergartens in operation /Statistical Bulletin, Ministry of Education, 2001/

B. General Education

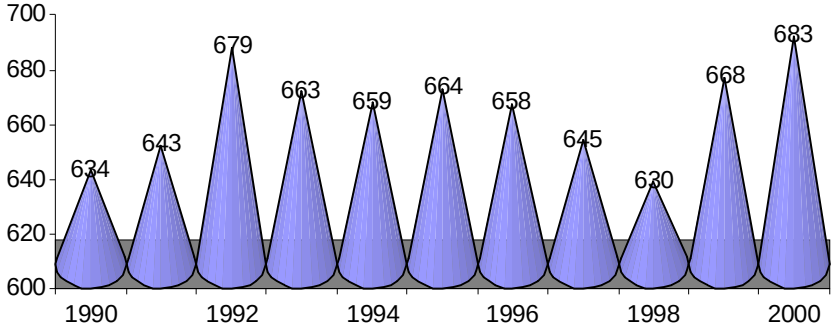
General education is classified as primary, basic, and full secondary education according to the Law on Primary and Secondary Education. It defines school age at 8 years of age. The law additionally provides that children of 6 and 7 years of age may enter school.

As of 2000, 494,544 children attended 683 schools. Of them, 606 are state-owned and 77 schools are private. The school enrollment level is 96.5 % as for primary schools, 80.1 % for secondary schools, and 45.8 % for full secondary schools /Social and Cultural Rights Team Report/.

4.3.2. Adequacy of schools

The primary condition for securing the right to education is the provision by the state of school facilities, resources and personnel.

Number of general educational schools



The above chart shows that the number of schools has generally increased since 1990. However, 130 rural schools, or 24 % of the total, and 91 school dormitories cannot operate in the winter due to the poor conditions of buildings and their heating systems. 80% of school buildings in the rural area, or 409 schools, and 84.9 % of the dormitories, or 298, need repair. 14.8% of schools, or 101, operate in 3 shifts /Statistical information provided by the Ministry of Education, Culture and Science/.

All the schools of Mongolia have a capacity to educate 280,000 children, however, as of 2000, 494,544 pupils attended schools. Thus, 214,544 more children, nearly twice were placed than the educational system can adequately accommodate. Such conditions are more common in the urban areas. For example, 65 schools with more than 1900 children operate in Ulaanbaatar while their capacity.

The establishment of many schools with dormitories for the children of livestock breeders during socialist times had an important effect on the development of the educational system. In the 2001-2002 school year, 92,315 children of the livestock breeders attended schools, and only 24 % of them stayed in dormitories while the remaining 76 % stayed out because of the shortage in dormitories. This is an obstacle to the effort to reduce school drop-outs by rural children, and to improve the quality of education.

4.3.3. School Drop-outs

As of 2000, 13.5 children between 8 and 17 years of age, or 68,155 children, had dropped out from school. According to statistics from the Ministry of Education, Culture and Science, 16.4 % of the children in grade 1 are leaving school, while 35 % of them leave without acquiring basic education. A study to determine the reasons for school drop-outs indicates that poverty is the reason for 8.6 % of the drop-outs while 7 % were not interested in studying, 5.1 % left school to work in the country and 0.7 % to work in cities. The reasons for 79% of school drop-outs, or 10,782 children, are unclear. Ascertaining the reasons for school drops is necessary for the state to find the ways to reduce the number of children dropping out of school. According to the 2000 population census, 502,700 children are between 8 and 15 years of age, 433,800 studying in schools of general education. Approximately 1000 attend technical or professional training and over 84,000 youth enroll in universities and colleges.

The percentage of school enrollment is 13.5 %, and it has decreased by 27.2 % at school age. Attention has been drawn to the fact that more boys dropped out of school than girls. Although 8-grade secondary education is compulsory, 18,200 children between 8 and 15 years of age dropped out of school as of the beginning of 2000 nation-wide, of whom 42,100, or 61.7 %, were male children, and 26,100 or 38.3 % were female children /Year 2000 Census on Population and Housing, NBS, 2001, p. 78/.

4.3.4. Primary and Intermediate Level Vocational Schools

Since Mongolia began to transform to a market-based economy, professional schools of primary and intermediate level professional training which supplied industrial and service workforce are experiencing structural conversions to meet new challenges. The most extreme fluctuations in this area were recorded in 1994, when 7,555 youths were studying at

vocational training institutions, in contrast to 31,434 youths in 1989. In the 2000-2001 academic year, 12,177 apprentices were being trained in 32 state-owned and 4 private vocational schools; compared to the figure in 1994, the number of students had increased by 3,870.

As of 2000, 45.8 % of 16-17 year old kids resumed their studies at secondary school, 11.4 % enrolled in vocational schools and 42.8 % chosen to leave school. Preparing personnel with vocational education for businesses, self-employment and community services should be a priority. According to a study on the educational backgrounds of unemployed persons undertaken by an industry research project, 59.5 % of the unemployed had no professional training. Objectives at present are to improve school facilities, upgrade the professional skills of teaching personnel, and reform the standard and program of teaching in accordance with market conditions. Investments and aid from the international community in recent years are increasingly important tools of reform.

4.3.5. Higher Education

A system which secures the right to education plays an important role. This matter is regulated by the Law on Higher Education, according to which 5 levels of higher education (Diploma, Bachelor's, Master's and Doctor's, awarded on the basis of the number of credit hours completed) have been introduced. As of 2000, 84,787 students were placed in 172 universities and colleges of Mongolia of whom 53,690, or 63.2 %, were female students.

Approximate student occupancy

Year	**1990**	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**
Students	**31,434**	**28,209**	**25,225**	**28,084**	**32,774**	**38,361**	**44,088**	**50,961**	**65,272**	**74,025**
Female	**19,209**	**17,901**	**16,760**	**19,089**	**22,751**	**26,793**	**30,512**	**31,782**	**42,380**	**47,248**
Male	**12,225**	**10,308**	**8,465**	**8,995**	**10,023**	**11,568**	**13,576**	**16,179**	**22,892**	**26,777**
School occupancy percentage	**16.1**	**13.2**	**10.9**	**12.2**	**14.3**	**16.3**	**18.6**	**21.5**	**26.4**	**29.1**
Female	**19.0**	**16.4**	**14.3**	**16.2**	**19.1**	**22.4**	**25.5**	**28.2**	**33.1**	**36.0**
Male	**12.9**	**9.8**	**7.4**	**8.0**	**9.1**	**10.0**	**11.6**	**14.2**	**19.2**	**21.7**

/NBS, 2000, Statistical Information from the Ministry of Education, Culture and Science, 2001/

In terms of the educational level of students, the number of students in diploma training sharply decreased since 1990 but has been stabilizing since 1993. The number of students in bachelor programs has been increasing since 1990. No sharp changes were evident in the number of those in Master or PhD programs.

4.3.6. Private Institutions of Higher Education

28,064 students are enrolled in 134 universities, institutions, and colleges across the country. In respect of professional orientation, 83.5 % of schools teach business administration, law, humanitarian science, social and economic studies, and education. The increasing numbers of these institutions may be attributed in part to the fact that considerable profit is made at a low operational cost. Private institutions are rare in the areas of technical skills, technology, minerals, industry, and services with only 16.5 % of the private students enrolled in these fields. The fact that accreditation was obtained by only 9 of the private institutions is an indication of their quality. Students at the institutions, which are not accredited, are ineligible for state-funded loans and assistance, and therefore their legal interests are harmed.

4.3.7. Institutional Fee

The paid educational system was introduced in the '90. However, the Educational Fund was set up by the state to provide a chance for study to those who are not capable of paying for their education, and an agency responsible for this matter was established at the Ministry of Education, Culture and Science. At present, the Fund grants:

- Concessional Loans
- Grants
- Scholarships

These are granted only to students from accredited national institutions that:

- Are members of a household with an income below the 60 % of a certain standard of living determined for the area;
- Are children of small livestock breeding households and which have 3 or more children studying simultaneously at universities or colleges;

Children of a public servant studying full-time for a diploma or a bachelor's degree are eligible to have the costs of their studies assumed by the state.

The students of the 150 private universities and colleges in the country that are not accredited are left without any kind of loan and assistance. This can be seen as discrimination or breach of the principle of equality towards these students.

4.3.8. Mongolians are studying in all corners of the world either privately or state funded, and by receiving international scholarships. As of 2000, 345 persons in total are studying for postgraduate degrees in 24 countries.

CONCLUSION

Obedience to the rule of law, attendance and respect to human rights in the behavior of the State, central and local administrations and public servants has become an essential concern.

An important constitutional principle addressing the functions of the government and public officials is to serve an individual, and to create an environment for ensuring it's rights. From this highly demanding constitutional perspective, the case of the State not fulfilling obligations to it's citizens can be observed from almost every chapter and section of the present report.

1. The present situation with inviolable rights, and serious violations in this area has become the most critical human rights issue in Mongolia. Although sufficient evidence on illegal actions, mischief and abuse of power leading to these violations are present at every administrative level, the duty of the State to prosecute offenders, fight against violations of human rights and freedoms, and restore infringed rights has not been effected.

The count for citizens arrested and detained without legal grounds is increasing every year, confessions are extorted by means of physical and mental coercion inflicted at pre-trial detention facilities, custody cells not meeting requirements prescribed by law, health endangered by hazardous infections and diseases – all these fact are long made public, however, nothing has been done to make a change.

2. Legislation on human rights guarantees and legal frameworks in the area of political rights is in conformity with relevant international documents. Human rights violations in the area of political rights are mainly caused by the level of awareness and respect of law by citizens, and their social responsiveness, and by shortcomings in law enforcement and public administration.

   Discrimination and mass lay-offs of public administration servants on the basis of party affiliation is becoming a political trend. Furthermore, this indelicate tendency is spreading to holders of public service offices.

   Though the rights for legitimate acquisition, ownership and use of property in the context of economic rights are open, however, bureaucracy and delayed processing of public institutions negatively affects business initiatives, and, even with a new law streamlining the approval system on hand, the number of licensed activities had not reduced.

   The Constitution declares the right for land ownership, however, a proper legislation has not been endorsed, and a multiple stage approval system is in place.

   Citizens submit large volumes of complaints and critique on the burden from customs and tax authorities imposed on entrepreneurship.

   Weak economic basis for social services and insufficiency of capital expenditure impedes the application of guarantees for citizens to enjoy social and cultural rights. Some citizens could not enjoy their rights for social security and pensions due to budget restraints.

Insufficiencies in monitoring of work safety and labor legislation, common practices of violations related to labor rights, and inadequacy of wages for sustainable living breaches the provision of the Universal Declaration, that provides the working person a right for "just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity".

3. Improvements in the legal drafting process and avoidance of loopholes in the legislation are crucial to ensure human rights, and to restrict abuse of power.

   An example of indifference is that the authority to exercise arrest and detention, penetration and search in domicile is given to officers of different jurisdiction by nine separate legislations.

   Provisions of international treaties ratified by Mongolia are not fully complied in the national legislation and it's internal mechanisms. Objectives of executive authorities are not weighed against individual rights and freedoms. Malpractices and legal acts contradicting the concepts of the Constitution had emerged from underestimation of the fact that only the law may establish the scope and grounds for restricting and infringing human rights. This issue cannot to be left to the subjective judgment of executive authorities.

4. Widespread violations of human rights are observed by means of bureaucracy, delayed proceedings, mischief and infringement of justice in the demeaning actions of public authorities that neglected the service for the citizen.

   Study results had disclosed the inadequate level of legal and human rights education of public servants and officials. This leads to abuse of power and issue of groundless decisions and orders.