

**NATIONAL HUMAN RIGHTS
COMMISSION OF MONGOLIA**



**HUMAN RIGHTS AND FREEDOMS
IN MONGOLIA
STATUS REPORT**

2003

ULAANBAATAR CITY

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FOREWORD

The annual status report on human rights and freedoms in Mongolia is submitted herein to the State Great Khural for the second

The preparation process of the present annual report included examination of information, findings and recommendations made during inspections, inquiries and studies conducted by the Commission, and analysis and evaluation of selected case-studies on human rights violations established through complaints investigations sustained from individuals in the year 2002 and first quarter of 2003, along with consideration of reports from state and non-government agencies, and recommendations and observations made by international and regional organizations on associated matters.

Furthermore, comparative analysis and review of legislation, international treaties, conventions, executive orders issued by state administrative and local authorities for public observance was conducted on their compliance with human rights principles. An attempt was made to bring to the attention of legislative, executive and judicial bodies to the impediments and controversies surrounding at present the enjoyment of rights prescribed by law by an individual.

The first chapter of the annual report is related to the current status of rights of the child, disabled and extremely poor citizens, comprising the social vulnerable group, and issues needed for urgent action for their betterment.

The second chapter of the status report touches upon issues on implementation of selected rights, namely the rights for health protection and medical care and rights included in the labor legislation.

Contemporary human rights concerns are contained in the third chapter, and include a wide range of issues from the system and operations of the judiciary and police to rights of economic migrants.

The present annual report also accommodates criticism and suggestions made by representatives of state and non-government organizations, scholars, national and international practitioners and human rights activists during the public forum (December 2002) held to discuss the contents of the previous 2002 status report.

*NATIONAL HUMAN RIGHTS
COMMISSION OF MONGOLIA*

**CHAPTER ONE
STATUS OF RIGHTS OF THE VULNERABLE
SOCIAL GROUPS**

1.1. Status of the Rights of the Child

As census for the year 2000 shows the population of Mongolia had reached 2, 375,5 thousand with an annual average increase rate around 1.4% being the lowest in the last 50 years.

The proportion of youth is still far prevailing, i.e. children aged up to 18 years make up to 46,4%, and youth aging between 19-24 years compose 12,1% of the total population.

After joining the UN Convention on the Rights of the Child in 1990 fundamental changes took place favorable to reform the child legislation. A network of specialized organizations devoted to deal with social matters of the child had been set up. The National Child Protection Board is coordinating activities of the recently established Child Centers in every province. The government had approved and started implementing the "National Program for Promotion and Protection of the Child" from the year 2002. Mongolia had also joined a whole set of ILO conventions defining basic principles in child employment, and had made relevant amendments and changes to the national legislation to better reflect internationally recognized principles.

At present several international organizations, relief agencies and private citizens are engaged in different projects aimed to contribute to the cause of child protection, and around 70 NGOs are active in the field to promote and protect child rights.

Although the government is committed to make a change, real and effective impacts are still far behind reaching vital targets of the child protection agenda, the main reason being overall poverty, unemployment, economic and social constraints in general and which eventually relates directly to violations of child rights.

The following human rights concerns related to child protection is based on reports from studies carried out by the NHRCM in the first quarter of this year, and from relevant work done by the ILO and NGOs in the subject area.

1.1.1. Right to Life. Comprehensive strategies implemented by the government with thorough support from WHO, UNICEF, UNFPA, donor and partner countries aimed at

promoting maternity and infant health protection, reduction of infirmity and mortality, improvement of parental knowledge and capacity in accessing medical care, child vaccination, breastfeeding and better nutrition has a large impact in improving healthcare of the child and youth.

According to healthcare statistics infirmity per 10, 000 children is 48,5 among infants, 72,3 among children at 1-4 years of age, 126,7 among children at 5-15 years of age and 66.8 among teenagers at 18-19 years of age. The data suggests that among 1, 000 school age children 678,2 are affected with chronic disease, and 9% of girls are found pregnant.

1.1.1.1. Although child mortality rate is decreasing, infant mortality in many Aimags is still above the national average. Children from poor households are exposed to diseases by more than 2.5 times, hospitalization and mortality rates are 3 times higher the national average.

Substantial financing is needed for the reorganization of medical care services to the children and youth, including improvements in technologies and facilities. In this respect quality of primary medical care and professional development of personnel do not meet basic requirements.

The number of pediatricians had reduced by 3, 5 times in recent years, and only 25% of all Aimags have them at all.

1.1.1.2. In general, nutrition intake of children do not meet WHO recommended standards - 12,5% of children aged 1-5 practically suffer from malnourishment, 24,6% physically underdeveloped, 32,15% vitamin D deficiency (rachitis), and 40,2% suffer from anemia. Similarly, 16% of children aged above 5 have same underdevelopment problems and 21,4% have iodine deficiency disorder.

Health problems including with fatal ends among the youth is mainly due to adverse impacts from natural disasters, environmental pollution and risks exposed by human

activities. The rate of various casualties and acute food poisoning among youth is more than twice higher when compared with adults.

1.1.2. Right to Education. Although considerable progress has been achieved in restructuring the public education system, improving learning environments and decentralizing of education with the introduction of private schooling, equitable access to education still remains a challenge.

According to data collected in the year 2000, there are 683 secondary schools with a capacity for 280, 000 pupils, but actually training 494, 500 pupils, which on average would mean having classes of 40-50 pupils and administering from 2,7 to 3 shifts in a school (Government CRC Periodic Report).

Emergence of private schooling slightly eases the burden on public schools in the metropolitan area according to a survey conducted by the Mayors' Office. However the amount of tuition fees at some private schools is three times higher than tuition fees in higher education institutions. The trend calls for professional monitoring on pricing policies, adequate services and teaching standards at private schools.

1.1.2.1 Insufficiency of primary and secondary education facilities not only makes them enormously overcrowded but also adversely impacts on quality of after school curriculum, creative and leisure activities as an integral part of child development. The government urgently needs to take crucial steps in order to reduce overloading public schools by building new and expanding existing facilities, and encouraging initiatives for development of private school networks.

1.1.2.2. Availability of school boarding facilities is crucial to provide access to primary education and to reduce the number of school dropouts. From early 1990s the entire system of managing rural school dormitories had collapsed. An attempt to charge fees in order to run the boarding houses simply failed due to weak financial

capacities of herder families. As the consequence the enrollment of rural students into the boarding system fell from 14.5 per cent of total pupils contingent to a symbolic 4.1% in 1996.

Certain improvement may be observed starting from 1997. Thus the number of pupils staying at school dormitories increased making the figures to 27,978 children receiving this service out of the total of 41,448 that requested in 2001-2002. However, services at the boarding schools are still very poor - for instance, most of the boarding houses are not heated in winter.

1.1.2.3. School drop outs show no sign of decreasing. Available data and survey findings on drop outs differ substantially. The National Child Protection Program declared that 13,5% or 68,155 school aged children have never enrolled or attended schools, from which 20% are from the countryside. In 1999-2000 academic year 12,167 children, in 2000-2001 a total of 13,751 children failed to attend school out of which 10,963 are from herder families (Statistical Report, Ministry of Education and Science).

According to the NHRCM survey conducted last year on the issue of rural migrants in Songino-Khairkhan and Bayanzurkh Districts, 633 children (from households with 4,754 family members) were denied access to education due to absence of residence permits.

1.1.2.4. There is an increasing tendency among herders to take out their children from schools due to high need of labor at the family farm. According to the survey conducted in 4 aimags by Social Development Center within the ILO funded IPEC project, among 291 children working at home as herders 53,8% had reported to run away from schools and 8.3% of them never attending school at all.

Despite the crying evidence of sizable and consistent abandoning of schooling by children from poor families, the local administration do not pay serious attention or take adequate measures to remedy the situation.

1.1.2.5. Some 150-200 children are detained to serve terms in the juvenile prison every year. Usually on average about 60% of them are former drop outs from grade 1 to 7 and 30% of them are usually completely illiterate (Report, Juvenile Prison Warden, 18 February 2003).

1.1.2.6. Survey results reiterate that either children of poor families or abandoned children would usually tend to drop out from school. "Tapping money" from pupils for any event or campaign of the school or even imposing bureaucratic requirement to shape up their clothing in order to promote the image of the school make the children of vulnerable background feel offended and indirectly contributes to non-attendance.

According to a questionnaire conducted among 290 pupils in Ulaanbaatar city 23% of respondents had confirmed that the school administration and teachers systematically "tap money" and 58,4% answered "from time to time". In general parents never cease to complain that schools force to purchase numerous handbooks not obligatory within the normal curriculum, or insist to buy various show tickets, and charge "fines" for missing the class or being late.

1.1.2.7. Statistics show that there are 34, 000 disabled and mentally slow children in Mongolia. There are 5 special schools which enroll over 2,000 disabled children.

In the countryside the chance for disabled children to acquire basic education is very limited in order not use a harsher terming. Thus dropping out of school is the predestined outlook. There is an urgent need to take measures in order to increase number of specialized schools and to provide access for disabled children to school threshold in rural area.

1.1.3 Child Labor. Mongolia had joined the 59th ILO Convention on Minimum Age for Industrial Employment, 123rd Convention of Minimum age for Employment in Mining and

182nd Convention for Banning and Eradication of Child Labor. In line with the provisions of the generally accepted norms and principles the government has taken several actions like including a chapter on child labor in Labor Law (1999), establishing a minimum age for employment as 16 and approving a list of jobs that prohibits employment of the child.

However, due to poverty and unemployment children are often employed in jobs that adversely affect their growth and development.

1.1.3.1 Proper and reliable data on the number of children employed in the formal and informal sector is not available at present. Ministry of Social Welfare and Labor had reported that “although research was conducted to determine the work condition for children, there is no definite number of children employed in the informal sector. But number of school drop outs can be taken as an estimation” (“Zuunii Medee” daily newspaper, No.145, June 2002).

According to a survey conducted by the NHRCM and several NGOs in UB and rural areas children are employed in the following jobs that are potentially hazardous to their health.

1.1.3.1.1. Attention was drawn to children working in gold mines side by side with adults doing the hard physical work like soil removing, rock lump crushing, stone loading and unloading meanwhile exposing themselves to mercury and other poisonous pollutants spread around in the area. Most dangerous part of it is that children who informally work in gold mines are working in direct contact with highly toxic mercury. ILO funded IPEC project had carried out a study among 59 people working privately in 17 gold mines in Tuv, Darkhan-Uul, Selenge aimags. Among them 17 people were children between 11-18 years. When toxicity analysis was done on them out of 17 children 8 had chronic mercury intoxication signs, 7 suffered with syndromes of nervous collapse. Out of 122 children working at these

gold mines 37.7% worked with mercury. A case was reported when a woman who had earlier worked in such mine delivered a baby with severe malformations due to mercury poisoning.

Number of labor accidents, injuries, health problems among private gold miners is common. Three accidents in Bornuur and four in Baruunkharaa were registered during 2000-2003

1.1.3.1.2. It became common that children work deep in mines with high risk of accident, in drilling well shafts doing heavy works such as crushing rocks, earth removing and carrying stones back and forth. Usually their workloads exceed the permitted hygienic standards at least 2-3 times. The industry accepted weight for lifting as permissible is 8-16kg for boys and 5-10kg for girls.

In Nalaikh mining city 200-300 children permanently work in coal mines /people call them as “sparrows”, “ravens”/. They dig for coals, carry the lot out, sieve it and sort the product into piles.

1.1.3.1.3 As an estimate, well over 1,000 children work at 31 big and small markets in 6 districts of UB. Survey on 300 children /64,3% male, 35,7% female/ working at some districts markets showed that 58,7% were drop outs, 45,3% had certain health complaints and 39% had been injured on several occasions.

Most of the children who work at markets had consented that they work under pressure from adults, daily humiliation and abuse by giving less money for commodities the children sell, or threaten them. The youngsters simply confiscate and beat the smaller fellows.

74% of respondents had confirmed that they pay fees or share some portion of their income to market inspectors, 29,3% pay to market gangs and 4.9% to police officers.

1.1.3.1.4 Recently vivid debates are unfolding whether to list traditional cattle husbandry and its routine herder work as a sort of hard labor for children or not.

Thousands of school age children are working at various fields in rural areas. It is becoming common scenery that besides the work around own parent's house, children's frequently work for wealthy families with or without pay. In 2001 a survey had been carried out inquiring 291 children of 225 herder and 122 employee families from 12 sums of Khovd and Uvurkhangaï Aimags. It was found that 54, 6 % of children worked for their parents and relatives, 45, 4% worked for other families, and 58, 3% of them were school drop outs. On the other hand, 57, 4% of employer families in rural areas had 201-500 animals and only 3,35% had more than 1,000 animals (Survey Data, ILO funded IPEC project).

Mostly the children work on the basis of "gentlemen" oral agreement. Although 1,5-6,1% of children pleaded they had written contract but non of them could deliver any paper at all. When asked whether they get any reward for their job 54,3% of the children answered affirmative and 45,7% revealed they work with no payment. Another NHRCM survey done in 2003 delivered the number of children busy in animal husbandry sector as 743 in Zavkhan Aimag, 650 in Umnugobi, 3500 in Bayanhongor and 522 in Gobi Altai Aimag.

Basing on the above mentioned facts a conclusion should be made that children from poor families practically are not able to enjoy rights for education and are being exploited without any written agreement and payment. This phenomenon seems to be widely spread.

Therefore, government is required to investigate the circumstances and should pay more attention on monitoring of local government as well as child rights organizations.

1.1.3.1.5 There has been an increasing criticism on abuse of children's rights in horse racing.

The purpose and scope of traditional horse racing had undergone considerable changes over the years, and strongly deviate towards money making hazardous business. The number of various celebrations including horse racing and betting had increased substantially and horse racing had been changed from its seasonal nature into a round-the-year business nowadays. It is estimated that 40-50 celebrations occur every year nationwide, and each occasion with horse racing would engage around 2,000 child jockeys.

There is a debate on whether horse racing is child labor. It has to be counted as labor considering that children work day and night in preparations for the race. They are isolated from their families, adjust horse feedings, take part in preliminary racing, ride 15-30 km rough road bathing in dust, sometimes get injured.

Riding as a jockey poses potential risks to life and health of very small children. During stallion and adult horseracings for 2001 Naadam 49 children were thrown from horse back and suffered light and serious injuries. One child was killed in 1999 Naadam during horse racing.

According to the survey conducted by Mongolian Women Lawyer Association among 50 jockeys, 68% were children between 10-16 years, 32% were children between 6-9 years. At the same time, 68, 9% of horse owners claim they always worry about children's' safety.

It is time to consider rewards and incentives for child jockeys. We think that taking child jockeys as part of traditional custom, ignoring their health, offering no regulation from the part of the government is a serious offense to children. It is required to do survey to set minimum age for horse riding, reduce possible danger to their life and health, ensure safety, regulate horse rider and owner relationship, involve children in insurance and develop appropriate legislation.

1.1.3.1.6. It has been observed that teenagers /aged 16-18/ work on the basis of an employment contract in companies and factories. Although, provisions for child labor is specified in the Labor Law it is never pursued authentically. When NHRCM investigated implementation of Labor Law in 24 factories with foreign investment of Darkhan-Uul Aimag, they were found violating the law by not involving workers in health check ups on a regular basis, by forcing people to work for long extra hours violating law provisions.

Shinhua Company of Dornod Aimag forced 17-18 year old boys and girls to work night shift in conditions that do not meet health requirements.

1.1.4. Juvenile Crime. There is a defined regulation for investigation of crime committed by children and for trial of their cases. Also there are separate specialized jails and detention center for children.

1.1.4.1. Local government and police take actions in prevention of children from committing crimes, enrolling abandoned children in child care centers, thereby to reduce number of deserted children.

Despite such measures the number of crimes committed by abandoned and street children is being comparatively high. According to the press release of the General Department of Police 1,675 children were involved in 1,147 crimes in the year 2001, and 1,703 children were involved in 1,059 crimes in 2002 respectively. This shows that the number of juveniles involved in crime had increased by 1,6%. It should be stressed that 70% of juvenile offenders reside in UB. When these crimes were classified, 70 % were against private property or in other words theft cases.

1.1.4.2. According to judicial statistics 990 children in 2000, and 1,034 children in 2001, and 1,162 in 2002 were convicted in commissioning crime. 10% of juveniles involved in crime are sentenced to serve term in jail. 150-200 children come to serve terms in jail every year.

1.1.4.3. Around 70% of juveniles that come to serve terms are illiterate, 60% are school drop outs, and 10-15% are orphans or homeless.

Previously, after serving half of their sentence in jail juveniles were interviewed and released on probation prior to the expiration of their term. But now with the enactment of new Criminal Law prior release privilege is limited. If compensation was not made to the victims, release on probation before term cannot be considered according to Article 74.4 of the law. Majority of juveniles are convicted on theft, and usually not capable for paying compensations.

Government should pay attention to these children, particularly, support released juveniles to find their place in society, to find jobs and occupation.

1.1.4.4. Survey reports indicate that number of jail sentencing for juveniles is relatively small compared to adults. However, the new law should be streamlined with the provisions of the CRC that declares that the courts should sentence children only in exceptional and unavoidable conditions. The courts should avoid sentencing a juvenile first time offender involved in a petty crime with an imprisonment term, and look at possibilities of replacing the sentence by other forms of punishment and reform measures.

Since usually homeless, full or semi-orphans or those who come from extremely poor families get involved in crimes their right to get legal aid or an advocate is very limited. According to a survey conducted by the NHRCM at Gants Khudag pretrial detention center 60 % out of 70 children had no advocates at all.

According to the new Criminal Procedure Law juvenile suspects may be detained in cases of grave crimes, and the maximum pretrial detention period is 1 year 6 months, which is not complying with the related principles found in the ICCPR.

1.1.5. Street Children. According to the press release of the Child Identification Center of UB Police Department 1,795 homeless children were received, their parents and custodians identified, and children transferred either to their relatives or to child care organizations in 2000. Similarly, 1,829 children in 2001, 1,279 children in 2002 were returned or placed in the same way. They have also reported about 231 children who have runaway from their home.

The number of runaway children in Darkhan-Uul, Dornod, Dundgobi and Selenge Aimags is higher than that of other aimags.

1.1.5.1. There are childcare centers that feed and offer shelter to runaway children coming from the Identification Center. There are 27 such centers operating in UB, around 10 operate in Dornod, Darkhan Uul, Orkhon, Tuv and Selenge Aimags. Foreign organizations and private individuals fund majority of them.

Although the Child Identification Center plays an important role in resolving runaway children problems, its work environment, personnel and supply is not all that adequate. According to the Law on Custody of Unsupervised Children (1994) a child can be detained up to 1 week. Detaining a child that has not committed any criminal offense for such a long period of time does not comply with the child's rights to personal security and freedom.

1.1.5.2 According to the survey conducted in the beginning of 2003 jointly by NHRCM and National Child Protection Board, from 1,606 children living in 37 childcare centers 768 are full or semi-orphans, 171 live there because of bad family relationships, 124 live because of step parent's problem and 171 live there because their parents are in jail. 1,262 children live in 27 childcare centers in UB.

1.1.5.3. Sadly, runaway girls often become prostitutes. There are many differing data on number of girl prostitutes, but according to the GDP survey there are 119 underage prostitutes in the country. Unfortunately, prostitutes aged

11-16 years are common. Adults usually coordinate and organize their clients, whereas hotels and bars are open to them. Exposing and punishing people who organized prostitution, provided premises and opportunity must be done hand in hand with effective agitation for girls on merits of prostitution.

1.1.6. Family Environment. Parents, relatives, guardians and custodians play an important role in the healthy growth and development of the child. Behind every case of divorce, crime, alcohol abuse and unemployment, rights of the child are being brutally abused. Therefore, it is important to punish parents who did not fulfill their parental rights.

1.1.6.1. According to judicial statistics rate of divorce has been alarmingly increasing four years in a row. Number of divorce in 1999 was 1,425, in 2000 it was 1,617, in 2001 it was 1,657, in 2002 it was 1,803. The courts ruled 899 child allowances (alimonies) in 2000, 1,371 in 2001, and 1,124 in 2002.

The amount of alimonies is equal to minimum living standard expressed in monetary terms for children up to 16 years of age. However in the last few years alimony payment has gone down noticeably. In UB 2,578 people are registered to pay child allowances by a judge order, however most of them either does not live at the registered address or is not capable of paying it.

According to Judgment Execution Law execution officers are entitled to 10% incentives of their execution amount. However such incentives would not apply to child allowances, therefore it is obvious that they do not pay much attention to it. In order to improve payment of alimonies it is recommended to develop accountability systems for execution officers avoiding collection of alimonies.

1.1.6.2. Most runaway children living in childcare center have at least one of their parents. From 1,262 children living in those centers, 736 are semi-orphans and 447 have both parents.

Reports from local surveys revealed cases when some parents abandon their children and disappear. Citizen "C" from Baruun Zuun Mod bagh of Tuv Aimag sold all his family belongings and abandoned his children after his wife's death. His four children between 4-15 years of age hire a room in a nearby household. Recently the children were accommodated in a hostel (Tuv Aimag Survey Report, 2003).

In this regard it is required to integrate the work of child rights organization and law enforcement agencies in order to prevent child abandonment, and if necessary punish parents who refused their duties.

1.2. Status of Rights of the Disabled

The NHRCM conducted a study on the situation of the rights of persons with disabilities and their social protection in collaboration with the Mongolian Association of the Disabled and the Mongolian Association of Disabled Women. The study was conducted in one remote (Nalaikh) and 6 central districts of the capital city. It benefited from the support of the Citizen Representative Khurals (local parliaments) and Governors in 20 provinces (excluding Orkhon province).

1.2.1. Legal Framework for Social Protection of the Disabled.

Active involvement of persons with disabilities in social life, protection of their rights, provision of social protection and healthcare are dealt with in the Law on Social Protection of Disabled (1995), the Labor Law (1999), the Law on Medical Insurance (2002), the Law on Healthcare (1998), the Law on Social Security (1998) as well as in the National Action Program for the Improvement of Livelihood of Disabled Citizens, approved by the Government in 1998 and other pertaining decrees, resolutions, regulations and directives issues by central state administrative bodies.

Moreover, services and benefits directed at addressing the livelihood and social issues of disabled citizens, their involvement in social life on equal terms with other citizens

through education are also reflected in the mentioned laws. For example:

- According to Article 9 of the Law on Value Added Tax (1998) organizations producing or importing items specially intended for handicapped are exempted from the value added tax;
- By Article 21 of the Law on Custom Tariffs (1996) items specially intended for handicapped, equipment, raw materials necessary for their production, as well as the humanitarian aid are not subject for tariffs;
- According to Article 5 of the Law on Education (2002) education in Mongolia shall be humane, democratic, continuous, accessible to all, citizens shall have equal rights to acquire education and to be provided with conditions to learn;
- In the Law on Higher Education it is stated that disabled students shall be provided with educational grants and soft loans.

It is possible to conclude therefore that the legal environment to provide equality for persons with disabilities, to involve them in social life, protect their health, rehabilitate and bestow social guarantees is generally in place.

However there are some shortcomings in the legislation that does not meet specific needs of persons with disabilities.

1.2.1.1. In Article 111 of the Labor Law states that a business entity or organization with 50 or more employees shall employ disabled persons or dwarfs to comprise for 3 or more percent of staff unless it is justified to exclude such persons because of the nature of the job or industry. If a business entity or organization does not employ disabled persons or dwarfs, it shall pay a monthly payment with respect to each such worker they should have employed.

However, this provision does not become reality and it cannot be fulfilled in the countryside because in provinces there are very few enterprises/organizations with more than 50 employees and, therefore, disabled persons cannot be employed to the intended extent. In the capital city there are 353 organizations with more than 50 employees, out of which 252 or 71.3% are state budget organizations.

1.2.1.2. With most of the disabled people, especially disabled children being extremely poor the provision that the cost of their orthopedic services shall be reimbursed from the Social Security Fund only once does not meet the needs of the disabled at all.

Although being handicapped children eventually grow mature and their body size changes with time, therefore, their prosthetic and orthopedic appliances have to be changed every year, while poor and extremely poor disabled people do not have any financial capacity to do so. The fact that costs of orthopedic appliances of extremely poor are being reimbursed only once does not provide any possibility to renew them in the end of exploitation time, in case of breakage or wearing out. The research shows that national and international humanitarian aid and donations are the prime source to obtain orthopedic appliances. There are no disabled people who buy the appliances at the market price. In general hearing appliances, perambulators and crutches are scarce, prosthetic appliances once made in a poor quality are not possible to exchange.

According to the research conducted by the National Center for Professional Education and Rehabilitation of Disabled People in 2002 among 3,976 people 18.51 % are able to pay for orthopedic appliances, whereas 81.49 % are not able to. Currently there are more than 9,600 people who need orthopedic appliances.

Therefore there is a need to change Article 25.1.3 of the Law on Social Protection of Persons with Disabilities

providing to reimburse the cost of the inner orthopedic devices of the disabled persons only once.

1.2.2. Implementation of Rights in the Laws for the Disabled.

Financial and economic constraints, persevering unemployment and poverty exercise strong negative impact on the opportunity of disabled to enjoy their basic rights such as to decent living, to be provided with favorable working conditions, and to acquire education and healthcare services. Moreover, there is a tendency to indirectly discriminate them on the basis of their disabilities by certain part of the society.

Meager amount of pensions, social benefits and allowances for the handicapped does not meet their basic needs. Benefits, assistance and services intended for them remain inaccessible.

1.2.2.1. In Article 5 of the Law on the Social Protection of the Disabled People it is stated that "Governors of provinces and the capital city shall develop measures to be taken regarding the social protection of disabled people on the local level and submit to the Citizen Representative Khurals, control over the implementation of the current law, take measures to facilitate its implementation, issue resolutions to involve disabled persons in social protection services". However, only 20 per cent of the provinces have developed measures to be taken regarding the social protection of disabled persons and submitted to respective Citizen Representative Khurals for consideration for the past 2 years.

Policies and activities of the central and local state administrative bodies regarding disabled persons are limited only to the issuance of pensions, allowances, small amount of benefits and assistance.

Article 5 of the mentioned law also states that "management of all organizations and enterprises, regardless of the form of ownership shall constantly pay attention to needs of disabled persons who used to be

employed with a view to assist them generate income, run businesses and to have accommodation”.

1.2.2.2. In provision 9.1. of the law it is provided that: “the state shall provide comprehensive support to disabled persons to find employment according to their working abilities and profession”. Out of 21,400 disabled people able to work, 3,300 were employed through the services of the employment agency, 7,100 are currently working and 14,300 people are unemployed being unable to find jobs (National Employment Agency data).

41.9 % of disabled persons covered by the selective study in the countryside had income from the source of being either self-employed or employed by others, 16.2 % received pensions, social benefits, while 24.4 were unemployed.

Given the fact that it is costly to create jobs for the disabled, it is becoming more difficult for them to find jobs. Moreover, employers are unwilling to employ disabled people alleging that they have very low productivity.

1.2.2.3. Provision 9.2. of the mentioned law states that “organizations that are formed by an initiative of a disabled or that employ disabled persons should be provided with encouragement and support indicated in legislature. If necessary, the Government, province or capital city’s Citizen Representative Khural may provide support to enterprises and organization that employ disabled citizens and refund certain part of their business losses from the state or local budget. However, with the exception of the Industrial Learning Center for Blind Persons, which was transferred to the aegis of the capital city Governor and provided with MNT 21 million for renovation of equipment and other financial needs in 2001, there are no cases of substantive support provided to enterprises and organization formed by initiative of disabled persons. It becomes increasingly difficult for these organizations to survive. This happens due to the absence of appropriate

systems of support from government institutions to disabled persons organizations.

1.2.2.4. The Law on Social Protection of Disabled provides that “special training shall be offered to children with disabilities of pre-school and school-age and adults with disabilities”. During the academic year of 2001-2002 total of 39,579 children with disabilities were enrolled in general secondary schools out of whom 19,159 have impaired sight, 10,586 hearing and speaking disorders, 2,723 mental disorders, 2,705 have disabilities affecting arms and legs, 4,406 with other types of disabilities (Report of the Policy and Coordination of Primary and Secondary Education Department, Ministry of Education and Sciences).

Selective study in 5 districts of the capital city and 18 provinces shows that 1,351 or 78% out of 1,718 children with disabilities who drop out of school reside in the countryside. Children with disabilities in the countryside lack access to education primarily due to the inadequate learning environment including special facilities, textbooks, teachers and financial incapacity of parents.

Parents in the countryside who can afford costs send their children with disabilities to the special secondary school in Ulaanbaatar. Despite their enrollment in the pre-school education institutions, children with disabilities face unwelcome reception at school. For example, secondary school No.2 in Uliastai, Zavhan province refused to take two children with disabilities as first grade pupils. Almost 80-90 percent of complaints received by the Disability Council of this province are requests for enrollment of children with hearing and speaking disorders in school. The termination of special school in this province impacts on the rights of these children to education thus leaving them uneducated and unskilled.

1.2.2.5. Poor and extremely poor persons with disabilities face huge financial difficulties to travel from remote areas to the provincial centers for examination and assessment of their health conditions. Moreover, it takes a lot of time

for these people to go through the assessment procedure due to the lack of information and knowledge, financial constraints and bureaucracy of the relevant bodies such as health and labor examination councils.

1.2.2.6. In addition, due to the lack of skills and commitment of responsible officers, persons with disabilities confront double burden being subject to faulty assessment of their disability conditions thus becoming unable to receive appropriate or adequate benefits. To give one example, although Mr. "S" has been insensible staying in bed for 5 years, Khan-Uul district health and labor examination council considered that he lost 50% of his labor capacity and issued only half a year long entitlement to benefit from social security funds.

1.2.2.7. There is a huge lack of medical and rehabilitation services specifically tailored for persons with disabilities. In most cases, medical services provided for them do not differ from that for normal persons.

1.2.2.8. A provision in the Law on Social Protection of Disabled dealing with physical rehabilitation of persons with disabilities undermined the responsibility of the Ministry of Health to provide professional administration of care, treatment and rehabilitation for persons with disabilities while transferring it to the hands of businesses that provide this type of services. For instance, in Dundgobi Aimag treatment and rehabilitation of disabled adolescents was very poor being primarily administered by the social security agency while lacking adequate involvement from medical institutions.

1.2.2.9. The weak social security system with inadequate supervision impacts on the right of persons with disabilities to receive information, services and benefits they are legitimately entitled to.

1.2.2.10. According to a 1999 resolution of the Government, families with a disabled member that have income lower than the minimum living standard are entitled

to such benefits as to be relieved from 50% of their accommodation rent, or to receive firewood and coal. However, in Bayanhongor Aimag, for instance, 65 out of 320 such households did not receive the benefits in 2001 and 167 out of 426 households – in 2002.

Although Ulaanbaatar residents who fall under above-mentioned categories are privileged to receive such benefits timely, here the problem is that the benefits are sometimes lesser in amount than they are ought to be.

1.2.2.11. There are almost no local administration that observes a provision in the Law on the Social Protection of Persons with Disabilities that obliges local governments to make public places more accessible to persons with disabilities such as telecommunication services, roads and bridges etc.

1.3. Status of Rights of the Extremely Poor

One of many difficult problems faced by Mongolia after its transition from centralized to open market economy was and is poverty. In 1998 35,6% of the population was poor, out of which 19,7% were extremely poor (“Survey on Population Living Standards” 1998). While in 2000, 38,3% of the population was poor, out of which 16,3% were extremely poor (Report, Poverty Investigation Consolidated Results, 2001). People earning less than 40% of the fixed minimum wage are considered to be extremely poor. This 40% would effectively translate, when the minimum wage is calculated using rates approved in Order 128th (2002) issued by director of National Statistics Board, to MNT 7,680.0 for the Western region, MNT 7,640 for the Khangai region, MNT 7,880 for the Central region, MNT 8,080 for the Eastern region and MNT 9,840 for UB respectively. NHRM conducted selected surveys in some soums of 21 Aimags and in 9 khoros of Songino-Khairkhan, Bayan Zurkh and Khan-Uul Districts of UB on the rights of the extremely poor citizens involving in total 1,265 respondents.

1.3.1. Situation with Poverty. At present poverty is fairly a real problem in Mongolia by large. At the beginning of the 90s

income poverty was predominant, - while perceived standards of living was rapidly weakening people had still preserved their education, health and other capacities enabling to sustain a decent living. However, the situation is now further deteriorating as capacity poverty prevails, and which could be explained by the following reasons. First of all, people living in poverty gradually lose their capacity for survival. For example, owing to malnutrition and poor living conditions they get sick, and since they cannot afford proper medical treatment their sickness aggravates leading to loss of related capacities. Secondly, children from poor families grow up to inevitably be the next generation of poor people. For instance 47,6% of extremely poor people are in fact children ("Poverty Investigation consolidated results", 2001).

1.3.1.1. In terms of localities 9% of UB, 21,8% of urban, and 20% of rural population live under extremely poor living circumstances.

1.3.1.2. A survey dealing with matters of rights of extremely poor shows that, the main causes for poverty are: unemployment, natural disasters such as drought and dzud (heavy snow fall blocking the access to pasture land grass), becoming disabled, poor parents and company lay off to name a few.

1.3.1.3. The main factor affecting poverty in rural areas is recurring drought and dzud. According to data provided by the National Statistics Department 12 million livestock perished during 1999-2001 dzud. In the report of the Mongolian Red Cross organization it was mentioned that 450,000 people were affected by dzud in the countryside. In Gobi-Altai Aimag, after the heavy dzud and draught devastations of 1998-2002, nearly 36,7% of the total population or 24,900 people had income below the minimum living standard. 1,100 of the families have lost their entire herd. Another study in Uvurhangai Aimag showed that by now 59% of people involved may be regarded as extremely poor.

1.3.1.4 In recent years migration to urban areas is accelerating. Among migrants the herders who lost their livelihood and herd due to natural disasters constitute the majority. A source reported that 30% of total migrants settle down in UB, Darkhan, and Erdenet. In 2002 out of 109 migrants settled in the center of Bulgan Aimag 42 of them were extremely poor.

1.3.1.5 The number of single-mother families among extremely poor people is quite large. According to 1998 data 24,6% of extremely poor families were headed by a single mother, which is twice higher than the better off families (Sample Survey On Population Living Standard, 1998). Although single-mother families usually compose of 5-6 people on an average, they do not receive any social welfare benefits and medical services unless on pension.

1.3.2. Legal Framework & Actions. In line with the objective to reduce poverty Government is implementing series of properly formulated and task-oriented policies. Main actions to support livelihood of extremely poor people and to reduce poverty are social welfare services. Within the framework of this conceptual policy the Government had started implementing various long and short term projects and programs.

1.3.2.1 Social Welfare Law (1998) provides definition of extremely poor citizen and prescribes welfare services for them. Article 3.1.3 of the law provides that “a person is claimed as extremely poor if earning less than 40% of the minimum living standard and has a limited consumption within the above stated income”. The law further provides that such person would be considered as belonging to the social vulnerable group, and shall be provided with social welfare services. However, the State Supreme Court did not explain the term ‘limited consumption’ in the law. Since there is ambiguity in the definition of an extremely poor person, citizens regarded as poor in one place can be poor or low income citizens in another area.

1.3.2.2 Social Welfare Law states: Following citizens, who are not entitled for pension in accordance with the Social Insurance Law, are entitled to get welfare allowance:

- extremely poor, men aged 60 or more and women aged 55 or more;
- extremely poor, women aged 45 (men aged 50), single parent headed family with 4 or more children;
- extremely poor, women are entitled to get childcare allowances once after their birth.

However, articles of the Social Welfare Law on pension and allowance deal only with extremely poor disabled people, their caretakers, extremely poor elderly or extremely poor woman heading a sizable family. Social welfare service is not accessible to other poor people. For instance, women aged below 40 and head of a big family is not entitled to get allowance.

1.3.2.3 Social welfare and medical care service for the poor is defined in Article 3.1.7 of the law which provides that these are type of 'services that feeds citizens on a temporary basis or provides with primary clothes, food and other supply, gives concession, provides professional training etc. from the government'. Social security services are comprised by superannuation, allowances, as well as provision of shelters, restocking, fuel, wood and coal, and free training. Conclusion drawn from the Social Welfare Law is that it provides only one time social services if professional training and social welfare pension are excluded. Action need to be taken in order to irreversibly rescue people from poverty by developing complex policies rather than providing one-time social services.

1.3.2.4. The government had approved 'National Program of Household Livelihood Assistance' by the Decree No.108 dated 2001. The main purpose of the program is 'to take extremely poor and poor households out of poverty by supporting human development factors and capacity through enhancing scope of necessary economic and social services, . . . 'and it has two implementation phases

in 2001-2006. There are three foundations, 'Risk Management of Pastoral Livestock Production', 'Local Initiative' and 'Micro-finance service component' in the program. National program of household livelihood capacity support office implements its policy through councils in the capital, aimags, districts and sums. One of the main activities of the program is to make regular awareness raising activities on the legislation, and to provide organizations and citizens with necessary handbooks and other materials. More than 30 percent of the poor covered in the survey were not aware about the availability of social welfare services or did not possess practical knowledge to get access. This would show that they lack necessary information about the services, thus local councils of the program must pay special attention to engage poor citizens more on this matter in a participatory manner.

The Government had established a Poverty Survey Unit at the Ministry of Finance and Economy in November 2001 in order to develop poverty reduction policies and support economic growth by providing with recommendations and sound judgment based on data from survey.

The state will subsidize tuition fee of one student from each herder family having 500 livestock in sheep, and extremely poor households earning less than 60% of the minimum living standard and has a limited consumption within the income stated by the regulation (Resolution of the Government No.158 of 2000 and No.195 of 2001).

1.3.3 Status of Rights of the Extremely Poor. Individuals earning less than MNT 8,200 obviously cannot cover expenses to meet their basic needs and fulfill its social, economic, cultural, political and civil rights. During a survey in UB, cases were reported on people who starved for days without any food, suffered from malnutrition and their mental health gradually degrading. In the social welfare center at Songino-Khairkhan District 56 year old citizen "G" was suffering from mental disorder caused by sever famine.

1.3.3.1. Due to malnutrition and improper living conditions the extremely poor get ill, having no earning they have no access to medical treatment and which only aggravates their health. 54% of people involved in the survey answered that they do not have medical insurance, and 38% said they suffer from at least one chronic disease.

1.3.3.2. Unemployment rate among the extremely poor in 1998 was 50,8% (Sample survey on Population Living Standard, 1998), around 52% in 2000, and 52,6% in 2001 (Poverty Investigation Consolidated results, 2001). From here, conclusion could be drawn that the main cause for poverty is unemployment. Unemployment is high particularly in suburban outskirts of UB, Aimag and soum centers because of unavailability of job in those places. It was found that one of the main causes for unemployment was inability to access the competitive labor market after an industrial lay off from previous employment. For example, around 30 families of Ulziit khoroo, Khan Uul District were laid off during *deer farm* breakdown in 1997.

1.3.3.3. The extremely poor cannot fulfill their rights to education. 60% of people involved in the test survey had primary and basic education, 10% had no education at all. It was found that 19% of children from extremely poor families were not enrolled in schools, 70% were dropped out of school due to lack of money to buy books and clothes.

1.3.3.4. Results of Poverty Investigation shows that 48, 1% of full orphans, 65, 6% of half orphan children live in extremely poor families. It is very difficult for the extremely poor to enroll their children to kindergarten and schools without external support (in clothing, buying stationery, and feeding) and along with the fact that dropping out of schools from poor families has become an increasingly worrying phenomenon.

1.3.3.5 During the UB survey, many extremely poor were observed to be living in city shafts digging garbage. These people live in a very dangerous condition. 12 families that

live near Ulaanchuluut garbage disposal of Songino-Khairkhan District and 8 families that live in thermal shafts were involved in the survey. When a focus group discussion was conducted among 30 people from around the garbage disposal it was found that majority of them lacked identity document, thus making social security and health care services inaccessible. Furthermore, due to bad living conditions apart from common respiratory tract diseases (cough, asthma and tuberculosis), cases of injury, burning, hurting and freezing happen to occur frequently in this "neighborhood".

1.3.3.6. The extremely poor lack access to information as most of them would not have TV or radio at home, or have the possibility to subscribe daily newspapers. To this end khoroo community workers pay little attention to information dissemination. 50% of Gobi-Sumber and 51,7 % Bulgan Aimag respondents answered that due to lack of information they do not get social welfare services. Because some migrants are unaware of temporary settlement approval, they are not able to access medical services; their children cannot get enrolled in schools.

It is required to determine the best way to supply necessary information like up-dates on labor market and social welfare services to extremely poor. There is a lack of initiative observed in placing advertisements and banners in public places like schools, khoroo administration, hospitals as well in distributing hand outs, leaflets, and in creating awareness on relevant provisions of laws and regulations.

1.3.3.7. The number of people without identity documents among the extremely poor is very large. 41% of those involved in the survey had no documents whatsoever. The survey suggests that one of the main reasons for not having an identity document is lack of sufficient monetary means and also the fact that old documents were lost or stolen prior to the discovery of such. These people cannot enjoy many of their rights including to education and medical care as well their rights to vote.

Some local officials have issued documents to wives and children of large extremely poor families, thus at least one partner can look for a job and meet basic necessities of the family.

1.3.4. Social Welfare Services to the Extremely Poor. Although there are various services designed and available to the extremely poor, but more often those services never reach the recipient.

1.3.4.1. It is quite common for the public services to publicize the quantitative aspects of assumed achievements rather than taking neat care and giving more thought to the quality of delivered services. On top of that, poor monitoring mechanisms in the delivery of those services offer advantageous grounds for smooth operators to step in. For example, gers allotted to homeless people do not have flooring or proper felt covering, thus making living in the “gift” gers not the most desirable experience one would enjoy during the winter. Strikingly, ger allotment to khoros’ is not based on number and location of the extremely poor, in other words basic distribution systems are somewhat missing out there, - and not because of favoritism practices. For instance, in 2002 Songino Khairkhan District officials allotted 81 gers to the extremely poor, but not a single ger to “residents” of the 4th khoroo where number of the extremely poor is notorious in the district.

In general, by just allotting a ger the basic problem with housing would not be resolved overnight. Khoroo Governors agree that “if we really want to help the poor we must solve their welfare problems along with ger allotment”.

1.3.4.2. Supply of coal for winter heating in gers to the extremely poor is regarded as one of the social welfare services that is budgeted and actually implemented at some khoros’. Community workers distribute coal by the quantity of bags per household which is not practical for the extremely poor as bags tend to be found in different sizes with varying capacity of 40, 50, 70 kgs. Since coal is not measured by actual weight but in quantity of bags per

household, intermediaries seize the opportunity and report back on proper distribution of the coal to the poor.

1.3.4.3. Some benefits and concession offered by the Law on Social Security are not made accessible to the poor. For example, Article 24.2 in the law provides travel concession for only one-way to health sanatoriums as well as 50% off the admission bill. This “one-way ticket” is reimbursed only once a year to elderly members of extremely poor families. However the cost of the return ticket, and all other expenses to get the elderly back home, might become an apparent challenge to the family budget. In other words, though the law provides assistance and gestures to the extremely poor, strategies should be developed to make those services more equitable and accessible.

1.3.4.4. According to Government Decree No.195 (2001) eligible students from extremely poor families are entitled to obtain public education grants for tertiary studies. But the amount of grant does not cover the full tuition fee of public as well private universities. It is not reasonable to expect that a student from an extremely poor family would be able to pay the difference between grant money and tuition fee.

At present 6,000 students have obtained these grants and registered themselves as children from extremely poor families. However, the irony is that there are no monitoring mechanisms to verify if these students are actually from extremely poor families, or if there is just another loophole in the legislation.

CHAPTER TWO

STATUS OF IMPLEMENTATION OF SELECTED RIGHTS

2.1. Implementation of the Rights to Health Protections and Medical Care

NHRCM in cooperation with the National Health Inspection Authority had conducted a survey on the rights to health protection and medical aid, including relevant social, economic and psychological aspects in medical treatment, in selected soums of Bayanhongor, Bulgan, Dornod, Dund-Gobi, Gobi-Sumber, Uvurhangai, Umnu-Gobi, Sukhbaatar, Tuv, Hovd and Khentii Aimags and in all districts of UB.

2.1.1. Due to insufficiency of hospital equipment for treatment and analysis, chemicals and other lab supplies, it is common for people especially in rural hospitals not having their diagnosis done properly and promptly. For example, since hospital serological lab of Bayanhongor Aimag had no antibiotic discs, the personnel could not do any diagnosis since the 2nd quarter of 2002.

In remote soums of most Aimags primary medical equipment including diagnostic kits had not been provided lately. For instance, soums of Bulgan Aimag do not have urine and blood diagnosis equipment, infrared test equipment, they even cannot treat toothache, and as a result people have to spend their own money to go the Aimag center for primary treatment.

I m m u n o c h e m i c a l , h o r m o n a l , m a r k e r , immonomorphological, cytochemical, histochemical, organ blood supply diagnosis and analysis are not done in regional diagnosis and treatment centers. One of main but perplexing reason is indeed typical. The authority would have usually forgotten to provide the doctors with necessary skills on a timely fashion, not to mention purchasing of chemical substances and supplies.

2.1.2. People experience tough times to get admission into hospitals. A great deal of endurance is needed for a patient to make an appointment to visit the doctor, obtain outcome of the diagnosis and finally receive admission to the hospital wards by the time which the illness is likely to get even worse than before. 56,9 % of respondents answered that they spent up to 7 days, 20,7% spent 8-15 days, 5,1% spent 16-20 days, 3,9% spent 21 or more days to go

through the whole process of visiting a medical practitioner, going through lab analysis, or just waiting for a free bed. To the question on the reasons for such delay the respondents answered that this was due to heavy queues - 36, 4%, no connections and friends - 15, 9% and waiting for the analysis report - 15%. To the question on outcomes of the treatment 53, 3% of the respondents thought they got well after being treated in the hospital while 46,5% deem they have not recovered fully after hospital treatment.

- 2.1.3.** Patients that come to central hospitals usually are in serious condition due to passing through many tiers of medical hierarchy that would mostly start from a visit to the local general practitioner, and sometimes the protracted layers and delayed proceedings would get the patient, in desperate need for immediate specialized medical intervention, to the hospital in acute suffering. Not surprisingly, fatality statistics on the first day of entry to the Central Clinical Hospital when medical treatment was to late for the patient reports 33 deaths in the year 2001 and 34 in 2002.

Professional medical aid is not provided at the soum and bagh medical centers for the same reason of lack of skilled and competent medical practitioners. Therefore, patients tend to travel to the Aimag center or UB for alternate diagnosis and available treatment.

- 2.1.4.** Fatal mistakes and serious omissions in medical treatment occur mainly subject to inferior health protection practices and poor accountability systems of the personnel. Unprofessional practices when doctors treat patients casually, withholds desperately needed treatment or medical sisters administering wrong injection seriously affects the health of patients..

According to a report from Bayanhongor, Uvurhangai, Gobi-Sumber, Tuv, Bulgan, Dundgobi and Khentii Aimags 14 people died, 10 in serious condition due to maltreatment by medical practitioners.

Medical practitioners participating in the survey identified following drawbacks existing among personnel: alcoholism - 12, 7%, reward expectation - 16, 6%, poor communication skills 40, 8%, ignorance of work hours - 35, 5%. The patients on the other hand thought that doctors and nurses have alcoholism problems - 12,1%, reward expectation - 20,9%, poor communication skills - 29,7% and ignorance of work hours - 33,1%.s

2.2.5. Although maternal mortality rate decreased in 2002, fatality still occurred because pregnant women reportedly do not undergo medical observation prior to delivery and because of the delayed medical aid process and improper skills of medical personnel. 35.5% and 14.5% of pregnant women were in bad and very bad conditions respectively when they undertook primary medical care, which implies complications developed before delivery 35 or 45%, 24 or 30% and 5 or 6.3% of deceased mothers were herders, housekeepers and students respectively. I

2.1.6. One of the reasons of serious violation of right to health protection and medical care is related to problems of rural migrants. 47,863 citizens in Ulaanbaatar who migrated from rural area and live without registration make 7% of the total population. Medical centers, district hospitals would not treat those migrants and homeless citizens without registration simply because of the bureaucratic restriction in order to manage migration of the population.

2.2. Implementation of Rights in the Labor Legislation

Fundamental rights and obligations of workers in labor relations have been extensively formulated in the Labor Code (1999). Employee rights in the Code strongly correspond with economic rights in other legislation, and it could be claimed that employee rights serve as a primary basis for economic relations to build on.

However, violations of employee rights prescribed by the Code are widespread, making individuals as victims in labor relations.

2.2.1. Employers do not establish employment contracts with individual workers, and even if such contracts are made they do not follow the provisions of labor legislation. Employment contracts do not clearly specify the main four terms in labor relations prescribed by the “Guidelines on Terms for Employment Agreements”. Some businesses do not establish employment contracts at all, by having the argument that they hire short-term labor. This situation is in breach with provision 24.1 of the Labor Code that prescribes “every employer should establish employment contract with an employee in writing, and provide with copy of that contract to the employee”.

2.2.2. The most common violation observed in labor relations is the issue of illegal over-time. The joint inspection conducted by the NHRCM with the Trade Unions Confederation of Mongolia and State Labor Inspection Board at selected private enterprises revealed that employees are forced to work 2-4 hours overtime on a daily basis, sometimes 8-12 hours on the weekends, to work overnight and on-call, without preset shifts. The joint inspection covered 30 companies, and illegal overtime was documented at “Cashmere Fine Asia”, “Mongol Hun Hua” and “United Apparel” in the metropolitan area, and “Gobi Tex”, “Shuten Uul” and “Morin Khuur” in Darkhan-Uul Aimag.

Article 74 of the Labor Code provides that “forced overtime labor is prohibited in situations other than national defense, medical emergency, natural or industrial disaster, and emergency situations arising from restoration works at water reserves, electricity, thermal heating, energy or communications supplies that needs mobilization of human resources at businesses or organizations in order to maintain its normal functioning”. However, the main justification for illegal overtime at the inspected factories was “unmet production deadlines and unpredicted increase in client orders”.

2.2.3. In some instances overtime is not paid at all, according to Article 53 of the Labor Code that prescribes the rate of 1,5 for overtime work. For example, 14% of employees that

participated in the survey responded that they were never paid for overtime work.

Although Article 52 prescribes a double rate for overtime work over the weekend or on national holidays, this provision was not followed at inspected factories, and employees not compensated even with day offs to substitute for working during such periods.

- 2.2.4.** Employees are entitled to be provided with proper work safety and hygiene standards at the workplace. Some businesses covered by the inspection do not provide these basic conditions and meet safety standards. For example “Cashmere Fine Asia” and “Gobi Tex” did not have proper ventilation systems, whereas premises at “ATM” did not have standard electric grounding wires. Common violations at the inspected factories were failure to request hazard and workplace inspections, absence of work safety and hygiene commissions or councils, or improper functioning when such is present, lack of appropriate instructions and guidelines for employees, unclean toilets among other hygiene concerns.

These violations predictably lead to diseases and industrial accidents. Preliminary data from the National Statistics Board suggest there were 343 industrial accidents in 2002, in which 47 people died, 34 became permanently disabled, and 281 temporarily lost work capacities from 365 that received casualties. The 2002 Industrial Accident Report declares that 34,5% of all casualties were women and 5,8% were minors. Absence of electric current grounding at “Mongol Hun Hua” had led to the death of 2 people.

- 2.2.5.** Payments to social security and healthcare insurance policies are not done on a timely basis, and workers insurance cards are not dully certified which leads to violations of related rights.
- 2.2.6.** The basis for assigning workload and planning production targets are unrealistic, unfairly high, and with low remunerations rates that leads to depression of wages. Overall, there is a lack of unified supervision and policies

to regulate labor needs assessment and development of production targets.

2.2.7. Terms and provisions in internal regulations at some business outlets are in contradiction with the Labor Code. The management regulations of “Tian Pin Garment”, in Dartzkhan-Uul, prescribes deduction of MNT 500 from salary when an employee is late for work for 10-30 minutes, and if late for more than that or never shows up for the day than up to 10% from the salary is deducted. As another example, AOSS Co. Ltd has established an 88 hour fortnightly shift which is in contradiction with Articles 70.1 and 70.2 of the Labor Code.

2.2.8. The joint inspection revealed that idle production payments are not paid according to the legislation, annual leave not provided, or leave days not compensated in full.

2.2.9. Some company management came up with a practice of establishing service agreements (according to the civil, and not labor, code) with short-term laborers in lieu of employment agreements, which supposedly made an excuse not to pay social security and healthcare insurance policies.

2.2.10. In view with the forthcoming amendments to the labor legislation, Article 97.1.1 deserves special attention to the drafters. The article in particular states that “an employee who partially lost work capacities is entitled for 9 months average salaries, and for 18 months if fully lost work capacities, as compensation for industrial accident, acute poisoning or work related sickness that could be provided as a single lump sum, or for several times”. In practice such compensations are never paid for more than once. This situation contradicts with the general provisions for compensations in the Civil Code.

CHAPTER THREE CONTEMPORARY HUMAN RIGHTS ISSUES

3.1. Law Enforcement Operations & Human Rights

Probably the worst example and the most intolerable form of human rights violation is when such practices occur within the

operational frames of law enforcement agencies. These are bureaucratic red tape, undue delay and hackneyed hierarchy in proceedings, all-out bribing epidemic, systemic corruptness, tribalism, cronyism, voluntarism and arbitrary demeanor.

In fact these practices are a poorly hidden secret. Although sharp criticism of such unhealthy and severely deviated practice are being heard from the tribunes of high-ranking government officials or even being reiterated by top functionaries of the law enforcement machine nothing crucial and decisive is made so far.

Despite the general desire of the broad community to make this environment cured and cleaned up radically and to call to account the staff implicated, deliberating on this topic is becoming a tautologous tradition of charisma. As a logical consequence such rerunning is doing nothing but prompting disappointment and desperation and even worse forcing the public to an inverse attitude instead of assisting the efforts to diminish such negative trends.

Recently numerous studies and surveys in varying methods of approach attempted to unveil the moral and behavioral fraud evident in the activities of law enforcement agencies, and in common work attitude of allegedly corrupt officials. Here we present some results of an independent study work.

The survey embraces 475 law functionaries (prosecutors, judges, detectives, court decision executors and advocates) as well as 417 customers.

The following question had been put to all participants "Will you agree with a claim that legal institutions are causing additional bureaucratic barrier and burden to customers by their clumsy and tiresome attitude?" The results of poll shows that 68.2 per cent of lawyers do agree with the above mentioned statement. So did 49.9 % of ordinary citizens as well.

Among the contingent of respondents 33.3 - 48.1% had answered that "the staff of court, prosecutor's office and police are tending to bias towards their relatives and friends, and bribing is

practically inseparable from their work". Similarly 55.3 per cent of lawyers and 73.8 per cent of citizens had positively responded to the question whether the officials are receiving bribes. (Study Report, "Making Law Enforcement Operations Transparent", Human Rights Education Center).

In accordance with the studies to clarify whether customers and the public in general do trust the legal institutions like the courts, prosecutor's office and police, conducted within the *Judicial Reform Project*, 48 - 72 per cent of those questioned had revealed that they do not trust at all or practically do not.

3.1.1. The Courts & Human rights. The Criminal Proceedings Law (2002), the Civil Proceedings Law (2002) and the Law on Courts (2002) had indeed made clear-cut formulation on the 3 tiers of judicial system, which greatly contributed to establishment of fair and just trials thus securing guarantees for human rights. (Article 3.2., Law on Courts).

3.1.1.1. As Article 5.1. of the Law on Courts further formulates, criminal cases shall be tried on the basis of deliberation and adversary principles, and as Article 17 of the Criminal Proceedings Law stipulates the proceedings shall be carried out on the basis of equal representation from both prosecuting and advocating parties in the process, and that the prosecutor shall bear the burden of proof in an indictment submitted to judges. These provisions in endorsed legislation would justify statements on the new judicial system guaranteeing that the courts will take absolutely neutral position and shall produce rulings based on credible evidence presented by both parties proving their own claim. However, other provisions in the criminal legislation seem to shatter the intentions to establish such fair prosecution systems.

For instance, the present legislation provides that the decision of a primary court may be overruled, in conformity with Article 317.1.1, Criminal Proceedings Law, when the superior-instance court finds that the pre-trial proceedings had not been carried out properly, or if, in conformity with the Article 317.1.4., it has found that the case should be considered as **deserving more severe sentencing**. If

despite the fact that the prosecutor, as a real “participant in adversary proceedings”, had already submitted within its authority the legal grounds for indictment in the first-instance court to its satisfaction, a counter claim from the superior court to overrule for a **more severe sentence** should only be assessed as biased position in punishment prevalence, and not as one of neutral judging. In fact this is an example of protracted mentality still tied up with the former oppressive system of the judicial machinery.

Despite the fact that the court system as a whole had supposedly progressed to adversary principles, the prevalent mindset of judges in biasing towards sentencing and punishing may keep back the principles for fair trial. This tendency in real practice nowadays might be easily proven by numberless cases being “ping-ponged” between the court and the prosecutor’s office.

3.1.1.2. The murder case of “E” is a typical example of court bureaucracy and that of legal institutions in general where no official bears responsibility for illegal actions. Citizen “E” had been detained in suspicion of murder that occurred in Erdenekhairkhan Soum (basic administrative unit) of Zavkhan Aimag (principal administrative division). A criminal file had been opened on December 31, 1995 and citizen “E” became the No. 1 suspect. However after 7 years of investigation, while he was still in detention, finally a decision came to existence that his implication in the crime has not been proven and that “E” should be released (Case No. 609003).

During these 7 years the primary court had ruled for death sentence on 3 occasions and for 25 years imprisonment for 3 times. Meanwhile “E” had spent 5 years in a high-security prison. This is in fact a terrifying evidence how the police had approached the case with a strong bias of their own. It has been proven that police officers had frightened the witnesses and extracted false testimonies against defendant “E”. Having no solid proof against him the police still managed to submit the case to courts for 6 times, and strikingly the court had ruled 6 times for severe sentencing,

death sentence on 3 occasions among them, thus unveiling their own “technique” in the administration of justice. To this end the judges have exposed inadequate professionalism and deviated sense of ethics present in their practices thus demonstrating breach of duties they have sworn to.

The most petrifying is that this is not the one and only failure, alas. Quite a row of such cases justify distrust of public thus logically provoking a question “Does the court protect human rights at all?”

3.1.1.3. In accordance with the provisions of the Criminal Proceedings Law (2002) the authority to arrest or detain a person ultimately rests with the judge. This is certainly a profound progress towards guaranteeing human rights. In order to fully implement provisions for arrest, instead of formal permission issued by the prosecutor which was the routine procedure in earlier days, the decision should be rather based on clarifying the existence of reasonable evidence to suspect a person in committing the crime and whether it is altogether necessary indeed to apply detention as a procedural measure. Proper decisions made according to the new criminal legislation would avoid brutal incidents of human rights abuse.

3.1.1.4. Establishment of an independent court on administrative cases is another significant progress in further sophistication of the national judicial system at large thus securing and protecting human rights. Unfortunately the implementation of the law had been postponed until June 1, 2004. This means that broader human rights protection has been delayed accordingly.

3.1.2. The Police & Human Rights. In conformity with the Law on Police (1993) its system consists of the General Department of Police, its profile agencies and of local divisions in administrative units. The main objective of the system is to guarantee public order and combat crime. Its management structure is centralized, and the Chief of the General Department nominates all top-officials in the

hierarchy. The system enjoys the right of an organization with special privileges. The activities of the organizations are inseparable from human rights issues.

3.1.2.1. Transferring the pretrial detention facilities from the police system to the management of the court decision implementing agency should be appreciated as a justified and correct measure from the viewpoint of securing human rights. It is deemed as of utmost importance that transferring management of detention centers will contribute in the prevention of abuse by law officers to suppress detained suspects and defendants, fabricate false cases or “discover” new circumstances.

3.1.2.2. The fact that the Criminal Police and Investigation (detective) Department are subordinate to one central organization (GDP) up to the present is another feature of the law enforcement system that cannot stand criticism in terms of proper management structures as well as in relationship with human rights concerns. Thus it is a priority for the legal system to urgently separate investigation and policing functions of the GDP in accordance with provisions of the Criminal Proceedings Law.

3.1.2.3. The duties of the Police to detain drunken people in order to undertake alcohol detoxication (sobering) procedures, which is in a sense profit making function, is provoking another extreme of and to much extent controversial violation of law by attempts to suppress the uncontrolled behavior of drunken people leading at the end of the day to violent abuse of power and human rights.

Police officers reportedly misuse their power in order to arrest people under presumption that they are drunk and detain them in the detoxication center. Officers would arbitrarily exercise powers to confiscate their property, including cash, which eventually gets lost, use force or even cause serious physical injuries. At the end of the day the police would effectively charge for the placement at the center without necessarily providing detoxication services. As for hygienic conditions, in the so-called

detention facilities, they are intolerable beyond description. Thus this anti-alcohol procedure is another hot topic in the narrow moments of human rights.

Although the NHRCM had submitted to Government a draft resolution on reorganization of the anti-alcohol procedures and implementing new principles the proposal had been ignored so far.

3.1.2.4. According to Article 14 of the Law on Police, the institution is responsible for carrying out criminalistic tests and certifies the results. Altogether 11 different examinations and tests are being made such as dactyloscopic, imprint analysis, tests to identify chemical, biological and physical properties as well as pyrogenic, photographic analysis and explosive studies.

The fact that expert labs are under the same management as policing and investigation divisions should be reviewed and ultimately reorganized in order to ensure credibility in procedures for collecting the body of evidence.

3.1.2.5. There are numerous complaints from individuals concerning facts of police brutality and violation of human rights. Police authority is extremely reluctant to effectively respond to such claims and to investigate and punish, if necessary, the abuser. This attitude is generally true both in the cities and in rural areas.

By comparison, the previous Criminal Proceedings Law at least had certain provisions obliging the police authority to open case files and carry out investigation against their own officers suspected in illegal actions. This instrument had been efficient and proven credible in the protection of human rights.

The following examples may give light to the facts of corruption within the police system when investigation carried out against their own staff who committed crime were formal and superficial, the punishment as prescribed by law had never been executed or arbitrarily mitigated.

Within only the first 5 months from the establishment of the Investigation Department at the General Prosecutor's Office, i.e. from September 2002 to March 2003, altogether 222 cases directly connected with police officers were deemed as criminal, and were retrieved for processing under prosecutors supervision (Report, National Conference on Corruption, March 27 2003). Compared to this volume, only 213 cases of alleged police abuse and malpractice were processed under the Internal Investigation Division of the GDP during the entire year of 2001.

3.1.2.6. Since September 1, 2002 practically every single day a complaint against police officers is being submitted and registered with the GDP. In the first 10 months of 2002 the whole network of police administration throughout the country had received 4577 complaints and requests from citizens. The analysis had shown that in 26.1 per cent of private complaints the police officers had allegedly dishonored professional ethics, in 46 per cent - violation of human rights and the law, or had carried out too superficial and haphazard investigation (Report, "Complaints Against Police Officers, Measures Taken and Lessons to be Learnt", 2002).

3.1.2.7. From the survey reports it is becoming absolutely clear that the police authority is indeed far behind of any positive assessment of their duties in order to take adequate responsive measures and fair punishment to their pleaded guilty servicemen.

The NHRCM had reviewed 4,236 cases registered in the year 2001 and in the first quarter of 2002 as dismissed by the State Investigation Department, district police stations, Railway Police, Traffic Police and by local police departments in 18 Aimags. The objective of this exercise was to examine alleged facts of violation of rights of the suspect and defendants as prescribed in relevant legislation. The results show that every 4th defendant was detained from 3 to 1047 days, the rights of detainees to

obtain an advocate or being provided with legal consultation had been practically ignored. In a number of reports from rural areas prosecution without presence of an advocate at all seems to be a persisting practice as yet.

Such incidents of rude abuse of human rights, including denying the right to access legal aid, had been revealed in 46.1 - 97.5 per cent of cases initiated and later on dismissed on grounds of lack of evidence by the State Investigation Department, Chingeltei and Bayanzurkh District Police Divisions, Darkhan-Uul, Selenge, Gobi-Altai and Khovd Aimags.

The analysis of remedial actions reported by the GDP, after an official demand issued to the top police authorities by the Commission to review internal police investigation procedures on alleged police brutality, revealed that only 52 officers had been "punished" by administrative warning for "violating procedural rules". Thus detaining innocent people for a long period of time and dismissing cases after being unable to "collect" sufficient evidence is classified by the police authority as not following "procedural rules", and thus is a matter of mere administrative warning (Official Memo, GDP, ref. No. 2/222, dated October 10, 2002).

- Police officer "A" of Tuv Aimag had detained citizen "B" forcing him by threat to plea guilty in theft of a semi-precious stone made snuff-bottle. The court had sentenced him for one-year imprisonment. Meanwhile the family where the snuff-bottle belonged had found it when they were moving to another seasonal pasture. The allegedly stolen item was simply fallen behind the shelf. By that time "B" had been released after his full service term under the sentence expired. The police authority had cut 2 months salary of the wrongdoer officer for 20 per cent and issued a written warning (Internal Memo, GDP, ref No. 2/172 dated August 8, 2002).
- With a pretext that citizen "G" had allegedly stolen quite a number of horses he was detained by the Tuv Aimag

Police for 11 months, and the case had been submitted to the court. During the detention period the suspect had been questioned on 9 occasions. At 7 occasions during the interrogation sessions the suspect had complained on “poor health conditions” and sought medical intervention, to which he was not given access. At the end of the day, when the court dismissed the case due to lack of evidence “G” died in detention cells on December 12, 2001. Forensic medicine conclusion reported that “the patient died due to aggravation of TB complications.” As the medical report explains “G” died in sever cachexy, i.e. “bone and skin” diagnosis. The punishment from the police authority in this case was a simple degrading of the offender officer by one rank.

- In Bulgan Aimag police officer “M” had detained citizen “S” in cuffs for 2 days without any charges. Then “M” forced the detainee to pay him MNT20’000.0 for personal travel needs, if “S” wanted to be released. The punishment for the offender officer was appallingly standard - 20 per cent salary cut for 2 months and a written warning (Report, Investigation Department, General Prosecutor’s Office, ref No. 224 dated December 31, 2002).

3.2. Criminal Prosecution & Human Rights

The Parliament of Mongolia had adopted the renewed Criminal Proceedings Law which came into effect from September 1, 2002.

The new law is indeed innovative in many aspects. It guarantees reliable protection against hazardous voluntarism, arbitrary conduct and abuse of law from the part of law enforcement officials in authority.

The following is an attempt to examine to what extent the new law is consistent with basic human rights principles at large, provisions in international agreements to which Mongolia is a party, and with generally accepted minimum norms and standards in this field.

3.2.1. Human Rights at the Pretrial Stage. The pretrial stage of a criminal investigation is the centerpiece in the administration of justice as related proceedings have a profound impact on the outcome of a case. This process consists of opening a criminal file, arrest and detention, exercise of suppression measures, search and seizure, collection of evidence, review of requests and complaints, if any sustained, investigation experiments, sealing up or confiscation of property, interrogation, cross-examination, visual identification and carrying out of tests to name a few. It is enough to make a small error in any of these proceedings, for instance failing to provide an advocate while questioning, and this may lead to an ambiguous indictment. Those small mistakes in the process would disturb following proceedings and could cause canceling of previous decisions or introducing amendments in investigation strategies or ultimately lead to the dismissal of the case altogether.

3.2.1.1. Article 183 of the law prescribes setting up a detective squad, and appointing its chief, in complicated cases requiring large-scale investigation. Such provision in the law may be interpreted as justified by the specific requirements of the investigation work to be undertaken. On the other hand, it may seem quite ambiguous from the viewpoint of defense. Though the investigation is carried out by a team, lead by one chief and using the same data files, conflicting judgment of one of the squad officers would make no difference. After all only the chief of the detective squad is responsible for the final decision, making the role and significance of the teamwork contingent next to negligible.

3.2.1.2. Article 35.1. of the law provides classification and status of suspects in criminal proceedings. However, nothing is prescribed concerning the time limits for this status. In other words, since there is no condition for termination of the status the person involved has nothing else but being the suspect until the case shall be proven irreversibly or, until the whole process shall come to some

final outcome. Such narrowness in status classifications is making the situation of the suspect extremely vulnerable. Since the person shall formally continue to be the suspect the probability for being detained shall stand, and the person will be obliged to ask for travel permission as well as to turn up at any time summoned.

3.2.1.3. Article 35 of the law provides the rights of the suspect, Article 36 that of the defendant and Article 41 the rights of the advocate and other participants in the litigation process. An important provision in these clauses is the right to get acquainted with case files (resolutions, evidence and other documentation) and subsequently to lodge complaints or requests. However, the irony is that the authority to grant those “rights” is in the discretion of the other “equal counter party” to the case – interrogators and detectives.

Since both the suspect and defendant become dependent from the interrogator, investigator or prosecutor, when arrested or detained, the abovementioned provisions of the law simply become ethereal and meaningless. For instance, mechanisms enabling the detainee to make use of its rights, as provided by Article 35.2.3, to submit evidence and related documents for self-defense are not present in the law.

Articles 35.2.8 and 36.3.4 provides rights for meeting with an advocate face to face. No need to deliberate on vital importance of this provision, where the law guarantees absolute confidentiality of such meetings. The interrogator or investigators are the least people to be allowed to learn the subject of their conversation. Any attempt to do interfere shall be violate the law. Unfortunately this guarantee is still on the paper. In reality the visit of an advocate is well orchestrated show. The advocate must knock quite a few doors to obtain the permission to see his client. Awkwardly enough, sometimes further authorization should be sought from the chief of the police department, or even “soliciting” the detective becomes inevitable.

3.2.1.4. Procedures prescribing justification and possibilities to restrict rights of a suspect in crime, including mechanism for supervision of such suppression measures as well as terms of releasing the suspect, are substantial criteria confirming the humane and human rights nature of any criminal legislation.

Although the present legislation prescribes methodology and justification for arrest and detention in considerable detail, regrettably the terms and rules for releasing or suspending detention had been left out. Such dubious provisions inevitably lead to absolute chaos in practice. Thus the police officers are free to decide whether there is a need to release the detainee prior to the trial. As a consequence, old practices persist and the detainee remains in detention cell without justifiable necessity for the purposes of investigation. In order to amend the law to become more humane, relevant rules on release mechanisms should be developed. Suspects detained during pre-trial investigation should be immediately released when the circumstances of their alleged involvement had been clarified, proper addresses and identifications are at hand, property assessed or seized, or if the case is still strongly debated or relation of the suspect altogether uncertain as yet, and especially when women and children are involved. The law should also prescribe mandatory criteria for the prosecution to change the decision for detention and to immediately release detainees.

3.2.1.5. Eventually the question on perfect balance to be sustained in certain aspects of the Criminal Proceedings Law, especially in relation to arrest, detention and imprisonment of suspects, defendants and convicts with their Constitutional rights for freedom, personal security, fair trial and presumption of innocence is crucial indeed from a human rights viewpoint.

In fact, Chapter Eight of the Law exclusively deals with the issue of detaining a suspect, and provides basic guidelines for execution of the oppression measure. Article

58 of the Law prescribes three legal grounds when the suspect must be arrested or detained. These being, firstly, if there are reasonable grounds to assume that the suspect may or would attempt to flee, secondly, if there are reasonable grounds to suspect a person to be involved in grave offences or ,thirdly, if suspected in especially dangerous crimes. Although these criteria seem to be indicative in supporting the work of the investigation to restore justice, it is barely justifiable to detain a person who is merely suspected in, though in concern of, a “grave crime” as yet.

The Criminal Law presumes 352 actions and omissions as criminal offences, among which 65 are classified as petty, 185 - as severe, 68 - as grave and 34 - as especially dangerous crimes. The present classification of crimes in the Criminal Proceedings Law justifies arrest or detention of individuals suspected in 102 types of actions and omissions just on the basis that such alleged misconduct fall under severe or grave crimes.

Article 58.1 of the Law is an imperative norm for prosecution due to the fact that within the whole package of sanction measures in the legislation it does not provide with an option other than for “arrest”. Thus the category of “grave crime’ implies immediate arrest of the suspect, and embraces such offenses like tax evasion; sale of improper quality goods; violation of the rules of exploitation of minerals; breach of environmental protection norms; and violation of traffic rules (negligence) to name a few. Prescribing mandatory and immediate arrest for suspects of grave crimes by legislation should be considered as gross violation of human rights.

In contrary, the previous Criminal Proceedings Law provided some room in the decision making process for the prosecution on the type of sanctions to be applied to suspects of similar crimes (Article 137). In other words, a decision could be made while avoiding the imperative prescription for arrest having a reasonable cause.

3.2.1.6. The new scope of jurisdiction when the judge exclusively decides the order for arrest or detention provides far much better guarantee for human rights. From now on the prosecution who's ultimate duty is to detect crime may not issue a permission to restrict the right for freedom merely as an administrative sanction as prescribed in previous legislation. The decision must be brought by the judge exclusively after having taken into account all necessary legal actions, including evidence and explanations provided by the suspect or its advocate, after having considered all circumstances related to the case and finally on the basis of exchange of views and argumentation of parties involved in the litigation process.

The new jurisdiction will benefit to the cause of human rights beyond doubt and fully correspond with the principles of international conventions Mongolia had entered so far. The comparative analysis of detention data from the first quarter of 2003 with previous year indicators shows that the number of arrested people had declined by 81.2 per cent, detained suspects by 27.4 per cent, and the number of defendants put under custody declined by 26.3 per cent. These figures were officially published in the report from the national seminar conducted by jointly by the Judicial and Execution Monitoring Center with participation from delegates of rural law enforcement agencies ("Unuudur" Daily Newspaper, No. 052, March 6, 2003).

3.2.1.7. In relation to the issue of oppression measures, there is another important topic concerning human rights worth paying attention, which is the issue of time limits and extension of periods for detention.

In the provisions of the new law the maximum detention term for especially dangerous crimes is prescribed to be 30 months (Article 69.4), and extension periods for further investigation is permitted for up to 24 months (Article 69.3). While the previous legislation prohibits extension periods for more than 2 months, the new law had increased such time limits dramatically by 12 times, to which there is no reasonable justification provided so far.

Furthermore the new law (Article 366.4) permits detaining minors for up to 18 months. This provision grossly violates the spirit of the Child Rights Convention, which declares that minors might be detained prior to trial “for the shortest possible period”.

3.2.1.8. The next issue where the provision of the previous law had been significantly deteriorated in the new version is the question of extension of detention periods. If in the former law it was prescribed that the extension of detention periods that lasts more than two months should be decided by a special resolution issued each month, then in the current law the prosecution is empowered to extend the time limits for a couple of months in advance (Article 69.5). This amendment is seriously affecting the human rights of detainees.

3.2.2. Legal Defense & Criminal Proceedings. Undeniably the decisive principle of criminal justice is the debate between the prosecution and legal defense (Article 17). However, the new legislation clearly underlines the statute of equality of litigating parties by embracing only the trial period of the proceedings when each party equally participates in the analysis of presented evidence, submits requests and expresses the position they hold.

3.2.2.1. In other words, the “equal” right of the defense becomes a phenomenon of ridiculous discrepancy when the entire hearings are essentially conducted on documentation prepared solely by the prosecution. However, true equality should be demonstrated by engaging the defense party in collecting evidence at the pre-trial stage and further applying them during the trial.

Article 41 describes the rights and duties of the advocate. The very fact that the defense attorney may request evidence, supporting documentation and factual data subject to approval from the prosecution attracts immediate attention. Alarming inclusion of evidence supporting the defense into the case file is to the discretion

of the prosecution. Given that the final outcome of any case would largely depend on access of the defense to essential evidence, capacity to present it at the trial and authority to call key witnesses, the provision of the law present to be inferior.

Thus further development of the legislation is needed in order to remedy the present unfair situation when the defense is not open to independently invite key witnesses and has to request the prosecution to make submissions to the case file.

The practice of undue delays or even the dramatic tendency of bringing wrong decisions and causing further damage to innocent people in numerous occasions merely due to the principally erroneous concept of understanding the role of advocate to be of symbolic nature should be urgently remedied.

3.2.2.2. As for persons being held in pretrial detention the possibilities to obtain an advocate are scarce. Along with insufficient number of public defense lawyers' lack of financial resources to hire attorney services makes the things only worse for the detainee. Unfortunately this is not a mere statistical curiosity rather the prevailing tendency. According to the results of the survey carried out by the NHRCM in 2002, in 42.4 per cent of criminal cases involving a total number of 783 individuals the pretrial investigation proceedings, including collection of the body of evidence, was carried out without providing any legal aid to the suspects or defendants. Interestingly, in most of these cases attorney services were made available during the trial, or even worse after the court ruling was issued, mainly when the convict asked for an appeal.

Legal literacy of the general public may have also contributed to the undesirable depiction revealed by the survey. 19.1 per cent of the respondents answered that legal aid was provided on demand whereas 33.1 per cent of the questioned had confirmed that they were denied with their request to be provided by an advocate.

3.2.3. Compensation for Damages Caused by Illegal Action.

Chapter Forty Four of the new Criminal Proceedings Law is an important instrument to protect human rights of individuals abused by illegal or incorrect actions from the interrogator, investigator, prosecutor or judge and provides with remedy measures in the form of compensation for damages.

Incorporating an entire package in the new law on compensation for damages caused to individuals in the process of prosecution is indeed a further step to provide legal guarantees for protecting related human rights in the administration of justice. Earlier there was a special legislation devoted exclusively to this branch of law, however the irony is that there was no single case in judicial practice processed under this legislation and which subsequently became void after the adoption of the new Criminal Law (2002).

3.2.3.1. Although six months had passed since the new law came into force (i.e. from September 1, 2002) no complaints neither petition was lodged with the courts within the scope of Chapter Forty Four. A thorough and comprehensive research is necessary in order to unveil the mystery of such “silence” or maybe the ignorance on the part of the legal profession, academia and human rights practitioners.

Article 389 of the new law is making mandatory for the state to compensate applicable damages to an individual as soon as a decision is ruled to dismiss the case due to lack of evidence. The law prescribes this obligation to be fulfilled in relation to any wrongdoing from the prosecution including in cases of negligence. In other words, the provisions of the law guarantee legal grounds to submit petitions and complaints for compensation. However, it should be stressed that Article 389.4, exempting the state from compensation of indirect damages, is in contradiction with the provisions in the Constitution on the basic human right for compensation (Article 16.16) as well as with the

duty on restitution by the state of violated rights of the citizen (Article 19.1).

The Constitution of Mongolia does not provide any option on direct or indirect damages, neither any privilege to exempt the state from compensation duties.

3.2.3.2. According to Article 389.2 of the new Criminal Proceedings Law the right for compensations shall arise in cases when a suspect or defendant is released from detention due to lack of evidence, the court had ruled a rehabilitating decision or when a case is dismissed due to lack of corpus delicti or proof relating the person to the commissioned crime. In this respect the judge or prosecutor shall provide legal advice and explanations on the rights to claim compensation, and provides with certified copies of decisions on case dismissal, rehabilitation and other relevant documents in person or through correspondence.

3.3. Legislation & Human Rights

It could be claimed that since the adoption of new Constitution the national legislation has been completely reformed in the last 11 years.

Almost all laws and rules, which at present regulate diverse social relations, have been enacted during the aforesaid legal reform, which commenced after the adoption of the new Constitution (1992). Currently, there are 291 laws in effective and over 200 international treaties and conventions to which Mongolia is a party. The number of laws, which were enacted from one composition of the parliament to another, has increased throughout the years. The State Great Khural of 1992-1996 adopted 137 branch laws, amended 142 laws, denounced 45 laws, and ratified 140 international treaties and conventions, whereas the parliament elected in 1996 enacted 110 laws, made amendments to 225 laws and ratified 77 international treaties and conventions. The present parliament, which was elected in the year 2000, has up-to-date enacted 87 laws, amended 321 laws and ratified 81 international treaties and conventions.

These statistics prove that the legislators have been working effectively in reforming and advancing legislation and building multilateral and bilateral relations. However, the following human rights concerns should be addressed by the law makers in the process.

- 3.3.1.** From a human rights perspective, the situation where criminal proceedings, including procedures for arrest and detention, are prescribed by more than ten different legislation and jurisdictions does not stand any criticism.
- 3.3.2.** Lack of professional information systems, legal databases and effective mechanisms to streamline legislation hinders the legal profession to keep up-to-date with legal reforms, apply appropriate provisions and communicate effectively with their clients. The efforts of the Parliament and Government to create appropriate information networks and legal databases, with services provided from the Ministry of Justice and Home Affairs, do not meet customer expectations in terms of effectiveness, comprehensiveness, reliability and timeliness.
- 3.3.3.** Permanent nature of rapid legal reforms makes application of relevant legislation challenging. For example, legislation on social security, social insurance, education and healthcare had undergone substantive changes for more than three times and laws on business entities for more than four times in the last 10 years.
- 3.3.4.** An observation could be made on frequent legislative amendments in order to meet changes in policies, which is contrary to principles of proper policy-making guided by endorsed legislation. These drastic changes occasionally worsen rights and interests of the beneficiaries. Article 27.2.3 of the Law on Civil Service (2002) states that a “civil servant dismissed from work for reasons other than work performance should be paid a lump-sum allowance in the amount equal to at least the annual salary received from last employment”, and Article 30.2 prescribes that a

“retiring civil servant shall be provided with a lump-sum non-refundable retreat assistance in the amount equal to at least the annual salary received from last employment”. The State Great Khural reduced the amount of the above lump-sum payments from annual to semi-annual basis by passing amendments to the law submitted by the Cabinet on January 2, 2003. Obviously the government was keen to avoid financial implications derived from policy reforms in the area of public service.

- 3.3.5.** Moreover, the present practice of endorsing new legislation not necessarily accommodating human rights principles and values, inconsistent and some times contradicting with provisions and the spirit of effective laws justifiably raises human rights concerns.

The Administrative Law (1992) authorizes a Soum governor to take into custody an offender of administrative offences on five actions. The Law on the Execution of Judicial Decisions (2002) permits “a prisoner giving birth while servicing imprisonment term to be with her child up to reaching 1 year of age”.

The provisions in the Labor Code (1999) relating to types, terms and amounts for “disability allowances caused by industrial accidents” (Article 97.1.1) are fully inconsistent with relevant remedial clauses in the Civil Law providing for “full compensation of incurred damages” to individuals who lost labor capacities due to industrial accidents.

In another instance, the Constitutional Court declared Article 5.3 of the Civil Law (2002) as unconstitutional on two occasions. The provision of the law provides that “executive orders from government ministries, portfolio agencies and local administration issued for public observance enjoy the same jurisdiction as civil law and serve as reference in the administration of justice” (“the State Gazette”, issue 10, 2003, p 269-272).

3.4. Implementation of International Human Rights Treaties

Foreign relations and international cooperation of Mongolia had reached new horizons, and as a member of the international community it enjoys unprecedented rate of accession and ratification to generally accepted international treaties and agreements. However, effective measures should be taken to implement obligations under the ratified treaties, incorporate imperative standards, norms and definitions in the lawmaking process, as well as to streamline national legislation for consistency with provisions in international covenants.

3.4.1. Policies and practices related to the implementation of ratified international treaties and covenants are not visible from both lawmakers and executive bodies.

Existence of contradicting and often conflicting provisions in international treaties and national legislation intended to be applicable within the same venue of social relations deserves special attention. The State Great Khural endorsed the Rome Statute on International Criminal Court on 5th of April 2002. The Statute is a fundamental document comprising both procedural and substantive criminal jurisprudence, and which establishes the jurisdiction of the International Criminal Court, sets definitions, composition and classification of crimes, types and degree of punishment, minimum age for criminal proceedings, clarifies on procedures and objectives of administration of justice, structural frameworks and scope of prosecutor's investigation. It could be claimed that from 5th of April 2002 Mongolia enforced two coexisting criminal legislation.

3.4.1.1. The Rome Statute assigns punishment for five acts in crimes of genocide, eleven acts in crimes against humanity and fifty acts in war crimes. Chapter Thirty "Security of Humanity and Crimes Against Peace" in the Criminal Law of Mongolia (2002) defines genocide

closely with the text in provisions of the Rome Statute, however never mentions on crimes against humanity and assigns punishment for ten acts in war crimes.

3.4.1.2. The maximum degree of punishment in the Rome Statute (Articles 77 and 78) is thirty years of imprisonment or lifetime sentencing. The Criminal Law of Mongolia assigns capital punishment on crimes that under the Rome Statute would not constitute severe penalty, e.g. aggravated manslaughter (Article 91.2 Criminal Law).

3.4.1.3. The minimum age for criminal proceedings is established to be 18 years of age in the Rome Statute (Article 26). However, national legislation established the minimum age to be from 14 (Article 21, Criminal Law) even on petty crimes, which of course are not comparable with socially dangerous crimes defined in the Rome Statute.

3.4.2. The practice of publishing the national law on endorsement, and not the actual text of international treaties, leads to inadequacies in legislative drafting and further complicates application in the administration of justice.

Article 25.1 of the Law on International Treaties of Mongolia provides that “agreements endorsed by the State Great Khural shall be published in accord with procedures to publicize laws of Mongolia”. The Law on Proceedings of the State Great Khural (Article 45.1) provides that an endorsed law shall come into effect only after its publication in central gazette, and the “State Gazette” bulletin shall publish full texts of laws and other Parliament decrees on a periodic basis.

Taking into account that courts could not possibly apply laws unless officially published (Article 12.2, Law on Judiciary), and that any endorsed legislation, including international covenants to that matter, could not be considered in effect unless officially published, there is an urgent need for publishing full texts of ratified treaties

and covenants in official gazette, in some instances post-datum.

- 3.4.3.** Consideration should be given to the timely submission and responsible presentation of Government implementation reports to Treaty Bodies.

Record of Government Reporting Obligations to Treaty Bodies

From the above table, the Government of Mongolia delayed 1-2 periodic reports on five covenants out of six under its reporting obligations.

1	Covenant	Year of Ratification	Reporting Periods	Reports Due	Comments
3.4.4.	ICCPR	1996	Every 4 years	16th periodic report in 2002	Two periodic reports due
2	ICESCR	1996	Every 4 years	16th periodic report in 2002	Two periodic reports due
3	CEACR	1996	Every 4 years	16th periodic report in 2002	Two periodic reports due
4	CEHRL	1996	Every 4 years	16th periodic report in 2002	Two periodic reports due
3.4.5.	CRIC	1996	Every 4 years	16th periodic report in 2002	Two periodic reports due
5	CRPD	2001	Every 4 years	1st periodic report in 2003	1st periodic report due
6	CAH	2001	Every 4 years	1st periodic report in 2003	1st periodic report due

work in relevant job descriptions, promoting the covenant to the public, organizing seminars and monitoring progress should be pivotal in further implementation of relevant conventions. Unfortunately, previous reports do not address challenges and immediate objectives to ensure implementation of relevant rights neither do they provide an accurate picture on impediments, but rather stress on reporting of ostensible achievements.

- 3.4.6.** It became common practice to not fulfill, or partially fulfill, obligations as a State Party to international treaties.

Comparative Table of National Legislation with Relevant Provisions in Selected Conventions

Name of Covenant and Selected Extracts	Status of Implementation
<p>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</p> <p>Article 2 1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.</p>	<p>After four years since joining the convention actions to implement prevention measures has not been undertaken</p>
<p>Article 4 1. Each State Party shall ensure that all acts of torture are offences under its</p>	<p>Article 251 (Extracting Information) of the Criminal Law provides that "extracting information by means of threat to use force, degrading treatment, deceit or</p>

<p>criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.</p>	<p>other illegal methods shall be punishable by imprisonment for up to 5 years"; and "punishable by imprisonment from 5 to 10 years, if such extraction of information had caused serious or grave physical injuries or substantial damages to the person".</p> <p>The Criminal Law does not apply the term "torture" in the text, and offences in Article 251 could be classified as serious and grave crimes. However the convention classifies torture as "especially dangerous crime".</p>
<p>Article 10 1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. 2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.</p>	<p>Relevant measures not taken, subject not included in training programmes</p> <p>Not included as an indicator in performance evaluations of law enforcement personnel</p>
<p>Article 11 Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.</p>	<p>Provision for supervision as per first part of the article not present</p> <p>Monitoring and inspection of conditions at detention facilities is done on occasional basis, however measures to ensure conformity with established norms and standards not undertaken</p>
<p>Article 15 Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.</p>	<p>Articles 16.3 and 92.4 of the Criminal Proceedings Law prohibits extracting information by means of pressure, use of force, demand, deceit, and prohibits collection of evidence by means of degrading, inhumane or cruel treatment.</p> <p>However, the Criminal Proceedings Law does not provide that such information shall not be invoked as evidence in any proceedings.</p>
<p>International Covenant on Civil and Political Rights Article 9 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.</p>	<p>The Criminal Proceedings Law of Mongolia provides that only a judge shall exercise powers to arrest or detain a person. However, according to the Administrative Law, Soum Governors may impose punishment by means of arrest, which contradicts with the provisions of the covenant.</p> <p>Although the Criminal Proceedings Law prescribes 2 months as general terms for detention, in cases of serious or grave crimes such terms may be extended to 24 months (2 years) or under special circumstances up to 30 months. These terms contradicts with the provision in the convention for trial within a reasonable time or to release.</p> <p>Provisions in the Criminal Proceedings Law prescribe arrest of suspects of serious or grave crimes. Article 68.2.2. of the Criminal Proceedings Law prescribes arrest (including minors) for reasons of threat to flee from justice.</p>

<p>International Covenant on Economic, Social and Cultural Rights</p> <p>Article 7</p> <p>- Remuneration which provides all workers, as a minimum, with a decent living for themselves and their families in accordance with the provisions of the present Covenant;</p> <p>- Safe and healthy working conditions;</p>	<p>Applying provisions in Article 7 of the Law on Minimal Wages the Government issued Decree 264, on the 25th December 2002, which established MNT 177.51 per hour or MNT 30, 000 per month as the minimum wage for workers under employment contracts starting from 1st January 2003. Earlier, salaries for public servants were established to be MNT 32, 500 per month at the entry level (Government Decree 195 dated 18th September 2002).</p> <p>During inspection at some 30 business entities at the capitol city and Darkhan, most companies lacked proper ventilation facilities, electricity lining, along with poor sanitation and hygiene conditions.</p> <p>The inspection at 200 manufacturing outlets by the State Occupational Safety Board revealed 343 industrial accidents in the year 2002 with 365 casualties and 47 fatal accidents.</p>
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<p>Convention on the Rights of the Child</p> <p>Article 3</p> <p>In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration</p>	<p>Chapter Forty-two of the Criminal Law (2002) contains the special procedure on proceedings for juveniles. The special procedure has terms providing some relief and rights protection for juveniles, however it could not be seen as safeguarding "the best interests of the child".</p> <p>The volume of executive orders and decrees issued by government ministries, state agencies and local administration for public observation is enormous. These orders and decrees should be used only as a measure of last resort and for the shortest period of time.</p>
<p>3.5 Executive Orders & Human Rights</p> <p>The volume of executive orders and decrees issued by government ministries, state agencies and local administration for public observation is enormous. These orders and decrees should be used only as a measure of last resort and for the shortest period of time.</p> <p>present administrative acts issued by ministries and agencies have not been centrally registered, evaluated and monitored according to established procedures. Moreover, there has been no regulation on publication and compilation of these administrative acts.</p>	<p>Procedural provisions for arrest and detention of juveniles are not different from that of adults (Article 366, Criminal Proceedings Law).</p> <p>Article 366A Criminal Proceedings Law contradicts with the provision in the convention prescribing on Apprehension of Unsupervised Minors (1994) which allows a competent police officer to apprehend a child for up to 7 days in order to establish address, find whereabouts of parents or custodians.</p> <p>detention of innocent minors is a serious rights violation.</p>
<p>3.5 All non-executive orders and decrees issued by ministries and agencies are supposed to be registered at the MoJHA, in accordance with Government Resolution No. 162 of</p>	<p>The Law on Child Rights Protection and other legislation do not provide for these measures.</p>

1993 on Examination of Territorial Administrative Acts and Resolution No. 178 of 1997 on Examination and Registration of Legislative Acts of Ministries and Coordinating Agencies, a consistent picture on the status validity of executive orders is not available. This is mainly due to irregularities in submissions to the MoJHA and inferior information systems within the justice ministry. An inspection conducted on data covering 2000-2002 discovered that executive orders are not usually submitted to MoJHA within the prescribed 5 day period, and that around 200 administrative acts issued by ministries, agencies, Ulaanbaatar and Tuv Aimag governors were not registered and evaluated by the above Ministry (MoJHA Presentation Paper to the Cabinet, 2002).

3.5.2. Currently mechanisms for official publication, enforcement and abidance of administrative acts are not present. Although some ministries compile and publish their administrative acts in respective institutional bulletins, these publications would have restricted coverage and limited distribution policies. In other words, the general public would have limited access to vital information contained in the administrative acts. On the other hand, while any legislative acts come into effect after publication the executive orders are intended for public observation without effective communications to its recipients.

3.5.3. The NHRCM had conducted a legislative review of executive orders compiled at the MoJHA. The process itself was extremely complicated due to the fact that information on validity and record of amendments could not be extracted from relevant databases. Overall the exercise revealed numerous cases of violation of national legislation and human rights principles. The following are examples that had drawn attention of the reviewers.

- “Temporary Regulation on Redundancy Payments” adopted by Decree No.43 of the Minister for Finance and Economy on 13 February 2003 provides that a retiree receiving redundancy payments will not have rights to re-enter public service in the future (Clause 7). However, the Law on Public Service (Articles

16.2.2. and 26.1.3.) stipulates that restriction to re-enter would apply only to persons in breach of professional conduct or abuse of authority in their last employment at public service. In this regard the temporary regulation imposes restriction for re-entry to persons who retired for redundancy reasons, in other words under circumstances beyond their control or irrelevant to their performance. The above-mentioned clause of the regulation was invalidated after an official demand was made by the NHRC to the MFE.

- The Chief of the General Customs Department issued Decree No.589 on “Special Registration Measures” dated 14 September 2001. According to this decree only licensed businesses were permitted to register goods to be realized on the territory of Mongolia with total value above USD 3000 at the customs office. In effect the decree prohibited private entrepreneurs to import goods with total value above USD 3000 to the country. Later on the decree was canceled by the Chief of the GCD upon official demands issued by NCHR.
- Although Resolution No. 86 issued by the Presidium of the Civil Representative Khural of Ulaanbaatar city on “Community Development Inspectors” had created new jobs, the administrative act had authorized the “inspectors” to impose fines. According to the resolution the inspectors are entitled to 20% from the amount of fines they collect from businesses and organizations allegedly accountable for breaching community development regulations. Moreover the inspectors are authorized to impose fines in the amount of MNT 800-1500 on individuals violating legislative acts issued by the Civil Representative Khural or the Mayors Office. Eventually this would encourage the inspectors to abuse their powers and conduct their duties arbitrarily.

- The Director of the GDP, after consultations with the General Prosecutor, issued Decree No.74 on “Regulations of Detoxication Centers” dated 15th May 1994. The so-called detoxication centers still operate under this regulation. Conversely this rehabilitation function should be removed from the police altogether.

In relation to the latter case, the Constitutional Court reviewed a private complaint questioning Article 17.2 of the Law on Police to be consistent with the spirit of the Constitution. After hearings on the case the Constitutional Court issued Statement No.02 dated 10th April 2002. According to this statement the provision in the law authorizing the “Director of the GDP to adopt and implement regulations on sobering up procedures after consultations with the General Prosecutor” was found to be unconstitutional. Article 13.13 of the Constitution declares that “no person shall be arrested or have their freedoms restricted upon any grounds beyond the law”. Indisputably, the decree issued by the Director of the GDP should not have same jurisdiction as civil law.

However, the very fact that sobering up procedures is still regulated under decree No.74 (1994) is illegal and seriously violates basic human rights for personal security.

3.6. Procedures & Criteria for Public Servant Performance Evaluation

Mechanisms to respect human rights are not embedded in the procedures and criteria for public servant performance evaluation. Article 19 of the Constitution declares “the State shall be responsible to create economic, social, legal and other guarantees ensuring human rights and freedoms, for the prevention of violations of human rights and freedoms and restoration of infringed rights”. However genuine instruments to fulfill these guarantees are not present in the operational frameworks of the public service.

3.6.1. Review of relevant guidelines for staff performance evaluation at the ministries of health, infrastructure, environment, social welfare and labor, and justice and

home affairs revealed that the main criteria established by most agencies were workplan deadlines, staffing efficiency, discharge of contracts and meeting cost-saving targets to name a few. In other words, indicators appraising effectiveness of client-oriented services, and hence contributing to the fulfillment of constitutional duties of the organization, are not seen as a priority.

For instance, Order No.168 of the Minister for Education and Science (2002) on "Performance Evaluation of Portfolio Agencies" provides for a 22 point evaluation scheme with an ascending ranking from /-7/ to /+15/. Among those points there is no reference to how many clients were provided with services aimed to fulfill their right to education, engage in scientific, cultural, artistic or other creative work. Evaluation criteria in other government ministries suffer from the same inward oriented values requiring dutiful service to the office.

- 3.6.2.** Naturally, human rights are concerned in the daily activities of the judiciary and law enforcement agencies, and one would reasonably expect that performance evaluation of personnel would include client oriented indicators. On the contrary, these indicators are formulated to show qualitative results on processed cases, executed sanctions, monetary value of fines and the like. Strikingly, the quantity of illegal actions and omissions that lead to human rights violations is not included in those criteria at all.

According to the results of a survey on performance evaluation at some ten khoroo duty stations of Songino-Khairkhan and Bayanzurkh Districts, job performance of police officers are evaluated on a monthly basis. Interestingly, the evaluation is conducted in a fashion somehow resembling those used in the entertainment industry. Officers who made their way to the first three nominations in the evaluation would be awarded with a 20% bonus to their monthly salary whereas those down in the last three positions would have their salaries deducted by 20%. In terms of indicators, the evaluation is based on the monetary amount of imposed fines along with the

quantity of confiscated cold weapon and other potential means for commissioning crime. Some officers at these khoroo police stations reported on alleged practices of enforcing extra work shifts if the approved amount of fines is not collected during the day.

As a general rule, the police department would employ appraisal systems using 19-40 points, the prosecutors' office 200 points and the judiciary 22-34 points in the evaluation of their respective staff performance.

These points would not include incidents of arbitrary detention, unlawful sentencing or inflicted damages. Performance evaluation based on quantitative measures indicating the volume of cases, sanctions, fines and not necessarily indicators safeguarding human rights has become a well-established practice in the career development of the legal profession.

Lack of accountability systems and monitoring mechanisms to prevent human rights violations is a serious concern in the present practice of public servant performance evaluation.

3.7. Fee Collection & Human Rights

Wealth of groundless and arbitrarily fixed payments, fees and fines cause a considerable burden to citizens and impede realization of their basic human rights. These payments and fees affect primarily their right to ownership and decent living.

At present any public agency could arbitrarily impose chargeable services without any relevant authorization. In particular, ordinary people are overwhelmingly irritated by the diverse amount of payments and fees established in the healthcare and educational sectors.

3.7.1. Despite medical insurance payments service fees are collected in both public and private hospitals from opening medical records, undertaking analysis, administering injections, appointments with doctors, visiting or nursing

the patient, sport a white gown or using the WC. For example, services in Bayangol District Health Center for opening medical records costs MNT 300, certified medical treatment register MNT 100, public WC MNT 100, a white gown to visit a patient costs MNT 100. At the Third City Hospital appointment to a practitioner would cost MNT 500 for persons without proper documents (Survey Report, 2003).

The list of paid services certified by the warden and administered in the Maternity and Infancy Research Center Hospital is provided below for illustrative purposes.

- ❖ Each section shall have two double-bed wards available on chargeable basis which are not to be included in the number of medical insurance covered or subsidized wards;
- ❖ Medical practitioners may proceed to paid services after working hours with honored doctors charging MNT 1,500; senior practitioners MNT 1,000; and ordinary practitioners charging MNT 400;
- ❖ Non-affiliated mothers delivering their babies at the Center are required to donate a mutually agreed amount to the development fund;
- ❖ MNT 1,000 shall be collected for nursing a patient.

3.7.1.1. The financial audit conducted by the State Occupational Control Board at the State Central Clinical Hospital established that one bed in paid wards was priced at MNT 3,000 to MNT 4,000, 65 paid beds were available in 14 sections, generating MNT 50.8 million in revenues. The Wardens Order No.A/47 (2001) approved accumulation of 40% from revenues collected from after working hour services to the hospital account and the rest to be distributed to medical personnel, which amounted to MNT 42.8 million from the total of MNT 65.7 million collected from after work services. In another case, patients with medical insurance undergoing treatment at the surgical section of the Kidney and Urethra Disorder Clinic still had to buy needed urinary tubes for MNT 5,000 ("Zuuny medee" daily newspaper, No. 41, 19 February 2003).

3.7.1.2. While taking into account that the Medical Insurance Law (1996), which was in effect up to 1st January 2003, provided all residents irrespective of insurance coverage with free medical examination at state clinic hospitals, ambulatories and by general practitioners, including in area, soum or bagh centers, and with free analyses and services other than on chargeable basis, the very fact that the abovementioned institutions charged fees are illegal.

According to the new Medical Insurance Law (2003) previously paid medical services became free of charge at both public and private hospitals. The difference from the previous law is that medical insurance coverage is now required in order to enjoy free services at ambulatory or stationary clinics. Although three months have passed since the law entered into effect, but collection of fees still remain in those hospitals.

A follow-up inspection by State Occupational Control Board at the State Central Clinical Hospital seized MNT 2.3 million collected in fees and transferred the sum to the state budget (“Zuuny medee” daily newspaper, No. 72, 27 March 2003).

3.7.2. Series of surveys conducted at affiliated institutions of the Mongolian National University, Police Academy, secondary schools and kindergartens, selected on representational basis of the educational establishment, show that numerous groundless fees, payments and fines exist under different titles. Order No.76 dated 19th December 2001 on “provision of paid library services” issued by the Rector of the Mongolian National University obliges students to pay MNT 500 per day in fines for late return books. On top of that, students were required to pay MNT 20 for WC use, and to which they had to strongly demonstrate protest in order to get the fees lifted.

3.7.2.1. Order No. B/651 dated 30th December 2002 issued by the Director of the Police Academy set rules for

“accumulating deposit funds”. According to the rules every cadet of the Academy is expected to temporarily deposit cash in varying amount around MNT 149,760 at the moment to the accumulation fund. The accumulation fund is used to purchase textbooks, manuals and other materials, service uniforms, projectiles for shooting exercises, preparation of fire tools and pay overtime for professors. However Article 40.4.5. of the Law on Education (2002) provides that “the state shall be responsible for all expenses related to military and police higher education”.

3.7.2.2. Government Resolution No. 170 (2002) established limits for annual tuition fees for tertiary studies and authorized administration of educational institutions to set tuition fee within those limits. Despite the established range between MNT 230,000 to MNT 300, 000 for tuition fees, students are required to pay more at state owned universities and institutes in the capital city which is a financial burden for them and their families.

3.7.2.3. School children and their family budgets have been seriously affected by different payments and fees imposed by schools in recent years, such as paid coaching, textbook fees, fines for late entry or skipping class, classroom repair work, presents for teachers or exaggerated student parties. These practices had raised public resentment over the years and became a hot topic in the media.

Collection of fees has become common for intensive training courses within the public education system. In certain schools (for example, in the School No. 93 of the capital city) an intensive course costs MNT 100 an hour for each student; in other schools it costs (School No. 33 of the capital city) MNT 800-1,000.

An intensive course referred above is a form of selective learning during after school hours or through correspondence sessions. The collection of payments for this kind of training violates provisions of the Constitution

(Article 16.7) and Law on Education (Article 6.2) on “provision by the state of free public education”.

Teachers in secondary schools at their discretion have established a system of “fines”. For instance, missing a session is “fined” MNT 100 to MNT 500 (Schools No. 54 and 34 of the capital city).

“Money tapping” from parents has been long established in state owned kindergartens as well, which take creative forms such as “renting” shoe pads (MNT 50) or collection of money for “kindergarten support donations”.

- 3.7.3.** Traffic Control Checkpoints of Ulaanbaatar City is another illustration of “money tapping” activities surrounding daily lives of ordinary people.

Resolution No. 47 (2000) issued by the Civil Representatives Khural of the Capital City approved the “Regulations for Auto Transport Fee Collection”, and which provides to collect MNT 500 from each vehicle registering with the Auto Transport Control and Registration Checkpoints for accumulation at the “Ulaanbaatar Foundation” account. Veterinary inspectors at these checkpoints levy MNT 6 to MNT 12 per kilo from uncertified meat products, MNT 15 to MNT 18 per hide of cattle, MNT 6 to MNT 8 per kilo of wool or cashmere and MNT 4 to MNT 6 per kilo of dairy products. The fees are collected without necessarily conducting any analysis or veterinary services, simply due to the absence of mobile labs as such.

- 3.7.4.** Imposing fees and payments arbitrarily and without demonstrating common sense has become widespread practice at each point of service. Some would take advantage of their monopoly rights to charge MNT 100 to MNT 500 for a single invoice form.

- 3.7.5.** In recent years of growing rural migration settlement fees seriously affect the livelihood and human rights of many citizens, particularly those with large families and modest means to sustain a decent livelihood. Administrative acts

to levy MNT 50, 000 from adults and MNT 25, 000 from children for settlement in the capital city seriously violates basic human rights of the migrants. The NHRM had approached relevant authorities urging them to review the situation with settlement fees. Unfortunately, the case had to be taken to courts (*see details in the previous annual status report*).

In reality, these illegal fees are expected to be paid by citizens without the right connections in a big city, who lost their source of income during the harsh winter draught, and who are looking for better employment opportunities in a place they don't know and culture they don't understand. Human rights of the migrants are further violated when access to education, healthcare and other services are denied due to the inability to meet the resettlement fees.

3.8. Corruption & Human Rights

Corruption is one of the main issues attracting public attention in modern Mongolian society. Most scholars tend to define corruption as an act by a public servant to fulfill self-interest through directly receiving money and other gains, or rights for possession, in exchange for giving privileges to the giver by abusing power or exercising illegal action.

Corruption ultimately leads to violations of human rights as in order to achieve its objectives of exercising illegal action through public servants the perpetrator evades social justice and appropriates public wealth.

Bureaucratic nature, inefficient services, delayed proceedings, professional incompetence, lack of accountability systems and closed environment of public agencies are nutritious grounds for corruption and bribery to prosper.

3.8.1. Most recently the government began to look more carefully into the issue and take steps to combat corruption. A series of awareness raising and policy development events involving representation from civil society, media, academia,

international practitioners and high-ranking officials had made the discussion on the issue public for the first time and focused public attention to specific areas of concern.

The Law Against Corruption was adopted in 1996, however its enforcement is still pending around issues of key actors and mechanisms for implementation. Income declaration procedures, a key element in the law for preventing corruption and raising accountability standards, have not been enforced up till present.

The National Anti-Corruption Programme, endorsed by the State Great Khural in 2002, admitted the existence of corruption and pointed to its negative impacts such as the issue of trust to the state from the public, impediments caused to political and economic reforms and even possible danger to national security.

A series of meetings and seminars, with participation of state and non-government organizations, culminated by the National Anticorruption Conference in March 2003, recommendations and findings of which suggested worst cases of corruption in the following areas.

- 3.8.2.** Corruption seriously violates rights of citizens for entrepreneurship, lawful possession, application and ownership of property. An opinion poll conducted among businesspeople, asking if bribes are given during visits to public agencies, revealed that 21,6% of respondents reported giving bribes most of the time, 19,0% believed it happens on a constant basis, 21,0% suggested it could happen occasionally. In other words, 63,4% of respondents believe that corruption became common in the public sector.

The President of the Taxpayers Association announced that a similar survey found that business people would use 15% from the total amount of payable taxes in bribes (“Onoodor” daily newspaper, No. 73, 28 March 2003).

- 3.8.3.** Revenues collected from tax and customs offices are essential used for accumulating the state budget. Corruption in these offices would adversely affect tax collection and

ultimately hinder financing of health, education and social welfare programmes. As a consequence, this may lead to violation of right to health and education, and harm representatives of vulnerable groups desperate for these social welfare services.

Results of a public opinion poll shows that the customs department (73,5%) is seen as the most corrupt office, followed by the taxation department (40,1%) (National Anti-Corruption Programme, 2002)

The opinion poll conducted among businesspeople also found that “services and operations of customs” are the most serious challenge in conducting business. They criticized operations of the customs office being overwhelmingly bureaucratic, inefficient and abusive which in all adversely affects the business environment (Mongolian Economy and Business Environment, 2002). Flow of illegal goods through customs, concealing actual consignment, wrongful application of pricing tariffs and lowering collectable taxes are all related to corrupt practices of the customs office.

3.8.4. Various surveys conducted by different organizations would constantly indicate law enforcement agencies to be positioned in the high ranks of corrupt offices. In fact, public scandals related to the process of internal investigations at these agencies reaffirm the findings of the above surveys.

An opinion poll conducted by the Human Rights Education Center in 2002 among 475 legal professionals and 417 individuals revealed that 55,3% of respondents from the legal profession and 73,8% from individuals agreed on presence of corruption at law enforcement agencies.

In a similar exercise to rank worst corrupt public offices 54,5-65,7% respondents named the prosecutors office, police and courts (Seminar Papers, The Private Sector in Combating Corruption, 2002). On the amount of bribes given by businesspeople the courts ranked second (41,6%) and police being fourth (30,7%).

Corruption in law enforcement agencies ultimately leads to violation of rights to personal security, equality before courts, fair trial and compensation for damages, and further aggravates practices of favoritism and discrimination.

Ineffective proceedings, undue delays, arbitrary detention, extended detention periods (up to 30 months) and absence of procedures for release are some examples that serve as causes for corruption.

3.9. Crimes in Trafficking of Women

3.9.1. Globalization opens new opportunities for countries to foster growth and development. However negative consequences go alongside with the process of opening and bringing closer new markets. Human trafficking and emergence of international networks engaged in the crime of trafficking is one of these negative consequences. Scholars admit that preliminary conditions and factors for this type of crime already exist in Mongolia. Overall poverty, widespread unemployment, escalating prostitution and increasing flow of migration provide nutritious ground for the flourishing businesses of counterfeiters engaged in visa processing and international marriage agencies, and serve as preconditions for trafficking crimes.

Illegal migration to seek better employment opportunities at the country of destination creates the demand for suspicious services. Whole networks are operating to provide with fabricated passports, change of identities and issuing of false visas.

3.9.2. Trafficking in women would most definitely lead to their subsequent forcing to serve in the prostitution industry. In some instances, women already engaged in prostitution would seek for intermediaries to assist them with travel arrangements and relevant employment at the point of destination. Number of women and girls engaged in prostitution is alarmingly increasing throughout the years, and networks of intermediaries exploiting sexual labor is

getting more organized (Report, Status of Trafficking of Women and Girls in Mongolia, 2002). Findings of the study suggest that poverty and difficult family circumstances would push women to prostitution.

- 3.9.3.** Recently reports on alleged cases of women and girls becoming victims of trafficking became common in the media.

The first case of trafficking of women was established by court in 2001. The incident began when two foreign citizens placed an announcement in papers in early 2000 announcing employment opportunities in “several countries in Europe, specifically Yugoslavia and Romania with high paid salaries”. Two girls were selected from applicants, transported to Yugoslavia via China, forced to prostitution and then smuggled. The girls managed to contact their parents, who through active involvement from the Ministry of Foreign Affairs returned them home. The perpetrators of this crime were sentenced according to Article 111.2 of the previous Criminal Law.

- 3.9.4.** The Central Intelligence Service had identified two commercial companies allegedly engaged in trafficking of girls to Japan for prostitution in the year 2001 (CIS Media Release, October 2001). The case file on perpetrators was transferred to the Criminal Police Department, however later on the cases were closed as the alleged victims never filed a complaint on the issue.

The number of reports on alleged mass trafficking of women and girls to China is increasing. It is believed that the main route of trafficking is to cities of Erlian, Khokhe Khot and Beijing, and that a number of both Mongolian and Chinese networks operate on both sides of the border. In the year 2001, a foreign citizen was arrested at the border while attempting to smuggle four girls to Macao through mainland China. The perpetrator confessed that the girls were introduced to him in entertainment establishments, and it was agreed that he would assist

them to find jobs in brothels of Macao (“Odriin Sonin” daily newspaper, No.280, 19 December 2001).

Unfortunately, official statistics on trafficked women is not available mostly due to the latent nature of the crime.

The report of the trafficking study conducted jointly by the NHRCM and Human Rights and Development Center mentions alleged cases of trafficking of women and girls to China, Macao, Singapore, South Korea, Japan and Yugoslavia (Report, Status of Trafficking of Women and Girls in Mongolia, 2002).

3.9.5. The perpetrators of these crimes use media channels to select victims. Job announcements on high paid overseas work for young, charming and well-groomed ladies, job offers in entertainment outlets and massage salons, and international marriage services is increasingly becoming common in the media. Other announcement would include recruitment of young ladies between 18-24 years of age as au pairs in Germany and acquaintance services for ladies below 23 years of age seeking marriage with South Korean nationals.

3.9.6. An amendment to the previous Criminal Law in the year 2000 included a provision for “Contracting under Deceit” (Article 111.1), which assigned punishment by imprisonment from 3 to 8 years for trafficking with purpose of prostitution.

The new Criminal Law (2002) has a provision for “Human Smuggling” (Article 113), which assigns punishment by imprisonment from 5 to 15 years for smuggling or trafficking of persons for prostitution.

3.9.7. Trafficking of women for smuggling, prostitution and slavery are serious human rights concerns throughout the region. This type of crime has deep roots in Asia where individuals from poor nations frequently become victims of trafficking crimes. Only in the route between India and Nepal more than seven thousand women are trafficked

each year (Working Papers of the APF 7th Annual Meeting, New Delhi, 2002).

- 3.9.8.** Economic migration and cross-border prostitution are closely related with trafficking of women and children for smuggling and slavery. Recommendations of the APF 2002 Annual Meeting stressed the importance of raising awareness on the issue among vulnerable groups and public servants in order to reduce and prevent crimes in trafficking

3.10. Status of Rights of Migrant Workers

From approximately 100, 000 citizens, who either migrated, enrolled in skilled worker exchange schemes or study abroad to more than 20 countries, roughly 43, 000 are unregistered workforce in their destination country (unofficial data from the Legal and Consular Department, Ministry of Foreign Affairs, 2002). Most of them reside in Kazakhstan, and the Republic of Korea being the second largest receiving country.

- 3.10.1.** There are more than 336, 000 migrant workers in the Republic of Korea, and by the number of migrants in their country, Mongolia ranked sixth after China, Bangladesh, Philippines, Thailand, Indonesia and Viet Nam (source: "Report on Migrant Workers in Korea", KNHRC, February 2003).

As reported by the Mongolian Embassy in the Republic of Korea, there were approximately 17-18 thousand citizens living and working in the country by the end of 2002. However, official Korean statistics claim residence of over 14, 000 citizens from which around 230 are under industrial apprenticeship programmes and the rest being illegal migrants (source: "Report on Migrant Workers in Korea", KNHRC, February 2003).

- 3.10.2.** The NHRC of the Republic of Korea had conducted a study on the status of rights of migrants at the end of 2002, and published a substantive report on the situation of migrant workers. For data collection purposes the study enrolled 1,078 respondents representing 330, 000

migrants, and where 90 Mongolian respondents took part in the study.

Findings in the above report and observations made during meetings with compatriots working in Korea by NHRCM delegates in late 2002 draws attention to the following issues.

3.10.2.1. Most Korean companies violate migrant worker rights by over-time work, work over the weekend and partial payments. On the question of total working hours per week 15,6% responded "40 hours and less", 32% responded "41-60 hours", 43,4% responded "61-80 hours" and 5,5% responded "81 hours and more" which illustrates that overtime work is common practice.

On the question of number of days in overtime work 40,5% responded "six days in the week", 16,7% responded "4 days in night shift" and 23,2% responded "work over the weekend".

On payments for overtime, night shift and weekend work 36,7-43,0% responded "150% from normal rates", 18,1-23,5% responded "receipt according to normal rates". Migrant workers "A" and "D" reported that they work 10-12 hours per day, including over the weekend, and sometimes asked to work additional night shifts without proper compensation (Mission Report, NHRCM Meetings with Migrant Workers, November 2002).

Furthermore, some employers delay payment of wages for months with knowledge of the fact that the migrant illegally resides in the country. Manager of a food processing plant had not paid salaries for almost two years to the Mongolian migrants by promising a lump-sum at the end of their employment. The worker complained on the issue through representation by his parents to the Commission. The complaint was subsequently passed on with necessary documentation to the KNHRC.

3.10.2.2. Most migrant workers have employment under hazardous or poor working conditions.

According to the findings of the migrant workers report, on the question of workplace safety 33,7% expressed dissatisfaction, 34,3% found it reasonable and 32,0% were satisfied with present conditions. On the other hand, 50% of illegal migrants complained on frequent industrial accidents and harsh working conditions.

A citizen interviewed during the visit complained that the management of her factory does not pay attention to workplace safety, hygiene and sanitation. Her co-worker "T" broke both his legs in an industrial accident. The management of the company paid for his first visit to the hospital and provided with one month bonus salary, after which they hired another person for the job without removing the causes for the accident.

Ms. "N" suffered an injury during work that partially impaired her vision. The management of the factory was reluctant to provide allowances for medical care; however a charity organization answered her cry for help and prevented her becoming totally blind.

3.10.2.3. Cases of violation of personal security of migrant workers, harming family and child rights are present along with sexual violence of women workers.

The findings of the migrant worker report states that 20,7% of respondents claimed experiencing "violation of some type", 11,3% complained on "physical search at workplace", 32,6% reported "passport seizure" and 22,5% responded experiencing "sexual abuse and violation".

During a meeting with migrant workers a case was reported where parents forced by the police to leave the country had left their 13-14 year old girl in Seoul. Later they heard that she was employed in an entertainment outlet, and expressed concerns on the possibility to be forced to provide sexual pleasures to clients (Mission Report, NHRCM Meetings with Migrant Workers, November 2002).

3.10.2.4. The most serious concern for migrant workers in Korea is to remit their earnings back to their families at home. Some ask travelers and intermediaries that they not necessarily know in person to deliver cash. Recently, a number of financial institutions started to provide money transferring services to migrants, however cases of fraud and deceit illustrated that the venture is not risk-free. In fall 2002, a joint Mongolian-Korean company had reportedly lost USD 120, 000 of transfer money to swindlers in Seoul (“Mongolin Medee” daily newspaper, No.205, 2002).

3.10.3. From reports it has become obvious that migration flow from Mongolia is steadily increasing each year, and earnings remitted back home sustains and assists dependent families to meet basic needs. Earning remitted back home has become an additional source for currency flow to the country. If for example, a migrant worker in Korea financially supports 5-8 family members back home, then roughly 75,000-120,000 individuals depend on the income earned by the migrant family member (“Onoodor” daily newspaper, No.56, 12 March 2003). A report from the IMF claims that USD 80-100 million is transferred to the country each year in migrant worker earnings.

Mr. “B” told at the meeting that he earns around USD 1,000 per month and had sent back USD 10,000 each year to his dependent family for the last four years. The money was used to solve housing problems of their large family.

As a labor sending country actions must be taken to protect rights of migrant workers and cooperate with relevant organizations at the receiving country.

3.10.4. State and non-government organizations of Korea submit recommendations, opinions and demands to their Government to protect migrant worker rights and call for observing legal standards during forced deportation and detention. For instance, the KNHRC had submitted a recommendation to the Cabinet Secretariat on 10th of

February 2003 where widespread practices of overtime labor, unreasonable low wages, discrimination, industrial accidents caused by poor workplace safety and hazard control, and seizure of passports was reported. / <http://www.humanrights.go.kr/org/aboutnews/>.

3.10.5. The UN Convention on Protection of Rights of Migrant Workers and Their Families should become into force from 1st July 2003 (Article 87.1 of the Convention) after the 20th depositary submitted the instrument on 14th March 2003.

As a labor sending country, and perhaps not the smallest when compared to the population, Mongolia should review the issue of joining the covenant in the near future. The convention would allow better access for migrant workers to seek international protection of their human rights.

The following data is provided courtesy of the National Human Rights Commission of the Korean Republic, and compiled during the study on rights of migrant workers in February 2003.

Country of Origin

Representation by Country

Types of Employment

Citizenship	Total	Apprenticeships		Unregistered Workforce	
		Male	Female	Male	Female
Total respondents	336,985	35,596	13,730	185,674	104,105
Respondents	87	18	23	34	12
China/HK/Taiwan	85,302	8,730	7,092	41,551	27,929
Chinese/Korean	86	18	13	23	32
Indonesia	84,670	3,422	1,317	41,118	36,813
Indonesia	121	24	24	35	38
Indonesia	241,117	7,297	1,646	114,937	3,437
Philippines	44,020	4,946	1,097	23,269	14,708
Philippines	85	17	14	24	30
Bangladesh	19,582	2,973	1,798	9,849	4,492
Mongolia	90	10	1	39	40
Myanmar /	14,970	238	35	7,600	6,137
Kazakhstan /	11,429	2,037	259	7,003	2,130
Pakistan	87	16	0	70	1
Pakistan	7,598	1,167	0	6,350	61
Nepal	3,436	775	202	2,133	446
Sri Lanka	81	1	0	0	0
Other (including from Myanmar)	2,881	1,239	163	1,267	212
Other (including from Myanmar)	22,302	812	106	16,110	5,274

Types of Manufacturing

Distribution of Workforce /central and rural areas/

Weekly Working Hours

Days of Overtime /per week/

Payment for Overtime

Delayed Payments

	Total Total	Apprenticeships		Registered Workforce		Aliens
		Korean Descent	Others	Korean Descent	Others	
Total respondents	1,000	283	220	235	240	1,148
0 days and less	5.8%	4.0%	5.4%	6.8%	5.3%	16.3%
1-3 days	7.8%	4.2%	3.6%	6.2%	6.2%	16.3%
4-6 days	5.6%	16.7%	4.8%	3.7%	4.3%	25.8%
7 days	3.7%	0	13.4%	2.4%	5.0%	19.6%
8 days	6.6%	12.1%	3.9%	6.5%	14.0%	44.6%
9 days	0.8%	0	0	0	0	5.4%
10 days and more	0.8%	2.8%	13.1%	10.3%	9.0%	3.4%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Have you been under arrest in factory premises or in dormitory after working hours?

Who put you under arrest?

7-12 months	7,6%	0	2,6%	5,3%	8,5%	
1-2 years	9,2%	0	3,3%	13,2%	8,6%	
2 years and more	5,4%	0	0	14,7%	3,0%	
Total	100,0%	100,0%	100,0%	100,0%	100,0%	

Reasons for Arrest

Job Satisfaction

Hardships Experienced in Korea

	Total	Apprenticeships		Unregistered Workforce	
		Korean Descent	Aliens	Korean Descent	Aliens
Total respondents	100%	100%	100%	100%	100%
Long working hours	56,6%	81,2%	54,2%	66,0%	54,3%
Harsh working conditions	41,1%	32,9%	43,7%	50,0%	38,9%
Professional illness	36,3%	27,9%	40,2%	36,0%	35,8%
Industrial accidents	36,3%	20,1%	37,4%	50,0%	33,6%
Delayed payment	39,0%	17,8%	26,7%	33,3%	38,8%
Low wages	41,2%	35,6%	40,0%	60,0%	36,3%
Physical search at work	17,3%	15,1%	15,1%	11,8%	16,2%
Passport seizure	32,6%	40,0%	59,7%	6,0%	30,5%
Violence	21,0%	0%	21,0%	16,0%	22,1%
Sexual abuse	17,7%	2,7%	14,8%	16,0%	19,2%
Sexual violence	14,8%	0	12,3%	16,0%	15,5%

CONCLUSION, COMMENTS AND RECOMMENDATIONS

1. The legislation and legal framework for the protection of rights, and for the provision of public services and entitlements to the child, disabled and disadvantaged persons are being established.

Widespread unemployment and poverty severely hurts mostly the socially disadvantaged and leads to their further disempowerment.

1. The building-up of legal frameworks for social protection and welfare services to the child, disabled and extremely poor by the state should be acknowledged. However, related state policies are not consistent, and absence of proactive measures for genuine implementation of long-established legislation is apparent.

Broad unemployment and poverty hurts the social disadvantaged groups the most and leads to their further incapacity to sustain a decent living.

1.1. Social benefits and welfare services for the child from vulnerable groups, especially from extremely poor and low income families, requires measures to facilitate equitability in access, improve quality and effectiveness in delivery, and to increase participation from state and non-government agencies, private sector and individuals concerned.

In this respect, the Government's Improvement of Child Development and Protection Programme needs sound management, together with active involvement of relevant organizations to ensure actual implementation of the rights of the child for safe environment, health protection and to education.

1.2. The government should provide throughout support to the employment of the disabled as well as to organizations and businesses creating jobs for them. Basic needs of the disabled are not met due to low amounts of pensions and benefits, and inaccessibility of welfare services. Inadequate procedures for delivering and lack of monitoring capacities for welfare services leads to the situation where persons most desperate for these services are left behind, and violations of their rights is becoming typical practice.

The present situation calls for consistent and effective policymaking directed to ensure the implementation of rights to education, healthcare and other entitled rights by the disabled, and to safeguard them from any forms of discrimination.

1.3. From year to year the numbers of poor and extremely poor in central and rural areas are critically increasing, and poverty itself, as a social phenomenon, is changing qualitatively to capacity poverty, which makes it one of the most serious and complicated human rights issues in modern Mongolian society. Obviously, taking the extremely poor under its protection and assisting them to crawl out from

their present misery should be a prime responsibility for the Government.

The prevailing system where social welfare services to the extremely poor is limited to ineffective one-time small scale assistance and/or subsidy, not necessarily accessible for all in need, should be reviewed and transformed to implementation of complex policies aimed to create jobs and provide sustainable means for income generation by its recipients.

2. Many issues remain in the implementation of rights to health protection and medical services, and rights prescribed by the labor legislation.

2.1. Immediate changes to equip the diagnostic and rehabilitation facilities at medical institutions with modern technologies, and, more importantly, to raise professional and ethical standards of personnel, who regrettably perform persistence in taking gifts from clients, in discriminative practices and favoritism, are the most obvious immediate objectives to undertake in the reform of the healthcare sector.

2.2. Special attention to ensure guarantees in the implementation of worker rights prescribed in the labor legislation, especially in its relevant provisions for working hours, remuneration, workplace safety and compensation for industrial accidents is evident from the respective part of the present report.

3. Protection of human rights in the operations of law enforcement agencies and in practice of the legal profession, especially in criminal prosecution, is the most serious human rights challenge in Mongolia. In this respect, the importance of endorsing the renewed legislation (both civil and criminal), fundamental in the operations of law enforcement agencies, by the State Great Khural in 2002 is palpable.

3.1. In order to eradicate human rights violations in the administration of justice, present practices urge for reviewing the system of law enforcement agencies, including

performance evaluation criteria and remuneration schemes of personnel.

To this end establishing practices to implement provisions in the legislation for compensation of damages caused by malpractice from the interrogator, investigator, prosecutor or judge (Criminal Proceedings Law, Chapter Forty-four) should become an important indicator in the reform of law enforcement agencies.

3.2. Further work to incorporate internationally recognized human rights norms and standards in the national legislation is required. For instance, lawmakers should review the terms for detention in the new Criminal Proceedings Law (Article 58), especially terms in pretrial detention (24-30 months) and terms for arresting and detaining a minor (up to 18 months).

3.3. At present the situation with implementation of international human rights covenants desires the best, let alone streamlining national legislation with the provisions in the covenants. The process of government report-writing on implementation, according to its obligation under relevant instruments, lacks timeliness and responsible attitude. Promotion of international covenants to the public, including publication of relevant texts, and application of international human rights norms and standards in the work of the judiciary needs new approaches and methodologies.

Glossary

APF	–	Asia Pacific Forum of National Institutions for the Promotion and Protection of Human Rights
CDC	–	Community Development Center
CIS	–	Central Intelligence Service
CL	–	Civil Law
CrL	–	Criminal Law
CMS	–	Center for Maternity Studies
CPL	–	Civil Procedure Law
CrPL	–	Criminal Procedure Law
CRKh	–	Citizen Representative Khural
GCD	–	General Customs Department
GDP	–	General Department of Police
ILO	–	International Labor Organization
MCCI	–	Mongolian Chamber of Commerce and Industry
MES	–	Ministry of Education and Science
MoE	–	Ministry of Environment

MFA	–	Ministry of Foreign Affairs
MFE	–	Ministry of Finance and Economy
MoH	–	Ministry of Health
MoI	–	Ministry of Infrastructure
MoJHA	–	Ministry of Justice and Home Affairs
MLEC	–	Medical and Labor Examination Commission
MSWL	–	Ministry of Social Welfare and Labor
NEC	–	National Epidemiologic Center
NHRCM	–	National Human Rights Commission of Mongolia
NSC	–	Normal Secondary School
PHI	–	Public Health Institute
PRNS	–	Public Relief and Nursing Services
SBD	–	Sukhebaatar District
SCCH	–	State Central Clinical Hospital
SHD	–	Songinokhairkhan District
SHIB	–	State Health Inspection Board
SID	–	State Investigation Department
SLIB	–	State Labor Inspection Board
SOSB	–	State Occupational Safety Board
SPGO	–	State Prosecutor General's Office
WHO	–	World Health Organization

APENDICIES

Appendix A

UNIVERSAL DECLARATION OF HUMAN RIGHTS

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom

from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore, THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among

the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3. Everyone has the right to life, liberty and security of person.

Article 4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6. Everyone has the right to recognition everywhere as a person before the law.

Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation

of this Declaration and against any incitement to such discrimination.

Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9. No one shall be subjected to arbitrary arrest, detention or exile.

Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11. (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13. (1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Everyone has the right to leave

any country, including his own, and to return to his country.

Article 14. (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution. (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15. (1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17. (1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.

Article 18. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and

to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20. (1) Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association.

Article 21. (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23. (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26. (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. (3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27. (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific,

literary or artistic production of which he is the author.

Article 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29. (1) Everyone has duties to the community in which alone the free and full development of his personality is possible. (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Appendix B

CONSTITUTION OF MONGOLIA

The Constitution of Mongolia was published in the issue # 1 of 1992 of the 'State Gazette'.

Chapter Two Human Rights and Freedoms

Article 14 [Equality, Right to Personality]

(1) All persons lawfully residing within Mongolia are equal before the law and the courts.

(2) No person may be discriminated on the basis of ethnic origin, language, race, age, sex, social origin or

status, property, occupation or post, religion, opinion, or education. Everyone is a person before the law.

Article 15 [Citizenship, Extradition]

(1) The grounds and procedure for Mongolian nationality, acquisition, or loss of citizenship may be defined only by law.

(2) Deprivation of Mongolian citizenship, exile, or extradition of citizens of Mongolia are prohibited.

Article 16 [Citizen's Rights]

The citizens of Mongolia are enjoying the following rights and freedoms:

1) The right to life. Deprivation of human life is strictly prohibited unless capital punishment as constituted by Mongolian penal law for the most serious crimes is imposed as final decision by a competent court.

2) The right to healthy and safe environment and to be protected against environmental pollution and ecological imbalance. 3) The right to fair acquisition, possession, and inheritance of movable and immovable property. Illegal confiscation and requisitioning of the private property of citizens are prohibited. If the State and its bodies appropriate private property on the basis of exclusive public need, they may only do so with due compensation and payment. 4) The right to free choice of employment, favorable conditions of work, remuneration, rest, and private enterprise. No one may be unlawfully forced to work.

5) The right to material and financial assistance in old age, disability, childbirth, and childcare and in other cases as provided by law.

6) The right to the protection of health and medical care. The procedure and conditions of free medical aid are determined by law.

7) The right to education. The state provides basic general education free of charge. Citizens may establish and operate private schools if these meet the requirements of the State.

8) The right to engage in creative work in cultural, artistic, and scientific fields and to benefit thereof. Copyrights and patents are protected by law.

9) The right to take part in the government of the country directly or through representative bodies. The right to elect and to be elected to State bodies. The right to elect is enjoyed from the age of eighteen years and the age eligible for being elected is determined by law according to the requirements in respect of the bodies or posts concerned.

10) The right to freedom of association in political parties or other voluntary organizations on the basis of social and personal interests and opinion. Political parties and other mass organizations shall uphold public order and state security, and abide by law.

Discrimination and persecution of a person for joining a political party or other associations or for being their member are prohibited. Party membership of some categories of state employees may be suspended. 11)

Men and women enjoy equal rights in political, economic, social, and cultural fields as well as in marriage. Marriage is based on the equality and mutual consent of the spouses who have reached the age determined by law. The State protects the interests of the family, motherhood, and the child.

12) The right to submit a petition or a complaint to State bodies and officials. The State bodies and officials are obliged to respond to the petitions or complaints of citizens in conformity with law.

13) The right to personal liberty and safety. No one may be searched, arrested, detained, persecuted, or restricted of liberty save in accordance with procedures and on grounds determined by law. No one may be

subjected to torture, inhuman, cruel, or degrading treatment. Where a person is arrested his or her family and counsel shall be notified within a period of time established by law of the reasons for the arrest. Privacy of citizens, their families, correspondence, and homes are protected by law.

14) The right

to appeal to the court for protection if one considers the rights or freedoms spelt out by the Mongolian law or an international treaty to have been violated;

to be compensated for the damage illegally caused by others;

not to testify against oneself, one's family, parents, or children;

to defense;

to receive legal assistance;

to have evidence examined;

to fair trial;

to be tried in one's presence;

to appeal against a court decision;

to seek pardon.

Compelling to testify against oneself is prohibited. Every person is presumed innocent until proven guilty by a court by due process of law. The penalties imposed on the convicted may not be applicable to his or her family members and relatives. 15) Freedom of conscience and religion.

16) Freedom of thought, opinion, expression, speech, press, and peaceful assembly. Procedures for organizing demonstrations and other assemblies are

determined by law. 17) The right to seek and receive information except that which the state and its bodies are legally bound to protect as secret. In order to protect human rights, dignity, and reputation of persons and to ensure national defense, security, and public order, the information which is not subject to disclosure must be classified and protected by law.

18) The right to freedom of movement and residence within the

country, to travel and reside abroad, and to return home to the country. The right to travel and reside abroad may be limited exclusively by law for the purpose of ensuring the security of the country and population and protecting public order.

Article 17 [Citizen's Duties]

(1) Citizens of Mongolia, while upholding justice and humanism, shall fulfill in good faith the following basic duties:

1) to respect and abide by the Constitution and other laws;

2) to respect dignity, reputation, rights, and legitimate interests of others;

3) to pay taxes levied by law;

4) to defend the motherland and serve in the army according to law.

(2) It is a sacred duty for every citizen to work, protect his or her health, bring up and educate his or her children and to protect nature and the environment.

Article 18 [Foreigner's Rights and Restrictions]

(1) The rights and duties of aliens residing in Mongolia are regulated by Mongolian law and by treaties concluded with the state of the person concerned.

(2) Mongolia adheres to the principle of reciprocity in determining the rights and duties of foreign nationals in an international treaty being concluded with the country concerned.

(3) The rights and duties of stateless persons within the territory of Mongolia is determined by the Mongolian law.

(4) Aliens or stateless persons persecuted for their convictions or for political or other activities pursuing justice, may be granted asylum in Mongolia on the basis of their well-founded requests.

(5) In allowing the foreign nationals and stateless persons under the jurisdiction of Mongolia to exercise the basic rights and freedoms provided for in Article 16, the State of Mongolia may establish necessary restrictions upon the rights other than the inalienable rights spelt out in international instruments to which Mongolia is a Party, out of the consideration of ensuring the security of the country and population, and public order.

Article 19 [Responsibility, Restrictions]

(1) The State is responsible to the citizens for the creation of economic, social, legal, and other guarantees ensuring human rights and freedoms, for the prevention of violations of human rights and freedoms, and restoration of infringed rights.

(2) In case of a state of emergency or war, the human rights and freedoms as defined by the Constitution and other laws are subject to limitation only by a law. Such a law may not affect the right to life, the freedom of thought, conscience, and religion, as well as the right not to be subjected to torture or inhuman and cruel treatment.

(3) In exercising one's rights and freedoms, one may not infringe the national security or rights and freedoms of others or violate public order.

Appendix C

LAW OF MONGOLIA

7 December 2000, Ulaanbaatar city

THE NATIONAL HUMAN RIGHTS COMMISSION OF MONGOLIA ACT

CHAPTER ONE GENERAL PROVISIONS

Article 1. Purpose of the Law

1.1. The purpose of this Law shall be to determine legal basis and operational principles of, and to regulate the relations arising out of the exercise of powers by the National Human Rights Commission of Mongolia (hereinafter referred to as 'the Commission').

Article 2. Legislation on the Commission

2.1. Legislation on the Commission shall consist of the Constitution of Mongolia, this Law and other legislative acts enacted in conformity with them.

2.2. If an international treaty to which Mongolia is a State Party (the international treaties of Mongolia) provides otherwise than this Law, the provisions of that international treaty shall prevail.

Article 3. The Commission and its Operational Principles

3.1. The Commission is an institution mandated with the promotion and protection of human rights and charged with monitoring over the implementation of the provisions on human rights and freedoms, provided in the Constitution of Mongolia, laws and international treaties of Mongolia.

3.2. The Commission shall consist of 3 (three) members (Commissioners).

3.3. The Commission shall adhere in its operations to the principles of the rule of law, independence, protection of human rights, freedoms and legitimate interests, justice and transparency.

3.4. It shall be prohibited for any business entity, organisation, official or individual person to influence and/or interfere with the activities of the Commission and its Members.

CHAPTER TWO

APPOINTMENT AND RELEASE OF COMMISSIONERS, SUSPENSION OF THEIR POWERS AND DISMISSAL

Article 4. Candidates for Commissioners

4.1. A candidate for Commissioners shall be a Mongolian citizen of high legal and political qualification, with appropriate knowledge and experience in human rights, with a clean criminal record and who has reached the age of 35 (thirty-five).

Article 5. Nomination of Candidates for and Appointment of Commissioners

5.1. The Speaker of the State Great Hural (Parliament) shall nominate names for candidates for Commissioners to the State Great Hural on the basis of respective proposals by the President, the Parliamentary Standing Committee on Legal Affairs and the Supreme Court.

5.2. If the State Great Hural declines to appoint a candidate as a Commissioner, then the Speaker of the State Great Hural shall submit the name of another person within 14 (fourteen) days in accordance with procedure provided in Art 5.1.

5.3. A name of the same person shall not be nominated again.

5.4. The State Great Hural shall consider and decide on this issue within 30 (thirty) days from the date of submission of the names for candidates.

5.5. In case any of Commissioners has been released, resigned from his/her official position or deceased before the expiry of the term of his/her office, the Great State Hural shall appoint replacement for that Commissioner within 60 (sixty) days from that date in accordance with this Law.

5.6. A Chief Commissioner shall be appointed for a term of 3 (three) years from among Commissioners by the State Great Hural, based on the proposal by the Speaker of the State Great Hural.

5.7. Commissioners shall not hold any job or office concurrently other than that mandated by this Law, except that of engaging in training and research. If any of Commissioners has been holding another job or office before his/her appointment, then he/she shall be released from that job or office from the day on which he/she has taken an oath of office.

Article 6. Term of Office of Commissioners

6.1. A single term of office for Commissioners shall be 6 (six) years.

6.2. Powers of Commissioners shall start by taking an oath of office to the Constitution of Mongolia, and shall end by the swearing in of the newly appointed Commissioners.

6.3. Commissioners may be re-appointed only once.

Article 7. Swearing in of the Members of Commission

7.1. Commissioners shall take an oath of office to the Constitution of Mongolia within 30 (thirty) days from the date of appointment by swearing in: 'I do swear to observe faithfully the Constitution of Mongolia, and to fulfil dutifully my obligations to promote and protect the human rights and freedoms, which are guaranteed in the laws and international treaties of Mongolia.'

7.2. The Speaker of the State Great Hural shall approve the procedure for ceremony of taking an oath by Commissioners.

Article 8. Release and Suspension from the Office, and Dismissal of Commissioners

8.1. The State Great Hural shall release a Commissioner from his/her office in the following cases:

8.1.1. A Commissioner has been nominated as a candidate for the President of Mongolia, or for the Member of the State Great Hural;

8.1.2. A Commissioner has been appointed or elected to another official position;

8.1.3. A Commissioner has requested on his/her own because he/she becomes unable to exercise his/her powers due to health conditions or for any other excusable reasons.

8.2. The State Great Hural shall discuss and make a decision within 14 (fourteen) days from the date of receipt of a proposal and decision from the competent authority on whether to suspend his/her powers, if a Commissioner has been implicated in the crime, as well as has been arrested as provided in Art 23.1. of this Law.

8.3. The State Great Hural shall restore his/her powers and adopt a resolution to that effect, on the basis of a decision by the competent authority or official, which has established that a Commissioner has not been implicated in the crime or not guilty of committing it.

8.4. The State Great Hural shall dismiss him/her from the office and adopt a resolution to that effect, if a crime, which has been proved to be committed by a Commissioner, and a final binding judgement to that effect by the Court has come into force.

CHAPTER THREE

COMPLAINTS LODGING TO THE COMMISSION

Article 9. Right to Lodge Complaints

9.1. Citizens of Mongolia, either individually or in a group, shall have the right to lodge complaints to the Commission in accordance with this Law, in case of violations of human rights and freedoms, guaranteed in the Constitution of Mongolia, laws and international treaties of Mongolia, by business entities, organisations, officials or individual persons.

9.2. Unless otherwise provided in laws and international treaties of Mongolia, foreign citizens and/or stateless persons who are residing in the territory of Mongolia, shall exercise the same right to lodge complaints to the Commission on equal footing as the citizens of Mongolia.

9.3. Complaints may be lodged in by representation of lawful representatives-parents, care-takers and/or guardians for the persons, who do not have full civil law capacity or have some limited or partial capacity, as well as by representatives provided under the law for the persons, who are considered missing or declared as deceased.

9.4. Non-governmental organisations and trade union organisations shall exercise equally the right provided in Art 9.1. and lodge complaints through their representatives.

9.5. Representatives provided in Art 9.3 and Art 9.4 shall have a document of proof for their own representation powers.

Article 10. Form of Lodging Complaints

10.1. Complaints shall be lodged in writing in Mongolian language or verbally in person. Persons, who do not know Mongolian language, may lodge complaints in their mother tongue and their complaints must be translated into Mongolian language and duly certified in accordance with procedure provided for it.

Article 11. Requirements for Complaints

11.2. Complaints shall reflect the following items:

11.1.1. A Complainant must have had his/her complaint decided through an administrative process;

11.1.2. A Complainant must indicate, which rights and freedoms guaranteed in the Constitution of Mongolia, laws and international treaties of Mongolia, have been violated;

11.1.3. The Complainant must write his/her own name, residential or postal address, and has signed it;

11.1.4. The Complainant must attach the name, address, phone-number and other related documents of the business entity, organisation, official or individual person who is implicated in the complaint;

11.2. Commissioners shall not receive complaints about criminal and civil cases and/or disputes, which are at the stage of registration/inquiry of cases, investigation and/or on trial or have been already decided.

Article 12. Period for Receiving and Replying to Complaints

12.1. A Complainant shall lodge a complaint within 1 (one) year from the date on which his/her rights and freedoms were violated or from the date on which he/she came to know about such violation.

12.2. The Commission shall not accept any complaint without a name or address on it.

12.3. The Commission shall give a reply within 30 (thirty) days from the date of receipt of a complaint, and if there is need for additional research and inquiry required, the Chief Commissioner may extend it up to 60 (sixty) days.

CHAPTER FOUR POWERS OF THE COMMISSION AND ITS MEMBERS

Article 13. Powers of the Commission

13.1. The Commission shall exercise the following powers:

13.1.1. To put forward proposals on any human rights-related issues;

13.1.2. To put forward recommendations and/or proposals on whether laws or administrative decisions are in conformity with the key human rights principles;

13.1.3. To put forward proposals on the implementation of international human rights treaties and/or drafting of Government reports thereon;

13.2. The Commission shall carry out the following activities within its powers:

13.2.1. To conduct research on human rights issues and provide necessary information;

13.2.2. To collaborate with the international, regional and other national human rights institutions;

13.2.3. To produce reports on the human rights situation in Mongolia;

13.2.4. To increase public awareness about the laws and/or international treaties relating to human rights;

13.2.5. To promote human rights education activities;

13.2.6. To encourage ratification of and/or accession to the international human rights treaties.

Article 14. Powers of the Chairperson of the Commission

14.1. A Chief Commissioner shall exercise the following powers.

14.1.1. To represent the Commission in domestic and/or foreign relations;

14.1.2. To appoint and/or release the Director of the Staff;

14.1.3. To deal with internal organisational matters of the Commission;

Article 15. Powers of Commissioners with respect to the acceptance of Complaints

15.1. Commissioners shall exercise the following powers with respect to the acceptance of complaints:

- 15.1.1. To accept and examine complaints;
- 15.1.2. To refuse to accept the complaints which do not meet the requirements provided in Art 11 of this Law;
- 15.1.3. To transfer complaints with respect to criminal and/or civil cases and disputes to relevant authorities or officials according to their jurisdiction;
- 15.1.4. To explain to the Complainant what rights and duties he/she has with regard to the restoration of violated rights.

Article 16. Powers of Commissioners with respect to Inquiry of Complaints

16.1. Commissioners shall exercise the following powers during the course of inquiry into complaints:

- 16.1.1. To take explanations in writing from the Complainant and relevant business entities, organisations, officials or individual persons and take explanations orally and take notes thereon if the Complainant is illiterate;
- 16.1.2. To summon the Complainant and relevant persons;
- 16.1.3. To have unrestricted access to any business entity or organisation and to participate in their meetings and conferences, and to meet in person with the relevant officials;
- 16.1.4. To obtain without any charge the necessary evidence, official documents and information from organisations and/or officials, and to get acquainted with them on the spot;
- 16.1.5. To appoint experts from the appropriate organisations in a case of necessity for the specialised knowledge, and to get their expert-opinions;
- 16.1.6. To transfer a complaint to the relevant authorities or officials according to their jurisdiction, if it is considered that

this complaint has a nature of criminal or civil case during the course of examination;

16.1.7. To conduct alone an inquiry into the activities of business entities, organisations or officials, or jointly on the basis of a proposal by the competent State authority and their officials;

16.1.8. To access the confidential data/secrets of the State, organisation or individual person in accordance with procedure established by the relevant law, if Commissioners considers it necessary during the course of exercise of his/her powers;

16.2. Commissioners shall keep in good faith the confidential data/secrets of the State, organisation or individual person, which he/she came to know about during the course of conducting the official business or which has been informed to him/her in trust.

Article 17. Powers of Commissioners in respect of Decision-making on Complaints

17.1. Commissioners shall exercise the following powers with respect to making a decision on complaints:

17.1.1. To submit claims to the Courts with regard to issues of violations of human rights and freedoms by business entities, organisations, officials or individual persons to participate in person or through a representative in judicial proceedings in accordance with procedure established by the law;

17.1.2. To put forward requests to the competent authorities or officials with regard to imposing administrative sanctions on officials who, as he/she considers, have violated human rights and freedoms;

17.1.3. To demand organisations or officials to stop activities which violate human rights and freedoms, or which create conditions for such violations;

17.1.4. To decide the issues by way of conciliation of the parties.

17.1.5. To return a complaint to the Complainant if he/she considers it to be without grounds.

17.2. Claims lodged under Art 17.1.1 shall be exempted from court expenses.

17.3. Commissioners shall have an obligation to inform the Complainant with regard to results of his/her complaint examination activities.

Article 18. Other Powers of Commissioners with respect to Fulfilling of Human Rights and Freedoms

18.1. Commissioners may participate in the advisory capacity in sessions of the State Great Hural or in meetings of the Government Cabinet at the request of the Speaker of the State Great Hural or the Prime Minister.

18.2. Commissioners may conduct inquiries at his/her own initiative on the basis of information with regard to violations of human rights and freedoms or at the request of business entities, organisations or officials.

18.3. Commissioners shall get acquainted with the decisions concerning civil and criminal cases as well as have access to the documents which rejected instituting a case or the cases which have been dropped, with a view to conducting human rights research.

18.4. Commissioners shall refer to the officials or authorities with law-initiating competence his/her proposals with regard to improving the legislation connected with fulfilling human rights and freedoms.

18.5. Commissioners shall provide advice on human rights issues at the request of State authorities.

Article 19. Demands and Recommendations of Commissioners

19.1. Commissioners shall issue demands and/or make recommendations during the course of exercise of his/her powers.

19.2. Commissioners shall write and deliver demands to relevant organisations in order to restore human rights and freedoms and eliminate the violations if he/she has considered that business entity, organisation or official has violated human rights and freedoms.

19.3. Commissioners shall make recommendations within his/her own competence and deliver them to relevant business entities, organisations or officials in order to eliminate reasons and conditions in case there is possibility for violations of human rights and freedoms.

19.4. Business entities, organisations or officials shall inform in writing with regard to measures undertaken within 1 (one) week if they have received demands, and within 30 (thirty) days if they have received recommendations from Commissioners.

19.5. Commissioners may approach the Court, according to the procedure established by law, with regard to the business entities, organisations or officials which have refused to undertake relevant measures as provided under his/her demands and/or recommendations.

19.6. Commissioners shall have a right to publish and report his/her issued demands or recommendations through the mass media.

Article 20. Report of the Commission

20.1. The Commission shall submit to the State Great Hural a report on the human rights situation in Mongolia within the 1st (first) quarter of every year.

20.2. Report of the Commission shall be published in the 'State Gazette'.

CHAPTER FIVE

GUARANTEES FOR THE POWERS OF COMMISSIONERS

Article 21. Political Guarantees

21.1. It shall be prohibited for the Commission and its Secretariat to conduct political activities. Commissioners shall suspend his/her political party membership during the period of his/her term of office.

21.2. Commissioners shall treat respectfully his/her official position in exercising his/her freedom of thought, opinion and expression, of speech and press, of conscience and religious belief.

Article 22. Economic and Social Guarantees

22.1. Expenses for the activities of Commissioners shall be financed from the State Consolidated Budget, and the State shall provide economic guarantees for carrying out his/her activities.

22.2. The State Great Hural shall approve and reflect specifically the budget of the Commission in the State Consolidated Budget on the basis of a latter's proposal, and this budget shall fulfil the requirements for the independent conduct of its activities.

22.3. Commissioners shall receive a salary equal to that of the Member of the Government Cabinet.

22.4. In case the term of office of Commissioners has expired, or he/she has been relieved from the office because of the health condition or for any other excusable reasons, Commissioners shall be provided with the allowance for period of up to 6 (six) months, which is not less than the salary level when he/she was Commissioners, until he/she gets transferred to another job or official position in line with his/her profession or expertise, or get employed in different job without scaling down the salary, and if he/she is employed in

job with lesser salary, then he/she shall be provided with the difference of that salary during the same period.

Article 23. Legal Guarantees

23.1. If Commissioners has been arrested in a criminal act or on the site of crime with all implicating evidence, it shall be reported by the relevant official to the Chairperson of the State Great Hural within the following 24 (twenty four) hours. In all other cases it shall be prohibited to detain, imprison or impose administrative sanctions by way of a judicial process on Commissioners, and to conduct the search of his/her home, office room and body.

23.2. Unless otherwise provided by the law, it shall be prohibited to release and/or dismiss Commissioners as well as to transfer him/her to another job or official position without his/her consent.

23.3. It shall be prohibited to divulge the confidentiality of correspondence related to the exercise of powers by Commissioners.

23.4. Business entities, organisations and their officials and citizens shall have obligations to render all kinds of assistance to Commissioners in exercise of his/her powers.

CHAPTER SIX

MISCELLANEOUS

Article 24. Work Organisation of the Commission

24.1. The Commission shall have a Secretariat. The Commission shall approve the by-laws of its Secretariat, and shall establish the posts and salary fund within the budget limits approved by the State Great Hural.

24.2. Staff of the Commission shall be civil administrative servants.

24.3. The Commission may establish ex-officio boards, which consist of the representatives of advocates' association, confederation of trade unions and/or human rights non-governmental organisations, to be assisted in conducting its activities.

24.4. The Commission may have research conducted by research organisations or non-governmental organisations on the issues, which are considered as required.

Article 25. Seal, Stamp and Official Blank Paper of the Commission

25. The Commission shall use a seal, stamp and official blank paper with the State Coat of Arms, made according to the regulation established.

Article 26. Liability for Violation of the Law on the Commission

26.1. The Court shall impose the following administrative sanctions on the persons who has violated this Law:

26.1.1. A citizen who has violated Art 3.4 of this Law shall be liable to a fine of Tg 5,000-40,000, an official to Tg 10,000-

50,000, and a business entity or organisation to Tg 50,000-150,000 (Tugrug is national currency);

26.1.2. A citizen who has violated Art 19.4 and Art 23.4 of this Law shall be liable to a fine to Tg 10,000-50,000, an official to

Tg 20,000-60,000 and a business entity or organisation to Tg 30,000-250,000.

**SPEAKER OF THE STATE GREAT HURAL
L. ENEBISH**

Appendix D

NHRCM STRATEGIC PLAN

INTRODUCTION

HUMAN RIGHTS & FREEDOMS STATUS REPORT 2003 NHRCM

The years of transition in Mongolia since the 1990's

The new Constitution of Mongolia /1992/ is the primary legislation that comprehensively formulates and guarantees human rights. The subsequent laws and regulations adopted in compliance with the constitutional spirit also contain a number of substantial provisions on human rights and freedoms.

Despite this framework, however, there are violations of the human rights and freedoms enumerated in the Constitution and other legislation. Of particular concern is the abuse of power and infringement of law by public authorities and public officials. Moreover, unemployment and poverty seriously affect their rights to education, health, and social protection of thousands of citizens.

In addition, there are various constraints and difficulties in the implementation of some political rights and freedoms, as well as economic and social rights.

This is the environment in which the Commission has been established and has to operate. The mandate and the scope of activities of the Commission are regulated by the Law of Mongolia on National Human Rights Commission. The Commission's role is the protection and promotion of human rights, and the monitoring of the implementation of the rights and freedoms enunciated in the Constitution and the international treaties.

Although we lack the staff, resources, capacity and experience to fully accomplish this honorable task set for us by law, the mission of the Commission will always be leadership of the sacred cause of the protection of human rights and the creation of social guarantees that everybody enjoys their rights in reality.

The highest priority will be given to the objectives to upgrade, in close cooperation with governmental and non-governmental human rights organizations, and the

mass media, human rights education and promotion among the people; to fight against all kinds of violations of human rights; to create a mechanism that will facilitate everybody's struggle for their legitimate rights; and to build confidence and to develop efficient and effective regional and international cooperation on human rights issues.

This Strategic Plan has been developed on the basis of comments and suggestions by the leaders of the governmental and non-governmental organizations in the field of human rights.

The plan is not confined to the current budget and capacity of the Commission. In fact, a number of essential activities are only realizable within the framework of the project to be implemented jointly by the Commission, UNDP, and OHCHR.

Understanding and a positive approach by public authorities with regard to suggestions, proposals, and demands of the Commission and their close cooperation in human rights priorities are an important prerequisite of the effective implementation of the activities of the Commission and its decisions. We consider it essential to take immediate action towards the human rights priorities in Mongolia as defined in the Strategic Plan.

The operational principles of the Commission will always be the rule of law and the protection of rights and legitimate interests of people, openness, transparency, and independence.

The Strategic Plan was adopted by the Extended Meeting of the Commission on the 13 September 2001.

NATIONAL HUMAN RIGHTS COMMISSION

VISION

Ensuring the rights of everyone in Mongolia

This vision articulates the challenges we face – the prime reason for our existence.

MISSION

To champion the sacred cause of promoting and protecting human rights to create the realistic implementation of the human rights of everyone in Mongolia

This mission statement identifies the Commission's essential role – to sharpen our own focus and to help those who come into contact with the Commission to understand what we do.

GOALS

Goal 1:

To contribute to the development of a human rights spirit so that people are aware of their human rights, are prepared to stand up for them and understand how to do so.

Goal 2:

The development of a human rights culture in the official sector, including central and local government, parliament and the judicial system, in which people's human rights are respected, consistent with the Constitution and international human rights standards.

Goal 3:

The enhancement of the human rights capacity in non-governmental rioritized and other civil society rioritized through training and partnerships.

Goal 4:

The establishment of the Commission as Mongolia's expert human rights rioritized that is able to fulfill its vision, mission and mandate and is so rioritize by the official sector, civil society and the general public alike.

These goals set out what the Commission wishes to achieve in the long-term. The objectives and activities that follow, grouped according to the Commission's three major functions, set out how the Commission intends to reach those goals.

1. HUMAN RIGHTS EDUCATION AND PROMOTION

We consider our education and training responsibilities in the Law on the Commission as probably the most crucial of all our roles. For unless we can raise public awareness on human rights and train the official sector in its human rights responsibilities, our goals will not be achieved. We are acutely aware that we cannot complete this without the active cooperation of our stakeholders.

Bearing this in mind, we aim at implementing the following activities:

Activity 1.1.

Develop and implement a comprehensive plan of information dissemination and advertisement with a view to support human rights public education;

Activity 1.2.

In cooperation with relevant Ministries and other agencies, to develop and implement an integrated policy of human rights education and training in secondary schools and higher education institutions;

Activity 1.3.

Develop and implement a public sector human rights training programme:

- human rights training for the police, prosecutors, judges, and officers from penitentiaries
- rioritized training of trainers in collaboration with international organizations and foundations;

Activity 1.4.

Conduct human rights training for the media, central and local non-governmental organization officers;

Activity 1.5.

Conduct joint examination and research in conjunction with non-governmental organizations; and support their activities by rioritize seminars and sharing data;

Activity 1.6.

Organise seminars and conferences with a view to strengthening cooperation among governmental and non-governmental human rights organizations, to share experience and achievement, the first seminar to be carried out in October, 2001;

Activity 1.7.

Make human rights education accessible in local areas, industrial partners, schools, households, and to each individual through an improved/upgraded means of education and promotion;

Activity 1.8.

Open a human rights information, inquiry, and advertisement center; design and operate a National Human Rights Commission's website.

Activity 1.9.

Translate, publish and disseminate international conventions and other documents on human rights;

Activity 1.10.

Establish a network of human rights documentation and information; develop and implement rules or guidelines on documentation;

Activity 1.11.

Design and disseminate handouts on human rights such as journals, newsletters, posters, and brochures etc.; organize on a frequent basis discussions, seminars, debates, and simple forms of training.

2. OPINION, RECOMMENDATION

The issuance of opinions and recommendations to responsible or relevant public officials and institutions with regard to human rights is a significant aspect of the mandate of the National Human Rights Commission.

This part of the mandate authorizes the Commission to comment on domestic legislation and administrative decisions in relation to their conformity with human rights standards, to comment on the Government's report of its implementation of international treaties, to comment on draft legislation, even to express its position regarding the ratification of and accession to international treaties. We consider it necessary to take the following measures in this area:

Activity 2.1.

Release opinions and recommendations with regard to laws and regulations in force, draft legislation in the Parliament whether the provisions comply with human rights standards; release opinions and recommendations to the legislature in relation to human rights violations by the public authorities and officials;

Activity 2.2.

Comment on the Government report of the implementation of international treaties to which Mongolia is a signatory; oversee the observance of the reporting timeframe;

Activity 2.3.

Conduct research, draw up analysis and provide advice to the legislature with regard to international treaties that should be ratified;

Activity 2.4.

Develop and implement guidelines or norms to oversee the conformity with human rights standards of laws, governmental resolutions, decisions and resolutions of the local Hurals of Citizens' Representatives and the local Governors that affect human rights

3. EXAMINATION AND RESEARCH

As envisaged in the Law on National Human Rights Commission, examination and research are a special part of the activities of the Commission.

The Commission has authority to investigate not only complaints from citizens, but also on its own initiative based on information about violations of human rights and freedoms and/or upon the requests from public authorities and officials.

In terms of examination and research, the Commission will conduct the following activities:

Activity 3.1.

Carry out the proper examination of complaints of human rights violations, thereby identifying the reasons for the violations and who is responsible for them; carry out proper follow-up measures; introduce an effective means of dispute settlement;

Activity 3.2.

Design a formal complaints and monitoring system with a prioritized case management system and database and a complaints and monitoring manual.

Activity 3.3.

Establish a system for complaints and monitoring in local areas, in conjunction with NGOs and local administrations;

Activity 3.4.

Conduct thematic and regional research; carry out examination on human rights situation; issue proposals, when necessary, to the central and local governments with regard to advancement of human rights situation;

Activity 3.5.

Oversee the implementation of national and local human rights action plans;

Activity 3.6.

Develop and introduce integrated methodology and standards for human rights reporting at national and local levels;

Activity 3.7.

Research and compile at least one major report on a particular human rights issue each year.

4. INTERNATIONAL COOPERATION

One of the important long and medium-term tasks of the Commission is to develop close cooperation with regional and international human rights organizations as an active member, to locate and efficiently and effectively use international assistance.

The activities in this area will be:

Activity 4.1.

Implement a long-term project with the purpose to strengthen the capacity of the Commission in cooperation with OHCHR and UNDP and other donors.

Activity 4.2.

Join regional and international human rights organizations, where necessary, and report on a frequent basis about the state's accomplishments in the human rights field; upgrade the competence of the staff through active participation in international seminars and conferences.

Activity 4.3

Develop and implement plans and projects to educate the official sector by supporting them to participate in international seminars and conferences on human rights;

5. MANAGEMENT AND ADMINISTRATION

Competent, creative, and effective management is in the key to the responsive and dynamic functioning of

the Commission and the full implementation of its tasks set by law.

Activity 5.1.

Develop and implement plans and projects that would facilitate the full and rioritized implementation of the Strategic Plan using the human capacity in the Commission to the full;

Activity 5.2.

Renew organizational rules, job descriptions, and management systems in compliance with the Strategic Plan;

Activity 5.3.

Appoint an ex officio board to advise and assist the NHRCM in carrying out its responsibilities.

Activity 5.4.

Establish and introduce collective management mechanisms /e.g. Meeting of the Commissioners etc./
Appendix E

NHRCM 2002 OPERATIONAL REPORT

Introduction

The National Human Rights Commission of Mongolia (NHRCM) is an institution mandated with the promotion and protection of human rights and charged with monitoring over the implementation of the provisions on human rights and freedoms enshrined in the Constitution

of Mongolia, laws and international treaties to which Mongolia is a party.

In order to implement the above-mentioned mandate, the NHRCM carries out the following activities:

- Receive and consider complaints regarding violations of human rights and freedoms;
- Conduct research on human rights issues and provide necessary information;
- Put forward recommendations and proposals on whether laws or administrative decisions are in conformity with the key human rights principles;
- Collaborate with the international, regional and other national human rights institutions;
- Produce reports on the human rights situation in Mongolia;
- Increase public awareness about the laws and international treaties relating to human rights;
- Promote human rights education activities;
- Encourage ratification of and accession to the international human rights treaties.

In addition to its budget from the Government, the NHRCM receives technical support from the UNDP and OHCHR through a Capacity Development project. With the support of this project, the NHRCM organized numerous human rights education and promotion activities, conducted researches, studies and also contributed into expanding its international cooperation.

We are happy to present to you our report for 2002. We would appreciate if you send us your comments on the activities of the Commission.

I. HUMAN RIGHTS EDUCATION AND PROMOTION

Human Rights Education

One of the key functions of the Commission is to promote human rights education. The Commission's human rights education strategy targets:

- Education institutions at all levels
- Specific target groups of the society
- General public

In addition, it has been very useful that staff training needs were assessed to improve the competence of the staff who are to implement the Commission's Human Rights Education Program.

In 2002, the Commission organized the following human rights training:

1. "Reporting under the Convention on the Elimination of All Forms of Discrimination Against Women", training for government officials, 28 February - 1 March
2. "Human Rights - The Next Step", seminar for the UN local volunteers, jointly organized with the HURISTMON Project, February
3. "Labor Rights and Human Rights Implications" pilot training in Tuv province, 5 April
4. "Communicating Human Rights", training for NGO's, 16 April
5. "Fundamentals of Human Rights Promotion", training for the authorized local representatives of the Commission, 22-24 April
6. "Reporting under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", training for government officials, 24-25 June
7. "Human Rights Summer Camp", Nairamdal International Children's Recreational Center, 15-22 August

8. "Reporting under the International Covenant on Social, Economic and Cultural Rights", training for government officials, 28-30 August
9. "Implementing the Rome Statute of the International Criminal Court in Mongolia", seminar jointly organized with the Ministry of Foreign Affairs and Ministry of Justice and Internal affairs aimed at promoting the International Criminal Court and supporting its activities, 03-04 October
10. "Human Rights", training for lecturers and students of law schools, 30 October
11. Training of Trainers, for human rights trainers, Bayan-Ulgii province, 26-30 November
12. "Labor Rights", training for representatives of business entities, jointly organized with the Confederation of Mongolian Trade Union, 27 November
13. One day human rights training for prosecutors, 4 sessions in total, November
14. Training of Trainers, during the "Smiling Child Forum" organized by the World Vision, November
15. "Local Initiatives for the Human Rights Protection", training for chairpersons and secretaries of local human rights councils and committees, 03-04 December
16. "International Treaties and Their Application in Domestic Practice", training for judges, 13 December
17. "Human Rights", training for the staff of local authorities, judicial organs and NGO's, during Road Shows at Bayankhongor, Uvurkhangai, Dundgobi, Selenge, Darkhan-Uul, Orkhon, Tuv, Umnugobi and Bulgan provinces, (28 sessions in total)
18. In addition, by invitation of law schools, local governments and some business entities, the Commissioners and the Commission staff gave 16-hour lectures on various human rights topics.

Human rights promotion

The Commission developed a draft Communications Plan in 2002. This draft Communications Plan specifies the main tasks and duties of the responsible officer for communicating with the media and the general public. It also draws up core activities and their timeframes.

Human Rights Promotion Activities Organized By The Commission:

1. Five TV documentaries, broadcasted by the Mongolian National Television (each 20-50 minutes long);
2. Brand awareness TV campaign - "Ad and bad", ten series of TV documentaries, broadcasted by the Mongolian National Television, 10 March-12 May (each 15 minutes long);
3. "Life around us", seven-part TV documentaries, broadcasted by the Mongolian National Television, 3 June–14 October (each 15 minutes long);
4. TV cartoons on 10 of the Constitutional rights, produced and supported by the HURISTMON and NHRM Capacity Development projects, broadcasted everyday starting from March to December by the Mongolian National Television (each 30 seconds long);
5. Radio awareness campaign – ten minute radio series, broadcasted every Tuesday and Friday starting from 29 November, ongoing;
6. The first "Report on Human Rights Status in Mongolia", published in Daily News;
7. Articles relating to the elections of the judges of the International Criminal Court, published in Daily News, Today and Millennium News;
8. Frequent coverage of the Commission's activities in different press;
9. Eight press conferences in the capital city Ulaanbaatar and three press conferences in the provinces. As a result of these press conferences, the general public received information on activities organized by the Commission through television, newspapers and radio;

10. Booklets on “Right to personal security”, “Right to property”, “Labor rights” and “Rights of the Child”;
11. Calendar for 2003 and different posters;
12. Produced and distributed various publications including the ‘Report on Human Rights Status in Mongolia’, ‘Rome Statute of the International Criminal Court’, ‘International Mechanisms for Protecting Human Rights’, ‘Compilation of Speeches from the first human rights NGO Forum’, “The International Criminal Court”, ‘Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’;
13. “Road Shows” or “Human Rights Open Days” in nine provinces. As a part of the Road Shows, the NHRCM organized human rights promotional activities, including meetings, press conferences, contests, competitions, discussions and distribution of booklets. The events also had coverage on local TV and radio stations. The Road Shows took place in:
 - Bayankhongor province, 26-29 June
 - Uvurkhangai, Dundgobi and Umnugobi provinces, 8-16 September
 - Bulgan and Orkhon provinces, 9-11 November
 - Tuv province, 8 November
 - Selenge and Darkhan-Uul provinces, 16-18 December
14. “Human Rights Day”, one day activity for children, Nairamdal International Recreational Center for Children, 21 August;
15. Student debate on the topic “Right to personal security” among five law schools, 5 June;
16. “Human Rights Action Theatre” for the UN Human Rights Education Decade among ten law schools, 29 November;
17. Public hearing on the “Report on Human Rights Status in Mongolia”, 10 December;

18. "Our rights", a public concert commemorating the International Human Rights day, organized with the support of HURISTMON and NHRCM Capacity Development projects, 10 December;
19. Human Rights Award for the best print media acknowledging their contribution into human rights promotion, 10 December;
20. Launch of the organization website /www.nhrcm.org/ with the support of the OHCHR and Danish Center for Human Rights;

II. RESEARCH AND SURVEYS

The NHRCM undertook numerous research and studies on different aspects of human rights either independently or in collaboration with other organizations.

Research and Studies Undertook by the Commission in 2002:

1. Research on the state of rights of rural-urban migrants, January
2. Examination of criminal cases of 2001 and 2002 acquitted by investigators, prosecutors and the courts, May
3. Situational analysis on the right to have legal aid, May
4. Research and investigation on activities of local inspectors, police officers and public inspectors in two districts of the capital city, October
5. On-site visits and inquiries regarding labor rights and implementation of Labor Law into some business entities, in collaboration with the Confederation of Mongolian Trade Union, September-October
6. Research on the right to health protection in selected areas of the country, in collaboration with the authorized local representatives of the NHRCM, Public Health Institute and Health Inspection Agency, May-October

7. Survey on trafficking in Mongolia, in collaboration with the Human Rights and Development Center, September-October
8. Inquiry into 'Maanit' prison, May

III. COMPLAINTS HANDLING

That the "Guidelines for Receiving and Handling Complaints in the National Human Rights Commission of Mongolia" was developed in 2002 has been very helpful for complaints processing. In addition, the Commission has developed a complaints brochure for the general public that is to be printed and distributed.

Facts And Figures about Complaints Received By The Commission In 2002:

1. The Commission received 147 complaints in 2002. The number of complaints has doubled in comparison to 2001. Out of 147, 96 complaints were admitted, processed and resolved.
2. In total 42 complaints were dismissed on the grounds of admissibility criteria constituting 28.5 percent of the total complaints received.
3. Nine complaints were resolved by mediation and conciliation.
4. The complaints officers conducted on-site investigations in Tuv and Bulgan provinces.
5. In accordance with its mandate, the Commission has issued eight official demands, six recommendations, and two opinions. It received feedbacks to four demands and three recommendations.

IV. INTERNATIONAL COOPERATION

For the Commission, 2002 was a year of strengthening and expanding its relations with other national institutions and international human rights organizations.

Facts about International Cooperation Of The
Commission In 2002:

1. The NHRCM became a member of the International Coordinating Committee of National Institutions.
2. It successfully participated in the 7th Annual Meeting of the Asia-Pacific Forum of National Human Rights Institutions.
3. The NHRCM established working relations with the national human rights institutions of New Zealand, Denmark, India, South Korea, Australia and Canada.
4. It started cooperating with the Canadian Human Rights Foundation in the field of human rights education.

V. MANAGEMENT ADMINISTRATION

A By-law of the NHRCM and new job descriptions were developed.

An Advisory Ex-officio Board consisting of representatives of human rights NGOs, the Confederation of Mongolian Trade Unions and lawyers was established by a resolution of the Commissioners' Meeting.

As a result of the training needs assessment of the Commissioners and the staff, mentioned earlier, a Staff Training Program is in place now.

VI. BUDGET

The budget of the NHRCM including salaries of the Commissioners and the staff and operational costs was approved by the Parliament of Mongolia.

In 2002, the NHRCM budget equaled to 72,717,800 tugrugs. The table below shows the general breakdown of the budget.

In 2002 the NHRCM also received financial support from the UNDP/OHCHR Joint Capacity Building project with a total

planned budget of US\$ 350,000.

No	Expenditures	planned budget of US\$ 350,000	
		MNT	USD 1,118MNT/1USD
1	Salaries	17,067,799	16,966.82
2	Social insurance and income tax	4,742,100	4,241.59
3	International mission	6,250,000	5,590.34
4	Field trip	900,000	805.01
5	Education and promotion activities, inquiries and investigations	2,800,000	1,788.9
6	International consultant's fees	3,350,000	2,996.42
7	Purchase and subscription of books and reference materials	500,000	447.23
8	Vehicle and fuel	13,892,300	11,531.57
9	Office stationery	2,220,000	1,985.69
10	Communications cost	9,950,000	8,344.11
11	Office rent	13,230,700	11,834.26
12	Equipment	2,280,000	1,994.62
13	Other /social benefit/	510,000	456.17
	Total		165,410

VII. QUANTITY INDICATORS FOR 2002

1. The NHRCM organized 47 training sessions of 435 hours involving 1497 participants in total.
2. The Commissioners and the staff worked in ten provinces.
3. Produced 23 TV programs of 370 minutes and broadcasted nationwide on the Mongolian National Television.
4. Prepared 5 radio programs of 75 minutes and broadcasted nationwide on the Mongolian Radio.
5. Published 32 articles and interviews on different newspapers.
6. Printed and distributed 17300 brochures and 1000 Calendar for 2003, books and handbooks.
7. The Commission received and resolved 147 complaints.

8. The Commission carried out 8 research projects and surveys on several human rights issues.
9. The Commission issued 18 official demands and 26 recommendations to relevant authorities and officials.
10. The Commission expanded its foreign relations with 6 other national human rights institutions. Chief Commissioners of two other national institutions paid official visit to the Commission.

VIII. CONCLUSION

Last year the NHRCM focused more on the human rights promotion and organized a number of activities in the area. In the future, the Commission will tailor its human rights promotion activities in conformity with the needs of specific target groups identified in the Human Rights Education Plan. It will also continue attaching high importance to the Road Shows organized in provinces. There is a need to advance organization and management techniques to reach best result of these events.

One of the largest and most effective activities organized by the NHRCM was training and related promotion activities to support the accession to the Rome Statute on the International Criminal Court. By ratifying the Rome Statute, Mongolia was among the founding countries of the International Criminal Court.

Also we submitted the first Report on Human Rights Status in Mongolia to the Parliament of Mongolia. This report was presented to the public by different channels including newspapers and a public hearing.

The NHRCM is planning to enhance its cooperation with relevant organizations and experts especially with human rights NGO's in the area of human rights education, promotion and research.

**Resolution of the Legal Standing Committee
State Great Khural of Mongolia**

2003.12.31

No. 15

Ulaanbaatar

Subject: *Hearing of the Report on the Status of Human Rights and Freedoms in Mongolia*

After hearing the Report on the Status of Human Rights and Freedoms in Mongolia, produced by the National Human Rights Commission, the Standing Committee on Legal Affairs, NOTES:

The National Human Rights Commission submitted to the State Great Khural its conclusions drawn in the report on social protection of vulnerable groups, situation of labour rights, personal liberties, and implementation of international human rights treaties.

Based on the report, it is important to draw attention to the following issues:

Due to the low quality of primary health care for children and adolescents, not a small number of children suffer from malnutrition, growth retention, and vitamin deficiency.

Difficulties in education system such as lack of accessibility to or overcrowdedness in schools, lack of dormitories in the countryside, and low household income create school dropouts, thus impact on child labour of harsh forms and juvenile crime.

Persons with disabilities are not entirely covered by social care system; the enforcement of the legislation in this area is weak.

Due to malfunction of justice institution personnel, human rights abuses such as groundless arrest, investigation and custody occur continuously. There are widespread practices that contradict to human rights principles including favouritism and corruption in the exercise of authority, particularly administration of justice.

Evaluation methods of the public servants performance do not create motives for better protection and provision of human rights. On the contrary, these methods applaud such performance as the number of persons brought for accountability, amount of fines charged, and amount of money added into state budget etc. while ignoring effects of the performance on human rights and freedoms.

Various fees and charges set by public authorities and other service corporations create complications for individuals.

There is setback in the process of studying of and reporting about the implementation of international human rights treaties, which Mongolia ratified or acceded to.

On the grounds of Article 17 of the Law on the State Great Khural, the Standing Committee on Legal Affairs RESOLUTES to:

1. Approve the conclusions and recommendations made in the 2003 Report on the Status of Human Rights and Freedoms in Mongolia, produced by the National Human Rights Commission;
2. Assign the Government of Mongolia /N. Enkhbayar/ to reflect on breaches of and failures in the enforcement of legislations related to human rights mentioned in the report of the National Human Rights Commission; to take necessary actions;
3. Assign the National Human Rights Commission / S.Tserendorj/ to continue to issue recommendations and proposals on the consistency of the legislations with fundamental human rights principles and to effectively monitor the enforcement of the legislations;

4. Recommend the Supreme Court of Mongolia /Ch.Ganbat/ and the State Prosecutors Office /M. Altankhuyag/ to reflect on abuses of human rights and freedoms in the administration of justice mentioned in the report and to take actions to eradicate those violations.

TS. SHARAVDORJ
CHAIR
LEGAL STANDING COMMITTEE



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MON01103**



Mongolia

tel: 976-11-318082
fax: 976-11-327136
Email: humanrights@mongol.net