



**THE SUBMISSION OF THE NATIONAL HUMAN RIGHTS COMMISSION OF  
MONGOLIA (NHRCM) TO THE THIRD CYCLE OF THE UNIVERSAL PERIODIC  
REVIEW (UPR) OF THE UNITED NATIONS HUMAN RIGHTS COUNCIL**

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National Human Rights Commission of Mongolia  
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The NHRCM is an independent national human rights institution with A status accreditation by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights and has a mandate provided by the Law of Mongolia on the National Human Rights Commission, which was adopted in 2000.

## **A. Introduction**

1. In 2018, the NHRCM submitted its 17<sup>th</sup> status report on human rights and freedoms to the Mongolian Parliament. The report included the status of the implementation of recommendations from the 2<sup>nd</sup> cycle of the UPR and other human rights treaty bodies, and recommendations to Government on how to effectively implement recommendations.<sup>1</sup>
2. The NHRCM has assessed the situation of human rights and freedoms in Mongolia during the 2015 to 2019 reporting period and submits, according to the United Nations Human Rights Council resolution 16/21, relevant information to the 3<sup>rd</sup> cycle of the UPR.
3. Since its first UPR in November 2010, Mongolia has seen a number of positive developments that have contributed to some level of progress in the human rights situation of the country. However, there have been some setbacks in the area of national legal framework. For example, the Parliament passed a legislation in March 2019 that grants the National Security Council of Mongolia, which composed of President, Prime Minister and the Speaker of Parliament, the authority to dismiss, without justification and before their terms of office expire, the head of the Independent Authority Against Corruption and the Prosecutor General. This new legislation weakens the independence of the judicial system.
4. Greater enforcement of the rights and freedoms guaranteed under the international human rights treaties, which Mongolia is a signatory to, as well as the rights contained within the Mongolian Constitution, is required.

## **B. Human rights issues**

### **I. INTERNATIONAL HUMAN RIGHTS TREATIES**

5. NHRCM welcomes Mongolia's accession to the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure and the Minamata Convention on Mercury.

### **II. NATIONAL HUMAN RIGHTS INSTITUTION (Recommendations 25 and 28-32)**

6. The Ministry of Justice and Home Affairs established a working group that drafted a new law on the National Human Rights Commission of Mongolia, which is in conformity with the Paris Principles and contains the provisions that strengthen the independence of the NHRCM and provision of transparent and inclusive selection and appointment process of Commissioners with broad public review and independent planning and adoption of its budget by the parliament. The draft law was considered and supported by the Government Cabinet of Mongolia through its session in July 2019 and is to be submitted to and considered by the Parliament of Mongolia within 2019.

### **III. FREEDOM OF EXPRESSION (Recommendations 131-138)**

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<sup>1</sup> NHRCM (2018). 17th Annual Report on the Status of Human Rights and Freedoms in Mongolia, page 206.

7. The Government of Mongolia needs to align the relevant national legislation with the International Covenant on Civil and Political Rights to protect the rights of whistle-blowers and the source of information. This would entail amending the existing *Criminal Code 2015* to ensure protections for journalists and the Law on Infringement.
8. In order to create legal protection for whistle-blowers and human rights defenders, the NHRCM, in cooperation with civil society, developed the draft law on the legal status of human rights defenders and handed over to a subject who has authority to initiate and submit legislation to the parliament. The Government Cabinet considered the draft legislation through its session of 27 February 2019 and decided not to support it based on the grounds that it is lapsed and conflicted with certain laws and is set to create duplication of roles among public institutions and to increase the number of public servants and budget expenditure. The NHRCM, with the support of the OHCHR and in cooperation with the Ministry of Foreign Affairs and civil society, held a consultation meeting from 4 to 5 September 2019 to improve and advocate the draft law based on the inputs and comments from the OHCHR, government organizations, academics, and various stakeholders. The Government of Mongolia included action for improvement of legal protection and environment for human rights defenders in its general plan for the implementation of UPR second cycle recommendations<sup>2</sup>, which is its obligation before international community. Thus, the NHRCM recommends adopting the draft legislation.

#### **IV. PREVENTION OF TORTURE (Recommendations 7, 38, 71-80 and 126)**

9. The Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment came into effect in Mongolia in 2015. As per Article 17 of the Optional Protocol, Mongolia has an obligation to establish a sovereign body to prevent criminal cases of torture. The Government of Mongolia is yet to implement this recommendation. The new draft law on the National Human Rights of Mongolia includes of a whole chapter on setting up an independent unit at the NHRCM to play the role of the national preventive mechanism.
10. The Government of Mongolia was recommended to set up an independent investigative mechanism to combat crimes of torture from the second cycle of UPR in 2015. The Government of Mongolia is yet to establish an independent body to investigate crimes of torture, and in connection with the entry into force of the new *Criminal Code* and *Criminal Procedure Code* from 1 July 2017, the State Prosecutor General adopted a procedure<sup>3</sup> “to set jurisdictions through which allegations of crimes are to be examined, and prosecutors take oversight on them”

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<sup>2</sup> General Action Plan for the implementation of the recommendations provided by the United Nations Human Rights Council (2016-2020) Annex to the Resolution 204 of the Government Cabinet of Mongolia dated 11 April 2016. Page 22.

<sup>3</sup> Through this procedure, criminal jurisdictions have been set that the Independent Authority against Corruption (IAAC) investigates allegations of crimes committed by policemen, the National Intelligence Agency (NIA) shall investigate allegations of crimes committed by police officials and the IAAC, the Special Subject Investigation Division of the Investigation Office shall investigate allegations of crimes committed by judges, prosecutors, and officials of the IAAC, and the Criminal Police Department shall investigate allegations of crimes committed by the NIA by breaching the Law on undercover operations.

through order A/67 dated 30 June 2017. This procedure that set jurisdictions is an imprudent solution, through which investigation bodies examine one another, and has created a situation where allegations of torture cannot be investigated in accordance with principles of independence and autonomy thoroughly and effectively, which is demonstrated by the information regarding how these organisations handled the allegations of torture.<sup>4</sup>

11. Currently, a working group has been set up by the decree of the Speaker of the Parliament of Mongolia to study and to issue conclusion on the possibility to establish independent and autonomous body to investigate law enforcement officials, who abused their authority and violated the human rights and freedoms, guaranteed under the Constitution of Mongolia.<sup>5</sup> Commissioner of the NHRCM is a part of this working group.
12. NHRCM commends the Government of Mongolia for the provision in the *Criminal Code 2015* that acknowledges civil servants as perpetrators of torture and appropriate judicial action. In other words, it expanded the scope of the subject of this crime to bring provisions of the Criminal Code into conformity with CAT.

#### **V. DEATH PENALTY (Recommendations 2, 3 and 62-70)**

13. On 1 July 2017, the Government of Mongolia removed the death penalty from the Criminal Code 2015, via an amendment.

#### **VI. RIGHT TO BE FREE FROM DISCRIMINATION (Recommendations 19-21, 42, 50, 53, 55, 56, 61 and 154)**

14. The Government has failed to draft or implement comprehensive anti-discrimination legislation that would ensure the legal protection of all individuals regardless of age, race, ethnicity, gender identity, sexual orientation, ability, religion or political belief.

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<sup>4</sup> NHRCM (2019). 18th Annual Report on the Status of Human Rights and Freedoms in Mongolia, pages 114-119.

<sup>5</sup> Decree 59 by the Speaker of the Parliament of Mongolia dated 15 March 2019.

## **VII. MARGINALISED GROUPS (Recommendations 24 and 34)**

### **Children (Recommendations 8, 43, 83 and 106-115)**

15. NHRCM commends the Government of Mongolia for adopting the *Law on Child Rights* and the *Law on Child Protection* and issuing a national plan of action. Through this legislation, the Government has committed to raise awareness, cooperate with civil society and conduct training.
16. The President of Mongolia issued a decree and declared the period of 2019-2020 as the year of Child development and protection, in accordance with which a number of activities have been conducted for the development and protection of the child by the government, civil society, and businesses at every level. However, the violations of the rights of the child have not decreased.
17. Horseracing by children is a popular tradition in Mongolia yet it is a dangerous practice with fatalities not uncommon. As a result of continuous efforts and advocacy activities of the NHRCM, the Government issued a resolution that prohibits organizing a horse racing from 1 November to 1 May and requires a safety clothing and insurance for child jockeys during a horse racing; however, this regulation is insufficient. Each year innocent children are suffering from death or injury, with a 10-year-old child losing his life in January 2019 during a horseracing rehearsal<sup>6</sup>. Danger to the health and wellbeing of the child is not the only human rights concern regarding horseracing. The free will of the child to participate and their ability to access education are also of concern, as is the legal working age and conditions.

### **Women (Recommendations 43- 49 and 139-142)**

18. NHRCM welcomes the reduction in the maternal mortality rate from 2015 to 2017<sup>7</sup> and encourages the Government to continue to take action to improve child and maternal health. Particular focus should be given to ensuring comprehensive sexuality education for adolescents, with 2016 data indicating an increase in adolescent births compared to 2015<sup>8</sup>.
19. Starting from the academic year of 2018-2019 subject of 'Health education' has been taught in the full-secondary education schools, but there is not decrease in alcohol, tobacco, and drug abuse and internet addiction due to the poor quality of the subject and expanse of risky behavior among adolescents. Furthermore, there are still various dilemma issues among adolescents such as psychopathy, increase of suicides, violence, adolescent pregnancy, abortion, sexually transmitted diseases, and inadequate knowledge of sexual and reproductive health. Thus, it is necessary to give special focus on providing comprehensive education of sexual life for adolescents and preventing them from risky behavior, and every school should employ a doctor and psychologist.
20. NHRCM is also concerned about "girls' check-up" in some schools. As during the health testing at the full-secondary education schools there are high risks where privacy of girls is breached, which

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<sup>6</sup> NHRCM (2019). NHRCM News – Warning. Available at <http://en.nhrcm.gov.mn/news/warning/>.

<sup>7</sup> NHRCM (2018). 17th Annual Report on the Status of Human Rights and Freedoms in Mongolia, page 163.

<sup>8</sup> NHRCM (2018). 17th Annual Report on the Status of Human Rights and Freedoms in Mongolia, page 163.

leads to discrimination, defamation, drop-out of school, even suicide, so it is necessary to give special attention to prevention from them. Based on the NHRCM's 18<sup>th</sup> annual report, the Parliament issued a resolution<sup>9</sup> ordering the government "to identify effective ways to organize a health screening that includes reproductive health and prevention for sexually transmitted diseases for adolescents at full-secondary education schools and to keep the confidentiality of the adolescents' information within school system".

21. Thus, the NHRCM delivered a recommendation to the Ministry of Health<sup>10</sup> to align the policy and activities of health sector with the human rights norms and standards and to take necessary measures by directing ethics, communication skills, and attitudes of doctors and medical professionals towards securing confidentiality of health testing of child, particularly, adolescents, preventing from violation of their rights to dignity, privacy of health, and personal security. In response, the Minister of Health issued the Official Assignment 12<sup>11</sup> to the Health Departments and hospitals of the Capital Area and provinces and health organisations of all levels. It requires quarterly reporting to the Public Health Department of the Ministry on the implementation of the assignment.
22. The enforcement of the *Law on the Promotion of Gender Equality 2011* is inadequate. Even though branch boards at ministry level and branch committees at provincial level were have been established and been working so far, NHRCM conducted a review of the law's implementation in 2019 and found that the overall knowledge and understanding of gender equality among civil servants is still in its infancy. Even though it can be understood as the minimum 40% quota of any gender in overall public service set in the law is implemented, majority of leadership of decision making positions is still held by men, and the minimum percentage quotas of positions of certain levels set in the law are not effectively ensured.<sup>12</sup>
23. In 2015, *the Law on Election* was adopted, which set the minimum percentage of any candidates of any gender female candidates from political parties and affiliates at 20%. This provision is insufficient and inadequate as there is not adequate procedure set for effective implementation of the quota.

### **Persons with disabilities (Recommendations 152-158)**

24. NHRCM commends the Government of Mongolia for passing the *Law on Rights of People with Disabilities 2016* and developing a national plan of action. In addition, it notes that establishment of an agency in charge of development of persons with disabilities has been a major positive step. However greater effort needs to be taken to ensure an enabling environment and that legislation is implemented effectively by service providers, civil servants and the public.

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<sup>9</sup> The Parliament of Mongolia considered the NHRCM's 18th annual report on situation of human rights and freedoms in Mongolia during its plenary session held on 17 May 2019 and issued a resolution No.62 dated 6 June 2019.

<sup>10</sup> Recommendation 1/30 of Commissioner dated 4 June 2019.

<sup>11</sup> Dated 4 July 2019.

<sup>12</sup> NHRCM (2019). 18th Annual Report on the Status of Human Rights and Freedoms in Mongolia, pages 209-212.

25. The Government failed to address increasing employment opportunities for people with disabilities in the national action plan. This is of concern given disabilities can pose a barrier to employment. In 2018, 19.7% of people with disabilities were employed<sup>13</sup>.
26. In 2017, the Government adopted a national program on the reproductive health of the mother and child, with a focus on the special needs of pregnant people with disabilities. In 2018, NHRCM conducted a study on the sexual and reproductive health and rights of women and girls with disabilities. The results of the study<sup>14</sup> indicate that further training of health professionals and an increase in accessible sexual and reproductive health information and services for persons with disabilities is required.
27. Many buildings are inaccessible for people with mobility disabilities and pathways and crossings can prevent a barrier for the visually impaired. NHRCM commends the efforts taken to renew the Technical Requirements to make spaces more accessible. However, the Government needs to increase infrastructure investment and encourage the private sector to make businesses and buildings accessible, in order to meet the needs of people with disabilities.
28. In addition, it is important for the Government to continue to foster accessible environments for children with disabilities so that they can attend school like other children. There continues to be a lack of access to inclusive quality education for children with disabilities including professional teachers with specialist training.

#### **Lesbian, gay, bisexual, trans, gender diverse and intersex people (Recommendations 53-60)**

29. Mongolia provides legal protections to protect people from discrimination and harassment based on their sexual orientation, gender identity, intersex status or gender expression within the scope of the provision of crime of “discrimination” in the new *Criminal Code 2015 and terms of “hate crime” is set as aggravated circumstance of “murder” with hate motivation based on difference of belief, race, national origin, religion, gender and LGBT status, which is punishable from 12 years to 20 years of imprisonment or for life.* However, further training and awareness raising activities for investigators and prosecutors are required.

#### **VIII. DOMESTIC VIOLENCE (Recommendations 83-105)**

30. NHRCM commends the Parliament for enacting the renewal of the *Law against Domestic Violence*, in 2016. The renewed law contains protective measures of the victims and focuses on the prevention, early detection and elimination of domestic violence. NHRCM, however, has concerns about the application of the law and other relevant legislation is not at sufficient level.
31. Article 31.1 of the *Law against Domestic Violence 2016* provides for police officers to conduct a threat assessment in the environment where the victim may be susceptible. However, there were cases of police officers conducting a threat assessment at the police station, and with both

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<sup>13</sup> NHRCM (2019). 18th Annual Report on the Status of Human Rights and Freedoms in Mongolia, page 49.

<sup>14</sup> NHRCM (2019). 18th Annual Report on the Status of Human Rights and Freedoms in Mongolia, pages 48-82.

the victim and offender present, which puts the victim at risk. NHRCM recommends that police officials undertake training on how to conduct a threat assessment in a way that is effective and protects the victim.

32. Efforts should also be made to ensure that there is a sufficient workforce to manage cases and conduct home visits. The existing allocation per investigator is 4,000 people however in some of the rural areas one investigator is responsible for 22,000 people. With 40-50% of the calls to police concerning domestic violence<sup>15</sup> the issue remains a priority for the Government and requires continued action. Thus, the NHRCM recommends increasing staff and budget of police in this regards.

## **IX. HUMAN TRAFFICKING (Recommendations 116-122)**

33. In 2016, a database to register victims and suspects of human trafficking was established by the Government to improve inter-sectoral coordination on the issue. NHRCM understands that the database requires an upgrade because it is not coping with input, therefore recommends that the Government invest in repairing and upgrading the database so that it is fit for purpose.

### **C. Conclusion**

34. While the Government of Mongolia has taken steps to implement the recommendations from the 2<sup>nd</sup> cycle of the UPR, NHRCM believes that further can be done at all levels to improve the implementation of legislation and policies to ensure better alignment between Mongolia's international obligations and national mechanisms.

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<sup>15</sup> NHRCM (2018). 17th Annual Report on the Status of Human Rights and Freedom in Mongolia, page 173.