



# HUMAN RIGHTS BASED APPROACHES GUIDE



The Asia Foundation



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**Swiss Agency for Development  
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**The Asia Foundation**

This guide is published in the framework of the “Engaging Stakeholders in Environmental Conservation II” project being implemented by the Asia Foundation in partnership with Ministry of Mining and with the financial support from Swiss Agency for Development and Cooperation.

# HUMAN RIGHTS BASED APPROACHES GUIDE

**(For Public Officers)**

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*2014*





## INTRODUCTION

The Asia Foundation (TAF) is implementing a project entitled “Engaging Stakeholders in Environmental Conservation (ESEC) II” in cooperation with the Ministry of Mining, with financing from the Swiss Development Cooperation (SDC). The project aims to enhance the contribution which Mongolia’s artisanal mining sector makes towards sustainable human rights-based local development, which includes respect for the right to decent work and the right to a healthy and safe environment.

The key approach for ESEC II implementation is a human rights-based approach (HRBA), which is a conceptual framework for the process of human development normatively based on international human rights standards and operationally directed to fulfil, respect and protect human rights.

HRBA aims to open the opportunity to empower and enable community participation in the decision-making process that impacts on the style and quality of life in an open and significant way. It is also a process that holds “duty bearers” accountable to better perform their obligations towards “rights holders” in compliance with international and national legislation.

Integration of HRBA in project implementation have importance from the following aspects:

- **International treaties and legislation:** the project goals and standards are globally accepted and contribute to the realization of principles stipulated in Swiss, Mongolian and international legal frameworks;
- **Clear and open goals for the promotion of human rights:** any local development policy and program should be anchored in basic HRBA principles, and implementation will contribute to compliance with sustainable development concepts;
- **Decision-making powers:** building the ability for all to have active, free and meaningful participation in decision-making with long-term impact;
- **Equality:** respect for justice, equality and freedom, and demanding that “duty bearers” desist from excessive power use, which is the main reason for poverty and social inequality. HRBA also stresses the need to reach marginalized groups;
- **Efficiency and effectiveness:** special importance should be laid on accountability, empowerment and commitment;



- **Accountability:** clarify the scale and norms of responsibility held by government, donors, private sector, local community and individuals for each other, and influence compliance with the aforementioned principles from all development stakeholders.

In 2005, Mongolia highlighted governance improvement as a prerequisite for human development and attainment of the remaining 8 goals in the MDG, and became a world pioneer in defining and ratifying the 9th MDG goal, which focuses on the promotion of democratic governance and human rights.

Such a prestigious pledge and work serve as a foundation and starting point for the Mongolian government to ensure human rights and freedom, with planning and implementation of government policies in a human rights-based approach, and measurement of results and impacts are guided by criteria of how well each citizen's rights and freedoms are ensured.

Earlier, Mongolia concentrated on attracting and injecting foreign investment in its mining sector, with extensive prospecting and mining, to boost mining-driven development; however the country is currently meeting the necessity to create an economy consistent with sustainable development concepts, producing a green footprint, and to advance without impeding choices of rights and freedoms of future generations. Driven by this, the Government of Mongolia has adopted a policy for the mineral resources sector and has expressed a commitment to devote special attention to eliminating obstacles to human rights and freedoms while creating sustainable development.

Within this framework, TAF, through its ESEC II project implementation, undertakes comprehensive and collective action to engage with the private sector, government, civil society organizations and community at both the national and local levels for the development of responsible mining. This involves strict compliance with HRBA principles; knowledge, skills and capacity are provided to stakeholders in developing, approving and implementing local development policies consistent with sustainable development, and there is further monitoring, evaluating and progressing of such policies.

We will be glad to receive your comments and opinions regarding this guidebook.

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## PREFACE

The Constitution of Mongolia guarantees the civil right to participate in the government decision-making process in Provision 3.2, which says, “State power shall be vested in the people of Mongolia. The people shall exercise state power through direct participation in state affairs and through their elected representative bodies of state power.”

**Engaging citizens in the decision-making process and ongoing capacity-building for oversight and evaluation are essential to achieve MDG objectives to maintain environmental sustainability, develop democratic governance and alleviate poverty.**

Over the last two decades, Mongolia has experienced a rapid development in the resource-based economic sector that has bolstered the expansion of industrialization and urbanization. As a result, the environment, the setting in which humans and wildlife live, has been deteriorating year on year. It is especially noticed that soil erosion, degradation and land quality deterioration from mining prospecting and exploitation have drastically changed the long-established lives of local communities.

Mining prospecting and exploitation impacts on conventional animal husbandry, hayfields, agricultural business areas and rural villages, and has created an “unwanted new world” which has forced local communities to make a tough choice: either to “adapt and tolerate” or to “flee and seek refuge in urban centers.”

**In July 2014, over 5000 licenses had been issued in 21 provinces; almost 30% are exploitation licenses. A census on mining reclamation in October 2010 showed that 48% of mining-affected areas were “abandoned”. Why were those fields “abandoned”? Surely this demonstrates the lack of a proper mechanism of public and civil society monitoring, corporate social responsibility and local community oversight and participation.**

**Therefore, it is a priority task for local government to effectively increase local and civil society participation for responsible resource use and management, and to ensure written legal agreements are made between stakeholders rather than just a verbal agreement.**



**Finally, first of all it is a necessity to ensure participation of those affected citizens in a decision, policy making process, and secondly, to create and enhance a proper mechanism for effective policy dialogue and partnership.**

In their operations, exploration and mining companies must ensure civil participation to comply with the principles of respect for indigenous people's rights. On the other hand, local government must engage the community and civil society in an implementation of development programs as part of good governance. Such efforts would lay the foundation for realization of the human rights.





## ABBREVIATIONS

ASEAN	Association of South East Asian Nations
MoEGDT	Ministry of Environment, Green Development and Tourism
MoFA	Ministry of Foreign Affairs
GDP	Gross Domestic Product
CSO	Civil Society Organization
CSR	Corporate Social Responsibility
CRK	Citizens' Representative Khural
MDG	Millennium Development Goals
UN	United Nations
IFI	International Financial Institutions
ILO	International Labor Organization
ASM	Artisanal and Small Scale Mining
NGO	Non-Governmental Organization
SGK	State Great Khural (Parliament of Mongolia)
LLC	Limited Liability Company
OHCHR	Office of High Commissioner for Human Rights
HRBA	Human Rights-Based Approach
ECHR	European Convention on Human Rights
NHRC	National Human Rights Commission
UDHR	Universal Declaration of Human Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights



## WHAT IS THE AIM OF THIS GUIDE?

This Human Rights Based Approaches guide aims to integrate the HRBA concept in implementation of short-, medium- and long-term government policies and actions, and the programs and projects implemented with official development aid and loans.

## FOR WHOM IS THIS GUIDE DESIGNED?

The Human Rights Based Approaches guide has been designed for public officers and decision-makers who have a key role in implementing development policies consistent with sustainable development concept and principles. The guide can be also used by other stakeholders including artisanal, small scale miners, large-scale mine operators, civil society organization staff, communities and local citizens, as the guide content aims to enhance knowledge and understanding of human rights and rights-based approaches.



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# CHAPTER 1

HUMAN RIGHTS, FREEDOMS  
AND THEIR PROMOTION

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## 1.1 Fundamentals of human rights

**Human rights apply to every member of the human family equally regardless of sex, race, nationality, religious belief, socio-economic group, political opinion or any other status with intrinsic value.**

In other words, every human being has the same value, dignity and worth, born with inherent rights: the rights to life, personal identity, life with honor and dignity, independence, lifestyle and independent decision-making. These are unique and untransferable characteristics inherent to every human.

These are original and unique features of human beings, and are not permitted or granted by any state, religion, law or governance system.

However, human rights do not express superiority or privilege. Human rights involve minimum standards for pursuing a happy and good life, but only indicate minimum standards for a happy and good life, and as such do not necessarily indicate a human being's aspirations and dreams.

### THEREFORE HUMAN RIGHTS ARE:

- Indications of the original and natural character of every human being.
- Required minimum standards for living with dignity.
- Natural (i.e. granted by nature), to be protected by governments, organizations, communities and those who have assumed responsibility for ensuring and protecting human rights at international and national levels.

Humans were guaranteed human rights and freedoms by the Universal Declaration of Human Rights (UDHR) in 1948. UDHR is an historic document which affirms that all rights - economic, political, civil, social and cultural - are equal and important. However, it indicates the minimum standards for a human to pursue a decent life, but is not a long-term goal or dream.

This international human rights document iterates the role and duty of all signatory states to their respective peoples and to each other, to respect and protect rights and freedoms of all people. The norms accepted by each signatory country have become standard, stressing common goals, fundamental measurements to assess outcomes and the importance of any development program, assistance and practical significance.



Human rights involve a multi-dimensional notion at the intersection of a variety of subjects such as philosophy, morality and law. The first written reference to human rights was in England in 1256, when the British Parliament formally guaranteed the rights on paper. Human rights issues have been discussed ever since. Current notions we talk about human rights are the latest versions of a concept that has existed since the 1700s. So although modern terminology of human rights has a 300-year history, the study of human rights remains incompletely studied and imperfectly developed, so the ongoing study needs to further develop into a holistic science..

## 1.2 Human rights- types and classifications

Depending on content and objective, human rights may be considered in 5 main categories, including:

1. Civil and political rights (first generation rights); these promote and guarantee freedoms.
2. Economic and social rights (second generation rights); these ensure security.
3. Environmental, cultural and development rights (third generation rights); these include the right to a healthy and safe environment, cultural rights, political rights and rights to economic development.



However, while enjoying rights, everyone is also obliged to respect the rights of others.






The following shows details of all 5 types of human rights, based on 29 rights in the UDHR and rights stated in Article 16 of the Constitution of Mongolia.<sup>1</sup>

<sup>1</sup> Experiences from other countries indicate that new rights often emerge during the development process.





## 5 TYPES OF HUMAN RIGHTS

 <b>CIVIL RIGHTS</b>	 <b>POLITICAL RIGHTS</b>	 <b>ECONOMIC RIGHTS</b>	 <b>SOCIAL RIGHTS</b>	 <b>CULTURAL RIGHTS</b>
<p>Right to: life; freedom; a healthy and safe environment; protection from environmental degradation; protection of reputation; freedom from slavery; legal capability; freedom from torture; universal recognition as an individual before the law; equal access to justice; restoration of violated rights; fair trial; self-defense in court; recognition of nationality and religion; marriage; parenthood; freedom from hunger; access to water; education; and choice of permanent or temporary domicile or residence.</p>	<p>Right to: complain to public officers and agencies; resolution of personal, family and correspondence privacy; protection of and immunity of residence; access to information from the state on matters aside from what is legally classed as confidential; seek refuge in another country from persecution; free expression; profession of belief; voting and election; assembly; demonstration and protest; and freedom of speech.</p>	<p>Right to: work; free choice of employment; property ownership, alone or jointly; run a private entity; labor; protection from unemployment; just and favourable conditions of work; equal remuneration for equal work; access to adequate wage for livelihood and existence of individuals and households; membership of a trade union for the protection of interests; strike; own and give property as inheritance; fair acquisition of moveable and immoveable property.</p>	<p>Right to: free travel within the homeland; access to social welfare; access to aid; maintenance of reputation; development; protection of health; travel; access to healthcare services; vacation and consistent limitation of worktime; access to paid vacation; and access to free time.</p>	<p>Right to: freely take part in the cultural life of the community; to enjoy the arts; to share in scientific advancement and its benefits; access to commercial and moral benefits of scientific and literary works; freedom of the media; preservation, development and protection of traditional culture.</p>

While Governments periodically report their human rights status, receive recommendations followed by pledge on implementation; human rights are classified as above, and implementation of each right is monitored by different committees, the UN International Covenant on Civil and Political Rights (ICCPR) addresses both civil and



political rights. The UN International Covenant on Economic, Social and Cultural Rights (ICESCR) embodies economic, social and cultural rights.



*“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.”*

*Article 23.2, UDHR*

*“Everyone has the right to a standard of living adequate for the health and well-being of himself/herself and of his/her 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/her control.”*

*Article 25.1, UDHR*

Note that these two UDHR Articles state two provisions: the economic right to have employment and remuneration and the right to access to social protection, when necessary, in combination.

The following summarizes basic economic, cultural and social rights guaranteed by the Constitution of Mongolia:

Basic economic, social and cultural rights	
1. Right to free choice of employment (16.4)	6. Right to healthy and safe environment, and to protection from environmental pollution and ecological imbalance (16.2)
2. Right to rest (16.4)	7. Right to protection of health and medical care ... (16.6)
3. Right to remuneration (16.4)	8. Right to engage in creative work in cultural, artistic and scientific fields (16.8)
4. Right to education (16.7)	9. Both men and women have the same rights in political, economic and cultural affairs and family relationships. The State shall protect the interests of families, mothers, infants and children (16.11)
5. Right to engage in creative work (16.8)	10. Right to benefit from engaging in creative work (16.8)

If the above rights are grouped, 1-5 (first column) are economic, 6-9 relate to personal safety/security (or civil and social) and 9-10 focus on political, social and cultural rights.



State parties to UN ICCPR and its additional protocols are obliged to submit a report every four years to the UN Committee of Civil and Political Rights. Implementation of ICESCR must be reported to the UN ICESCR Committee every five years. The Government of Mongolia submitted an ICESCR Implementation Report in November 2012, and the UN Economic, Social and Cultural Committee has scheduled a revision for 1 December 2014. Mongolian human rights NGOs, under the umbrella of the Civil Society Forum, develop a shadow report, which is an independent report on the status of implementation, and send it to the Convention Committees. Such reporting on implementation of human rights has a specific nature and system.

Mongolia ratified its Constitution to include UDHR, ICESCR and ICCPR concepts and principles, in compliance with its obligations under international law. The 1992 Constitution expresses a commitment and duty to enable full exercise by Mongolians of rights and freedoms in the overall concept of a democratic and humanitarian society. Constitution Articles 14, 15 and 16 focus entirely on promotion of human rights and freedoms; Article 16.14 highlights civil and political rights.



*"The right to appeal to the court for protection of rights if the appellant considers that freedoms as spelt out by the Mongolian law or by international treaty have been violated; they may apply for compensation for damage illegally caused by another. They may choose not to testify against themselves, their family, parents or children; they are entitled to self-defense, to legal assistance, to have evidence examined, to a fair trial, to be present in any trial, to appeal against a court judgement, and to seek a pardon. There is a prohibition against being compelled to testify against oneself. Every person shall be presumed innocent until proven guilty by a court by due process of law. It is prohibited to apply any conviction to other members of the family or relatives."* Үндсэн хууль.16-р зүйлийн 14 заалт.

*Article 16.14, Constitution of Mongolia*

For instance, the right to appeal to a higher court, the right to compensation and the right not to self-incriminate or testify against the family relate to the political right that every person is presumed to be innocent until charges are proven in court by due process of law. These rights are inseparable, interrelated and universal; the entire world has accepted these rights and



divides them into two main categories: economic, social and cultural, and civil and political.

Human rights can also be classified into two, depending on status:

- **Absolute or core rights** cannot be interfered with, curtailed or suspended in any circumstances. Absolute rights include the right to life, to freedom from hunger, to a prohibition on torture and a prohibition on slavery. There is never any justification for conduct or treatment that violates this prohibition.
- 2. **Non-absolute rights or qualified rights** may in certain circumstances be subject to limitation by the State, under certain norms and periods expressly recognized by international law. For example, smoking is an individual right, but can be limited in public places for a greater social good.



Some non-absolute rights are derogable, meaning that they can be suspended in time of war or public emergency. This may include, for example, allowing longer periods of detention for questioning. These limits cannot be arbitrary, but must be prescribed by law, and these derogations are not automatic or unlimited; the derogation must have **legal grounds which must be explained to those whose rights are derogated**.

Article 19.2 of the Constitution of Mongolia states,



“In a state of emergency or war, human rights and freedoms as defined by the Constitution and other laws shall be subject to limitation only by a law. Such a law shall not affect the right to life or to freedom of thought, conscience and religion, nor the right not to be subjected to torture, inhuman and cruel treatment.”

This Article guarantees that absolute or core rights cannot be interfered with, curtailed or suspended in any circumstances.



### 1.3 Fundamental human rights and classifications

We mentioned above that fundamental human rights including freedom of religion, freedom of movement and the right to education are inherent to humans. Fundamental or so-called natural rights can be divided into rights and freedoms, although such classifications are inter-related.

#### Right

A **RIGHT** is the inherent feature of human beings with which they are born. Every person is entitled to enjoy rights.

#### FREEDOM

A **FREEDOM** is a opportunity to enjoy individual rights. This is fulfilled when a state does not interfere with freedom of speech, religion, participation or development.

The table below shows the interdependence of political rights and civil liberties/freedoms using rights guaranteed by the Constitution.

Interrelation of political rights and freedoms	
Basic rights	Freedom: opportunity to enjoy a right
Right to take part in the conduct of State affairs (16.9)	Freedom of expression (16.16)
The right to elect and to be elected to State bodies (16.9)	Freedom of expression (16.16)
Right to form a political party or other public organization and unite voluntarily in association (16.10)	Freedom of media (16.16)
Right to submit a petition or a complaint to State bodies and officials (16.12)	Freedom of demonstration (16.16)
Right to a fair trial/justice (16.14)	Freedom of information (seek and receive) (16.17)

In terms of freedom, duty bearers are obliged to refrain from violation. Citizens may have rights, but without state support of rights and freedoms, people cannot exercise rights and bear duties.

In accordance with the rights in UDHR Article 29, the Constitution of Mongolia has made every attempt to include all human rights and freedoms, and has grouped these rights into 18 articles. However, as stated above, human rights are evolving due to social development and globalization, and new rights and new terminologies are emerging. Therefore, Constitutional amendments are required, to guarantee these newly emerging rights. For instance, the Constitution does not currently include the right to food, civil participation, development, or to hold the government accountable.



## 1.4 CORE PRINCIPLES OF HUMAN RIGHTS

The UDHR human rights document has been globally accepted. It was ratified by all states without objection (8 nations abstained) on 10 December 1948.

The declaration lists all rights to be enjoyed by all people on earth regardless of nationality, language, race, color, sex, social status, religion, opinion, property or other status. Governments affirmed that they would promote human rights for their nation as well as for the people of other nations. Borders are no impediment to the enjoyment of human rights. Since 1948, UDHR has become the international standard on human rights; 171 nations (representing 99% of the world population) at the 1993 Global Summit re-affirmed the promotion of human rights.

Grounded on UDHR, the ICESCR (International Covenant on Economic, Social and Cultural Rights) and the ICCPR (International Covenant on Civil and Political Rights) formally include human rights principles. Also a number of other regional treaties, such as the African Charter, the European Convention on Human Rights and the American Convention on Human Rights, clearly define the principles for the promotion of human rights.

As outlined in the UDHR and other human rights-related documents, certain basic principles apply in the international human rights framework:

### 1 **Equality:**

Everyone is born human, so everyone has the same value/dignity and should enjoy the same level of respect and rights. UDHR Article 1 points out, “All human beings are born free and equal in dignity and rights,” indicating basic principles of equality of human rights.



### 2 **Non-discrimination:**

This is a principle inseparable from equality and ensures that no one should be denied protection of their human rights by external factors. All people are equal and are entitled to the same human rights, without discrimination of any kind,



no matter their nationality, race, sex, color, age, language, religion, political or other opinion, disability, property, birth or other status. The rights cited above in international treaties and conventions are just examples; they do not imply that individuals can be discriminated against on other grounds. Refusal to issue a driving license to a woman or a rural person would certainly be considered discrimination, but refusal to license a blind person or a child to drive a vehicle would not be discrimination as it is on reasonable grounds.



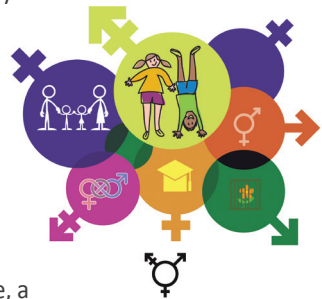
### 3 **Universality:**

All nations, indigenous people, local residents and communities have their customs, traditions and values. Universality applies within a larger framework which describes acceptance of the principle and considers all human rights apply to all people universally.



### 4 **Principle of human value and dignity:**

This guarantees the equality of all people by virtue of their inherent dignity. No one should suffer discrimination on the basis of race, color, ethnicity, gender, age, language, sexual orientation, capability, political or other opinion, social position, citizenship or other status as established by human rights standards. The key notion is that human rights are inseparable from human dignity. For instance, a newborn child, free from any wrongdoing, and the most terrible criminal in the world, both have the innate right to ethical treatment as humans. Human dignity differs from reputation or fame, which may be gained and lost. In human rights, a person's dignity is inherent and unique, with differing characteristics.





## 5 *Indivisibility:*

Human rights are indivisible, so civil, social, economic and cultural rights must be considered as a whole. The human rights principles of indivisibility and interdependability are not separate; they exist in relation to each other. For instance, the right to a safe and healthy environment relates to the right to life; enjoyment of the right to access to adequate healthy nutrition leads to the right to education and to contributing to a nation's development by being healthy and creative; they are interrelated. Economic rights involve the right of a person to accommodation, employment and remuneration.



## 6 *Principle of interrelation:*

As rights are inalienable and indivisible, violation of rights entails limitation of other rights. Promotion of human rights in one sector supports promotion of rights in other sectors. Human rights must be observed and promoted everywhere: home, workplace, street and public places, at any time and in all societal matters.



## 7 *Principle of inalienability:*

This means rights cannot be separated/alienated from human activity. If one person forces another to marry, or gets another to sign a document accepting slavery, these are unacceptable. But an individual may freely limit their own right to property ownership, as it is not an inalienable right.







## 8 Accountability:

a) **Holding the government accountable:** Human rights are not gifts or grants from the state. The state must not refrain from promoting, respecting, ensuring and progressing human rights or respecting and protecting the rights of any group and must not refuse to promote the rights of others.



b) **Holding individuals accountable:** Individuals are entitled to enjoy their rights, should respect others' human rights and should demand responsibility from any institution for the promotion and fulfillment of everyone's rights.

c) **Holding other persons accountable:** Social institutions such as corporations, NGOs, funds and other government institutions have a duty to protect and promote human rights.



*The UN Committee on Economic, Social and Cultural Rights has stated that violations of the right to health include "the failure to enact or enforce laws to prevent the pollution of water, air and soil by extractive and manufacturing industries."*

This provision concerns the obligation to create legal means to ensure fulfillment of, and safeguard from violation of, human rights such as life, a healthy and safe environment, protection of land-based household livelihoods, and access to safe food.

Human rights are also evolving due to social development and globalization. As society develops, human rights adapt and new rights terminologies emerge. For instance, Mongolian society used not to consider matters such as green (environmental) rights, indigenous/local citizens' rights, rights of herders as carriers of cultural heritage, rights to household business and livelihoods or land rights when there was not such intensive development in the mineral resources industry.



As party to the International Covenant on Economic, Social and Cultural Rights, Mongolia is obliged to keep its people free from hunger. Over 40% of Mongolians live in poverty, but the country has never linked this to infringement of economic rights or the right to be free from hunger. Addition of poverty alleviation goals to the MDG became a starting point for the country to recognize that poverty is an infringement of economic rights.

Similarly, intensive extractive sector development calls for environmental protection, which directly involves human rights such as the right to a healthy environment and protection from environmental imbalance. Environmental degradation directly affects the right to a safe and healthy environment and to access to food and potable water. However, Mongolia still has no system of consequences for legal entities and senior politicians making incorrect decisions, but only imposes sanctions on a few public officers.

Japan's "Community System" enables court action against corporations that pollute the environment and infringe the human right to a safe and healthy environment, and western countries impose stringent sanctions on such violations; they impose high penalties and may even dissolve the responsible company.

The Aarhus Convention is an international treaty that obligates states to guarantee the rights of people, particularly indigenous people, to access to information about any project implemented in their territory; to discussion and consultation based on that information; to participation in the decision-making process concerning the environment; to a safe environment during project implementation; and to access to justice if rights are infringed.

The Aarhus Convention was endorsed in the Danish city of Aarhus on 25 June 1998 as "Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters."<sup>2</sup>

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<sup>2</sup> [www.chrd.mongolnet.mn](http://www.chrd.mongolnet.mn) Translation by Human Rights and Development Center NGO, 2011



*“To contribute to the protection of the right of every person of the present and future generations to live in an environment adequate to his or her health and well-being, each party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.”*

*Article 1, Aarhus Convention*

Mongolia has taken steps to ratify this important convention with a series of preparatory work, with civil society organizations calling for action and a number of consultative meetings at various levels. There are designated Working Groups at the President’s Office, the Environment, Green Development and Tourism Ministry and the Foreign Ministry.

## 1.5 Progressive realization of human rights

Some rights (such as to health, education and social welfare) may present challenges for states with resource constraints. Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights says: “Each state party to the present Covenant undertakes to take steps, individually and with international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

The principle differs from that of the ICCPR, which obliges parties to «respect and to ensure to all individuals within its territory and subject to its jurisdiction» the rights in that Convention. However, this concept of ‘progressive realisation’ is sometimes misunderstood; for example, it does not mean (as is sometimes incorrectly assumed) that socio-economic rights involve no immediate obligations.

The requirement to «take steps» imposes an immediate and continuing obligation to strive to realise the rights concerned. It also prohibits deliberate regressive measures which impede that goal. The Committee on Economic, Social and Cultural Rights interprets this principle as imposing “minimum core obligations” to provide at least minimal and essential levels of each right. A further immediate obligation is the obligation not to discriminate in progressive realization of these rights.



A key obligation therefore (often not accurately recognized in programs, reports etc) is that progress towards achievement of rights that fall into this category must be by all available means on the basis of allocating the maximum of a state's available resources. This requirement has led to a useful focus on budgetary decision-making and priorities as a means of monitoring whether a state is actually meeting this legal requirement.

Another requirement that qualifies the margin that the concept of progressive realisation allows to states is the international law principle of non-regression. This principle requires that the norms already adopted and standards achieved should not be reversed.

A relevant additional obligation in the context of socio-economic rights and development requires the international community to assist states in fulfilling their human rights obligations.

The exploration of this obligation has in part given rise to the concept of the 'right to development.' This obligation to assist other states in meeting their human rights obligations means, as a minimum, that states do not force or pressurize other states to fail to meet their obligations, such as through inappropriate aid conditions.

## 1.6 State duty to ensure human rights

When Mongolia became a UN member state in 1961, the government accepted duties and responsibilities to observe and comply with human rights and freedoms as specified in the UDHR. Mongolia ratified its two major pacts, the ICESCR and ICCPR. Thus Mongolia recognized its duty to establish favorable conditions and environments conducive to respect for the rights of its people to a healthy and safe environment, to decent working conditions, to housing, to food, to adequate pay and to societal well-being.

Member states must take action to defend human rights and freedoms from any infringement and violation; otherwise, acceptance of rights on an international level does not make sense.

In claiming that protection of human rights and freedoms is the ultimate duty of a state, we need to examine who and for what purpose the state is formed. What are the obligations of the state? From where come the authority and obligations?



In primitive society, everybody's life was at risk because everybody was responsible for their own safety. Blood relatives united into clans or tribes, and these clans or tribes formed tribal groups, to protect each other from external danger. There was then less need for everyone to carry weapons; with this division of labor they would appoint protectors of farm land or tribal group from invasion. In this way the state was formed.

In simple terms, people united to protect rights and freedoms, formed a state and assigned authority to certain groups. Mongolia's citizens elect public officials for a 4-year term. To ensure that the state can carry out its responsibilities, citizens voluntarily give up some of their rights and transfer them to the state; for example, they agree on a restriction of ownership rights, pay taxes and accept the duty to serve in the army or protect the environment.



Thus, the state is an institution mandated by the people to fully protect their rights and freedoms, to provide every opportunity to a safe and healthy environment, to have jobs and decent housing.



*"Government of the people, by the people, for the people, shall not perish from the Earth".*

*Abraham Lincoln*

In its Constitution Mongolia proclaims its intention to build a democratic and humanitarian society and is by the world considered to be a country pursuing a democratic path which is favorable for human rights and freedoms. In democratic societies, people hold the power, demanding that duty bearers ensure and promote everyone's rights to expression and belief and holding the state responsible to ensure rights are respected.

Acceptance of human rights obliges governments and all duty bearers to perform certain obligations in their territory:

- o To respect human rights.
- o To protect human rights.
- o To fulfill human rights.







Details on each obligation are as follows:

TO RESPECT HUMAN RIGHTS	TO PROTECT HUMAN RIGHTS	TO FULFILL HUMAN RIGHTS
<p><b><i>To respect human rights:</i></b> states should not interfere with the enjoyment of human rights and freedoms. States should refrain from restrictive measures to rights or illegal acts (i.e. refrain from torture, illegal arrest or forced eviction, fees for medical services for insolvent persons, forced property seizure, and must respect freedom of voting and association).</p>	<p><b><i>To protect human rights:</i></b> states should create a legislative framework and systems to prevent violation of human rights and freedoms, restore rights if infringed and compensate for damage/loss due to any rights violation.</p>	<p>The state should improve and add to opportunities for its people to enjoy their rights and freedom in a way that is progressive and on-going. The duty to protect human rights is a wide-scale notion that includes instruments of protection. It focuses on some main aspects: ensuring rights (making public services more accessible and less bureaucratic), promoting rights (providing more information and encouraging meaningful participation), and implementing rights (focus on marginalized groups and on ensuring equality).</p>



For these three duties, states must comply with universal principles of human rights as well as the following<sup>3</sup>:

-  **Availability:** Legislate resolution of key problems of public service providers and delivery of appropriate facilities, premises, equipment, sanitation, drinking water, staff and wages.
-  **Accessibility:** Enable service access to all without discrimination, and enable all to participate in any action.
-  **Acceptability:** Rules and regulations should be clear, meet citizen needs, and enable access for all to all public services and information.
-  **On-time (coherent with the time being):** Government policy and services must be consistent with social change and mobility. For marginalized groups, services must meet needs, and public services must also support all other rights.

As detailed above, the formation of a state is not to acquire power, but to work for protection of rights and freedoms. Therefore, the protection, promotion and respect for human rights are not by government good-will, but are key state obligations.

Both formal and informal studies indicate that 29-40% of Mongolians (about 1 million people) live under the poverty line. It is also estimated that a similar number of people are on the brink of poverty. What are the main reasons for the Mongolian level of poverty and its rapidly threatening increase? Who is responsible for Mongolian poverty? Is the key reason a natural Mongolian laziness? Or is the government failing to provide every opportunity for its people to have a safe and healthy environment, employment, revenue and accommodation, so driving people into poverty?

People should be able to exercise the right to remind the government how it should act and what duty the nation has imposed, and hold the government accountable. It is vitally important that citizens of a country that intends to develop a democratic and human society can effectively participate in and engage with any decision-making that affects the rights and freedoms of current and future generations.

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<sup>3</sup> Human Rights Brochure, p. 196, NHRC. 2014



## 1.7 Business' duty to promote human rights

With Mongolia's transition to a democratic society and a free market economy, a favorable and conducive environment was created. Subsequently, citizens are able to establish businesses and incorporate in various forms of business. Trans-national corporations are injecting investment into all sectors of our economy, especially in mining, construction and infrastructure. So the nation's economy has diversified, and business ownership has become both public and private. The Mongolian state has increasingly transferred duties and functions to the private sector, to companies and corporations. Management of public transport has been privatized, and construction and road-building projects are subject to concession agreements financed by the taxpayer. Once the state transfers duties to private sector players, the corporate sector should respect human rights because they do their business with taxpayer money.



The relevant rights may include non-discrimination by age, sex, race or religion in personnel recruitment; a food producer's obligation to produce high-quality goods with a stress on consumer health and safety; waste management in the mining, construction, energy and road-building sectors to eliminate health dangers; and the duty of natural resource exploiters continuously to mitigate adverse environmental impacts on human rights.

Many international agreements, conventions and documents that require business to respect human rights have been ratified, including the UN Global Compact<sup>4</sup> (2002) and the Guiding Principles of Business and Human Rights<sup>5</sup>.

The Global Compact is the most widely accepted voluntary movement for corporate social responsibility, initiated by then UN General Secretary Kofi Annan. Almost 5300 companies from 135 countries have currently joined this movement. Global Compact Local Networks are operational in more than 90 countries.

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<sup>4</sup> Global Compact, 2002

<sup>5</sup> United Nations 'Protect, Respect and Remedy' Framework, 16 June, 2011, UN Human Rights Council





Under this agreement, companies assume no legal or financial duty, but agree to follow 10 Principles in their business activity, in four groups: human rights, labor, environment and anti-corruption.

The Mongolian Agency of Standardization and Measurement has translated ISO26000 standards on corporate social responsibility, approved by the International Organization for Standardization, and subsequently endorsed the National MNS 26000:2012 standard on the same subject<sup>6</sup>. This guiding standard comprises 7 Core Principles, not intended as management standards requiring certification.

The 10 Principles of Global Compact and 7 Core Principles of MNS ISO 26000:2012 standards are shown below:

10 principles of Global Compact:	7 components of MNS ISO 26000:2012 standard
<ol style="list-style-type: none"> <li>1. Businesses should support and respect the protection of internationally accepted human rights.</li> <li>2. Businesses should ensure that they are not complicit in human rights abuse.</li> <li>3. Businesses should respect freedom of association and the effective recognition of the right to collective bargaining.</li> <li>4. Businesses should eliminate all forms of forced and compulsory labor.</li> <li>5. Businesses should support the effective abolition of child labor;</li> <li>6. Businesses should eliminate discrimination in respect of employment and occupation.</li> <li>7. Businesses should support a precautionary approach to environmental challenges.</li> <li>8. Businesses should undertake initiatives to promote greater environmental responsibility.</li> <li>9. Businesses should encourage the development and diffusion of environmentally friendly technologies.</li> <li>10. Businesses should eliminate corruption in all its forms, including extortion and bribery.</li> </ol>	<ol style="list-style-type: none"> <li>1. Good organizational internal governance.</li> <li>2. Respect for human rights and freedoms.</li> <li>3. Ensuring right to labor.</li> <li>4. Be favorable to the environment.</li> <li>5. Ensure justice and fairness.</li> <li>6. Ensure rights and freedoms of consumers and clients.</li> <li>7. Seek effectiveness in societal relations and development.</li> </ol>

<sup>6</sup> Corporate Social Responsibility Standards



These principles enjoin businesses to support, promote and respect human rights, uphold freedoms and have ownership of these obligations. From a fairness point of view, businesses and individuals who do business and gain benefit using public funds should respect and protect social interests and human rights and satisfy the state's duty without modification.

Non-state actors like trans-national corporations have a role in a country's development. In June 2011, the UN Human Rights Commission endorsed its "Guiding Principles on Business and Human Rights,"<sup>7</sup> which has become a global standard for business to devote attention to and prevent adverse business impacts on human rights. Inter-governmental organizations are also enjoined to observe rights when transferring power and rights to businesses.

Large-scale and micro extractive miners must play a significant role in promoting human rights and freedoms. They have no right to refrain from, suspend or modify human rights. They are specifically obliged to ensure, respect and restore rights to a safe and healthy environment and protection from ecological imbalance.

**The environment** encompasses all living and non-living things occurring naturally anywhere on Earth, particularly when home to humans and other living organisms.



**A healthy environment:** this mainly refers to environmental balance and the circumstances of nature. It specifically involves affairs and rights pertaining to water, land, soil and air.

**A safe environment:** this involves socio-politics, e.g. freedom from violence, with public order, personal safety and territorial safety<sup>8</sup>.

The human right to a safe and healthy environment is the basis for freedom to life. As humans are part of the nature, their immediate needs are fresh air, potable water and a healthy soil. Both the state and the private sector are obligated to ensure people's rights to a healthy and safe environment and to protection from ecological/environmental imbalance.

<sup>7</sup> United Nations 'Protect, Respect and Remedy' Framework, 16 June, 2011, UN Human Rights Council

<sup>8</sup> Dictionary of Human Rights Terminologies. P. 135, 2012 NHRC



## 1.8 Individual rights, freedom and duties

When we talk about human rights, we should talk about individuals rather than nations, social classes or strata. The target for implementation of human rights is the individual, and is the measure of to what extent individual rights are promoted. The individual is the core and basis for all societal matters and legitimacy. From birth, individuals may exercise freedoms, and no one, not even the state, has the right to limit these freedoms. There are no grounds to limit human rights and freedoms of an individual unless the individual abuses other people's rights.

Every citizen has equal rights. It is not a legal or moral justification to claim that the state is superior to the individual because it exists with the help of public taxation and is formed by the people. Public servants have no better rights than the citizen; rather they should always remember that they are duty-bearers for citizen benefit, although they do have the same rights as other individuals. Public servants, from soum (rural administrative unit) and khoroo (smallest urban administrative unit) Governors to parliamentary members and the President, should remember that they were elected for four years with a "license" from the people by promising to do their best. Citizens, as right-holders, should be able to remind duty-bearers of duties and responsibilities and hold them accountable; the state is obliged to enable and empower people to hold them accountable.

The ultimate goal of a state is support and respect human rights and freedoms. People are not tools, they are goals, and the need is for a people-centered policy, not a state policy-centered people. The state should protect from assaults and attack, and no law or regulation should be approved which limits or disrespects human rights.



Individual responsibility is the most important societal issue. Individuals should not share with others or lay on others their own mistakes/failures made while exercising a freedom. People have no right to violate the rights of others who exercise the same rights.

This is a core principle that citizens must accept in exercising their rights. Individual freedoms can have only one limitation, the rights and freedoms exercised by others. If an individual harms or acts in a way that is detrimental to the environment or to public interest, the state has a duty to interfere to protect public and societal interests.



“In the exercise of rights and freedoms, all 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.”

Article 29.2, UDHR



Mongolia’s Constitution of Mongolia says, “In exercising rights and freedoms, no one shall infringe on the national security, rights and freedoms of others or violate public order,”<sup>9</sup> which means that rights are exercised and freedoms enjoyed without harm to other people, communities or society, and each person bears duties and obligations.

Georg Friedrich Hegel, a great thinker who made a significant contribution to the philosophy of freedom by explaining the interrelation between personal interests and public deals, spoke of “free will” and proposed it is solely by risking life that freedom is obtained; “... the individual who finds freedom has attained the truth of this recognition as an independent self-consciousness.”

Hegel expresses the possibility that people can recognize and exercise what they want and what they are committed to, but freedom to enjoy rights and express personal interests must be governed by public rules and legislation in societal affairs; that is personal obligation.



# CHAPTER

# 2

## HUMAN RIGHTS-BASED APPROACH AND PRINCIPLES





## 2.1. International and national system for human rights realization

By participating in the international human rights collective system, governments accept an obligation and commit themselves not to violate minimum standards of human rights, and to protect these rights by including internationally accepted human rights obligations into their own constitutions, laws and regulations, policies, programs, budgets, measures and activities. Such commitments and obligations are relevant to all branches and levels of government, especially at the local level, where public servants deliver basic services. The local level is not limited to province, bagh and soum, but includes primary administrative units in the capital city, including khorroos and districts.

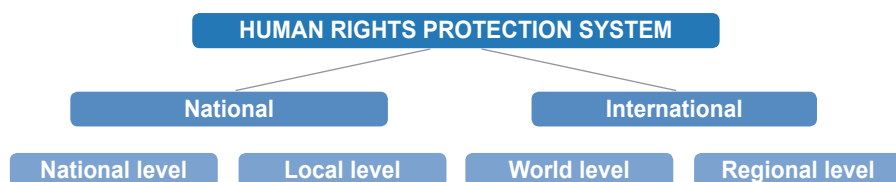
States have the responsibility to assess and evaluate implementation of development policies and plan at both planning and completion phases, using human rights outcome indicators to police implementation of human rights. Another important state role is to oversee obligations, approaches and practices of third party actors which participate in or influence development process, including business, with the aim of facilitating equal fulfillment of human rights.



Enforcement systems for human rights and freedoms are relevant not only to a particular country, but also require effort at the international level, joint international system and policies (see the diagram below).

Documents that define and guarantee human rights, especially inherent and fundamental rights, are called law sources. They are of two main types, with the following forms: international law, and domestic laws (including the Constitution)<sup>10</sup>.

<sup>10</sup> Constitutional Knowledge, B.Chimid, p. 95, 2008



When Mongolia passes a law, it is self-endorsed; when a country ratifies and becomes signatory to an international convention, the country will also pass a designated law.

The Constitution of Mongolia offers relevant provisions: “Mongolia shall fulfil in good faith its obligations under international treaties to which it is a Party” (10.2) and “International treaties to which Mongolia is a Party shall come into effect as domestic legislation upon the entry into force of the laws of their ratification or accession” (10.3).

So international treaties become part of Mongolian law as “international treaties” and become valid; a country in its Constitution guarantees that it will adhere to them as an obligation when it ratifies any particular treaty.

## 2.2. Human rights-based approach and need for integration into policies

Many stakeholders contribute to application and development of a human rights-based approach (HRBA) in defining, implementing, evaluating and improving their development policies. The UN takes the main role in promoting the HRBA. Specialized UN agencies such as the UNDP have used a human-centered approach to guide their operations. The UN and its member states, alone or collectively, are responsible for applying fundamental human rights embodied in the UDHR. This is the UN’s core purpose and principle<sup>11</sup>.

<sup>11</sup> Article 1 of the UN Charter defines its main purposes: “to maintain international peace and security; to develop friendly relations among nations; to achieve international co-operation in resolving international problems of an economic, social, cultural, or humanitarian character; and to promote and encourage respect for human rights and for fundamental freedoms.” In Article 55, the UN has committed to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction of race, sex, language or religion. In Article 56, all members pledged to take joint and separate action in cooperation with the UN to achieve purposes in Article 55.





In promoting human rights as both development tool and goal, the HRBA notion has been in existence for years; it is not a new concept<sup>12</sup>.

HRBA aims to bring human rights issues to the centre of policies and programs for global acceptance, providing opportunities for people to claim and enjoy their rights and to participate in oversight and decision-making.



The Human Rights-Based Approach (HRBA) is a process of continuous application of core principles in policies and activities with the objective of ensuring full enjoyment of human rights

It aims to ensure that human rights are constantly acknowledged and reflected at all levels, even at the lower level, in all standards, plans, policies, budget, actions and measures as well as outcomes.

National and local-level development policy documents<sup>13</sup> should be developed and implemented involving core principles of human rights and freedoms. Evaluation of implementation must explore in a broader and more comprehensive view what footprints policy documents and actions leave on social, economic and environment settings; to what extent policy implementation has enabled the exercise of rights and freedoms; how the policy has ensured human development and progress in the quality of life of households and persons; and how the policy has helped government to fulfill its human rights duties. The angle we look at policy must be based on human rights, is how we understand the HRBA.

Development outcomes must be based on active and meaningful participation of individual and nation and should be an ongoing process for continuous improvement of livelihoods.

<sup>12</sup> For instance, the ILO, founded before the UN, has operated in the field of human rights since establishment in 1919. Humanitarian programs implemented by the Office of the High Commissioner of Human Rights have been based on international human rights standards since 1955.

<sup>13</sup> Development policy documents include long term policy, action plans, annual social and economic development directives, projects and programs implemented with public funds and aids, government duties transferred to businesses and concession agreements.



*Development is a comprehensive economic, social, cultural and political process. At the core of this process is the constant improvement of the well-being of the entire population and every person based on their active, free and meaningful participation and these matters each and every country. States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. As such the internationally accepted definition of development embraces not only economic and macro-economic results, but includes other issues like health, housing, education, distribution of resources, development of human capacity, expansion of their choices.*

*Thus, the focus of development on process and outcomes means that it is about the development of civil, political, economic and cultural rights of the people.*

*Declaration on the Right to Development adopted by the UN General Assembly, 1986<sup>14</sup>*

For instance, Mongolia's poverty and unemployed levels should be mitigated as a result of development outcomes. Such outcomes would define to what extent jobs were created; wages increased; slavery eliminated; employment opportunities increased especially for marginalized groups; fair wages for fair work adequately sustains livelihoods, food acquisition, accommodation, education, cultural and health services; families have sufficient income to care for children and parents; the young workforce is not sent abroad; and violence and discrimination diminish.

HRBA requires not only a poverty reduction strategy and goals grounded on international human rights principles, norms and standards, but also that these strategies aim to empower low-income and unemployed groups, and enable meaningful and active participation by identifying needs, implementing strategies and evaluating outcomes.



HRBA is a tool/instrument to help disadvantaged groups classed as "poor" or "vulnerable" to understand that they are rights-holders; they are able to remind the state about its obligations and hold it accountable by increasing, step-by-step, their knowledge and information about rights and freedoms and by enhancing the quality of meaningful participation of these people in decision-making.

<sup>14</sup> [www.unhchr.ch/html/menu3/b/74.htm](http://www.unhchr.ch/html/menu3/b/74.htm)



It is noteworthy that human rights-based approaches have been developed and are currently applied. The effectiveness of the particular HRBA type depends on the sector, on the social and political situation and on the HRBA user. HRBA offers various formulations and approaches<sup>15</sup>, all of which have a common goal and main principles. HRBA principles have increasingly become a legitimate indicator to evaluate results or outcomes of a country's economic, cultural and political processes and development efforts, together or separately.

This guide presents HRBA models commonly used in countries that resemble the context, special features and specific needs of Mongolia.

HRBA has the following common principles that create the core of the approach, interrelated and internationally accepted:



Before explaining HRBA principles, it is worth discussing bearers of the duty to fulfill human rights, their sense of rights and approaches. In mainstreaming HRBA, duty-

<sup>15</sup> For example, The UK government Department for International Development uses HRBA as a common principle. Participation, inclusiveness and fulfilment of obligations are important elements in HRBA application. The UN HURIS program uses PANEL (Participation, Accountability, Non-discrimination, Empowerment and Linkage) as its normative standard. For other definitions used by various stakeholders, refer to the document at: [http://www.crin.org/docs/resources/publications/hrbap/Interaction\\_analysis\\_RBA\\_definitions.pdf](http://www.crin.org/docs/resources/publications/hrbap/Interaction_analysis_RBA_definitions.pdf).



bearers must not approach it as abstract or apply it as a one-off project tool. This would not succeed, and would certainly impede the promotion of human rights at certain levels.

Public officers, local decision makers and business employers have abundant experience in the duty to promote and report human rights at local and international levels. But duty-bearers as individuals are not obligated to change their individual sense, dignity, immanence and committed attitude and thinking for their constituents.

HRBA specifically takes into account the personal attitude of an individual duty-bearer, calling for a delicate sensitivity demonstrated by personal conduct and manifested by how business is done, in communicating with society and others, and impacting on others' conduct and attitudes as well as society at large; in this sense it is a new management tool.

Although the state is abstract, HRBA may be located in a sensitive attitude of authorities, decision-makers and policy makers towards individual rights and actions, and in the footprint of conduct of those people who fully recognize their duty. When citizens elect representatives, they may just circle the number before the candidate name; this makes a social contract by which an individual is elected.

Knowledge of and sensitivity about human rights of those who represent citizens, their human qualities and manners, and how they were raised as a human, these directly determine how they will fulfill their responsibility as a duty-bearer. So there is a need to improve and engrain HRBA with civil servants, decision-makers and employers rather than talking in general about the state.





Table: Main differences between HRBA and other approaches

OTHER APPROACHES	HUMAN RIGHTS BASED APPROACH
Activities are <b>voluntary</b>	Activities are <b>compulsory</b>
People have <b>needs</b> that have to be met	People have inherent and <b>legally-protected</b> rights to claim their rights
Disadvantaged groups <b>receive assistance</b> as objects of welfare policy.	Disadvantaged groups <b>have rights</b> to get assistance as objects of a human rights approach
Some people can be <b>excluded</b>	Every person has equal rights for self-development and can receive assistance for better self-realization
People are <b>passive beneficiaries</b> of development. They can be <b>invited</b> to participate in the development process in order to improve effectiveness of programs and projects	People are <b>active participants in the development process in terms of rights</b>
Some <b>cultures</b> do not accept some needs	Because human rights have no boundaries, and are universal and inalienable, the state has no right to degrade them or take them away
It is very difficult to change the balance of power, hence <b>pragmatic</b> ways are needed	Any factors that hinder a human rights fulfillment process have to be <b>effectively changed</b>
Development is a <b>technical</b> process, and it should be led by technocrats who have the best knowledge and expertise	Right-holders are considered as important participants in the development process and they have to be <b>supported</b> so that they can enjoy their rights and participate in decision-making
There is a <b>“ladder of needs”</b> and some needs of rights are always more important than other needs	Rights are <b>indivisible</b> at any time, and are <b>interrelated</b>

This comparative table shows a traditional approach to human rights that has treated people, and especially marginalized groups, as objects or tools; HRBA is a totally new management tool because it acknowledges and accepts that people, particularly marginalized groups, are main participants in development, as decision-makers and rights-holders.

Duty-bearers for state and non-state functions need to be trained in a rights-based approach; individuals should reconsider their own point of view about rights and



management approaches, drawing appropriate conclusions and perhaps changing views about and attitudes towards marginalized groups or right-holders.

Let's discuss the five main principles of HRBA in detail.

## One: I international human rights system and standards



Prior to HRBA implementation it is important to raise the awareness of government and public officers not just about UDHR and the two related international treaties, but also about other international agreements and conventions that define legal obligations and responsibilities, norms and standards, and how to incorporate them in the national legislation, raise

public awareness and mobilize resources for effective implementation. Such other agreements and conventions include the Convention on Child Rights, the Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, the Convention on Political Rights of Women, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Prevention and Punishment of the Crime of Genocide<sup>16</sup> and the Convention on the Rights of Persons with Disabilities.

In addition there is a broad range of official statements from relevant organizations/ authorities, including conventions and protocols adopted by the International Labor Organization, a convention on transit trade of land-locked countries, obligations between some countries of a particular region, joint declarations and statements, and evaluation reports by the UN Special Rapporteur.

HRBA requires a clear specification of human rights in domestic laws and defines performance indicators and requirements for outcome evaluations.

<sup>16</sup> State Information Bulletin, 2014, Special edition.



## Two: Empowerment

The core cause for those who are unable to exercise their rights is a lack of understanding and knowledge, or in many cases lack of access to information and limited opportunity to participate in decision-making. Such situations drive the demand for changes in human rights promotion and lead to situations in which the state cannot ensure rights.

The principle of empowerment requires an increasing awareness for both the rights-holder and duty-bearer on information exchange and opportunities for participation in and engagement with decision-making. A rights-holder who exercises the right to participate fully and comprehensively can show others how to join demands for rights; they may also increase the skills and capacity of duty-bearers in holding the government accountable.

Effective and constant promotion of the right to participate would be fundamental to implementation of the empowerment principle: the principle of active and meaningful participation is ensured through empowerment.

## Three: Meaningful and effective participation through empowerment

The right of someone to be involved in decision-making that may affect their life is a progress both in fulfilling human rights and in human rights themselves. Like other HRBA principles, the right to participate is defined by international law as a comprehensive concept of being “active, free and meaningful.” It requires ensuring other rights like the freedoms of expression, association, education and information. Based on the principle of non-discrimination, obligations assumed under the international agreements require states to disseminate widely and build awareness about human rights.

Effective and real participation depends both on empowerment and being empowered/getting power, and is about “community being capable of defining issues and challenges facing them in their localities, developing and implementing mitigation programs, and monitoring the results of implementation of such programs.” It is the state’s duty to build this capacity, while it is the rights-holders’ obligation to act with initiative and to be proactive.



#### 4 Four: Non -discrimination and significance for marginalized groups

The principle of non-discrimination relates to the other principles, but is considered a core principle, springing directly from the international human rights protection system. Prohibiting discrimination and devoting greater attention to marginalized groups for human rights is included in all human rights treaties, and is therefore a common and universal human rights issue.

This principle mostly applies to developmental activities, but does not involve putting a particular group (women or rural community) in the limelight and considering them marginalized; rather it is the notion that any development policy must focus on ensuring that the less empowered exercise their rights fully, and that they be engaged and empowered in policy development. The Government of Mongolia has developed and implemented long- and medium-term poverty reduction policies, but despite a considerable expenditure of public funds and much effort, the poverty reduction goals remain unachieved, and marginalized groups have not benefited in quality of life. Non-discrimination is a principle demanding a look at the issue through HRBA lenses, followed by development and implementation of effective policies.

However, it should be recognized that the delicate and vulnerable nature of human rights changes at all levels from time to time and for different social groups.

#### Five: Accountability

An HRBA accountability system is a legal system comprising the above principles of empowerment, participation and priority to marginalized groups, serving as an accountability system for ensuring human rights.

The system is designed to measure progress made by both duty-bearers and rights-holders, encouraging positive changes in human rights and remedying mistakes.



“The state and other duty-bearers should be sensitive in protecting human rights. They have to comply with legal norms and standards on human rights. In case of failure, right-holders have the right to take appropriate measures before the courts and other enforcement agencies take relevant measures according to rules and principles prescribed by law.”<sup>17</sup>

<sup>17</sup> Human rights-based approach to development cooperation – Common understanding among UN agencies, [www.undp.org/governance/docshurist/030616CommonUnderstanding.doc](http://www.undp.org/governance/docshurist/030616CommonUnderstanding.doc)





Accountability addresses all processes, from policy development to decision-making and outcome measurement. The principle of accountability requires coverage of the following:

- a) Establishing effective and systematic planning and allocation of resources.
- b) Evaluating, analyzing, context and nature of accountability in legal, administrative and political spheres.

The principle includes ensuring, managing and measuring accountability outcomes for both duty-bearers and the state.

## 2.3 Potential obstacles in HRBA implementation

When applying and realizing HRBA, there are essential measures beyond just recognizing that policies, practices and organizational structures are HRBA-consistent; more is needed for real achievement. There is a requirement not just to develop methodologies and practical toolkits, but also to predict future challenges and consider present obstacles to avoid risk, and constant learning from best practice in other countries to mainstream activities. Applying HRBA itself is a long and time-consuming process.

Some challenges and obstacles may occur in applying HRBA:

- Behavior and stereotype of duty-bearers, government officers, may remain unchanged.
- Conventional processes and hierarchy of government agencies maybe counter to the new trends.
- Duty-bearers may claim that HRBA has already been included and implemented in policies. There may be an entrenched approach or a view that many policies and measures targeting disadvantaged groups are in place, that citizen participation is ensured and that people, especially disadvantaged groups, are already empowered.
- Lack of consideration of participation of rights-holders as an issue relating to human rights may mean that effective planning and implementation may encounter problems, or the process may stagnate.
- Stakeholders and partners may have no unified and consolidated information/knowledge about the main content and importance of HRBA, and lack willingness for change.



- Limited public awareness and information on human rights, and low expectation for changes, may result in weak and inactive engagement and participation.
- There may be a misperception that fulfillment of human rights depends only on property ownership rights or economic growth.
- There may be a perceived weak capacity of HRBA programs and lack of identified priority issues.
- Civil society organizations may be scattered or non-unified, limited in number, or unable to cooperate with each other.

Many politicians think an extensive use of natural resources and a resource-driven economic growth will have a perceptible impact on improvement of livelihoods and will directly contribute to fulfillment of human rights and freedoms in Mongolia. They therefore believe that natural resource-driven economic growth will lead to HRBA progress.

But economic growth may have a negative impact and result. In many countries, economic growth has boosted inequality, as GDP growth is not always tied to a redistribution policy. Corruption, discrimination and lack of empowerment all result in the upper levels of society most benefiting from economic growth. Mongolian economists have warned about this potential retreat, as exemplified by Nauru, a country rich in natural resources.<sup>18</sup>

Many countries have considerable experience in these potential challenges and problems. We should be able to learn from their experience, and there are many opportunities for extensive learning from such global examples.

HRBA implementation requires time and resources for long-term sustainable change. Change is required in all stages and aspects of organizational function, from change of management systems to staff training and modifying criteria for progress measurement to change of organizational culture. Specific time must be devoted to achieve full understanding of the notions. But we must commence HRBA application now, as duty-bearers must make progress in human rights realization and how to ensure full and comprehensive fulfillment of human rights.

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<sup>18</sup> <http://www.ikon.mn/n/b23>



## 2.4 Importance (benefits) of mainstreaming HRBA

Earlier it was said that HRBA is a process that is constantly applied in policies and action, to offer opportunities to everyone to fully exercise their rights. Full exercise of a person's rights is about people enjoying the rights to live and work in a healthy and safe environment, to a quality education, to contribute to their country's development, to have an income sufficient to sustain their lives. This is often defined as progress in personal development and quality of life, and these are core to development.

A country's development is not the result of a one-off event or action or of economic growth in a certain period, which are only of temporary effect, benefitting only a small minority of elites rather than bringing gains for the population, creating a bigger rich-poor divide and offering only fancy buildings, high-end houses and glittering streets.

The on-going and non-stop process of HRBA-driven policy and action empowers rights-holders by ensuring their participation. Further, it creates positive opportunities for full enjoyment of rights, and keeps benefitting by continuous expansion.

HRBA-driven development must not leave negative environmental and ecosystem traces or footprints, at present or potentially. It must ensure a diversified economy and mobilize the national workforce, and duty-bearers must create opportunities for participation and constructive engagement in building a humanitarian society based on the rule of law and on social justice. This management tool is internationally-accepted and requires politicians and duty-bearers at all levels to keep promises, gain public confidence and effectively push forward national development.

HRBA implementation brings the following immediate benefits:

- HRBA empowers people and expands opportunities for participatory planning and resource estimation, automatically creating a process of public empowerment.
- HRBA has an important impact on effective implementation of development goals and objectives, enabling local communities and indigenous people to have constructive engagement and ownership of local development processes, to effectively participate in development planning, implementation and monitoring, to plan development and to enhance the development process.
- HRBA builds and mainstreams the responsibility of the local community and their duty towards the future of the local area.



- As development goals, criteria and plans are grounded on universal standards of an international human rights system, HRBA demands from duty-bearer and rights-holder a consolidated understanding, transparency and responsibility/accountability. This builds mutual understanding, consensus and effective partnership.
- HRBA creates the grounds for protecting civil society on behalf of rights-holders, establishing international mechanisms (judicial and non-judicial) for the country's acceptance of social and economic rights.
- HRBA empowers the public and the individual by defining their rights and allows them to demanding duty-bearers be accountable.
- HRBA creates a common integrated model for all process of a country, from policy implementation, strategic planning and resource allocation to public officers' training and their performance appraisal;
- HRBA offers an effective and well-grounded analytical system. It requires action to identify root causes of issues affecting public interest and to remedy problems. The traditional methodology for explaining the poverty rate often involves economic indicators, while human rights-based analyses of poverty focus on more empowerment rather than the materiality of poverty.
- HRBA necessitates the acceptance that economic growth alone is insufficient to reduce poverty; it should be accompanied by measures to mitigate inequality.
- Other HRBA benefits include teaching people how to participate in decision-making; how to gain empowerment; how to monitor the government effectively; and how to demand rights. HRBA also encourages duty-bearers to understand how to implement human rights (doing what and how) and how to make rights-based analyses. HRBA also serves as grounds for policy development and budget allocation to eliminate and remedy root causes.

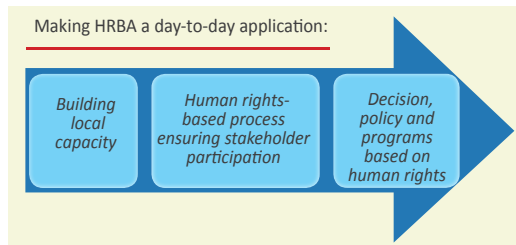
Over the past period we have tried to fix problems affecting public interest, and especially to resolve the social, economic and cultural issues of marginalized groups. We have spent considerable time and resources without resolving these issues because we have not addressed root causes or ensured the participation of these groups; rather we have addressed only those factors that have aggravated negative results.



Such shortsighted approaches are not attributable solely to our government; other governments are also trying to correct this failure. Other governments have used tools and methods specific to themselves, but are more often applying the guidelines for a human rights-based approach and methodology.

## 2.5. Making HRBA a day-to-day practice

The application of a human rights-based approach may in practice require some preparatory work. In Mongolia, it can be said that laws and regulations guarantee democratic values such as citizen participation, transparency, accountability and the right to claim more accountability. That given, HRBA can be directly applied because of the already established legal framework.



Unfortunately, this approach has not been embraced by politicians or governance structures/hierarchies as a day-to-day practice. It is embraced only on the surface, and that should be no excuse. Government and civil servants are duty-bearers who promise to ensure people's full enjoyment of their rights and freedoms, and they have no right to delay or make excuses for not applying HRBA.

Prior to implementing HRBA in action, you should analyze each obstacle to your local development using the rights-based approach.

The analysis should identify why an issue has remained unresolved for a long time, delaying development. Then policies should be developed to mitigate the impact and ultimately eliminate the cause. This is specifically beneficial as it would enable resolution in a relatively short time by allocating resources and developing and implementing effective policy.

We must learn the rights-based analysis methodology for identifying root causes of any problem. Below we offer two main methodologies.



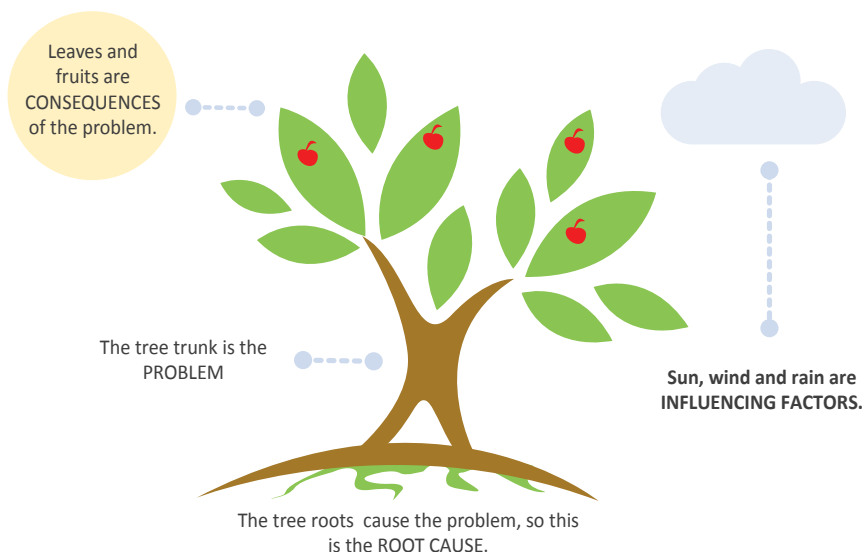
## ONE "PROBLEM TREE" MODEL

Of many tools for problem analysis, two most common methodologies are presented here. The "problem tree" methodology is a consistent way for local areas or organizations to analyze and define pressing issues at a community or organizational level.

If the overall content of an issue involves community interests, public well-being or larger representation of communities such as aimag or soum populations, it can be defined as a PROBLEM. For resolution, attention must be devoted to policy, program and systematic levels.

If the issue relates to an individual or a family, it can be defined as DIFFICULTY. Specific, focused and one-off measures can be taken to overcome such a difficulty. Bearing these differences in mind, we must clarify whose (how many people) interests the issue affects, and effectively facilitate the subsequent process.

- ▶ The model identifies the root cause for a problem, what the PROBLEM itself is, what influencing factors cause long-time non-resolution, and what are the social, economic and environmental consequences of the problem.
- ▶ People frequently fail properly to differentiate, addressing consequences rather than causes, thus wasting time and resources. Without addressing the root cause or systematic problem, we cannot effectively resolve the problem.





Let's explain how to conduct an analysis using HRBA on an existing societal issue.

Since 2000, Mongolia has had a new type of “job” in the so-called “private miner” or “artisanal miner” and society has addressed them in various ways. Artisanal mining, once limited to only a few amateurs, has become the main income source for over 200,000 people of 100,000 households. In some ways it has been recognized as stable employment, and under the relevant legislation, the government collects taxes of MNT 53,000 per month<sup>19</sup>.

The government has taken a number of measures to stop artisanal mining, which have not stopped operations. It even seems that there are even younger male and female artisanal miners, some university graduates. The government has changed its policy, allowing mining groups and legislating to licence some types of artisanal mining, but this has still failed to create proper conditions for safe and sustainable work. The government is taking step-by-step action to ensure economic, social and cultural rights, but violations of human rights persist.

What are the reasons? Analyze using HRBA, or put on the “magnifying glass” of human rights and liberty to try to answer the following questions:

1. What is the **root cause** for the fact that there are over 60,000 artisanal miners?
2. What are the **key factors** in this unresolved problem relating to work for 60,000 artisanal miners?
3. At the local and national levels, what are the consequences of the unresolved issue of work for 60,000 artisanal miners? Are there any positive consequences? Are there any negative consequences? Can today's positive consequences be changed in the future (in the long run) into negative consequences? Can today's negative consequence be changed in the future (in the long run) to positive consequences?
4. **Whose interests** are most affected or have been most affected because the problem remains unresolved? Does the issue cover a wide range of people: in other words, does the problem relate to the public interest? What percentage of employment-age people in your area are women and children?

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<sup>19</sup> Law on Income Taxes on Individuals Whose Income Not Identifiable



5. Of the most affected groups, whose rights are most violated? Violation of **which rights may infringe other rights**? For instance, is it the right to life, to improved quality of life, to education or to culture?
6. Have government legislation, policies and measures to resolve the problem delayed or supported human rights and freedoms? For instance, did the government inform citizens when it made Resolution 308?
7. Has policy-making and action ensured participation of artisanal miners? Did the government help the citizen ability to participate?
8. Are the norms and standards set forth in international human rights bills complied with (compare with Article 29 of UDHR, ICESCR and ICCPR)?
9. Evaluate the exercise of human rights and freedoms as compared with other groups. Consider Article 18 of the Constitution as a minimum.
10. What are responsible parties doing to resolve these pressing problems? Have demands been made for responsibility? What actions were taken?

Answering all these questions as accurately as possible can lead you to the best resolution. Answering these questions is an analytical process to identify root causes using a human rights-based approach and methodology.

## TWO

### "COMPREHENSIVE COMPARATIVE ANALYSIS" MODEL SIVE COMPARATIVE SIS" MODEL

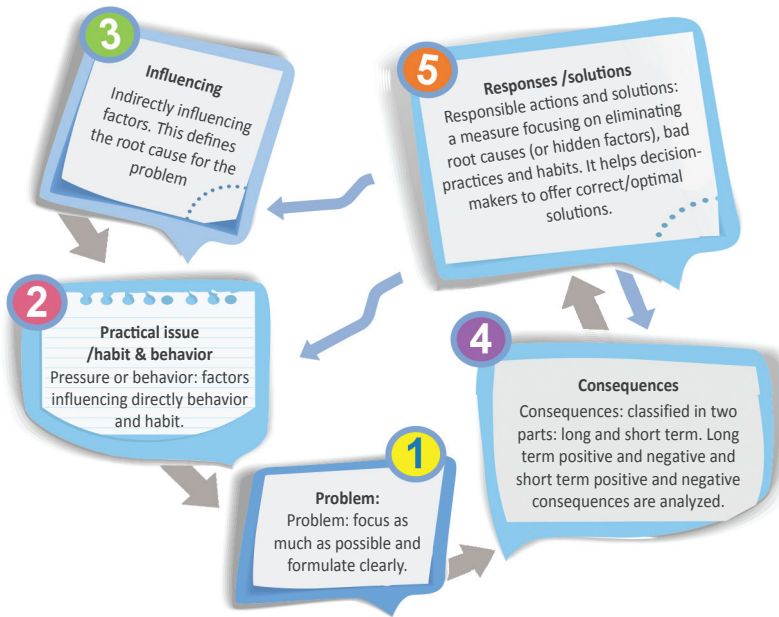
'Comprehensive comparative analysis' is more appropriate for analyzing national or provincial level problems, long-term government policy and large-scale programs and projects rather than local issues.

It is a qualitative analytical tool for social and economic issues, and the policy analysis is accepted by the UNDP as one of a few tools capable of analyzing environmental and desertification issues.



Integration and relations between environment, economy and social issues are the main objects for comprehensive comparative analyses.





With this methodology, a **PROBLEM ANALYSIS** can clarify a pressing problem needing immediate address, and the **POLICY ANALYSIS** should use the following five structures or stages. Let's demonstrate this methodology by analysis of three most pressing issues in the capital city, those of air, soil and water pollution.



### RECOMMENDATIONS:

- In using this methodology, participatory analysis is recommended. It is particularly important to conduct the analysis with people affected by the unresolved issue, when the analysis will be most effective and realistic.
- If a duty-bearer such as a government agency or representative of a Citizens' Representative Khural is to carry out an analysis, they must collect ample information from rights-holders, to be analyzed for the answers for the above five stages. Most importantly, the information collected must be authentic and accurate; the more accurate the information, the more benefit to the methodology.
- As to form, open discussion or focus group discussion (with target group representatives) can be appropriate.
- The methodology can be used to analyze organizational strategy, issues met by a coalition of umbrella organizations and specific policies and programs, as well as a specific project. Businesses and government agencies working for a specific group of people can use the methodology for strategic development and policy making, jointly or individually.



Capital city air pollution		Capital city soil pollution	Capital city drinking water safety
Issues	Air pollution reached extremely dangerous level	Soil pollution reached extremely dangerous level	Water resources diminish and quality deteriorate
Pressure and behavior: directly influencing factors	<ul style="list-style-type: none"> <li>• Extensive use of raw coal</li> <li>• Broad use of many old cars</li> <li>• Knowledge, behavior and attitude</li> <li>• Heating homes using various cheap fuels because of poverty</li> </ul>	<ul style="list-style-type: none"> <li>• Over 180,000 pit latrines are in use</li> <li>• Ineffective system for waste collection, sorting and burial</li> </ul>	<ul style="list-style-type: none"> <li>• Uncontrolled water consumption</li> <li>• Low water cost applying not honestly for users</li> <li>• Lack of policy</li> </ul>
Factors influencing indirectly:	<ul style="list-style-type: none"> <li>• Weak infrastructure solutions and urban planning policy</li> <li>• No infrastructure or utility network in ger (traditional tent dwelling) districts</li> <li>• Dense population</li> <li>• Lack of limits requirements on car use and lack of technological renovation to eliminate use of raw coal</li> <li>• No advocacy of knowledge, behavior and attitude</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of government willingness to eliminate pit latrines</li> <li>• Weak civic participation and attitude</li> <li>• High migration to urban areas</li> <li>• No infrastructure in the ger districts</li> </ul>	<ul style="list-style-type: none"> <li>• Increasing water consumption fueled by population growth and industrialization</li> <li>• All water needs supplied from fresh underground aquifers</li> <li>• Large number of permitted and unpermitted drilled wells</li> </ul>
Consequences:	<p>Positive and long term</p> <ul style="list-style-type: none"> <li>• Issue in the limelight of politicians</li> </ul>	<ul style="list-style-type: none"> <li>• Investment in infrastructure and roads</li> <li>• Urban planning consistent with water supply capacity and reserves taking place</li> </ul>	<ul style="list-style-type: none"> <li>• Satellite cities to be built</li> <li>• Settlement in local areas will be established</li> </ul>



Consequences:	Negative and long term	<ul style="list-style-type: none"> <li>• Situation deteriorating human health</li> <li>• Toxic substances create mutation in plants and animals</li> <li>• Various projects and programs will increase the national debt</li> </ul>	<ul style="list-style-type: none"> <li>• Sources for long-term human disease</li> <li>• Adverse effect on soil structure and quality</li> <li>• Urban soil capacity cannot hold the pressure</li> </ul>	<ul style="list-style-type: none"> <li>• Water reserves will be insufficient for predicted 1.5 million population by 2020</li> <li>• Tuul River levels will decrease</li> <li>• Loss of drinking water security and safety</li> </ul>
	Positive and short term	<ul style="list-style-type: none"> <li>• Apartment construction in ger areas started</li> <li>• Opportunities for fund-raising for programs and projects</li> </ul>	<ul style="list-style-type: none"> <li>• Extensive apartment construction started</li> </ul>	<ul style="list-style-type: none"> <li>• Outcomes will be achieved by international projects and donor credits</li> </ul>
	Negative and short term	<ul style="list-style-type: none"> <li>• Increase in accidents - poor visibility</li> <li>• Money laundering, corruption and project fund fraud take place</li> </ul>	<ul style="list-style-type: none"> <li>• Weak effectiveness of policies and funding with unfocused and weak spending</li> <li>• Adverse effects on human health, particularly of children</li> </ul>	<ul style="list-style-type: none"> <li>• Increase of water fees would add burden to population</li> <li>• Greater need to reduce water consumption</li> <li>• Politicians play around the issue and businesses earn more</li> </ul>
Responsive actions and solutions		<ul style="list-style-type: none"> <li>• Improve community participation and monitoring; change attitudes and behavior</li> <li>• Citizen advocacy for optimal government policy</li> <li>• Encourage good practice, technology import and best practice</li> <li>• Support green development and green business</li> <li>• Government policy focuses not on eliminating root causes, but only consequences</li> </ul>	<ul style="list-style-type: none"> <li>• Make urban planning consistent with soil capacity; establish satellite cities</li> <li>• Pursue different policies for different areas in Ulaanbaatar e.g. different policies for Gandan area and Songinokhairkhan district</li> <li>• Increase citizen participation and change their attitudes</li> <li>• Eliminate urban/rural differences</li> <li>• Study international best practice and implement urban development policy in accordance with international standards</li> <li>• Proper waste management</li> </ul>	<ul style="list-style-type: none"> <li>• Reduce ground water use</li> <li>• Re-use gray water</li> <li>• Collect and use rain water and surface water in Ulaanbaatar</li> <li>• Charge for water according to use (metered) and increase water pollution fee</li> <li>• Reduce population density</li> <li>• Change citizen behavior and attitudes</li> </ul>



If root causes are clearly identified and subsequent policy and actions are focused on eliminating these root causes consistent with the rights-based approach, the result will be elimination of the problem's consequences. Policies and programs focused on root causes and influencing factors must be developed, consistent with international human rights bills and considering sustainable development concepts, while green development solutions must also be developed with participation of those whose interests are most negatively affected.

Such processes empower citizens; making and implementing decisions that ensure and protect human rights will lead to development resulting from stakeholder participation and joint efforts.

If public officers and employers use the human rights-based approach as often as possible in analyzing issues and mainstreaming human rights knowledge, feelings and approaches, and use HRBA in decision- and policy-making, the **ENGAGEMENT CAN BE EFFECTIVE, FOCUSED, LONG-LASTING AND MUTUALLY BENEFICIAL.**



## CHAPTER

# 3

SUSTAINABLE DEVELOPMENT CONCEPTS  
AND HUMAN RIGHTS







### 3.1 Implementing sustainable development through a human rights based approach

Throughout the centuries, Mongolians have interacted with nature, lived according to nature's power and managed to preserve pristine wilderness; it is one of a few countries that kept nature natural. Ecological education, green economy and sustainable development are not new concepts for Mongolians.



In the 13th century, Chinghis Khan's "Ikh Zasag" (Great Power) Law defined the nation's policy of proper and sustainable use of land, water and pasture, preserving undisturbed pristine nature, mandating that "a death penalty shall be imposed on those who piss into water, who dig up grasslands and who set fire to pasture," showing the stringent punishment on those who violate the environmental law.

The "Mongol-Oirat Law" in the 17th century laid down norms for environmental protection and natural resource use, and included the first-of-its-kind provision rewarding those who extinguished wild fire and save lives in flood, while the "Khalkha Juram Law" which was adopted in 1709 established green zones for settlements, prohibited tree felling and hunting in such green zones, defined responsibilities of protection personnel, protected water, enforced proper use of water and rewarded those who made wells.



*For Mongolians, the concept of environmental protection refers to not just protecting the environment from external factors or seeking reclamation after erosion/degradation, but means preventing against potential degradation, living in proper accord with nature, comparing the earth with a mother, respecting nature, acting with care for the environment, loving flora and fauna and observing strict ecological ethics for resources."<sup>20</sup>*

These above legislative documents clearly illustrate a traditional policy focusing on preservation of natural resources, sanctioning violators of environmental rules and strictly regulating comprehensive matters such as promotion of best practice.

<sup>20</sup> "Mongolia's environmental protection traditions", A. Oelun (M.Sc), Senior Lecturer, Architecture Department, Mongolian University of Science and Technology



A key difference between humans and animals is human desire and commitment for a safe and peaceful environment, smart planning and passing on belongings to future generations<sup>21</sup>. Sustainable development can be defined as a development that ensures a safe environment for future generations and balancing a green economy, human rights, justice and equality, without prioritization, in planning and action for social and economic development.



#### **Mongolia on sustainable development...**

*Mongolia has set specific goals and objectives for sustainable development and a shift to a green economy. The Mongolian Government Action Plan for 2012-2016 sets forth goals to "Make a green development policy one of the pillar policies for national development" and "Construct green development concepts and medium-term programs to establish green development models."*

*The State Great Khural (Parliament of Mongolia) endorsed the National Green Development Concept and Medium-Term Program on 13 June 2014, setting five key directions: [a] development adaptive to climate; [b] green economy and financing; [c] equality for employed and income-earning people; [d] culture and heritage; [e] governance for sustainable development, with 8 goals and 39 objectives.*

- *The Green Development Medium-Term Program identified policy and action directions for 2020 as:*
- *Setting fundamentals for low-carbon development adapted to climate change;*
- *Increasing the percentage share of renewable energy in the energy supply;*
- *Processing domestic raw materials and resources and diversifying to a non-mineral economy;*
- *Increasing investment in water, sanitation and infrastructure for environmentally friendly and resource-efficient energy, roads, transport and construction;*
- *Reducing the production and consumption of environmentally destructive goods and services and introducing operational and market regulation.*

Traditional nomadic animal husbandry, cropping and tourism are based on a pristine nature. While pastoral herding and nomadic traditions were once dominant in Mongolia's social and economic sector that economy has been dominated by the mining sector since the 1990s. While the emergence of this new sector is good for Mongolia, as it helps the diversification agenda, these land-based sectors have different interests and different consequences.

<sup>21</sup> Sustainable Development, G. Gansuh, 2014.





Animal husbandry, cropping and tourism don't change the pristine form and nature of the environment, as these sectors use topsoil fertility and pristine wilderness, provide jobs and benefit a considerable number of people. The mining sector often operates in areas dominated by traditional sectors, and changes the form of nature by extracting resources from the sub-soil; it also employs a smaller workforce.

The government-run 1993 Gold Program has been crucial in helping Mongolia to mitigate adverse impacts of the economic downturn in the 1990s transition period. Despite the economic benefits, the government has been unable fully to collect taxes because of a weak responsibility and oversight system of its tax exemption policy, the five-year tax exemption for foreign investment. Boroo Gold LLC mined over 80% of its gold reserves in the initial five-year period, and Mongolia learned a bitter lesson because taxation income did not reach budget estimates.

On 10 June 2014, 2827 licenses (1335 mining and 1492 exploration) existed for oil extractive companies for 21 areas and 20 licenses had been issued for raw nuclear materials. These license areas are in 227 soums areas of 22 provinces: Tuv (373), Dornogobi (339), Umnugobi (248), Ulaanbaatar (183), Selenge (183), Khentii (170), Dundgobi (168), Bayankhongor (151), Dornod (143) and Gobi-Altai (134) are the 10 provinces with the most licenses<sup>22</sup>.

This implies that the extractive industry violates the rights to life, business and a safe environment, is working within primary administrative units and affects the traditional culture and rangeland, the main livelihood for herders, as well as specially protected areas.

For Mongolia's sustainable development it is necessary to develop sectors equally, with sectors supporting each other in not violating people's rights and freedoms and ensuring and promoting such rights. All processes and environmental/economic footprints must be free from harm to present and future generations; this is what the policy and actions must emphasize on.

Government does not itself create sustainable development, but must make sustainable development decisions that offer a full opportunity to enjoy rights and freedoms;

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<sup>22</sup> [http://www.mram.gov.mn/index.php?option=com\\_content&view=category&layout=blog&id=14&Itemid=34&lang=mn](http://www.mram.gov.mn/index.php?option=com_content&view=category&layout=blog&id=14&Itemid=34&lang=mn)



perform its state duties to develop and implement policies and actions with human rights-based approaches, and ensure all principles are adhered to in implementation.



For instance, the Government and the Mining Ministry have drafted an Extractive Sector Transparency bill<sup>23</sup> which has been submitted to parliament<sup>24</sup>.



*The bill's concept notes state: "Boosting the benefits of extractive sector for the long-term sustainable development of Mongolia ... as the extractive industry is a backbone to national development, the proposed law would make a considerable contribution to reduction of unnecessary costs and expenditure in the sector, optimal expenditure of sector revenue and establish social and economic systems. In particular, the bill offers important benefits in economic diversification, avoiding resource damage and reducing corruption."*

In analysis of the bill with a human rights-based approach and sustainable development outlook, the bill says it would boost the impact of the extractive sector on sustainable development; however it focuses on sole support for economic development based on mining and on the creation of a favorable social and economic environment.

<sup>23</sup> The Extractive Industry Transparency Initiative is implemented in resource rich countries where the extractive sector reports payment of taxes and fees and the government reports receipt of the taxes; the two reports are reconciled by independent audit. For more details, go to [www.eitimongolia.mn](http://www.eitimongolia.mn) and [www.pwyp.mn](http://www.pwyp.mn)

<sup>24</sup> <http://www.parliament.mn/news/info/categories/210/pages/17059>



While economic diversification sounds good, the defined goal must involve support for mineral processing, smelting and oil refining rather than support for the mining sector that conflicts (operationally and territorially) with agriculture<sup>25</sup>. Moreover, the bill gives its objective as reduction of current inefficient expenditure and improvement of optimal spending rather than spending extractive sector revenue in developing present and future generations, showing that it highlights the mining sector as a dominant industry, a cash cow from which revenue is spent.

The Constitution guarantees that natural resources are to be owned by the people; natural resources are wealth belonging to all generations. The government must use natural resources with public participation and permission when seeking to create financing sources and economic sectors using publicly-owned wealth.

Any policy on and regulation of natural resource use must not interfere with the rights of the resource owners to a healthy and safe environment, and must ensure on-going and stable sustainable development that guarantees convenient and high-quality lives of the owners, while financing sources for development must also be a sources with a "green footprint." It can thus be concluded that HRBA and sustainable development principles and concepts have not been included in the bill.



Why do we mine and use natural resources? Obviously, answer is "to facilitate development" and "to create financial sources." So what is development? Is this an economy that we have created from bonds, loans and aid that we have raised to attract foreign investment in resource extraction? Is this an economy that endangers our natural resources, rights and freedoms? Just high-rise buildings and fancy streets?

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<sup>25</sup> According to Article 52 of the Land Law, herders get a 60-year land ownership title of their winter shelters, but mining licenses were also issued on these lands for 90 years (30+30+30).



The UN Declaration for Right to Development defined development as follows.



*“Development is a comprehensive economic, social, cultural and political process which aims at constant improvement of well-being of the entire population, and of all individuals, on the basis of a free, active and meaningful participation in development and in fair distribution of benefits resulting therefrom.”*

*UN Declaration of Right to Development*

Everyone wants to live in a humanitarian and just society where they can fully enjoy their rights and freedoms and express individual desires for sustainable development based on a green economy. The UN definition of “development” above is a roadmap for what people want.

A natural resource, particularly a mineral resource, is depletable, and a local area such as an aimag or soum must have a sustainable economy for when an extractive industry in the area closes down. The legacy must be a safe and sustainable place for humans and animals, with no human rights infringement in the present and future, a green and diversified economy and stable local incomes; this can be a definition of development resulting from the mining sector.



In 2013, the mining sector contributed 18% of Mongolia’s GDP (59% of its industrial output and 88% of its export revenues<sup>26</sup> ) compared to 1994, when the mining sector GDP share was 5%. This growth resulted from factors such as the new windfall tax and increased income from corporate taxes, thanks to global mineral price rises. Unfortunately, Mongolia was not able to impose a sovereign wealth fund during this favorable period, and government spending (recurrent costs, social welfare transfers and capital expenditures) rose sharply.

In this mining peak period, 17,343.6 hectares (including 545.8 hectares in Uvurkhangaï aimag, 433.3 in Dundgobi and 398.3 in Khentii) were left unrehabilitated (or with no one responsible for reclamation), says a 2011-2012 report from the Environment and Green Development Ministry: “58.7 hectares of water basin areas were eroded, particularly riverbanks, mainly in Gobi-Altai, Khovd, Khuvsgul, Tuv and Zavkhan provinces.”

<sup>26</sup> Same report, p. 23.



The report's findings demonstrate irresponsible operations in the extractive sector driving environmental and ecosystem degradation, violations of the right to a safe and healthy environment, particularly in agriculture, and violation of economic, social and cultural rights of small businesses at the household level. These direct impacts remain a "dark spot and trace" that have led to local economy stagnation and deterioration.

What is the GDP share of provinces and soums where extensive mining? Has any increase equaled the national average? Perhaps local interests and sustainable development have been "scapegoated" for the larger interest, the national interest. Resource-rich countries often experience problems such as weak development, environmental degradation, high corruption rate, extreme poverty and high unemployment rates. That is called the "resource curse." Similarly, aimags and soums with rich mineral deposits may have been victims of this phenomenon.

Rural areas have higher unemployment and poverty rates than urban areas, as shown in the table below. Poverty can be measured by lack of revenue generation and materiality, but also by how limited are the opportunities for choice and exercise of freedoms and rights.

**Rural and urban poverty rates, 2010- 2012<sup>27</sup>**

	Poverty rate (%)			Unemployment rate (%)		
	2010	2011	2012	2010	2011	2012
National	38,7	33,7	22,7	9,9	7,7	8,2
Western region	52,6	40,3	32,5	10,1	10,8	9,8
Khangai region	52,0	49,1	38,6	11,9	8,3	8,3
Central region	29,8	28,2	28,1	9,3	6,8	7,7
Eastern region	42,4	40,1	33,3	10,5	11,1	10,8
Ulaanbaatar	31,0	25,7	19,8	8,7	5,6	7,1

As mining activities increased, adverse environmental impacts also increased. In Mongolia, negative impacts have long been clear as the quality of the living environment in rural areas have deteriorated, household incomes have fallen and large numbers have

<sup>27</sup> 5th National Report on MDG, 2013. p.53.



migrated to urban areas. While the national capital (Ulaanbaatar) occupies only 0.3% of the nation's area, it is home to almost 70% of the population, with 247 per square kilometer as opposed to 1.7 per sq km in rural areas, showing that many rural people are leaving their areas without "ownership."<sup>28</sup> In rural areas that lack a comfortable living environment and access to good quality education and health services, the population has declined; subsequently the provinces receive a smaller share of the budget for their smaller population in the present Budget Law. The municipality receives more public financing, but it finds it difficult to deliver services in an equal and just way. The effects/impacts of financing for local development through Local Development Funds will be minimal; and a choice has to be made as to whether investment must be injected in low-population areas.

Norway has succeeded in converting its natural resources into development, and its Oil Agency issued a 2012 statement that "Norwegian revenue from natural resources does not belong to a few wishing to enrich themselves with public property, but belongs to all Norwegian people," and this was endorsed by parliament<sup>29</sup>.

Many countries have learned from ups and downs that sustainable development does not refer only to economic growth. Using lessons learned from the "resources curse" and "Dutch disease," over 180 UN member states defined sustainable development in 1992 in Rio de Janeiro as: [a] segregating economic development from the environment leads to desertification and loss of balance; [b] focusing on ecology without developing the economy boosts poverty and inequality for generations; [c] a balance must be struck between these two notions and resources spent on creating development, ensuring a full exercise of human rights and freedoms, well-being and safe and healthy living.

The inter-generational responsibility principle for sustainable development is that the present generation should not deplete all resources and limit choices for future generations; while Mongolia accepts this principle for sustainable development, in reality we still ignore environmental and ecosystem protection while developing the economy.

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<sup>28</sup> "Rural migration and population policy", Step Without Boundaries NGO, Through Women's Eyes Forum- VIII, 2014.

<sup>29</sup> Sainkhuu Ganbaatar, "How to develop Mongolia and how to achieve our goals," p.43, 2014.



## WHY SUSTAINABLE DEVELOPMENT BASED ON A GREEN ECONOMY?



Any government, institution or individual who supports a green economy must consider the well-being and prosperity of both present and future generations. Short-term goals can certainly meet current economic needs without negatively affecting current and future ecological comprehensiveness and making the economy more ecologically efficient, while the long-term goal must be to supply the needs of all generations and set up sustainable development.



Although nations are ruled by different legislation, speak different languages and enjoy different levels of development, we live in one world, so we must have solidarity in adhering to the same responsibilities at the global, national and individual levels in fairness and ethics. As a natural resource is created over a long time by ecological processes, natural resources must not be considered the property of the present generation, but the property of all generations and all people. One person or a group of people misusing public property with adverse environmental impacts, or having negative impacts on human rights and freedoms, or ensuring unfair distribution, these should be condemned for encroachment on human rights and freedoms.



To establish trends/approaches and unified principles, heads of states meet frequently to discuss and formulate development policies and programs; countries make pledges and accept responsibilities. Primarily, the UN and the various regions meet to discuss and make policies and programs on “sustainable development” and the “green economy.”



**1: Human rights binding agreements related to environment**

*At the regional level, linkages between human rights and the environment have been recognized in binding agreements such as the African Charter on Human and Peoples' Rights, the European Convention on Human Rights, the American Convention on Human Rights, and the UNECE's Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (usually known as Aarhus Convention).*

*At the national level, lawmakers in many countries have drafted constitutional and legislative provisions setting out the right to an environment of a specified quality, such as healthy, safe, secure, clean and ecologically sound. Some 130 constitutions in the world, including the overwhelming proportion of those amended or written since 1970, include a state obligation to protect the environment or a right to a safe, healthy, ecologically-balanced (or other adjective) environment.*

The UN Environmental Program has developed a working definition of a green economy, as one that results in improved human well-being and social equity, while significantly reducing environmental risks and ecological scarcities. At its simplest, a green economy can be thought of as one which is low-carbon, resource efficient and socially inclusive. Being harmful to any part of the environment could lead to other environmental impacts; it may cause unpredictable adverse consequences. A diminishing and depleting natural resource is unrecoverable, and extinction of living organisms may threaten human extinction, as we should be aware.

In 1972, the Stockholm Declaration on the Human Environment said, “Man has the fundamental rights to freedom, equality and adequate conditions of life, in an

environment of a quality that permits a life of dignity and well-being.” This acknowledges the intrinsic connection between human rights and ecology. A significant number of international instruments such as treaties, international resolutions and declarations, have elucidated certain aspects of the human rights-environment connection.

The core, or source, of violations of all or most human rights we have seen originates from the ecological crisis, to which we must pay attention, because humanity must either find a new planet or better development, otherwise we are threatened with





extinction. Introducing an eco-approach based on human rights will support sustainable development and be an analytical tool for more effective policy-making. HRBA highlights common mistakes and failures in social, economic and ecological fairness and provides guidelines for remedy.

The Constitution of Mongolia says that “Citizens of Mongolia shall be guaranteed the right to a healthy and safe environment, and to be protected against environmental pollution and ecological imbalance... In Mongolia, the land, its subsoil, forests, water, fauna and flora and other natural resources shall be subject to the people’s power and state protection... It is a sacred duty for every citizen to work to protect health, to bring up and educate children and to protect nature and the environment” (Articles 6.1; 16.2; 17). This mandates the state with the duty to ensure and promote human rights and freedoms.

The Mongolia MDGs laid legal fundamentals for reducing poverty, ensuring environmental sustainability, protecting human rights, and advancing democratic governance, which can be achieved through the responsible use of natural resources.

Human rights instruments recognize the rights to basic elements of human welfare of food, health and adequate living and working conditions; environmental agreements elaborate the importance of environmental protection for achieving those welfare elements.

Human rights law imposes procedural obligations on states in relation to environmental protection, as follows.

- (a) To assess environmental impacts and make environmental information public.
- (b) To facilitate public participation in environmental decision-making, including by protecting the rights of expression and association.
- (c) To provide access to effective remedies for environmental harm.



**2. Secretary-General Ban Ki-moon, March 2012:**

*“The United Nations supports the development of a holistic sustainable human development agenda that addresses the challenges related to inclusive growth, social protection and the environment and that the rule of law is essential to ensure equality of protection and opportunities.”*



States have substantive obligations to act against environmental harm that interferes with the enjoyment of human rights. Specifically, states have an obligation to adopt a legal framework that works against such environmental harm. States must not discriminate against groups on prohibited grounds in the application of their environmental laws and policies, and they must take additional steps to protect certain groups.



### 3: Access to Information

*The rights to information and participation, and their particular importance for both human rights and environment matters, are well reflected in the international legal framework, in both human rights law and environmental law.*

*Article 19 of the Universal Declaration of Human Rights states that everyone has the right to freedom of opinion and expression; that right includes the freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers. The right is also enshrined in Article 19 of the International Covenant on Civil and Political Rights (ICCPR). Article 19(2) stipulates that everyone should have the right to freedom of expression; that right should include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of choice. Article 19(3) does allow certain restrictions, but they should only be such as are provided by law and are necessary (a) for the respect of the rights and reputations of others, or (b) for the protection of national security or of public order or of public health and morals. In 2011, the Human Rights Committee issued a new General Comment further detailing rights under Article 19 of the ICCPR.*

The enjoyment of human rights depends on environmental protection, and in turn environmental protection depends on the exercise of certain human rights, such as the **rights to information, to public participation in decision-making and to access to justice**.<sup>30</sup>

Local communities and local government play a vital role in preserving resources upon which they depend. Importantly, the right to information is an essential feature of democratic processes and of the right to participation in public life. Access to environmental information is a prerequisite to public participation in decision-making and to monitoring governmental and private-sector activities.

<sup>30</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matter, 1998.



#### **4: Participation and accountability.**

*Participation and accountability provide a focal point for community and social movement mobilization for sustainable development. Ultimately, the goal of HRBA is “self-mobilization” rather than “invited” forms of participation, where people “participate by taking initiatives independent of external institutions to change systems,” gaining and retaining control of resources and decision-making. Public participation allows for those most impacted by environmental degradation to speak on and influence decisions that will impact their basic human rights, such as the right to life and health. Making decisions with the opinions of those most greatly impacted, means addressing better poverty issues and encouraging sustainable development and a green economy. Participation is also critical to the effectiveness of law.*

Public participation allows all stakeholders to be involved in decision-making, so helping to ensure that all impacts are considered, including those that affect the ecosystem. The strengthening of this right is essential to sustainable development and will enable a green economy to reach its objectives of providing healthy ecosystems to help alleviate poverty. HRBAs promote a proactive policy process by insisting on the active, free and meaningful participation of all affected by the ecological crisis in sustainable development. Acknowledging participation as a right, rather than simply a desirable extra, is not a procedural formality, but an attempt “to increase control over resources and regulative institutions... by those hitherto excluded.” Exercising participatory control of resources is the key

to building ecological resilience and social justice. Enhancing civil and political rights can raise ecological awareness and encourage reflection over long-term ecological and social issues.

The Constitution of Mongolia states that it is the right of every citizen to participate in a decision-making process by prescribing that “state power shall be vested in the people of Mongolia. The people shall exercise state power through their direct participation in state affairs as well as through the representative state power bodies elected by them; the citizens of Mongolia are guaranteed to enjoy the right to take part in the government of



#### **5: Access to Justice**

*The right of access to justice guarantees victims of human rights violations an effective remedy. There are two aspects to the right to a remedy: access to justice and substantive redress. This allows for violations of other rights to have consequences and discourages possible violations. By strengthening the access to justice, all other rights are strengthened. In turn, this reinforces human rights and the environmental protection, advancing the promotion of actions that help alleviate poverty and support sustainable development.*



the country, directly or through representative bodies” (Article 16.9). “The citizens of Mongolia are guaranteed the right to seek and receive information, except that which the state and its bodies are legally bound to protect as secret” (Article 16.17).

Accountability, or claiming that duty bearers must be responsible for their work, is about “increasing people’s capacity to claim their rights” and increasing duty-holders’ “capacity to be held accountable.” The major role played by the public in environmental protection is participation in decision-making, especially on environmental impact or other permitting procedures. States must ensure that women are able to participate in environmental decision-making, and states should take care to address environmental harm that may have disproportionate effects on women.

Articles 10, 18, 19, 27, 28, 29 and 32 of the UN Declaration on the Rights of Indigenous Peoples, which the General Assembly adopted on 2 October 2007, state that any development projects, including the use of natural resources, must ensure informed participation of indigenous people in the decision-making process. It obligates states to get permission from indigenous people for any project. The Declaration specifically outlines that states must accept indigenous customs and approaches to land use and management and establish independent, fair and transparent decision-making systems compliant with customs and traditions in cooperation with the indigenous people.

In its simplest definition, the term “civil democratic society” means a society where every citizen has the opportunity to perform realistic tasks and duties for the public at their own initiative. So a citizen is not only a performer of decisions made by the state, but a participant in decision-making, implementation and monitoring; an influential subject rather than an object. This is expressed by effective citizen participation. The obligation to protect human rights from environmental harm does not require cessation of all activities that may cause environmental degradation.

States have the discretion to strike a balance between environmental protection and other issues of societal importance such as economic development and the rights of others. Once a state has adopted environmental standards into law, it must implement and comply with those standards.



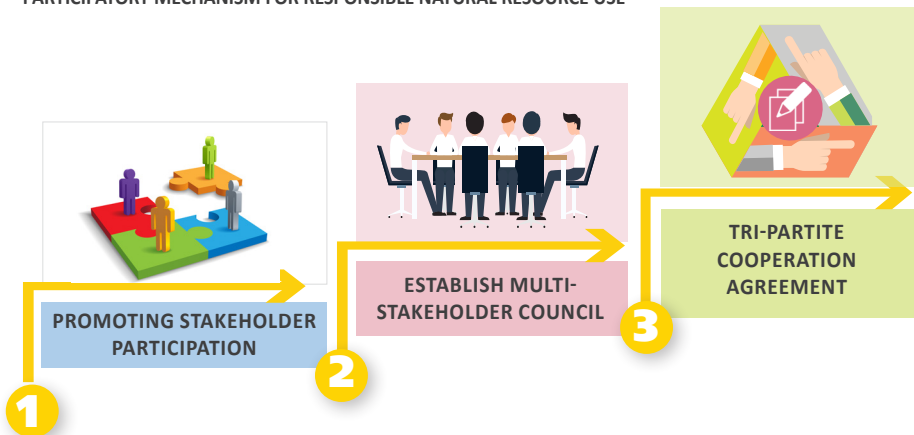
HRBA offers many ways for dealing with environmental protection.



1. Increasing policy legitimacy by integrating social and environmental concerns.
2. enhancing accountability of governments, private sector and environmental or human rights organizations.
3. strengthening cross-sectorial links.

## 3.2 Stakeholder collaboration

### PARTICIPATORY MECHANISM FOR RESPONSIBLE NATURAL RESOURCE USE



A local multi-stakeholders council (LMC) in a soum is a mechanism to ensure stakeholder engagement. Its overall purpose is to promote active and creative participation of local stakeholders in increasing environmental conservation and to promote responsible resource use at the local level and thus contribute to local sustainable development.



## Multi-Stakeholder Collaboration Agreement (MCA)

An LMC is responsible for making multi-stakeholder collaboration agreements (MCA).

A Multi-Stakeholder Collaboration Agreement (MCA) is tripartite, with principles of equality between a mining company, a local government and local residents, often represented by CSOs. The agreement's

**6: Article 42 of Mongolia's Law on Minerals** prescribes how mining license holders can make agreements and coordinate their activities with local governing bodies in connection with environmental protection, infrastructure development and employment growth issues.

overarching goal is support for human rights; mitigation of environmental violations from mining operations; development of good governance; support for regular private industry operations; establishment of public participation in legal enforcement and monitoring; and enhancement of both public and private social responsibility.

## Human rights, the environment and a green economy

The UNEP definition of a green economy is of an economic system “that recognizes the properties of healthy eco-systems as the backbone of economic and social well-being and as a precondition for poverty reduction; thus ecosystem services are an essential basis for human wellbeing and economic development.”

Environmental protection and economic development action must take into account natural laws. The environment aspects of air, water, soil and all species are interdependent. Harm to one aspect of the environment may harm them all.

**Economics cannot be divorced from social and economic underpinnings. The current economic model does not fully comply with environmental and the future generation's needs;** the whole world must advance to a green economy.

A green economy and any institution devised for it should focus fundamentally on the wellbeing of all people across present and future generations. If the immediate goal is to make the economy more ecologically efficient, by meeting current economic needs without compromising present and future ecological integrity, the greater goal is to do so in a way that the needs of all people can be met and sustained.



**Case: Costa Rica uses human rights to support and strengthen its efforts to protect its environment.**

*In 1994, Costa Rica amended its constitution to add the right to a healthy and ecologically balanced environment. Its experience since then shows some of the benefits of adopting such a constitutional right. The presence of the right in the highest law of the country symbolizes the importance Costa Rica places on environmental protection, providing a strong legal basis for its environmental statutes; it enables direct enforcement by the Constitutional Chamber of the Supreme Court.*

*The Constitutional Chamber has construed the amparo cause of action very broadly, to allow any person to file a case regarding a constitutional right without a lawyer, with no filing fees, in any language, at any time, on any day of the year and in any form, including handwritten notes. Furthermore, it allows individuals to bring actions in the public interest, including the interest of environmental protection. Lowering barriers to access for those claiming violations of constitutional rights in general, and environmental rights in particular, is truly an exemplary practice, which should be an inspiration to other states.*

Therefore, human rights require protection and compliance with fair allocation and distribution and standards and principles to meet our basic needs.

## Human right to decent work

Work is central to well-being. As well as providing income, work can pave the way for broader social and economic advancement, strengthening individuals, families and communities. Such progress, however, hinges on work that is decent.

The Decent Work concept was formulated by the ILO constituents: governments, employers and workers. It is based on the understanding that work is a source of personal dignity, family stability, community peace, democracies that deliver, economic growth that expands opportunities for productive jobs and enterprise development.

Decent Work includes priorities on each country's social, economic and political agenda



**7. Creating Jobs** – an economy that generates opportunities for investment, entrepreneurship, skills development, job creation and sustainable livelihoods. Guaranteeing rights at work – to obtain recognition and respect for the rights of workers. All workers, and in particular disadvantaged or poor workers, need representation, participation and laws that work for their interests.



and the international system. In a relatively short time this concept has forged an international consensus among governments, employers, workers and civil society that productive employment and Decent Work are key elements to achieving fair globalization, poverty reduction and equitable, inclusive and sustainable development.

**The overall goal of Decent Work is to effect positive change in people's lives at national and local levels.**

## Gender equality

**"Gender"** involves a perception of the roles, responsibilities and status which a man or a woman should fulfill in political, economic, social, cultural and family spheres that is established and evolves in the course of history.



**Gender equality refers to** an absence of discrimination on the basis of sex, achieved through equal participation of men and women in political, economic, social, cultural and family relations, and equal opportunities to contribute to and access the benefits of economic, social and cultural development<sup>31</sup>.



**Gender discrimination** is any action or inaction resulting in discrimination, exclusion or restriction based on sex or on attributes of sex and marital status of men and women in political, economic, social, cultural, family and other spheres.

**Gender-based violence refers to any action or inaction prompted by the victim's gender that inflicts or has the potential to inflict physical, sexual, emotional, and economic damage.**

## Key principles and policies for gender equality promotion

Gender equality is based on the following key principles.

- **Principle of equality:** men and women shall have opportunities and conditions to enjoy equal rights in political, economic, social, cultural, family and other relations, to participate equally in social life, and have equally access to the benefits of development and social wealth.

<sup>31</sup> Law on Promotion of Gender Equality





- **Principle of non-discrimination:** men and women shall be guaranteed enjoyment of human rights and freedoms without discrimination or restriction on the basis of any difference in age, sex, vocation, rank, view, marital status or education.
- **Principle of government responsibility:** the state shall fulfill all commitments related to promotion of the equality of men and women in Mongolia as provided for in the Constitution of Mongolia, in international treaties and any other legislation, and be accountable for the results.
- **Principle of gender mainstreaming:** development policies shall be gender-sensitive through incorporation of gender concepts in law, government policies and programs.
- **Principle of gender sensitive data and information:** the state shall ensure the availability and accessibility of sex-disaggregated statistical data and other information.

The state policy on gender equality shall aim to ensure conditions for equal rights, opportunities and treatment of men and women and at preventing and eliminating gender discrimination.

**Gender analysis** evaluates whether any policy and action is based on the needs of both men and women and assures equal opportunity for participation and access to benefits.

**Gender sensitivity** is defined as willingness, commitment, knowledge and skills to highlight the differences between men and women and emphasize limiting factors they may encounter in participation in development and access to benefits.

**Gender mainstreaming** (in policy, planning and actions) means all frameworks, policies, actions, and particularly legislation and programs must consider the difference in impact on men and women, and includes a process to devote particular attention to needs, knowledge and experience

**Gender impact assessment** looks at how policies and actions influence men and women in various social groups and identifies negative aspects. Different from gender analysis, impact assessment is often effective if it has public participation in measuring short and long term impacts.





# CHAPTER

# 4

KEY MECHANISMS TO  
HOLD STATES ACCOUNTABLE







## 4.1. United Nations

Established in 1945, the United Nations is a primary inter-governmental, global and united organization. UN Charter Article 26 sets its goal to promote human rights and individual value. Basically, member states follow the principle of non-intervention in another country's domestic affairs, and accept that they do not treat or act upon their citizens as others may wish.



The UN Charter Preamble states, "Promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" (Chapter 1, Article 2).

The first step towards this goal was the UDHR, agreed in 1948 with many basic rights, such as freedom and right to choice (Articles 8, 10 and 11); social protection; (Article 22) and labor rights (Article 23). Article 29 states people's responsibilities towards the society they live in.

## 4.2 International human rights treaties

International human rights treaties are legally binding contracts between states that impose mutual obligations on the signatories about how they treat individuals in their jurisdiction (citizens and others). Treaties are sometimes called 'covenants' or 'conventions' but their legal status is the same regardless of title.

Treaties are sometimes referred to as 'hard law' to distinguish them from other international instruments, such as 'declarations' (eg from political conferences), which are sometimes referred to as 'soft law' – influential and authoritative but not legally binding. International law therefore evolves 'soft' law standards can evolve into legally binding 'hard' law.

## 4.3 Human rights monitoring bodies

Each of the UN treaties establishes a committee to monitor implementation by treaty signatories and Special Rapporteurs are appointed. Each committee has its own procedural rules, but most require states to submit periodic reports on their efforts to fulfill treaty obligations. These are examined by the committee, with recommendations for improving treaty implementation in the state concerned.



The committee also considers the views and findings of interested parties like NGOs, which is often an excellent avenue for NGOs to influence development. Some committees also examine individual cases of alleged violations of human rights.

The committees also issue General Comments about treaties, with clarification and interpretation of treaty provisions. The comments are often quite detailed, sometimes focusing on an individual treaty article. The comments themselves are not legally binding, but their authority carries considerable weight, so they can be used as effective frameworks for monitoring and advocacy, and as a benchmark for standards and principles.

Every country must submit a five-yearly report on the implementation of ICESCR (International Covenant on Economic, Social and Cultural Rights), and a six-yearly report on ICCPR (International Covenant on Civil and Political Rights). In a “shadow reporting” mechanism, civil society organizations submit independent reports.

#### **4.4 Signature, ratification and reservation**

Signing a treaty is a state’s first step towards being bound by its contents. Ratification follows (according to each state’s domestic treaty ratification procedure). It is important to note that even if a state has signed but not yet ratified a human rights treaty, by first signature it undertakes not to do anything that undermines the treaty until the state has ratified it and becomes bound by its mechanisms and procedures.

Covenants and treaties clearly describe what the state must do/not do to perform obligations under the covenant. States, as duty bearers, are expected to adopt or modify domestic legislation and policies so that they conform to human rights standards, and create resources to promote and to implement human rights.

A state can, however, submit certain reservations at the time of signing. This means that the state has indicated certain provisos with which it is not in agreement, and by which it consequently does not consider itself bound. Reservations can only be entered at the time of signing, not at a later date.



## 4.5 UN Human rights monitoring structure and Human Rights Council

The Human Rights Council was established in June 2006, replacing the Human Rights Commission. The new Human Rights Council has 47 seats, which are allocated by region, and are rotated every three years, on a staggered basis.



Central to the functioning of the Human Rights Council is the Universal Periodic Review (UPR). This is a four-yearly review of the human rights records of UN member states, when a report is produced by a panel of Human Rights Council members and each state responds to the recommendations. NGOs and National Human Rights Institutions are also key actors in this process.

Special procedures of the Human Rights Council are generally either individuals (Special Rapporteurs) or groups of individuals (working groups), mandated to explore a specific topic or country and report on human rights implications. These themes include torture, violence against women, freedom of expression and harmful traditional practices. Special Rapporteurs are generally leading experts, and to preserve their independence are unpaid.

So far, three UN Special Rapporteurs have visited Mongolia since 2005.



*Jan Ziegler, UN Special Rapporteur, was in Mongolia in 2004 on the right to food; he made 11 recommendations.*

*In 2005, Special Rapporteur Manfred Nowak visited Mongolia on torture and other cruel, inhuman or degrading treatment or punishment; he made 8 recommendations.*

*In 2009, UN Special Rapporteur Vernor Muñoz Villalobos made 12 recommendations on the right to education, addressing both government and international organizations.<sup>32</sup>*

<sup>32</sup> Mongolia reports on the implementation status of human rights international treaties, recommendations from the UN Committees to Government of Mongolia, Volume 2, p. 489- 546, National Human Rights Commission, 2012.



Finally, there is the Office of the High Commissioner for Human Rights (OHCHR). Unlike the Human Rights Council, which is a political body, the High Commissioner for Human Rights is a UN official and the office is part of the UN Secretariat. The OHCHR is mandated to protect and promote human rights and, importantly, acts to mainstream human rights across all UN agencies.

Some UN agencies have had a central role in promoting a more consistent rights-based approach to policy and programming.

## 4.6 Regional human rights instruments

In addition to the United Nations instruments, there are three regional human rights organisations.

1. European.
2. Inter-American.
3. African.



The oldest of these, the Council of Europe (CoE), adopted the European Convention of Human Rights and Fundamental Freedoms (ECHR) in 1950, and pre-dates the two core UN Covenants. The CoE also has the most developed court system, the European Court of Human Rights, with an extensive body of jurisprudence, which serves as global benchmark and reference point. The European Court has been key in establishing the principle of evolutionary nature of human rights, and the ECHR as a ‘living instrument’ advances societal norms and trends.

**Inter-American Court of Human Rights** The Inter-American system also had its origins in the aftermath of World War II, with the adoption of the American Declaration of the Rights of Man in 1948. The Inter-American Commission was established in 1969, and the court came into being in 1979, following the entry into force of the American Convention on Human Rights. One of the most successful aspects of this system has been the Commission’s country visits to investigate allegations of human rights. The Commission’s 1979 report on Argentina was key in revealing to the world the military government’s systematic policy of “disappearing” people (desaparacidos).





The **African Commission and Court on Human and Peoples' Rights** is very interesting in terms of the formulation of its Charter. As mentioned above, there is a deliberate emphasis on peoples' rights as well as individual rights. The Charter also demonstrates the principle of evolution of human rights. While human rights are conceived of as inalienable and unalterable, the various treaties and instruments concerning them are unavoidably a product of the era in which they were drafted. The African Charter, for example, for the first time specifically mentions the "right to an environment" and the "right to development."

The African Commission has faced many challenges to achieving human rights change. It remains to be seen what the relatively recent African Court of Human Rights will achieve, after the protracted time taken for its establishment.

There is no regional human rights court for Asia. With the "Asian values" debate being a central factor in delaying such a development, there have been recent developments including the signature in November 2009, by the leaders of ASEAN's ten member states, of a Charter that established a dedicated ASEAN<sup>33</sup> human rights body. The first formal session of the **ASEAN Inter-governmental Commission on Human Rights (AICHR)**, was in March/April 2010 in Jakarta.

As such, states affirmed that UDDER is not an issue related to particular country or regions, and have created regional cooperation mechanisms on human rights.

In Mongolia, a regional conference on defenders of human rights in South-East Asia was held in 2008, which released the Night Declaration.

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<sup>33</sup> ASEAN's Goal: To accelerate the economic growth, social progress and cultural development in the region through joint endeavors in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful and promote cooperation and trade among members for the benefits of all member states.



## 4.7 International solidarity principles towards ensuring human rights and freedom in official development aid

At the international level, developed countries provide development aid, loans and technical assistance to developing and poor countries. Since 2003, there have been three international summits to improve aid effectiveness. The second, in 2005, adopted the Paris Declaration, with specific goals to improve aid/loan effectiveness; implementation of the declaration has been evaluated three times so far. The Government of Mongolia has joined this action.

At the third summit, in 2008 in Accra (Ghana), both donor and developing countries approved an Action Agenda aiming to accelerate and deepen implementation of the Paris Declaration.

In 2012, states and development stakeholders signed the “Busan Partnership Agreement on Effective Development Cooperation” whereby participants recognized the private sector as development actors in addition to governments, donors and civil society, and developed a set of responsibilities with which stakeholders must comply.

It is impossible to resolve all pressing societal issues with official development aid, but aid is expected to contribute to and push for achievement of certain development outcomes. It is expected to bring about specific, measurable and progressive outcomes in poverty reduction, gender equality and environmental/ecological balance. It is desired to bring about concrete outcomes in improving livelihoods, reducing poverty, eliminating discrimination, resolving root poverty causes using HRBA and positive democratic change.

Since 1991, the Government of Mongolia has received over MNT 8 billion in official development aid from donor countries and international organizations; 54% was to make loans to persons of up to US\$5,000 by the end of 2013<sup>34</sup>. The government has accepted aid/loans to financing a budget deficit, to finance projects and programs, for on-lending and to pay debts.

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<sup>34</sup> “Boosting benefits of aids/loans” Assessment report, 2011, Development Watch Forum.



International principles of official development aid say it must be a tool to support development, and government and donors must play important roles in increasing aid effectiveness; civil society and the private sector must be equal stakeholders and duty-bearers in official development aid.

#### 4.7.1 Paris Declaration and its principles

The Paris Declaration (2005) is a practical, action-oriented roadmap to improve the quality of aid and its impact on development. It gives a series of specific implementation measures and establishes a monitoring system to assess progress and ensure that donors and recipients hold each other accountable for their commitments. The Paris Declaration outlines the following five fundamental principles for making aid more effective.

- ▶ **1. Ownership:** developing countries set their own strategies for poverty reduction, to improve their institutions and to tackle corruption.
- ▶ **2. Alignment:** donor countries align behind these objectives and use local systems.
- ▶ **3. Harmonization:** donor countries coordinate, simplify procedures and share information to avoid duplication.
- ▶ **4. Results:** developing countries and donors shift focus to development results and results get measured.
- ▶ **5. Mutual accountability:** donors and partners are accountable for development results

Donors and development partners must establish frequent discussions on how accountability and responsibility principles are adhered to, with the inclusion of stakeholders, government, civil society and the private sector. In Mongolia, a Development Watch civil society forum held multi-stakeholders discussions in 2011 and 2012<sup>35</sup>.

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<sup>35</sup> A group of NGOs, led by the Human Rights and Development Center NGO and the Food Coalition, assessed "Boosting the benefits of loans and aids" in 2010 and held a multi-stakeholder discussion on findings in the Citizens' Hall (Government House) in cooperation with the Presidential Office and Cabinet Secretariat in 2011 and in cooperation with the Finance Ministry in 2012, and reached consolidated results on stabilizing such multi-stakeholder mechanisms.



*Aid is about building partnerships for development. These are most effective when they fully harness the energy, skills and experience of all development actors: bilateral and multilateral donors, global funds, CSOs and the private sector. To support developing country efforts to build for the future, we resolve to create partnerships that will include all these actors.*

*We will be judged by the impacts that our collective efforts have on the lives of poor people. We recognise that greater transparency and accountability for the use of development resources—domestic as well as external—are powerful drivers of progress.<sup>36</sup>*

## 4.8 Swiss international cooperation principles

Article 54 of the Constitution of Switzerland says, “The Confederation shall ensure that the independence of Switzerland and its welfare is safeguarded; it shall in particular assist in the alleviation of need and poverty in the world and promote respect for human rights and democracy, peaceful coexistence and the conservation of natural resources.” Switzerland strictly complies with the principle of establishing fairness in society and access to justice (equal treatment).



The Swiss International Cooperation has set itself clear principles for its mandate, firstly collaborating with partners and local institutions in mutual respect to reduce poverty and global risks efficiently and sustainably. These principles are shown below.

- Promoting structural conditions and global policies conducive to development: Switzerland aims for fair and favourable legal conditions for the private sector and non-governmental organisations. It promotes sustainable and global management of issues relating to water, food security, climate, health and migration, and lobbies for green economic growth.
- Ensuring maximum efficiency: project planning, implementation and supervision focus on results and real improvements in living conditions of those receiving international cooperation.

<sup>36</sup> Accra Agenda for Action, Section 16 and 22 on “Aid Effectiveness”, Third Summit, 2008, Accra, Ghana.



- Adding value, developing and sharing know-how and experience: Switzerland supports areas where it possesses substantial know-how. Switzerland deploys the expertise of the SDC, other Federal Administration areas, private business, research institutions and civil society. Switzerland aims to harness local knowledge to the benefit of developing countries and to share its own experience.
- Partners in mutual respect: the SDC recognises and respects all cultures and religions. It works with people, institutions and political forces in partner countries, emphasising respect for law and human rights. These partnerships involve shared values and objectives, trust relationships and a desire for transparency.
- Working with public authorities: considering civil society as an important development partner and paying considerable attention to cooperation with civil society.
- Good governance: Switzerland promotes respect for human rights and good governance in all of its projects and programmes and in its political dialogue, which targets the quality of government and public administration and compliance with the obligation to be held accountable. This requires the legal system to be independent of the state and implies the rule of law, a democratic system and fair regulatory framework for private and public enterprises. Transparency and liability for corruption are of vital importance.
- Equality between women and men: Switzerland's efforts for poverty reduction go hand-in-hand with a commitment to equality between sexes. It condemns discrimination against women, whether at work, in education, in rights or attacks on physical integrity. For sex equality work, the SDC has a careful regard for cultural and contextual specificities.

#### SDC (Swiss Development Cooperation) supports sustainable development.

The SDC positions itself at the intersection of three interdependent fields: environment, economy and society. Institutional development, technology and expertise are vehicles to accomplish the main mission: championing poverty reduction and sustainable development..



- The SDC encourages users to stand up for their rights and supports local and regional political processes to manage water in a sustainable and socially equitable way.
- In the Integrated Water Resources Management framework, the SDC has two key focuses: drinking water and sanitation (Water for People); and water for food production, which entails safeguarding water-producing ecosystems (Water for Food).
- Internationally, the SDC invests up to 90 million Swiss francs per year in work in international organizations and 170 field projects.

## 4.9 *National human rights mechanisms*

International protection of human rights is crucial, but national protection is most important in preventing human rights violations in the first instance and ensuring the most prompt redress for violation. Human rights may be protected through a constitutional bill of rights or by other state law.

That everyone is born with freedom and inalienable human rights is a concept formulated during the American and European revolutions in the 17-18th centuries and was the grounds for the first constitutional bills. Other states started to include human rights as an important part of their constitutional bills to prove they were democratic.

Constitution of Mongolia Article 16 stipulates that Mongolian citizens have the following guaranteed rights and freedoms.

- 1) a safe and healthy environment, with protection from environmental pollution and loss of natural balance.
- 2) free choice of work and profession, decent working conditions, decent salary, rest and private businesses. No one shall be forced to work.
- 3) All people have equal rights in political, economic, social and cultural spheres (for more details, refer to Training Handbook).

Constitutional bills of rights set out rights that have priority over ordinary legislation and cannot be changed without certain fixed procedures being followed (sometimes a national referendum).



Whether or not they have a Constitutional Bill of Rights, states that are party to legally binding human rights treaties are expected to make them locally applicable and enforceable. After ratification, states must ensure that national laws take account of, and do not conflict with, treaty provisions, and they must also ensure that people are made aware of the treaties, their content, the recommendations of treaty bodies etc.

Some states incorporate international treaties into their domestic legislation, which can then be directly invoked before national courts, while some states translate international laws into national law by another act (e.g. legislation) for domestic applicability.

Other than judicial systems, states often provide quasi-judicial human rights monitoring and enforcement bodies, such as human rights institutions, human rights commissions or ombudsmen. These can have roles such as promoting human rights awareness; reviewing legislation for human rights compliance; conducting enquiries; or taking legal proceedings to vindicate human rights.

This institutional duty is performed in Mongolia by the National Human Rights Commission, responsible for ensuring and protecting human rights and freedoms as laid down in the Constitution, national legislation and international treaties to which Mongolia is party.

The first international workshop of the Human Rights Institute in 1991 defined the Paris Principles, and the UN General Assembly ratified the principles. Under Paris Principles, the National Human Rights Commission must comply with the following.

- a). Monitor any situation of violation of human rights which it decides to take up.
- b). Be able to advise the government, parliament and any other competent body on specific violations, issues related to legislation and general compliance and implementation with international human rights instruments.
- c). Relate to regional and international organizations.
- d). Be mandated to educate and inform about human rights.
- e). Some institutions are given a quasi-judicial competence.

The Mongolian National Human Rights Commission is responsible for compliance with the Paris Principles. It is also obliged to highlight the universality of human rights in implementation, and ensure all government departments comply with human rights.

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