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# **A HUMAN RIGHTS-BASED APPROACH AND GENDER EQUALITY**

Manual

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## Preface

The promotion of human rights and human rights standards and the adoption of human rights-based approaches are important ways to effectively address the various social, economic and political challenges currently facing Mongolia. What needs to be done is to raise awareness about the potential inherent in such approaches to gradually bring about sustainable and positive change, promote public recognition of that potential, and create the capacities needed for practical work on such approaches. Improved knowledge about human rights and related concepts - among both government officials employed in agencies responsible for the protection of human rights and the implementation of human rights standards and among the population at large - and closer cooperation between government and society on human rights issues are vital to achieve progress in this field.

This training manual, entitled “A Human Rights-Based Approach and Gender Equality”, approaches the problems existing in small-scale artisanal mining from a human rights perspective, proposes to address them via a human rights-based approach which includes the principle of gender equality, and is designed to serve as a tool for helping both government officials and citizens improve their knowledge and skills in relation to protecting the human rights of artisanal miners in order to develop viable solutions for improving their lot. The manual is for use by small-scale miners and government agencies responsible for developing, implementing and enforcing policies and decisions pertaining to artisanal miners and small-scale mining.

The manual is divided into three chapters. The first two chapters discuss the basic concepts in human rights-based approaches and gender equality and provide illustrations of how those concepts can be used in practice. The third chapter contains practical recommendations on ways in which a human rights-based approach can be used to resolve the challenges present in such areas as education, health care, social protection, welfare, employment, land ownership and management, and the conducting of business, and includes information on related government policies and services.

The manual was prepared by the Center for Human Rights and Development (CHRD) as part of the initiatives undertaken by the Sustainable Artisanal Mining (SAM) Project supported by the Swiss Agency for Development and Cooperation (SDC).

The recommendations and other material contained in this manual are those of the authors and do not necessarily reflect the views of SDC.

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## INTRODUCTION

Although humankind's progress has become much more dynamic, development challenges such as the eradication of poverty, environmental sustainability and gender equality remain largely unresolved globally, regionally, nationally and locally. The opportunities for equal participation in the processes of development and the enjoyment, on an equitable basis, of the benefits accruing from development are not yet there. The practices so common in many developing countries - in which the benefits of economic growth and development accrue to a minority of people close to positions of power to the exclusion of the poor and vulnerable groups - are not uncommon in Mongolia. In order for all people to equally enjoy their inalienable rights and to be protected from overt or hidden forms of discrimination, it is important to have access to information and the ability to participate in the formulation of development priorities; to have a say in the planning and implementation of decisions that affect people's wellbeing so all can benefit equally. Human rights-based approaches have a clear and decisive role to play in helping accomplish such goals.

Mainstreaming gender equality into the formulation of development policies and programmes and ensuring that the rights of women and girls are protected through special measures remains an urgent imperative. It is therefore essential that the protection of human rights involves incorporating, or mainstreaming, gender perspectives in development policies and programmes so that gender equality becomes a reality.

The incorporation of gender perspectives into development policies, programmes and activities should be based on human rights standards and principles and be accompanied by efforts that promote awareness of the importance of the principles of equality and non-discrimination and that build the capacities required to implement these principles. In this respect, human rights-based approaches can play an invaluable role.

As proclaimed in the Universal Declaration of Human Rights, the protection of human rights is the foundation of freedom, justice and peace in the world.<sup>1</sup> The Vienna Declaration and Program of Action adopted by the World Conference on Human Rights in 1993 stated that democracy, development and respect for human rights and fundamental freedoms were interdependent and mutually reinforcing. With this statement came the recognition that upholding human rights and freedoms at the local, national, regional and global levels was

<sup>1</sup> *Universal Declaration of Human Rights. 1948*



the basis for promoting development and democracy worldwide.

This idea inspired the United Nations when it launched its Program of Reform in 1997, including in the area of human rights-related activities, and called on member countries to incorporate human rights in their policies and programmes and to adopt human rights-based approaches in their efforts. Since then, all United Nations agencies, funds and programmes have introduced human rights-based approaches in their activities and projects and have gained considerable experience in this field. In May 2003, the United Nations undertook an assessment of these efforts and came up with a Common Understanding in relation to the goals, principles and outcomes to be pursued when adopting human rights-based approaches to development cooperation and programming. The Common Understanding agreed that (a) All programs of development cooperation, policies and technical assistance should further the realisation of human rights; (b) Human rights standards should guide all development cooperation and programming in all sectors and in all phases of the programming process; and (c) Development cooperation contributes to the development of the capacities of ‘duty-bearers’ to meet their obligations and/or of ‘rights-holders’ to claim their rights.

When providing development assistance, donor countries in the European Union (EU) are guided by policies that embrace human rights-based approaches and work towards building their capacities in this area. The EU has undertaken substantive work in this respect. Such policy documents as Increasing the Impact of EU Development Policy: An Agenda for Change, Assessment of Human Rights and Democracy by the Council of the European Union and the EU Strategic Framework and Action Plan on Human Rights and Democracy emphasise the importance of promoting human rights-based approaches in the EU’s development cooperation programmes. The EU Toolbox on a Rights-Based Approach to Development, finalised in June 2014, urges member countries to adopt this approach in their activities and incorporate it in their development aid programmes in developing countries.

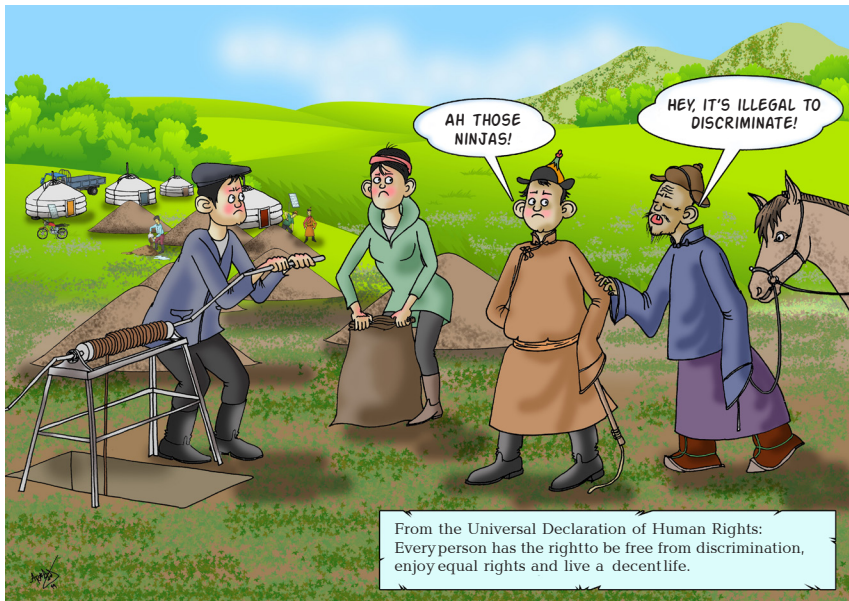
All development-related problems and the programmes and projects designed to address them have a human rights dimension. The challenges we face in Mongolia - such as poverty, unemployment, inequality, droughts, desertification, environmental degradation, and conflicts involved in the realisation of mining activities - all affect human rights. And none of them can be resolved without addressing the issue of human rights. This means that all actors and stakeholders need to improve their knowledge about what is involved in human rights-based approaches and work towards enhancing the capacities and resources needed for introducing these approaches in their day-to-day activities.

## CHAPTER ONE: A HUMAN RIGHTS-BASED APPROACH

### 1. WHAT IS A HUMAN RIGHTS-BASED APPROACH?

A human rights-based approach (HRBA) is a human development concept based on the implementation of international human rights standards and the upholding of human rights.

The principal objective of such an approach is to achieve human-centered development, to channel the aims of development toward human development. A person can only develop if his/her rights are realised. Therefore, the realisation of human rights lies at the heart of human development.



A HBRA aims to explore the sources of inequality, the main challenges to development, and addresses the entrenched discrimination in society and unequal power distribution that hamper economic development.

### International human rights standards

Each human rights covenant contains a list of rights that fall under its protection. It is customary to refer to the legal texts that provide for such rights as human rights standards. The following is a list of human rights standards set forth in the Universal Declaration of Human Rights, a document that, according to the Guinness Book of Records, has been translated into the most number of languages:

- *Freedom from slavery*
- *Freedom of expression, assembly and association*
- *Freedom of thought, conscience and religion*
- *Freedom from torture and cruel, inhuman or degrading treatment or punishment*
- *Freedom from arbitrary arrest, detention or exile*
- *Freedom from arbitrary or unlawful interference with one's privacy, family, home or correspondence*
- *Equality before the law*
- *The right to a fair trial*
- *The right to seek and to enjoy in other countries asylum from persecution*
- *The right to have a name and a nationality*
- *The right to non-discrimination, equality and a decent life*
- *The right to vote and to be elected and to take part in the conduct of public affairs*
- *The right to life, liberty and security of person*
- *The right to enjoy equal and inalienable rights*
- *The right to enjoy the highest attainable standard of physical and mental health*
- *The right to education*
- *The right to just and favourable conditions of work*
- *The right to adequate food, clothing and housing, and to social security*
- *The right to pursue one's culture, traditions and take part in cultural life*
- *The right to development*

A HRBA establishes a link between development policies, programmes and processes with those human rights enshrined in international law and with

the role governments play in protecting human rights. By empowering<sup>2</sup> people, particularly marginalised<sup>3</sup> groups of the population, through participation in decision-making and holding accountable those who are responsible for implementing those decisions, a HRBA helps achieve sustainable development outcomes. No universal recipe exists for HRBA implementation: Each country, locality or industry develops them in accordance with their specific context and features. However, there are three common characteristics:

- The formulation and implementation of all development policies and programmes should be aimed at furthering government responsibility for the realisation of human rights;
- Human rights standards and principles, as defined in international human rights instruments, should guide all development cooperation and programming in all sectors and at all phases; and
- Development cooperation contributes to the development of the capacities of ‘duty-bearers’<sup>4</sup> to meet their obligations and/or of ‘rights-holders’<sup>5</sup> to claim their rights.

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<sup>2</sup> “Marginalized” groups refer to those groups of people who lack both the capacity and the opportunity to engage in getting their message across, protecting their rights, and influencing the making of decisions. These may include the poor, women, the unemployed, inhabitants of remote localities, youth, ethnic, linguistic and sexual minorities, and small-scale miners.

<sup>3</sup> “Empowerment” is a comprehensive participatory civic process which involves the ensuring of openness and accessibility of information, the building of pertinent legal frameworks and development of capacities that enable citizens to participate in the decision-making and the protection of their rights.

<sup>4</sup> “Rights-holder” – since all persons are born with inalienable rights all persons are rights-holders. Each and every person is a rights-holder.

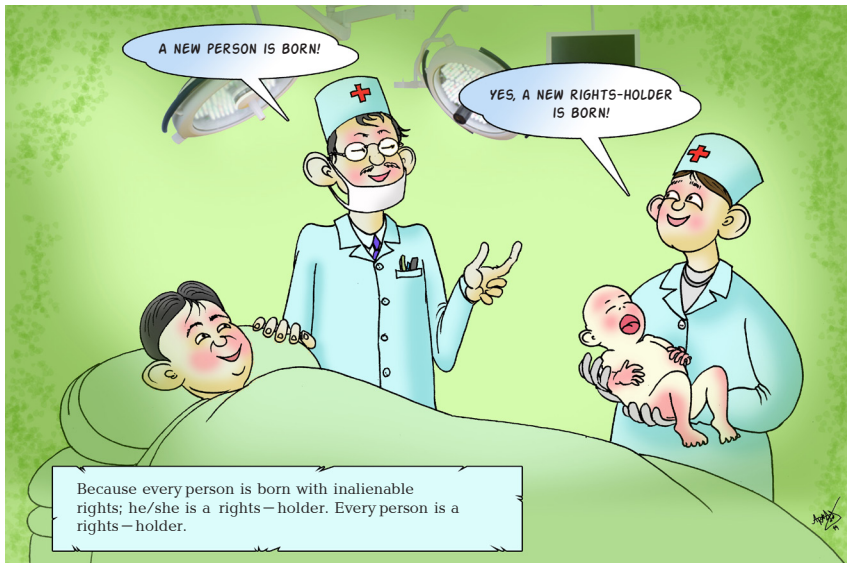
<sup>5</sup> “Duty-bearer” – by joining international human rights covenants the state assumes the duty to respect, protect and fulfill human rights. The duties of the state are carried out by state organizations and officials. Therefore, state organizations and officials are called duty-bearers.

## 2. PRINCIPLES TO BE APPLIED WHEN USING A HUMAN RIGHTS-BASED APPROACH

The following five basic principles are used in a HRBA:

1. Linking development challenges to international human rights standards;
2. Empowering rights-holders to claim their rights and duty-bearers to meet their obligations;
3. Engaging rights-holders and duty-bearers in the formulation of development programmes and other development processes that affect them;
4. The non-discrimination of vulnerable groups, and their engagement in decision-making processes; and
5. The transparency of the activities of duty-bearers before rights-holders, and their accountability with respect to rights-holders.

A HRBA is used throughout the entire development process. The five principles of HRBA are used at all phases of development planning and implementation: The formulation of development policies and strategies; project development, planning and implementation; and monitoring and evaluation.



**Principle 1. Linking development challenges to international human rights standards:** Practical implementation of this principle involves ensuring that development programmes and projects are in line with a government's international human rights obligations. The goals of programmes and projects designed for target groups should be in line with the rights these groups should be enjoying nationally.

To achieve this:

- The government's responsibility to respect, protect and fulfill human rights should be clearly laid down for each stage of national and local development planning (from policymaking and needs assessment to implementation, monitoring and evaluation);
- The indivisible, interdependent and interrelated nature of civil, cultural, economic, political and social rights should be taken into account at all stages;
- The fulfillment of human rights should be guaranteed in all spheres: Health care, education, housing, the justice system and political participation;
- It is important that all stakeholders in development, the general public, public officials, local government staff and the staff of development projects build their capacity to apply human rights norms in their activities, either through taking part in training, employing consultants or seeking recommendations.

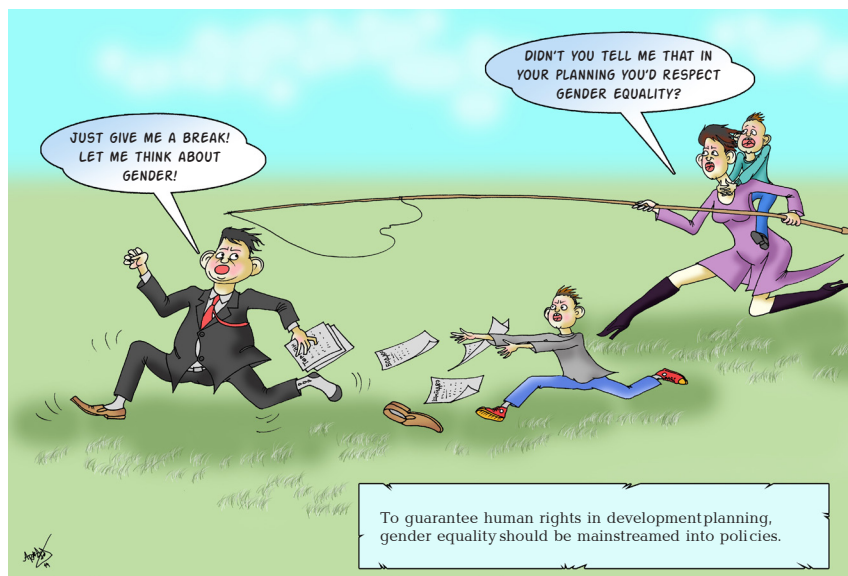
**Principle 2. Empowerment:** Development policies and programmes are not charity projects; rather they are processes aimed at empowering participants. Empowerment means developing the ability and skills of individuals and communities to exert power over those processes affecting their lives, including through education and access to information. Rights-holders and duty-bearers should strive to develop a common understanding about the objectives of human rights-related activities that are aimed at promoting respect for, and the protection and fulfillment of, human rights. Empowerment includes educating and enhancing knowledge about human rights and human rights concepts among civil servants employed both in central government and local governments, including staff at agencies providing public services.

**Principle 3. Participation:** Ensuring active, free and meaningful civic participation. Civil society organisations, minority groups, women, children and local communities should all be encouraged to participate, and their participation should not be limited to formal consultative meetings. Transparency, access to information about activities and responsiveness on the part of local development agencies serve as the basis to ensure meaningful citizen participation.

**Principle 4. Prioritising non-discrimination and the protection of vulnerable groups:** The first order of business both at the national and local levels should be to ask the question: “Who is vulnerable?” Official data should contain information on ethnicity, religion, language, age, sex, migration history and other human rights categories.

In addition, in order to ensure the inclusion of human rights throughout all stages of development planning, gender equality considerations must be incorporated. All legislation, policies and programmes should be evaluated in such a way as to account for disparities in their impact on women and men.

Special attention should be paid to identifying the causes that have led to the feminisation of poverty, and to the actions that need to be undertaken to address this situation.



**Principle 5. Mutual accountability:** All policies, programmes, plans and budgets should undergo a human rights impact assessment to ascertain progress in the fulfillment of human rights. The responsibility of a duty-bearer to protect and fulfill (support and ensure) human rights, and the responsibility of local governments and private businesses and other stakeholders to respect these rights (not to infringe upon them) should be clearly stated in programme documents. The rights of rights-holders and the duties of duty-bearers must be determined in parallel. The implementation of human rights standards should



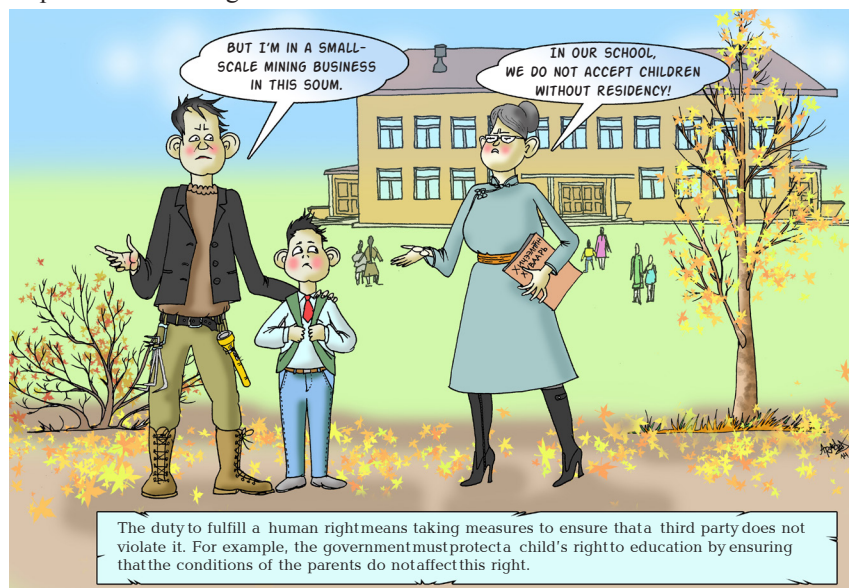
be assessed based on concrete progress achieved against defined benchmarks, and accountability should be demanded accordingly. Sound legislation, effective policies, rules and regulations, and implementing bodies are essential for guaranteeing the fulfillment of citizens' rights, as well as the establishment of mechanisms for filing complaints, seeking compensation or demanding accountability in instances where rights have been violated.

### 3. THE ROLE OF GOVERNMENT IN UPHOLDING HUMAN RIGHTS

In accordance with the international human rights covenants to which Mongolia is a party, the Government of Mongolia has the responsibility to ***respect, protect and fulfill*** its human rights obligations.

The obligation to *respect* human rights means that the government must refrain from interfering with or curtailing the enjoyment of human rights. For example, the government must refrain from forcibly making people migrate or arbitrarily restricting citizens' right to vote or to assemble.

The obligation to *protect* human rights requires the government to protect individuals and groups from human rights abuses by third parties. At the individual level, while we are entitled to our human rights, we should also respect the human rights of others.





The obligation to *fulfill* human rights means that the government must take positive action to facilitate the enjoyment of basic human rights and to gradually improve the implementation of those rights. Sometimes fulfilling can mean supporting and ensuring the implementation of human rights. *Supporting* human rights means that the government takes measures to strengthen the capacity of individuals to promote their rights. For example, it can engage in activities aimed at building the conditions for improving the quality and range of health care services and access to such services. To achieve this, the government can extend its support to public and private health care institutions through policies and standards. *Ensuring* human rights means that the government engages in the direct delivery of the services needed for the implementation of certain rights. For example, if food shortages occur because of market imbalances, the government can intervene to ensure the right to adequate food.

#### **4. SHOULD GOVERNMENT BE STRONG OR LARGE TO PROTECT HUMAN RIGHTS?**

There is no necessity for a government to be strong or large to implement human rights. International human rights covenants do not stipulate a certain form of government or a certain economic system. In a broad sense, human rights can be implemented under any political and economic system. However, in a democratic country where the “equal, indivisible and interdependent” nature of human rights is understood and accepted, human rights have a better chance of being realised.

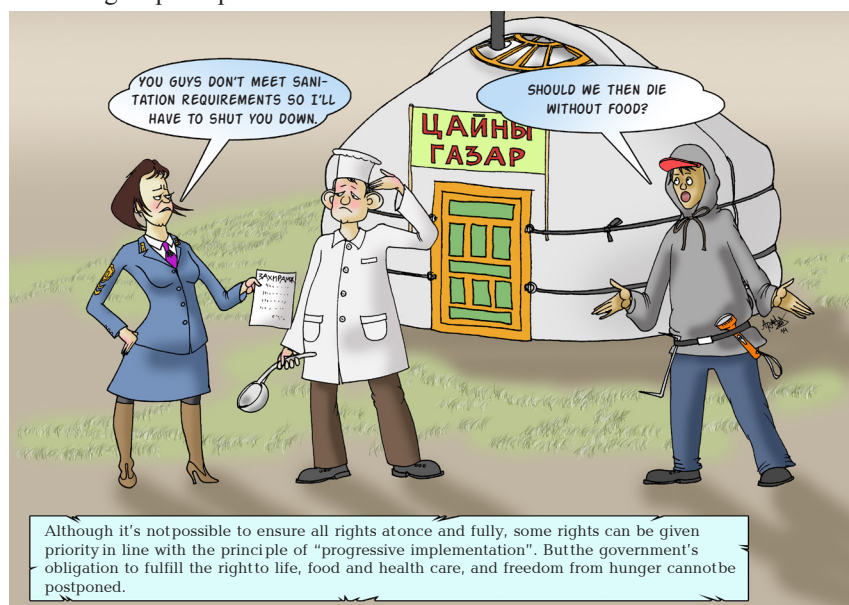
##### *Some human rights principles*

- *Human rights are universal and inalienable; that is, every person is born with inherent rights;*
- *Every person has equal value and has the right to live a decent life;*
- *Human rights are equal, indivisible, interdependent;*
- *Human rights cannot be taken away from a person;*
- *Governments and government officials have an obligation to implement human rights and refrain from impeding the exercise of human rights;*
- *Human rights are internationally guaranteed;*
- *Human rights are legally protected;*
- *Human rights protect individuals and, in some case, communities.*

The government has a duty to deliver publicly accepted, quality basic services,<sup>6</sup> on a non-discriminatory basis, and to introduce and enforce policies and arrangements aimed at preventing situations in which a person is denied access to basic services due to insolvency. When determining its development priorities, in response to the constraints imposed by limited resources, the government should base its policy choices on human rights considerations.

## 5. MAINSTREAMING HUMAN RIGHTS PRINCIPLES INTO POLICY PLANNING

When making choices about what issues need to be immediately addressed and what issues can be temporarily postponed, decision-makers should consider five human rights principles.



**First**, the principle of the indivisibility of human rights, which means that no right can be separated from another and should be taken into account. The violation of one right leads to the violation of other rights. No human right is less important than other human rights. There can be instances in which a certain right is given priority either because its implementation has been neglected or because it is deemed to have a multiplying effect on the implementation of other

<sup>6</sup> Basic services include healthcare, education, social security, transport and communication.

rights. For example, countries attach priority to the implementation of the right to education as it helps boost the implementation of other rights, such as the right to adequate food, the right to health, the right to employment, and women's and children's rights.

**Second**, those issues that are delayed through policy decisions cannot include economic, social and cultural rights that constitute "core rights to be implemented without delay."<sup>7</sup> Governments are obligated to implement these core economic, social and cultural rights, without delay and on a binding basis. The implementation of core rights cannot be delayed or postponed.

**Third**, the government has a duty to fulfill without delay its obligation to implement the right to non-discrimination. Government policies and programmes should identify the vulnerable and at-risk groups which are most likely to be discriminated against based on their ethnicity, sex, geographical distribution, social status, wealth, sexual orientation and disability, and include provisions that prevent such discrimination.

**Fourth**, all processes that involve policy analysis, decision-making, enforcement and implementation, and monitoring and evaluation must be transparent and participatory.

**Finally**, in accordance with the principle of preventing the deterioration of human rights, a human right should not be allowed to deteriorate to a state worse than the time when policies were implemented to fulfill that particular right. When attaching priority to a particular human right and when allocating greater resources to its implementation, the government should strive not to reduce the resources needed for the implementation of other rights and to ensure that those rights do not fall behind previous levels.

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<sup>7</sup> Due to limited resources, countries implement economic, social and cultural rights gradually, in a step-by-step manner, using to a maximum the resources where progress has been made. Still, economic, social and cultural rights are a sum of rights and are composed of many parts. Among them core rights are identified and governments have an obligation to fulfill them immediately. For instance, in the right to education, right to illiteracy and right to primary education have been identified as core rights. In the right to food, the core right is freedom from hunger. Therefore, there can be no illiterate people or unschooled children, or hungry people in any country. Governments are obligated to have in place policies, resources and capacities to immediately assist people who find themselves in such situations.

## 6. THE EFFECTS OF HUMAN RIGHTS ON BUDGETING

All human rights need funding to be implemented. Budgets give a picture of what rights and for what groups are being implemented and how they are being implemented. Consequently, budget analysis is an important instrument with which to identify gaps in policy and policy enforcement, advance the implementation of human rights, suggest other priorities and choices, and strengthen the capacity of duty-bearer to fulfill their obligations.

Budget planning involves the accumulation of aspirations and needs at the national level and subsequent decision-making on funding priorities. Government choices on revenue and public expenditure - that is, choices about how much money will be allocated to implement whose rights and what rights - represent a highly important political decision.

A HRBA promotes a budget process that is transparent, open, accountable, non-discriminatory and participatory. These principles should apply at all stages of budget planning, and this process should encourage an inclusive debate on the ways in which the objectives of national development strategies can be incorporated into the budget plans approved by the State Ikh Khural (the State Ikh Khural is Mongolia's supreme law-making assembly). The State Ikh Khural should have sufficient time to deliberate and evaluate budget proposals and budget implementation and have the power to make amendments if required.

Although budget-related debates and deliberations can be highly politicised, realistic arguments based on human rights standards can help decision-makers to better orient themselves amid the contested priorities imposed by limited resources and, subsequently, pass budget decisions that ensure the implementation of specific human rights goals. Such goals include:

- Free general education for all;
- Priority access to public money for the most discriminated groups;
- Provisions concerning the implementation of core rights, or at least the minimal implementation of core rights;
- Advancement of the implementation of human rights;
- Preventing deterioration in the implementation of those human rights not prioritised (for example, avoiding cuts in the funding of health care services because of the need to fund national security or debt servicing).

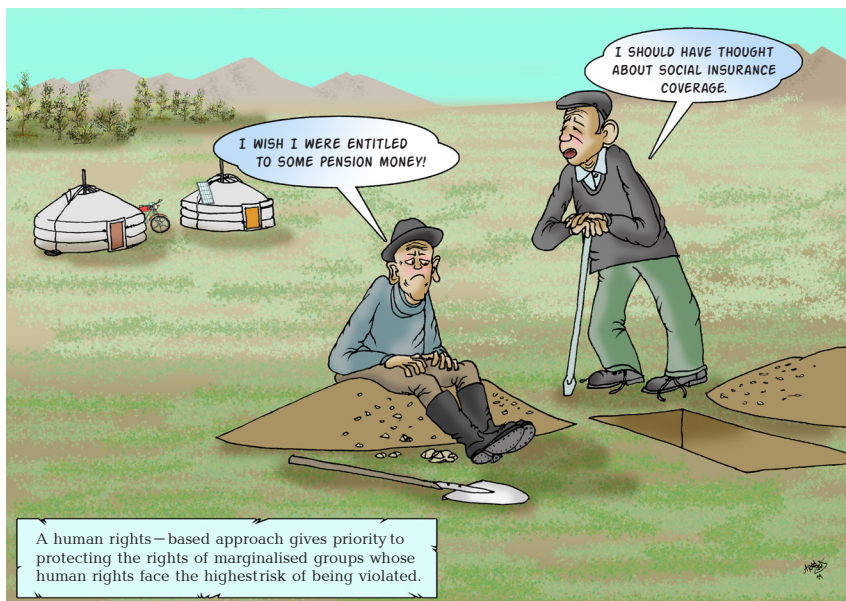
## 7. THE SIGNIFICANCE OF USING A HUMAN RIGHTS-BASED

The significance of using a HRBA is twofold. Firstly, a HRBA is legally and morally justified because of its intrinsic value. Its practical use helps educate people about it. Secondly, a human rights-based approach is an approach that leads to sustainable results in human development. Using this approach helps gain recognition for it, and expands its application.

Using a HRBA adds to the value of development. Its use promotes learning about previous experiences, retains the best from the past, and consolidates and builds on achievements. Development experience demonstrates that such important achievements in development as education for girls and boys, guarantees for the possession of land and other real estate, equal opportunities for women and men to own land, and the promotion of civil and political rights upon which to build good governance have been made possible through outcomes that led to progress in the implementation of human rights.

The significance of using a HRBA in promoting development lies in the following:

**1. *Whose rights?*** A HRBA prioritises the rights of those marginalised groups of the population whose rights are most likely to be infringed upon. There is a basic understanding in governance that sustainable development cannot be achieved without accepting the principle of the universality of human rights. The principle of the universality of human rights means that although there may be priorities in the implementation of human rights because of limited resources, all people enjoy equal human rights. However, this does not mean that the problems people face can be addressed at once and simultaneously.



**2. A comprehensive approach.** Programmes that employ a HRBA adopt a comprehensive approach to the problem at hand. For example, relations among such institutions as the family, community,<sup>8</sup> civil society, and local and national governments on social, political and legal issues are treated as a whole, and the ensuing duties and responsibilities are approached in a comprehensive manner. A HRBA helps improve coordination among sectors and comprehensively resolves many-faceted development problems.

**3. International treaties and covenants.** The outcomes to be achieved and the standards of services and activities derive from universally accepted development objectives, goals and norms set forth in international human rights treaties and covenants. A HRBA contributes to effectively implementing these goals and standards at the national level, within a certain time frame.

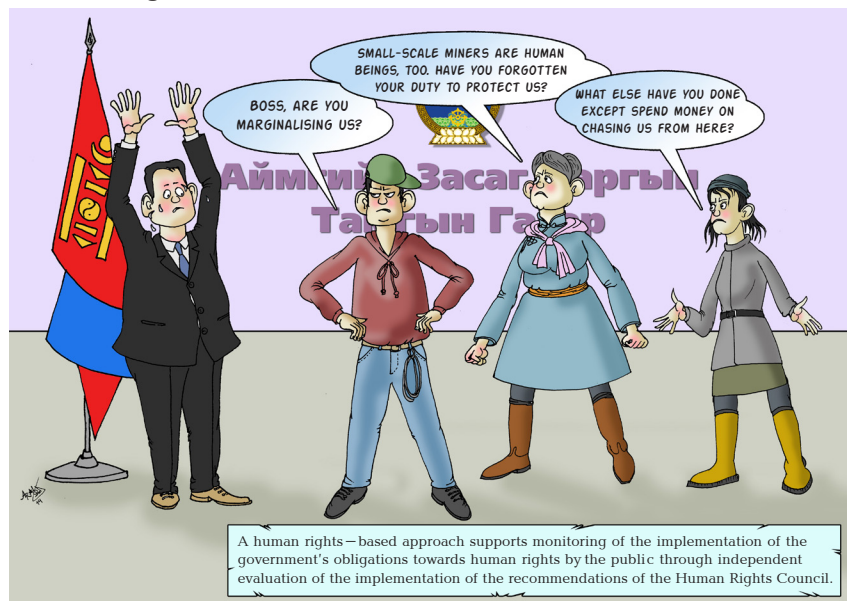
**4. A participatory process.** Responsibilities for achieving these goals and standards are determined through a participatory process (which involves, inter alia, policy development and national planning). This participatory process provides an opportunity for consensus to be reached between those whose rights have been violated and duty-bearers. A HRBA helps develop the policies and laws that are needed for both sides and the skills required for taking part in meetings

<sup>8</sup> "Hui olon" refers to a group of people with common interests and positions. The English word for the term is 'community.'

and debates involving families, communities and civil society organisations. In so doing, a HRBA contributes to the institutionalisation of a participatory democratic process both at the national and local levels.

**5. Transparency and accountability.** A HRBA helps develop policies, laws, rules and regulations, and budgets aimed at protecting rights and seeks to answer such questions as which rights, which standards, whose job is it? It is also concerned with developing skills or guaranteeing the resources required to develop them. In other words, A HRBA helps make the decision-making process more open, and builds the capacity of individual citizens and communities to hold duty-bearers accountable for the implementation of a particular policy and demand effective action in cases where violations of their rights need redress.

## 6. Monitoring



**7. Sustainable results.** A HRBA leads to the following sustainable results:

- Citizens acquire the skills necessary to negotiate and hold the government accountable;
- Social responsibility is strengthened through a participatory process that encourages consensus on the need to help marginalised, vulnerable groups of the population;
- Social and political consensus aimed at achieving results is



translated into laws, policies and programmes consistent with international human rights treaties and covenants;

- Human rights guarantees are strengthened in laws and in law enforcement agencies;
- The democratic process is institutionalised;<sup>9</sup>
- The capacity of individuals and organisations to fulfill obligations deriving from local, national and international laws, policies and programmes is strengthened.

## CHAPTER TWO: GENDER EQUALITY

### 1. THE CONCEPT OF GENDER

Gender refers to the socially attributed roles, tasks and opportunities associated with being male and female, and the relationships between women and men and girls and boys, as well as those relations between women and those between men.

Gender is a product of society since relationships between men and women, their roles, tasks and opportunities vary depending on a particular societal context and the time period, and it changes over time as the context itself changes. Accordingly, as a concept, idea or attitude, gender has evolved historically. Gender roles, tasks and relationships are defined by the expectations a particular society has in regard to men or women, to what it values in them, and to what it allows.

Gender is determined by the traditionally established roles, tasks and social status of men and women in a society, and by the relationships between them within the political, legal, economic, social, cultural and family relationships in a society. Gender reflects the divergent roles, tasks, opportunities and relations a society assigns to women or men depending on their sex. This means that gender roles, tasks and relations are socially constructed, and a person learns about them in the process of his/her socialisation.

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<sup>9</sup> “Institutionalization” can be understood as ‘formalization,’ or ‘legalization.’ This means passing laws and accompanying them with instructions, structures and mechanisms and budgets intended to implement the provisions of these laws.



## 2. APPROACHES AIMED AT ENSURING GENDER EQUALITY

Societies have inherited inequality in gender roles, tasks and relations. In almost all societies, the roles assigned to men and women and the activities they undertake differ markedly, and the opportunities they have to access resources or control their allocation have been unequal.<sup>10</sup>

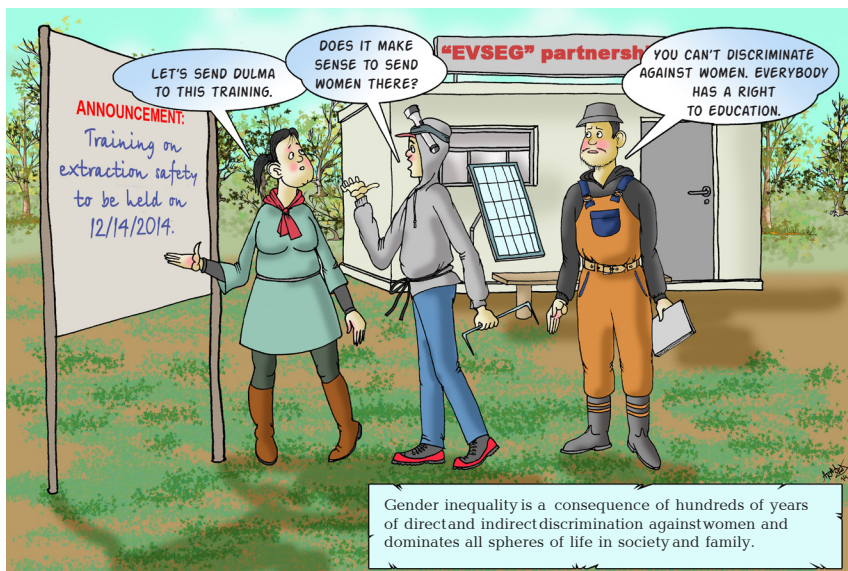
As a result, attaining gender equality emerged as a central issue in development. An understanding that human rights and democracy cannot be achieved without ensuring gender equality became a widely recognised belief. Doing away with traditionalist approaches toward gender relations and with discriminatory political, social, economic, legal, family and cultural attitudes and practices in relation to women became a priority for promoting human rights and democracy through the promotion of gender equality.

Internationally agreed development goals set forth in various globally recognised development documents define gender equality as equal participation by men and women in political, economic, social, cultural and family relations, equal benefits from the gains of development, and equal contribution to development. Promoting gender equality serves as the basis for achieving democratic, sustainable development. Hence, the goal of attaining gender equality has been proclaimed a central pillar of efforts towards development.<sup>11</sup>

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<sup>10</sup> "Gender Mainstreaming: Strategy for Promoting Gender Equality." Office of the Special Advisor on Gender Issues and Advancement of Women. 2001

<sup>11</sup> This approach has been formulated in such documents as the 20-year Cairo Program of Action adopted at the 1994 International Conference on Population and Development; the 1995 Beijing Declaration of the Fourth World Conference on Women; Millennium Development Goals etc.

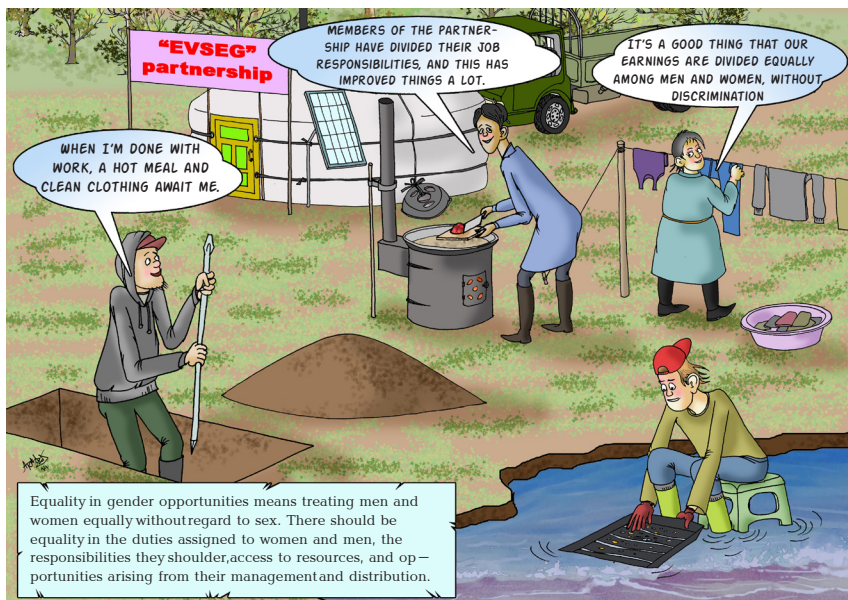


Goal 3 of Mongolia's Millennium Development Goals (MDGs) is focused on promoting gender equality and increasing women's participation in political decision-making. Goal 3 includes three targets: Achieving an appropriate sex ratio in all levels of education by 2015; ensuring gender equality in wage employment; increasing the participation of women in politics and decision-making. The Fifth National Progress Report on MDGs issued in 2013 concluded that the first target was "achievable with more effort" and that the second target was "on track"; however, the third target was deemed "difficult to achieve."

**Gender equality refers to** the equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same; rather that women's and men's rights, responsibilities and opportunities are not dependent on whether they are born male or female.<sup>12</sup>

**Gender equality refers to** the non-discrimination of people by sex. The promotion of gender equality involves the equal participation of women and men in social, economic, civil and political life.

<sup>12</sup> Ibid.



### 3. THE LEGAL BASIS FOR PROMOTING GENDER EQUALITY AND THE ROLE OF GOVERNMENT

The Constitution of Mongolia provides for the equality of sexes. The more than 30 international treaties, covenants and their associated protocols to which Mongolia is a party prohibit discrimination by sex, gender inequality and the deepening of such inequality. Those treaties and covenants provide for the following human rights standards and principles that promote gender equality:

- The equal rights of men and women and freedom from discrimination;
- Upon attaining adulthood, women have the right to freely decide on their entering or not entering into marriage, or on dissolving a marriage;
- Women have equal rights with men to enjoy their civil and political rights, such as the right to vote, to be elected, to participate, to have access to information, to be equal before the law, and to enjoy freedom of expression and conscience;
- In the event of the dissolution of a marriage, the children, be they girls or boys, are entitled to equal protection of their rights;
- The non-discriminatory enjoyment of social, cultural, economic and other rights, such as the right to education, health care, social protection, employment, equal remuneration for equal work, and the right to have

equal access to cultural, artistic and scientific achievements;

- The right to hold political office.

Among the many international human rights treaties and covenants to which Mongolia is a party, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol specifically aims to promote gender equality and overcome all forms of discrimination against women.<sup>13</sup> In accordance with this and other conventions, the Government of Mongolia is obligated to respect, protect and fulfill women's human rights. Its first order of business in this regard should be to eradicate, without delay, discriminatory practices and attitudes towards women. To achieve this, government agencies and government officials are obligated to promote gender equality, primarily through gender mainstreaming.

In 2012, Mongolia adopted a Law on Promoting Gender Equality, which came into effect in 2013. The purpose of the law is “to regulate the relationships arising from developing the legal foundations for creating the conditions conducive to the promotion of gender equality in political, legal, economic, social, cultural and family relations, and ensuring their execution.”<sup>14</sup> The law is specific about promoting gender equality in such areas as the political and economic spheres, civil service, employment and labour relations, culture and education, health care, and the family. It also defines the mandate of the National Commission for Gender Equality responsible for the implementation of the law and the oversight functions of State Ikh Khural, the Government of Mongolia, including the Prime Minister, government agencies at both the national and local levels, and local self-government bodies, as well as the implementation functions of the Civil Service Council and the participation of non-governmental organisations. The law provides for a biennial legislative review of its implementation by the State Ikh Khural.

The adoption of the Law on Promoting Gender Equality was an important step forward, second only to the Constitution of Mongolia, which strengthened the national legal basis for the promotion of human rights and the advancement of democracy. Since the implementation of the law is in its initial stages, the attitudes and approaches that reflect, entrench and indirectly discriminate against the rights of women still persist.

There are a number of areas in which the Government of Mongolia has

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<sup>13</sup> Mongolia ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1981 and its Optional Protocol in 2002. The Optional Protocol envisions the right to file individual complaints regarding human rights violations with the Committee on the Elimination of All Forms of Discrimination against Women.

<sup>14</sup> Article 1.1. of the Law on Promotion of Gender Equality.

failed to enact coherent and coordinated policies in order to fulfill its obligation to promote gender equality. The following is an incomplete list: *The structural adjustment and privatisation policies undertaken as part of the transition to a market economy have led scores of women to join the ranks of the poor; many laws that have been adopted and implemented have never been assessed against their impact on gender equality; no effective policies have been designed or implemented to deal with inequality in labour relations or to reduce inequality in the labour market; unemployment remains high among women; no effective policies are in place to arrest or eliminate the existing gaps in education, health care and ageing among women and men; no legal basis exists for combating violence against women or for providing restitution; and little effort is made to promote equal political participation by women and the productive use of their abilities at the levels of policy development and management and organisation.* Recommendations addressing these outstanding issues have been delivered to the Government of Mongolia by the CEDAW Committee.

#### **4. STRATEGIES FOR THE PRACTICAL IMPLEMENTATION OF GENDER EQUALITY**

Incorporating gender perspectives into all development policies, programmes and activities (gender mainstreaming) is an internationally accepted strategy for promoting gender equality. Gender mainstreaming is not an end in itself, but a means of achieving the goal of gender equality. Gender mainstreaming strategy refers to “...the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.”<sup>15</sup>

**Gender mainstreaming** is a strategy that is designed to assess all policies, programmes, legislation, rules and regulations, as well as the activities undertaken, to realise their goals against the impact they have on the situation of women and men and girls and boys, and achieve gender equality by bringing their divergent perceptions and experiences to bear on policymaking, planning

<sup>15</sup> The UN Economic and Social Council’s Agreed Conclusions 1997/2. *Official Records of the General Assembly, Fifty-Second Session, Supplement No. 3 (A/52/3/Rev.1), chap. IV, para. 4. [Twenty-Third] Special Session [of the General Assembly] on Gender Equality. Evaluation of Gender Policy Implementation in UNICEF, UNICEF Evaluation Office.*

and decision-making.

Gender mainstreaming involves gender analysis, the development and use of sex-disaggregated statistical data, the development and use of gender-sensitive indicators, and the promotion of participation, particularly meaningful participation, based on knowledge and information, by minority power groups.<sup>16</sup>

In order to introduce gender mainstreaming into policies, programmes and activities, the following steps are a priority:

- Undertaking gender analysis and determining the tasks and expectations associated with gender in social and cultural settings;
- The collection of sex-disaggregated statistical data, and using that data to conduct gender analysis;
- Developing specific arrangements with a view to incorporating gender issues into government policies and actions for carrying out gender mainstreaming;
- Conducting a gender evaluation of government policies and actions; the indicators used in such evaluations should be specific to particular issues and should be gender-sensitive;
- Capacity-building in the area of promoting gender equality; this should include enhancing government officials' understanding, knowledge and awareness about gender equality;
- Building government capacity to address the issues of human rights and gender equality in the design, planning, implementation and evaluation of development policies and programmes, as well as the capacity for gender-mainstreaming.

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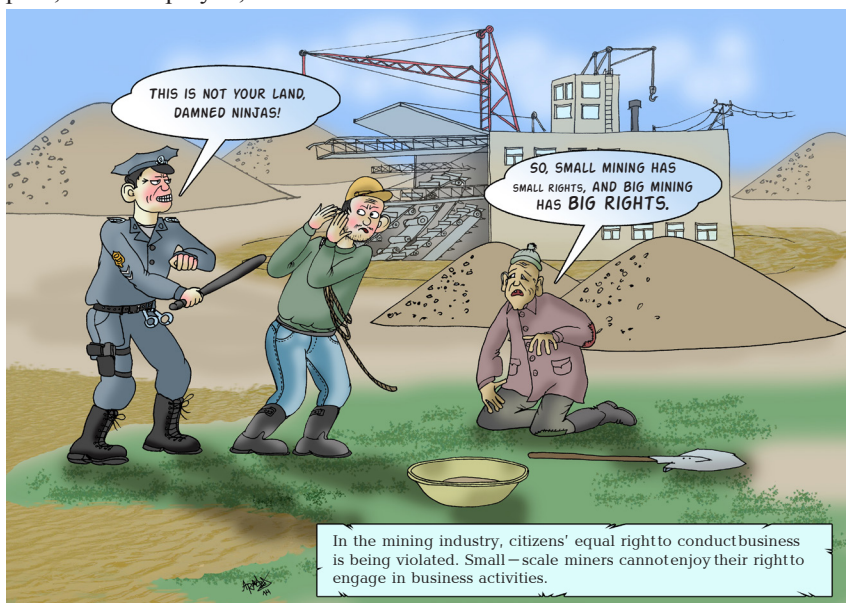
<sup>16</sup> "Minority power groups" refers to groups that, despite their numeric strength, have little opportunity to express their views and protect their rights. These include women, the poor, the unemployed, herders etc.



## CHAPTER THREE: IMPLEMENTATION OF A HUMAN RIGHTS-BASED APPROACH AND GENDER EQUALITY

### 1. CHALLENGES CONFRONTING SMALL-SCALE AND ARTISANAL MINERS

Development policies and programmes do not bring equal and positive benefits to all people. Their impact varies, depending on specific groups of the population. This primarily concerns those individuals and groups who lack the skills and the means to formulate and voice their interests, such as women, the poor, the unemployed, herders and artisanal miners.



In Mongolia, despite the economic policies said to prioritise the development of mining industries, rural inhabitants, namely herders, face the chronic curtailment of their rights. In rural areas, local citizens' right to participate equally in economic activities in the mining industry is not being fulfilled. Artisanal miners lack the opportunity to equally enjoy their right to operate businesses in the mining sector and to benefit from the endowments of nature. These are only a fraction of the challenges currently faced by small-scale miners.

These challenges can be grouped into several categories, such as the relevant legal framework and its implementation; coordination among government agencies, policy continuity; the capacity of the staff in government agencies;

the income and tax-related issues faced by small-scale miners; the social issues facing artisanal and small-scale miners; occupational health and safety at small-scale mines and medical care; the organisational matters facing artisanal miners; and public attitudes. These are wide-ranging, systemic issues that involve legal and organisational matters, resources, capacity and public attitudes. Therefore, their resolution requires a multi-faceted, coordinated response translated into concrete activities.

a) Issues concerning the legal framework and its implementation

The following laws and regulations regulate the artisanal mining: The Law on Minerals, Law on Land, Law on Income Tax on the Income of Individuals Engaged in Individual Work or the Provision of Services and Whose Income is Undetermined, and Government Resolution #308 dated October 1, 2010, “Regulations on the Extraction of Minerals at Small-Scale Mines”. In addition, there are rules, instructions, forms, model agreements and other documents that specify further implementation of the aforementioned laws and regulations that were adopted via Ordinance #153 of 2011 issued by the Head of the Department of Minerals. Also, in 2014 a new provision was added to the Law on Minerals on gold deposits to MongolBank (the Bank of Mongolia) by small scale-miners.

However, the existing laws and regulations are not being fully implemented or enforced, and some of their provisions hinder the activities of artisanal miners. For example, provisions concerning land to be used by small-scale miners are not being implemented. The Regulations on the Extraction of Minerals at Small-Scale Mines introduce parameters that have no legal basis and go beyond what the laws stipulate. Specifically, the limits set in paragraphs 5.1 on “no more than 5 hectares”, 5.2 on “not exceeding 10 hectares”, 6.4 on “no less than 5 hectares”, 7.4.3 on “to be registered as a resident”, 11.1.10 on “using containers of over 500 cubic centimetres” prevent small-scale miners from formalising their mining activities. Some of the limits in the regulations are unnecessary and could be dealt with within the existing laws. The provision in the Law on Minerals on depositing gold with MongolBank has not been detailed in further regulations and coordination mechanisms do not exist, and no formal offices or bodies have been set up on the ground for buying the gold from artisanal gold miners. The income tax for artisanal miners has been set at too high a rate. These are some examples of what has gone wrong in the legal framework for artisanal small-scale mining.

b) Coordination among government agencies, policy continuity and the capacity of government officials

The problems in this area include the following: The realization of the agreements concluded by small-scale miners with government entities remains unsatisfactory; government agencies lack sound coordination; although the

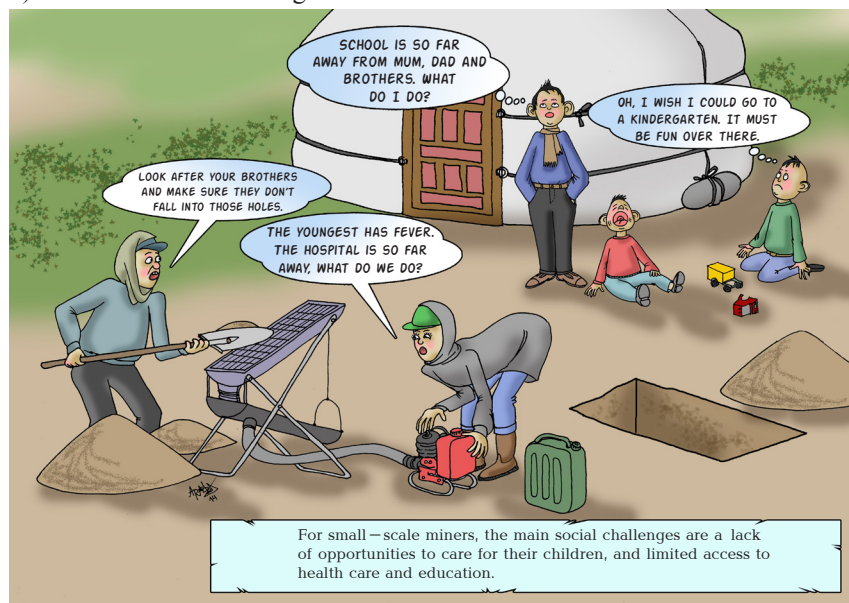


government has already enacted policies regarding small-scale mining and the requisite decisions have been made, the opposition to small-scale mining by the government agency responsible for environmental issues has led to the suspension of operations of enrichment shops; central government agencies are dismissive of the decisions made by local government bodies; the municipal government does not have sufficient power to deal with the organisation of artisanal mining activities, particularly in relation to land-use issues; the level of professionalism and the knowledge and awareness of staff at government agencies in relation to human rights remains unsatisfactory; and the stable functioning of the civil service is constantly affected by the change in power of political forces.

c) Small-scale miners' incomes and income tax-related issues

The risks associated with small-scale mining include the following: Small-scale miners' income is subject to the fluctuations of global commodity prices; miners are in debt to middlemen; income uncertainty; tax burdens (the monthly fixed income rate stands at MNT 53,000); and a lack of opportunities to access loans and various income-generating projects.

d) Social issues confronting small-scale miners



e) Issues of the organised association of small-scale miners

f) Public attitudes



Small-scale miners have been able to self-organize and are able to conduct their activities within legal boundaries in accordance with environmental and other rules and regulations. This distinguishes them from “ninjas”, HAMO<sup>17</sup> non-organized artisanal miners.

However, the public at large is unaware of the distinction. They continue to view small-scale miners as “ninjas” or artisanal miners. As a result, their negative attitudes are projected on to small-scale miners, who are routinely accused of destroying the environment. There are instances in which larger mining companies have accused small-scale miners of illegal activities as a cover for their own actions.

## **2. APPROACHING THE CHALLENGES OF SMALL-SCALE MINERS FROM A HUMAN RIGHTS PERSPECTIVE**

If the aforementioned challenges faced by small-scale miners are approached from a human rights perspective, the suppression of their right to work can be identified as the principal rights violation. The violation of this right directly affects their right to provide for themselves and their families, depriving them of the right to adequate food, housing and clothing, and a decent life. As a consequence, the right of their children to attend school and receive an education, and their own right and that of families to have access to medical care, are being seriously affected.

Although the government has supported small-scale miners’ right to work by establishing relevant legislative and regulatory frameworks, there is still room for improvement as practical implementation remains weak. Government agencies and government officials fail to fulfill their obligations in regard to protecting the human rights of small-scale miners.

Small-scale miners are not in a position to participate on an equal basis in government-supported social programmes or have full access to the benefits these programmes offer. They also lack access to information regarding government-sponsored programmes supporting small and medium-sized businesses, household livelihoods and other development projects and programmes, and therefore are unable to participate in them. Concessional loan programmes are equally inaccessible to small-scale miners, and as a result they cannot benefit from them. All this is the result of the direct and indirect discrimination they suffer at the hands of government officials.

The civil right of small-scale miners to hold the government accountable is not being fulfilled. The reason for this is that, on the one hand, the penalties to

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<sup>17</sup> HAMO – Mongolian acronym for ‘artisanal miners.’

be incurred by government agencies and government officials when they fail to implement their human rights obligations remain murky and, on the other hand, small-scale miners lack the practical skills needed to exercise their right to hold government agencies and government officials accountable.



The opposition of the ministry in charge of environmental protection to policies enunciated by the whole of government on small-scale mining significantly impacts on the realisation of the human rights of small-scale miners. Coordinated policy development, planning and principled implementation of the agreed policies by the Ministry of Mining and the Ministry of Environment, local governments and municipal self-governments is the key to realising the human rights of small-scale miners. The existing laws and regulations provide the legal basis for local residents to take part in the deliberations at bagh general meetings, have a say in decision-making on the use of the land for common tenure,<sup>18</sup> assemble in partnerships and send requests to presidiums of soum Citizens' Representative Khurals (a soum is an administrative territorial unit in rural areas) for decisions on land assignments for mining as land for special local needs, and then, upon authorisation by the government agency in charge of geology and mining, proceed to mineral extraction activities.

However, the bulk of the requests focused on the use of a portion of the

<sup>18</sup> Law on Land, Article 22.1.1.

land designated for special local needs for small-scale mining activities are rejected on the grounds that specific tracts of land either fall under the category of land prohibited for mining extraction and use, or is subject to a special land-use license, in accordance with other laws or resolutions, or overlaps with land designed for a bidding process prior to its use. In this way, specific provisions of the Law on Minerals concerning small-scale mining prevent the application of Articles 16.1.11 and 16.2 of the Law on Land, which empowers local municipalities, within their powers, to designate land for small-scale mining activities as land for special local needs. As a result, small-scale miners find themselves in a situation in which they cannot engage in mineral extraction and cannot exercise their right to formal employment. It is therefore important that the government considers improving the legal environment regulating small-scale mining to ensure the discrepancies and contradictory provisions in existing legal acts are corrected and that there is policy coherence.

The failure to ensure small-scale miners' right to receive education about their human rights serves as the principal constraint preventing the development of the skills necessary for reminding authorities of their obligation to respect, protect and fulfill human rights. Conversely, poor knowledge of human rights concepts among government officials prevents them from effectively fulfilling their obligation to promote the human rights of small-scale miners. This situation reflects the absence of a proper system of human rights education in general and of the failure to incorporate knowledge of human rights and the skills needed to address human rights issues into the job requirements for government officials.

Better coordination and closer cooperation within the ranks of small-scale miners can serve as a good basis for developing the necessary skills at the national and local levels to demand respect, protection and fulfillment of their human rights. Small-scale miners should develop better awareness of the importance of exercising their right to association and come together in partnerships and non-governmental organisations that could advance their interests as legal entities. Small-scale miners should also strive to develop such qualities as taking responsibility for advancing the public good, respect for the human rights of others, and personal responsibility.

### **3. RESOLVING THE ISSUES FACING SMALL-SCALE MINERS BY APPLYING A HUMAN RIGHTS-BASED APPROACH**

There are three areas in which concrete activities should be carried out to expand the opportunities for resolving the issues faced by small-scale miners: **The goals and objectives set forth in national and local development**

**policies and programmes; the planning, implementation and evaluation of development policies and programmes; and the human rights skills of duty-bearers and rights-holders.** These activities include the following:

1) The goals and objectives of development policies and programmes

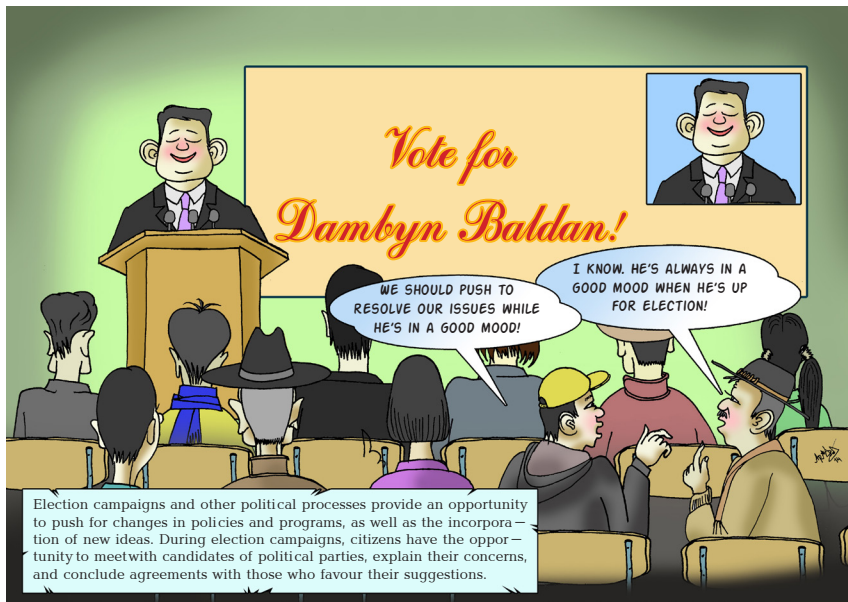
- Priority should be given to incorporating the human rights of small-scale miners into the goals and objectives of national and local development policies and programmes. The issue of small-scale miners has been taken up, to varying degrees, in such national development documents such as the MDGs-based Comprehensive National Development Strategy, the National Minerals Policy Strategy and the Government Action Plan.<sup>19</sup> However, they all need to be assessed from a human rights perspective, which will allow evaluation of the extent to which the goals and objectives are geared towards achieving progress in the promotion of human rights.
- The development goals and objectives of the central government should be translated into the goals and objectives of local development policies and programmes. Provisions in the latter documents concerning small-scale miners should also be assessed from a human rights perspective. If human rights considerations are found to be needed, advocacy work should be conducted to better incorporate small-scale miners' rights into those documents.
- Advocacy work on incorporating small-scale miners' rights into local development policies should focus on reminding Citizens' Representative Khurals and political factions within khurals of the provision in the Government Action Plan 2012-2016 which has the objective to "develop rules that would obligate cities and baghs (the lowest administrative unit in rural areas) to resolve the issues before them in a manner open to citizens and with the participation of citizens".
- Once the aforementioned rules are put in place, citizens should demand that all stakeholders conduct regular deliberations and reviews on issues related to local development appraisal, and should themselves be involved in the organisation of such meetings. Citizens, including small-scale miners, should be well acquainted with the data and documents concerning their localities and should devise possible solutions for local development. Such activities can be effective if citizens assemble into organised groups to advance their interests and their human rights.

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<sup>19</sup> See Annex 1 of the Manual.



- Ensure information and suggested solutions are made available to local citizens for discussion, and seek their support.



## 2) Planning, implementation and evaluation of development policies and programmes

- Developing baseline indicators with which to assess the fulfillment of small-scale miners' human rights, as well as indicators with which to evaluate progress on human rights in the implementation of development goals and objectives.
- Participating in national and local development planning to ensure there is the inclusion of specific activities, and monitoring their execution to assess the progress that is being made in human rights.
- Following the budget planning process to see if suggested activities are reflected in the budget, and conducting advocacy work during budget debates.
- Demanding timely implementation of the activities planned at specific stages and monitoring budget spending, participating in monitoring, demanding access to information on budget performance, and making this information available to the public, and in so doing exercising the right to participate.

- In instances in which the right to know and to participate are being violated, seeking redress and restoring this right in accordance with the Law on Information Transparency and the Right to Obtain Information, and the Budget Law.
- Assessing the implementation of human rights standards and principles at all stages of programme development: Planning, implementation and evaluation. The primary questions to ask are: Is the principle of non-discrimination being upheld? Are open and hidden discriminatory practices being identified and eradicated? Is multi-stakeholder participation taking place? Have vulnerable and marginalised groups been identified, and is their participation ensured? Is their participation based on information and knowledge; is it free, meaningful and real?

### 3) Building the capacity of duty-bearers and rights-holders

- Assessing the human rights knowledge of the government agencies and officials responsible for respecting, protecting and fulfilling human rights, the duty-bearers whose job it is to make decisions about small-scale mining.
- Evaluating the decisions and activities of government officials to assess their conformity with human rights standards and principles.
- Strengthening the capacity of those duty bearers responsible for the human rights of small-scale miners in the spheres of mining, environment, land use, in local government and local khurals, and holding trainings and discussions among them on the issues facing small-scale miners from a human rights perspective.
- Strengthening the capacity of duty-bearers to implement the laws that guarantee the human rights of small-scale miners.
- Organising phased training and seminars designed to assess the knowledge of small-scale miners, or rights-holders, about human rights and build their capacity to demand their human rights.
- Developing national and local teams of small-scale miners who are capable of knowledgeably presenting their human rights grievances to government officials and of effectively representing and negotiating their interests.
- Improving small-scale miners' knowledge of human rights and their capacity to pursue legal action against violators of human rights, file lawsuits in administrative courts, and use international human rights mechanisms.



Successful implementation of the aforementioned activities can lead to: The inclusion into development policies and programmes of goals and objectives aimed at improving the implementation of small-scale miners' human rights; the creation of mechanisms and bodies that will enable the implementation of those policies and programmes in accordance with human rights standards and principles; and enhancement of the effectiveness of the personnel employed in such bodies, and better coordination among government officials. Such arrangements should lead to substantial progress in ensuring that the human rights enjoyed by small-scale miners meet international standards. The aforementioned activities should also enhance the level of organisation and quality of cooperation among small-scale miners at both the national and local levels.

#### **4. GENDER EQUALITY ISSUES CONFRONTING SMALL-SCALE MINERS**

Because small-scale miners have not been assigned legal land for mineral extraction, they arrive en masse in areas where minerals have been found and begin prospecting and informal mining operations. This leads to sudden human crowding at these sites. Such illegal artisanal mining has led to a multitude of challenges, ranging from a lack of access to medical care and water, risks to life and health, the absence of safety, and dangerous work overloads, to crime and conflicts with law enforcement bodies and local governments. The latest sudden accumulations of people engaged in artisanal mining occurred in 2014 in Sumber soum, Tuv amaig, Delgerekh soum, Dornogobi aimag and Sukhbaatar soum, Sukhbaatar aimag (an aimag is an administrative territorial unit larger than a soum).

The general reaction of local governments is not to extend support, within their legal powers, to artisanal miners who resort to this form of self-employment to provide for themselves and their families. Instead, they impose penalties on the miners, physically removing them, including by loading them into trucks, confiscating their equipment, and taking measures that give precedence to the interests of larger gold mining companies.<sup>20</sup> Many issues accompanying artisanal mining have laid bare the deep-seated gender attitudes and gender relationships prevalent in society.

One manifestation of this can be found in instances where mercury is illegally used at artisanal mining sites. The use of mercury for gold recovery takes

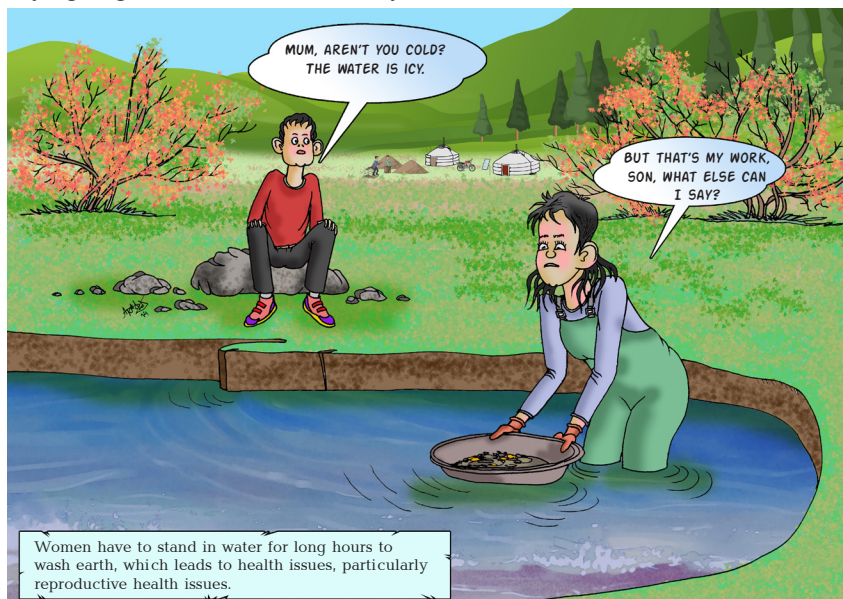
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<sup>20</sup> National Human Rights Commission. 2012. "Report on the Survey of Human Rights in Small-Scale Mining."

place at miners' homes, which exposes members of the household, including children and women, and sometimes pregnant women and breastfeeding women, to mercury poisoning. The risks of mercury poisoning being transmitted to an embryo/fetus or an infant are high. A study conducted in the Czech Republic confirmed that mercury poisoning can lead to miscarriages or underweight babies.

Women are also exposed to health risks and often risk their lives when, because of their smaller bodies, they descend into holes at placer gold mines to bring up earth. In addition, long hours spent standing in water washing sand or earth pose serious health risks, particularly to their reproductive health. Constant contact with earth or sand and exposure to dust can also lead to chronic respiratory diseases.

Men at small-scale mines predominantly engage in digging, loading and unloading, crushing rocks, ore separation and other physical activities, and seldom work on the enrichment of ore or in other auxiliary occupations. Women sometimes remove ore from holes and remove gravel from earth, putting them into sacks, but their main task is washing ore and other work in processing shops where ore enrichment takes place. They also do the cooking and cleaning, the buying of gold and all other auxiliary work.<sup>21</sup>



<sup>21</sup> The Asia Foundation. 2013. *Report on Gender Assessment of Small-Scale Mining in Mongolia*.

Because of the scarcity of clean water, food preparation, household cleaning and laundry are challenging. A lack of sanitation, proper toilets and disposal sites for solid and liquid waste is conducive to the spreading of communicable diseases. In instances in which family members fall ill, women act as nurses and caregivers. Women in small-scale mining who were surveyed as part of The Asia Foundation's 2013 "Study of Gender Equality in Small-Scale Mining", conducted by the Engaging Stakeholders in Environmental Conservation Project Phase II, singled out water contamination as a serious environmental concern, which may have been prompted by household-related problems.

The majority of small-scale miners distinguish between the challenges faced by men and women in this sphere. Women have indicated that attending to their families was their primary concern, along with the physical challenges they endured because of their sex. For younger women, the primary concern was leaving their young children in the care of someone else. Single mothers identified as their primary challenge the need to combine and balance child care and work.<sup>22</sup> Left without the means to provide for their families, they engage in artisanal mining to provide for their children. They may be able to bring their pre-school-aged children with them to the mining sites, but must leave behind their school-age children so they can continue their education. Leaving behind their children is a source of constant torment for women, and they suffer significant emotional problems as a result.

Because artisanal mines tend to be located a distance from soum centres or other settlements and have poor communication and transportation, access to medical care remains a challenge. Because most small-scale miners are not covered by health insurance, they are unable to pay for medical costs. To be able to receive medical assistance, be registered with a doctor's office and receive health insurance, small-scale miners must have local residency with the civil registration office. However, most small-scale miners come from other places, residing at mine sites only temporarily or seasonally, so they tend not to apply for local residency.

Because men working at artisanal mining sites live away from home, sex workers are frequent visitors to the sites, leading to the spread of sexually transmitted diseases. And because women have poor knowledge about such diseases and about the use of condoms, they not only contract or spread sexually transmitted diseases, they also become a high-risk group for HIV.

The consumption of alcohol is common at artisanal mining sites. The belief that the discovery of gold should be celebrated with alcohol, that alcohol helps people relax and removes stress, and that mercury poisoning can be treated with

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<sup>22</sup> The Asia Foundation. 2013. *Report on Gender Assessment of Small-Scale Mining in Mongolia*..

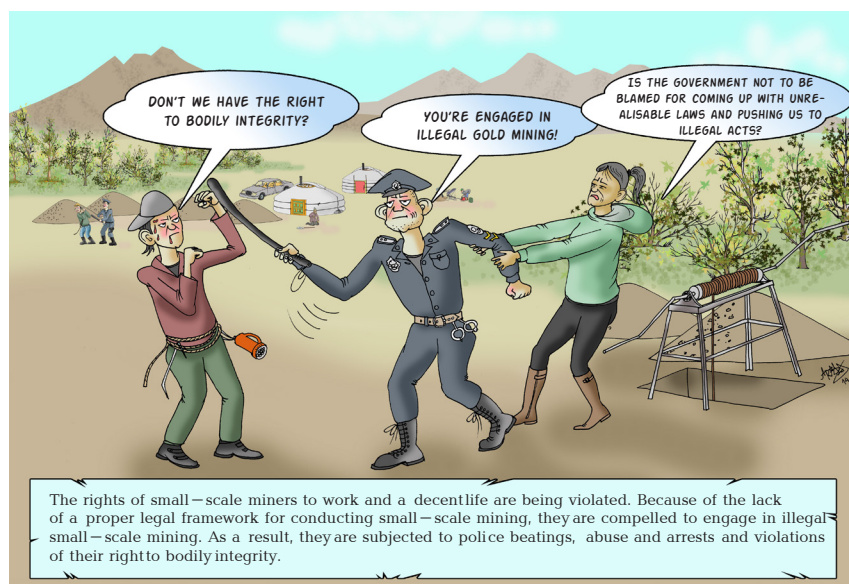
alcohol, combine to make its consumption a real challenge. Because of this, women live in constant fear, and exposure to violence remains high.

Because the law prohibits unlicensed artisanal mining at the sites of larger mining companies, small-scale miners feel they are under constant pressure from such companies' security services and local police. Police engage in the forced removal of small-scale miners, often accompanied by brutal behaviour, beatings and verbal abuse, including on women, with detention lasting for several hours. Such police action directly violates the human rights of artisanal miners.

The challenges confronting artisanal miners invariably result in various forms of gender-based violence and lead to the entrenchment of traditional gender inequality in the home, in communities and in local neighbourhoods.

## 5. APPROACHING THE GENDER EQUALITY ISSUES OF SMALL-SCALE MINERS FROM A HUMAN RIGHTS PERSPECTIVE

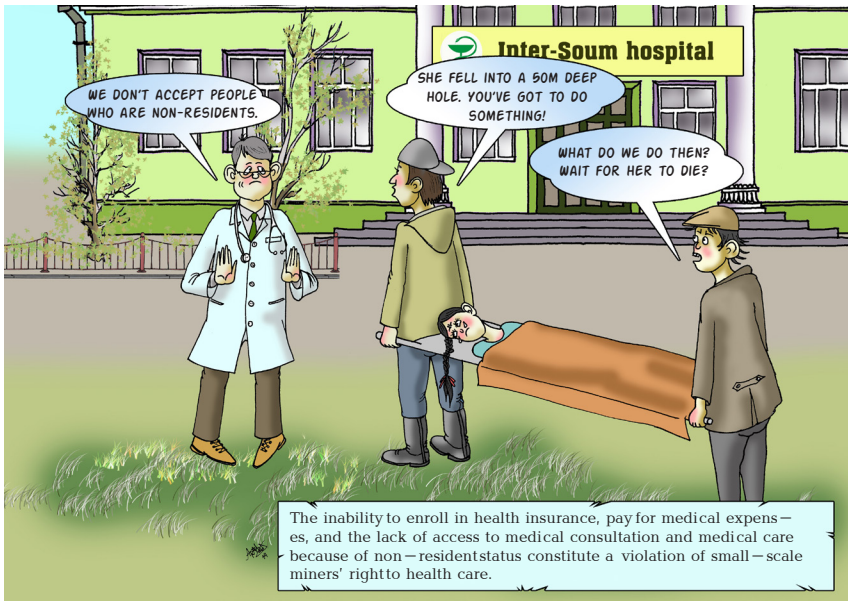
The challenges facing artisanal miners described above remain a reality for small-scale miners, largely due to the failure to implement the requisite legal and regulatory frameworks to guide small-scale mining activities. As a result, small-scale miners are subject to the following violations of human rights standards:



- The failure to approve environmental impact assessments of enrichment

shops results in the continued illegal use of mercury in homes which seriously affects the health of miners and their families. Hence, the right to live and work in a safe and healthy environment is violated.

- A lack of access to drinking water, a scarcity of clean water, a lack of proper toilets and solid and liquid waste disposal sites that meet sanitation standards leads to the violation of the right to live in a safe and healthy environment and poses serious health risks.
- Living and working in a dusty, damp and cold environment leads to respiratory diseases and diseases of the reproductive organs, and violates the right to live in a safe and healthy environment and the right to reproductive health.
- Poor knowledge about sexually transmitted diseases and about the use of condoms leads to the spread of sexually transmitted diseases and the high risk of contracting HIV. Hence, the right to reproductive health and sexual rights are violated.



- The rights of children of small-scale miners are seriously violated. Their right to health (undermined by the use of mercury), to enjoy parental care (undermined by the necessity to leave school-age children behind), and to education (undermined by the need to leave school to

help their parents) are violated.

- Widespread alcohol consumption leads to physical and sexual violence and undermines the right to life and health.

The gender issues facing small-scale miners are human rights issues. These issues can be resolved provided they are incorporated as goals of development policies and programmes and are effectively implemented, and provided that small-scale miners are given access to information, have their voices heard and are able to participate in decision-making processes.

## **6. WAYS OF RESOLVING THE GENDER ISSUES OF SMALL-SCALE MINERS**

In order to successfully resolve the gender issues facing small-scale miners, a gender strategy should be used. This involves the following:

- Undertaking a gender analysis of the situation. This analysis identifies the roles and tasks of men and women and girls and boys, and the needs, requirements and challenges encountered in undertaking these functions;
- Collecting gender-disaggregated data and documents and using them in the gender analysis. This data can be used to develop gender-sensitive indicators;
- Conducting a gender analysis of the legal acts, policies and programmes that address the issues in question, and of the status of their implementation, and then developing conclusions and recommendations;
- Developing gender-sensitive indicators consistent with specific issues and using them when conducting a gender analysis;
- Reflecting the views of stakeholders of all ages, sexes and occupations in developing recommendations;
- Suggesting specific changes that should be incorporated into policies, programmes and legal acts, and taking account of those changes during planning and implementation;
- Recommendations should include provisions on the planning and coordination of national and local development policies, on budgets, and on capacity building;
- Primary attention should be focused on developing a legal framework that enables citizens' participation and mechanisms for promoting participation, including budgets and capacity;



- Evaluating the activities of government agencies and officials from a gender perspective, and producing recommendations on strengthening their capacity to implement gender strategies.

## 7. ACCESS TO GOVERNMENT-PROVIDED SOCIAL SERVICES

The government implements a multitude of projects and programmes aimed at expanding the availability of social services, supporting small and medium-sized enterprises and promoting job creation. Citizens need to be aware of these services and programmes in order to fully benefit from them. It is only by participating in these programmes that citizens can get a sense of their effectiveness or ineffectiveness, judge their performance and formulate suggestions on improving certain aspects of those programmes. The active participation of citizens and their critique can help improve the delivery of social services, resulting in greater progress in fulfilling the right of citizens to education, health care, social services, employment and a decent life.

This Training Manual provides information on government-sponsored programmes and projects that is designed to improve the delivery of such services as education, health care, social services, social welfare, employment, social protection, and support for small and medium-sized enterprises. It also provides an overview of the existing legislation on land ownership, land possession and land use, and on the promotion of citizen participation.

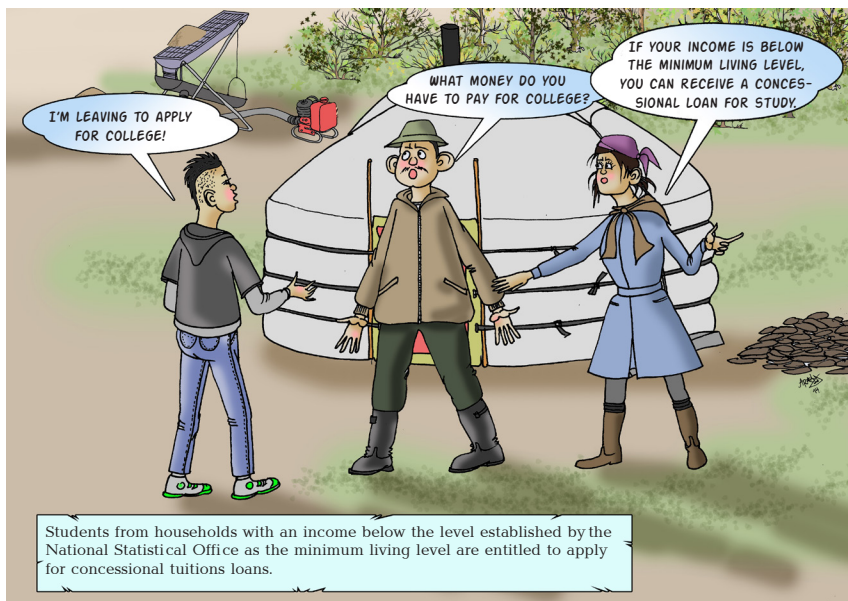
### 7.1 EDUCATION

The Constitution of Mongolia provides for free and universal general education (Grade 1 to 12). A Government Training Fund has been set up to assist students enrolled in higher education schools by providing loans and scholarships.

#### **Categories of loans and scholarships:**

- 1) **Concessional loans: These are issued to the following categories of students enrolled in higher education schools in Mongolia:**





First-year students who scored 600 or above in the General Admission Test (GAT) and following students whose grade point average is 2.8 or above:

- Half orphans
- Children of herders
- Children from households whose income per member of family is below the local livelihood level established by the National Statistical Office
- Former servicemen who have served no less than two years as contract soldiers

2) **Merit Scholarships:** These are offered to full-time students enrolled in higher education schools in Mongolia who exhibit academic excellence in disciplines for which there is a high demand.

**Amount of scholarship:**

- First-year students who have been awarded the first three places at National Olympiads and the finalists of international Olympiads
  - Full tuition fees
- Holders of a 3.6 GPA - 75 percent of tuition fees
- Holders of a 3.2 GPA and above; first-year students who have

scored higher than 720 in the GAT on a subject in high demand and whose GPS is 3.0 and above; students enrolled in internationally certified programmes or joint degree programmes and whose GPA is 3.0 and above - 50 percent of tuition fees

- 3) **National Scholarships:** These are offered to full-time students who have enrolled in bachelor's, master's or doctoral programmes in higher education institutions in Mongolia in accordance with requirements and have demonstrated academic ability and maturity.

**Amount of Scholarship:** 50 percent of the amount of the minimum wage for up to 10 months in one academic year

- 4) **Tuition fees** are covered for the following categories of students:
- Full orphans studying for a bachelor's degree
  - Bachelor's students with a disability or both parents with a disability
  - One bachelor's student from a family in which one member is permanently incapacitated

Further information is available at [www.STS.meds.gov.mn](http://www.STS.meds.gov.mn)

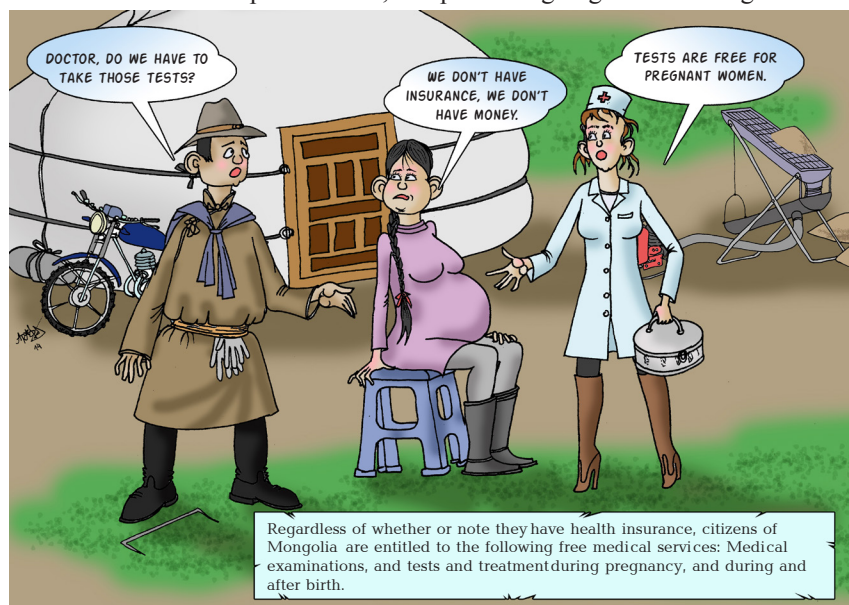
### **Projects and programmes under implementation:**

1. National Education Programme 2010-2021
2. "One Mongolia" Programme 2012-2016
3. National Programme of English Language Learning 2009-2020
4. "Educated Mongols" National programme 2012-2016
5. "Doing the Right Thing: Children of Mongolia" National programme 2012-2016
  - I. "Books" Sub-programme 2012-2016
  - II. "Talent" Sub-programme 2012-2016
  - III. Reform of the Quality of Preschool, Primary and Secondary Education - 2012-2016

## 7.2 HEALTH CARE

Citizens of Mongolia, irrespective of whether they have health insurance, enjoy the following free medical care:

- Emergency medical assistance, prompt medical assistance
- Treatment of tuberculosis, cancer, mental disorders and other diseases necessitating long periods of rehabilitation, cancer research services, scheduled preventive injections, disinfection measures at the sites of origin of infectious diseases
- Medical examinations, tests and treatment in relation to pregnancy, child birth and postnatal care (only for conditions resulting from pregnancy and childbirth)
- Treatment of illness and injuries caused by natural disasters, situations of sudden danger, and outbreaks of infectious diseases affecting wide areas and populations
- Treatment of illness or injuries caused by actions in extreme situations aimed at self-preservation, and preventing large-scale damage



*Health insurance coverage offers discounts on the cost of medical assistance and services and other benefits*

**Health insurance can be defined as follows:** A socio-economic measure whereby the insured or his/her employer pays a premium, under terms specified by law, to an insurance fund in order to financially insure himself/herself against the risks of incurring medical expenses for treatment of illnesses; the insurer pays for the medical assistance and services of the insured from the insurance fund to which premium payments have been made.

**The services offered by a health insurance fund:** The insured has an obligation to pay the health insurance premium for each calendar year and, in the course of the year, is entitled to receive payments from the fund for the following eight categories of medical services:

- Medical treatment and services in hospital
- Outpatient treatment and services
- Tests and diagnosis
- Traditional medicine
- Rehabilitation, costs of stay at treatment and care centres
- Day care and treatment
- Palliative care
- Discounts for prescription drugs

**Amount of variable costs for medical expenses per insurer**

Nº	Category of treatment and services	Amount (in MNT)
	Medical treatment and services in hospital (2,500 diagnosed illnesses in 115 goupes)	<b>108,380-536,060</b>
	Day care and treatment	<b>68,385-134,212</b>
	Outpatient treatment and services	<b>9,000-9,720</b>
	Tests and diagnosis	<b>30,000</b>
	Traditional medicine	<b>80,000</b>
	Rehabilitation	<b>50,000-52,290</b>
	Palliative care	<b>65,000</b>

**Prescription drug discounts:** When an insurer is prescribed by his/her family, soum or bagh doctor a medication that is listed on the list of medicines subject to discounts, the insurer pays a certain percentage of the cost of medicine; the rest is paid by the patient.

**To be noted:** *To benefit from prescription drug discounts, it should be noted that there are 390 generic-brand drugs included on the list of discounted drugs, which are subject to a 50-80 percent discount. They are sold at specified*

*pharmacies and are available upon presentation of a prescription issued by a family, soum and bagh doctor.*

**Rewards for the insured:** If the insured has made health insurance payments for three consecutive years but has not used the funds available from the health insurance fund within this period, he/she is rewarded with a free comprehensive medical check-up. If some who is insured meets the criteria, they should visit their local social insurance agency and file a request.

**Medical services available for reward-holders are:** General medicine, neurologist, gynecology and obstetrics, tuberculosis, otolaryngologist, full blood count, urine test, ultrasonic examination of internal organs, ultrasonic examination of the prostate, electrocardiogram, electroencephalogram, ophthalmoscopy, and chest X-ray.

### **Ongoing programs and projects**

1. National Programme of Environmental Health 2006-2015
2. National Programme of Mouth Cavity Health 2006-2015
3. National Programme of Prevention from Injuries and Violence 2010-2016
4. National Mental Health Programme II 2010-2019
5. National Health Programme 2010-2021
6. National Medical Emergency Network Programme 2010-2016
7. National Programme for Combating Infectious Disease 2010-2015
8. National Programme of Reproductive Health 2012-2016
9. National Programme “Healthy Cities, Districts, Soums, Baghs for Employment and Schools” 2012-2016
10. National Programme for Healthy Ageing and Age Health 2014-2020
11. National Programme for Prevention and Control of Illnesses Caused by Bad Habits 2014-2021
12. ”Tegsh Duuren” Programme for Rehabilitation of People with a Disability Through Support from Communities” 2011-2015
13. Programme of Spreading Mongolian Traditional Medicine “Family Pharmacy” 2012-2015

### 7.3. SOCIAL PROTECTION, SOCIAL WELFARE

#### Receiving benefits from the Human Development Fund

Mongolian citizens who are registered with the Population and Family Register and who have no conflicts of citizenship are entitled to benefit from the Human Development Fund. Citizens can choose from the following benefit options:

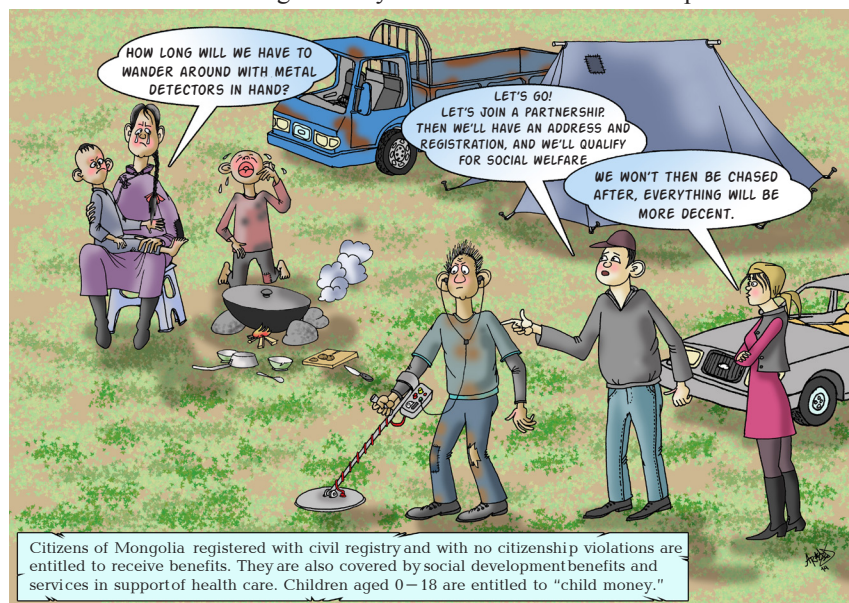
1. Payments for pension insurance or health insurance plans
2. Payments for buying a house/apartment
3. Cash
4. Payment of expenses for medical care and education

If citizens have been unable to receive their benefits within a year, the benefits are rolled over to the following year(s) with no accumulation of interest.

#### Social welfare benefits

##### One. “Child money” from the Human Development Fund

This welfare service is regulated by the Law on Human Development Fund.



**Every child aged from 0-18 who is a citizen of Mongolia is entitled to monthly support of MNT 20,000.** “Child money” is disbursed on a monthly basis after the 20th day of each month. If a citizen has filed for “child money” but the money has not been transferred to the child’s designated account within the calendar year, it can be claimed the following year (this provision was added in Cabinet Resolution 130 of 2014).

**People entitled to claim “child money” on a child’s behalf:** Parents, foster parents, legal guardians.

**Attention:**

- “Child money” is disbursed through designated individual accounts opened in the child’s name
- “Child money” is disbursed starting in the month when the request for payments was filed. It is advisable to file a request early.
- Children of people with dual citizenship are not entitled to receive “child money.”

## **Two. Social development services**

There are three types of social development services:

1. Services to support education
2. Services to support health care
3. Services to support food provision

**1. Services to support education** - The following categories of children are covered by these services:

- 1) Children from households with a demonstrated need for social welfare
- 2) Children of a person with a disability
- 3) Children with a disability
- 4) Half and full orphans
- 5) Children of homeless people
- 6) Children in specialised foster care
- 7) Children released from prison



**Assistance provided:** If children in the aforementioned categories attend preschool or schools of general education, they are entitled to discounts on the following:

- School items
- Textbooks
- School uniforms

## **2. Services to support health care**

The following categories of citizens are covered:

- 1) Member of a household with a demonstrated need for social welfare
- 2) Citizens covered by social welfare

**Assistance provided:**

- Full or partial payment of health insurance premiums of a member of a family with a demonstrated need for social welfare (regulated by the Law on Health Care Insurance)
- Other health care services for people covered by social welfare (regulations on the provision of such services are issued by Ministry of Health and funds are allocated from the ministry's budget).

**3. Food provision services:** The following categories of citizens are covered:

- 1) Member of a household with a demonstrated need for welfare. Such people are identified using a ceiling methodology and the amount of funding needed is reflected in the national yearly budget adopted by the State Ikh Khural.
- 2) Homeless people

**Assistance provided:**

- Issuing food vouchers to purchase food:

The monthly amount to be provided to a member of a household with a demonstrated need for food support is fixed by the Minister of the Population development and social protection the monthly food voucher is issued in the name of the member of the household who filed for it.

- Providing hot meals and tea:

Homeless people identified by aimag, capital city and district administrations and included in registers of the homeless are served one hot meal and cup of tea daily. This service is managed by aimag, capital city and district welfare departments. The expenses for daily welfare meals are determined by the Minister of the Population development and Social protection, and the funds are transferred to local welfare departments.

*(A district is an administrative territorial unit in cities larger than a khoroo).*

### **Three. Welfare assistance and discounts to people with disabilities**

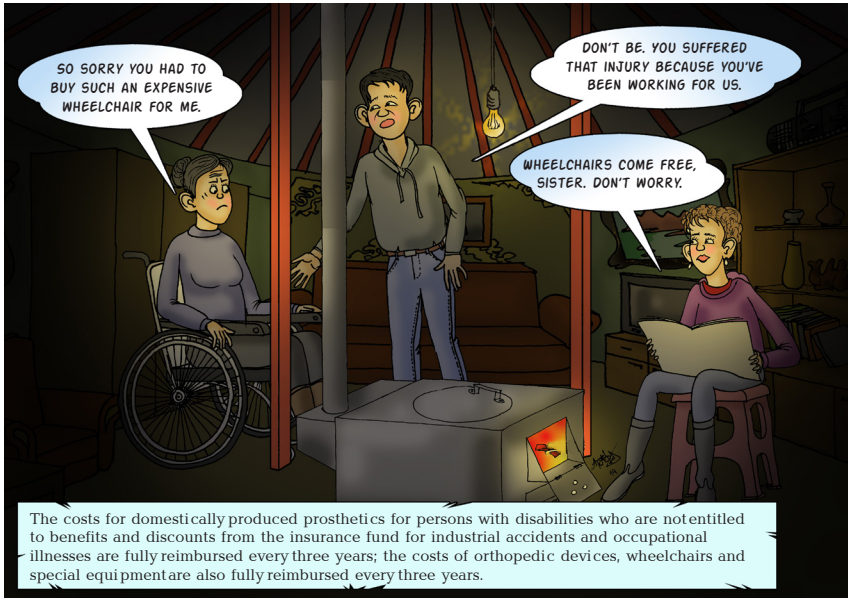
#### **Citizens covered by the assistance:**

- People with a disability. Disability can be defined as a physical, mental, intellectual or sensory impairment that has lasted for more than 12 months and which hinders a person's full participation in society on an equal basis

#### **Categories of assistance and discounts:**

1. Once a year cash transfer is disbursed to those who are blind, deaf, speech impaired and of short stature, as well as others with disabilities who require constant care and have fully lost their capacity to work, to assist with the cost of rent or the purchase of fuel if a person lives in a house without central heating or in a ger (a felt-covered nomadic dwelling).
2. When people with disabilities permanently residing more than 1,000km from the capital city come to the city to undergo treatment or undergo tests prescribed by specialist doctors at an aimag hospital, they are entitled, during a calendar year, to full reimbursement of the costs of one-way travel.
3. People who have fully lost their capacity to work and who require treatment and care but are not entitled to the discounts on prosthetics or rehabilitation provided by the Insurance Fund for occupational injuries and illnesses are entitled, once a year, to 50 percent reimbursement of transportation costs and voucher costs to receive care at a health centre.

4. Communication costs for blind people aged 18 and above are discounted at a rate established by the government.
5. A cash allowance amounting to 75 percent of a burial allowance is provided from the Social Insurance Fund to cover the burial expenses of a single person with a disability who is not entitled to a burial allowance as stipulated in the Law on Social Insurance.



6. People with disabilities who are awarded gold, silver or bronze medals at the Olympic Games, in continental games or in other world sporting events are entitled to a one-time cash assistance equal to the amount of the pension they receive during the period of the time between participated games or sporting events.
7. Round-trip transportation expenses for blind people who need to travel from the capital city to an aimag or from an aimag to the capital city to receive care at a health centre, as prescribed by a medical institution, are reimbursed 75 percent of their costs once a year.
8. Letters and postcards written by blind people in braille and packets weighing less than 10kg which contain printed materials written in

braille are sent by free domestic post, as are devices, equipment and materiel for use by the blind.

**Categories of assistance and discounts provided to children with disabilities:**

1. The costs of domestically made prosthetics for children with disabilities aged under 18 are 100 percent reimbursed every two years; the costs of wheelchairs and other orthopedic equipment are 100 percent reimbursed every three years.
2. Children with disabilities and their caregivers or guardians receive once a year discount for transportation costs to and from school or kindergarten, or are provided with a bus service.
3. The costs of kindergarten food for children with disabilities and for one child of a person with a full loss of work capacity are discounted.
4. Transportation costs for one-way travel and vouchers for children with disabilities to receive care at a domestic health centre are subject to a 50 percent discount once a year.
5. Summer camp vouchers for children with disabilities are discounted 50 percent once a year.
6. A cash allowance amounting to 75 percent of the full burial expense allowance from the Social Insurance Fund is disbursed to cover the burial expenses of children with disabilities.

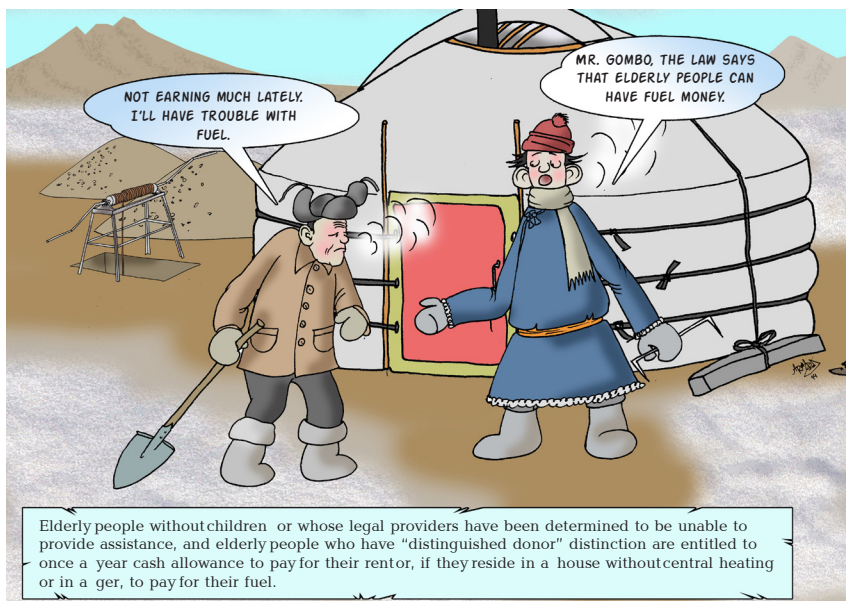
**Four. Assistance and discounts for the elderly**

This assistance is provided to the following citizens of Mongolia and to foreign nationals and stateless people legally residing in Mongolia:

- Men aged 60 and above
- Women aged 55 and above

**Assistance and discounts provided:**

1. The costs of domestically purchased and domestically made prosthetics for legs and arms, dentures (excluding those made of precious metals) and orthopedic devices for hearing and vision are reimbursed every five years. If prosthetics and orthopedic devices for the elderly are made for a pair of bodily parts and if they are prescribed by a specialist doctor, the reimbursement covers both.



2. The transportation costs for one-way travel and the cost of vouchers for Honorary donors and the elderly to rest and receive care at a domestic health centre, as prescribed by a medical institution, are subject to a 50 percent discount once a year.
3. A cash allowance amounting to 75 percent of the burial allowance is provided from the Social Insurance Fund to pay for the burial expenses of a single elderly person who is not entitled to a burial allowance as stipulated in the Law on Social Insurance.
4. When elderly people permanently residing more than 1,000km from the capital city come to the city to undergo treatment or undergo tests prescribed by a supervisory committee of specialist doctors of an aimag hospital, they are entitled, during a calendar year, to full reimbursement of the costs of one-way travel.
5. Vouchers for the elderly to receive care at rest and health centres for the elderly are offered at discounted costs.
6. The elderly are entitled to free public transportation (excluding taxis) in the capital city and aimag centres, irrespective of their residency.

7. Retail trade, transport, communications and health care service providers, among others, are encouraged to serve the elderly on a priority basis.

### **Five. Specialised welfare and care-giving services based on public participation**

#### **Categories of people covered:**

- 1) The elderly
- 2) People with disabilities
- 3) Children living in difficult conditions
- 4) Victims of violence
- 5) People released from prison
- 6) Victims of alcohol and substance abuse
- 7) People suffering from incurable illnesses
- 8) Homeless families and people
- 9) Members of migrant families with a demonstrated need to receive social welfare, support and assistance
- 10) Single mothers and fathers

#### **Welfare services offered:**

1. Organising training sessions that are designed to instill confidence, build skills for leading an independent life, acquire job skills, and appreciate an individual's talent
2. Providing counselling
3. Referrals to rehabilitation services
4. Providing temporary shelter and care
5. Referrals to day care services
6. Referrals to home care and welfare services
7. Providing other welfare services based on the needs of individuals and their families
8. Helping homeless people and their families regain hope and become socialised, acquire documents and find shelter

9. Implementing projects designed to provide welfare, support and assistance to families and individuals to enable them to become part of society, assemble in groups, and acquire skills for income generation.

**Specialised care** - The following categories of people are covered:

- 1) Elderly people without children to take care of them, who are unable to live independently, or whose child or children are of advanced age or have disabilities and are unable to provide care, and who cannot be covered by welfare services based on public participation.
- 2) Single people with disabilities without children to care for them and who are unable to live by themselves and need professional services and special care.
- 3) Children with disabilities under the age of 18 who live in difficult conditions and need constant care as specified in Article 25.5 of the Law on Family.
- 4) Twin children and other children of multiple births under the age of four whom the parents have consented to be raised in a specialised public care-giving institution.

**Assistance provided:**

1. Elderly care
2. Care for people with disabilities
3. Care for children under 18 living in difficult conditions
4. Care for twins and other children of multiple births

**The pensions of people receiving care at specialised care-giving institutions:**

Seventy percent of the amount of social insurance pensions and social welfare pensions paid to elderly people, and 70 percent of social welfare pensions paid to people with disabilities aged 18 and above who are in the care of specialised care-giving institutions, are paid those people; 30 percent goes to the institution providing care.

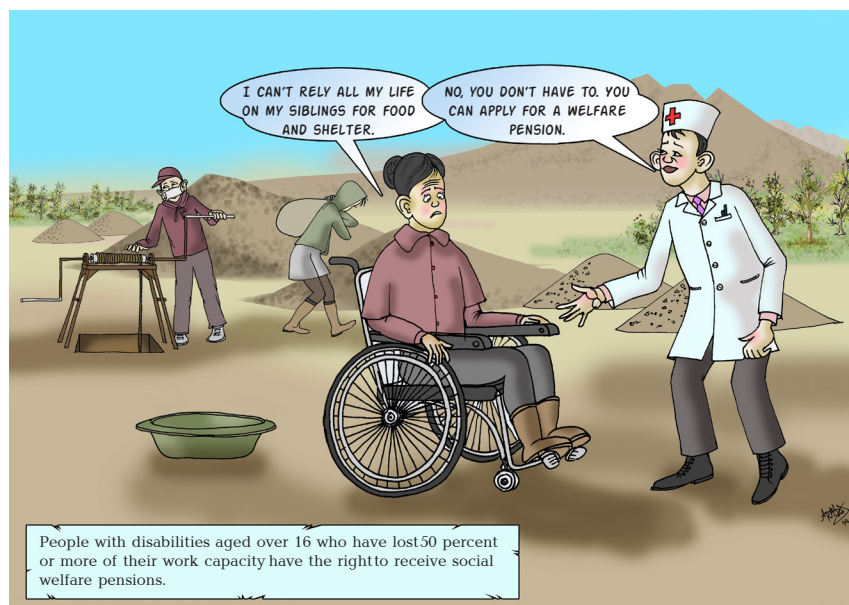
## **Six. Social welfare pensions**

**People entitled to social welfare pensions:** The following categories of people



who are not entitled to social insurance pensions as stipulated in social insurance legislation are entitled to social welfare pensions:

- 1) Men aged 60 and above, women aged 55 and above
- 2) People of short stature aged 16 and above
- 3) People with disabilities aged 16 and above with a 50 percent loss of work capacity
- 4) Single mothers aged 45 and above and single fathers aged 50 and above with four or more children under the age of 16
- 5) Children under the age of 18 from families who have lost their breadwinner



People seeking social welfare pensions should file a request with soum and khoroo social workers (a khoroo is an administrative territorial unit in cities).

Social welfare pensions cover citizens of Mongolia. Foreign nationals and stateless people legally residing in Mongolia can also be covered.

**Seven. Cash allowances for special circumstances and for supporting livelihoods:** The following categories of families and people are entitled to cash allowances:

- 1) Families who have lost their homes, whose homes have become unsuitable for dwelling, and who have lost their sources of livelihood due to sudden calamity or accident or other force majeure
- 2) People aged from 18-24 who became full orphans while aged under 18
- 3) People released from prison and without a home
- 4) Homeless people and families
- 5) Families or people who gave birth to, and raise, twins or more children of multiple births
- 6) Children aged under 16 in need of constant care
- 7) People aged 16 and above who are in need of constant care
- 8) Single mothers and fathers with three or more children aged under 14
- 9) Holders of the “Mother’s Glory” order of first rank, and holders of the “Mother’s Glory” order of second rank if there is no duplication of another cash allowance

People seeking cash allowances should file a request with soum and khoroo social workers

**Detailed information is available at the following link:**

<http://www.khun.gov.mn/index.php/mn/niigmiinhalamj.html>

Telephone numbers:

Ministry for Human Development and Social Protection: 262686;

General department for Social Welfare and Services: 70127030, 70127040.

***List of social insurance legislation:***

1. Law on Health Insurance
2. Law on Pensions and Benefits for Service People
3. Law on Individual Accounts for Pensions Insurance Premiums
4. Law on Pensions, Benefits and Payments from Social Insurance Fund for Industrial Accidents and Occupational Sicknesses
5. Law on the Minimum Benefits Rate

6. Law on Regulations in Applying Social Insurance Laws
7. Law on Unemployment Benefits from Social Insurance Fund
8. Law on Pensions and Benefits from Social Insurance Fund
9. Law on Social Insurance

***List of social welfare legislation:***

1. Law on Rewards for Women who Raised Many Children
2. Law on Additional Allowances for Elderly Persons who are Heroes of Mongolia, Heroes of Labour, Holders of Titles “People’s” and “Distinguished”
3. Law on Benefits Rates
4. Law on Social Protection of Elderly Persons
5. Law on Social Welfare
6. Law on Rewards for Women who Raised Many Children and Expanding Pensions
7. Law on Benefits and Transfer of Cash Allowances to Children, Mothers and Families
8. Law on Social Protection of Persons with Disabilities

***List of population legislation:***

1. Law on 2011 Budget for Human Development Fund
2. Law on Family
3. Law on the Protection of Child’s Rights
4. Law on Human Development Fund
5. Law on Temporary Public Custody of Children
6. Law on Combating Domestic Violence

## **7.4 EMPLOYMENT**

The following government agencies are responsible for providing information to citizens on employment opportunities:

- 1) **Central Labour Exchange:** The mission of this institution is to help the labour force maintain stable employment and to help link the unemployed and businesses. In addition, it conducts orientation sessions and shares information and advice. Detailed information is available at <http://www.labornet.mn/>

- 2) **Centres for Employment Services:** The principal mission of these centres is to deliver to citizens, business entities and other organisations quality government services in the areas of employment support, vocational education and training, and small and medium-sized businesses. The services provided include: a) Organising job fairs and exhibitions on vocational education to promote awareness among citizens; b) Conducting training and information sessions and providing advice on legislation related to labour relations, occupational safety and sanitation; and c) Providing information and advice on vocational education and training. Detailed information is available at <http://www.ces.gov.mn/>
- 3) **Thirty labour departments in 21 aimags and nine districts:** Their mission consists of supporting employment among the population and business entities, and in supporting labour relations in an equal, open, transparent and accessible manner, without red tape, to contribute to the eradication of unemployment. The services provided include: a) Mediation to help the unemployed to find a job; b) Development of a database on vacant and new employment positions; c) Providing orientation, consulting and information on employment choices.



The following policies and programmes are being implemented with the objective of promoting job creation, income generation and equal opportunities in the labour market.

### **Projects and programmes (2012-2016)**

1. Programme for preparing for employment
2. Programme for supporting employment for people aged 40 and above
3. Programme for supporting the employment of herders
4. Programme for supporting commerce
5. “Mongolia of Owners” programme
6. Programme for supporting jobs for people with disabilities
7. Programme for supporting youth employment
8. Programme for training national cadres
9. “Student employment and per-hour jobs” programme
10. Project on advice for elderly professionals

## **7.5 SUPPORT FOR SMALL AND MEDIUM-SIZED BUSINESSES**

**Definition:** A person who has met the requirements set forth in Article 5.1. of the Law on Small and Medium Enterprises and has filed a request is registered as a “manager of a small and medium enterprise” and is formally licensed. A **manager of a small or medium-sized enterprise** should meet the following requirements:

- 1) Running an enterprise that employs fewer than 199 employees under contract and on a labour contract, and of which the annual sales revenue amounts to less than MNT 1.5 billion.
- 2) Running a wholesale trade that employs fewer than 149 employees under contract and on a labour contract, and of which the annual sales revenue amounts to less than MNT 1.5 billion.
- 3) Running a retail trade that employs fewer than 199 employees under contract and on a labour contract, and of which the annual sales revenue amounts to less than MNT 1.5 billion.
- 4) Running a service that employs fewer than 49 employees under contract and on a labour contract, and of which the annual sales revenue amounts to less than MNT 1 billion.

- 5) Running a small enterprise that employs fewer than 19 employees under contract and on a labour contract, or operates a trade and service that employs fewer than nine employees under contract and on a labour contract, and of which the annual sales revenue amounts to less than MNT 250 million.

Small and medium-sized enterprises operate legally as companies, cooperatives or partnerships.

The following activities do not qualify as small and medium-sized enterprise operations:

1. The production of tobacco and alcohol
2. The drawing of lots, gambling, lotteries
3. Banks, non-banking activities, insurance
4. Minerals exploration, prospecting and mining



**Financial support and other opportunities to facilitate the activities of small and medium-sized entrepreneurs:**

- ***Fund for Development of Small and Medium Enterprises:*** The purpose of the fund is to concentrate the funds intended for supporting small and medium-sized enterprises and distributing them to small and

medium-sized businesses to strengthen their position in the economy and create jobs. The fund's functions include:

- a. Providing long-term concessional loans
  - b. Providing financial support for employers who have created jobs
  - c. Offering financial leasing services to support the purchase of industrial equipment
  - d. Issuing loan guarantees
  - e. Providing professional advice
- **Loan Guarantee Fund:** In accordance with the Law on Loan Guarantees, the fund issues loan guarantees amounting to 60 percent of the credit taken out by small and medium-sized enterprises with few assets to use as collateral.
  - **Soum Development Fund:** The fund supports the starting up, operation and expansion of small and medium-sized enterprises and the creation and retention of jobs to support the soum economy.
    - Provides a three-year concessional loan with an interest rate of up to 3.0 percent to competitive projects selected through bidding.
  - **Employment Support Fund:** The fund provides financial support for training among small and medium-sized business operators, and provides advice and information.
    - Provides a 24-month loan with an interest rate of up to 0.85-1.25 percent which, in the case of the unemployed, informal workers, herders and the self-employed, amounts to MNT 5 million, and in the case of those planning to set up a business, partnership or cooperative, amounts to MNT 10 million.

#### **Projects and programmes under way:**

1. Programme of industrialisation of Mongolia 2009-2016
2. Measures to support herders and domestic businesses and entrepreneurs
3. National programme of family development
4. Project on empowering small and medium business entrepreneurs 2011-2016
5. Project on partnership-based vocational education and training in min-



ing industries 2013-2015

6. “One Location - One Product” programme
7. Programme on society-wide development of cooperatives - II 2009-2017

**Detailed information is available at the following websites of government department and organisations:** a) Mongolian Ministry of Labour; b) Department of Development of Small and Medium Enterprises - Division of Support of Small and Medium Entrepreneurs; c) Mongolian Chamber of Commerce and Industry and other organisations.

**Websites:** [www.mol.gov.mn](http://www.mol.gov.mn), [www.LGF.mn](http://www.LGF.mn)

**Phones:** 62-26-30-22, 7011-0057, 7011-0058, 7011-0059

## 7.6 LAND POSSESSION, USE AND OWNERSHIP

As the Land Law of Mongolia stipulates, citizens of Mongolia, business entities and organisations are entitled to paid land possession and land use.

**“To possess land”** means to be in legitimate control of land in accordance with the purpose of its use and the terms and conditions specified in contracts.

**“To use land”** means to undertake a legitimate activity to make use of some of the land’s characteristics in accordance with contracts made with the owners of the land.

### **One. Land possession and land use**

Citizens of Mongolia and business entities can possess land for a duration of 15-60 years upon obtaining a land possession license. *(Citizens and business entities that have used their own resources to rehabilitate vacated land that has been degraded due to human activity may be entitled to possess that land.)*

#### **The purpose, size and location of the land in possession**

For common family needs:

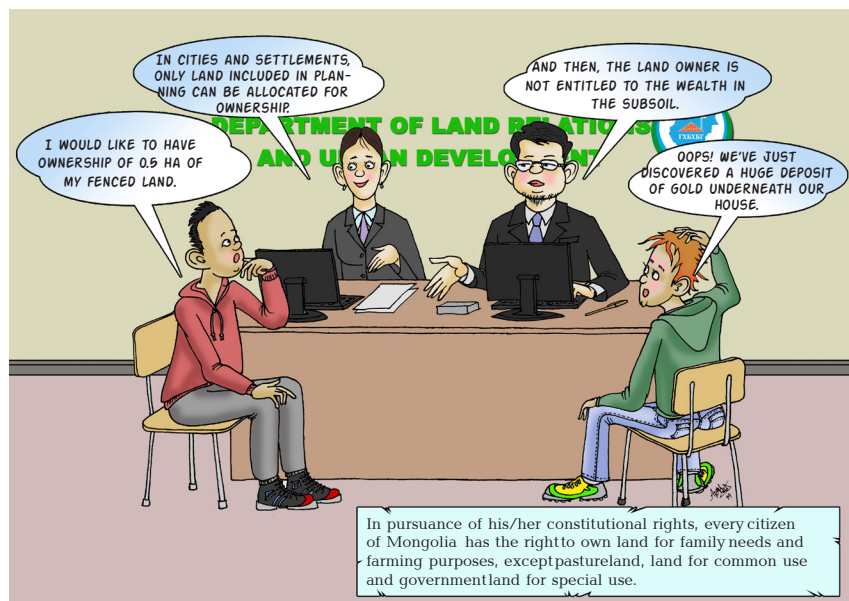
- For a fenced private house or ger - up to 0.07 ha (free)
- For growing vegetables, fruit, berries, other plants - up to 0.1 ha (free) (this land can abut the fenced family property or be at another designated location)
- For agriculture: a) For growing grains - 100 ha; b) For growing potatoes and other vegetables - up to 5 ha

**Note:** The location of the land for possession can be determined by the soum and district Citizens' Representative Khurals by taking into consideration the population density and the availability of land resources.

**Attention:** Paleontological, archeological and ethnographic studies must be conducted on the land, and professional expert opinion made, before land possession licenses are issued for minerals prospecting, mining and other economic activities.

## Two. Land ownership

In the enjoyment of their constitutional rights, the citizens of Mongolia have the right to own land, excluding pastureland, land for common tenure and land for special government use, for family needs and farming purposes. This right is regulated by the Law on the Allocation of Land to Citizens of Mongolia for Ownership.



### 1. Land for family needs (a one-time free allocation for ownership)

Citizens have the right to own land except for the following:

- Land for public tenure (streets, squares, roads, areas allotted for

- resorts, outdoor resting and sports activities, gardens, cemeteries, waste disposal sites, and purification installations)
- Pastureland
- Forest and water basin areas
- Land for special uses
- Land for roads and electricity lines

Land to be allocated to citizens for ownership is marked in the general and detailed plans of the Land Management departments of aimags and the capital city, and decisions are made by Citizens' Representative Khurals at any given level.

### ***Size of the land to be allocated to citizens for ownership***

The size of land allocated for ownership for family needs depends on its location, and is as follows:

<b>№</b>	<b>Location</b>	<b>Size (hectares)</b>
1	The capital city	Up to 0.07
2	Aimag centres	Up to 0.35
3	Soum centres and baghs	Up to 0.5
4	Along national roads linking the capital city and aimag centres (except soum centres)	Up to 0.07

## **2. Land for farming purposes**

Land to be allocated for ownership for farming purposes is divided into two principal categories: a) Agricultural purposes; b) Farming activities other than agriculture.

***a) The allocation of land for agricultural purposes*** is based on the total size and location of the land as determined by the long-term and annual crop-development plans of aimags, the capital city, soums and districts, as well as by the number of citizens who have requested land ownership. In addition, citizens engaged in agricultural activities may own the allocated land as commonly owned land, either entirely or partially.

***b) The land allocated for ownership for non-agricultural purposes*** cannot include land for public tenure in cities, townships and other localities, such as streets, squares, roads, areas allotted for resorts, outdoor resting and sports

activities, gardens, cemeteries, waste disposal sites and purification installations, as well as pastureland, forest and water basin areas, land for special uses, land for roads and electric lines.

***Forms of acquiring land ownership:***

- Buying land on preferential rights (if a citizen is in legal possession of a plot of land in conformity with the law and files a request to own that land, he/she has a preferential right to own that land)
- Buying land at auction (a citizen who does not possess land in conformity with the Land Law can buy that land through auction).

***Size of the land allocated for possession for farming and agricultural purposes***

- If land is owned through obtaining a possession license, the size of the allocated land equals the size of the land in possession
- If land is bought through auction, the size of the land for ownership is determined by the size of the plot up for auction.

The Government of Mongolia establishes the size and location of land to be allocated for ownership on a yearly basis, based on suggestions put forward by aimags and the capital city. This means that the size and location of the land available for ownership vary yearly.

## **7.7 THE LEGAL FRAMEWORK FOR PROMOTING CITIZENS' PARTICIPATION**

Citizens' participation allows citizens to express their views on issues of national and local development, have a say in decision-making, and protect their rights. The right to participation includes the right to obtain information, participate in decision-making, and have their rights protected.

Article 3 of the Constitution of Mongolia stipulates that state power is vested in the people of Mongolia, and that they exercise this right through direct participation in the affairs of the state as well as through the representative bodies which they elect. The Constitution thus enshrines the right of citizens to participate.

Chapter 2 of the Constitution, entitled "Human Rights and Freedoms", stipulates the rights that Mongolian citizens are entitled to by law in order for them to have a say in government decision-making. These are:

- 16.1.9. The right to take part, directly or through their representatives,

in the conduct of the affairs of the state. The right to elect and to be elected

- 16.1.10. The right to form a party or other organisations of society, the right to free association
- 16.1.12. The right to petition government and government officials and file complaints and demand their resolution
- 16.1.14. Citizens who deem that their rights and freedoms set forth in the laws of Mongolia and international treaties have been violated have the right to file a lawsuit with a court of law, seek compensation for the damage caused by unlawful actions of others
- 16.16. The right to freedom of thought, freedom of expression, freedom of speech, freedom of press, and freedom of peaceful assembly
- 16.17. Citizens “have the right to seek and receive information except that which the government and its bodies are required by law to protect as secret”
- 26.2. Citizens and organisations have the right to forward to lawmakers their suggestions concerning draft legislation

The following provisions regulate citizens’ environmental rights:

- 6.1. “In Mongolia, the land, its subsoil, forests, water, fauna and flora and other natural resources shall belong solely to the people and shall be under government protection”
- 16.2. Citizens enjoy “the right to live in a healthy and safe environment, to be protected from environmental pollution and ecological misbalance”
- 17.2. “It is a sacred duty of citizens ... to protect nature and environment”

There are a number of legal acts that, in conformity with the provisions of the Constitution on citizens’ participation, regulate the procedural aspects of the practical exercise of this right. These are:

- Legal acts on submitting suggestions on legislation by the public and non-governmental organisations, adopted in pursuance of Article 26.2 of the Constitution: Article 18.3 of the Law on Regulating the Submission of Draft Laws and Other Decisions of the State Ikh Khural, Law on Popular Referendums of 1995
- Legal acts on submitting petitions and complaints to government agencies and government officials by citizens who deem their rights having been violated and seek redress: The 1995 Law on Regulating the Submission of Petitions and Complaints to Government Agencies

and Government Officials, the 2001 Law on Administrative Lawsuits, the 2001 Civil Code

- Legal acts that guarantee participation by non-governmental organisations, their right to monitor the implementation of laws and submit related proposals, and the obligation by government agencies to seek participation by non-governmental organisations in their decision-making: Law on Non-Governmental Organisations, 1997
- The role of public control consists of preventing violations of law on the part of government agencies, fighting the abuse or overuse of power by government officials, preventing and combating corruption, and contributing to building a responsible government: Article 9 of the Law on Combating Corruption envisages public involvement through petitions, complaints and information on corruption-related matters; the Criminal Code and the Law on Protecting Environment also have pertinent provisions
- Law on Administrative Territorial Units and their Governance, 2006
- Several laws on economic sectors have provisions on citizens' participation: Law on Minerals, Law on Environmental Protection, Law on Environmental Impact Assessment<sup>23</sup>

The revised 2006 Law on Administrative Territorial Units and their Governance created a system that made the participation of bagh and khoroo citizens' general meetings in the formulation of local government decisions a formal procedure. In accordance with this law, local self-government (Citizens' Representative Khurals of aimags, the capital city, soums and districts, as well as general meetings of bagh and khoroo citizens) is comprised of representatives who are elected in free elections and an executive body accountable to representatives, and is obligated to pass decisions on the economic and social development of administrative territorial units in conformity with the interests of the local populace (Article 8.2).

Bringing their concerns before Citizens' Representative Khurals and taking part in the formulation of decisions is an essential means of citizen participation that allows for the free expression of opinions and thus protects people's rights.

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<sup>23</sup> Center for Human Rights and Development. 2009. "Public Participation in Decision-Making on Environment." A handout. .

*Article 12.1.9 of the Law on Administrative Territorial Units and Their Governance*

*Representatives have the obligation to work in close contact with their voters, resolve their petitions and complaints in accordance with pertinent regulations, and transmit these concerns to relevant authorities and respond to citizens*

The law also includes a provision in which voters have the right to dissolve khurals before the expiration of their terms if the decisions of the aimag, capital city, soum and district khurals are seen to be counter to the rights and interests of citizens and are therefore deemed unlawful.<sup>24</sup> For the dissolution of khurals to take effect, the law requires that two-thirds of the total number of voters in a given administrative territorial unit are in favour of dissolving the khural. In the case of bagh general meetings, two-thirds of all households should be in favour.



### **Citizens' participation in bagh and khoroo general meetings**

To effectively enjoy and protect their rights, citizens cannot only voice their concerns to their elected representatives, but can also be active in their local bagh and khoroo general meetings, which is their lowest and closest level of self-government; and, through these meetings, formulate suggestions for

<sup>24</sup> Article 15.1.2. of the Law on Administrative and Territorial Units and Their Governance. .

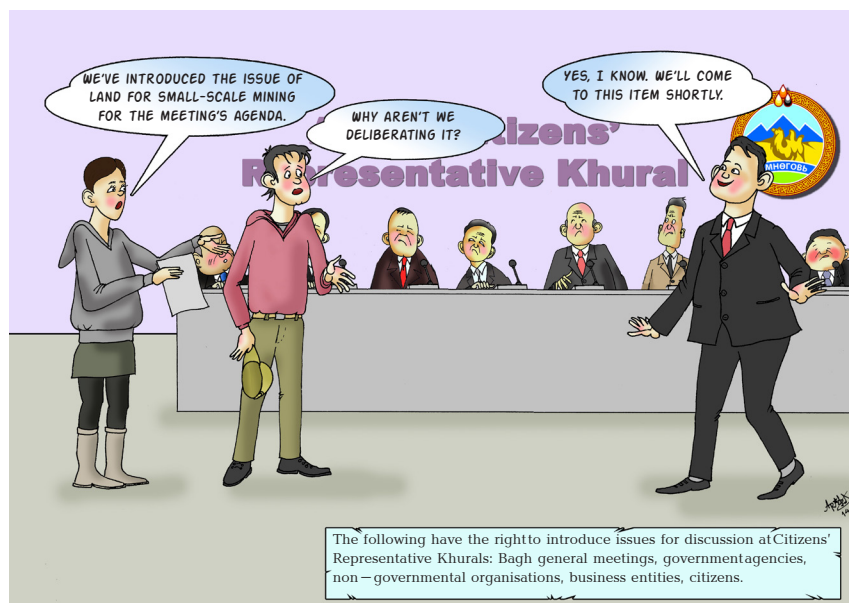


deliberation at the next higher level of khurals.

*Who can take part in the bagh and khoroo general meetings?*

- All citizens of voting age
- The quorum is ensured when one representative from every fourth family is present at the meeting
- Anyone can suggest a topic for deliberation at a general meeting

As bagh and khoroo general meetings reach decisions that express the consolidated views of all residents of voting age, it is important that the deliberations are held in an informed way, with knowledge of the legal ramifications of the decisions that are made.



All items on the agenda of a general meeting should be accompanied by a background information sheet on the issues being raised, handouts, draft resolutions and recommendations that should be distributed at least one day prior to meeting. Failure to distribute the accompanying materials for a proposed item results in its non-inclusion on the agenda.

*In cases where the meeting's decisions run counter to the interests of citizens:*

- *Transfer the decision on an unresolved issue to a higher-level khural*  
The old practice was for the citizens to approach a higher-level

governor and ask that the issue in question be included in the agenda of the Citizens' Representative Khural, although governors could choose not to. Current arrangements envisage the direct transfer of unresolved issues to a higher-level khural.

- *Filing a lawsuit with an administrative court*
- *Resubmitting the issue to the general meeting*

In cases where the decisions of bagh general meetings contradict a law or a government decision, the meeting rescinds it.

*Lawsuits with an administrative court are filed:*

- When the decisions of a higher-level khural are not accepted by bagh citizens.
- Citizens' Representative Khurals are responsible for passing independent decisions on the economic, social and cultural issues pertinent to the local population. Therefore, a higher-level khural cannot pass decisions on issues that are not the prerogative of a lower-level khural.

Cases in which citizens incur damages due to the unlawful decisions of khurals or governors are brought before a court (41.1).

The Law on Information Transparency and the Right to Access to Information of 2012<sup>25</sup> plays an important role in fulfilling citizens' right to receive information and to participate. This law guarantees citizens' right to receive information about all government agencies and state-owned enterprises in four areas: Operation, human resources, budgets and procurement. Thus, citizens can approach central and local government administrations, ministries and other government agencies and request that information be provided in these areas.

The Budget Law, which came into effect in 2013, contains several provisions that promote citizen participation. In particular, these are:

6.5.2. Ensuring public participation in budget planning, composition, appropriation and reporting.

6.5.3. Facilitating public monitoring of budget execution and spending to control their conformity with the approved plan.

6.5.4. Facilitating public monitoring of government activities and services and of other measures, as well as of the procurement of goods and services for carrying out these activities.

6.5.5. Taking into account the opinions and priorities of the public

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<sup>25</sup> [www.legalinfo.mn](http://www.legalinfo.mn)

when determining the hierarchy, the ordering and implementation strategies of programmes, projects and other measures.

6.5.6. Authorities are obligated to report to citizens and non-governmental organisations on the ways in which their suggestions and priorities have been reflected in government decisions and on the outcomes of their efforts to promote public participation in the budget process.

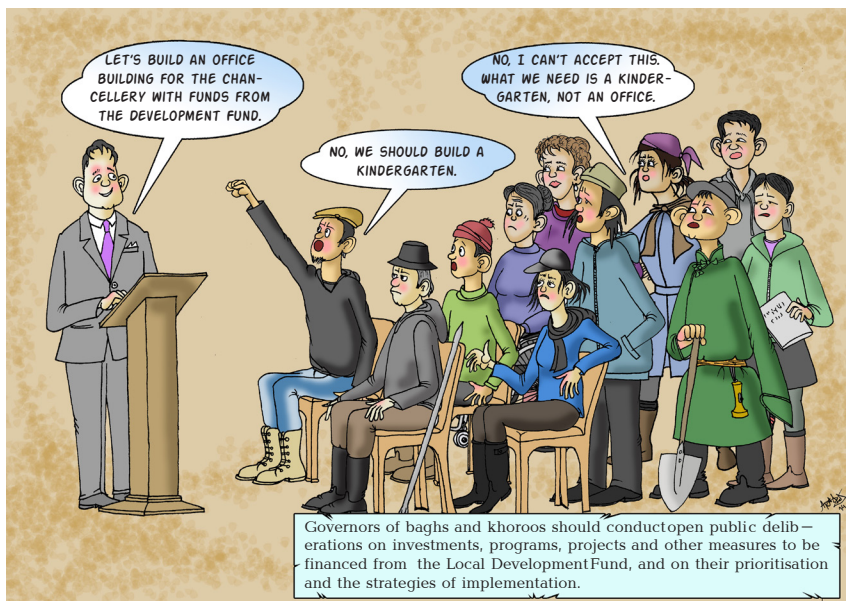
10.2. A nine-member informal National Council on Budget, Finance and Economy, composed of representatives of non-governmental organisations, including taxpayers, professional associations and scholars, shall be formed under the Prime Minister with the objective of improving the planning of budgetary, fiscal and economic policy, enhancing reporting and transparency, and carrying through public monitoring.

41.7. The government shall approve regulations on ways to ensure transparency of the approved budget of budget organisations, the income they may generate, of savings in expenditures and their allocation, as well as transparency of the execution and openness before the personnel on budget-related matters.

52.1. The State Ikh Khural and the general public should be informed about prospective government debt and related payments.

63.1. Governors of baghs and khoros should conduct open public surveys on the investments, programmes, projects and other measures to be funded from the Local Development Fund and the ordering and strategies of their implementation

67.3. During budget debates, governors of aimags, the capital city, soums and districts make available to the public the debated draft budgets of their respective governments and introduce to khurals the views and suggestions on the draft budget by citizens of aimags, the capital city, soums and districts.



### 68.3. The general public should be informed in a transparent manner about annual budgets approved by Citizens' Representative Khurals

In pursuance of laws aimed at ensuring citizens' participation, the government has established a number of channels aimed at improving the accessibility and quality of government services.<sup>26</sup> Citizens can use these channels to express their views and forward their complaints. In instances in which human rights are violated, citizens can address their complaints to the National Human Rights Commission. If these mechanisms fail to resolve their concerns, citizens can approach non-governmental organisations working on specific human rights issues. Information about such organisations is available at the Center for Human Rights and Development, the compiler of this training manual.

<sup>26</sup> See Annex 2 of the Manual.

## ANNEX 1. POLICY DOCUMENTS ON THE DEVELOPMENT OF SMALL-SCALE AND ARTISANAL MINING IN MONGOLIA

No.	Policy document	Related Articles	Content
	MDGs-based Comprehensive National Development Strategy 2007-2021	5.2.1 Industrial development policy 5.2.1.1. Development policy for geology, mining, minerals, heavy industry	Stage 1. Strategic goal 1: Proceeding from the principles of government regulation, environmental protection and a safe environment for life, create a legal framework for artisanal extraction of minerals
	Sub-programme for developing artisanal and small-scale mining until 2015	Two. Goals of the sub-programme 2.1; 2.2	2.1. Create a legal framework for mining minerals using artisanal methods and in the form of small-scale mining, regulate individual artisanal mining activities according to law 2.2. Promote the phased development of a small-scale mining model that uses small-size mining equipment and advanced technology, operates safely and is economically profitable and that engages in the mining of non-industrial resources that have been left after use at mining enterprises or at mining sites with a special license, of operational and technological waste at secondary mines, and of resources at the mines deemed economically non-profitable for large-scale industrial mining
	Government Action Plan 2012-2016	1. Jobs and Incomes for Mongolian People	Improve regulation of small-scale mining, enhance control over implementation
	Government Minerals Policy 2014-2025	Three. Policy directions for the minerals sector 3.1.Improve the legal framework for the minerals sector	3.1.2.Extend policy support for legal cooperatives of citizens engaged in small-scale mining, improve the necessary legal framework

## **ANNEX 2. SUBMISSION OF REQUESTS AND SUGGESTIONS BY CITIZENS FOR GOVERNMENT OFFICIALS**

### **1. Central government's 1111 Centre:**

The goal of the 1111 Centre is to promote open and transparent government, eradicate red tape by providing fast services to citizens in receiving, and responding in detail to, their requests and suggestions. These can be forwarded using the following numbers and addresses:

**Direct telephone line:** 11-11

**SMS messages from cell phones:** 141111

**Email:** 1111@gov.mn

**For Twitter and Facebook messages:** 1111 Center

**In person:** Government reception bureau

### **2. Reception bureau of the capital:**

The capital administration strives to provide fast services to citizens in responding to their concerns and requests, providing information on the administration's activities and services, conducting surveys and opinion polls, and requesting citizens' opinions and views in its urban development policies.

- **“Ulaanbaatar is listening” service for receiving requests, complaints and suggestions:** It is a service designed to collect the suggestions, statements, complaints or expressions of gratitude by citizens, and provides an opportunity to follow and control the progress of the resolution of particular requests or complaints.

**Direct phone line:** 1200

**Website:** [www.ub1200.mn](http://www.ub1200.mn);

**In person:** First floor, Hangard Palace of the city administration

- **“Ulaanbaatar is listening” services for providing information:** This service provides information on the services the city administration provides to citizens.

**Phone:** 1234

3. **Aimag centres:** These centers provide information on local government services, collect and respond in a fast manner to requests and complaints concerning the quality of services provided by the administration's personnel. They operate telephone services, which for Uvurkhangaï aimag is 7032-1111; for Zavkhan aimag is 7046-1111; for the city of Erdenet is 7035-3511.

4. **Requests and complaints concerning mining and environment may be addressed to respective ministries and their staff in charge of public relations.** Telephone numbers are available at the ministries' websites. If written requests have been forwarded, responses should be made available within the legally prescribed time.

5. **Anti-Corruption Agency:**

The Anti-Corruption Agency receives requests and complaints concerning abuse and overuse of power by government officials, by leaders of non-governmental agencies and business enterprises, instances of giving, receiving or mediating a bribery, illegal enrichment, and misappropriation of public funds.

**Direct phone line:** 1800-1969

**Email:** [contact@iaac.mn](mailto:contact@iaac.mn)

**Website:** [www.iaac.mn](http://www.iaac.mn)

**In person:** Sukhbaatar District, 5th khoroolol, Seoul Street-41, Ulaanbaatar, 14250

6. **National Human Rights Commission:**

The commission receives and resolves requests and complaints from citizens and business entities concerning violations of human rights and freedoms. In addition, it provides free legal advice on the international human rights treaties and covenants to which Mongolia is a party, and on the provisions in the Constitution of Mongolia and other legal acts on human rights and freedoms. Senior officers of the National Human Rights Commission in aimag centres are also available for advice.

**Direct phone line:** 7000-0222

**Email:** [info@mn-nhrc.org](mailto:info@mn-nhrc.org)

**Website:** <http://www.mn-nhrc.org/>

**In person:** Chingeltei District, Independence Square, Government Building 11, Floor 5, Suite 509.





