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BUSINESS AND HUMAN RIGHTS | ASIA



# BUSINESS AND HUMAN RIGHTS

## NATIONAL BASELINE ASSESSMENT

# 2022



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## ACKNOWLEDGEMENTS

We would like to express our deepest gratitude to the European Union, the Delegation of the European Union to Mongolia, the Ministry of Foreign Affairs and the Business and Human Rights Asia Programme in UNDP's Asia-Pacific Regional Office for supporting this project. The aim is to conduct a baseline study to identify the negative impact of business on human rights, which is one of the biggest challenges for Mongolia to address human rights violations and to determine the current situation through meetings with government institutions, business enterprises, civil society organisations and other stakeholders and to clarify appropriate measures to be taken for the future.

In addition, our deep appreciation goes to the Working Group tasked with developing the National Action Plan for the implementation of the "UN Guiding Principles on Business and Human Rights" and in particular to the members of the Executive Committee who generously contribute their time and expertise and provided active support at all stages of the preparation of the "National Baseline Study and Assessment Report on Business and Human Rights".



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## INTRODUCTION

The countries implementing the “UN Guiding Principles on Business and Human Rights” funded by the European Union<sup>1</sup> have different issues and objectives in their National Action Plan due to different levels of situations, economic development and cultural differences. Japan, for example, considers (1) government procurement, (2) equality, (3) labour rights, including the rights of foreign workers, and (4) respect for human rights in responsible supply chain based on the specifics of its business environment. Ireland, on the other hand, takes into account (1) labour rights, (2) corruption, (3) inequality, (4) information and security, and (5) human rights issues in procurement and supply chains. Each country identifies the negative human rights impacts that occur in business activities, as well as their causes, according to its own characteristics and reflects them in the National Action Plan. The National Action Plan consists of many parts, including implementing some legal reforms, raising awareness and informing the public, and strengthening the capacity of businesses. Currently, 45 countries have developed their National Action Plans.

In 2011, the UN Human Rights Council adopted the “UN Guiding Principles on Business and Human Rights”. In 2015, the Human Rights Council discussed the second universal periodic review on the situation of human rights in Mongolia

and made a total of 164 recommendations that the Mongolian government should implement. Mongolia decided to adopt 150 of these recommendations and therefore, approved the plan to implement the recommendations through Government Decision No. 204 in 2016.

Since 2019, the Government of Mongolia has taken progressive measures to develop a “National Action Plan” under the implementation of the “UN Guiding Principles on Business and Human Rights”. In order to properly prepare and effectively implement the National Action Plan, a thorough examination of the existing economic and human rights situation in Mongolia is required. This is because despite the increasing involvement of the private sector in Mongolia (77% of GDP), the majority of businesses (88%) operate at the micro, small and medium enterprise level. In other words, it is crucial to adequately determine the aspects to be considered in the implementation of the “UN Guiding Principles on Business and Human Rights” by taking into account circumstances such as the relatively small size of enterprises and their low economic potential on the one hand, and the comparatively high involvement of state-owned enterprises on the other, as well as other factors including the culture and traditional factors.

<sup>1</sup> UN Human Rights Council, “Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, 2011 [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)



Therefore, this baseline study and assessment report on business and human rights has been prepared to identify the state of human rights and human rights violations in Mongolia's business activities. In developing this baseline study, detailed desk research and comprehensive legal research was conducted, a series of 20 discussion forums were organised with approximately 1,000 participants, comprising representatives from the private sector, government and civil society organisations

in the city of Ulaanbaatar and in 21 Aimags at the regional level (Central Region, Gobi Region, Eastern Region and Western Region), and an online case study was conducted among business enterprises.

Based on the above study and discussions held, the negative impacts and human rights violations caused by business activities were assessed considering the following three categories. These include:



- Do the existing business environment, rules and regulations encourage companies to respect human rights in their activities?  
(THE STATE DUTY TO PROTECT HUMAN RIGHTS)
- Do companies have the incentives, interest, knowledge and information to respect human rights in their activities and are they aware of and comply with their obligations  
(THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS)
- Is there an adequate mechanism for individuals whose rights have been violated by business activities to file a complaint and obtain an adequate remedy  
(ACCESS TO EFFECTIVE REMEDY)?



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## LIST OF ABBREVIATIONS

<b>AG</b>	Agriculture
<b>AIDS</b>	Acquired Immune Deficiency
<b>BE</b>	Business enterprises
<b>BHR</b>	Business and Human Rights
<b>CMTU</b>	Confederation of Mongolian Trade Union
<b>FCYDA</b>	Family, Child and Youth Development Agency
<b>GALWS</b>	General Agency for Labour Welfare Services
<b>GDP</b>	Gross Domestic Product
<b>HDI</b>	Human Development Index
<b>HIV</b>	Human immunodeficiency virus
<b>ILO</b>	International Labour Organization
<b>IOS</b>	International organizations
<b>LGBTI</b>	Lesbian, Gay, Bisexual, Transgender, Intersex
<b>LLC</b>	Limited Liability Company
<b>LSPTARI</b>	Labor and Social Protection Training, Assessment and Research Institute
<b>MLSP</b>	Ministry of Labour and Social Protection
<b>MNCCI</b>	Mongolian National Chamber of Commerce and Industry
<b>MOH</b>	Minister of Health
<b>NSO</b>	National Statistical Office
<b>NHRCM</b>	National Human Rights Commission of Mongolia
<b>OHS</b>	Occupational Health and Safety
<b>SMES</b>	Small and medium enterprises
<b>SMEA</b>	Small and Medium Enterprise Agency
<b>SPIA</b>	State Professional Inspection Agency
<b>SIACC</b>	Specialized Inspection Agency of the Capital City
<b>SOES</b>	State owned enterprises
<b>SGH</b>	State Great Hural
<b>UN</b>	United Nations
<b>UNDP</b>	United Nations Development Programme
<b>WSH</b>	Workplace sexual harassment



## DEFINITION OF TERMS

This study used the Mongolian and English names and explanations of terms in line with the UN Guiding Principles on Business and Human Rights, as well as terms widely used to determine and explain negative impacts and human rights violations related to business activities.

**Business and Human Rights:**<sup>2</sup> A comprehensive concept and international nomenclature encompassing the negative human rights impacts of business activities, human rights violations and issues related to preventing and addressing these negative impacts.

**Children's Rights and Business Principles:**<sup>3</sup> It contains recommendations that incorporate the principles of respect for children's rights and child-friendly policies in business, developed jointly by the United Nations Children's Fund, the United Nations Global Compact and Save the Children.

**Duty of Care:**<sup>4</sup> It includes various measures to prevent negative impacts on human rights and human rights violations through the activities of business enterprises. These obligations include, for example, organising human rights training, conducting human rights due diligence to identify the existence of risks, and improving the risk management system.

**Decent work:**<sup>5</sup> According to the ILO definition, it is about the opportunity for productive work that provides a decent income and a living wage, security at work and social protection for workers and their families, better prospects for personal development and social integration, freedom for all men and women to express their concerns, and employment on equal terms.

**Equal pay for male and female employees in workplaces of equal value (Equal pay):**<sup>6</sup> As defined in ILO Convention No. 100, the term equal pay for male and female workers for work of equal value refers to equal rates of pay without discrimination on the basis of sex.

**Forced labour:**<sup>7</sup> According to the definition of ILO Convention No. 29, forced labour is any work or service which is exacted from a person under the menace of a penalty and to which the person concerned has not voluntarily agreed. Excluded from this definition are compulsory military service, normal civic duties, judicial convictions, emergencies and minor community service and work.

<sup>2</sup> UN Office of the High Commissioner for Human Rights, "On Business and Human Rights" <https://www.ohchr.org/en/business#:~:text=About%20business%20and%20human%20rights,third%20parties%2C%20including%20business%20enterprises>.

<sup>3</sup> UNICEF, Save the Children Fund, and UN Global Compact, "Children's Rights and Business Principles", 2012 <https://resourcecentre.savethechildren.net/document/childrens-rights-and-business-principles-crbp/>

<sup>4</sup> An Initiative of Shift, "Basic concepts of business and human rights" <https://shiftproject.org/wp-content/uploads/2015/02/Glossary--UN-Guiding-Principles-Reporting-Framework-1.htm>

<sup>5</sup> ILO, Decent work: On Decent Work" <https://www.ilo.org/global/topics/decent-work/lang-en/index.htm>

<sup>6</sup> ILO, C100 – Equal Remuneration Convention, 1951 (No. 100) [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100\\_Ilo\\_Code:C100](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100_Ilo_Code:C100)

<sup>7</sup> ILO, Overview on the possibility to accede to 2014 Protocol to the ILO Forced Labour Convention (1930) [https://www.ilo.org/wcms-sp5/groups/public/--asia/--ro-bangkok/--ilo-beijing/documents/meetingdocument/wcms\\_750284.pdf](https://www.ilo.org/wcms-sp5/groups/public/--asia/--ro-bangkok/--ilo-beijing/documents/meetingdocument/wcms_750284.pdf)



**Free, Prior, Informed Consent without any coercion:**<sup>8</sup> This principle refers to businesses giving local citizens the opportunity to approve or reject the mining project before it becomes operational in a local area. The international organisations recommend the implementation of this principle. By implementing this principle, effective communication and consultation with local communities can be established.

**Gender Pay Gap:**<sup>9</sup> International standard calculation for assessing the pay gap between men and women.

**Human Rights-Based Approach:**<sup>10</sup> A concept that is in line with international human rights standards and aims to guarantee and protect human rights. The most important aspect of the human rights-based approach is to put the person at the centre while ensuring equality and enjoyment of human rights without discrimination. A human rights-based approach is also the concept of paying special attention to the rights of groups at high risk of human rights violations.

**Human Rights Due Diligence:**<sup>11</sup> It refers to a comprehensive set of practises that business enterprises must adopt to prevent their operations from having a negative impact on or violating human rights. This is done by assessing the existence of human rights risks in business operations and in the supply chain, addressing any negative impacts and violations identified, and compensating for any damages.

**Labour Exploitation:**<sup>12</sup> According to the ILO definition, labour exploitation is a form of modern slavery in which a person is forced to work for excessive periods of time in unsafe and hazardous working conditions that are harmful to human health, for very low wages.

**Living wage:**<sup>13</sup> It refers to the right of everyone to a wage that provides them and their family with an adequate standard of living, including food, clothing and housing in accordance with Article 11 of the International Covenant on Economic, Social and Cultural Rights.

**Modern slavery:**<sup>14</sup> Modern slavery means that a person is forced by coercion or violence to perform hazardous work in unsafe and dangerous conditions in order to earn money for personal gain. Modern forms of slavery include human trafficking, forced labour, worst form of child labour, child marriage or any other form of labour exploitation for money or other purposes.

**Stakeholder:**<sup>15</sup> An individual, group of persons or organisation affected positively or negatively by business activities and decisions.

<sup>8</sup> World Wildlife Fund, "Evaluation report on the conditions and opportunities for parties to participate in the mining decision-making process", 2015 [http://d2ouvy59p0dg6k.cloudfront.net/downloads/gap\\_mon\\_1.pdf](http://d2ouvy59p0dg6k.cloudfront.net/downloads/gap_mon_1.pdf)

<sup>9</sup> The Government of Australia, "International Gender Equality Reporting Schemes", 2019 <https://www.wgea.gov.au/publications/international-gender-equality-reporting-schemes>

<sup>10</sup> UN Sustainable Development Group, "What is a Human Rights-Based Approach?" <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>

<sup>11</sup> UN Office of the High Commissioner for Human Rights, "Corporate human rights due diligence – Identifying and leveraging emerging practice" <https://www.ohchr.org/en/special-procedures/wg-business/corporate-human-rights-due-diligence-identifying-and-leveraging-emerging-practices#:~:text=Human%20rights%20due%20diligence%20is,with%20which%20they%20are%20involved>.

<sup>12</sup> ILO, Details of indicators for labour exploitation [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_105035.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105035.pdf)

<sup>13</sup> Global Living Wage Coalition, "What is a Living Wage?" <https://www.globallivingwage.org/about/what-is-a-living-wage/>

<sup>14</sup> Anti-Slavery International, "What is Modern Slavery?" <https://www.antislavery.org/slavery-today/modern-slavery/>

<sup>15</sup> Ibid



**Stakeholder Engagement:**<sup>16</sup> Collaboration that involves communication and consultation to address issues related to a company's positive and negative impacts on stakeholders.

**Strategic Lawsuit Against Public Participation (SLAPP):** In most countries, this is a strategic action to file a lawsuit for "defamation" or damage to the business reputation of a person or an organisation and dissemination of false information against businesses, governmental organisations, human rights defenders, whistleblowers and civil society organisations, in order to delay the court's decision-making processes to silence their voices, threaten and intimidate them.

**UN Guiding Principles on Business and Human Rights:**<sup>17</sup> The UN Guiding Principles on Business and Human Rights, adopted by the UN Human Rights Council in 2011, are recommendations for states and businesses based on the "Protect, Respect and Remedy" framework to identify and address negative human rights impacts and human rights violations caused by business activities and to remedy the affected rightholders.

**Working poor:**<sup>18</sup> As mentioned in the NSO's Household Socio-Economic Survey, this refers to the population that is employed but living on the poverty line.

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<sup>16</sup> *Ibid*

<sup>17</sup> UN Human Rights Council (n 1).

<sup>18</sup> NSO, "Inequality of income and consumption", 2021 [https://1212.mn/BookLibraryDownload.ashx?url=%D0%9E%D1%80%D0%BB%D0%BE%D0%B3%D0%BE\\_%D1%85%D1%8D%D1%80%D1%8D%D0%B3%D0%BB%D1%8D%D1%8D%D0%BD%D0%B8%D0%B9\\_%D1%82%D1%8D%D0%B3%D1%88\\_%D0%B1%D1%83%D1%81\\_%D0%B1%D0%B0%D0%B9%D0%B4%D0%B0%D0%BB.pdf&ln=Mn](https://1212.mn/BookLibraryDownload.ashx?url=%D0%9E%D1%80%D0%BB%D0%BE%D0%B3%D0%BE_%D1%85%D1%8D%D1%80%D1%8D%D0%B3%D0%BB%D1%8D%D1%8D%D0%BD%D0%B8%D0%B9_%D1%82%D1%8D%D0%B3%D1%88_%D0%B1%D1%83%D1%81_%D0%B1%D0%B0%D0%B9%D0%B4%D0%B0%D0%BB.pdf&ln=Mn)

# 1

## OBJECTIVES AND METHODOLOGY OF THE BASELINE STUDY

10



**BUSINESS AND HUMAN RIGHTS**



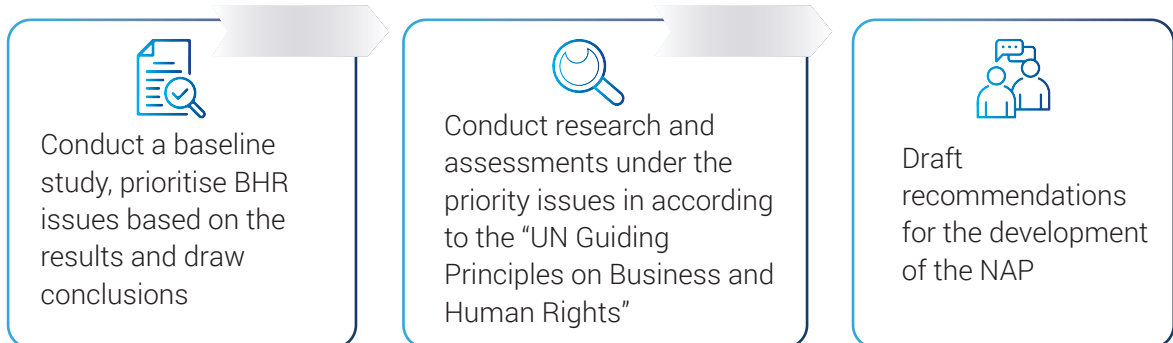
MAIN GOAL

The main goal of this baseline study is to identify the negative human rights impacts and human rights violations caused by the activities of businesses, the external and internal factors that affect them, the methods used to address them, the obstacles and challenges encountered, and to draw conclusions and make recommendations on how to prevent businesses from causing, contributing and linked to negative impacts and committing human rights violations, and how to respect human rights in their operations, in order to support the development of the National Action Plan for the implementation of the “UN Guiding Principles on Business and Human Rights” by the Government of Mongolia.

OBJECTIVES

- 1 Assess the level of awareness of business enterprises in Mongolia that know and understand the concept of “UN Guiding Principles on Business and Human Rights”;
- 2 Identify and prioritise the adverse impacts and violations of human rights that frequently occur as a result of the activities of business enterprises operating in Mongolia;
- 3 Identify external factors that prevent business enterprises from respecting human rights in their operations;
- 4 Examine whether the necessary legal framework for business enterprises to respect human rights is in place and whether relevant regulations are in line with the “UN Guiding Principles on Business and Human Rights” and draw legal conclusions;
- 5 Based on the findings of the study, to develop proposals and recommendations for the effective development of the National Action Plan.

TABLE 1. Research methodology process





## SCOPE OF THE STUDY AND THE METHODOLOGY



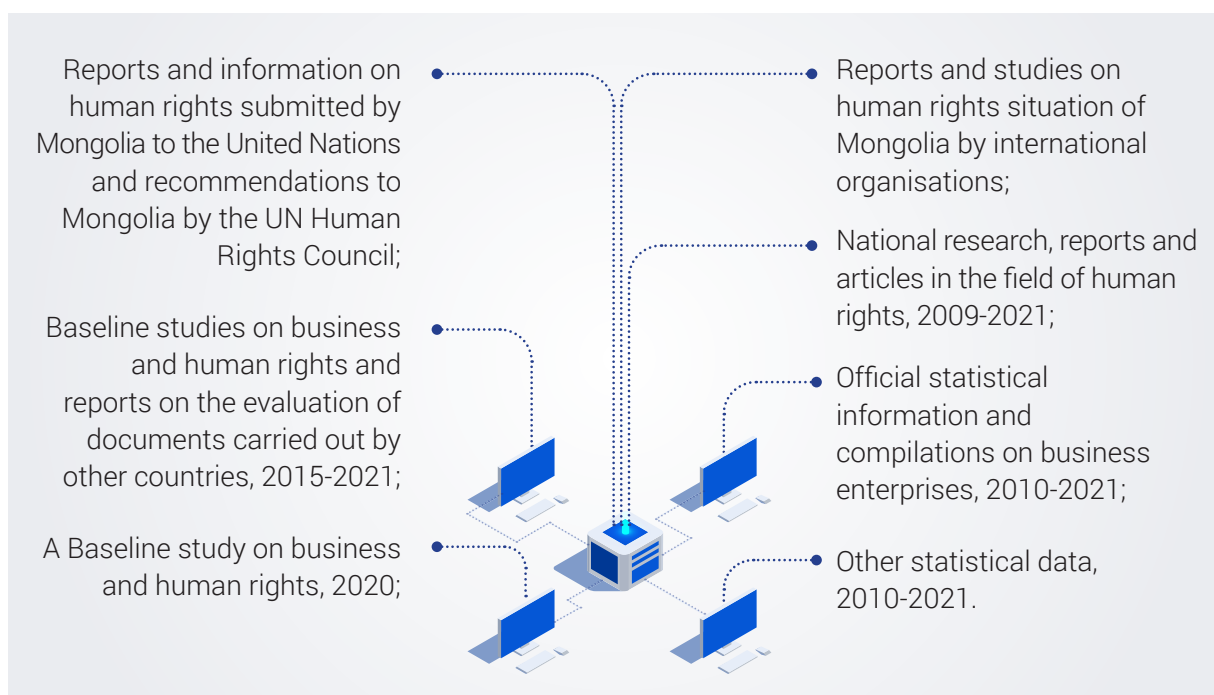
This study includes both primary data (a variety of multistakeholder discussion forums and case studies) and secondary data (other research papers and publications). This research also includes an examination of various Mongolian legislation and policy documents.

### Desk-based research:

Following the multi-stakeholder discussion forums and case studies, desk research was conducted to determine the status of business enterprises' compliance with the "UN Guiding Principles on Business and Human Rights" and to clarify and examine in depth the factors that hinder business enterprises from implementing these principles.

Desk-based research was conducted to review human rights research reports conducted in Mongolia over the past 12 years, including studies on human rights violations and negative impacts of business activities, reports on the state of human rights submitted to the United Nations by the Mongolian government and civil society organisations, recommendations of

the United Nations and other international and regional organisations, and reports of the Special Rapporteurs on human rights, and to identify the negative impacts on human rights and human rights violations caused by business activities. In addition, the research was conducted to determine the current situation by answering the guiding questions posed in 12 situation-specific contexts of the template for the national baseline assessment developed by the Danish Human Rights Institute. The survey was sent to the relevant ministries and authorities. The responses were received in official letters and have been included in the report. The following documents were collected and a database was created. These include:







### Legal research:

There are more than 150 laws in force in Mongolia dealing with economics and human rights issues. These laws have been studied in detail and compared with similar laws in other countries. Legal research materials developed by the National Law Institute, the General Council

of Justice and other lawyers and academics, as well as research and recommendations published by international organisations since 2010, were compared with the situation in Mongolia.

### Case study:

The case study survey was developed based on input from members of the Working Group Executive Committee. More than 100 business enterprises and organisations from the trade and services, agriculture, mining and construction sectors participated in the case study.

#### Research sample size:

By 2020, the number of enterprises registered and actively operating in Mongolia will exceed 94.9 thousand. The NSO recommended that the inclusion of at least 3,500 enterprises in the study would provide a representative sample for the study population. Due to time, scope and budget constraints, the research team included more than 100 companies in the study.

#### Data collection process and methodology:

The case study was conducted through an online survey. The possibility of obtaining information was limited due to the confidentiality of the company's business. Therefore, we collected information on business and human rights violations and issues by asking in the third person (projective techniques). For this purpose, the platform "Surveysparrow" was used, for which official permission was obtained.

#### Data collection stage:

The survey was conducted online from 1 September to 18 October 2021. The Ministry of Foreign Affairs has asked relevant governmental and non-governmental organisations to facilitate broad participation of businesses in the survey. (MNCCI, Small and Medium Enterprises Agency, professional associations, large government and private sector groups) In addition, the online survey was published on the MNCCI website and in the mass media, and data was collected from enterprises.

#### Data processing stage:

As the Surveysparrow platform cannot process primary data, the research team used SPSS 21.0 software to conduct the analysis. In addition, the report includes the results of surveys conducted in the construction, hospitality, leather industry and local SME sectors using the grant offered to non-governmental organisations by the UNDP "Business and Human Rights" Project. These include:



**TABLE 2.** Overview of studies carried out by NGOs in the framework of the “Business and Human Rights” Project

#	Name of the implementing organization	Name of the study	Research methodology
1	“Setgeliin goyol” NGO	Assessing the impact on human rights in the operations of business enterprises in Zavkhan aimag	Data were collected through questionnaires and interviews with a sample of 643 people from 24 sums of the Zavkhan Aimag.
2	Centre for the Protection of Children and the Elderly	Protecting and promoting women’s rights in the hospitality industry by conducting human rights due diligence.	Data were collected through questionnaires among 161 employees and 113 customers of the hospitality industry in Ulaanbaatar city and 5 Aimags, and through individual interviews with 43 people.
3	“Association to support labour rights of Mongolian women” NGO	Documenting labour rights violations in the construction industry	The data was collected by means of an online questionnaire from a total of 172 people living in the city of Ulaanbaatar and in the countryside.
4	“Sain turshlaga” (Good Experience) NGO	Human rights issues in the leather industry	The data was collected through a survey involving 483 people, including employers and employees of the tannery factory in Khan-Uul district, Ulaanbaatar city, as well as local residents.

### A series of discussion forums:

In order to validate the above case study, 21 series of discussion forums on business and human rights were organised, with a total of more than 1,000 participants, including business enterprises from different sectors, relevant ministries, agencies and non-governmental organisations, local administrations, representatives of trade unions, human rights activists and groups at high risk of human rights violations, such as rural citizens, pastoralists, persons with disabilities, female employees and young workers. The discussions were divided by region, including the Central Region, the Gobi

and Eastern Region, the Western Region and the city of Ulaanbaatar. In addition, the discussion forums were thematically organised according to the issues most important to the participants, such as SMEs, representatives of TOP 20 enterprises, trade unions and mechanisms for restoring violated rights. In the discussion forums, the research team conveyed the basic understanding and information about the “UN Guiding Principles on Business and Human Rights” and collected real cases on the problems of the participants using the prepared format.

The research team attached particular importance to the discussion forums and the resulting proposals and recommendations. It drew on the best practises of countries that have adopted their National Action Plans by holding public discussions and interviews with all stakeholders, such as the private sector, civil society organisations and government representatives, to listen to their views, gather information, identify common human rights issues and develop the content and structure of their National Action Plans (Indonesia, Thailand, Uganda, etc.).

**TABLE 3** Organised discussion forums and the number of participants

Nº	Name	Format	Date	Number of participants
1	Discussion forum organised for private sector companies	hybrid	2 June 2021	15
2	Discussion forum organised among government organisations	hybrid	3 June 2021	30
3	Discussion forum organized for the member business enterprises of "American Chamber of Commerce Mongolia"	hybrid	8 July 2021	11
4	Discussion forum organised among IWFCI affiliates	in-person	4 August 2021	35
5	Discussion forum organised between representatives of the 21 provinces of the NHRCM	in-person	21 August 2021	40
6	Discussion forum with representatives of CSOs and herders of Hanbogd Soum, Southgobi Aimag	online	3 September 2021	4
7	Discussion forum with local government, pastoralists and representatives of civil society organisations in Gurvantes soum, Southgobi aimag	online	7 September 2021	10
8	Discussion forum with different civil society organisations	in-person	13 September 2021	18
9	Discussion forum among the human resources managers of the TOP 20 group enterprises	in-person	16 September 2021	32
10	Discussion forum with the united associations of the Confederation of Mongolian Trade Unions (CMTU)	in-person	17 September 2021	24
11	Discussion forum with Small and Medium Enterprise Agency (SMEA) and SMEs	hybrid	24 September 2021	67
12	A BHR presentation was given and a survey was conducted with about 300 participants from HR management and employees	in-person, online survey	15 October 2021	300
13	Discussion forum with business associations from 8 Aimags of the Central and Khangai regions (in the Orkhon Aimag)	hybrid	11 October 2021	69
14	Discussion forum involving government organizations of 8 aimags the Central and Khangai regions (in Orkhon aimag)	hybrid	12 October 2021	30
15	Discussion forum among CSOs of 8 aimags of the Central and Khangai regions (in Orkhon aimag)	hybrid	12 October 2021	17
16	Meeting with the working group members to report on the progress of the baseline study and exchange views	in-person	22 October 2021	27
17	Meeting with scientists and researchers to exchange views during the development of the baseline assessment	in-person	1 November 2021	5
18	Discussion forum between business associations from 8 Aimags of the Gobi and the Eastern Region (in the Dornogobi Aimag)	hybrid	11 November 2021	59
19	Discussion forum between government and civil society organisations from 8 Aimags of the Gobi and the Eastern Region (in the Dornogobi Aimag)	hybrid	12 November 2021	53
20	Discussion forum involving government, private sector and non-governmental organisations from 5 Aimags (provinces) of the Western Region	online	1 March 2022	110
21	Discussion forum with judges, lawyers, jurists, arbitrators and other legal experts, researchers and representatives of civil society organisations working in the field of redress of grievances.	hybrid	6 May 2022	62
<b>Total number of participants</b>				<b>1,018</b>

# 2

## CURRENT SITUATION OF MONGOLIAN ECONOMY AND BUSINESS



16



**BUSINESS AND HUMAN RIGHTS**

## MACROECONOMIC GROWTH AND VARIATIONS IN THE SECTORS OF ECONOMY

Mongolia's economy reached 37.4 trillion tugrug in 2020, with per capita growth of 11.6 million tugrug (USD 4,128). This is a slight decrease related to the situation resulting from the Covid 19 pandemic.



Over the last decade (2010-2019), Mongolia's real economy grew by an average of 7.7% per year, while per capita economic growth was 5.5%. The breakdown of economic growth by sector shows that average annual growth from 2010 to 2019 was a minimum of 0.7% and a maximum of 20.8%, with differences between sectors.

For example, (1) the finance and insurance sector grew by 20.8%, (2) construction by 11.9% and (3) agriculture by 9.2%, which were the top performers, while the education, culture, entertainment, games and water supply, sanitation, waste management and cleaning

sectors grew by only ~1%. Due to factors such as economic efficiency and the competitiveness of companies in the sector, the framework for managing companies with respect for human rights is created.<sup>19</sup>

## THE STATE OF ENTERPRISES AND ORGANISATIONS IN THE BUSINESS SECTOR

Although Mongolia has been transitioning to a market economy for more than 30 years, some sectors of the economy are heavily regulated by the state and the number and scale of state-owned enterprises in Mongolia is quite large.

For example, in 2020, a total of 459<sup>20</sup> state and local enterprises operate in the five sectors of the economy, and in some sectors the government intervenes directly by regulating the prices of goods and products.

<sup>19</sup> NSO, "Economic conditions of Mongolia" [www.1212.mn](http://www.1212.mn)

<sup>20</sup> *Ibid.*

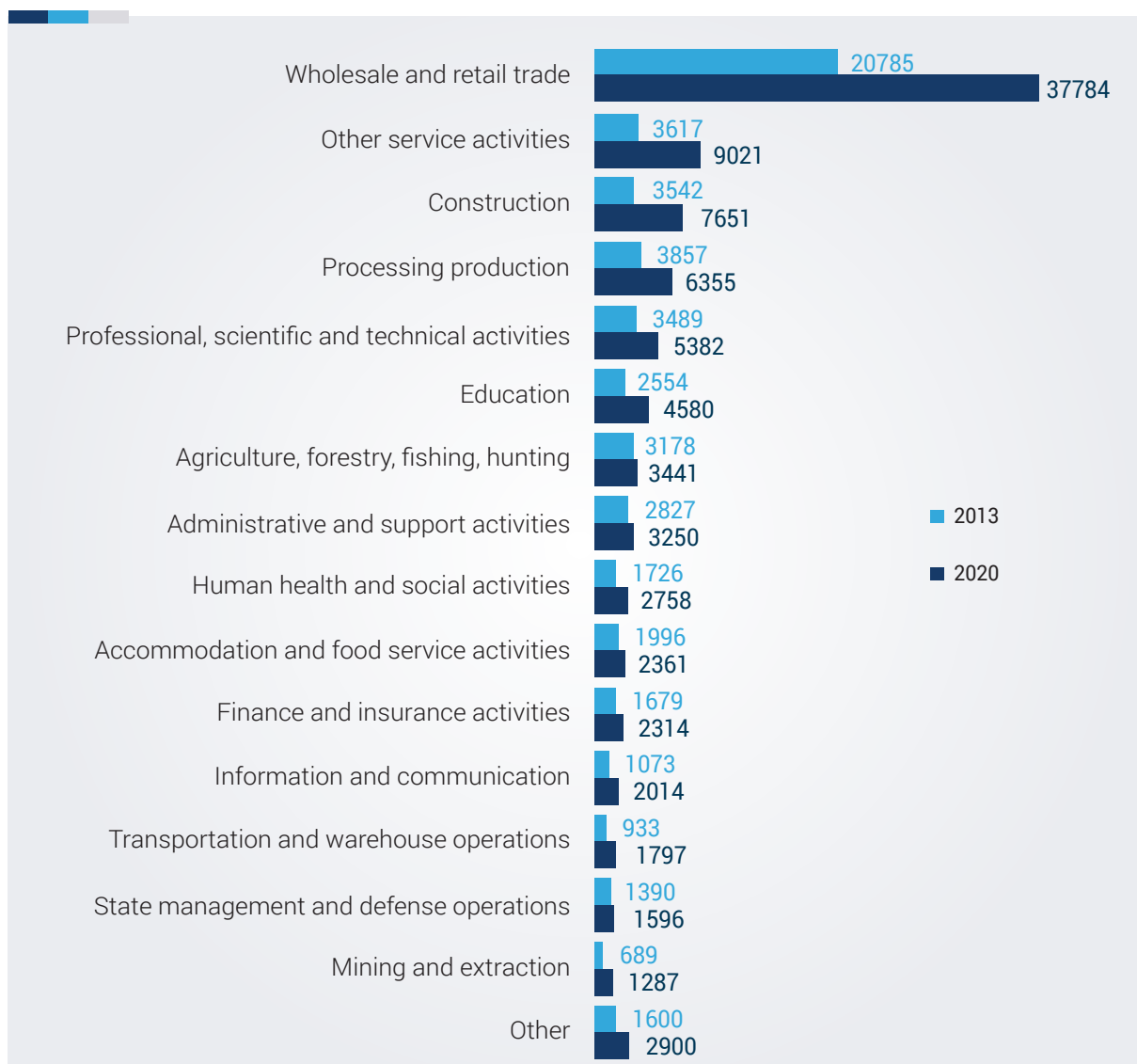


However, the contribution of private sector enterprises to Mongolia's GDP was 72% between 2000 and 2010 and 77% between 2011 and 2020,<sup>21</sup> which shows that the participation of the private sector in the overall economy is continuously growing. According to the official data of the NSO for 2020, 200.4 thousand legal entities were registered with the General Authority of State Registration of Mongolia. Of these, 80% (160,000) are enterprises and 12% (24,000) are non-governmental organisations, while 459 are state-owned enterprises and 4,600 are budgetary institutions. However, the number of enterprises actively operating is

94.9 thousand. Eighty-eight per cent of these enterprises have up to 9 employees, while 2.5% (2.4 thousand) have more than 50 employees. The classification by economic sector shows that 40% of the enterprises are active in wholesale and retail trade and 9.5% in other services.

The graph below illustrates the active business enterprises according to their economic sectors. Over the last 7 years, the number of enterprises in the services, construction and transport sectors has increased the most. (Graph 1)

**GRAPH 1. Companies and organisations actively operating, by number and economic sector (2013-2020)**



Source of data: NSO, Statistical compilation, 2020.

<sup>21</sup> Ibid.



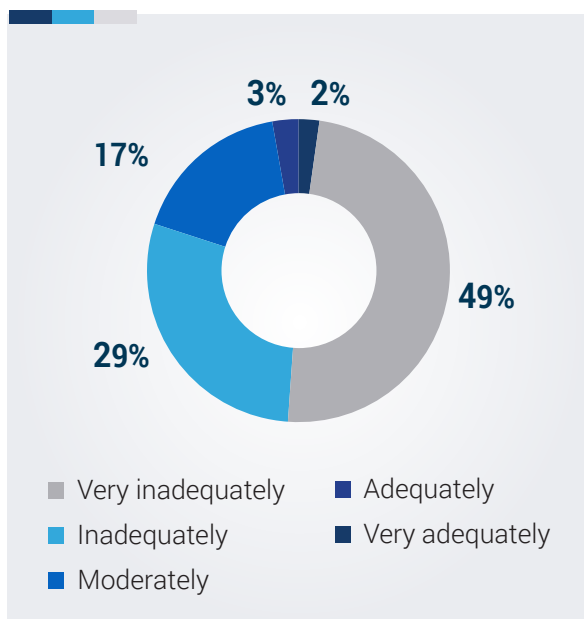
## BUSINESS ENTERPRISES' AWARENESS AND UNDERSTANDING OF HUMAN RIGHTS

A case study was conducted to further define the awareness and understanding of business and human rights. To the question on 'How adequately do governmental administrative bodies provide your company with information and recommendations on the 'UN Guiding Principles on Business and Human Rights?', 5% of the companies that participated in the survey answered "Adequately", while 78% answered "Inadequately". Business enterprises get their information on the "UN Guiding Principles on Business and Human Rights" mainly from IOs' reports and social networks. (Graph 2)

In response to the question "Does your company regularly respect human rights in its operations?" 58% of the companies that participated in the survey answered that they regularly conduct their business relations and activities with respect for human rights. When asked whether the company identifies human rights violations and whether it conducts human rights due diligence, 20% of the participants answered "Yes, it does". However, due to the insufficient

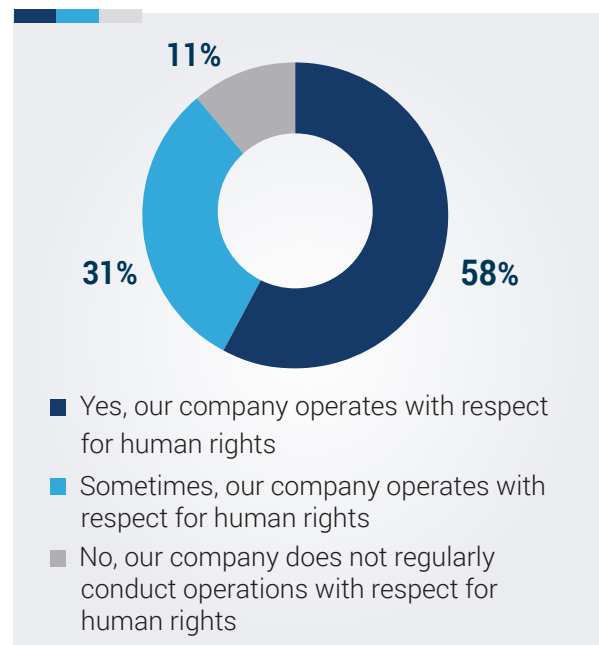
awareness and understanding of companies on human rights due diligence, it is difficult to evaluate the above answer as realistic. It can be concluded that companies are not comprehensively implementing the 'UN Guiding Principles on Business and Human Rights' and that their awareness and understanding of this issue needs to be improved.

**GRAPH 2.** How adequately do governmental administrative bodies provide your company with information and recommendations on the 'UN Guiding Principles on Business and Human Rights'?

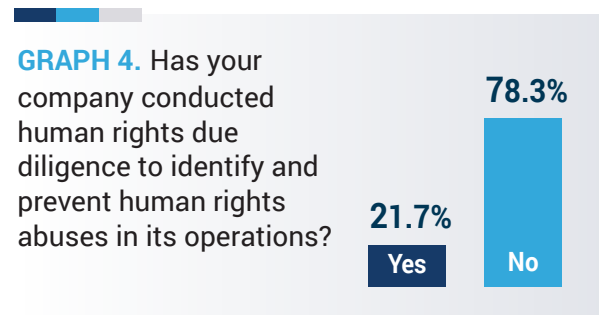


Source of data: Results of the case study conducted by the research team, September, 2021.

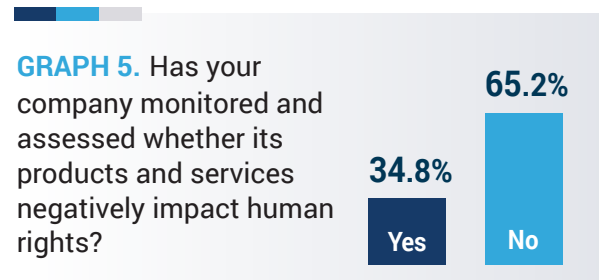
**GRAPH 3.** Does your company regularly respect human rights in its operations?



**GRAPH 4.** Has your company conducted human rights due diligence to identify and prevent human rights abuses in its operations?



**GRAPH 5.** Has your company monitored and assessed whether its products and services negatively impact human rights?



Source of data: Results of the case study conducted by the research team, September, 2021.

# 3

## COMMON ADVERSE IMPACTS AND VIOLATIONS OF HUMAN RIGHTS CAUSED BY BUSINESS OPERATIONS



**BUSINESS AND HUMAN RIGHTS**



The findings of the case studies, multi-stakeholder discussion forums, desk-based research and legal research described in the previous part of the report were compared with the findings of the 2020 Business and Human Rights preliminary baseline study report, and the most recurring human rights issues were ranked and examined in depth in this report.

The “A preliminary baseline study report” conducted in 2020 specifically addressed the following issues to identify the negative impacts and human rights violations of business activities. These include:

1. Forced labour
2. Freedom from all forms of discrimination
3. Protection of freedom of association
4. A safe and healthy working condition
5. Freedom from workplace harassment, violence and sexual harassment
6. Child labour
7. Rights of rural herders
8. Rights of people with disabilities
9. Rights of LGBTI citizens

To validate the issues discussed in this report using primary data sources, 12.2% of the participants in the case study organised among the business enterprises stated that their salary is not qualify as a living wage, 11.3% answered that they do not receive additional proper compensation for their overtime and holiday work, and 10.2% mentioned most issues related to the working environment (decent work, right to safe and healthy working conditions, disability friendly workplaces).

Furthermore, the violation of the right to an effective remedy (9%), violation of the right to work without harassment and violence and (8.1%), and violation of the right to equality and freedom from discrimination on grounds of sex, age and physical development (14% in total) were also most frequently mentioned. (Graph 6)



**GRAPH 6.** Common human rights violations that occur within the organisation in the course of business activities



Source of data: The results of the case study conducted by the research team, September 2021

The following graph summarises the suggestions made during the discussion series. (Chart 7) It shows that violations of the right to work, including the right to a living wage, the right to be free from discrimination, harassment and violence, and the right to a safe and healthy working conditions, were repeatedly reported. In addition to the right to work, rights of groups at high risk of human rights violations, including the right of local people and pastoralists to live in a safe and healthy environment, and the right to an effective remedy are the most common types of rights violated.

In contrast, the business enterprises that participated in the multi-stakeholder discussion forums reported on the problems they face in doing business. They mentioned the unethical behaviour of employees, the disclosure of trade secrets and some cases where their property rights were violated by decisions of the state and local administration. Participants in the 21 discussion forums generally emphasised the need to improve the role of the state in protecting human rights.



**GRAPH 7. Frequent human rights violations raised in the discussion forums**



Source of data: Consolidated results of the series of discussion forums, 2021-2022

Based on the most common issues raised during the case study and the series of discussion forums, the report has been divided into the following two sub-chapters highlighting the

relevant rights:

- (1) Violation of workers' rights by companies
- (2) Violation of human rights of society and the environment by business enterprises

**3.1 Negative impacts and violations of workers' rights caused by business activities include the following:**

- Decent work and right to living wage
- Right to equality and freedom from discrimination
- Right to safe and healthy working condition, right to free from any forms of harassment and violence
- Right to freedom of association
- Other labour rights issues

**3.2 Violation of human rights caused by business operations to society and the environment include the following:**

- The right to safe and healthy food
- The right to live in a safe and healthy environment, to be protected from pollution and loss of ecological balance
- Groups at high-risk of human rights violations. These include: the rights of local citizens, herders, people with disabilities, children, women, ethnic minorities and LGBTI people
- The right to an effective remedy



# 3.1

## VIOLATION OF LABOUR RIGHTS IN THE BUSINESS OPERATIONS



**THE RIGHT TO WORK** is one of the fundamental human rights guaranteed in the Universal Declaration of Human Rights, international treaties and conventions, and the Constitution of Mongolia.

Article 23 of the Universal Declaration of Human Rights states that “Everyone has the right to work,...to just and favourable conditions of work and to protection against unemployment”, while Article 25(c) of the International Covenant on Civil and Political Rights provides that “Every citizen...shall enjoy equal participation in the public service of his country under general conditions”. Furthermore Article 7 of the International Covenant on Economic, Social and Cultural Rights guarantees that everyone has the right to “Fair wages and equal remuneration for work of equal value without distinction of any kind... a decent living for themselves and their families..., safe and healthy working conditions, equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence, rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays”.

Article 11 of the same Covenant guarantees that: “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”, while Article 16(4) of the Constitution of Mongolia states that: “citizens of Mongolia have the right to free choice of employment,

to favourable conditions of work, remuneration and recreation, and to private enterprise. No one may be unlawfully forced to work”.

The right to work, or the complex concept of “decent work” as defined by the ILO, encompasses many rights related to work, including the provision of working conditions that meet the standards of the OHS, access to social security, access to a fair and living wage, freedom from discrimination and guarantee of equal opportunities, work in an environment free from harassment and violence, freedom of association and other rights guaranteed by law.



Below is information on the violations of the right to work that the study found are usually caused by the activities of business enterprises.



### 3.1.a. RIGHT TO AN ADEQUATE LIVING WAGE SUFFICIENT FOR THE PERSON AND THEIR FAMILY

Problems related to wages that are insufficient for a decent standard of living and the lack of fair compensation and adequate remuneration were widespread and still exist in private sector enterprises. For example, a 2003 study of enterprises in the mining sector found that “there were problems with employers’ and workers’ lack of knowledge of legal acts related to employment relationships and other rights, improper work organisation, and worker absenteeism due to lack of standards and assessments, resulting in a lack of compensation and wages”.<sup>22</sup> As the management skills and economic potential of private sector enterprises increase, industrial relations disputes and conflicts may decrease. However, the majority of enterprises operating in Mongolia are small and medium-sized enterprises; therefore, there is a great need to develop their management and economic capabilities. A 2017 survey of SME workers<sup>23</sup> documented common violations, including the presence of workers without employment contracts (7%), workers not receiving a copy of the employment contract (30.4%),<sup>24</sup> workers working up to 14 days without an employment contract (12.4%), workers working more than 40 hours per week (60.5%), and often workers not receiving their overtime pay.<sup>25</sup>

According to the case study conducted by the research team, 23.5% of participants responded that they do not receive an adequate living wage and that they do not receive additional compensation for overtime and holidays. (Chart 6) The fear of becoming unemployed and losing one’s main livelihood despite not being paid a decent living wage encourages the occurrence of other types of human rights violations in the workplace.

An business owner who participated in the discussion series said:

**“ The private sector will only pay wages and social security if they increase their income. The livelihood of their families also depends on them. Now is the time to support the private sector in a situation of high credit criteria and high bank interest rates,”** illustrating that the basis for creating an environment for more decent work and protection of workers’ rights is a favourable business climate.

An assessment of the human rights situation in the hospitality sector<sup>26</sup> has shown that there is a strong tendency to pay minimum wages to workers in this sector. Furthermore, due to the spread of the Covid 19 epidemic and the measures taken to combat it, the quality of life of workers in this sector has deteriorated drastically due to a lack of work and income. Many medium-sized employers do not sign employment contracts with their workers. While there is interest in long-term employment contracts for professionals considered essential to the hospitality industry, such as managers and trained chefs, there are no employment contracts for positions such as caretakers, service staff and waiters. 78% of hospitality workers are women, and they are more at risk of facing challenges such as the lack of a decent living wage and social security.

Furthermore, according to the results of the online survey on labour rights in the construction sector,<sup>27</sup> out of the 172 construction workers who participated in the survey, 81% said that they did not receive any overtime pay at all, while 69% were not paid their wages on time and 51% were responded that their salary is not

<sup>22</sup> NHRCM, “Inspection and study conducted on the implementation of rights specified in basic principles on labour of some sectors of mining and the Labour Code of Mongolia”, 2003

<sup>23</sup> NHRCM, “Some labour rights issues in small and medium enterprises” among the business enterprises in the sectors of trade, services, wool and cashmere industry”, 2017

<sup>24</sup> Section 48.1 of Article 48 of the Labour Code, “The employer or the official appointed by him concludes a written employment contract with the citizen and hands a copy of the contract to the employee”.

<sup>25</sup> NHRCM (n 22).

<sup>26</sup> Centre for the Protection of Children and the Elderly, “Human Rights in the Hospitality Industry” Evaluation Report, 2022.

<sup>27</sup> Ibid.

**GRAPH 8. Minimum wage in Mongolia, in tugriks, 2019**

Source of data: National Statistical Office, [www.1212.mn](http://www.1212.mn)

adequate for living in duplicated numbers.<sup>28</sup> In terms of overtime, 61.5% of respondents said they worked very long hours and at night, while 56.4% said they could not take a break on weekly basis.

Although the government has taken gradual measures to increase the minimum wage, which is expected to be 420,000 tugrug in 2020, it is not enough to cover the subsistence level due to the increase in inflation and the decreasing purchasing power of the tugrik. As shown in the graph below (8), the minimum wage has increased by about US\$70 over the last 13 years, compared to the 2007 level when converted to US dollars. As stated in the Social Insurance Contribution Report of the Social Insurance Agency, in 2019, 80.7 (9.9%) of the 813.7 thousand workers received a salary of up to 320.0 tugrik or less than the minimum wage.<sup>29</sup> The proportion of workers receiving the minimum wage or less increased by 4.7 percentage points compared to 2016.

The discussion forum participant stated,

“Local supermarkets and small shops employ shop assistant and other execution level employees without a labour contract, and there are many violations such as unpaid work during the probationary period, non-payment of wages for reasons that do not meet the requirements, and allocation of very low wages than the agreed amount”. Considering this, it can be deduced that there are many workers in small local business enterprises who receive less than the minimum wage.

Workers in seasonal industries, especially construction, also have to work longer hours during the warmer months. Overtime is not only not remunerated, but also increases the risk of occupational accidents and injuries.<sup>30</sup>

<sup>28</sup> Mongolian Women's Labour Promotion Association, "Labour rights in the construction sector" training, information, research, and checklist preparation project, 2021

<sup>29</sup> NSO, Overview of the average monthly salary of the employees of the business enterprises and organizations, 2019 [https://1212.mn/BookLibraryDownload.ashx?url=average\\_wage\\_2019.pdf&ln=Mn](https://1212.mn/BookLibraryDownload.ashx?url=average_wage_2019.pdf&ln=Mn)

<sup>30</sup> Embassy of the United States of America in Mongolia, Human Rights Report of Mongolia, 2018 <https://mn.usembassy.gov/mn/our-relationship-%20mn/official-reports-mn/2018-human-rights-report/>

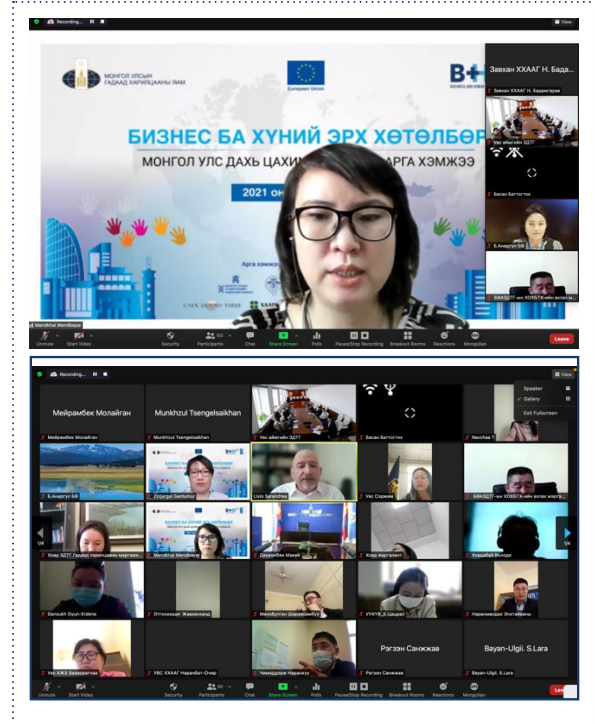




The government of Mongolia has taken concrete measures to promote decent work. The “Concept for Sustainable Development of Mongolia until 2030” adopted by the State Great Khural of Mongolia in 2016 and the “Vision-2050”, Mongolia’s long-term development policy adopted by Decision No. 52 in 2020, include the issue of supporting decent work.

As part of the state policy to support decent work, it is necessary to take comprehensive measures to create a legal environment for all enterprises and organisations that enables a decent work environment in accordance with the definition developed by the ILO.

*“Ensuring human rights in the business sector”  
Western regional online discussion forum,  
1 March 2022*



## Legal research

Article 102 of the revised Labour Law of 2021 states that the following principles shall be observed when determining wages:

- 102.1.1. the level of remuneration of workers performing equivalent work and tasks must be the same;
- 102.1.2. take into account the development of the cost of living of the population and the rate of inflation;
- 102.1.3. the level of the worker's skills and performance must be commensurate with his or her productivity;
- 102.1.4. no discrimination on the basis of sex or on any other grounds;
- 102.1.5. the method of calculating salary and wages must be transparent and clear.

Moreover, according to Article 103.2 of the Labour Law, the National Committee is responsible for approving the salary calculation method, and according to Article 16.1.4 of the said Law, the National Committee is responsible

for monitoring the company's salary calculation method. Although the above regulation is commendable as it provides workers with the opportunity to receive equal pay in comparable jobs without being subjected to gender discrimination and to receive a fair evaluation of their performance, international experience shows that women's right to equal pay cannot be guaranteed by this regulation alone.<sup>31</sup>

Therefore, in addition to the legal regulation of equal pay regardless of gender (Equal Pay), it is advisable to create a regulation (Gender Pay Gap) to regularly examine women's salary income and report it to the public. Taking into account good international standards, it is necessary to include an additional legal regulation in the future that obliges companies with 250 or more employees to conduct an annual survey of the pay gap between male and female employees within their organisation and to report on it to the relevant organisations.

<sup>31</sup> Council of Europe, “Why pay transparency can help reduce the EU's gender pay gap?” 2022 <https://www.consilium.europa.eu/en/infographics/pay-transparency/>



### 3.1.b. THE RIGHT TO SAFE AND HEALTHY WORKING CONDITIONS AND RIGHT TO FREE FROM ANY FORM OF HARASSMENT AND VIOLENCE

Employees have the right to work in a favourable work environment that meets the standards of OHS and is free from any harassment and violence, regardless of whether they work in a private sector or a government organisation. This right is guaranteed in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Constitution of Mongolia and other laws and regulations.

**(1) Compliance with the standards of OHS, (2) intolerance, prevention, detection and elimination of any harassment and violence in the workplace are crucial responsibility for employers and managers to respect the human rights of their employees.**

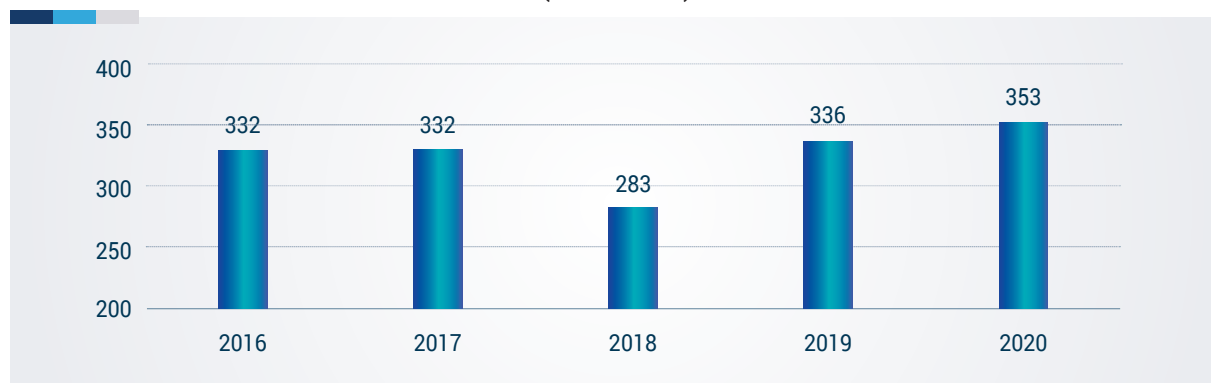
According to the case study findings, the second biggest violation of human rights is the violation of the right to a workplace that meets the standards of OHS and is free from harassment and violence. 10.2% of respondents believe that the right to favourable working conditions is violated, while 8.1% of respondents think that the right to be free from emotional

stress, harassment and violence and 5.2% of respondents answered that the right to be free from sexual harassment at work are the most common human rights violations in business enterprises. (See chart 6)

#### **Occupational health and safety (OHS):**

Organisations such as the ILO and the Confederation of Mongolian Trade Unions are working together to ensure that Mongolia ratifies ILO Convention No. 190 on the Elimination of Violence and Harassment in the Workplace and Recommendation No. 206. Since 2008, Mongolia has adopted and implemented the Law on Health and Safety at Work. According to the “Study on the Social and Economic Impact of Occupational Accidents and Diseases” prepared by the Ministry of Labour and Social Protection, 3,802 people have been affected by occupational accidents and acute poisonings and 1,055 people have died in Mongolia in the last 10 years.<sup>32</sup> It highlighted that 353 new cases of occupational injuries and acute poisonings were registered in 2020, an increase of 5% compared to 2019. Most of the registered cases of occupational accidents and acute poisonings are in the construction, mining and heavy industry sectors.<sup>33</sup>

**GRAPH 9.** The number of industrial accidents and acute poisoning cases registered in Mongolia (2016-2020)



Source of data: National Statistical Office, [www.1212.mn](http://www.1212.mn)

<sup>32</sup> MLSP, “Social And Economic Impact of Industrial Accidents and Occupational Diseases”, 2020

<sup>33</sup> *Ibid.*





*“Ensuring human rights in the business sector” Gobi and Eastern regional discussion forum, 11 November 2021.*

It further mentioned that in 2019, the cost incurred by the total number of deaths due to occupational accidents is 23.1 billion tugrik. In 2019, the cost incurred by serious accidents is 52.9 billion tugrik, while the cost incurred by light accidents is 40.3 billion tugrik. The fact that 54.9% or 70.1 billion tugrik of the costs related to occupational accidents and acute poisonings are borne by individuals or workers and by companies is a matter that deserves attention.<sup>34</sup>

76% of respondents to the survey of employees in SMEs conducted by the NHRCM said that there are rules in their company on the subject of OHS, while 61% answered that there is an employee responsible for this subject and 62% said that a council is active in this area. When asked if there are situations for possible accidents, injuries and damages at work, 49% of the participants answered “No” and 28% answered “Do not know”. The employees who participated in the focus group discussion of NHRCM’s study reported, “Hearing has deteriorated due to working in a constantly noisy environment”. In this context, the experts from OHS stated that there is a need to increase responsibility and change company attitudes towards OHS standards.<sup>35</sup> This illustrates that the violations related to OHS often occur among employees of SMEs.

<sup>34</sup> *Ibid.*

<sup>35</sup> NHRCM (n 23).

<sup>36</sup> Mongolian Women’s Labour Promotion Association (n 28).

A businessman who participated in the discussion forum stated:

**“ The budgetary cost of OHS accounts for 23% of labour costs. But in fact only 10% instead of 23% of these costs are spent on OHS. Due to the high cost to the company, we cannot pay enough attention to OHS.”** This shows that the inability of SMEs to budget and spend the required expenses is one of the reasons for non-compliance with OHS standards and human rights violations. The representative of the construction industry also stated,

**“ When hiring a new OHS engineer, there was a case where the new employee did not know the construction work because he had done his internship in the food industry, and therefore could not fully prescribe the required OHS. Therefore, it is necessary to improve the quality of training institutions that train OHS engineers and to ask students to do internships in places that match their future workplace”.**

43.6% of 172 people who participated in the “Study on the labour rights in the construction industry”<sup>36</sup> responded that they had suffered damage to their health and injuries to their organs as a result of their work, while 17.9% stated that they had been temporarily unable to work.



## Legal research

Issues related to legal regulations for monitoring the implementation of OHS standards and procedures

### 1. Uncertainty about the functions of some officials who have the power to exercise monitoring

According to Article 25.1.1 and 25.1.2 of the Law on Occupational Health and Safety, the governors at all levels and the OHS officials of the Aimags, the capital, the Soums, the districts and the sub-districts are responsible for monitoring the implementation of the law. However, there are no detailed regulations or specific procedures on how these officials conduct monitoring, the scope and limits of their monitoring authority, and how they can be held accountable for failing to perform their duties of monitoring. In an interview with the head of the OHS department of the Centre for Occupational Health and Safety, they said that district governors do not understand their duties when it comes to ensuring the implementation of the standards of OHS in their respective districts.<sup>37</sup>

### 2. Regulation on the establishment of an internal control system for the implementation of companies' obligations OHS and the imposition of sanctions for non-compliance with their obligations

According to Articles 28.1.4, 28.1.5 and 35 of the Law on Occupational Health and Safety, management must assess OHS risks in the workplace, eliminate potential risks, organise regular training, create an internal system to monitor compliance with OHS standards and exercise supervisory functions. According to a 2017 study by the MLSP, more than 70% of all companies that participated in the study had weak internal controls, did not have an integrated registration database to collect information on occupational accidents, acute poisonings and

occupational diseases, and did not have detailed work plans and programmes to OHS prevent risks.<sup>38</sup>

The above illustrates the weak system of accountability for organisations and officials who fail to fulfil their duties in relation to OHS. In other countries, the requirements for organising training related to OHS and carrying out prevention and monitoring functions are regulated in detail by law, and in the case of serious industrial accidents, heavy fines are imposed, up to and including closure of operations.

In Mongolia, Article 10.15 of the Law on Infringement imposes a fine of three thousand units (up to 3,000,000 tugrik) on an official and a fine of five hundred units (up to 500,000 tugrik) on a legal person (up to 5,000,000 tugrik) if the incapacity for work of an employee, if the percentage of incapacity for work of an employee who was incapacitated for work due to an occupational accident, acute poisoning or occupational disease was incorrectly determined, and a fine of seventy-five units (up to 75,000 tugrik) is imposed on a civil servant and a fine of seven hundred and fifty units (up to 750,000 tugrik) is imposed on a legal person if the employee was not admitted to the preliminary and regular medical examination.

The weak form of sanctions for organisations and officials that do not fulfil their responsibilities related to OHS, the low level of fines and the insufficient effectiveness and implementation of the accountability law are the reasons why business enterprises do not fulfil their responsibilities related to OHS and the number of accidents and deaths does not decrease.

<sup>37</sup> T.Solongo, "Governors of aimags and districts are responsible for fully ensuring occupational health and safety" Occupational Health and Safety Center, 2020 <http://www.habemt.gov.mn/content/19847.shtml>

<sup>38</sup> MLSP, "Study report on the implementation of the Law on Occupational Health and Safety", 2017



**Judicial practise in resolving cases related to occupational accidents and damages caused by non-compliance with OHS standard procedures**



Judicial practise in resolving cases related to OHS shows that the enterprise’s management is rarely held responsible, while there are many cases where the company’s OHS specialist is found guilty.<sup>39</sup> The cases of violations and damages decided by the courts due to non-compliance with OHS standards show that the courts and law enforcement agencies do not attach any importance to whether the company’s management has performed its duties in relation to OHS. Due to the weak accountability mechanism for company executives, there is little motivation or desire to take action to implement OHS risk management system in their operations, equip employees with protective clothing, assess and eliminate risks, conduct regular training in a consistent manner, allocate budgets and enforce execution.<sup>40</sup>

Furthermore, it should be noted that the environment and conditions of OHS in heavy industry (mining, transport and construction) are not adequate. This category includes in particular the mining sector, its suppliers and companies providing transport services. A total of 10,000 people are employed in companies providing coal transport and related services.<sup>41</sup> The majority of these citizens are lorry drivers and the survey conducted among them revealed that the top three challenges they face are (1) long queues on the road (41.1%), (2) road damages (15.1%) and (3) poor working and living conditions (10.1%). There are many problems lurking in the background that affect the right to work. The fact that 90% of drivers do not or cannot access health services and that companies do not comply with the relevant OHS rules, regulations and standards are the main factors contributing to the loss of occupational safety. In addition, drivers are not

compensated for overtime and holidays, and there are insufficient mechanisms to protect drivers’ rights in the event of an incident on the territory of the People’s Republic of China after crossing the border.

In addition, the companies responsible for the project tend to consider employees of subcontractors and suppliers affected by OHS on the construction site as not their employees.

A local employee who participated in the discussion forum said on this issue:

**“In terms of suggestions and complaints to the company that is carrying out the big mining project, they do not attach any importance to the work of subcontractors as they assume that they are not their employees. For example, if an employee of a subcontractor suffers an accident while working at the mine, he is not compensated, even though the Labour Code stipulates such compensation. Similarly, if someone suffers a fatal accident in the course of his work, his family will not receive compensation because the company carrying out the project will not pay compensation as they are not its employees.”**



*An online discussion forum with local herders in Hanbogd soum, Southgobi aimag, 3 September 2021.*

<sup>39</sup> Sentencing decision of the intersoum court of first instance of criminal cases in Darkhan-Uul aimag, 26 February 2021, No. 2021/ShTsT/0046 [https://shuukh.mn/single\\_case/54366?daterange=2020/01/01%20-%202021/04/21%20&id=1&court\\_cat=2&bb=1](https://shuukh.mn/single_case/54366?daterange=2020/01/01%20-%202021/04/21%20&id=1&court_cat=2&bb=1)

<sup>40</sup> UNDP, “Business and Human Rights” preliminary baseline study, 2020

<sup>41</sup> NHRCM, Human rights impact evaluation report, 2020



**Freedom from harassment, violence and sexual harassment in the workplace:**

Article 7.1 of the Labour Code of Mongolia prohibits employers, workers and third parties from engaging in verbal, physical, online or other forms of harassment or violence in employment relationships. The results of the case study conducted by the research team show that 13.3% of the participants (the right to be free from mental and physical harassment and violence (8.1%), the right to be free from sexual harassment (5.2%)) responded that the violations of the rights to be free from harassment, violence and sexual harassment at work are common.

As for some representatives of private sector enterprises and SMEs, 25.1% of the respondents to the 2017 NHRCM survey “Some labour rights issues in small and medium enterprises” among enterprises in the trade, services,

wool and cashmere sectors responded that the organisation’s management instigates distress and harassment at the workplace.<sup>42</sup> When further asked to clarify the form of this harassment, 12.2% of respondents answered that management criticises work performance without good reason, 11% said that it verbally insults them, 9.6% answered that it informally makes them work overtime, and 7.3% said that it makes them do work other than that specified in the job description.<sup>43</sup> (Table 3) In addition, 59% of the participants in the “Study on labour rights in the construction industry” answered that they assign more workload than prescribed, 43.6% said that they insult, 38.5% said that they set an unreasonable work schedule without taking into account their living situation.

**TABLE 4.** What type of harassment has been perpetrated in the workplace by SME management?

Nº	Answers	Trade and services sector (%)	Wool and cashmere sector (%)	Total (%)
1	Inappropriate criticism of the finished work and scolding	12.6	11.5	12.2
2	Verbal abuse and insulting	11.1	10.9	11.0
3	Making them work overtime unofficially	8.5	12.1	9.6
4	Demanding them to perform duties other than those specified in the job description	6.8	8.4	7.3
5	Discrimination based on job position	6.2	4.1	5.5
6	Discrimination based on education and social status	2.2	3.1	2.5
7	Discrimination based on physical appearance and health condition	2.2	2.5	2.3
8	Physical assault (e.g., punching, pushing, kicking)	0.8	0.4	0.7
9	Workplace sexual harassment	0.3	0.8	0.4
10	Other	1.3	0.6	1
Cases of different forms of harassment in the workplace in duplicated numbers		<b>566</b>	<b>265</b>	<b>831</b>

Source of data: National Human Rights Commission of Mongolia, “Some labour rights issues in small and medium enterprises”, study conducted among enterprises in the trade, services, wool and cashmere sectors, 2017.

<sup>42</sup> NHRCM (n 23).

<sup>43</sup> Ibid





The 2018 comparative research results<sup>44</sup> show an increase of workplace sexual harassment (WSH) by a total of ~18% since 2004. The Mongolian Women's Foundation has also reported that 1 in 5 women is affected by WSH.<sup>45</sup> 82.1% of 1,120 people, who participated in a study conducted in 2018,<sup>46</sup> reported that they were affected to any types of acts related to sexual harassment in the workplace.

The comparatively different results of several studies on bullying, violence and sexual harassment in the workplace and in labour relations indicate that the definitions of the issues studied are defined differently.

In 2019, a total of 8 people filed a complaint with the NHRCM for being victims of WSH, 2 of which were related to the actions of private sector managers. Under the law, employers are required to provide procedures in internal labour regulations for the prevention, elimination and resolution of complaints related to psychological

and physical harassment, violence and sexual harassment in the context of employment and labour relations, and to create an environment that does not tolerate such conduct. However, according to the NHRCM reports, both employers and workers are hardly aware of the preventive measures required by law.<sup>47</sup>

According to the study of employees working in the hospitality sector,<sup>48</sup> 21% of respondents said they had been harassed or discriminated against in some way at work. Female employees are still more likely to be victims of harassment, violence or sexual harassment because they lack of knowledge on WSH.



## Legal research

### Obligations of the employer related to prevention, as reflected in the revised Labour Code

According to Articles 7.4 and 43.2.3 of the Labour Code, the employer is obliged to conclude an employment contract with a person and to provide a workplace that is free from any kind of discrimination, harassment, violence and sexual harassment and complies with the requirements and standards of the Law on Occupational Health and Safety. This is a form of preventive duty (a duty of care). However, within the scope of the duties set out in the above provision, the types of measures and specific actions that the employer should take are not specifically regulated. Thus, it can be concluded from the

provisions of Article 6.26 (2) of the Law on Infringement that the employer is only obliged to establish rules to prevent sexual harassment in the workplace and to address the complaints received in its labour regulation.

In countries such as Australia and the United Kingdom, there are legal provisions to compensate victims of workplace violence and harassment and to hold employers liable if they fail to take all possible measures to prevent discrimination, violence and harassment in the workplace.

<sup>44</sup> Center for Gender Equality, "On the status, attitude, and comparative study of sexual harassment of girls and women in the workplace, 2004-2017", 2018

<sup>45</sup> *Ibid*

<sup>46</sup> State Great Hural of Mongolia, "Joint consultative meeting of ethics councils of government institutions", 2020 <http://parliament.mn/n/7mco>

<sup>47</sup> NHRCM, "18th Report on the state of human rights and freedoms in Mongolia", 2018

<sup>48</sup> Center for Protection of Children and the Elderly (n 26)



In the case of Australia, for example, the requirements for taking all possible measures include: adopting internal work rules that do not tolerate harassment and violence, training employees on the issue, and internal procedures outlining what liability should be imposed in the event of harassment and violence, how to make and resolve a complaint. If the employer meets the above requirements, it is exempt from liability for the occurrence of harassment or violence in the workplace.<sup>49</sup>

Similarly, it is necessary to define in detail in the Labour Code of Mongolia the employer's obligations to prevent harassment and

violence in the workplace and to enforce their implementation effectively.

### Regulatory issues for resolving complaints concerning workplace sexual harassment

According to Article 7.3 of the Labour Code, a worker, an employer or a third party who is a victim of harassment, violence or sexual harassment in the course of employment or a work relationship may file a complaint with the management, an organisation, a high-ranking official, a relevant non-governmental organisation, a trade union, a labour dispute resolution organisation, a law enforcement agency, a labour inspectorate, the NHRCM or a court, respectively. It is a rather flawed provision as it does not take into account the severity or lesser forms of harassment, violence or sexual harassment and the relevant circumstances. The reason for this is that it is very often executive officers who commit sexual harassment. It is necessary to regulate in detail the employer's obligations in relation to the resolution of the complaint, such as maintaining the confidentiality of the complainant in cases where the victim of sexual

harassment is harassed, discriminated against (victimisation) or placed in a difficult situation, to file a complaint, to meet with the parties and witnesses in relation to the complaint, to obtain their opinions and information, to take steps to prevent the complainant from being harassed, and to record and archive at an appropriate level all proceedings relating to the resolution of the complaint.

In other countries such as Australia and the UK, in relation to sexual harassment in the workplace, the complainant has the right to choose whether to make a complaint informally or formally, and the employer is responsible for providing the complainant with advice and information about the procedures for making a complaint.<sup>50</sup>

<sup>49</sup> Karen O'Connel, "Sexual harassment laws in Australia: An Overview" <http://executive.law.berkeley.edu/wp-content/uploads/2018/05/Australia-Sexual-harassment-Laws-Overview.pdf>

<sup>50</sup> Government of Australia, "Safe work, Preventing workplace sexual harassment", 2021 <https://www.safeworkaustralia.gov.au/sites/default/files/2021-03/Guide%20for%20preventing%20workplace%20sexual%20harassment%20-%20for%20publishing.pdf>

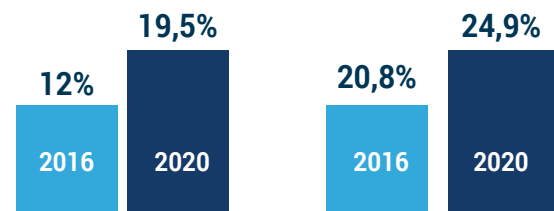


### 3.1.c. DISCRIMINATION IN THE WORKPLACE AND RESTRICTIONS ON THE RIGHT TO WORK

The 1999 Labour Code, the revised 2021 Labour Code and the 2011 Gender Equality Law prohibit gender discrimination in labour relations in Mongolia. Although various studies have been carried out on gender equality in the public sector and many projects and programmes have been implemented to raise awareness and provide information, there are no sufficient measures for the private sector.<sup>51</sup> In particular, there is a lack of studies and data on workplace discrimination in private sector companies at the national level.

The 2020 Business and Human Rights preliminary baseline study concluded that the mechanisms for redressing violated human rights by filing a complaint in case of direct or indirect discrimination in company job advertisements and recruitment procedures are not clear enough and have not been adopted into legal practise.<sup>52</sup> 14% of the business enterprises that participated in the sample survey (gender equality (7%), discrimination (7%)) answered that there is discrimination in the workplace. (See Chart 6) It would be possible to concretely define the problem and develop future actions by expanding the scope of the survey and conducting in-depth studies to identify the common characteristics of these enterprises.

The NSO's official statistical data on average monthly salaries show that the difference between the salaries of male and female employees has increased from 12% in 2016 to 19.5% in 2020, when the occupational group is not taken into account.<sup>53</sup>



The pay gap between male and female employees working as specialists increased from 20.8% in 2016 to 24.9% in 2020.<sup>54</sup> In 2020, "Axon Neurolab" LLC conducted a survey involving 104 companies to "determine gender equality in the workplace of the private sector".<sup>55</sup> In the survey, 1 in 5 enterprises that shared information about their salary network reported that there is a gender pay gap. The wages of male employees in these companies were 13% higher than the wages of female employees in managerial positions and 8.2% higher in all other positions.<sup>56</sup> This realistically shows that there is gender discrimination in similar jobs in the private sector. According to a 2020 study funded by MLSP, there is "discrimination in the workplace: on the basis of age (8%), gender (3%), race and ethnicity (1%), and there are also cases of abusive behaviour and bullying (14%)."<sup>57</sup> The study concluded that although they only represent a relatively small percentage, these problems cannot be ignored.<sup>57</sup> In the study conducted by NHRCM in 2017 involving small and medium enterprises:<sup>58</sup>

<sup>51</sup> NHRCM, "19th report on the state of human rights and freedoms in Mongolia", 2020

<sup>52</sup> UNDP, Preliminary baseline study report, 2020 (n 40)

<sup>53</sup> NSO, "Average monthly salary of employees of business enterprises and organizations" [www.1212.mn](http://www.1212.mn)

<sup>54</sup> Ibid

<sup>55</sup> Zorig Foundation, Axon Neurolab LLC, "Study to determine gender equality in the workplaces of the private sector", 2020

<sup>56</sup> Ibid

<sup>57</sup> MLSP, Shi.Batbayar, "Case study on working conditions in Mongolia", 2020

<sup>58</sup> NHRCM (n 53).



- To the question “Have there been acts of discrimination, restriction or favouritism based on ethnicity, race, age, social status, wealth, occupation, position, education, religion or opinion in your organisation’s labour relations?”, 3.1% of respondents answered “Yes”, 76.7% answered “No” and 10.5% answered “Sometimes”.
  - Yes **3.1%**
  - No **76.7%**
  - Sometimes **10.5%**
- When asked if there were cases of discrimination based on race, ethnicity, religion, political opinion, gender, disability, HIV/AIDS status and sexual orientation in decisions related to hiring, promotion, dismissal, retirement, career development, working conditions and pay, 18.6% of respondents answered “Yes”.
  - Yes **18.6%**
- 31.5% of the 85 people with disabilities who responded to the survey answered, “There have been cases of harassment and bullying by management in the workplace”.
  - Yes **31.5%**
- Regarding the employer’s decision, there are cases of discrimination in hiring. 12% of respondents answered that discrimination occurs because of age, while 8% said it happens because of gender.
  - of age **12%**
  - of gender **8%**

According to the assessment report “Human Rights in the Hospitality Sector” by the Centre for the Protection of Children and Older Persons, there is a general tendency not to hire women with young children or women who are the heads of households in the hospitality sector. The report concluded that such a situation violates women’s right to work. On the other hand, women would hide the fact that they have young children, which can lead to violations of

children’s rights and neglect of children.<sup>59</sup>

Based on these statistical data and research findings, it is assumed that there is some degree of discrimination and restriction in the workplace in private sector companies. In the context of this study, a detailed research on the status of discrimination against workers with disabilities, LGBTI persons, ethnic minorities and foreign nationals working in Mongolia is conducted.

### **On equal rights and opportunities for persons with disabilities**

In 2019, 8.6 thousand persons with disabilities work in 7.7 thousand enterprises and organisations that pay social security contributions. According to the relevant law, the required quota for full-time employment of citizens with disabilities nationwide is 33,000.<sup>60</sup> What then are the reasons why companies fail to employ people with disabilities in 24,300 jobs? On the other hand, why are citizens with disabilities not working?

According to official statistics, the number of people with disabilities has increased by 30% compared to the last 10 years and will reach **108,400** in 2020.

According to 2019 statistics, 91.2 per cent of all citizens with disabilities or **98.8** thousand people with disabilities are of working age.

<sup>59</sup> Centre for the Protection of Children and the Elderly (n 26)

<sup>60</sup> Research Institute for Labour and Social Protection, “Quantitative Analysis of the Employment of Citizens with Disabilities”, 2020





### **On equal rights and opportunities for persons with disabilities**

In 2019, there are 2,106.1 thousand people of working age (15 years and older) in Mongolia, of whom 0.6 per cent or 12.6 thousand reported that they cannot work at all due to a disability.<sup>61</sup> If we subtract these citizens from the 98,800 people with disabilities of working age, we can assume that there are about 86,000 citizens who are able to work (only mathematically).

For persons with disabilities, discrimination in the workplace and in labour rights, as well as violations that restrict their labour rights, are quite common. Therefore, it is necessary to realistically assess whether the companies and organisations in the business sector have an interest in employing a person with disabilities (demand), and if there is such an interest, whether the applicant meets the requirements and labour productivity conditions of the company (supply).

- As mentioned in the NSO's "2019 Labour Force Survey Report", the number of potential workers at the national level (including the population outside the labour force who are looking for work but are unwilling or unable to work + are not looking for work but are willing and able to work) is 58.8 thousand, of which 6% or 3.5 thousand people have not attempted to apply for a job or start a business due to their disability, despite having such an interest.
- In 2019, only 406 persons with disabilities are registered as active jobseekers in the integrated labour market information system of the General Agency for Employment Welfare.<sup>62</sup>

According to this statistical data, people with disabilities are not provided with jobs as required by the relevant law. There are many reasons for this, such as the lack of jobs suitable for them and, on the other hand, the fact that applicants do not meet the employer's requirements in terms of education, skills and experience (this

means that the applicant does not meet the established criteria, which have nothing to do with disability) or the lack of desire or conditions for people with disabilities to seek employment. In other words, the conclusion that companies discriminate against people with disabilities and limit their employment opportunities is rather one-sided. It is necessary to conduct a more thorough investigation. In this context, the director of the human resources department of Central Express CVS LLC or the chain of shops "CU Mongolia", who participated in the discussion forum, said:

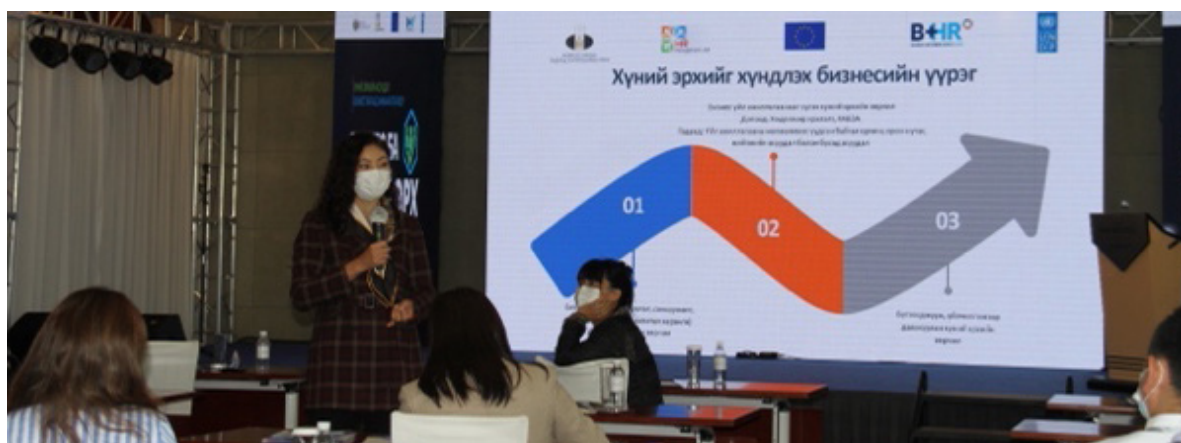
**“ We provide jobs for more than 60 people with disabilities. When it comes to hiring more people with disabilities, the most urgent problem in Ulaanbaatar is the lack of infrastructure and services that should be provided by the government, such as the environment where people with disabilities can come and go to work, public transport, entrances and exits at workplaces. In addition, rental spaces for service purposes are not suitable for people with disabilities to enter and exit. Because of these problems, employment opportunities for people with disabilities are limited. Our company is quite capable of creating jobs for people with disabilities.”**

So it is necessary to create an environment that is accessible to people with disabilities.



<sup>61</sup> NSO, Labour force survey report, 2019

<sup>62</sup> Research institute of labour and social protection (n 62).



*Discussion forum of the directors of human resources of TOP 20 Group companies, 16 September 2021.*

According to the 2019 Employment of Persons with Disabilities Survey, 55.6% of respondents answered that the salary of persons with disabilities is equal to that of other employees at the same level, 22.2% said it is lower, 12% said it is higher, while the rest of the respondents answered “do not know”.<sup>63</sup> It can be concluded that 1 out of 5 companies that participated in the survey pay low wages to people with disabilities in the workplace, which is a sign of discrimination or a form of restriction.

Citizens who participated in the Forum on the Employment Status of Persons with Disabilities organised by the MLSP in 2018 stated,

“ Instead of fulfilling their obligations to employ persons with disabilities, employers are trying to solve this problem with money. Also, the provision of the Labour Code on the employment of up to 1 person with disabilities

in organisations with 25 or more employees cannot be implemented. Especially in rural areas, this provision is not enforced. This is because in rural areas, the organisations with more than 25 employees are only the government institutions, which have no interest in hiring people with disabilities.”<sup>64</sup>

It goes on to say:

“ The concept of a person with a disability is defined in society in a rather wrong context. People with disabilities are people with special needs. However, employers have the idea that a person with a disability is not able to work. For example, if a workplace is willing to meet the needs of a person in a wheelchair with special adaptations, a person with a disability has the opportunity and ability to work.”<sup>65</sup>

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ontslokh.mn*, “Meeting was held on the employment of citizens with disabilities”, 2018 <http://www.ontslokh.mn/134581.html>

<sup>65</sup> *Ibid.*



## Legal research

### Employer's obligations in relation to the employment of persons with disabilities

According to Article 6.1 of the Labour Code, an employer is obliged not to discriminate against a citizen on the basis of disability, and according to Article 144 of the same Code, an employer is obliged to provide an employment opportunity to a person with a disability. Also, article 144.2 requires an employer to employ persons with disabilities in at least 4% of vacancies if the employer has 25 or more employees. If the employer does not comply with these obligations, the payment per eligible job is equal to the minimum wage and is paid monthly to the Sub-fund to Support the Employment of Citizens with Disabilities.

However, this provision, which replaces the employer's mandatory obligation to hire a person with a disability with a payment, has the potential to restrict the right of persons with

disabilities to work. The amount to be paid by the employer if it fails to fulfil its obligation to employ a person with disabilities, as stipulated in Article 144 of the Labour Code, is comparatively less than the amount spent on hiring a person with disabilities.

Therefore, employers may prefer to take a simpler route than hiring a person with disability, adjusting the working conditions and workplace accordingly, and paying him or her the salary by making the payment under Article 144.3 of the Labour Code. Moreover, Article 144 of the Labour Code cannot be implemented in rural areas. As there are few enterprises with 25 or more employees in rural areas, there is a problem of restricting the right to work for persons with disabilities. In view of these problems, it is therefore appropriate to regulate employers' obligations more precisely and to take local conditions into account in order to promote the employment of citizens with disabilities.

### ***On the right to work for senior citizens and pensioners***

During the discussion forum with trade union representatives, several participants mentioned that senior citizens and people of retirement age are dismissed without their desire to continue working being taken into account. According to Articles 145.2 and 145.3 of the Labour Code, it is prohibited to restrict the right to work of seniors who are able to work but receive a pension from the state. However, the trade union representative who attended the discussion forum said,

**“Some educational institutions immediately dismiss an employee and restrict her right to work, even though she is willing to continue working after reaching the age of 55. We want to work with the professional associations to protect the rights that have been violated”.**

According to the annual internal survey of the Veterans Association, 67.9 % of senior citizens want to continue working.<sup>66</sup> In addition, the 2016 NHRCM study on “Social Security and Human Rights of Senior Citizens,”<sup>67</sup> highlighted that due to the lack of detailed regulation of the legal environment related to the employment of senior citizens, there are cases where companies, regardless of whether they are state-owned or privately-owned, immediately dismiss employees of retirement age without taking into account their wishes and suggestions, do not hire citizens of retirement age and do not consider their income from pensions as income, and by limiting the financial independence of senior citizens and financial regulation, they restrict their right to participate in social and

<sup>66</sup> Mongolian Women's Association, “Senior citizens are free to exercise the right to work”, 2020 <http://mwf.mn/dw>

<sup>67</sup> NHRCM, “Study on the social protection and human rights of senior citizens”, 2016



economic relations. In developing a national action plan, attention must therefore be paid to the restrictions on the right to work and the social and economic rights of older persons, and

the focus must be on the enforcement of the law providing for employer respect for the right of older persons to work.

### ***On respect for the human rights of LGBTI persons***

Article 6.1 of the revised Labour Code states: “In employment and labour relations, it is prohibited to discriminate directly or indirectly against, restrict the rights of, or give preference to a person on the basis of ethnicity, language, race, age, gender, social origin, marital status, property, religion, opinion, political opinion, trade union membership, health condition, pregnancy or childbirth, sexual or gender orientation, expression, disability, or appearance”.

**However, the mechanism for resolving cases of sexual or gender orientation discrimination and violation of rights, and for restoring violated rights, is not clear.**

According to the results of a survey conducted by the LGBTI Centre in 2012-2013, 93.3% of people who were asked if they had been denied employment on the basis of their sexual and gender orientation and expression answered that they had not experienced any problems in employment (because they concealed their sexual orientation and gender identity), while 6.7% of respondents who expressed their sexual orientation and gender identity answered that they had been discriminated against by their employers.

In response to the question “Have you ever been discriminated against at work because of your sexual orientation or gender identity?” 11.7% of respondents answered “yes”, 41.7% said they have not been discriminated against at work

because they have not told anyone about it, 40% said it is better to hide it because there will be problems if they talk about it, 3.3% answered they have never worked, and only 3.3% said they have not been discriminated against at work because of their LGBTI status. In response to another clarifying question from those who answered “yes”, respondents stated that they are discriminated against because people do not understand that it is about individual rights and that “they always tell me that I act like a girl and sometimes they discriminate against me by saying that I cannot do this because I am like a girl”.

A 2013 study conducted by the LGBTI Centre on the “Implementation of Sexual Minority Rights in Mongolia” concluded that the right to work of LGBTI persons is weakly enforced. For example, as there is a tendency not to hire anyone who discloses their LGBTI status, they have to hide it. Even if they are hired by hiding their LGBTI status, once they are hired, if they disclose their LGBTI status or it is revealed in any way, they face a lot of discrimination at work, which makes their working conditions unbearable and eventually leads to them leaving their jobs. The study therefore concludes that not only is LGBTI persons’ right to work violated, but their right to an adequate standard of living and adequate housing, which are linked to the right to work, are also directly affected.<sup>68</sup>

<sup>68</sup> LGBT Center, “Implementation of rights of sexual minorities in Mongolia”, 2013





## On respect for the human rights of ethnic minority groups

**“Minorities are persons who do not occupy a dominant position in a country and are distinguished from the majority population by their nationality, ethnicity, religion or language.”<sup>69</sup>**

The right of ethnic minority populations to work and live like other citizens without discrimination or restrictions is reflected and guaranteed in international and national legal documents. The purpose of this study is to examine whether private sector enterprises discriminate against ethnic minorities when it comes to providing them with jobs and guaranteeing their right to work.

In Mongolia, the NHRCM has conducted 3 studies and analyses on the human rights and freedoms of the Kazakhs, Tsaatans and other national minorities and submitted them to the Great Khural three times by including them

in the annual report on the “State of Human Rights and Freedoms in Mongolia”. Currently, programmes such as supporting the education of national minorities, reviving reindeer herding and improving the living standards of Tsaatans are being implemented. The 2014 NHRCM report on “Implementing the Rights of National Minorities” states: “The Tsaatan people practise shamanism, speak the Tuvan and Mongolian languages, and are a national minority with a unique culture.” The report concludes that “their rights to freedom of religion and belief, to use their mother tongue, to education, health protection, employment and other rights and freedoms have not been discriminated against”.<sup>70</sup> It can be deduced that the right to work of ethnic minorities was not violated and not discriminated against. However, there is a lack of detailed research and data in this area and it is necessary to further investigate this issue in the future.

## On the human rights of foreign citizens and nationals living and working in Mongolia

Relations related to the employment of Mongolian nationals abroad and foreign nationals in Mongolia, as well as the protection of their rights, are regulated by the 2001 Law on the Outsourcing of Labour, Recruitment of Labour and Specialists from Abroad. Mongolia has recruited workers from abroad and used them for the construction of paved roads, buildings and the development of the mining sector. In addition, workers with foreign citizenship work in all sub-sectors of the economy, such as car repair and maintenance, training centres, banks and hotels.<sup>71</sup> The number of foreign nationals employed under labour contracts was 5,938 in 2016 and 5,617 in 2021.<sup>72</sup> According to the “Barometric Research Report on Labour Market

Demand” of the MLSP’s Institute for Labour and Social Protection Training, Evaluation and Research, the number of foreign nationals working in Mongolia was 16.5 thousand in 2017 and 10.7 thousand in 2019.

According to the study conducted by the Central Bank of Mongolia in 2014 on the wages of foreign workers working in Mongolia, the average monthly salary of a worker in mining was US\$ 1,432.7, while in construction it was US\$ 318.3, and the average monthly salary of an employee doing intellectual work in mining was US\$3,206.9, while in construction it was US\$ 4,192.6. In 2014, the average monthly salary in Mongolia was 678.7 tugrik in construction and 1,550.8 tugrik in mining.<sup>73</sup> The average wage of a

<sup>69</sup> P.Oyunchimeg, “Implementation of rights of ethnic minorities”, 2014 <https://nhrcm.gov.mn/%D0%BC%D1%8D%D0%B4%D1%8D%D1%8D/%D2%AF%D0%BD%D0%B4%D1%8D%D1%81%D0%BD%D0%B8%D0%B9-%D1%86%D3%A9%D3%A9%D0%BD%D1%85%D0%B8%D0%B9%D0%BD-%D1%8D%D1%80%D1%85%D0%B8%D0%B9%D0%BD-%D1%85%D1%8D%D1%80%D1%8D%D0%B3%D0%B6%D0%B8%D0%BB%D1%82/>

<sup>70</sup> *Ibid.*

<sup>71</sup> Central Bank of Mongolia, “Survey on the salaries of foreign employees working in Mongolia”, 2014

<sup>72</sup> NSO, Study on employment, 2021, [www.1212.mn](http://www.1212.mn)

<sup>73</sup> NSO, “Average salary of business enterprises and organizations”, 2014, [www.1212.mn](http://www.1212.mn)



foreign worker working in construction is ~40% lower than the average wage in construction in Mongolia, and the average wage of a foreign worker working in mining is 41% higher than the average wage in mining (at that time US\$ 1=1,526₮). Although this statistical data is insufficient for comparisons, the difference in wages by industry and by whether the worker is a foreign or a domestic citizen is high.

Although there is relatively little research on the working environment of foreign workers in Mongolia, it is necessary to pay attention to the prevention of discrimination and forced overtime work in relation to the labour rights and working conditions of foreign workers employed in the mining, transport, road and construction sectors.



### Legal research

#### Inadequate regulations to prevent discrimination prior to the establishment of an employment relationship.

The above-mentioned restriction of workers' rights and discrimination against ethnic minorities, LGBTI citizens and foreigners can already be occurred before an employment relationship is established, for example in the recruitment stage. According to Article 6.4 of the Labour Code, the employer is prohibited from asking the candidate questions that are not relevant to his/her duties at the beginning of the employment relationship or at the stage before the conclusion of the employment contract, from collecting information unless provided for by law, or from subjecting him/her to tests to detect medical or mental illness, human

immunodeficiency virus infection or pregnancy. However, there is a lack of means to monitor the implementation of this provision and the system for detecting discrimination before the employment relationship begins.

In other countries, such as Australia, there is a legal provision whereby one can complain to a human rights organisation if one feels that a company seeking to hire an employee is asking for personal information that has nothing to do with the job, or refuses to hire him or her on the basis of personal information.





### 3.1.d. THE RIGHT TO FREEDOM OF ASSOCIATION

Mongolia guarantees the right of employees to freedom of association, the right to form a trade union, and the right to protection from discrimination on the basis of membership or non-membership in a trade union through the Law on Trade Union Rights (1991) and the Labour Code (2021). Article 6.1 of the Law on Trade Union Rights and Articles 11.1.1, 11.1.4 and 11.2.3 of the Labour Code prohibit the employer from hindering the freedom of association of workers and the right to form a trade union, or interfering with the activities of the trade union.<sup>74</sup>

The right to freedom of association gives workers the right to join, participate in and withdraw from an organisation that defends the interests of all members through collective action without interference from the employer or the government. On the other hand, the freedom of collective bargaining and negotiation by associations ensures the possibility of mutual agreement between workers and employers on the basis of equality. Collective bargaining and negotiations have the advantage for the parties of creating fair labour relations, thereby preventing costly labour disputes. Research shows that in countries where collective bargaining has been fully implemented, wage differentials are lower, unemployment steadily declines and there are fewer strikes than in countries where this is not the case.<sup>75</sup>

2.3% of employees of business enterprises who participated in the case study answered that a problem of punishment arises in relation to freedom of association, while 5.8% answered that such a problem arises in relation to the protection of their or other rights and freedoms (see Chart 6). According to the study's findings, problems related to the right to organise are relatively minor, lagging behind other human rights issues such as adequate wages, harassment and discrimination in the workplace in terms of importance. However, the situation

is somewhat different for SMEs in terms of violations of freedom of association and relevant issues. In a case study looking at SMEs, 96% of the companies that participated in the study did not have a trade union, and ~93% of all workers reported that they were not members of a trade union.<sup>76</sup> 24.7% of the participants in this study answered that collective bargaining and negotiations "it exist", 24.1% said that they "do not exist at all", while 39.8% of all participants answered that they "do not know if collective bargaining or negotiations exist". (Graphs 10; 11).

**GRAPH 10.** On the existence of trade unions in the SME sector, by number of respondents



**GRAPH 11.** Trade union membership in the SME sector, by number of respondents



Source of data: NHRM, "Some labour rights issues in small and medium enterprises", study conducted among enterprises in the trade, services, wool and cashmere industries

<sup>74</sup> ILO, "Review of Mongolia's Policy: Freedom of association and collective bargaining", 2016

<sup>75</sup> ILO, Rules of the game (Overview of ILO labour norms), 2019

<sup>76</sup> NHRM (n 23)





2020 “Business and human rights preliminary baseline study” developed by UNDP conducted an analysis based on the information received from CMTU. According to the analysis, workers face the following challenges in forming and joining trade unions. These include:<sup>77</sup>

- Some employers prohibit their employees from participating in trade union activities during working hours (regardless of legitimate rights) or dismiss them for such participation in order to weaken trade union activity;
- Pay deductions in disguised form for holding an elected trade union office;
- Refusing to enter into collective bargaining;

- Some companies use the money withheld from workers’ wages for union taxation for other purposes and do not transfer it to the union;
- Some employers refuse to enter into collective bargaining.

A trade union member who holds an elected office and participated in the discussion forum concluded that

**“ freedom of association is not implemented in small and medium-sized enterprises”.**

On the other hand, even in large companies there are cases of harassment, intimidation and punishment related to trade union activities.<sup>78</sup>



*Discussion among associations of CMTU, 17 September 2021*

<sup>77</sup> ILO, “Review of Mongolia’s Policy: Freedom of association and collective bargaining”, 2016

<sup>78</sup> Some of the highlights on many topics discussed during the trade union forum were: “The private sector and business organisations do not want to understand the trade union committee. There is a perception that the trade union committees are not necessary because they speak on behalf of workers on the issues of night work, overtime, labour relations violations and make proposals on orders and decisions. The collective agreement between our union committee and the company ended in 2018, but it has been 3 years since the company filed a lawsuit against the union committee to prevent the conclusion of a collective agreement. It has been more than a year since the case went all the way to the Supreme Court and back to the first instance, but still there has been no court hearing on the matter. The private sector has money and power. They take advantage of that by requiring workers not to join the union. There is absolutely no freedom of association in our carpet industry. For example, the private sector gets a loan from international organisations like the ADB. When granting loans, these organisations check through surveys whether there is a collective agreement that complies with human rights and whether there is a trade union. To meet this requirement, they use one of the legal provisions by stating that they will not conclude a collective agreement with the trade union committee, but only with the workers’ representatives. Then the employer drafts a collective agreement on its own, forcibly convenes a few people to represent the workers, forces them to agree to the draft agreement it drafts, and concludes an agreement that suits its interests. Consequently, they say that they will not conclude a contract with the trade union committee because they already have a collective agreement. This is a pretend collective agreement. Workers are forced to sign a collective agreement as representatives of unions and workers. In this way they want to conclude a contract that suits their interests. I am a victim of this myself. I worked as a full-time committee chair for three years. Since 2018, our taxes have been blocked immediately, and there is no place we have not approached to solve this problem for our employees without receiving a salary. The main reason why the private sector does not support the Trade Union Committee is that they are willing to exploit workers’ wages and they are not willing to resolve issues such as overtime pay, night time and those arising from other labour relations and other social issues. Neither the government nor the employer nor the worker monitors whether the private sector is complying with the law. The issues of how to create a system to monitor the implementation of the law in the private sector, how to increase the participation of trade union organisations and how to increase the status of the trade union in the private sector are of utmost importance.”



The findings of a previous study in the sector state that “as the number of workers increases, union formation increases, and as the number of workers decreases, union initiative and support decreases.”<sup>79</sup> This study found that both employers and employees do not have sufficient knowledge and understanding of the benefits and opportunities of forming a trade union in the SME sector.

In the future, in order to create an environment that supports trade union activities in large enterprises, educate and raise awareness among employers and workers of SMEs about the importance of collective bargaining, and ensure the independence of trade unions, the law needs to be revised in line with the ideas, principles and standards of the ILO Convention and the UN Declaration on Human Rights Defenders.

### 3.1.e. VIOLATIONS OF OTHER HUMAN RIGHTS IN RELATION TO THE RIGHT TO WORK

In addition to the above human rights violations, the 2020 “Business and Human Rights” Preliminary baseline study also addresses the following violations. In order to update and verify the statistical information on these violations, this section incorporates secondary data sources and the findings of a number of discussion forums and case studies. These include human rights violations such as informal employment, child labour, full restoration of violated rights and redress for damages.

#### **The issue of forced labour:**

Although Article 8 of the Labour Code prohibits forced labour and the Criminal Code considers it a crime punishable by special sanctions, several studies have documented the occurrence of forced labour. For example:

- In Mongolia, there is a tendency to force people into forced labour in SMEs, trade and services, and agriculture. Poor people living below a decent standard of living and migrant workers are most at risk of becoming victims of forced labour.<sup>80</sup>
- Once migrant workers enter Mongolia, they are subject to violations such as having their passports confiscated, being held hostage for their wages, and having their wages transferred to an intermediary organisation or another person. The study’s findings show that document confiscation is common not only among migrant workers, but also among small and medium enterprises.<sup>81</sup>

- 41% of study participants who employed workers in SMEs in the trade and services sector and the wool and cashmere industry said that employers create obstacles by not providing documents, while 22% said that they also do not pay the salary of their completed works.<sup>82</sup>

According to the information in the above studies, there is still a problem with forced labour in SMEs and enterprises in some sectors of the economy. Identifying the factors and causes of the problem and further detailed research would be one of the basic starting points for reducing human rights violations caused by enterprises.



<sup>79</sup> NHRM (n 23)

<sup>80</sup> ITUC CSI, “Trafficking, forced labour exploitation, and migrant workers in Mongolia” (2011) <https://survey.ituc-csi.org/Chinese-migrant-workers-forced.html?lang=es>

<sup>81</sup> Mongolian Lawyers’ Association, “Study on 1930 ILO Convention on Forced Labour (No. 29)”, 2014

<sup>82</sup> NHRM (n 23)



### Child labour:

As 2020 “Business and Human Rights” preliminary baseline study covers the issue of child labour in detail, this report includes the summaries of the main findings.

- In 2012, the UN Children’s Fund, the Global Compact and the Save the Children Fund called on companies to incorporate their jointly adopted 10 principles entitled “Children’s Rights and Business Principles” into their business operations.<sup>83</sup>
- According to NSO statistical data, 16.7% of children aged 5-17 years are in employment. For example, in 2017, a total of 10,435 children were registered as jockeys, while there are data showing that more than 3,000 children are directly or indirectly employed in artisanal mining.<sup>84</sup>
- In a study conducted by the UN Children’s Fund, large companies reported that they do not employ children under the age of 18, while

SMEs employ children between the ages of 16 and 18 to some extent.

- Following the services provided in the environmental zone by citizens and businesses operating recreation and tourism centres, as well as by private host families in rural areas, children aged 13 to 16 engage in activities such as driving tourists on motorbikes, riding horses, camels and yaks, and retailing on a small scale, which exposes them to risk.<sup>85</sup>

According to the findings of these studies, there is not only a lack of an in-house mechanism to specifically register the employment of children under 18, but also a lack of a governmental mechanism for official supervision and legal regulation in Mongolia.



### Informal employment:<sup>86</sup>

Although there are many detailed studies on informal employment in Mongolia, they mostly refer to economic aspects. According to the LSPTARI study, in 2020 there were 481,400 informal workers in the agricultural sector and 209,800 in the non-agricultural sector.<sup>87</sup> The average length of informal employment amounts to 11.8 years. 64.8% of informal workers worked at their workplace for at least eight years.<sup>88</sup> In addition, 53.7% of them are employed in wholesale and retail trade and car and motorbike maintenance, 19.7% in manufacturing, 7.4% in transport and storage, 6.3% in other service industries and the rest in hotels, hospitality and other industries. Informally employed workers

make up 2/3 of Mongolia’s working population.

The study on whether human rights violations occur in these groups, based on secondary data sources, found that the following violations are common:

- Violations of rights concerning adequate living wages, vacation time, social security, etc. are relatively common. The average number of hours per week is 58.1 hours. This is much more than the 40 hours per week required by the Labour Code.<sup>89</sup>
- Access to health care is different for relief pastoralists and informal workers in artisanal

<sup>83</sup> UNICEF, *Save the Children, Global Compact (n 16)*.

<sup>84</sup> *Save the Children Fund, “State of children’s rights”, 2018*

<sup>85</sup> *Center for the Protection of Children and the Elderly (n 26)*.

<sup>86</sup> *Informal workers include: (1) employees whose employment relationships are not fully regulated within the legal framework and who do not receive income tax, sick pay, leave and other social security benefits, (2) employees of a household enterprise who work in the informal sector, (3) employees of households that only produce products for their own final consumption.*

<sup>87</sup> NSO, *Informal employment, [www.1212.mn](http://www.1212.mn)*

<sup>88</sup> LSPTARI, *“Research report on the situation of informal employment in Mongolia”, 2021*

<sup>89</sup> *Ibid.*



mining. It was mentioned that their working environment is not only below basic OSH standards, but also poses the greatest risk to human health.<sup>90</sup>

- Overtime and night and evening work at weekends are common in the hospitality industry. However, they receive neither extra pay nor a day off for overtime and weekend work. Female employees in particular do many tasks in addition to their main job and work overtime, but do not receive adequate additional remuneration for it.<sup>91</sup>

Cases of human rights violations related to informal employment were collected during the discussion forums. For example, an NHRCM worker said,

**“ In the area, it is common for supermarkets, 6 and 8 boutiques not to sign employment contracts with vendors and other helpers.**

**There are many violations, such as employment during probationary periods, non-payment of wages if they do not meet the requirements, or very low wages or deductions from wages under excuses such as products are missing”.**

Informal employment is not only widespread in Mongolia, but human rights violations are also quite common in this sector. There are many human rights violations in agriculture, hospitality, small retail shops and service centres, which were investigated in this study.

Therefore, it is necessary to take comprehensive measures to improve the conditions in the labour market and raise the basic understanding and awareness of employers and workers about human rights.

### **Social security:**

Companies officially pay social security contributions for citizens when they conclude an employment, rental or work contract with a citizen, provide him with a job and pay him a salary. In real life, however, it is common for employers and employees in the private sector to reach an agreement or, at the employer's demand, not to pay social security contributions or to increase disposable income by paying the small amount of contributions. The business owner who participated in the discussion explained:

**“ I run three small businesses. Because of the increase in social security premium, our employees are reluctant to pay it. Since the net income of their salary is not enough, they want to get their entire salary without paying social security contributions. In real life, it is more important for a person to get a higher amount**

**of salary now than to wait for their pension in the future. Because an employer can not raise the salary or does not want to lose their employees, they are forced to break the law.”**

69% of the employees working in SMEs responded that they fill out the social insurance correctly, while 22% said that they do not know about it.

Since workers who work in rural areas do not have an employment, service or performance contract with an employer, they especially do not have the opportunity to be covered by social security. Workers do not want to pay social security contributions and income tax because of their low amount of salary and prefer to receive their salary in full without deduction, while companies have an overriding interest in paying as few contributions as possible.

<sup>90</sup> NHRCM, “Study on the human rights in the small-scale mining sector”, 2013

<sup>91</sup> Centre for the Protection of Children and the Elderly (n 26)





Although this matter may seem advantageous to the parties at the time, it is a violation of the right to future pensions. Although this negotiation is based on a mutual agreement between the employer and the employee, it is necessary to pay attention to this issue as it poses future security risks, including the impossibility of obtaining salary loans, the loss of benefits in the event of temporary incapacity, unexpected accidents and maternity leave, the impossibility of obtaining pensions, the creation of conditions that reduce the possibility of exercising the right to protection.<sup>92</sup>

In addition, the discussion also touched on the challenges employers face in paying social security contributions. An example:

“An employee does not return to work for up to 3 years after maternity leave. During this time, the worker’s social security contributions are paid and the job is maintained. It is necessary for the government to grant exemptions from social security contributions for job retention, especially during the Covid 19 pandemic.” (Minutes of discussion, 29 August 2021)



Gobi and Eastern regional discussion forums. 11-12 November, 2021.

<sup>92</sup> Ibid.



## Legal research

### Align the legal provisions prohibiting forced labour and child labour with international human rights standards

The US Department of Labour conducts an annual study on child labour and forced labour in developing countries. This study is used by many organisations, countries and multinational companies to get a clear picture of the country's laws, legal climate and conditions. 2020 study on worst forms of child labour in Mongolia released by the US Department of Labour,<sup>93</sup> explained that children in Mongolia work under harsh conditions, e.g. in small-scale mining and as child jockeys on horses. Mongolian legislation does not comply with international labour standards. For example, it was mentioned that the minimum working age does not apply to children working in the informal economy and to people who are self-employed. It is therefore necessary to examine the possibilities for improving the legal regulations and to renew some regulations:

- Enforce the minimum working age in the working conditions of the informal sector and the informal economy.
- Include provisions in the Criminal Code to criminalise and punish the involvement of children in pornography and pornographic videos.
- Include in the Criminal Code provisions on the criminalisation and imposition of criminal liability where a child is involved in the cultivation, manufacture by other means, purchase, sale, supply or transportation of narcotic drugs or psychoactive plants.
- Include provisions in the Criminal Code criminalising horse riding for all children under the age of 18 and imposing criminal responsibility.

### State of judicial practise in sentencing offences related to forced labour and the worst forms of child labour

Although crimes related to the worst forms of child labour, forced labour and human trafficking, which are internationally considered serious crimes and must be prosecuted and punished by the courts, are recorded by the police, there are almost no cases of further prosecution and imposition of sentences by the courts.

The shadow report issued by non-governmental organisations for the universal periodic review on the situation of human rights in Mongolia

in 2020, for example, raised the problem that crimes related to child jockeys, forced herding of livestock by children or begging, which are the worst forms of child labour, are registered by the police, but these cases are not prosecuted and does not come to court and those responsible have not been held legally responsible.<sup>94</sup>

<sup>93</sup> US Department of Labor, "Mongolia: Worst forms of Child Labor", 2020 <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/mongolia>

<sup>94</sup> UN Human Rights Council (n 1) paragraph 66.



### 3.1.f. THE STATE DUTY TO PROTECT HUMAN RIGHTS IN LABOUR RELATIONS AND THE SITUATION OF BUSINESS ENTERPRISES

The previous sections have discussed general issues of violations of labour rights and the factors that influence them. In order to clarify the violations and negative impacts on labour rights, the situation of enterprises was examined and whether the State supports enterprises and creates an environment in which they respect human rights in their operations. The state has a duty to protect its citizens's rights from violations and negative impacts, while companies have

a duty to create working conditions and opportunities that respect human rights. The business environment in which companies operate has an important influence on respect for human rights. The following sections of the study therefore examined issues such as (1) what factors influence respect for human rights in corporate operations and (2) what conditions and opportunities the state provides to ensure respect for human rights by corporations.

#### **Problems faced by business enterprises in respecting human rights in their operations:**

12% of the businesses that participated in the case study indicated that the legal provisions for respecting human rights and restoring violated rights in their operations in Mongolia are adequate, while 49% indicated that they are insufficient or very insufficient. (Graph 12)

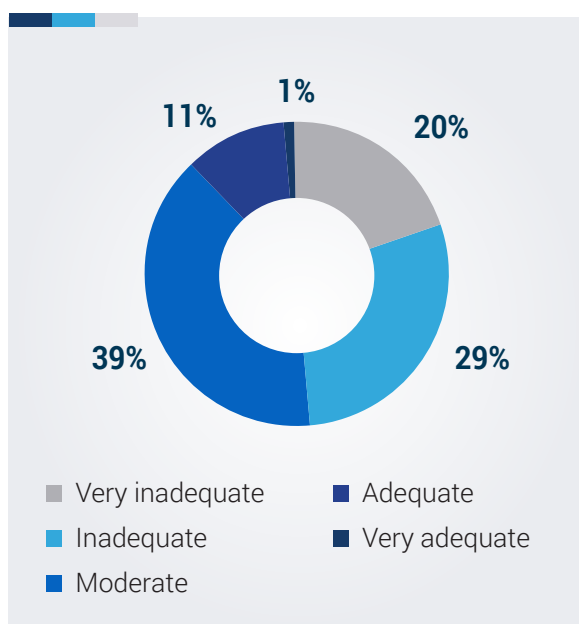
Although the majority of business enterprises (81.3%) that participated in the study on the internal work environment and working conditions in companies responded that they have internal company rules and regulations regarding the submission of employee complaints and their resolution, 61% of companies have included provisions on human rights compliance, while 26% allocate and spend a budget on human rights compliance. Despite internal rules and regulations, the companies that have included human rights compliance provisions are relatively few, while those that spend their budget on this issue are even fewer. Basically, it can be said that 1 out of 4 companies that participated in the study make a real effort to respect human rights.

The research team clarified the challenges business enterprises face in implementing the "UN Guiding Principles on Business and Human Rights". The main challenges in terms of responses were that neither management nor employees give importance to human rights or that there is a lack of knowledge about human

rights. Also, the director of the company who participated in the discussion forum stated,

“ Although certain activities are carried out, there is a lack of systematic knowledge on how to adequately address human rights issues in the business environment and what kind of management and methodology is required.”<sup>95</sup>

**GRAPH 12.** Do you consider that the legal provisions for respecting human rights and restoring violated rights when conducting business in Mongolia are adequate?



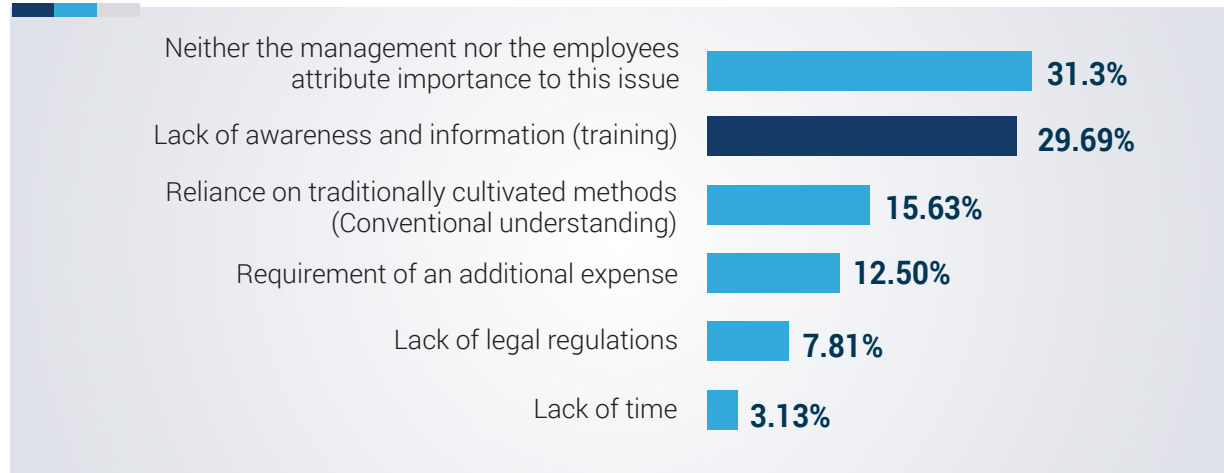
Source of data: Case study by the research team, September 2021

<sup>95</sup> From the discussion forum with the directors of human resources of TOP 20 companies, 17 September 2021...





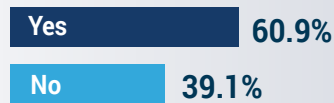
**GRAPH 13.** What factors negatively affect your company's efforts to respect human rights in its operations?



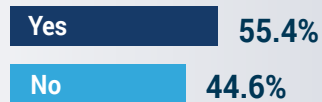
**GRAPH 14.** Does your company have internal procedures for receiving suggestions and resolving complaints from employees?



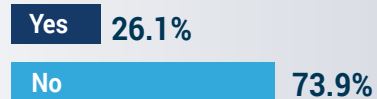
**GRAPH 15.** Does your company have a policy document or internal procedures for conducting operations with respect for human rights?



**GRAPH 16.** Does your company have a system, council, or personnel responsible for receiving, monitoring and resolving complaints on human rights violations?



**GRAPH 17.** Does your company allocate and spend the budget to respect human rights and remedy violated rights?



Source of data: Results of case study, September 2021, Business and Human rights project

According to the case study findings, there is insufficient understanding of business and human rights among business enterprises operating in Mongolia. Government, business

and civil society organisations from 21 Aimags who participated in the discussion forum stressed the need for the government to take appropriate action.



### Suggestions from the discussion forums:

Training of human rights experts in rural areas and dissemination of news and information;

If action is taken to approve a plan to ensure human rights in business, allocate a budget for its implementation, including at least the cost of printing handouts, training and publicity;

Hire a human rights expert in the legal department of the Governor's Office and implement effective activities according to a specific plan in all Soums;

Focus on supporting and building the capacity of civil society organisations working on human rights.

The obstacles that businesses face in respecting human rights in different sectors of the economy need to be examined in depth. Business leaders who participated in the discussion forum raised the following issues. For example, there is a need to improve the understanding and attitudes of company founders, shareholders and management towards human rights. It was noted that due to the lack of labour force and the pressure of paying high taxes and interest on loans, entrepreneurs in rural areas focus too much on paying salaries and covering operating costs instead of focusing on respecting human rights and making a positive impact on society.

“ Our company employs about 40 people in the manufacture of goatskin work gloves. These various types of double taxation (customs, VAT) prevent us from working fairly, growing and expanding our business by entering the international market and respecting human rights in accordance with the laws of Mongolia.

“ In order to fully ensure and improve OHS, which is an important aspect of human rights, it is necessary to increase the average salary and decrease bank interest rates. Also, I would like to receive the VAT receipt for the loan paid to the bank.

“ The high interest rates on loans from banks and non-banking organisations in Mongolia are the biggest obstacle to increasing the wage amount. Savings interest rates have fallen during the pandemic, but lending rates have not. It is very difficult for SMEs to develop

successfully in an environment dominated by bank loans and taxes.

“ Employees working on sophisticated production technologies leave their jobs and start similar private enterprises after gaining experience and mastering the technology. In this case, the company suffers great damage due to the loss of intellectual property, know-how and internal information of the employer. There are also often problems related to the intentional or accidental disclosure of the company's confidential information and intellectual property to third parties.

“ In cases where the managing director implements the tax evasion or other decisions of the company's board of directors, it is the managing director and not the board of directors who is responsible for violations or misconduct.

It was also mentioned in all the discussion forums that citizens have lost the desire to work because of the indiscriminate allocation of social benefits.

“ Families with many children in rural areas live sufficiently on 400-500 thousand tugrik child benefit. In addition, they receive other social benefits such as social and disability allowance. Employees are seeking employees with responsible, ethical and hard-working attitude and offering a monthly salary of 1 million tugrik but they can not find anyone who is willing to work.”



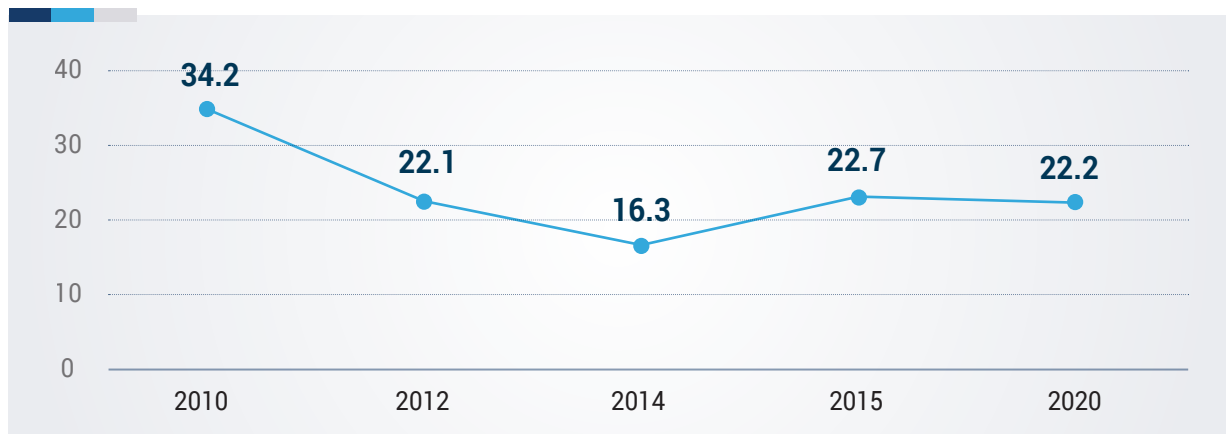
It can be concluded that this is due to the fact that the salary is not sufficient for an adequate living. In addition, factors such as inflation, national wage policies and income inequality have a negative impact on the economic potential of enterprises. Companies that are not able to strengthen themselves financially cannot address human rights issues.

**Inflation:** In the last 10 years, there has been a 28.2% difference between Mongolia's inflation target and the actual level of inflation.<sup>96</sup> This difference forms the basis for the increase in business costs and expenses. Consequently,

this leads to a decrease in economic efficiency and productivity, which is one of the conditions for the violation of workers' rights.

**National Wage Policy-Minimum Wage:** According to the results of the 2018 Socio-Economic Household Survey, one in five workers is classified as "working poor".<sup>97</sup> Over the last 10 years, the proportion of the "working poor" in the total employed population has not decreased, as shown in the graph below. The working poor" category consists mainly of workers in agriculture and the service sector.

**GRAPH 18.** Percentage of citizens under the category of "Working poor" in the total working population (2010-2018)



Source of data: NSO, Study on inequality of income and consumption, 2020

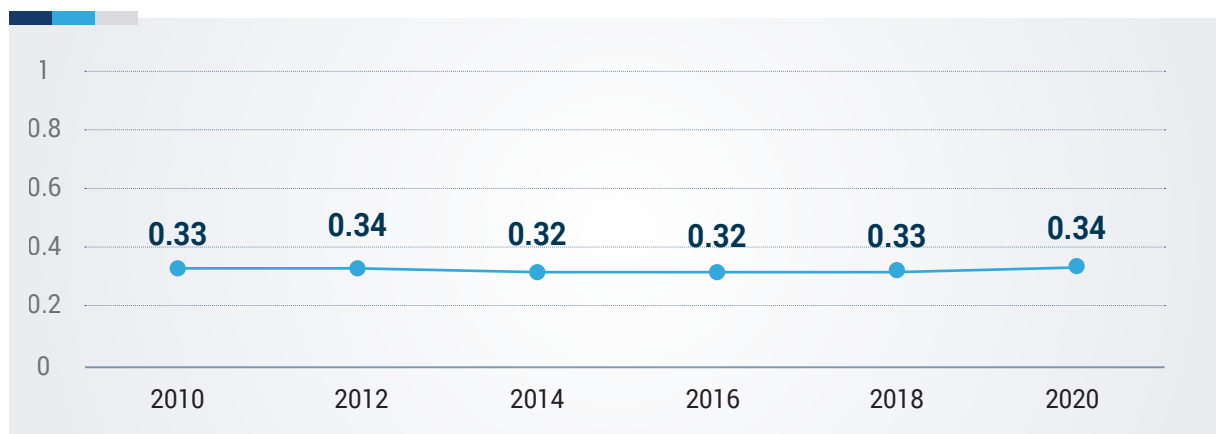
Business enterprises and organisations set their wages based on the minimum wage set by the government. However, the minimum wage in Mongolia is not enough to cover basic needs. In developed countries, it is common to adjust the country's annual inflation rate to the level of wages in order to protect the purchasing power of citizens. In Mongolia, some foreign companies increase their employees' wages in line with the inflation rate, but the majority do not implement this practise.

**Unequal distribution of income:** The very different growth of economic sectors and the unequal distribution of income create the conditions for companies to pay extremely low wages in some

sectors, exploit workers and further violate other related labour rights. For example, the Gini coefficient, which represents income inequality, has not changed significantly in Mongolia over the last 10 years, ranging between 0.32 and 0.34 points. This indirectly reflects the higher wage level of enterprises in high-growth sectors and the lower wage level of enterprises in low-growth sectors (agriculture, trade, services, education, health, etc.) violate workers' rights by not taking the initiative to pay their employees sufficient wages to meet their standard of living and create a pleasant working environment.

<sup>96</sup> Central Bank of Mongolia, "Inflation report" <https://www.mongolbank.mn/listmonetarypolicy.aspx?id=05>

<sup>97</sup> NSO, "Overview of the household socio-economic study, 4th quarter of 2018", 2018

**GRAPH 19.** Gini coefficient of Mongolia, 2010-2020

Source of data: Statistical compilation, NSO, 2020

The most important macroeconomic indicators that have a direct impact on the implementation of the “UN Guiding Principles on Business and Human Rights” by business enterprises and organisations have been briefly mentioned above. Due to factors such as different government policies and regulation of economic sectors, national wage policies, unstable inflation, laws and regulations that are not adapted to cities, urban settlements, infrastructure, population distribution and development characteristics, and government controls in the form of fines and harassment, business enterprises do not observe human rights in their operations.

Although this research report did not aim to examine the negative human rights impacts as a result of state activities and review data and information in this area, it was considered appropriate to include this topic in the report as it was the issue most frequently raised by business organisations during the discussion forums. In addition, the report does not include human rights violations that occur in the implementation of government procurement, social policies and various other special projects and programmes.



## 3.2

### NEGATIVE IMPACTS AND VIOLATIONS OF HUMAN RIGHTS IN RELATION TO SOCIETY AND THE ENVIRONMENT CAUSED BY BUSINESS ACTIVITIES



Although enterprises engaged in business, create jobs in society, form the tax base, manufacture and supply goods and products to meet the demand of the people, there are some cases where they violate the rights of citizens in the area in which they operate, cause adverse impacts and fail to compensate for the damages of such violations.

These include producing and selling products that are harmful to human health and carrying out activities that violate citizens' right to live healthy and safe environment during the production process.

This part of the study examines human rights violations caused by, contributed to by, or directly related to business enterprises outside the labour relations context.





### 3.2.a. THE RIGHT TO BE PROVIDED WITH HEALTHY AND SAFE FOOD <sup>98</sup>

Mongolia meets the food needs of its population with imported commodities and products as well as domestic agricultural and livestock products. Businesses involved in the food supply chain must comply with all relevant health, safety and quality standards and requirements. In 2018, 951 businesses and organisations, as well as 16.2 thousand households grow vegetables and potatoes in Mongolia.<sup>99</sup> Chemicals and fertilisers are used to some extent in the cultivation of agricultural crops. Although it is important to increase crop yields and protect crops from pests and weeds, it is necessary to adjust the dosage of chemicals and fertilisers. Tuul.D, head of the agrochemical laboratory for soils of the Training and Research Institute for Plants and Agriculture in Darkhan-Uul Aimag, explained: "Even if the depleted soils are not fertilised to improve their fertility, they are polluted by the use of strong pesticides."<sup>100</sup> According to this, if chemical fertilisers and pesticides are not used to an appropriate extent, they not only have a negative effect on the soil, but also lead to an increased accumulation of chemicals in the human body.

As of 2021, 305.4 thousand herders supply livestock food products for population consumption.<sup>101</sup> Animal health is important for the production of meat and milk for human consumption. On one of the mass media platforms, a sheep farmer stated,

“ On average, a sheep is given 10-12 types of vaccines, medicines and injections per year, including scheduled injections, scabies and distemper vaccines. It is no different for cows. There is no danger if we can wait until the toxicity of the drugs and injections has left the animal's body.”<sup>102</sup>

On the other hand, according to the interview with the officer in charge of the General Agency for Veterinary Services, 0.01-1.2% of the total livestock were classified as sick, indicating relatively good health of the livestock. The official also informed that the use of veterinary drugs and injections is under control.<sup>103</sup>

“ However, there are many violations that affect the quality and safety of meat,” said an official from the State Professional Inspection Agency (SPIA). This official further elaborated, “For example, there are many violations in transporting wet meat without drying it. When wet meat is stacked in large quantities, it becomes mushy, which leads to it being easily contaminated and affects the quality and safety of the meat. Another problem is transporting meat without storing it.”<sup>104</sup>

Participants at the discussion forum held in the Western Regional Aimags expressed great concern about food safety in Mongolia and put forward the following suggestions and recommendations on food safety and the right to safe and healthy food:

<sup>98</sup> Forum of Mongolian human rights NGOs, National report on the state of human rights”, p.19, 2010, <http://upr-mongolia.mn/images/xupld/Undesniiltgel.pdf>

<sup>99</sup> Ministry of Food, Agriculture and Light Industry, “Overview of the agricultural crop sector”, 2020, <https://mofa.gov.mn/exp/blog/8/71>

<sup>100</sup> Interview with D.Tuul, head of the Soil agrochemical laboratory of the Plant and agricultural training and research institute in Darkhan-Uul aimag, 2010, <https://gogo.mn/r/20m99>

<sup>101</sup> NSO, Uniform statistics database, 2021 [https://1212.mn/tables.aspx?TBL\\_ID=DT\\_NSO\\_1001\\_027V1](https://1212.mn/tables.aspx?TBL_ID=DT_NSO_1001_027V1)

<sup>102</sup> D.Chantsaldulam, “Did the livestock meat in Mongolia “bombarded” with medicines and injections become a poison rather than food?” 2021 <https://ergelt.mn/news/59/single/15637>

<sup>103</sup> S.Tserendulam, B.Ganbold: 0.01-1.2% of livestock herd was sick, which means that we have relatively healthy animals”, 2021 <https://unuudur.mn/159768/>

<sup>104</sup> D.Batjargal, State Professional Inspection Agency, “There are many violations affecting the quality and safety of meat”, 2020 <http://inspection.gov.mn/new/?p=3060>



“ When we talk about human rights, we should also pay attention to food safety. Human rights are often violated in the food sector... Due to the poor quality of food and its negative effects on the human body, people suffer from unprecedented forms of cancer and other diseases.”

“ Food safety is directly related to livestock diseases and the deterioration of grazing conditions. There is a need to educate herders on food safety issues, build capacity and raise awareness.”

There are violations of the right to safe and healthy food at all stages from raw material preparation and cultivation to processing and service. For example, in 2019, 247 people who visited the Zaisan branch of the international fast food chain KFC developed symptoms of poisoning, and 42 people were hospitalized.

The following violations and irregularities, among others, were found during the inspection of the SPIA:

1. The branch has 35 employees. During the inspection of the preventive health examination logbook, it was found that no

examination for contagious skin diseases was carried out, a certificate was issued although the examination was incomplete, the official signature was missing, the photograph was not stamped and the signature of the doctor who carried out the examination was missing. This is a serious violation of the “Procedures for Employees of Commercial and Service Organisations to Conduct Preventive Health Examinations and Tests” approved by Decision No. A/145 of the Minister of Health in 2017;

2. Adequate hygiene practises were not applied in the production of food and there was a lack of supervision between the different stages of production;
3. There was no internal monitoring of employee health and hygiene, and appropriate records were not maintained;
4. Disinfectants were used in the establishment that were not approved by the competent authority;
5. The employees who worked in food production did not have a professional licence issued by the competent training institution;
6. A doctor specialised in hygiene was not appointed and internal supervision was inadequate.<sup>105</sup>

The above studies and reports show that it is necessary to pay special attention to the food safety of the population.



### Legal research

According to Mongolia’s Law on Food, the Law on Food Safety and the Law on Consumer Rights Protection, business enterprises engaged in food production are required to conduct internal monitoring to ensure the safety of food production, storage and distribution, cooperate with non-governmental organisations that protect the interests of the public, and receive complaints from consumers. However, it is unclear how and under what requirements internal monitoring should be

carried out to ensure food safety, production and sale of healthy food, and how it interacts with consumers and NGOs, and there is a lack of research data on this topic. Consequently, initiatives and specific measures need to be taken to effectively implement the provisions for internal monitoring of food producers and for assisting consumers with food safety, as set out in the Law on Food and the Law on Food Safety, respectively.

<sup>105</sup> Info Mongolia, “KFC food poisoning: conclusions from the Specialized Inspection Agency of the Capital City, 2019 <http://www.infomongol.mn/a/162226>





### 3.2.b. THE RIGHT TO LIVE IN A HEALTHY AND SAFE ENVIRONMENT, TO BE PROTECTED FROM ENVIRONMENTAL POLLUTION AND LOSS OF ECOLOGICAL BALANCE<sup>106</sup>

The right of a citizen to live in a healthy and safe environment, to be protected from pollution and loss of ecological balance, as stated in Article 16.2 of the Constitution of Mongolia, is understood as a condition of life, not to be affected by or free from negative impacts on life and health on a daily basis. The healthy

environment is often discussed in terms of the ecological balance and condition of the environment and includes air, water, land and a variety of other related factors. The degree of violation of this right was considered separately for citizens living in the city of Ulaanbaatar and those living in rural areas.

#### Issues related to the right of the citizens of the city of Ulaanbaatar to live in a healthy and safe environment, to be protected from pollution and the loss of ecological balance

This section of the report briefly summarises the data on pollution of the healthy and safe living environment of citizens.

Ulaanbaatar, home to 60% of Mongolia's population, is one of the most polluted capitals in the world. The main source of air pollution in Mongolia is smoke from household chimneys in the Ger District and business boilers, which account for ~80% of total air pollution, while exhaust from vehicles accounts for 10% and exhaust from thermal power plants accounts for 6%.<sup>107</sup> Although there is a lack of research and statistics on the impact of enterprises on air pollution, as of 2020, 186 enterprises with low-pressure furnaces are operating in Ulaanbaatar, which is a source of air pollution.<sup>108</sup> On the other hand, the direct and indirect costs incurred by private sector companies due to air pollution have a negative impact on employers and employees. Not only do employees have to spend 875,000 tugrug on a visit to the doctor, the purchase of medicines, a hospital stay and transport costs, but they also lose their daily wages.<sup>109</sup>

According to the MONTSAME agency, the soil contamination study found that only 1% of the total soil samples taken from Ulaanbaatar city were free of bacterial contamination, while 88% were contaminated. Of these, 53% were slightly bacterially contaminated, 24% moderately contaminated and 11% heavily contaminated. Especially in the capital, the soil around ger districts, large shopping centres, markets and landfills is heavily contaminated with bacteria.<sup>110</sup> According to a 2012 study, the average chromium content of soil in Ulaanbaatar is 56.4 ppm, twice that of uncontaminated soil. In some places it reaches 1512-1548.8 ppm. Around tanneries and pre-treatment plants, chromium contamination is up to 607-555 ppm, which is 20 times higher than non-contaminated soil and 3 to 4 times higher than standard levels.<sup>111</sup>

According to the study "Human Rights Issues in the Leather Industry" conducted by the non-governmental organisation Good Experience", which surveyed more than 400 residents who have lived near the leather industry for 3 years or more, 95% or more of the respondents said

<sup>106</sup> According to the National report on the state of human rights in Mongolia by the NHCRM, "At the national level a total of more than 30 laws, including the Constitution, Law on Environmental Protection, the Law on the Environment of Specially Protected Areas, Law on Water, Law on Springs, Law on Air, Law on Forests, Law on Minerals, Law on Toxic and Hazardous Substances, Law on Household and Industrial Waste, Law on Environmental Impact Assessment, Law to prohibit mineral exploration and mining operations at headwaters of rivers, protected zones of water reservoirs and forested areas regulate provisions on the protection of the right to live in a healthy and safe environment, to be protected from environmental pollution and loss of ecological balance, 2010

<sup>107</sup> Economic Policy and Competitiveness Research Center, "The current state of air pollution in Mongolia", 2022 [https://www.nogoonhutuch.mn/a/179#\\_ftn1](https://www.nogoonhutuch.mn/a/179#_ftn1)

<sup>108</sup> Updown.mn, A.Bat, "It will be prohibited to burn raw coal in the low-pressure furnace from next year", 2020 <https://updown.mn/116615.html>

<sup>109</sup> Legal data, I.Baljinnyam, "We have a right to breath clean air", 2021 [https://legaldata.mn/interview/57#\\_ftn15](https://legaldata.mn/interview/57#_ftn15)

<sup>110</sup> MONTSAME agency, B.Bold, "Soil pollution adversely impacts the citizens' health by 2%", 2021 <https://www.montsame.mn/mn/read/261258>

<sup>111</sup> O.Batkhishig, Soil pollution of Ulaanbaatar city, 2013



that their rights have been violated because they cannot go outside, let their children play outside, open the windows and live in a clean environment due to the very unpleasant, smelly and strong odour emanating from the activities of the leather industry.<sup>112</sup>

The average daily water consumption per person in Mongolia is low compared to other countries. In the city of Ulaanbaatar, for example, more than 200 organisations provide drinking water and clean water to the population and carry out wastewater disposal services with special permission.<sup>113</sup> The average water consumption per person per day is less than 100 litres in urban households and more than 20 litres per person

in rural areas, while the average consumption per person per day in developed countries is about 200 litres. This illustrates that the right to safe drinking water and sanitation in Mongolia is 2-10 times lower than in other countries, depending on housing conditions.

To ensure the right to live in a healthy and safe environment, to be protected from pollution and loss of ecological balance, quality-controlled processes of companies involved in the construction of buildings and housing are very important. Human rights violations occur due to non-compliance with OHS standards and the construction of substandard residential buildings. For example:

**TABLE 5. Some cases on violations of the right to healthy and safe environment**

#	Name of the business enterprise	Cases
1	"Mogul Sky" LLC	Due to the lack of heating connection from the neighbouring substation because "Mogul Sky" LLC did not pay the relevant dues, more than 2,000 citizens from more than 350 households in the "Mogul Town" residential area were affected by the cold in their homes and had health problems. <sup>114</sup> (14 October 2017)
2	"Eco Construction" LLC	A 3-year-old boy standing in front of the elevator of building No. 86 in the 18th sub-district of Bayangol district fell from the 7th floor. Although the residents were charged the condominium association fees, the lift has not been repaired for two years. <sup>115</sup> (27 January 2022)
3	-	The engine of the crane fell from the building under construction in the area of the 20th sub-district of Bayangol district, resulting in the death of the employee M. <sup>116</sup> A 22-year-old man died after falling from a 10-storey building under construction on the east side of the Sun Bridge in the Bayangol District. <sup>117</sup> There have also been reported cases of deaths caused by falling metal from the building of the "Hangard City-1" housing estate under construction near Yarmag, 4th subdistrict of Khan-Uul district. <sup>118</sup>

<sup>112</sup> "Good Experience" NGO, study on the "Human rights issues in the leather factory", 2021

<sup>113</sup> Eagle TV, An interview with J.Batsuur, head of the council for coordinating the use and services of water supply and sewerage in cities and urban settlement areas, 2021 <http://eagle.mn/r/84901>

<sup>114</sup> "Mongolian Public Opinion" information and research LLC, article on "This is the real image of expensive apartments in Zaysan's "Mogul town", 2017 <https://www.medee.mn/single/111039>

<sup>115</sup> "Public Media" LLC, article on "The building where the child died in the elevator belonged to Eco Construction", 2022 <http://time.mn/rpJ.html>

<sup>116</sup> Eagle TV, "Crane fell from the building killing a person", 2016, <http://eagle.mn/r/7429>

<sup>117</sup> Daily newspaper, "A man fell to his death from a building under construction", 2022 <https://dnn.mn/%D0%B1%D0%B0%D1%80%D0%B8%D0%B3%D0%B4%D0%B0%D0%B6-%D0%B1%D1%83%D0%B9-%D0%B1%D0%B0%D1%80%D0%B8%D0%BB%D0%B3%D0%B0%D0%B0%D1%81-%D1%85%D2%AF%D0%BD-%D1%83%D0%BD%D0%B0%D0%B6-%D0%BD%D0%B0%D1%81-%D0%B1%D0%B0%D1%80%D0%BB%D0%B0%D0%B0/>

<sup>118</sup> News article, "Metal fell from the sixth floor of the Hangard City-1 building, and a person died", 2021 <https://murch.mn/2021/09/03/01444440022/>



The analysis of the situation in connection to the above cases reveal the following. These include:

- The Law on Occupational Health and Safety stipulates that the manager of a company is responsible for occupational accidents and injuries that occur in the organisation, but according to judicial practise it is common for the OHS professional of the organisation or the employee involved in the occupational accident to be held liable.<sup>119</sup>
- There are more than 7,000 elevators across the country, of which 6,000 are registered in the capital. About 160 companies are responsible for installing, repairing and operating these elevators. More than 50 of these companies are actively operating. The capital's specialised inspection agency is responsible for monitoring the safety and standards of elevator. However, the agency has only 2 specialists in charge of this issue. Therefore, official sources reported that they "cannot" inspect all elevators.<sup>120</sup>
- According to the SPIA reports, enforcement of

the law is inadequate, although the number of inspectors has been increased and the types of responsibilities and fines for companies that commit violations have been strengthened. In the future, SPIA inspectors need to be trained more effectively in inspection techniques and evidence gathering. Although the newly adopted Law on Infringement has increased fines for violations and misdemeanours, the SPIA believes that the Act increases the inspection burden and weakens the role and involvement of inspectors.<sup>121</sup>

In addition to the above cases concerning the negative impact of corporate activities on the human right to live in a healthy and safe environment, there are regular media reports of various risks and violations, such as private sector buses used in public transport repeatedly catching fire while travelling, or companies operating children's playgrounds that do not meet the required standards and where children are injured while playing or die due to lack of maintenance of these playgrounds.

### Issues related to the right of citizens living in active mining regions to a healthy and safe environment, to protection from pollution and loss of ecological balance

Participants at the Gobi and Eastern Regional Discussion Forum, as well as herders, citizens and local administrators from Gurvantes and Hanbogd soums in the South Gobi Aimag pointed out serious violations of the rights of people living in the mining region to live in a safe and healthy environment, to be protected from pollution and loss of ecological balance, and to have access to clean water. It was also pointed out that the pollution and dust caused by mining and transportation, especially for the citizens who are pastoralists, affect not only human health but also the health of their livestock, contribute to the loss of value of their wool and cashmere, deteriorate pastures and deplete drinking water, all of which are their livelihoods,

and that there has been no solution to these problems for many years. The NHRCM and other organisations have studied the negative impacts of mining operations on human rights and the environment and made recommendations to the government of Mongolia. For example, this study report reiterates the need for relevant government agencies to take into account the suggestions and recommendations made in the NHRCM's 12th and 17th "Human Rights and Freedoms" reports,<sup>122</sup> and 2018 report on "Human Rights Impact Assessment of Coal Mining and Transportation in the Tavantolgoi Mine Deposits" jointly conducted by the NHRCM, the Institute of Policy Innovation and the UNDP.<sup>123</sup>

<sup>119</sup> UNDP, *Business and Human Rights preliminary baseline study report, 2020 (n 40)*

<sup>120</sup> NEWS agency, B. DELGERTSEG, "Is there a place that checks and controls the safety of elevators?" news article, 2022, <https://news.mn/r/2530117/>

<sup>121</sup> UNDP, *Business and Human Rights preliminary baseline study report, 2020 (n 40)*

<sup>122</sup> National Human Rights Commission, *Report on the state of human rights and freedoms (nhrcm.gov.mn)*

<sup>123</sup> Policy Research Institute, *report on the "Evaluation of the human rights impacts of coal mining and transportation operations of Tavantolgoi mining deposits", 2018, 1540519784\_henb-2018-10-23-final-by-inedu.pdf (nhrcm.gov.mn)*



The following are the negative impacts and human rights violations related to the right of local people in active mining regions to live in a healthy and safe environment.

### Dust and air pollution:

Representatives of local citizens who participated in the discussion forum said: “The carriers who transport coal do not stick to their transport routes, drive their vehicles almost over the Gers at various points and cause dust and pollution. When asked to follow their established transport routes, the drivers do not respond by saying, “I choose where to drive”. They further mentioned that the dust kicked up by large vehicles takes time to settle. According to the report on the “Human Rights Impact Assessment

of Coal Mining and Transport in the Tavantolgoi Mine Deposit”, the dust caused by coal transport affects not only the area surrounding the mine and the road, but also the herders’ households living 2 km away, negatively affecting human and animal health. Consequently, the participants of the discussion forum also warned about the possible conflicts between the transport drivers and the herders, which can lead to injuries and deaths.

### Deterioration of drinking water and pastures:

During the discussion forum, pastoralists also expressed concern about overgrazing of pastures, desertification and depletion of drinking water resources for citizens and livestock due to mining activities. As mentioned

in the report on the “Human Rights Impact Assessment of Coal Mining and Transport in the Tavantolgoi Mine Deposit”, there is a risk of pollution of local water sources and damage to watersheds as a result of mining activities.

### Noise:

Households living near the mine have mentioned in the discussion forums that they live in a very noisy environment. The report on the “Human Rights Impact Assessment of Coal Mining and Transport Operations at the Tavantolgoi Mine” also states that the loud noise caused by

blasting and other activities at the mine has a negative impact on citizens’ health. Citizens also expressed great concern about the negative impact on their health from dust, pollution and noise caused by mining operations.

### Adverse impacts on herders’ property and livelihoods:

it was further expressed that the pollution and dust caused by mining and transportation activities not only have adverse health impacts on people involved in livestock production, but also cause negative problems such as. Such as the disease of livestock, which is the main

source of livelihood, the reduction in the value of wool and cashmere, the deterioration of pastures and the reduction of drinking water, resulting in a violation of the right to live in a safe and healthy environment.



**The herders are not upset about the mining activity. They understand and support its positive economic impact. They are only upset about its adverse impacts on their livelihoods. Therefore, it is necessary to establish good standards and provide information to the local people living in the vicinity of the mine in an open and transparent manner**

*Participant of the Gobi and Eastern regional discussion forum, 12 November 2021*



## Other negative impacts and violations caused by the activities of mining companies:

During the discussion forums, pastoralists also explained that there were cases where animals were injured or died because they fell into the ditches and pits left by the mining companies. During the meeting with the residents of Dalanjargalan Soum in Dornogobi Aimag, it was mentioned that children also died while playing. In addition, the report on “Human Rights Impact Assessment of Coal Mining and Transport in

Tavantolgoi Mining Deposits” points out that dogs, with or without owners, guarding the mining sites cause harm to the health and property of pastoralists.

In the context of violations, the question of compensation for damage and redress of rights arises. This issue is discussed in the section on the right to restoration of violated rights and compensation for damages.



## Legal research

Environmental pollution in rural areas and adverse health effects on citizens are directly related to the activities of mining and transport companies. Therefore, it is necessary to take the

following legal and political measures to prevent the negative impact on human rights and to eliminate the existing violations in the areas where there are many mining transports.

## Legislation and regulations to ensure the participation of local citizens

According to the Law on Minerals, the Law on Environmental Impact Assessment and other relevant laws, all production, service, agricultural, mining and infrastructure projects in Mongolia must conduct a detailed environmental impact assessment (DEIA) to illustrate the baseline condition before work begins and to assess in advance how it might change as a result of the work. It must then present the DEIA at a public citizens’ meeting with herders’ participation, certify the proposals received, attach them to the report and submit it to the Ministry of Environment and Tourism.

As stated in the project’s study on “Conditions and opportunities for parties to participate in mining decision-making: strengthening public participation in mining investment planning to ensure the health of people, livestock and the environment in Mongolia” developed by the World Wildlife Fund (WWF) Mongolia Programme Office, and the examination of issues raised during the discussion forums held as part of this study, it was found that the following legal regulations require special attention.<sup>124</sup> These include:

## Ensuring public participation in the process of issuing special permits for mineral exploration and extraction and in the preparation of environmental impact assessments:

As enacted in the *regulations of Articles 17.2 and 17.3 of the Law on Minerals*, the governor of the Aimags is responsible for obtaining the proposals of the Praesidium of the Assembly of Citizens’ Representatives of the Soum in which the area is located and informing the Central State Administration Office for Mining and Geology of the approval or rejection.

Such obligation by the governor of the Aimag and the capital is essential to inform citizens about the project, listen to their opinions, seek their consent or ensure citizen participation in mining exploration activities before they begin.

<sup>124</sup> WWF, “Conditions and opportunities for parties to participate in mining decision-making: Strengthen public participation in mining investment planning to ensure the health of people, livestock and the environment of Mongolia”, 2019





However, it is not clear whether this obligation is effectively implemented in reality, and the results of the meetings and discussion forums with pastoralists and citizens show that implementation is inadequate.

Furthermore, it is not clear whether the international recommendations on free, prior and informed consent (FPIC) are followed in fulfilling the obligation to ensure joint participation, and there is no detailed provision in the legislation on what liability is imposed if this obligation is not fulfilled.

The statutory provision that the governor of the Aimags and the capital can withhold the consent on the grounds specified in the Law is also not clear. It is not clear from the Law whether the Central State Mines and Geology Management Authority would reject the exploration project if it is disapproved.

### Quality and implementation of the cooperation agreement:

It is appropriate to improve the quality of the trilateral cooperation agreement between the local administration, the citizens residing in the impact zone and the mining company and to establish a working group to implement the cooperation agreement. The existing cooperation agreements do not fulfil the objectives of public participation, environmental rehabilitation and social responsibility of the local companies. Analysis of the 2017 model cooperation agreement between Soum Lun in Tuv Aimag and the state-owned company "Avdarkhairkhan" (SOE) revealed that it does not include provisions for environmental impact assessment, health and social impact assessment, but instead includes donation-

Furthermore, the "Regulation on Public Participation in Environmental Impact Assessment" currently in force does not make clear what is meant by "holding meetings with citizens and fully soliciting citizens' suggestions through participatory assessment methods", how suggestions are taken into account at the assessment stage and in what context suggestions are considered fully solicited.<sup>125</sup>

This Regulation does not contain provisions on the mechanisms to ensure participation, on how proposals should be taken into account and on the types of sanctions if proposals are not taken into account.

It is therefore necessary to clarify the functions of local government to ensure public participation, to implement a specific policy on the issue of public participation in the development of the impact assessment, and to guarantee the participation of local citizens under this policy.

like provisions such as improvement of the parking area outside the Soum governorate and development of the archery field.

The cooperation agreement must clearly set out mandatory provisions such as minimising the negative impacts of the company's operations, defining responsibilities for preventing human rights violations, guaranteeing citizens' rights to information and external monitoring, and clarifying the functions of local government to ensure public participation. It is also important to regularly monitor the implementation of the cooperation agreement and to transparently disseminate information about the process.

<sup>125</sup> "Regulations on Public Participation in Environmental Impact Assessments", approved by the Minister of Environment and Green Development as an appendix to Order No. A-03 of 2014, dated 6 January 2014



### Establishment of the impact zone:

Mongolia still lacks regulations for environmental, social and human rights impact assessment of mining activities, as well as for land clearance and resettlement in accordance with the FPIC Principles of the International Human Rights Standard. There is a lack of a legal environment to realistically identify the potential harm and impact on citizens who may be affected by the negative impacts of mining and the environment,

and to protect citizens' interests in land eviction and resettlement. Therefore, in order to protect the interests of citizens living in the impact zone of mining and related transport and industrial operations, it is necessary to create a legal environment that details the determination of the impact zone, the legitimate interests and compensation of citizens in the impact zone.

### MONITORING. Monitoring whether mining activities are carried out in accordance with the law and whether they have negative impacts on human rights and the environment

#### Legal regulations to monitor human rights violations and negative environmental impacts caused by mining activities

One of the most important prerequisites for the development of responsible mining in Mongolia that respects human rights and does not have a negative impact on the environment is the establishment of an adequate and optimal control and monitoring system. However, the NHRCM study report concluded that "although companies engaged in mining take into account issues related to safety of transportation routes and equipment, as well as negative impacts on the external environment when obtaining a special licence, they do not implement them in practise and the plan is only on paper to obtain

a special licence."<sup>126</sup> The following laws govern the relations concerning the monitoring and inspection of mining companies:

- The Law on State Monitoring and Inspection;
- The Law on Minerals;
- The Law on Common Minerals;
- Law on the Environmental Protection;
- The Law on Environmental Impact Assessment; and
- The Law on Infringement.



#### Law on State Monitoring and Inspection

According to Article 3.1 of the Law on State Monitoring and Inspection, state supervision and inspection consists of monitoring and inspection by the State Great Khural, the President, state audit organisations and state administrative bodies ("professional inspection"), and supervision and inspection by the Constitutional Court, courts, prosecutors and local self-government bodies in accordance with this Law. According to Article 3.3 of the same law, the monitoring and inspection of the government, ministries, agencies, governors

of the capital, aimags, sums, districts, baghs and sub-districts, professional inspection of institutions authorised by law, and relations related to the monitoring and inspection of local self-government bodies are governed by the Law on State Monitoring and Inspection.

The Open Society Forum's analysis of the legal provisions implementing the oversight and monitoring functions of the government, ministries, agencies, governors of the capital, aimags, soums, districts, baghs and sub-

<sup>126</sup> NHRCM, "Impact of mining activities on human rights in Mongolia" research report, 2012





districts concluded that these provisions are unclear and not clearly implemented.<sup>127</sup>

For example, if the common grounds and procedures for state monitoring and inspection as set out in Article 5 of this Law are relevant only to the monitoring and inspection activities of the professional inspection organisation, and Articles 8.1.1 and 12.1.2 of the same law stipulate that the governors of the capital, the Aimags, the Soums, the districts, the Baghs and the sub-districts, the Praesidium of the Assembly of Citizens' Representatives of the

Aimags, the capital, the Soums and the districts **have full authority to carry out monitoring and inspection of all organisations and business enterprises operating in their respective areas**, irrespective of their jurisdiction, to assess whether they are implementing the laws and regulations adopted by the government, their organisations and the Assembly of Citizens' Representatives. **However, it is not clear how these powers will be implemented and how monitoring and inspections should be carried out.**

### Regulation of monitoring and inspection to be carried out under the Law on Minerals

Article 10.1.8 of the Minerals Law requires the state administrative agency responsible for geology and mining to monitor and control activities related to the exploitation of strategically important mineral deposits, and Article 11.1.10 requires the department of that organisation responsible for mining affairs to assess the impact of mining production on national economic and social sectors and to draw conclusions. Also Article 11.1.14 of the same law requires the department responsible for cadastral affairs to be responsible for carrying out unified monitoring of activities related to exploration and operating permits. According to Article 11.3 of the same law, the professional supervisory authority is obliged to monitor the implementation of laws and regulations on minerals and activities related to prospecting, exploration and exploitation of minerals by the state, while under the Article 12.1.3, local administrative and self-government bodies are authorised to monitor the implementation of the obligations of the holder of the special permit related to the protection and rehabilitation of the environment, the protection of public health and payments to the local budget.

However, the Law on Minerals does not contain detailed regulations on the implementation of the monitoring functions and powers of the above-mentioned local administrative and self-governing bodies. In the study report prepared by the Open Society Forum, the representative of the Ministry of Mining and Heavy Industry stated,

“ The issue of how to implement the full powers of the central state administrative body responsible for geology and mining to monitor the operation of strategic deposits, as stipulated in Article 10.1.8 of the Law on Minerals, remains unclear, and there is no unified position or regulation on how monitoring should be carried out, and the scope and limits of the monitoring mandate. In this context, our Ministry has applied to the Ministry of Justice and Internal Affairs to issue a specific regulation on this issue, but it was rejected on the grounds that the law does not grant them the power to issue such a regulation”.<sup>128</sup>

<sup>127</sup> Open Society Forum, “Inspection and monitoring system and its effectiveness in the mining sector” research report, 2022

<sup>128</sup> Ibid.



## Regulation of monitoring and inspection to be carried out under the Law on Common Minerals

According to Article 4.1.1 of the Law on Common Minerals, “common minerals” means an accumulation of widespread sands, gravels, brick clays, cobbles, granites and loose stones that can be used for roads and building materials, and under Article 10.2, the state monitoring of the implementation of this Law and the exploration and exploitation of common minerals shall be carried out by the Professional Control Authority.

In addition, as stated in Article 11.2.3 of the same law, the Assembly of Citizens’ Representatives of the Aimag and the Capital has the power to monitor how the licence holder fulfils its obligations in relation to public health, the environment, rehabilitation, mine closure and payment to the local budget.

As mentioned earlier, while it is clear who will carry out the monitoring, there is also a lack of detailed provisions for monitoring the mining of mineral resources.

## Regulation of monitoring and inspection under the Law on Environmental Protection

According to Article 26.1 of the Law on Environmental Protection, the monitoring of the protection of the environment, the proper use of its resources and its rehabilitation **shall be carried out by a professional supervisory authority**. Article 26.3 states that the State Inspector General, the State Inspector General of the sector, the State Chief Inspector, the State Chief Inspector in the Aimag and the Capital, the State Inspector, the State Chief Inspector in the Soums and Districts, the State Inspector and the Inspector of Environmental Protection shall work in the central authority for professional supervision and inspection. **Also as stated in Article 16.2.4 of the said law, the Assembly of Citizens’ Representatives and the Governor of the Aimags and the Capital are responsible to monitor the activities of enterprises and organisations in their area, irrespective of their jurisdiction, in relation to environmental protection, resource use, rehabilitation and compensation for environmental damage, and to take measures to remedy any violations found, and, if necessary, to suspend the activities of the enterprise or organisation affecting the environment within the scope of their powers or refer the matter to the competent authority for resolution. Furthermore, under Articles 17.2.3 and 17.2.4, the Citizens’ Representative Meeting and the Governor of Soums and Districts**

have the powers to monitor the use of natural resources by citizens, business enterprises and organizations, accept the forests and plants cultivated, animals raised, restored and improved lands and water points by them, carry out monitoring and inspection on the activities of business enterprises and organizations in their territory, regardless of their jurisdiction, on the protection of the environment, appropriate use of its resources, and rehabilitation, demand compensation for environmental damage, take measures to eliminate the detected violations, and if necessary, suspend the operations of the business enterprise or organization that adversely impacts the environment within their capacities or refer the matter to the competent authority for resolution.





Under Article 18.1.2 of the same Law, the Citizens' Representative Meeting and the Governor of Baghs and Subdistricts have the powers to monitor the protection and exploitation of natural resources for public use respectively.

In the above-mentioned Law on State Monitoring and Inspection, the Law on Minerals and the Law on Environmental Protection, in addition to the professional inspection authority, other authorised organisations and officials also have the full power of monitoring and inspection, but this power is not regulated in detail, the functions related to the full power are not defined, and it

can be concluded that the authorised official does not have a mandatory duty to monitor the negative impact on the environment and human rights violations in his or her jurisdiction. Compared to the Law on State Monitoring and Inspection and the Law on Minerals, the Law on Environmental Protection regulates the supervisory powers of the governors of the capital, the soum and the districts in more detail, for example by providing for measures to be taken to remedy the violations. However, it is not clear what kind of measures are to be taken under the term "measures to remedy violations"

### Regulation of monitoring and inspection to be carried out under the Law on Infringement

According to Chapter 7 of the Law on Infringement, the officer responsible for investigating and remedying offences and infringements relating to environmental protection, pollution and illegal activities is the Environmental Protection Officer with the powers of a State Environmental Inspector, a State Occupational Inspector, an Authorised Police Officer or an Environmental Police infringement Investigator. However, as mentioned in the Open Society Forum study, the Law on Infringement contains dual functions in relation to the jurisdiction to inspect and remedy offences committed by mining companies, such as the overlapping of the powers of authorised police officers with those of state inspectors and the overlapping of the jurisdiction to inspect and remedy offences of the environmental protector with those of the state professional inspector.<sup>129</sup>

Under the Law on Environmental Protection, the State Inspector General, the State Inspector General of the Sector and the State Chief Inspector at the Central Authority for carrying out professional inspection and supervision related to environmental protection, the State Chief Inspector and the State Inspector in the

Aimags and the Capital, the State Chief Inspector, the State Inspector and the Environmental Reservator in the Soums and Districts shall exercise their respective functions and these officials shall have the power to obtain the information and facts necessary for supervision in accordance with Articles 27.1.2 and 27.1.3 of the same law from the concerned citizens, enterprises and organisations, to require the elimination of the violations from the citizens, enterprises and organisations that have caused harmful effects on the environment by violating laws, standards and the maximum permissible amount, and to temporarily stop their activities in accordance with the procedures stipulated in the Law on infringement. However, as mentioned in the Open Society Forum study, there is no way to exercise this right in practise. Inspectors other than the state inspector, including local inspectors, do not have specific, comprehensive powers and even have difficulty obtaining statistical data from legal entities.<sup>130</sup>

<sup>129</sup> *Ibid.*

<sup>130</sup> *Ibid.*



## Challenges in monitoring the activities of mining companies by the professional regulatory body

“ Inspections that rely mainly on paper checklists are not able to effectively assess negative environmental and social impacts.

The Professional Regulatory Authority uses the “Inspection and Monitoring Checklist for Assessing the Environmental Impact of Production, Services and Activities”<sup>131</sup> as the main criteria for environmental inspection and monitoring of the mining sector and includes the Open Pit Inspection Checklist, the Underground Mining Inspection Checklist and

the Concentrator Plant Operation Inspection Checklist. In its study, the Open Society Forum has analysed in detail whether this inspection and monitoring checklist can be used by the professional inspection authority to clearly verify the obligations of companies operating in the mining sector under the provisions of the Minerals Act and environmental laws.<sup>132</sup>

“ As the research shows, it is not possible to realistically assess the negative impact of the mining company on the environment and society using the paper checklist issued by the professional inspection organisation, as it can only verify that the required documents are in place, but not whether the content of the documents is correct or complies with the laws.

For instance, according to Article 25.1.7 of the Law on Minerals, an application for a special minerals licence must be accompanied by an environmental impact assessment. The environmental impact assessment should contain the information listed in Article 8.4 of the Law on Environmental Impact Assessment such as the activities, including statistical data and concrete steps to be taken to minimise the negative impact on the environment. However, the checklist can only verify whether the EIA has been approved by the central

state administrative authority, not whether the content of the EIA complies with the relevant laws, whether it is realistic and whether the content of the data is correct.

This issue was raised by herders from the Gobi Aimags during the discussion forums on “Ensuring Human Rights in the Economic Sector”. They explained, for example, that there are many cases of falsification of the minutes of public citizens’ meetings in Bagh and Soum and falsification of signatures, but no investigation has been carried out.

## The workload of the professional inspector is very heavy

According to the study conducted by the Open Society Forum, there are four chief inspectors and two state inspectors in the SPIA’s Environment, Geology and Mining Inspection Department, while in the Aimags where mining activities are concentrated - three inspectors in Dornogobi Aimag, three in Dornod Aimag, two in Selenge Aimag - and one state environmental

inspector in each of the other Aimags.<sup>133</sup> However, as of December 2021, a total of 333 exploration and exploitation licences are valid in the Dornogobi Aimag alone. The heavy workload of the professional inspectors and the lack of staff is one of the difficulties in actually carrying out the effective inspections.

<sup>131</sup> State Professional Inspection Authority, “Inspection and monitoring checklist for assessment of the environmental impacts of production, services, and activities”

<sup>132</sup> *Ibid*, p.62.

<sup>133</sup> *Ibid*, p.71



## International best practises for monitoring negative environmental impacts of mining activities

Australia and Canada have a highly developed mining sector and have therefore enacted strict laws. These countries have sophisticated monitoring and inspection systems to prevent human rights violations and negative environmental impacts from mining activities, and to redress violated rights. In Australia, the Department of Environment Regulation is the main organisation responsible for the control and monitoring of mining. The Department of Mines, Industry Regulation and Safety is also responsible for environmental monitoring and control in the mining and oil sectors.<sup>134</sup> The main purpose of monitoring and inspection is to prevent risks to the environment and public health. In the guidelines given to companies in the context of monitoring the implementation of environmental protection legislation,<sup>135</sup> **mining companies themselves are required to assess their activities, keep records and notify the competent authorities if violations are found or if there is a negative impact on the environment.**

If the legal person fails to notify the relevant authorities within the time prescribed by law as soon as the adverse effects are identified and has not complied with its record-keeping obligations, the offending legal person will be liable to a fine of up to 500,000 Australian dollars. Depending on the circumstances and the frequency of the breach of the obligations set out in the Act, sanctions may also include a warning, suspension of activities, imprisonment under the Criminal Code and sentencing by the courts.

The above-mentioned guidelines clearly and in detail regulate the measures that mining companies are obliged to take in connection with the implementation of laws on environmental protection and what liability is imposed in the event of non-compliance with this obligation.

<sup>134</sup> *Ibid*, p.75

<sup>135</sup> Australia, Department of Mines, Industry Regulation and Safety, "Guidance Note on Environmental Non-compliance and Incident Report" <https://www.dmp.wa.gov.au/Documents/Environment/ENV-admin-118.pdf>





### 3.2.c. ON THE RIGHTS OF GROUPS AT RISK OF HUMAN RIGHTS VIOLATIONS



The desk-based research and the issues raised by the participants in the discussion forums show that the rights of citizens with disabilities, children and pastoralists are often violated by corporate activities. It is therefore necessary to address the rights of these groups.

#### **Rights of citizens with disabilities:**

26 organisations in the most developed area along the district roads of Ulaanbaatar city centre were assessed for their accessibility to people with disabilities. It was found that 50% were not accessible at all, 27% had non-standard ramps, 15% had ramps but stairs inside, and the remaining 8% had a reasonable ramp but no stairs or toilet inside. According to the study conducted in Ulaanbaatar city, 52.2% of all hospitals had inaccessible paths from the car park to the hospital, 18.2% had no ramps and 69.1% had non-standard ramps. The study also found that 71.9% of hospitals did not have elevators and 94.7% of hospitals did not have toilets specifically designed for use by people with disabilities. The government commission to review the quality and standard of new buildings includes representatives of persons with disabilities, but most of them have not implemented the legal provisions.<sup>136</sup>

Access to information is also limited for people who are blind or have difficulty using printed materials. The issue of providing information to people with disabilities using new modern communication technologies is not addressed and there are no initiatives in this regard. With the exception of the talking book publishing house at the National Federation of the Blind of Mongolia, the concept of making information accessible to persons with disabilities is not under development in Mongolia.<sup>137</sup> Article 8.2.7 of the Law on Public Service Broadcasting and Television provides that public service broadcasting and television must strive to meet the needs of social groups, classes and the public, such as ethnic minorities, women, children and persons with disabilities, in a balanced manner. On the other hand, this policy is not enshrined as a specific task in the law, and broadcasters pay attention to whether the needs of social groups are met.

#### **Children's rights:**

According to a 2017 study by UNICEF, (1) many unregistered people who have migrated after mining and their children do not have access to basic social services. (2) When parents go to work in the mines, children are left without a guardian for long periods of time. This has become so common that a new term has even been created for it, "children as heads of household". (3) The number of children exposed to crimes, including domestic violence, increases as mining activities intensify.<sup>138</sup> In addition, enterprises in the retail sector lack internal company policies and procedures on how to properly and ethically market and promote products aimed at children.

in 2018, for the first time in Mongolia, a study was jointly conducted by the United Nations Children's Fund, MNCCI and the Family, Child and Youth Development Agency (FCYDA) to assess whether the legal and other environment for child-friendly businesses was in place. Representatives from more than 100 companies participated. The study found that in practise, companies do not pay special attention to children's rights in their operations and do not sufficiently assess the positive and negative impacts of their products and services on children.<sup>139</sup>

<sup>136</sup> UNDP, *Business and Human Rights preliminary baseline study report 2020* (n 40)

<sup>137</sup> *Universal Periodic Review on the state of human rights: Implementation of the rights of people with disabilities, 2015*

<sup>138</sup> UNICEF, *"Mining-induced migration and its impact on children", 2017*

<sup>139</sup> UNDP, *Business and Human Rights preliminary baseline study report, 2020* (n 40)





## Legal research

### Some issues on the legal regulation to protect against violations of children's rights by business enterprises

#### On respect for children's rights in advertising and marketing:

Under Article 4.1.5 of the Law on Children's Rights, children's rights shall be protected by providing news and information appropriate to their age, physical and mental characteristics.<sup>140</sup> Also, under Article 16 of the Law on Advertising, all business enterprises have an obligation to respect and protect children's rights in creating, publishing and distributing advertisements.<sup>141</sup> In order to protect the rights of children, it is prohibited in the creation, publication or dissemination of advertising to affect the reputation of parents or guardians, to directly advise, incite or otherwise influence children to require their parents or other persons to purchase the product, to create the impression that children are superior or inferior to other children in purchasing or not purchasing the product in question, use images, sounds or words depicting dangerous spaces and situations for children in advertising, disparage or increase the knowledge, practise and experience required to use the product in advertising, create a false understanding in children about the price of the product, advertise food and feeding equipment made for infants and young children and not covered by Article 3.1.8 of the Law on Food.<sup>142</sup> It is also prohibited to allow children to participate

in the advertising of food and food products that are high in sugar, salt, trans fats and saturated fats. This provision of the Advertising Act is broadly in line with the requirements of the recommendations of international organisations, but in addition to the clear obligations of the parties responsible for protecting children's rights in relation to marketing and advertising, it is crucial for state institutions to carry out training and information dissemination activities. According to Article 8 of the Law on Child Protection, parents and guardians in the family environment, teachers and school employees in the school environment, as well as state institutions that have legal obligations and legal entities in other environments, are responsible for protecting children from games, books, works of art, messages, advertisements and social networks that have harmful effects on children's development, health, education and character formation by exercising their rights and duties. It is necessary to clarify the duties of many subjects, such as parents, guardians, teachers, school employees, state institutions and legal entities, and to develop procedures to monitor their exercise.

#### Protecting children's rights in digital environment and social media:

As mentioned in the study conducted by the United Nations Children's Fund, 82% of all children in Mongolia use the internet on a daily basis, with the most commonly used social network being Facebook. 85.5% of children have one or more Facebook accounts.<sup>143</sup> 90% of the children who participated in the study did not tell their parents that they have accessed inappropriate content on the Internet, which

was not intended for children. In Mongolia, business organizations that provide individuals and families with Internet networks (Skymedia, Univision, etc.) do not bear any responsibility related to the exposure of children to online violence (for example, protecting children from viewing inappropriate news and information), and there is no law or legal framework regulating this issue.



<sup>140</sup> Section 4.1.5 of Article 4 of the Law on Children's Rights

<sup>141</sup> Article 16 of the Law on Advertisement

<sup>142</sup> Section 3.1.8 of Article 3 of the Law on Food for Babies and Toddlers

<sup>143</sup> UNICEF, "Five priority issues facing Mongolian children" <https://www.unicef.org/mongolia/mn/commitment-address-top-five-challenges-children-are-facing-mongolia>



### Product safety for children's development and health:

Children's favorite sweets, sweet drinks, breakfast food and other daily food products must have the total sugar content, ingredients and other chemical content clearly visible to the consumer in their outer containers and packaging. However, the Law on Food does not contain any regulations regarding the labeling requirements of food products for children.

However, the Law on Food for Babies and Toddlers includes provisions on this requirement. Therefore, it is necessary to standardize the ingredient information of food products for all children under the Law on Food.

### Violation of children's rights due to the adverse environmental and social impact concerning the use and production of natural resources

In international practice, in the case of resettlement of citizens living in mining-affected areas, an assessment is made on how this will affect children's rights.<sup>144</sup> For example, children's rights are included in the assessment of social impacts, such as whether resettlement will affect children's right to education because they will have to be housed further away from schools, or whether the negative environmental impacts will affect children's health.<sup>145</sup> However, Mongolia's

Mining Law and Environmental Impact Assessment Law do not contain provisions on the violation of children's rights. The Cumulative Impact Assessment and the Environmental Impact Assessment do not consider children's rights, but generalise them under the category of citizens, which is a negligence without taking into account the vulnerability and specific characteristics of children compared to adults.

### Youth employment:

In recent years, the number of young people who have not officially entered the labour market but want to work and earn money alongside their studies has increased significantly. 47.5% of Mongolia's working age population are young people, with 39.2% of urban youth and 22.2% of rural youth in employment. According to the study conducted to develop the national "Student with Income" programme, 7 out of 10 students have expressed interest in working part-time.<sup>146</sup> Article 11.1.9 of the Law on Promotion of Youth Development adopted by the State Great Khural in 2017, states that "private sector organisations (with 100 or more employees) shall create part-time student positions equal to 5 per cent of the total number of employees", while Article 11.3 of the same Law provides for the development of relevant regulations by the government. In

accordance with the above law, the government approved the "Procedures for Student Part-Time Employment" on 19 June 2020. The procedures require companies to adhere to the principles that part-time work should be based on the student's wishes, interests, choice and needs, that the salary should be reasonable for the valuation of the work, and that it should not interfere with the student's health, safety, personal development and education. Businesses have an obligation to comply with these principles when hiring part-time workers, to include them in their human rights due diligence and to regularly monitor their implementation.



<sup>144</sup> UNICEF, "Children's Rights and Mining", 2017 [https://sites.unicef.org/csr/files/FINAL\\_Child\\_Rights\\_and\\_Mining\\_Toolkit\\_060217.pdf](https://sites.unicef.org/csr/files/FINAL_Child_Rights_and_Mining_Toolkit_060217.pdf)

<sup>145</sup> *Ibid.*

<sup>146</sup> MLSP, "Procedures for the student part-time employment had been adopted", 2020 <https://mlsp.gov.mn/content/detail/753>



## ■ Employees with children and employees responsible for the care of young children:

A positive provision included in the revised Labour Code refers to section 3 of article 43 on the basic obligations of the employer, which provides for ensuring the work-life balance of the worker by regulating working hours and rest periods and employing flexible employment conditions, as well as implementing child-friendly and child protection policies for workers by involving them in collective bargaining and internal labour standards. Under the Labour Code, the employer has a primary duty to take measures to protect children. This obligation must be implemented in a way that ensures work-life balance for workers who have children

and workers who are responsible for childcare. However, it is not clear how this duty, which is crucial for children's rights, will be implemented and, in particular, what measures will be taken to ensure work-life balance; therefore, there is a risk that it will not be effectively implemented and will only be on paper. Companies, as part of their human rights due diligence, must determine whether employees with young children are working overtime and whether supportive measures such as reducing their working hours or granting leave, if necessary, are practised, while the government must provide instructions and guidelines on how to work in this regard.

## ■ The rights of rural herdsmen: ○

Mining and related transport activities violate the rights of pastoralists quite significantly. In particular, as mentioned above, the rights of pastoralists to live in a safe and healthy environment, to be protected from pollution and the loss of ecological balance are being violated. In addition to the rights of pastoralists to live in a healthy and safe environment, this section discusses some other rights related to the specific living conditions of pastoralists.

### **Cultural rights of herders to preserve their heritage:**

In a series of discussion forums, the herders' representatives declared:

“Do we have the right to preserve our heritage and continue our traditional work as herders? “Today, as pastoralists, we face the challenge of whether we should exist or not.”

This thought was expressed several times. Civil society organisations that participated in the discussion forum on “Strengthening the mechanism for redressing violated rights” also said,

“In our activities to protect pastoralists' rights, resolve complaints and allocate compensation, we have found that business

enterprises and state institutions do not perceive pastoralists as bearers of national cultural heritage and neglect their cultural rights. They also do not perceive pastoralist families as business entrepreneurs who raise livestock and violate their rights because they cannot realistically assess the profits and benefits that pastoralists derive from their livestock and pastures.”

### **On the allocation of compensation to pastoralists:**

Livestock is the main source of livelihood and basic financial income for pastoralists. However, due to mining activities, the productivity of livestock, which is the main source of livelihood, is declining.



During the discussion forum, a herder from Eldev Bagh, Dornogobi Aimag said,

“ Due to the smoke and dust caused by mining, not only our health but also the health of our livestock is affected. When I want to submit the wool of our livestock for sale, half of it is rejected because it is covered with smoke and dust and thus loses its quality”.

**In Mongolia, however, there is currently no legal regulation that considers the reduction in livestock productivity loss as an economic loss and provides for compensation.**

### Impact management: ○

Each phase of mining operations has physical and intangible impacts on local communities. A mining company develops and implements a management plan to reduce and eliminate adverse impacts. As mentioned in their plan and the report, disputes and complaints related to contracts and compensation payments made by some mining companies to households in mining-affected areas are ongoing. When families were resettled under the contract, there are complaints such as wells were not constructed or the payment was incomplete. Representatives of the citizens who participated in the discussion forums expressed the problem of inadequate implementation of management in the mining impact zones using the example of the railway and the road towards Hangi Mandal. They explained,

“ When the road was first paved, many animals died of lung diseases from the dust. And quite a number of people were hospitalised. Medical certificates were also issued. But now that the issue of financial compensation is coming up, it is not clear who is responsible to provide us.”

The methodology for environmental impact assessment of mining and infrastructure projects was approved by Government Decision No. 374 in 2013, while the methodology for social impact assessment has not yet been developed. The lack of a social impact assessment means that there will be no resettlement, compensation or livelihood reconstruction programmes. As a result, Mongolia does not have a mechanism to comprehensively determine what social and economic rights of people living in the mining development zone, including pastoralists, will be affected, what harm they will suffer, and what remedial measures should be taken to resolve them.<sup>147</sup>

Figures and real life examples of rights violated due to business operations are discussed in the above sections of the report.

<sup>147</sup> UNDP, Preliminary baseline study report, 2020 (n 40)



### 3.2.d. RIGHT TO AN EFFECTIVE REMEDY

Based on the suggestions of participants in the discussion forums and desk-based research, and in line with the recommendations of the third pillar of the UN Guiding Principles on Business and Human Rights regarding access to remedy, the following section discusses the issues of the right to an effective remedy,

which concerns the resolution of disputes on the restitution, and reparation of violated rights of citizens and remedies in Mongolia through mechanisms including judicial, non-judicial state-based mechanisms and non-state based grievance mechanisms.

#### On the Right to Restitution, Compensation and Reparation



#### Court system is facing backlogs, delays and work force shortage

During the discussion forums, representatives of civil society organisations and numerous citizens explained that in many cases there are delays and lengthy procedures in court to restore violated rights and obtain compensation for damages. In particular, they emphasised that business enterprises violate human rights by taking advantage of the fact that court cases take a long time and are likely to drag on. For example, even if a representative of a civil society organisation goes to court to restore violated rights, resolving a case in court can take 3-4 years. They also mentioned that there are cases where the case is dropped without compensation for the damage because it takes a lot of time to be sent back to the first instance court from the Supreme Court.

Delays in court proceedings, inefficiency and lengthy court proceedings are common challenges. Chief Justice of the Supreme Court of Mongolia D. Ganzorig stated at the “First National Conference of Judicial Officials” in October 2021 that laws related to court procedures should be amended to improve the quality of court services.<sup>148</sup>

Participants in the discussion forum on “Strengthening mechanisms for redressing human rights violations” said that the delays

in resolving the case in a timely manner were related to the workload of the courts. During the discussion forum, a judge said,

“It is true that some district courts have a heavy workload due to insufficient manpower in court offices. It is important to create more vacancies to reduce the workload. There are urgent issues like increasing the number of court assistants and court clerks, solving the problem of bailiffs and improving courtrooms.”

Another judge said,

“In Khan-Uul district court, a judge has a maximum of 230 cases to handle. I have 180 cases at the moment. The judiciary is the only institution that protects the rights of citizens. Therefore, citizens must understand and realise that this important institution that protects and guarantees the legitimate interests of citizens must be financially secured.”

Therefore, respecting the infrastructure of the courts and solving the problem of reducing their workload are important foundations for ensuring the exercise of citizens’ rights to a speedy resolution of their violated rights by an independent and fair tribunal in accordance with Article 14 of the International Covenant on Civil and Political Rights.

<sup>148</sup> N. Saranchimeg, “Don’t be dragged by court proceedings and waste time” MONTSAME, 2021 <https://montsame.mn/mn/read/278319>



It is necessary to amend the laws on the timely disposal of court cases, improve social and economic guarantees for the judiciary, and the government must attach particular importance to the development of the relevant court infrastructure in order to uphold the principle of continuity of justice in accordance with Article 14 of the International Covenant on Civil and Political Rights, Article 9 of the Civil Procedure Code, Article 10 of the Law on Administrative Procedure, and Article 34.3 of the Criminal Procedure Code.

**There is a tendency to reject the cases regarding the human rights violations that filed before the courts**

The lawyers and advocates who participated in the discussion forum on “Strengthening mechanisms for redressing human rights violations” mentioned that there are cases where citizens do not have access to remedy because claims and complaints filed in court are rejected or dismissed. For example, a representative of a civil society organisation who participated in the discussion forum said,

“When filing a complaint in court about the violation of pastoralists’ rights and legitimate interests, it seems that in order not to accept the violation of rights and not to resolve the complaint, the courts pay more attention to how they can reject the claims or not resolve the case. After we filed the complaint to protect the interests of herders in South Gobi Aimag, the court dismissed our complaint on the grounds that our organisation was not entitled to file a complaint or represent in court.”

A lawyer who does strategic litigation also mentioned that a case filed in the Civil Court for violation of citizens’ right to live in a safe and healthy environment by a company that built a car park on public pedestrian area was dismissed on the grounds that they must file a complaint with the governor. In light of these cases, it is necessary to include provisions in the relevant laws and legislation that require judges to resolve cases with particular regard to

human rights violations and to decide cases in the context of public interest without dismissing them unless absolutely necessary. The judges who participated in the discussion forums also said that other factors besides the judge’s attitude influence the court’s dismissal of cases. For example, one judge said,

“One of the difficulties in court cases is related to the fact that the parties involved in the case may not live at their stated address. If the issues related to business address registration are not resolved at the political level, there will be significant delays due to the absence of the parties at their stated address. The court’s dismissal of the case is related to this problem. If the registration system is improved, the problem of dismissal of lawsuit will reduce significantly.”

Therefore, it is necessary to reflect in the Law on State Registration of Legal Entities and the Law on State Civil Registration detailed provisions to impose a requirement on business enterprises and citizens to register their address changes immediately, and insert sanctions in case of a failure to do so.

In addition, several judges who participated in the discussion forums expressed the need to reinstate the office of court marshals, which performs important functions such as ensuring equal participation of the parties and locating the whereabouts of defendants.

**Necessity to include in the Civil Procedure Code provisions for the filing and settlement of suits in the public interest.**

A representative of a civil society organisation who participated in the discussion forum on “Strengthening mechanisms for redressing human rights violations” made a suggestion by stating:

“Regarding the recommendations to improve the legal environment, it should be noted that judicial procedures related to public interest lawsuits are making progress in administrative courts, despite some shortcomings.





**In our aimag, ... LLC was granted special exploitation license on 31 December, 2015. It covers an area of 5,447.21 hectares, which spans over 3 soums including the whole of Dalanjargalan soum, Dornogobi aimag, and Shiveegobi soum of our aimag, and the southern part of Tumur soum. Since 2017, we are conducting a public interest litigation to have this special license canceled at the Administrative Court of the Capital City. However, a lot of difficulties occur, including process delay, and annulling the decision of the first instance court by the court of appeals.**

*Participant at the Gobi and Eastern regional discussion forum, 12 November 2021.*

However, in civil proceedings, the issue of receiving and resolving public interest claims is not considered very well. Yet it is very important to receive and deal with them. It is necessary to include in the Civil Procedure Code, which is currently being revised, the issues related to receiving claims related to public interest, exempting them from stamp duty and expanding the opportunities for citizens whose rights have been violated to file a class action lawsuit.”

In this context, it is necessary to include new provisions in the amendment to the Code of Civil Procedure, such as the definition of public interest claims, the exemption from stamp duty on the receipt of such claims and the filing of class action lawsuit by multiple plaintiffs in the same public interest matters.

Internationally, the term “class action lawsuit” refers to a type of lawsuit brought in civil proceedings by more than one plaintiff against a company or government entity in a public interest case. Although first developed in the United States, the class action lawsuit has become a common practise in Europe and many other countries around the world for settling cases through the civil courts.<sup>149</sup> Implementing this best international practise for filing class action lawsuit in Mongolia will not only reduce the workload of the courts, but may also improve attitudes towards prioritising cases involving public interests and human rights.

In addition, it is also possible to limit the filing of counterclaims to actions in the public interest. At the international level, in the context of business and human rights, there is a case for including anti-SLAPP provisions in legislation.<sup>150</sup> Article 14.3 of the Criminal Code of Mongolia provides for criminal liability for acts involving the use of force or the threat of force or the making of payments for non-publication or the threat of serious harm to the publisher’s activities in accordance with the law, in order to publicly prevent the dissemination and communication of information affecting one’s own or others’ legitimate interests. Compared to the anti-SLAPP provisions of other countries, this is inadequate. For example, the Civil Procedure Code of the State of California in the United States contains many valuable provisions to protect human rights defenders, such as the prohibition on bringing a counterclaim on the grounds that a strategy has been used to silence or threaten public participation and voices, or the SLAPP-back rule, where an action against the organisation’s commercial reputation affects the public interest, human rights and freedoms, making the judicial process transparent to the public in cases where the public interest, human rights and freedoms are affected, and prohibiting defendants from taking action in advance.<sup>151</sup>

<sup>149</sup> Wikipedia, “Class Action Lawsuits”, 2022 [https://en.wikipedia.org/wiki/Class\\_action](https://en.wikipedia.org/wiki/Class_action)

<sup>150</sup> Business and Human Rights Information Center, “Corporate Legal Responsibility Report 2020 - Protecting Human Rights Defenders: From Cases in Southeast Asia” <https://www.business-humanrights.org/en/from-us/briefings/defending-defenders-challenging-malicious-lawsuits-in-southeast-asia/>

<sup>151</sup> Guaranteeing Freedom of the Press, ‘California’ Anti-SLAPP Law <https://www.rcfp.org/anti-slapp-guide/california/>



**On the lack of attention of judges and lawyers to human rights violations and the non-application of international human rights legislations in court decisions**

Citizens who participated in the series of discussion forums believe that judges presiding over court cases do not pay attention to human rights and do not apply international human rights standards. Participants in the discussion forum on “Strengthening mechanisms for redressing human rights violations” also raised issues related to the application of international human rights treaties in court. There were also reports that police officers and prosecutors responsible for resolving criminal cases harass people by making them sit in waiting rooms for hours.

According to Article 33 of the Law on International Treaties of Mongolia, adopted in 2016, courts are obliged to apply international treaties to which Mongolia is a party in court proceedings. However, it can be seen from the court decisions registered in the unified database of court decisions that the international treaties that Mongolia has joined are rarely applied to civil, criminal and administrative court decisions.<sup>152</sup>



**As some substantive laws do not clearly set out the liability for the violation of certain human rights and legitimate public interests, it is difficult to bring an action in court for the restoration of violated rights.**

Participants in the discussion forum on “Strengthening mechanisms for redressing human rights violations” stressed the need to include detailed human rights provisions in some substantive laws. For example, a lawyer who was conducting a strategic public interest litigation for the violation of citizens’ right to live in a safe and healthy environment and the

right to safely participate in road traffic by the construction of a private company car park on public pedestrian area said,

**“ In filing a court case in relation to this case, due to the absence of provisions on the violation of these rights in the Roads Act and other laws, there is no other option but to approach this matter from a general standpoint that it violates the right to live in a healthy and safe environment.”**

Moreover, some of the rights Mongolia faces in this study, such as the right to a safe and healthy food, are not clearly stated in the Constitution of Mongolia and the Food Law. It is not clear whether citizens of Mongolia have the right to be provided with safe and healthy food. By enshrining basic human rights and freedoms, as set out in the Universal Declaration of Human Rights and international human rights treaties and conventions, in the laws currently in force in Mongolia, people will be given the opportunity to exercise their rights. In the event of violations of these rights by the state or third parties, there is the possibility to sue for the violated rights in court and to impose sanctions on those guilty of such violations.



**Adopt regulations to hold liable the management of companies that fail to fulfil their prevention and monitoring obligations in relation to OHS and the environment**

As mentioned earlier, companies responsible for carrying out internal monitoring to ensure OHS standards and risk prevention are not held accountable in cases of non-compliance with obligations or causing violations of the Law on Occupational Health and Safety, but the person responsible from OHS is punished. Even if the person who committed harassment or violence is held accountable in cases related to WSH, there is no legal system that holds employers liable if they fail to fulfil their obligations to

<sup>152</sup> Unified database of court decisions <http://old.shuukh.mn/>



create an environment where harassment is not tolerated and to prevent such risks under the Criminal Code and the Law on Infringement.

An analysis of how human rights violations caused by business enterprises are resolved through judicial and non-judicial processes in other countries shows that most countries have addressed in detail the due diligence or prevention obligations of business enterprises in their legislations. Business enterprises have numerous obligations to ensure that they do not commit human rights violations in the course of their business, conduct training and assessments for the purpose of prevention, inform their employees and conduct audits.<sup>153</sup> In Mongolia, the preventive duties of employers and enterprises are generally included in the Labour Code, Law on Food and the Law on Environmental Impact Assessment Law such as “creating an internal monitoring system”, but there is a lack of detailed regulations on how to carry out an internal monitoring system, and what type of sanctions to impose for human rights violations due to the failure to fulfill the duty of care.



**No possibility of resolving cases on the basis of “the burden of proof” or because the evidence does not meet the required criteria of the law**

During the Gobi regional discussion forum, a citizen said, ,

**“ In order to claim the damage caused by the mining company’s violations in Tsogtsetsiy Soum, a total of 700 million tugrik in damages was assessed and submitted to the court. In the end, the case was dismissed on the grounds that the institution that assessed the damages did not have the authority to do so. Basically, the case was closed because of insufficient documentation. So it shows that judges do not respect human rights. Therefore, human rights education should be done at all levels.”**

<sup>153</sup> *Ibid.*

<sup>154</sup> Council of Europe, “Business and Human Rights: A Guide for Lawyers”, 2018 Handbook-Business-Human-Rights\_ENG.pdf

<sup>155</sup> *Ibid.*

<sup>156</sup> Council of Europe’s recommendation no. CM/Rec(2016)3

In some countries, the burden of proof in cases involving human rights violations and public interests is not on the victim or the plaintiff, but on the defendant or the party who committed the violation.<sup>154</sup> For example, in France, if civil rights are deemed to have been violated due to the company’s failure to exercise due diligence or due to negligence, the company must prove that it has sufficiently fulfilled its due diligence obligation.<sup>155</sup> Recommendation No. 3 CM /Rec (2016) issued by the Council of Europe also requires European countries to apply such a flexible procedure when resolving cases of human rights violations caused by business activities and for companies to demonstrate that they have adequately fulfilled their due diligence obligation and duty of care.<sup>156</sup>

As the series of discussion forums shows, in cases where citizens cannot obtain compensation for human rights violations caused by business activities, this problem can possibly be solved by placing some burden of proof on the responsible party in accordance with the above recommendations.



**It has not been reflected in the practice to hold legal entities accountable for some rights violations and crimes.**

Although crimes related to the worst forms of child labour, forced labour and human trafficking, which are internationally considered serious crimes and must be prosecuted and punished by the courts, are recorded by the police in Mongolia, there are almost no cases of further prosecution and imposition of sentences by the courts. For example, in the shadow report issued by non-governmental organisations for the regular public forum on the situation of human rights in Mongolia in 2020, the Non-Governmental Organisation for Gender Equality pointed out that crimes related to child jockeys, forced herding of livestock by children or begging,



which are the worst forms of child labour, are registered by the police, but these cases are not further investigated and tried in court and no legal responsibility has been imposed on those responsible.<sup>157</sup> It is necessary to include legal provisions to cultivate the practise of imposing criminal sanctions for violations of certain labour rights, such as the worst forms of child labour and forced labour, and to include in the calculation of economic damage the reduction in the productivity of livestock, which are a source of income and livelihood for the local population.

The issue of how legal persons can be held accountable for crimes is also not yet implemented in practise. The study “Challenges in the imposition of criminal liability on legal entities in Mongolia”, prepared by the Open Society Forum, found that while the legal provisions on criminal liability of legal entities have become more sophisticated, their implementation is insufficient and the number of crimes solved by the courts is relatively low.<sup>158</sup> Furthermore, it considers that the problems related to the duplication of the characteristics of infringements and crimes as specified in the Law on Infringement and the Criminal Code, as well as the difficulty in distinguishing between the amount of damage and the damage to human life and health, lead to problems in practise. Therefore, the legal regulations still need to be improved by defining more precisely some unclear regulations on the criminal liability of legal persons and by expanding the types of offences in the legislation.

Participants in the discussion forum on “Strengthening mechanisms for redressing human rights violations” pointed out that there are challenges in resolving some cases in terms of protecting the victim, calculating the damage and imposing liability. During the discussion forum, a lawyer who does strategic litigation related to children’s rights said:

**“ There was an accident involving 4 children in the national park. This case is due to the irresponsibility of a for-profit legal entity.**

**However, the case was closed after some compensation was paid to the family. Secondly, the person responsible was pardoned by the state and not held accountable. There is also the problem of child jockeys. Many children died. There is still no response to a request for information on the number of racehorse trainers and company employees who have been held criminally responsible in connection with the deaths of the children.”**

The prosecutor who attended the discussion forum responded,

**“ There are problems in calculating damages in terms of human life, health and emotional damages in solving crimes caused by business transactions. The question of how to calculate such damages from an economic point of view should be included in the substantive laws and the issue of experts should be clarified. Due to the lack of clarity on the issue of calculating damages, there are cases where the case is resolved by mutual agreement between the family members and the parties.”**

It can be deduced that the problems of not calculating damages realistically and not imposing sanctions when establishing liability for the violation of certain rights are related to the lack of specific rules in substantive law. It has already been mentioned that in some cases damages cannot be realistically calculated.

**The legal regulations for calculating economic and non-economic damage are inadequate.**

During the discussion forums, the problem of the lack of realistic assessment and calculation of compensation and damages for pastoralists was raised numerous times. Pastoralists in the Gobi who participated in the regional discussion forums pointed out that there is no legal provision to realistically calculate the decline in livestock productivity, which is the main source

<sup>157</sup> UN Human Rights Council (n 1) paragraph 66.

<sup>158</sup> Open Society Forum, “Issues on imposing criminal liability on legal entities in Mongolia”, 2022



of livelihood for pastoralists, and the damage to livestock caused by mining and heavy industry. For example, herder Eldev Bagh from Soum Dalanjargalan in Dornogobi Aimag province pointed out,

**“Due to the dust caused by mining, the hair and wool of the animals are covered with dust and half of the wool is not accepted for sale because it is covered with dust and does not meet the quality standards. That is our economic loss, but it does not considered as a damage according to the current law”**

During the discussion forum on “Strengthening mechanisms for redressing human rights violations”, a representative of a civil society organisation said,

**“In the calculation of compensation, pastoralists are not considered as livestock business owners. The loss of productivity of livestock and the economic returns that would have been generated are not taken into account. They simply believe that it is a greedy family runs after money. Even if the winter quarters are taken into account in sharing the pastures and relocating them, they neglect the returns that would have been made from the pastures.”**

It can be concluded that there is a need to create a legal framework to realistically calculate the economic and health damages caused to citizens and pastoralists by mining activities.

### **State-based non-judicial mechanism for redressing violated human rights rights and compensating for damages**

Court proceedings can be time-consuming and expensive due to the workload of the courts. In order to restore violated rights quickly and effectively, non-judicial mechanisms need to be developed with the involvement of other state institutions. The representatives of judges, lawyers and advocates who participated in the discussion forum on “Strengthening mechanisms for redressing human rights violations” also raised this issue and made suggestions on the need to develop state-based non-judicial mechanisms for the restoration of human rights violations in order to reduce the workload of the courts and provide other opportunities for citizens to effectively resolve their complaints. In Mongolia, there are some types of state-based non-judicial mechanisms. These include mechanisms such as procedure for preliminary administrative complaints prior to administrative court proceedings, labour arbitration, soum and district tripartite labour rights dispute settlement committees, mediations at chambers of commerce, and submission of complaints to the NHRCM.

However, these mechanisms are not always effective, and their activities are insufficient to obtain compensation for damages and restore rights. Citizens who participated in the series of discussion forums stated,

**“As for the branch council for complaints, the state committee, the branch council in aimags, and the committee in soums conduct their operations and mediate prior to the court proceedings, but they do not achieve any results.”**

Therefore, in this section, the challenges faced by state based non-judicial mechanisms are considered.





### **Redress of human rights violations under the NHRCM mechanism for receiving and resolving complaints**

International organizations emphasize the important role of national human rights institutions in restoring violated rights caused by business operations. For example, the Edinburgh Declaration<sup>159</sup>, which came out of the meeting on “Ensuring the participation of national human rights institutions on business and human rights issues” jointly organized by the Office of the United Nations High Commissioner for Human Rights in Edinburgh, Scotland, UK, in 2010, declared and emphasized the important role of national human rights institution in informing the public about human rights violations caused by business operations, monitoring human rights due diligence of business organizations, resolving complaints related to human rights violations, and mediating the parties.<sup>160</sup> In Mongolia, Article 7 of the revised 2020 Law on the National Human Rights Commission provides that the National Human Rights Commission shall make proposals and recommendations to legal persons on all issues related to human rights and freedoms, investigate human rights complaints caused by legal persons, and cooperate with legal persons regarding human rights violations, and that the National Human

Rights Commission is an organisation capable of supporting and monitoring the activities of business organisations to respect human rights.

In this regard, during the discussion forum on “Strengthening mechanisms for redressing human rights violations”, a lawyer said:

“After we advised our clients to approach the NHRCM, there were cases where the Commission did not take action itself but referred cases to other institutions. I do not know about the Commission’s human resource capacity. However, it is necessary for the Commission to evaluate companies on the basis of the complaints received and to make recommendations. If it is not possible to implement them, then they should solve this problem.”

Mongolia has a fully functional legal system that enables the NHRCM to receive and process complaints about human rights violations caused by companies. The main problem is building the human and financial capacity to carry out such activities.

### **Redress of human rights violations through mediation in court**

The Law on Mediation was passed in 2012 and during this period more than 100,000 disputes were resolved through judicial mediation. Of these, 75% were civil disputes, 24.5% were family disputes and 1% were labour disputes.<sup>161</sup> In 2021, out of a total of 19,337 applications received, 12,369 applications were resolved, of which 68.5% concluded that reconciliation was successful.<sup>162</sup> During the discussion forum on the “Revision of the Law on Mediation” organised by the Ministry of Justice and Internal Affairs in February 2022, the need to diversify

the types of disputes that can be resolved through mediation, to include the participation of civil society organisations and professional associations, to improve the implementation of reconciliation agreements, to build the capacity of mediators and to develop their financial and social protection was emphasised.

Judges, lawyers and jurists who participated in the discussion forum organised as part of this study on “Strengthening mechanisms for redressing human rights violations” made

<sup>159</sup> UN OHCHR, *The Edinburgh Declaration of the International coordinating committee of National Institutions for the Promotion and Protection of Human Rights (ICC)*, 2010 [https://www.ohchr.org/Documents/AboutUs/NHRI/Edinburgh\\_Declaration\\_en.pdf](https://www.ohchr.org/Documents/AboutUs/NHRI/Edinburgh_Declaration_en.pdf)

<sup>160</sup> *Ibid.*

<sup>161</sup> “Ministry of Justice and Internal Affairs organized a discussion within the framework of the revision of the Law on Mediation”, 2022 <https://mojha.gov.mn/?p=7157>

<sup>162</sup> *Ibid.*





arguments similar to those mentioned above. One lawyer who participated in the discussion forum said,

“ We have referred cases to mediation several times and there are several key issues in resolving trade disputes. First, you have to understand the dispute very well and know the reasons why the parties are disputing. The lawyers handling the case know this. However, in mediation, the reason is not given. Secondly, a mediator should have excellent negotiating skills and persuasive powers to get people to reconcile. But mediators with such skills are rare. Therefore, in our case, the case was temporarily moved to mediation to save time. In the meantime, the parties negotiated with each other.”

The judges and lawyers who participated in the discussion forum stressed the need to develop the capacity of mediators and to ensure their financial and social security. The development of out-of-court dispute resolution procedures will not only reduce the workload of the courts in the future, but is also important for the speedy resolution of disputes. Internationally, there is

a prevailing tendency to resolve human rights violations related to corporations through mediation.<sup>163</sup> The mediator has the advantage of resolving disputes by balancing the powers of the parties, providing information, resolving misunderstandings in a conciliatory manner and reaching agreement. Under the OECD Guidelines for Multinational Enterprises of the Organisation for International Economic Co-operation and Development (OECD), the organisation’s adhering countries must establish National Contact Points (NCPs) to receive and process complaints of rights violations by multinational enterprises and to provide technical and methodological advice and information. The National Contact Point conducts activities for the mediation of business-related rights violations and has so far handled more than 500 complaints worldwide.

It can be deduced that there is a need to improve the legal environment, build capacity and specialise mediators to resolve corporate-related human rights violations through mediation.

### **Improving the procedure for resolving the preliminary administrative complaints, as set out in Articles 92-99 of the General Administrative Law**

By increasing the understanding and accountability of state institutions in relation to their duties to protect and respect human rights and public interests, it is possible not only to improve the procedure for the resolving the preliminary administrative complaints in relation to administrative acts adopted by state institutions, but also to reduce the workload of administrative courts. As stated in the study “On Procedure for Preliminary Administrative Complaint” by Judge D. Baatarkhuu, however, the procedure for preliminary administrative

complaint is completed in a manner where government officials display bureaucracy to citizens and businesses by dismissing the complaints without accepting them, passing the complaints through several stages or to other organisations, quickly terminating the procedures for preliminary administrative complaints without thoroughly understanding and deciding the cause of the dispute, and without considering whether the complaint can be resolved without going to court, and often giving the answer “it is not possible”.<sup>164</sup>

<sup>163</sup> Elise Groulx Diggs, “Mediation in the Field of Business and Human Rights”, International Mediation Institute, 2021 <https://imimmediation.org/2021/07/07/mediation-in-the-field-of-business-and-human-rights/>

<sup>164</sup> D. Baatarkhuu, “On Procedure for Preliminary Administrative Complaint” [http://resource3.sodonvision.com/shuuh/file/2014/5/5wonyzqltvys58cm08yk5t8yf/%D0%97%D0%B0%D1%85%D0%B8%D1%80%D0%B3%D0%B0%D0%B0%D0%BD%D1%8B\\_%D1%85%D1%8D%D1%80%D0%B3%D0%B8%D0%B9%D0%B3\\_%D1%83%D1%80%D1%8C%D0%B4\\_%D1%87%D0%B8%D0%BB%D0%B0%D0%BD\\_%D1%88%D0%B8%D0%B9%D0%B4%D0%B2%D1%8D%D1%80%D0%BB%D1%8D%D1%85%20\(1\).pdf](http://resource3.sodonvision.com/shuuh/file/2014/5/5wonyzqltvys58cm08yk5t8yf/%D0%97%D0%B0%D1%85%D0%B8%D1%80%D0%B3%D0%B0%D0%B0%D0%BD%D1%8B_%D1%85%D1%8D%D1%80%D0%B3%D0%B8%D0%B9%D0%B3_%D1%83%D1%80%D1%8C%D0%B4_%D1%87%D0%B8%D0%BB%D0%B0%D0%BD_%D1%88%D0%B8%D0%B9%D0%B4%D0%B2%D1%8D%D1%80%D0%BB%D1%8D%D1%85%20(1).pdf)



Therefore, in order to improve the procedures for the preliminary administrative complaints, there is an urgent need to reflect in detail the duties of government employees in receiving and settling complaints in the Law on the Settlement of

Petitions and Complaints by Citizens to State Organisations and Officials of 1995 and the Mongolian Law on General Administrative and to increase the accountability of government employees.

## ■ Non-state based mechanisms for redress and reparation for human rights violations



The non-state based mechanisms for redress and reparation for human rights violations has not yet been developed in Mongolia. In order to implement the UN Guiding Principles on Business and Human Rights, the state needs to develop rules and regulations that promote and guide effective and transparent restitution and reparation for negative impacts and human rights violations identified through due diligence involving affected persons. Judges, lawyers and jurists participating in the discussion forum on “Strengthening mechanisms for redressing human rights violations” addressed the need to develop mechanisms for restoring violated rights caused by corporate activities through non-state based non-judicial processes.

### ***Mechanisms for redress of human rights violations within professional associations and business cooperation associations***

In international practise, non-governmental mechanisms for redressing human rights violations in the context of business include the mechanisms for processing complaints to international organisations and the internal mechanisms of professional associations and business cooperation associations for receiving complaints.<sup>165</sup> These types of grievance mechanism and reparation mechanisms have many advantages that judicial institutions do not have, such as resolving negative human rights impacts speedily before they escalate, reviewing the outcome after a certain period of time without deeming it resolved, and continuing to initiate cooperation and established relationships between parties.<sup>166</sup>

It has already been mentioned that Mongolia has not yet developed a sophisticated non-governmental grievance redress mechanism. There is a possibility of restoring human rights violated by business activities and resolving the case through arbitration and mediation

procedures at the MNCCI and the Ulaanbaatar City Chamber of Commerce. However, many difficulties arise in the process, such as the parties’ violation of contractual obligations due to the fact that the decision and mediation agreement are not enforced by the court, non-compliance with the decision, and the impossibility of competition in terms of fees, as the fee for arbitration is 30,000 tugrik. In this regard, the representatives of the lawyers who participated in the discussion forum on “Strengthening mechanisms for redressing human rights violations” said,

“ Since the agreement reached through arbitration at the MNCCI Arbitration Board is not enforced by the court, the need arises to resolve the case again through the court. If the decision is enforced by the court and the mediator is selected similar to an arbitrator, there is an opportunity to resolve the case in confidence and proceed more efficiently.”

<sup>165</sup> UN Human Rights Council, “Practical study of compensation and restoration of rights of citizens whose rights have been violated by business operations through non-state based non-judicial procedures”, 2020 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/113/99/PDF/G2011399.pdf?OpenElement>

<sup>166</sup> *Ibid.*



Thus, in order to develop this type of mechanism, the state must provide some support and create an appropriate legal climate. In addition, it is possible to add functions and build the capacity of professional associations to receive and resolve complaints about human rights violations caused by member affiliates. At the international level, cooperative societies and professional associations of business organisations active in agriculture, including the cocoa and food industries, and mining are responsible for receiving and internally resolving complaints.

For example, the international organisation Fair Trade is responsible for assessing whether the activities of companies in the agricultural sector have caused human rights violations and receiving such complaints.<sup>167</sup> There is a duty to remedy the rights of the complainant that have been violated and to compensate for the damage. If this duty is not fulfilled, companies may lose the right to label their product with the certificate for fair trade respecting human rights and for environmental friendliness according to the provisions of the internal regulations.<sup>168</sup>

### **Internal mechanisms and activities of business enterprises to remedy human rights violations**

It is advisable that companies include activities to remedy and compensate human rights violations and negative impacts and resolve complaints through their internal monitoring system and operations, as recommended in the “UN Guiding Principles on Business and Human Rights”.

In this regard, the lawyers and advocates who participated in the discussion forum on “Strengthening mechanisms for redressing human rights violations” said:

**““ Businesses themselves should establish the mechanism for remedying the human rights violations. They must have mechanism for accepting and resolving complaints through their internal procedures. In our country, mining companies have staff responsible for resolving issues related to residents’ complaints. Therefore, it is necessary to develop this mechanism gradually and systematically by first improving the company’s internal procedures for resolving complaints and using the mediation process in case this mechanism is not sufficient.”**

For businesses, openly receiving complaints from citizens and resolving cases without escalating to court has many advantages. For example, it opens up the possibility for the complainant and

other citizens to participate in some way in the company’s activities, especially in the decision-making process, to clarify responsibilities related to the company’s activities and to assess and define current and future risks.<sup>169</sup> For example, “Energy Resources” LLC receives suggestions and complaints from citizens and registers them under their grievance mechanism policy. Resolving cases and keeping records helps to collect information on the frequency of complaints and violations and to evaluate the outcome.<sup>170</sup> In receiving and resolving internal complaints, companies must adhere to the principles of impartiality, independence and fairness set out in the “UN Guiding Principles on Business and Human Rights”.

The representatives of civil society organisations who participated in the discussion forum on “Strengthening mechanisms for redressing human rights violations” expressed that,

**““ We demand from big business enterprises to establish a mechanism for internal resolution of resolving complaints. The banking sector receives complaints by phone and calls it a grievance mechanism. However, this is not a mechanism to resolve complaints or compensate damages, but a mechanism to remedy deficiencies in companies.**

<sup>167</sup> Fair Trade USA, “Grievance Procedure” [https://www.fairtradecertified.org/sites/default/files/filemanager/documents/Complaints/FTUSA\\_PRO\\_Complaints\\_EN\\_2.0.0.pdf](https://www.fairtradecertified.org/sites/default/files/filemanager/documents/Complaints/FTUSA_PRO_Complaints_EN_2.0.0.pdf)

<sup>168</sup> Ibid.

<sup>169</sup> Mongolian Sustainable Development and Social Responsibility Council, “Procedures for resolution of applications and complaints for mining companies”, 2019

<sup>170</sup> Ibid.



There are no corresponding regulations, capacities or budgets. The corporate grievance mechanism should follow the principle of impartiality and independence. The UN “Guiding Principles on Business and Human Rights” contain certain principles such as independence from management and fairness. However, these principles are not always followed in our practice, so it is necessary to include in the action plan that business enterprises will work in accordance with these principles.”

In Mongolia, some legal regulations more generally require companies to receive and deal with complaints about negative human rights impacts and human rights violations caused by their activities. For example, according to the

“Exemplary Procedures for the Implementation of Internal Monitoring by Food Enterprises” adopted under Article 7.4 of the Labour Code and Article 12.1 of the Law on Food, business enterprises are required to establish a procedure for receiving and resolving complaints through their internal monitoring system and to conduct regular monitoring activities. However, these regulations only stipulate the obligation to receive and resolve complaints, but do not regulate exactly how the complaints are to be resolved and what principles and criterias are to be followed. It is therefore necessary for the state to include detailed regulations in the relevant laws and to provide information and guidelines on how to develop and improve companies’ internal complaints procedures.



## 3.2.e. OTHER HUMAN RIGHTS ISSUES

### The right to protection of health and the right to education (Privitisation):

The right to protection of health and the right to education (Privitisation): The law provides private companies and organisations with the opportunity to carry out public health and education services. From 2021, 30% of educational institutions at all levels and 88% of health institutions will be private companies.<sup>171</sup> These organisations and enterprises need to create a sufficient business environment to provide quality and accessible services so that people can exercise their right to health protection and the right to education. This study examined whether the people of Mongolia are able to exercise their right to health and the right to education at a adequate level compared to other countries.

Countries often use the Human Development Index (HDI) to determine the level of well-being and development of their population. The Human Development Index is a coefficient that combines 3 basic indicators of population, including (1) health and long life, (2) acquisition of knowledge and education, and (3) adequate income levels and economic potential. Since 2010, this indicator has been calculated in 3 main groups and 189 countries in the world use this index.

In the Human Development Report 2020 issued by the United Nations, Mongolia ranks 99th out of 189 countries with an index of 0.737. Mongolia's human development index has ranked 96-105 over the last 10 years and has dropped 3 places in the last 5 years. According to the report, the average annual growth rate of Mongolia's human development index has increased by 0.64% per year over the last 10 years.<sup>172</sup> This growth ranks 79th, which is insufficient growth compared to countries with a near HDI. Notably, Mongolia has experienced relatively low growth over the past 10 years compared to countries such as Indonesia, the Maldives, Peru, Uzbekistan and the Philippines, which were in a similar position in terms of population well-being and development growth.

On human rights violations in business enterprises providing health and education services, participants said,

“ The principle of equal pay has been lost. For example, there are many cases where salaries are graded according to years of service and tasks are assigned outside the job description. In school, a class can hold up to 30 children, but the workload of teachers has doubled because they teach more than 60 children instead, while the salary has remained the same.”



#### Legal research

**The government of Mongolia must observe the following points so that educational and health institutions, including the private institutions can operate with respect for human rights.**

#### FOR EDUCATIONAL INSTITUTIONS:

##### Take policies to address educational inequality:

Inequality in education is one of the challenges facing Mongolia. Educational institutions are of varying quality, whether they are fee-paying or not, and most schools with good qualities are

out of reach for the majority of children; this is the basis of the problem of diverse education for children. Depending on the reputation and quality of educational institutions, there is also the

<sup>171</sup> NSO, [www.1212.mn](http://www.1212.mn)

<sup>172</sup> UNDP, *Human Development Report-2020*



problem of bribery to get children into prestigious public schools and schools with Cambridge curriculum. Therefore, the government must take action to eliminate inequality in education, regulate public schools with high fees, improve

the quality of public schools, change the fact that some schools have a curriculum separate from others (e.g. the Cambridge curriculum), promote and improve a common curriculum, and strive for the educational equality.

### ■ **Protect children's right to education depending on their vulnerability and social and economic conditions:**

Although Article 4.1.1 of the Child Protection Act regulates the duties of social workers working with «children at risk», the Law on Primary and Secondary Education does not regulate the duties of teachers, educators and schools working with children at risk in primary, secondary and general education, in particular those related to protecting and supporting children's right to education. There are provisions that focus only on children with disabilities without taking into account the family and economic impact of children belonging to vulnerable groups. The definition of a child with a disability or a child

with special needs must take into account the health problems that are common among young students in today's society, including down syndrome, autism, dyslexia and ADHD or poor concentration, which are considered intellectual disabilities.

There is also a need to create jobs and build the capacity of professional psychologists and social workers who work with children living in risky and difficult family situations, and to create posts for child psychologists and doctors in some schools that need them.

### FOR HEALTHCARE INSTITUTIONS:

#### ■ **Make accreditation of facilities providing medical care services mandatory and not voluntary**

Medical care services are established based on the fulfilment of certain criteria in accordance with standard procedures approved by the Ministry of Health under the Law on Special Licencing of Enterprises. According to Article 23.1 of the Law on Medical Care Services, a legal entity providing medical care services

obtains accreditation by voluntarily undergoing an assessment of the nature and performance of its services. Mandatory accreditation is necessary to improve the quality of medical services and the system of regular monitoring of their accessibility.

#### ■ **Improve accountability of medical staff and protect patients' confidentiality about their illness**

In other countries, health-related laws regulate in detail how and for how long patient confidentiality must be maintained, as well as the ethical responsibilities of medical staff in this regard. In Mongolia, the first annex of the Minister of Health's 2019 Decision No. A/554 on "Criteria

for the Evaluation of Health Facilities Providing Specialised Medical Care and Services" outlines the criteria related to confidentiality and storage of information about the patient's illness, but does not detail the prohibitions and restrictions on its use and disclosure.



# CONCLUSION



While businesses play a positive role in society by creating employment opportunities, generating tax revenues, producing and supplying goods and services, boosting trade and attracting investment, they can also cause and contribute to negative impacts and harms, such as the violation of human rights and environmental damage in the course of their commercial activities. Since 2010, the number of enterprises operating in Mongolia has doubled and has reached 96,000 by 2021. Despite the positive indicators showing an increase in the number of enterprises, economic growth varies by sector. Over the last ten years (2010-2019), Mongolia's economy grew by an average of 7.7% per year.<sup>173</sup> The overview of economic growth by sector reveals a significant variation between an average of 0.7% and 20.8% per year. Enterprises operating in sectors with low economic growth have low profitability. This leads to major problems such as low wages for workers and poor conditions for a healthy and safe working environment. Therefore, in order to protect the rights of citizens working in sectors with low economic growth, the government must develop policies that ensure living wages and work with companies in the sector.

Out of 106 business enterprises that participated in the case study conducted by the research team, 5% answered that they “receive adequate information and recommendations related to the concept of the ‘UN Guiding Principles on Business and Human Rights’ from government administrative bodies”, while the majority of respondents or 78% answered that this was “insufficient”. The survey shows that businesses receive information regarding the concept of “UN Guiding Principles on Business and Human Rights” mainly from IOs and social networks. In addition, the majority of companies (78.3%) answered “no” to the question of whether they conduct risk assessments to prevent and

identify adverse human rights impacts related to their activities.

The legal research conducted by the research team shows that the Mongolian Law on Company and the Law on Securities Market, which regulate matters related to the management and decision-making of business enterprises, and the Law on State and Local Property, which regulates the internal management and decision-making of state-owned enterprises, do not contain detailed provisions on the risk management system and preventive obligations and corresponding sanctions related to the prevention and identification of risks and negative impacts on society and the environment. In this baseline study, the negative impacts and human rights violations caused by business activities are divided into two parts: human rights violations related to labour rights and human rights violations related to social and environmental rights caused by business activities. The findings of the case studies and discussion forums show that labour-related rights are significantly violated in the context of business relations and activities. Labour-related rights include many important rights such as the right to work, freedom of choice of employment, the right to safe and healthy working conditions, the right to freedom from discrimination and harassment, the right to an adequate living wage for oneself and one's family members, and the right to freedom of association. According to the NSO's 2021 research data, more than 50% of labour disputes settled in civil and administrative proceedings are disputes related to unfair dismissal and unpaid salary.<sup>174</sup> Through desk-based research, case studies and a series of discussion forums conducted by the research team, many cases and data related to labour rights violations were collected and the most common human rights violations are included in this report.

<sup>173</sup> NSO, Calculation based on statistical data [www.1212.mn](http://www.1212.mn)

<sup>174</sup> NSO, Unified statistical database, Labour disputes resolved by courts, 2021.



## 1. ADVERSE IMPACTS OF BUSINESS OPERATIONS ON THE RIGHT TO WORK AND HUMAN RIGHTS VIOLATIONS

### Decent work includes:



- Right to a living wage for oneself and one's family;
- Right to safe and healthy working conditions;
- Right to free from any form of harassment and violence at workplace;
- Right to equality and freedom from discrimination; and
- Right to freedom of association.

Common violations of these rights can be summarised as follows:

#### ***Right to a living wage for oneself and one's family:***

In a survey conducted using sample data from actively operating companies, the highest percentage (23.5%) referred to the problem of wages not being sufficient to cover the cost of living, and overtime and holidays not being paid. In 2018, workers who are employed but earn wages below the subsistence level and belong to the category of “working poor” make up 22% of the total labour force. The majority of these workers are employed in agriculture and the service sector. Violations by companies in this sector, including non-payment of living wages and overtime, are considered forms of labour exploitation by international organisations. Business enterprises who participated in the panel pointed out that the reason why wages are not sufficient to cover the cost of living does not depend only on the employer. They explained that due to low profits and high tax burden, they cannot increase the wages of their employees even if they express such a wish.

According to legal research, Article 102 of the revised Labour Code of 2021 contains the principle of wage determination. The regulations stipulate that the development of inflation and the cost of living must be taken into account when setting wages, and that equal pay must be paid for work of equal value without discrimination on the basis of gender or other forms. While the existence of such provisions in the Labour Code is commendable, their effective implementation requires that companies pay their employees a living wage. This forms the basis for ensuring important social, economic and cultural rights. It is necessary to implement policies and programmes based on human rights to raise awareness on this issue. It is also important that large business enterprises conduct research on the pay gap between male and female employees in their companies and provide transparent information to the public to ensure gender equality in labour relations.

#### ***The right to a safe and healthy working conditions:***

The second problem that emerged from the case study is the violation of the right to safe and healthy working conditions (23.5%). Among the violations of this right, the violation of the standards of OHS accounts for the highest percentage. According to the Labour Code, a worker has the right to work in a workplace that meets the standards of OHS and is free

from discrimination and harassment. However, in 2020, a total of 353 occupational accidents and acute poisoning cases were registered in Mongolia.<sup>175</sup> Industrial accidents cause significant amounts of damage (for example, in 2019 the damage amounted to 127 billion tugrik), and 55% of this includes the damage caused to individuals or employees.<sup>176</sup>

<sup>175</sup> NSO, [www.1212.mn](http://www.1212.mn)

<sup>176</sup> MLSP, “Study of the social and economic impact of industrial accidents and occupational diseases”, 2020 [https://mlsp.gov.mn/uploads/files/UOMSHU\\_sudalgaa\\_tailan\\_2020.pdf](https://mlsp.gov.mn/uploads/files/UOMSHU_sudalgaa_tailan_2020.pdf)



Sectors where OHS standards are poorly enforced include companies operating in the construction, mining and transport sectors, their subcontractors, and trading and service companies.<sup>177</sup> Business enterprises in these sectors not only cause negative impacts on the environment, but also commit most labour rights violations in workplaces that meet the standards of OHS. As mentioned in MLSP's 2017 "Research Report on the Implementation of the Law on Occupational Health and Safety", enforcement of the said law is rather weak, and in most cases it is not management that is held liable for non-compliance with the OHS standards, but other employees or especially the OHS engineer.<sup>178</sup> The representative of the enterprises in construction sector who participated in the discussion forum stated,

**“Despite the allocation of budgetary funds for OHS in accordance with the law, we have no choice but to spend them on other operating costs”.**

The legal investigation found that the functions related to internal monitoring of whether the employer meets the OHS standards set out in the Law on Occupational Health and Safety are not being performed adequately. The study's analysis of court decisions related to OHS in 2021, extracted from the Uniform Database of Court Decisions, found that at the judicial decision-making stage, employees in charge of OHS are held liable for workplace accidents caused by the failure to implement the standards of OHS. However, the question of whether the company's management has fulfilled its preventive duties related to OHS (such as conducting risk assessments and training) is not considered, and there are only a few court cases where management has been found liable.<sup>179</sup> Governors of aimags, the capital city, soums, and districts, who constitute an authority responsible for monitoring whether business enterprises meet the standards of health and safety, are not aware of its duties and thus, not adequately performing their monitoring responsibilities.<sup>180</sup>

### **Right to free from any form of harassment and violence at workplace:** ○

In 2019, in terms of the complaints and resolution by NHRCM, it has received 8 complaints (two of which were from senior executives of the private sector entity) on being affected by WHS issues.<sup>181</sup> It can be seen in reality there are many WHS problems, but the number of grievances and the resolution of cases is relatively low, which shows that the grievance mechanism is not sufficiently enforced.

Especially emotional and other types of harassment as well as workplace violence are common in SMEs' labour relations.<sup>182</sup> 25.1%

of employees who responded to the survey said they had experienced harassment and violence at work from management.<sup>183</sup> When asked to clarify the forms of such harassment and violence, they responded that their work is criticised in an unreasonable manner, they are verbally insulted, forced to work overtime and are required to perform tasks other than those specified in the job description.

According to Article 7.4 of the revised Labour Code, the employer is responsible for creating a workplace free of harassment and violence,

<sup>177</sup> Ibid.

<sup>178</sup> MLSP, "Research report on the implementation of the Law on Occupational Safety and Health", 2017 [http://www.rilsp.gov.mn/upload/2018/sudalgaal/%D0%A5%D0%90%D0%91%D0%AD%D0%90\\_%D1%82%D1%83%D1%85%D0%B0%D0%B9\\_%D1%85%D1%83%D1%83%D0%BB%D0%B8%D0%B9%D0%BD\\_%D1%85%D1%8D%D1%80%D1%8D%D0%B3%D0%B6%D0%B8%D0%BB%D1%82%D0%B8%D0%B9%D0%BD\\_%D1%81%D1%83%D0%B4%D0%B0%D0%BB%D0%B3%D0%B0%D0%B0%D0%BD%D1%8B\\_%D1%82%D0%B0%D0%B9%D0%BB%D0%B0%D0%BD\\_-2016\\_%D0%BE%D0%BD.pdf](http://www.rilsp.gov.mn/upload/2018/sudalgaal/%D0%A5%D0%90%D0%91%D0%AD%D0%90_%D1%82%D1%83%D1%85%D0%B0%D0%B9_%D1%85%D1%83%D1%83%D0%BB%D0%B8%D0%B9%D0%BD_%D1%85%D1%8D%D1%80%D1%8D%D0%B3%D0%B6%D0%B8%D0%BB%D1%82%D0%B8%D0%B9%D0%BD_%D1%81%D1%83%D0%B4%D0%B0%D0%BB%D0%B3%D0%B0%D0%B0%D0%BD%D1%8B_%D1%82%D0%B0%D0%B9%D0%BB%D0%B0%D0%BD_-2016_%D0%BE%D0%BD.pdf)

<sup>179</sup> Sentencing decision no.2021/ShTs/0046 of the court of first instance in criminal cases of Darkhan-Uul aimag, 26 February 2021 [https://shuukh.mn/single\\_case/54366?daterange=2020/01/01%20-%202021/04/21%20&id=1&court\\_cat=2&bb=1](https://shuukh.mn/single_case/54366?daterange=2020/01/01%20-%202021/04/21%20&id=1&court_cat=2&bb=1)

<sup>180</sup> Center for Occupational Health and Safety, P. Enkhtaovan: Governors of provinces and districts are responsible for fully ensuring the health and safety of workers" 2020 <http://www.habemt.gov.mn/content/19847.shtml>

<sup>181</sup> NHRCM, "18th Report on the Status of Human Rights and Freedoms in Mongolia" 2019

<sup>182</sup> NHRCM (n 26)

<sup>183</sup> Ibid.



creating an environment that does not tolerate harassment and violence in the workplace, and preventing, eliminating and resolving complaints related to harassment and violence. Currently, there is a lack of recommendations and regulations on the prevention of harassment and violence in the workplace directed at companies, and legal liability for failure to exercise due

diligence is unclear. Therefore, it is necessary for government institutions to organise training for the management of companies to comply with the above-mentioned obligations set out in the Labour Code and to implement effective preventive measures, and to provide guidance and promote awareness on human rights due diligence as a form of due diligence.

### **Right to equality and freedom from discrimination:** ○.....

When hiring, paying salaries and bonuses to employees, companies make decisions based on competitive criteria such as employees' skills, performance, productivity and achievements without discriminating on the basis of gender. However, according to the NSO, male professionals received 20.8% higher wages than female professionals in 2016, and this wage gap is expected to increase to 24.9% by 2020. So there is no denying that there is a problem in setting salaries and promoting staff based on gender differences. 14% of the case study respondents mentioned discrimination in the workplace and restriction of the right to work as the most common types of violations. In addition, according to the research of the relevant central government administration, there is discrimination in the workplace based on age (8%), gender (3%) or race and ethnicity (1%). It concluded that these problems cannot be ignored as they represent only a small percentage.<sup>184</sup>

A case study on right to equality and freedom from discrimination involving workers with disabilities, LGBTI persons, national minorities and foreign nationals shows that there is some degree of discrimination in the workplace for persons with disabilities.<sup>185</sup> However, the representative of business enterprises, who attended the discussion forum said,

**“ We provide jobs for more than 60 people with disabilities. When it comes to hiring more people with disabilities, the most urgent problem in Ulaanbaatar is the lack of infrastructure and services that should be provided by the government, such as the environment where people with disabilities can come and go to work, public transport, entrances and exits at the workplace. If these problems are solved, our company is quite capable of creating jobs for people with disabilities.”**

It can be concluded that there is a need to increase the contribution and financial resources of all stakeholders, including the role, efforts and responsibility of the government, to reduce discrimination in the workplace and restrictions on the right to work

**In terms of legal framework:** While it is commendable that the Labour Code clearly defines the concept of discrimination and the employer's obligations in this regard, there are issues that need to be addressed in detail. There is a need to insert provisions that allow the job applicant to file a complaint with the company and the relevant institutions if he or she feels discriminated against before entering

<sup>184</sup> MLSP, Shi.Batbayar, "Case study of working conditions in Mongolia", 2020.

<sup>185</sup> NHRCM, (n 23)



into the employment relationship or during the recruitment phase. The regulations under the Labour Code on receiving and resolving complaints related to OSH are also rather weak, as they do not take into account specific factors, and there is no mechanism to protect victims

and the confidentiality of information related to OSH complaints. Furthermore, there is a need to raise awareness and inform the management of companies on the issue of discrimination.

### **The right to freedom of association**

According to the case study, 5.8% of the employees suffer from the protection of their own and others' rights and freedom of association, while 2.3% of respondents complained of a violation of freedom of association. In addition, citizens, civil society organisations and business enterprises with trade union membership who participated in the CMTU discussion forum pointed out that companies do not understand the functions and objectives of trade union organisations, hardly accept proposals regarding holiday time and overtime pay for workers, do not support the formation of trade unions, and do not understand the need to consult workers in collective bargaining, instead forcing them to enter into a pre-determined agreement.<sup>186</sup>

The desk-based research revealed that the exercise of the right to freedom of association is most problematic in the SME sector. The smaller the number of employees in the enterprise, the less likely it is that the right to

collective bargaining and the establishment of trade unions will be guaranteed. In the SME sector, the experience and culture of organising a trade union is not established, and both employers and employees lack knowledge and understanding of the benefits and opportunities of trade unions. In addition, the study's findings show that the commission's activities to resolve labour disputes and implement the collective agreement are inadequate. Even in large companies with many workers, the right to freedom of association is not guaranteed and there are cases of harassment.

In terms of the legal framework, it is necessary to revise the Law on Trade Union Rights, which guarantees the legal status of trade unions, clarifies the provisions prohibiting obstruction and interference in trade union activities, and ensures their independence from management in terms of finance and administration.

<sup>186</sup> CMTU, minutes of the discussion forum of united associations, 2021





## 2. ADVERSE IMPACTS AND HUMAN RIGHTS VIOLATIONS IN RELATION TO SOCIAL AND ENVIRONMENTAL RIGHTS THROUGH BUSINESS ACTIVITIES

In the next part of the study report, the adverse social and environmental impact of business operations and human rights violations were considered. These include:



- Right to safe and healthy food;
- The right to live in a safe and healthy environment, to be protected from pollution and loss of ecological balance;
- Rights of groups at high risk of human rights violations (These include: pastoralists, children, people with disabilities, ethnic minorities, LGBTI people and human rights defenders); and
- Right to an effective remedy.

### Right to safe and healthy food ○

Mongolia meets the food needs of its population with imported commodities and products as well as domestic agricultural and livestock products. In the food supply chain, there are standards, requirements, regulations and general recommendations on food safety that businesses must meet. As of 2018, 951 business enterprises and 16.2 thousand households<sup>187</sup> grow vegetables and potatoes in Mongolia.<sup>188</sup> It is common practise in agriculture to use chemical fertilisers instead of natural fertilisers and not to adjust the prescribed dosage.<sup>189</sup> The chemical fertilisers used by farmers not only harm the soil but also increase the amount of chemicals that accumulate in the human body. The citizens who participated in the Western Region Discussion Forum expressed their grave concern about food safety. They pointed out that improper consumption of food not only results in stomach aches in children and infectious diseases, but also endangers food safety.

Across the country, 305.4 thousand herders will supply animal food for the consumption of the population as of 2021.<sup>190</sup> The health of livestock is important for the production of meat and milk for human consumption. One of the most important issues for livestock farmers is to

stop buying medicines for animals haphazardly from the market and instead obtain and use them through a veterinarian. According to an SPIA official, the regulation of traffic, supply and transportation of meat from rural areas to the capital is inadequate.

“There are many violations that affect the quality and safety of the meat”.<sup>191</sup> In the raw materials of food, there are violations of the right to healthy and safe food at all stages, including preparation and cultivation, as well as processing, production and services. One such example is the food poisoning of many customers at the “KFC Zaisan” outlet in 2019.

**Within the legal framework,** business enterprises in the food sector must carry out internal monitoring to ensure the safety of food during production, storage and distribution, cooperate with non-governmental organisations and receive complaints and information from consumers in accordance with the provisions of the Law on Food, the Law on Food Safety and the Law on Consumer Rights Protection. However, business enterprises do not always actively enforce internal monitoring, and the rules for cooperation with consumers and non-

<sup>187</sup> Ministry of Food, Agriculture and Light Industry, “Overview of the agricultural crop sector”, 2020 <https://mofa.gov.mn/exp/blog/8/71>

<sup>188</sup> Ministry of Food, Agriculture and Light Industry, “Overview of the agricultural crop sector”, 2020 <https://mofa.gov.mn/exp/blog/8/71>

<sup>189</sup> Mongolian content LLC, “Interview with D. Tuul, head of the Soil agrochemical laboratory of the Plant and agricultural training and research institute in Darkhan-Uul aimag”, <https://gogo.mn/r/20m99>

<sup>190</sup> NSO, Unified statistical database, 2021 [https://1212.mn/tables.aspx?TBL\\_ID=DT\\_NSQ\\_1001\\_027V1](https://1212.mn/tables.aspx?TBL_ID=DT_NSQ_1001_027V1)

<sup>191</sup> D. Batjargal, State Professional Inspection Agency, “There are many violations affecting the quality and safety of meat”, 2020 <http://inspection.gov.mn/new/?p=3060>





governmental organisations are unclear and poorly implemented. Therefore, the regulation of duties and responsibilities related to internal

monitoring of enterprises in the food industry should be clearly stated in the law and its implementation should be enforced.

## **The right to live in a safe and healthy environment, to be protected from pollution and loss of ecological balance**



The right of a person to live in a safe and healthy environment depends on various factors, depending on where the citizen lives. Therefore, the right of Ulaanbaatar city residents and rural residents to live in a healthy and safe environment was studied separately.

### ***The right of citizens living in Ulaanbaatar city to live in a healthy and safe environment:***

One of the critical issues facing the citizens of Ulaanbaatar city in living in a healthy and safe environment is air and soil pollution. The main source of air pollution in Mongolia is smoke from household chimneys in Ger District and business boilers, which account for ~80% of total air pollution, while vehicle exhaust accounts for 10% and thermal power plant exhaust accounts for 6%.<sup>192</sup> 88% of the total soil samples taken in the city of Ulaanbaatar were contaminated. Especially in the capital, the soil around ger districts, large shopping centres, markets and landfills is heavily contaminated with bacteria.<sup>193</sup> Chromium contamination near tanneries and pretreatment plants ranged from 607 to 555 ppm, which is 20 times higher than uncontaminated soil and 3 to 4 times higher than standard levels.<sup>194</sup> More than 200 organisations provide drinking water, clean water and sanitation to the population under special permits, but the right to guaranteed drinking water and sanitation facilities is 2.5 times lower than in other countries, and access is also unequal depending on the type of housing.<sup>195</sup>

Moreover, the right of citizens living in the capital to live in a healthy and safe environment is being violated in many cases because the companies involved in the construction of housing do not comply with the standards of OHS and offer low-

quality housing for use. The government's failure to pay attention to the quality and standards of newly built residential buildings and the lack of clarification of cases related to the approval of low-quality buildings by the State Commission are the main reasons for the violation of the right of residents to live in a healthy and safe environment.

In order to ensure the right to live in a safe and healthy environment and to be protected from pollution and loss of ecological balance, as stipulated in Section 2 of Article 16 of the Constitution of Mongolia, it is necessary to improve the enforcement of business enterprises' obligations to carry out internal monitoring measures related to public health and safety, as provided for in the Law on Construction, and its related regulations and standards, the Law on Air, and the Law on Urban Development. For example, Article 9.1.4 of the Law on Air requires the business enterprise to carry out internal monitoring in accordance with the environmental monitoring programme included in the detailed environmental impact assessment report and to submit reports on air pollution to the relevant authorities. Similarly, companies in the industry and construction sectors that engage in activities that affect citizens' right to live in a safe and healthy

<sup>192</sup> Economic Policy and Competitiveness Research Center, "The current state of air pollution in Mongolia", 2022 [https://www.nogoonhutuch.mn/a/179#\\_ftn1](https://www.nogoonhutuch.mn/a/179#_ftn1)

<sup>193</sup> "Will the pit toilets changed?" 2022

<sup>194</sup> O.Batkhishig, *Soil pollution in Ulaanbaatar city*, 2013

<sup>195</sup> Eagle TV, An interview with J.Batsuur, head of the council for coordinating the use and services of water supply and sewerage in cities and urban settlement areas, 2021 <http://eagle.mn/r/84901>



environment and to be protected from pollution and loss of ecological balance must improve their internal monitoring and develop legal policies that support the system for assessing the risk of negative impacts on human rights. There is also

a need to improve accountability mechanisms for companies that fail to implement an internal monitoring system, assess risks and reduce negative impacts.

### ***The right of rural citizens to live in a safe and healthy environment:***

The rights of citizens living in rural areas are in many cases violated by the activities of companies undertaking mining and infrastructure projects. In 2020, the NHRCM produced a report on the “Human Rights Impact Assessment of Coal Mining and Transportation in the Tavantolgoi Mining Deposits”. As part of this report, a survey was conducted among residents of Tsogttsetsiy Soum and Tsagaan-Ovoo Bagh centres in South Gobi Aimag, where intensive mining operations are taking place. The citizens named dust, air pollution, problems with drinking water and road safety in their living environment as the most urgent problems. During the regional discussion forums, citizens and herders from Dundgobi, Dornogobi, South Gobi, Gobisumber, Bayankhongor and Dornod Aimags in the Gobi region expressed their concerns about the negative impacts and human rights violations related to air pollution, dust and drinking water caused by mining and transportation activities, and stressed the need to assign a “regional status” to these provinces and soums and implement specific measures. Participants in the discussion forum suggested that one way to solve these problems would be to ban mining activities by private individuals and small companies and to grant licences only to large, responsible companies engaged in the extraction of large strategic deposits.

In order to ensure the right of citizens to live in a safe and healthy environment and to protect them from pollution and loss of ecological balance, and to prevent and reduce the negative impacts of the activities of companies undertaking large infrastructure projects such as mining, heavy industry and transport, it is necessary to include in the Law on Minerals, the Law on Environmental Impact Assessment, the Law on Minerals, the Law on Environmental Impact Assessment, the Law on Land and other relevant laws and legislation, to insert provisions outlining the obligation of companies to conduct human rights due diligence, for example by adding a human rights impact assessment to the obligation of mining companies to conduct an environmental impact assessment, to improve the transparency of information provided by mining companies in order to strengthen citizen participation and to improve government oversight of mining activities. There is a need to revise the methodology for environmental impact assessment of mining and infrastructure projects, adopted by Government Decision No. 374 in 2013, and to develop and incorporate the methodology for social impact assessment, which includes the protection of human rights.



## Rights of social groups at high risk of human rights violations

### **The rights of rural herders:**

According to the 2012 study, degradation of pastures and lack of potable water caused by mining affect pastoralists' right to life, to freely choose their living environment and to preserve their heritage, making it impossible for them to fully exercise their constitutional rights and raise livestock.<sup>196</sup> The 2018 study concluded: "Due to the irresponsible activities of mining companies, pastoralists face difficulties such as the loss of their livestock, which is the source of their livelihoods, poisoning by toxic chemicals and the loss of the source of their drinking water."<sup>197</sup> According to the findings of the NHRCM 2020 evaluation report on mining, problems related to dust, air pollution, drinking water and road safety pose the greatest challenges to the living environment of rural people and pastoralists. This indicates that the damage caused by human rights violations and negative impacts of mining in the last 6 years has not only not been remedied, but also not realistically compensated.

### **Rights of people with disabilities:**

26 facilities in the most developed area along the district roads of Ulaanbaatar city centre were assessed for their accessibility for people with disabilities. It was found that 50% of them were not accessible at all. Medical facilities also have buildings that are not suitable for serving people with disabilities. According to a study conducted in Ulaanbaatar city, 52.2% of all hospitals had inaccessible paths from the car park to the hospital, 18.2% had no ramps and 69.1% had non-standard ramps. Despite the appointment of representatives of citizens with disabilities to the State Commission for Monitoring and Inspecting the Quality and Standards of New Buildings, most buildings are still designed to be inaccessible to people with disabilities.<sup>198</sup>

With the exception of the news programme "Wheel of Time" on the "Mongolian National Public TV", hearing-impaired people still have limited opportunities to receive news on television. People who are blind or have difficulty using printed material also have limited access to information. There are no initiatives to disseminate information to people with disabilities using new modern communication technologies, and there is a lack of consideration for their legitimate interests.

### **Children's rights:**

According to a 2017 study by UNICEF, (1) many unregistered people who have migrated after mining and their children do not have access to basic social services. (2) When parents go to work in the mines, children are left without a guardian for long periods of time, and the risk of exposure to violence and domestic accidents increases. This is so widespread that a new terminology has even been created, "children as "heads of households". (3) The number of children exposed to crime, including domestic violence, is increasing as mining activities intensify.<sup>199</sup> In a study involving more than 100 companies to assess the existence of child-friendly legal and other conditions in companies, it was found that companies insufficiently follow the practise of paying special attention to the rights of children in their operations and assessing whether their products and services have a positive or negative impact on children.<sup>200</sup> It is therefore necessary to create the conditions within the legal framework for companies to exercise due diligence on human rights in their operations and to pay particular attention to children's rights by monitoring internally whether their business activities, products and services have a negative impact on children's rights and by establishing accountability mechanisms to hold them liable in the event of violations.

<sup>196</sup> NHRCM, UNDP, "Mongolia: Business and Human Rights in Mining, Proceedings of an International Conference, 2012

<sup>197</sup> NHRCM, report on the "Evaluation of the human rights impacts of coal mining and transportation operations of Tavantolgoi mining deposits, 2018

<sup>198</sup> UNDP, Business and Human Rights preliminary baseline study report, 2020 (n 40)

<sup>199</sup> UNICEF, "Mining-induced migration and its impacts on children", 2017

<sup>200</sup> UNDP, Business and Human Rights preliminary baseline study report, 2020 (n 40)



### **The rights of human rights defenders:**

The discussion forums raised the issue of employers' disapproval, harassment and harming trade union activists and elected representatives for standing up for workers' rights. 2.3% of the companies that participated in the case study responded that it is a problem to impose penalties for exercising the right to freedom of association, while 5.8% stated that such penalties arise in the context of protecting their own rights and freedoms and the rights of others. There is therefore a need to change mindsets by raising awareness and understanding of human rights among employers or business owners and encouraging companies to conduct human rights due diligence in their operations. Here, sector-specific trade associations and chambers of commerce and industry play an important role.

The International Corporate Responsibility Forum has developed a handbook to protect and support whistleblowers and human rights defenders in countries developing "National Action Plans for the Implementation of the UN Guiding Principles on Business and Human Rights".<sup>201</sup> The manual provides detailed guidance on how the protection of human rights defenders who raise their voices against human rights violations and negative corporate impacts can be enshrined in national legislation and what measures can be taken by state agencies. It also recommends the development of a national programme to reduce and prevent obstruction of the activities of whistleblowers and human rights defenders and the use of threats, intimidation and violence against them, and to train law enforcement officials where appropriate.

In addition, there are difficult problems in organising demonstrations in Mongolia. According to Article 9.1 of the Law on the Procedure for Holding Demonstrations and

Assemblies, "Applications to hold demonstrations and assemblies in streets and squares must be registered with the governor of the district. Where the road or square on which a demonstration or assembly is to be held extends over the area of two or more sums or districts, the application shall be submitted to the Governor of the Aimag or Capital for registration." According to Article 9.5 of the same Act, if the governor has not responded within 3 days and registered the demonstration and assembly, it is deemed as consent to exercise the right to hold a demonstration and assembly. In 2017, Dr. O. Munkhsaikhan, Associate Professor of the School of Law, NUM, in an interview with [www.ikon.mn](http://www.ikon.mn), said, "There are cases where governors do not accept or register the registrations of demonstrations or assemblies by citizens and obstruct them at their discretion".<sup>202</sup> Although in 2005 the permission to hold demonstrations and assemblies was changed in the law to a notification, many cases of violent suppression of peaceful demonstrations and assemblies of citizens by the police during the Covid 19 pandemic due to lack of permission show the continued belief of citizens that they need permission to hold demonstrations and assemblies.<sup>203</sup>

In order to protect the voices of human rights defenders and support their activities, it is necessary to study international legal regimes for the protection of human rights defenders, such as the prohibition of filing a counterclaim on the grounds that a strategy has been used to silence or threaten public participation and voices, or the SLAPP-Back law regime, the transparency of judicial proceedings to the public in cases involving the public interest, human rights and freedoms, and the prohibition of defendants from taking any action in advance and its introduction into judicial practise.

<sup>201</sup> International CSR Forum, "Regulation of Human Rights Defenders in the National Action Plans on Business and Human Rights", 2017

<sup>202</sup> N.Puntsagbold, "O.Munkhsaikhan: Citizens' right to hold demonstrations and gatherings is blocked and restricted at the discretion of the Governor", 2017 <https://ikon.mn/n/z1y>

<sup>203</sup> B.Burmaa, "Ts.Munkhtsetseg: The demands of the police do not correspond to the right to hold demonstrations", 2021 <https://eguur.mn/282034/>



## Redress of human rights violations and the right to effective remedy

Representatives of trade unions and pastoralists who participated in the discussion forums explained that they had petitioned the courts for the restoration of their violated rights, but had been unable to resolve their cases and obtain compensation for years due to the lengthiness of court proceedings and insufficient evidence. Judges, lawyers and jurists who participated in the discussion forum on “Strengthening the Mechanism for Restoration of Violated Rights” stated that due to the workload of the courts and infrastructural challenges, the reasonable time for resolving court cases is exceeded.

Based on the suggestions of citizens, judges, lawyers and jurists who participated in the discussion forums, as well as the suggestions of civil society organisations working on the restoration of violated rights, and the results of the desk-based and legal research on human rights violations by companies, the resolution of damages and resulting complaints through judicial and state non-judicial procedures, as well as non-state procedures for the resolution of complaints, the study identified the following urgent problems.

### The issues concerning the mechanism for redress of human rights violations through judicial proceedings:

- The delay and backlog of court cases are related to court workload and infrastructure problems.
- One of the main reasons for rejection and dismissal of cases by the court is related to registration of addresses of citizens and businesses. Therefore, it is necessary to amend the relevant legal regulation of state registration on business enterprises.
- It is necessary to resolve the issues of organisation of bailiffs, who play an important role in ensuring equal participation of parties and identification of the location of the defendant.
- There is no existing regulation for the filing and settlement of lawsuits involving the public interest in civil proceedings.
- In order to prevent people from being unable to enforce their claims due to lack of evidence or insufficient evidence, there is a need for a legal regime that places the burden of proof on the defendant.
- In cases where the public interest is at stake, legal provisions should be included in the relevant procedural laws that allow multiple claimants to file a class action lawsuit.
- The issue of how legal persons can be held accountable for certain offences and crimes is not clear and implementation is inadequate. For example, in cases of child labour, forced labour or serious violations of children’s rights, corporate management is not held accountable according the law.
- Compensation is not calculated realistically. For example, when calculating compensation and damages for pastoralists in relation to livestock, they suffer losses because the economic benefit derived from the productivity of the animals is not realistically calculated.
- It is necessary for courts to apply the human rights provisions set out in international human rights treaties.
- As some substantive laws do not enshrine certain human rights and do not clearly define responsibilities in relation to the violation of those human rights, it is difficult to bring an action in court to redress the rights that have been violated.



### **The issues related to the mechanism for redress of human rights violations and resolution of complaints through a state-based non-judicial mechanism:**

- In order to establish an effective mechanism for the redress of human rights violations in the course of receiving and resolving complaints through the NHRCM, it is necessary to build staff capacity and provide the necessary budget.
- To reduce the workload of the courts, it is necessary to diversify and develop mediation activities at the court, build the capacity of mediators and improve their social and economic guarantees.
- In order to improve the procedure for the provisional settlement of administrative cases set out in Articles 92-99 of the General Administrative Law, it is necessary to define precisely the duty of officials to receive and settle complaints and to strengthen the accountability associated with this role in the Law on the Settlement of Petitions and Complaints from Citizens to State Organisations and Officials and in the General Administrative Law.

### **The issues concerning the non-state based grievance mechanism for redressing human rights violations and resolving related complaints:**

- It is necessary to amend the relevant laws related to the judicial enforcement of the mediation agreement in relation to cases resolved through the mediation process of the MNCCI and the Ulaanbaatar City Chamber of Commerce and other independent and impartial mediation centres.
- In the context of developing and improving the internal complaints procedure of business enterprises, it is necessary to include specific provisions in the relevant laws and to disseminate government information and guidelines.
- In order to develop mechanisms for redress the human rights violations within the framework of professional associations and business cooperation associations, it is necessary to build their capacity and provide governmental support.



# RECOMMENDATIONS: ISSUES TO BE REFLECTED IN THE NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS



The recommendations were developed in accordance with the three pillars of the UN Guiding Principles on Business and Human Rights, which refer to the duty of the state to protect human rights, the responsibility of business enterprises to respect human rights and access to remedies to redress of human rights violations.

## **PILLAR ONE.** MEASURES TO IMPLEMENT IN RELATION TO STATE DUTY TO PROTECT HUMAN RIGHTS

### **Improving the legal environment and regulation system:**

- Ensure that all social and economic policies implemented by the government in Mongolia are developed based on the human rights approach;
- Amend the Law on Companies, the Law on Securities Market and related laws regulating the activities of business organisations to require companies that meet certain requirements set out in these laws (e.g. business enterprises with 200 or more employees and companies that implement large projects and programmes with their annual sales revenues and funding from the state budget, etc.) and within their value chains to conduct human rights due diligence;
- Amend the Law on Companies to define the duties of shareholders, the board of directors and management to prevent adverse human rights impacts and prevent human rights violations;
- Amend the Law on Companies to include the duty of management to assess, monitor and remedy adverse human rights impacts and human rights violations caused by the activities of subsidiaries and independent enterprises of the parent company;
- Enshrine in relevant laws the mandatory obligation of wholly or partially state-owned or locally owned enterprises, as well as enterprises engaged in public service activities (public education, health, public transport, etc.), to conduct human rights due diligence in their operations;
- Amend relevant legislation to include provisions requiring businesses to respect human rights in their operations as a primary criterion in selecting business enterprises for the purchase of goods, works and services with state and municipal funds and for the implementation of major projects and programmes;
- Include responsibility for ensuring the implementation of the above law, providing technical and methodological support and monitoring enforcement in the functions of the central state administration;
- Improve the legal environment to improve the internal monitoring system of enterprises, establish accountability and the monitoring system with citizen participation as stipulated in the Law on Occupational Health and Safety, the Labour Code, the Law on Environmental Impact Assessment, the Law on Minerals, the Law on Water, the Law on Soil Protection and Desertification Prevention and the Law on Environmental Protection;



- Revise the Law on Trade Union Rights to ensure that trade unions can operate independently and impartially, and clarify sanctions in case of interference;
- Conduct human rights-based monitoring, inspection, and evaluation of the implementation of all laws and regulations in force in Mongolia on a regular basis, with public participation and information disclosure and transparency, to ensure the implementation of relevant laws, regulations, and policy documents to respect, protect, and realise the human rights enshrined in international covenants, agreements, and conventions to which Mongolia is a party;
- Clearly define Mongolia's state institutions and officials, especially those responsible for overseeing the activities of business enterprises, increase their awareness and understanding of business and human rights, and improve regulations and mechanisms to strengthen accountability in the event of human rights violations resulting from the failure to fulfil their duties;
- Implement the Great State Khural Resolution 2022 on certain measures to ensure a safe and healthy food supply and security;
- Pay urgent and special attention to the human rights of citizens living and working in areas with active mining and heavy industry and take appropriate measures (e.g. enforce the right to live in a healthy and safe environment, to be protected from pollution and loss of ecological balance, freedom of information, property rights and cultural rights, and mechanisms for compensation for damage and redress of human rights violations).
- Revise the methodology for environmental impact assessment of mining and infrastructure projects in accordance with Resolution No. 374, develop, integrate and implement the methodology for social impact assessment and improve the quality of monitoring the implementation of impact assessment reports in the context of protecting the legitimate interests of rural pastoralists, define the impact zone to assess and mitigate the negative impacts on the human rights of pastoralists living in the vicinity of the areas where mining, transport and heavy industry activities take place, define and enshrine in law the responsibilities of the companies concerned in terms of prevention, enforcement, monitoring and accountability;
- Amend the relevant laws and regulations to realistically monitor whether human rights have been violated or negative impacts occurred from operation of business enterprises engaged in mining, heavy industry, construction, and transportation in the course of carrying out state monitoring and inspection functions and to create an effective monitoring system.
- Amend the Law on Land and the Law on Minerals, which is currently being revised,<sup>204</sup> to include the principles of free, prior, and informed consent described in this report, and define the duties and responsibilities of officials who are authorized to carry out functions related to participation of citizens.
- Evaluate laws, rules, regulations and standards related to urban planning, organisation and public services based on human rights-based approach, make amendments where necessary, ensure implementation, strengthen the legal sanctions for violations (e.g. impose fines, withdraw permits, suspend measures, etc.)
- Improve and develop non-state based non-judicial mechanisms to resolve the complaints about corporate human rights abuses (e.g. a system based on mediation, professional associations, an independent system within the framework of international financial institutions, etc.)
- Enshrine the functions of fighting corruption and reducing the risk of corporate corruption in relevant laws to create an economic system free of corruption and bribery and based on fairness, competence, productivity and competition;

<sup>204</sup> Mongolian Mining Journal, "A Working Group was established to draft the revision of the Law on Minerals", 5 February 2021 <https://www.mongolianminingjournal.com/a/71372>



- Improve legal provisions to enhance the internal monitoring system and preventive obligations of business enterprises engaged in food production and strengthen accountability mechanisms;
- Promote the employment of persons with disabilities, prevent and limit discrimination prior to the establishment of employment relationships and consider a differentiated legal regime for the employment of persons with disabilities in rural areas; and
- Ratify the International Labour Organization Convention no.190.

### **Raising public awareness and organise training on the “UN Guiding Principles on Business and Human Rights”:**

- Conduct regular short-term online and face-to-face training on the UN Guiding Principles on Business and Human Rights and create and build the capacity of human rights ambassadors in business enterprises.
- Promote awareness and understanding among business enterprises of the benefits and importance of implementing UN Guiding Principles on Business and Human Rights and continue to raise awareness of the positive impacts and benefits of conducting human rights due diligence in their operations.
- Promote awareness among business enterprises that respect for human rights in their operations is a separate concept from corporate social responsibility.
- Build the capacity of consultancies, civil society organisations and professional associations to conduct independent human rights due diligence and introduce it into business operations.
- Provide professional associations of business organizations with a professional methodology for conducting human rights due diligence and build their capacity.
- Recognise the achievements of businesses that operate with respect for human rights, promote them as exemplary businesses in society, share their good practises and motivate others through chambers and associations, and support multistakeholder initiatives among businesses that respect human rights in the business sector.
- Include business and human rights content in university curriculums.

### **Promoting decent work in business operations and ensuring the protection of labour rights:**

- Implement the regulations under Article 102 of the Labour Code and introduce an incentive policy for enterprises to set wages according to the rate of inflation (give them preference in public procurement, offer tax benefits, etc.);
- Conduct detailed research on discrimination against groups at high risk of human rights violations in labour relations, such as persons with disabilities, women, older people and LGBTI persons, and organise uniform measures to reduce discrimination based on the research findings;
- Promote awareness and disseminate information to founders, major shareholders, executives and other employees of large companies on the exercise of workers’ right to freedom of association and preventive measures against the violation of labour rights;
- Raise awareness of human rights among SMEs, provide guidelines to ensure the protection of labour rights by their employees and organise training; and
- Create a favourable business and economic environment for enterprises to ensure employees’ right to a living wage.



## PILLAR TWO. MEASURES TO BE IMPLEMENTED IN CONNECTION WITH THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

- Create an effective system for public reporting and monitoring of reports on non-financial activities of certain companies, especially those involved in mining, heavy industry, construction and transport. For example, introduce a practise whereby companies operating in these sectors must regularly submit their environmental impact assessment, social impact and health impact reports, as well as their activity reports, to the public on an annual basis;
- Approve procedures that require companies to include what types of information in their non-financial reports (e.g. environmental impact assessment, human rights impact assessment, information on activities to reduce the risk of corruption, etc.);
- Organise training and promotional activities for business enterprises in the informal economy on respect for human rights in their activities;
- Conduct activities to identify negative impacts and violations of labour rights of citizens working in the informal economy (e.g. identify child labour, worst forms of child labour, forced labour and labour exploitation in the tourism and hospitality sectors and establish accountability mechanisms);
- Organise integrated training for TOP 100 taxpaying companies on the implementation of the “UN Guiding Principles on Business and Human Rights”, in particular on human rights due diligence, by involving senior management staff.
- Include in the criteria for selection of companies as TOP 100 taxpayers by the MNCCI the criterion of doing business in accordance with human rights, conducting human rights due diligence and publishing their human rights policy publicly.
- Develop handbooks for businesses on how to integrate the human rights policy and the human rights due diligence in their day-to-day operations.
- Promote and incentivise exemplary companies that respect human rights in their daily operations and encourage multiskateholder initiatives between companies to share best practises, learn from others and work together to remedy human rights violations.



## THE PILLAR THREE. MEASURES TO BE IMPLEMENTED WITHIN THE MECHANISM FOR ACCOUNTABILITY AND EFFECTIVE REMEDY

### Under the mechanism for redress of human rights violations through the judicial mechanism

- Allow exemption from stamp duty in public interest cases and the payment by the state of costs such as lawyers' fees and other reasonable expenses incurred in connection with court proceedings, depending on the circumstances of the claimant and complainant and subject to certain eligibility criteria;
- Create legal provisions for the resolution of public interest cases and human rights violations through the civil procedure system, define public interest cases and class-action lawsuits and include them in the civil procedure code;
- Shift the burden of proof in certain rights of action to the defendant in civil proceedings concerning human rights violations affecting the public interest and clarify the provisions for class actions by multiple plaintiffs in a case affecting the public interest;
- Improve legal provisions for free legal aid in cases of human rights violations affecting the public interest;
- Establish an effective system to fund, promote and intensify the work of lawyers and advocates who voluntarily conduct strategic litigation in cases of human rights violations and public interest under certain rights of action.
- Improve the legal education of citizens, especially those belonging to the group at high risk of human rights violations, on the accountability and right to an effective remedy, compensation for damages and protection of rights, and consequently create and finance a universal centre for legal education in rural areas and build the capacity of its staff.
- Include provisions in the Criminal Procedure Code regarding the methods of calculating compensation and damages in certain cases (e.g. when forced labour, labour exploitation, child labour and serious violations of the right to live in a healthy and safe environment, the right to a workplace that meets the standards of OHS are registered as criminal offences and, in the case of a registered case, detail the provisions for calculating the life, health, emotional, material and non-material damage of the victim)
- Strengthen the criminal liability regulation and implementation for legal persons in relation to the above cases and include detailed provisions on the liability of management level officials in the law.
- Clarify the legal provisions on the economic loss of livestock, which is the source of the economy and livelihood of local herders, and include this in the laws on administrative, civil and criminal proceedings.
- In order to keep the time for processing cases in the courts at a reasonable level, organise effective work to reduce the workload of the courts and allocate funds from the budget (e.g. establish specialised and district courts in the necessary areas, increase the number of judges, assistant judges and administrative staff, and explore ways to effectively conduct court proceedings outside the chambers). Especially considering the fact that there are many problems related to the dismissal of cases because the parties involved in the case are not at their registered address, systematically solve the state registration of addresses of citizens and enterprises.



- Re-establish the organisation of bailiffs, who have the important task of locating the whereabouts of defendants and ensuring the equal participation of parties in the process, in order to support the continuous and effective work of the court.

### **In the context of state-based non-judicial mechanisms for redress of human rights violations and reparation of damages:**

- Support the establishment of an online platform to receive and resolve information on human rights violations caused by companies;
- Strengthen and improve the function of the mediation mechanisms at the courts and pay special attention to the establishment of a trustworthy, reliable, impartial and fair dispute settlement system in order to reduce the workload of the courts in resolving labour disputes;
- Build the capacity of mediators, improve their ability to build trust, persuade and negotiate, and increase their economic and social guarantee to improve court-based mediation activities;
- Improve the procedure for resolving the preliminary administrative complaints and increase the accountability of officials responsible for responding promptly to complaints from citizens about human rights violations received by administrative institutions and for providing advice and information.
- In adherence to the Edinburgh principles of the United Nations,<sup>205</sup> include and further develop the procedures for redress of human rights violations caused by business activities and compensation for damages in NHRCM's complaint resolution activities and build the capacity of its staff.
- Study other countries' best practises related to non-judicial grievance mechanisms (such as the Canadian Ombudsman responsible for resolving environmental cases, mediation activities at the International Finance Corporation, etc.) and train experts to effectively resolve disputes through mediation and other dispute resolution mechanisms.
- Engage the Corporate Ethics Department of the Financial Regulatory Authority of Mongolia to monitor negative impacts and human rights violations by companies and to provide advice and information.

<sup>205</sup> *Edinburgh Declaration adopted by the United Nations, 2014* [https://www.ohchr.org/sites/default/files/Documents/AboutUs/NHRI/Edinburgh\\_Declaration\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/AboutUs/NHRI/Edinburgh_Declaration_en.pdf)





### **Within the framework of non-state based mechanism for restitution of human rights violations and compensation of damages:**

- Amend the relevant legislations to strengthen the judicial enforcement of decisions and mediation agreements in cases resolved through mediation procedures at chambers of commerce and arbitration tribunals, which are the non-governmental, independent and impartial mechanisms for resolving complaints related to corporate human rights abuse;
- Develop regulations that encourage enterprises to establish the corporate internal grievance mechanism that provides effective remedy and accountability for human rights violations and adverse impacts identified through human rights due diligence or complaints received;
- Establish a mechanism to resolve, redress and compensate negative impacts and human rights violations caused by the activities of businesses within business associations or multistakeholder initiatives, train and build the capacity of business associations and multistakeholder initiatives to set internal grievance mechanism to receive and resolve these types of complaints within member enterprises; and
- Provide advice and information and organise training for companies on how to set up internal grievance mechanisms for receiving and resolving complaints from citizens and other stakeholders about their business activities.

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