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Совет по правам человека

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**Поощрение и защита всех прав человека,
гражданских, политических, экономических,
социальных и культурных прав,
включая право на развитие**

Доклад Рабочей группы по вопросу о правах человека и транснациональных корпорациях и других предприятиях

Добавление

Поездка в Монголию*

Резюме

По приглашению правительства один из членов Рабочей группы по вопросу о правах человека и транснациональных корпорациях и других предприятиях посетила с официальным визитом Монголию 8–18 октября 2012 года. Эксперт Рабочей группы высоко оценила всеобъемлющие и откровенные обсуждения, проведенные в ходе этого визита с представителями правительства, деловых кругов, затрагиваемых заинтересованных сторон и гражданского общества. В настоящем докладе Рабочая группа представляет основные выводы, касающиеся потенциальных и фактических негативных последствий предпринимательской деятельности, а также прогресса в осуществлении Руководящих принципов предпринимательской деятельности в аспекте прав человека. В заключении доклада содержатся рекомендации, выполнение которых позволило бы добиться заметных улучшений в деле защиты прав человека, предупреждения негативных последствий предпринимательской деятельности в Монголии и доступа к средствам правовой защиты для лиц, затрагиваемых предпринимательской деятельностью.

* Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен.

В ходе визита эксперт пришла к выводу о том, что проблемы, с которыми сталкивается Монголия, в основном обусловлены отсутствием ясности в вопросе о ролях и ответственности правительства и деловых кругов в решении вопросов, связанных с последствиями для прав человека; необходимостью обеспечения того, чтобы лица, затрагиваемые предпринимательской деятельностью, участвовали в принятии основных решений, которые их затрагивают, что в свою очередь требует, чтобы потенциально затрагиваемые лица имели своевременный доступ к соответствующей информации; необходимостью объединения усилий деловых кругов и правительства в решении вопросов, касающихся суммарного воздействия предпринимательской деятельности; необходимостью учета аспектов прав человека в законах и деятельности по их применению; и необходимостью обеспечения того, чтобы национальные и местные органы управления располагали достаточными возможностями для осуществления эффективного контроля и обеспечения соблюдения предприятиями соответствующих законов и правил, а также необходимостью расширения доступа к средствам правовой защиты для лиц, негативно затрагиваемых предпринимательской деятельностью.

Annex

[English only]

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its visit to Mongolia (8 to 18 October 2012)

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I. Introduction

1. Further to resolution 17/4, the Working Group is mandated by the Human Rights Council to conduct country visits. At the invitation of the Government, Margaret Jungk, expert and member of the Working Group, undertook an official visit to Mongolia from 8 to 18 October 2012.

2. The Working Group expert met with Government representatives at the central and local (*aimag* (province) and *soum* (district)) levels, including the Vice-Minister of Foreign Affairs, the ministers of Construction, Economic Development, Mining, Justice, Population Development and Social Protection, and Nature, Environment and Green Development. She also met the President's Advisor on Human Rights, the Deputy Speaker of Parliament and the commissioners of the National Human Rights Commission (NHRC). The expert met representatives of the United Nations system, international cooperation agencies, diplomatic missions, business enterprises and organizations, trade unions and civil society organizations, as well as representatives of nomadic herders and artisanal miners. In addition to holding meetings in Ulaanbaatar, the expert travelled to Ömnögovi *aimag*, held meetings in Tsogtsetsii and Khanbogd *soums* and visited two mining sites (Tavan Tolgoi, operated by Energy Resources LLC; and Oyu Tolgoi, operated by Turquoise Hill Resources). She also participated in the conference, Mining and Human Rights in Mongolia (hereafter the Conference), organized by the NHRC and United Nations Development Programme (UNDP) on 10 and 11 October 2012¹.

3. The Working Group expert wishes to thank the Government for its invitation and for its valuable assistance before, during and after her visit to the country. She would also like to thank the civil society organizations and individuals with whom she met during her visit, as well as business representatives, particularly those who invited the delegation to visit their operations.

4. The key challenge for any country, especially one that is undergoing rapid economic development like Mongolia, is to maximize the positive effects of business (e.g. economic development, building infrastructure, employment) while minimizing the negative impacts (e.g. damage to the environment, violation of labour rights, reduced access to public services). Further to the Working Group's mandate,² during the visit, the expert focussed on five areas: identifying the main business-related impacts on human rights; identifying what key actors are currently doing to address these; clarifying what challenges are inhibiting key actors from meeting their human rights obligations and responsibilities; identifying the opportunities to advance implementation and dissemination of the Guiding Principles on Business and Human Rights (hereafter the Guiding Principles); and the good practices and lessons learned that can be shared more broadly.

5. In the present report, the Working Group describes the information received by the expert during the visit to Mongolia, identifies key challenges as well as good practices, and makes recommendations for actions that may assist in remedying the challenges identified.

¹ See <http://www.mn-nhrc.org/eng/main3/120/58-recommendations-from-international-conference-mining-and-human-rights-in-mongolia.html>.

² See Human Rights Council resolution 17/4, para. 6.

II. Context

A. General situation

6. Mongolia has undergone 20 years of political and economic reforms during its transition towards a market-based economy. The economy, traditionally based on livestock herding, is experiencing rapid transformation, driven by mineral discoveries,³ and real GDP per capita has more than doubled since 1990.⁴

7. In 2011, foreign direct investment in Mongolia totalled \$5.3 billion. The World Bank highlighted that this economic growth has translated into some benefits for the people of Mongolia – poverty decreased from 39.2 per cent in 2010 to 29.8 per cent in 2011. According to UNDP's Human Development Report (HDR) 2011, Mongolia has a human development index value of 0.653, in the medium human development range, placing the country at 110 out of 187 countries and territories. Although the percentage of the population which is undernourished has fallen steadily since 1991, in 2011 it was still at 24.2 per cent.⁵ As noted in December 2012 by the Special Rapporteur on extreme poverty and human rights, "this clearly shows that the growth triggered by the mining and extractive sector has not benefited the poorest sectors of society who have been left behind."⁶

8. Investment in the mining sector is expected to continue to drive economic expansion. Given the large human rights and environmental footprint of the mining sector, the Working Group expert gave greater focus to mining, and visited two *soums* affected by mining activities in Ömnögovi. She also met with a business enterprise in the manufacturing (cashmere) sector and received information concerning the construction industry from numerous stakeholders.

B. Framework for the protection of human rights in Mongolia

1. International legal framework for the protection of human rights in Mongolia

9. Mongolia has ratified seven of the core human rights treaties,⁷ signed the Convention on Enforced Disappearance, and was reviewed at the ninth session of the Working Group on the Universal Periodic Review (UPR) (2010). Mongolia is party to all eight fundamental conventions of the International Labour Organization (ILO) and the four Geneva Conventions of 12 August 1949.

³ See World Bank, Mongolia Quarterly Economic Update - October 2012.

⁴ UNDP, Mongolia Human Development Report 2011, "From Vulnerability to Sustainability: Environment and Human Development" (Ulaanbaatar, 2011), para. 4.

⁵ United Nations Department of Economic and Social Affairs, Millennium Development Goals Indicators, Population undernourished, percentage.

⁶ Press statement on the mission to Mongolia, 2-7 December 2012, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12874&LangID=E>.

⁷ International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Civil and Political Rights (and its two Optional Protocols), International Covenant on Economic, Social and Cultural Rights (and its Optional Protocol), Convention against Torture and Other Cruel or Degrading Treatment or Punishment, Convention on the Elimination of All Forms of Discrimination Against Women (and its Optional Protocol), Convention on the Rights of Children (and its first two Optional Protocols), and the Convention on the Rights of Persons with Disabilities (and its Optional Protocol).

2. The national policy and legal framework

10. Article 10, paragraph 2, of the 1992 Constitution states that “Mongolia shall fulfil in good faith its obligations under international treaties to which it is a Party,” while paragraph 3 states that “the international treaties to which Mongolia is a Party shall become effective as domestic legislation upon the entry into force of the laws on their ratification or accession.” The Working Group recommends that Mongolia ensure that international treaties do become effective as domestic legislation in practice.

11. Chapter 2 of the Constitution addresses human rights and freedoms, and in addition to provisions against discrimination, article 16 guarantees specific rights for citizens of Mongolia.

12. In addition to these rights, various Government and presidential platforms are relevant to the protection and promotion of human rights.

13. The State Great Hural (Parliament) adopted a National Human Rights Action Programme in 2003⁸ to reinforce State mechanisms guaranteeing the realization of human rights and freedoms, combating violations thereof and ensuring their effective implementation. The action programme specifically recognizes the role of private enterprises and organizations in “the alleviation of poverty, in raising the general standard of living, in ensuring the right to work and to favourable conditions of work.” It also acknowledges that “commensurate with their important role in society, the operations of private enterprises have a profound effect on the enjoyment of these and other human rights. They are, thus, important duty-bearers of human rights obligations and the subject of legitimate expectations of the State and the people of Mongolia.” Specifically, the action programme sets a number of objectives with regard to the private sector, including the promotion of awareness of human rights among workers, business owners, leaders and managers; the establishment of systems for registering human rights violations in the workplace and relevant complaints and development of investigation procedures; and the development and implementation of regulations to nullify licences of enterprises and legal persons that have seriously infringed on rights or damaged the environment twice or more.

14. At the time of the expert’s visit, the new Parliament had been in place for about 40 days and many of the Ministers were new in their functions. The Working Group regrets that it was unable to meet with the Parliamentary Sub-Committee on Human Rights or with the Prime Minister’s Office, particularly as the latter is responsible for coordinating, monitoring and reporting on national and international policies, and other issues relevant to human rights.

15. The Government recently adopted its Platform for 2012-2016,⁹ which includes improving access to employment for citizens of Mongolia; improving access to health care and education; protecting the environment by integrating economic and development policies with a green development policy; and improving transparency and accountability with regard to State and Government activities.

16. The National Development Strategy (2007-2021)¹⁰ reiterates Mongolia’s commitment to respect human rights. It aims to improve direct enjoyment of human rights and freedoms by balancing the distribution of State powers; creating a legal environment for compensation of damages incurred by illegal actions of other actors; ensuring the right

⁸ Resolution of the State Great Hural (Parliament) of Mongolia, 24 October 2003, Number 41: Adoption of the National Human Rights Action Programme of Mongolia.

⁹ See http://www.wpro.who.int/countries/mng/mongolia_government_action_plan_2012-16.pdf.

¹⁰ See <http://cabinet.gov.mn/files/govactivityprogram/08110001.pdf>.

to a healthy and safe environment; providing for special protection of the rights of disabled citizens; and improving the legal environment for protecting the rights of children.

17. Mongolia adopted a national level Millennium Development Goal 9 on strengthening human rights and fostering democratic governance. Its targets are to fully respect and uphold the Universal Declaration of Human Rights; ensure the freedom of the media and provide the public with free access to information; mainstream democratic principles and practices into life; and develop a zero-tolerance environment to corruption in all spheres of society. The 2011 national report on the implementation of this goal states that while there has been some progress towards achieving the three targets, several challenges remain.¹¹

18. With regard to national human rights institutions, the Parliament adopted a law establishing the NHRC on 7 December 2000. The NHRC is mandated to promote and protect human rights and is “charged with monitoring the implementation of the provisions on human rights and freedoms, provided in the Constitution of Mongolia, laws and international treaties of Mongolia.”¹² It is also mandated to review complaints of human rights violations and initiate proposals and recommendations and transmit them to State authorities.

19. Finally, the goals of the President’s Policy and Action Programme for 2009-2013 include consolidating a human-centered society upholding human rights and freedom; strengthening the judiciary, establishing justice and eliminating corruption and bureaucracy; and ensuring a nature-friendly sustainable economic development policy supportive of rural development efforts.¹³

III. Impacts of business activities on human rights

A. Framework for business activities

1. Time of significant change and opportunity to improve prevention of business-related negative impacts

20. The political and legislative landscape in Mongolia is in a stage of significant change, as the new Government has just assumed office and has an ambitious Platform for 2012-2016, with numerous new policies and laws being debated. The Working Group highlights this window of opportunity for setting the stage correctly and improving mechanisms to prevent the negative impacts of business activity. The Working Group emphasizes that there is need to ensure that laws are coherent, clear and address legislative gaps.

21. Positive developments include the new Procurement Law, which came into force on 1 October 2012. It provides for civil society to be involved in bidding processes and monitoring implementation of procurement contracts. This is crucial for environmental, social and human rights impacts to be given greater visibility. A role for civil society in reviewing tenders and contract implementation provides valuable confidence and capacity building for civil society to participate in decision-making in other areas, for example mining.

¹¹ Mongolia, Millennium Development Goals Implementation, Fourth National Report, 2011.

¹² National Human Rights Commission of Mongolia Act, 7 December 2000, available at <http://www.mn-nhrc.org/eng/28/29/>.

¹³ See <http://www.president.mn/eng/president/action-program.php>.

22. The expert was informed of the Environmental Protection Law, amended in May 2012, which requires environmental impact assessments for large-scale business projects, as well as strategic assessment of environmental and social impacts across an entire sector, when there are cumulative impacts from multiple projects. The Government should follow international best practice and incorporate human rights and social aspects into impact assessments, which are now included in leading international standards relating to environmental impact assessments.

23. The expert learned that the upcoming revision of the Minerals Law of 2006 will address issues related to infrastructure provision, stakeholder consultation and the social responsibility of mining companies. Given the significant impacts of mining activities on human rights, the Working Group urges careful consideration of this revision and stresses that it should be undertaken with a human rights lens and with strong engagement of stakeholders at all levels.

24. The expert was informed of a new Conflict of Interest Law that requires Government officials to declare their ownership or interest in businesses. Enforcement of this is critical to establishing a firewall between business and Government. The Working Group strongly encourages the Government to pursue this initiative and consider other measures that ensure the separation of business and politics. This would enable both democracy and business to flourish, and would enable the Government to play its role in protecting the population from the adverse impacts of business.

25. The Working Group welcomes the Government's plan to reform and strengthen the independence of oversight bodies, particularly those on audit, human rights and corruption, as these bodies play a key role in preventing and addressing adverse business impacts.

26. In addition to these legal developments, the Working Group stresses that the Government should consider a smart mix of measures – mandatory and voluntary – to foster business respect for human rights. The Government should engage with all stakeholders, in particular with regard to setting expectations and obligations of business enterprises and other actors in addressing business-related impacts on human rights. To foster business respect for human rights, the State should encourage business enterprises to communicate their policies and procedures for addressing their human rights impacts. The Working Group recommends that Mongolia consider developing a national plan for the implementation of the Guiding Principles and refer to relevant Working Group reports¹⁴ that highlight positive examples.

27. The Working Group urges the NHRC to take an active role in identifying whether specific laws are aligned with Mongolia's human rights obligations and are being effectively enforced, as well as in providing guidance on human rights to business enterprises.

2. Expectations and responsibilities of all actors in addressing business-related impacts must be clarified

28. The expert observed a lack of clarity as to the respective roles of business and Government, which is linked to the fact that business and politics often go hand in hand in Mongolia. In mining communities, the expert was informed of expectations that hospitals and schools would be built in the soums by business enterprises, without any mention of the government's responsibility to do so, nor with clear contractual or legal obligations for business enterprises in this regard.

¹⁴ A/HRC/20/29; A/67/285.

29. The Working Group recommends that communities, business enterprises and the Government refer to the Guiding Principles for clarification on the responsibilities of the different actors for preventing and addressing business-related human rights impacts. According to the Guiding Principles, the State has a duty to protect against human rights abuses in the context of business operations by establishing policies, laws and regulations that facilitate an environment in which business enterprises respect human rights. The State must also monitor and enforce compliance with such policies and regulations. As such the Government also has the responsibility to hold business enterprises to account and ensure the provision of an effective remedy for victims when business enterprises negatively impact on human rights.

30. Business enterprises, for their part, have the responsibility to respect human rights across their activities and operations. This means avoiding negative impacts on human rights either directly through their own operations or through their business relationships, for example with suppliers, business partners or governments. This includes applying international labour standards to their workers and those of their contractors, enforcing good health and safety practices, and ensuring that communities are not adversely affected by their operations. This also means that they have the responsibility to provide for or cooperate in remediation of adverse impacts that they have caused or contributed to.

31. The Working Group emphasizes that obtaining clarification on roles and responsibility is key. Without such clarification, business enterprises and Government will continue to point the finger at each other “to do something,” obscuring who exactly has responsibilities for which impacts and activities. Human rights risk falling into the gap between the two. Without such clarification, business enterprises may be pushed into taking on the role of the Government, and in the course of doing so, may weaken pressure on the Government to be accountable and fulfil its democratically elected functions. Furthermore, those adversely affected by business will not know where or how to access remedy for infringement of their human rights.

32. The Working Group recommends that the Government comply with its duty to protect against human rights abuse within its territory and/or jurisdiction by third parties, including business enterprises. This requires that the Government state the expectation that all business enterprises domiciled in its territory (regardless of whether they are national, foreign, State or privately owned) respect human rights throughout their operations. The Working Group notes that the 2003 Action Programme provides for the Government to ensure that “human rights standards shall be developed and implemented by all enterprises and organizations in Mongolia and reflected in work standards;” it encourages the Government to effectively implement these plans.

33. The Working Group further recommends that business enterprises operating in Mongolia comply with their responsibility to respect human rights, including by adopting a human rights policy, carrying out human rights due diligence with regard to their current and planned operations and addressing any negative human rights impacts that they cause, contribute to or are linked to. In doing so, business enterprises should refer to existing guidance and practice in various sectors.¹⁵ Business enterprises should pay particular attention to vulnerable groups and ensure that such groups are addressed in company due diligence.

34. The Working Group encourages business enterprises to share their experiences in meeting their responsibility to respect human rights with other enterprises within and across sectors in Mongolia.

¹⁵ See, for example, A/HRC/20/29 and A/67/285.

3. Key concerns arising from the lack of available and effective remedies and redress

35. The Working Group recalls that for the purposes of access to remedy in the Guiding Principles, the term “grievance mechanism” is used to indicate any routinized, State-based or non-State-based judicial or non-judicial process through which grievances concerning business-related human rights abuses can be raised and remedies can be sought in an effective manner.

36. Although the 2003 Action Programme provides for “procedures of public institutions and the Courts, whereby individuals and groups may seek redress for complaints about human rights violations [to] be widely publicised,” the expert observed that many do not appear to know where to seek redress for violations. For example, while nomadic herders indicated that they had contacted various authorities and business enterprises to raise their concerns, none of these can be deemed “grievance mechanisms” as defined in the Guiding Principles. In addition, the expert was informed that in many cases, victims and their families do not have recourse to grievance mechanisms or remedy. She was also informed that business enterprises were not adequately sanctioned for failing to observe legally required safety standards, preferring to pay the relatively small fine for violations rather than change their practices. In this regard, the expert found that current penalties are inadequate and should be reviewed to ensure that they can act as a deterrent to human rights violations.

Access to judicial mechanisms for remedy

37. As highlighted by the ILO, the gaps and inconsistencies in legal provisions regulating employment and dispute resolution arising out of employment relationships are of concern. The Law of Courts 1994 does not give clear authority to establish specialized courts to deal with employment matters. As such, civil courts deal with contractual claims and individual labour rights disputes. In the absence of dedicated labour courts, the Working Group recommends that Mongolia ensure that alternate, adequately resourced mechanisms are available to resolve both labour rights and labour interest disputes. The expert learnt of a comprehensive exercise to modernize the Labour Law of 1999 in the light of comparative international experience and international labour standards that Mongolia has ratified, and welcomes its inclusion in the 2013-2014 State Tripartite Agreement on Labour and Social Consensus. The Working Group urges the Government to continue this initial work in a tripartite manner, in order to provide a stronger legal framework to uphold the rights of workers in Mongolia.

38. The lack of clarity as to where grievances against administrative acts can be brought is also of concern; the Constitutional Court does not hear individual complaints, and the purview of the Administrative Courts is unclear. While the expert was told of specific cases where remedies were awarded,¹⁶ she also received evidence of significant gaps. The Working Group welcomes the initiative of the Government to develop a general law on administrative procedure. It urges the Government to ensure that independent administrative courts are empowered to effectively review complaints against administrative organs; to review the decisions and actions of public officials that violate human rights; and to prevent administrative abuses and misconduct, as per the 2003 Action Programme. It also encourages the Government to consider widening the mandate of the Constitutional Court to include hearing complaints from individuals with regard to violations of their rights, as suggested in the Government Platform for 2012-2016.

¹⁶ According to the Minister of Justice, the Supreme Court recently awarded 1.3 billion togrogs to the local community in a case relating to human rights violations by a company in Dormut *aimag*.

39. Concern with regard to the independence and capacity of the judiciary was highlighted. The Working Group recommends that Mongolia implement the recommendations made during the UPR,¹⁷ and reinforce the independence and capacity of judges, lawyers and prosecutors. The Government should ensure that mandatory training for judges and lawyers includes international human rights obligations to which Mongolia is a party, as well as standards relating to business and human rights, such as the Guiding Principles.

40. The expert was told of other specific barriers to accessing remedies, namely that actions can only be brought on behalf of specific named individuals with notary certificates, and that the law does not allow for cases against illegal administrative acts if those filing the case have not been directly affected. The Government should consider broadening the locus standi provisions to enable public interest litigation, particularly with regard to the impact of mining on human rights. Further, the expert was informed that high court fees and stamp duties impede access to courts. The Working Group recommends that the level of court fees and stamp duty be reviewed, and waived for indigent plaintiffs and public interest cases.

41. More broadly, the Working Group notes reports of the lack of free legal assistance in civil cases, and even for criminal cases there is insufficient free legal assistance.¹⁸ It notes the adoption of the National Programme on Legal Aid in 2006 and the Government's plans to adopt a Law on Legal Aid. The Working Group recommends that the Government consider increasing the number of qualified lawyers providing free legal assistance throughout Mongolia for both criminal and civil cases.

42. Furthermore, the expert was informed of financial costs relating to the implementation of court decisions by the Court Decision Enforcing Authority. The Working Group recommends that financial obstacles to the implementation of judicial decisions be removed.

43. The Working Group understands that one of the President's priorities is judicial reform, and that the 2003 Action Programme includes provisions on improving access to remedy, including through addressing barriers to the implementation of court decisions. Similarly, the planned Ministry of Justice review of all laws and draft laws (including at the sub-national level) to verify compliance with human rights obligations may address some of these issues. The Working Group welcomes these initiatives and suggests that the Government be guided by the Guiding Principles in addressing existing gaps and challenges in access to remedy, that a special lens of business and human rights be applied, and that legislation be amended to ensure compatibility with Mongolia's international human rights obligations. The Government should carry out awareness-raising campaigns, together with the NHRC and civil society, to allow persons within its jurisdiction to avail themselves of the legal, and non-legal, remedies available to assist them.

Access to non-judicial mechanisms for remedy

44. The expert was told of various non-judicial mechanisms, including mediation and grievance mechanisms. The Labour Code provides for dispute resolution systems for collective and individual disputes. In the case of individual disputes, it specifically provides for Labour Dispute Settlement Commissions in business enterprises. The Confederation of Mongolian Trade Unions¹⁹ (CMTU) referred to a tripartite dispute settlement subcommittee which operates in 21 aimags to seek to resolve disputes that would otherwise be taken to the courts, and which it notes is a faster dispute resolution mechanism.

¹⁷ See A/HRC/16/5.

¹⁸ NHRC, Report on Human Rights and Freedoms in Mongolia, 2009.

¹⁹ Conference presentation.

45. The expert was informed that a tripartite committee was set up in early 2012 to allow trade unions and employers' unions to resolve mining-related grievances, but that the initiative was suspended following the change of Government. The Working Group recommends that the Government assess the effectiveness of all grievance mechanisms, and support effective non-judicial mechanisms to complement judicial mechanisms where appropriate. Non-judicial mechanisms play a key complementary role to judicial mechanisms in ensuring access to effective remedy, and may play a role in preventing further human rights violations by providing a venue for community concerns to be heard and addressed. The Working Group encourages the Government to provide adequate resources to ensure that such mechanisms are effective, and encourages all stakeholders to build awareness of their special role.

46. The Working Group also notes that the NHRC has an important role to play in hearing business-related human rights grievances, though reports indicate that it receives limited complaints on this topic. The Government should ensure that the NHRC is provided with the necessary support and resources to receive and investigate complaints.

47. The Working Group notes that a number of business enterprises operating in Mongolia are subject to the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises and the International Finance Corporation's (IFC) Performance Standards on Environmental and Social Sustainability, both of which mention the need for operational-level grievance mechanisms.²⁰ These mechanisms, which the expert was informed are in place in a number of mining companies, can provide early-stage recourse and resolution. The Working Group regrets that little information is available on the accessibility and effectiveness of these mechanisms across Mongolia and across sectors. It recommends that operational-level grievance mechanisms reflect the criteria in principle 31 of the Guiding Principles to ensure their effectiveness in practice, namely that they are legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning. It also encourages business enterprises to ensure that operational-level mechanisms are based on engagement and dialogue, consulting the stakeholder groups for whose use they are intended and focusing on dialogue as a means to address and resolve grievances.

4. Consultation and public participation at all levels of decision-making, including timely access to information, are key to addressing business-related impacts

48. Public consultation and participation is particularly crucial for decisions that will have a substantial impact on people's lives, including big "community footprint" projects such as mining or the construction of a large commercial complex. The failure to provide people with information not only undermines the ability of a business enterprise to respect rights (as it may not be aware of its potential or actual impacts), but it also fosters mistrust between communities and business enterprises.

49. Nomadic herders informed the expert that they only found out that a mining operation was coming to their area when the trucks and equipment arrived. Local government officials also said they were not involved in the decisions of the central Government on exploration and mining activities.²¹ They reported that the law that provides for consultation at the *aimag* level is selectively applied, in practice, or simply ignored, even where the local government expressly requests that mining licences no longer be

²⁰ See <http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/> and http://www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/Sustainability+Framework++2012/Performance+Standards+and+Guidance+Notes+2012/ respectively.

²¹ See Conference presentation by the Governor of Dundgovi *aimag*.

issued in a particular *aimag*. Many stakeholders expressed concern that mining operations impeded good governance and influenced local elections, and that the interests of mining companies had “merged” with local politics. The expert was also informed that investment contracts and environmental impact assessments are often made public only after they have been agreed – if at all –, making it impossible for affected stakeholders to monitor the process by which they were created or to participate and raise concerns as to their content prior to the agreements being finalized.

50. The expert also noted some positive developments, including the new Budget Law that allows for local oversight of Government expenditure at the *soum* level; local town hall meetings organized by business enterprises in areas where they operate; and initiatives such as collaboration between business enterprises, local government and citizens or civil society; citizens’ councils identifying and addressing projected impacts; committees discussing environmental impact assessments for specific mining projects; and initiatives with small local business enterprises ensuring that procurement processes delivered quality food to schools.

51. The expert noted the negotiations for a proposed cooperation agreement between Ömnögovī *aimag* and Oyu Tolgoi LLC on key areas of collaboration; the intention at the *aimag* level to set up a dedicated institutional unit responsible for mining policy; and Citizen Halls, aimed at receiving public comments on draft laws and policies. The Working Group noted various other initiatives, including an Information Centre, a website and a telephone hotline that allows users to register complaints.

52. Specifically with regard to mining, the Platform for 2012-2016 stipulates that the opinion of local residents should be obtained in the process of issuance of mineral licences. The Working Group recommends that the Government take the lead in meaningful engagement directly with affected communities, including in environmental impact assessments and through its planned revision of the Minerals Law. It should consider decentralizing access to information through local government offices.

53. It recommends that business enterprises engage regularly and directly with the communities where their operations take place, in addition to the local *hural* (parliament), as per the corporate responsibility to respect human rights contained in the Guiding Principles. Whether through joint cooperation councils or other forums, business enterprises should ensure that communities are consulted and notified before operations begin and that they are fully informed of the way their lifestyles, livelihoods and human rights may be affected. The Working Group further encourages business enterprises to share the lessons of these efforts with others in their industry sector and geographic region.

54. The Working Group recommends that the Government ensure that meaningful consultations with potentially affected stakeholders become an essential component of all investment contracts entered into with international investors. It encourages the Government to refer to UNCTAD’s Investment Policy Framework for Sustainable Development²² and the Principles for responsible contracts.²³ The Working Group commends the developments relating to Mongolia’s possible accession to the Economic Commission for Europe (ECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention).

²² Available at http://unctad.org/en/PublicationsLibrary/webdiaepcb2012d6_en.pdf.

²³ See A/HRC/17/31/Add.3.

5. Need for stronger monitoring and enforcement capabilities

55. The expert was informed of frequent reports of fatal accidents caused by construction companies ignoring basic health and safety requirements. Stakeholders raised the issue of lack of Government human resources and technical expertise to monitor increasing private-sector activity. This lack of capacity is particularly acute at the local level, where the General Agency for Specialized Inspection (GASI) struggles to undertake inspections with very limited human, technical and financial resources, and in the construction sector where the expert learned of over 80 construction projects in Ulaanbaatar that lack the required permits. She noted the 2010 NHRC report that over 60 per cent of violations of the building code related to construction standards.²⁴ According to ILO, GASI has itself called for provisions in the labour law to empower its inspectors to monitor conditions in the workplace. ILO's studies in 2005²⁵ and 2009,²⁶ comparing Mongolian law with international labour inspection standards, highlighted a number of gaps. The Government should ensure that inspection standards are compatible with international labour inspection standards and consider ratifying the Labour Inspection Convention, 1947 (No. 81).

56. The expert was informed that the Government has initiated a review of all occupational and health standards and called for strengthened enforcement of laws in its Action Programme. She was also informed that local and national governments have taken action recently to address the lack of compliance with safety measures. The Working Group urges the Government to prioritize the strengthening of human resources and the technical capacity of State entities charged with monitoring and enforcing laws regulating business activity. It further encourages international development partners to support efforts in this area.

57. This should also include reinforcing the capacity of the NHRC, which has the potential to serve as an effective tool in monitoring business impacts on human rights and providing information and avenues for redress. However, the NHRC suffers from lack of resources and a presence in rural *aimags*. Furthermore, though it has been accredited with "A" status since 2003 by the ICC, in November 2008²⁷ the Subcommittee on Accreditation (SCA) recommended that the process for appointing Commissioners be transparent and that consultation and engagement with civil society be enhanced, a call which has been echoed by United Nations treaty bodies.²⁸

58. The Government should devote adequate human, financial and technical resources to the NHRC and increase its capacity to effectively monitor human rights impacts, including those arising from business. The Government should ensure that the NHRC has sufficient resources to increase its efforts to raise awareness throughout Mongolia of its competence to receive and consider complaints relating to the negative impacts of business on human rights. The Working Group notes that the Platform for 2012-2016 indicates that the NHRC may be reformed; it urges that any reform strengthen the independence of the NHRC and its compliance with the Paris Principles.²⁹ In turn, the NHRC should ensure that it covers the broad spectrum of human rights in its activities, and in particular takes guidance from the

²⁴ NHRC, Report on Human Rights and Freedoms in Mongolia, 2010.

²⁵ ILO Subregional Office for East Asia, "Revitalizing the Labour Inspection System in Mongolia," July 2005.

²⁶ ILO Subregional Office for East Asia, "Revitalizing the Labour Inspection System in Mongolia," 2009, new chap. IV.

²⁷ http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/2008_November%20SCA%20Report.pdf.

²⁸ CCPR/C/MNG/CO/5/, para. 5; CAT/C/MNG/CO/1/CRP.1, para. 12.

²⁹ General Assembly resolution 48/134, annex.

Guiding Principles when investigating individual complaints relating to the human rights impacts of business activities.

B. Specific industries and issues of concern

1. The mining industry

59. The increase in mining activities and their considerable footprint means numerous and severe potential negative human rights impacts if the activity is not managed properly. In addition to issues relating to lack of information and consultation (see above), the Working Group expert noted four main impacts of this sector relating to the traditional way of life of nomadic herders; over-stretched social services; working conditions and the right to a healthy and safe environment as protected by the Constitution.

60. The expert was informed that mineral exploration and extraction has resulted in herders losing access to their traditional herding lands, and that pastureland and surface water resources have been destroyed. As a result, the herders enjoyment of the rights to an adequate standard of living and to take part in cultural life through farming and animal husbandry has been impacted. She noted concerns about the right to water, which is essential not only for the preservation of the nomadic lifestyle and culture, but also for those who are living in towns across the region. Finally, the expert was informed that mineral exploration has required herders to move their herds to more remote regions, for longer periods of time, limiting their access to education, health care and social welfare services.

61. Migration into *soums* located near mining operations has severely stretched the capacity of social services to provide adequate facilities and services: budgets are based on the registered population, and economic migrants often do not register until they have secured employment. The Minister of Mining himself voiced the concern that when extractive industries are developed without any preparedness, in terms of infrastructure, there could be a violation of article 16, paragraph 3, of the Constitution (Right to freedom of movement within the country and freedom to choose one's place of residence).³⁰ The Government should ensure adequate access to health and social services in all *soums*, and adequate planning, with regard to infrastructure and services, prior to the start of mining operations.

62. The expert was informed about the difficult working conditions in the mining sector, and several associated negative consequences, including the impact on family life of strenuous shift work that is common in mining operations. The Minister of Labour indicated that 70 per cent of occupational diseases nationwide are linked to the mining sector (largely due to dust in the workplace).³¹ A related issue of concern is that of civic rights; the expert was informed that employees and shift workers do not get time off to vote in elections. The Government should address the issue of restrictions to the right to vote as a matter of urgency.

63. The expert was informed of serious impacts on the right to a healthy and safe environment, as provided for in the Mongolian Constitution, linked to the contamination of soil and water, destruction of land and depletion of ground and surface waters. Stakeholders commented on the dust generated by coal mines and its impacts on the health of the local

³⁰ Conference presentation.

³¹ Ibid.

population. The expert was also informed that some of these “coal roads” cross protected areas, causing further potential environmental impacts.³²

64. The expert was encouraged to note that the Ministry of Nature and Green Development is putting in place a programme to restore areas that have been damaged due to mining operations; improve awareness of environmental impact assessments and related regulations; and improve the enforcement of laws related to environmental damage.³³ The Working Group notes the Ministry’s ongoing review of existing environmental legislation, and urges prompt action to close any gaps. It also notes that the Law on Natural Resources states that business enterprises are responsible for restoring land after mining, and that the Government is responsible for monitoring the implementation of the law. The Working Group urges business enterprises involved in mining activities to comply with their legal obligations to restore land after mining, and urges the Government to ensure adequate financial and technical resources to effectively monitor compliance with these provisions.

65. The Minister of Mining indicated that he plans to carry out a study on mining and human rights violations,³⁴ and that according to the Government Platform for 2012-2016, the key economic policy objective is the reduction of dependency on the mining sector; achievement of long-term sustainable development; and the creation of a competitive and diversified economy. The Working Group notes that Mongolia is Extractive Industries Transparency Initiative (EITI) compliant³⁵ and that a Declaration on Responsible Mining was developed in 2007 through a multi-stakeholder forum.³⁶ However, it notes with concern that the mining contracts signed are very broad and difficult to monitor. The Government should ensure that it maintains adequate policy space to meet its human rights obligations when entering into investment treaties or contracts with business enterprises. The Working Group refers to the Principles for responsible contracts and recommends that the Government integrate the management of human rights risks into State-investor contract negotiations. The Government should proceed with the review of the Minerals Law, which should include provisions requiring meaningful engagement with local government and potentially affected stakeholders.

2. Artisanal miners

66. According to the Minister of Labour, there are 62,000 citizens engaged in artisanal mining, across 49 *soums*.³⁷ Unregistered artisanal miners face uncertain income, dangerous working conditions – exacerbated by violence,³⁸ and lack of access to basic social services in their *soum* of work. It is also reportedly common for children of artisanal miners to leave school to assist in mining activities.³⁹ Despite new laws and regulations aimed at formalizing and legalizing their activities, reportedly, only around 5,000 artisanal miners have done so.⁴⁰ Many artisanal miners cannot afford to pay the monthly flat rate income tax

³² Conference presentation by Mongolian Environmental Civil Council.

³³ Conference presentation.

³⁴ Conference presentation.

³⁵ EITI is a global standard ensuring transparency of payments from natural resources at the local level. The EITI Board designated Mongolia as EITI compliant on 19 October 2010.

³⁶ See <http://asiafoundation.org/resources/pdfs/MGmultistakeholderVI.pdf>

³⁷ Conference presentation.

³⁸ ILO, *Informal Gold Mining in Mongolia: A Baseline Survey Report Covering Bornuur and Zaamar Soums, Tuv Aimag* (Bangkok, 2006); also Conference presentation by Swiss Development and Cooperation Agency (SDC).

³⁹ Conference presentation by SDC.

⁴⁰ Mongolia, Ministry of Mineral Resources and Energy (MMRE), Regulation on extraction operation of minerals from small scale mines, appendix to Government Resolution 308 of 1 December 2010; also SDC and MMRE, “The small-scale mining legal framework development process in Mongolia,” 2011; and Conference presentation by SDC.

levied on registered small-scale miners. Furthermore, some artisanal miners have tried to register with the local government, as required by law, but have been unable to complete the process, due to barriers at that level.⁴¹

67. The Government should investigate all cases of violence against artisanal miners and address any generalized discrimination and marginalization linked to their activities, whether they are legal or illegal.

68. Conversely, the expert noted reports of negative impacts from artisanal mining, particularly related to environmental damage and poor working conditions of those working in artisanal mines. The Working Group emphasizes that the Guiding Principles apply to all business enterprises regardless of size, sector, location, ownership or structure. As such, registered small-scale mining operations should abide by the corporate responsibility to respect human rights. The Government should ensure that laws and procedures related to business enterprises enable, rather than constrain, business respect for human rights. The Government should facilitate the registration of artisanal miners by reviewing the 2010 law on formalizing artisanal and small-scale mining, while seeking to identify and prevent any negative human rights impacts such operations may have on those working in the mines and on surrounding communities.

3. Employment and rights of workers, particularly in the construction and cashmere industries

69. Article 16(4) of the Constitution protects “the right to free choice of employment, favourable conditions of work, remuneration, rest, and private enterprise. No one may be unlawfully forced to work.” According to ILO, Mongolia has ratified a total of 16 international labour conventions, including the eight fundamental ILO conventions, however, Mongolia discharges its reporting obligations only intermittently. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) identified several legislative shortcomings in the application of international labour standards obligations. The Government should proceed with a general revision of the Labour Law to identify and remedy these gaps.

70. According to the CMTU, common violations in industrial relations relate to the hiring and laying off of employees; determination of wages; the establishment of employment contracts; occupational health and safety; and the right to freedom of association.⁴² The expert was informed that persons with disabilities, children, older persons and women are particularly at risk, and that the Labour Law does not explicitly and adequately protect them against direct and indirect discrimination. She also received reports indicating that the right to freedom of association, as guaranteed by article 16, paragraph 16, of the Mongolian Constitution, is violated as workers are pressured, discriminated against and even fired for seeking unionization or being unionized.⁴³ The Working Group recalls that the right to freedom of association is protected under ILO conventions and international human rights treaties to which Mongolia is a party; it recommends that the Government ensure and monitor the effective application of this right.

71. Despite the establishment of a National Tripartite Committee on Occupational Safety and Health in 2009,⁴⁴ the lack of implementation of the Law on Occupational Safety and Health is an issue of serious concern, as it has led to loss of life and health. Statistics presented during the Conference indicate that the number of accidents and occupational

⁴¹ Conference presentation by SDC.

⁴² Conference presentation by CMTU.

⁴³ Ibid.

⁴⁴ ILO, CEACR, Direct Request, adopted 2011, relating to the Occupational Safety and Health Convention, 1981 (No. 155).

diseases are decreasing, but still remain particularly poor in mining (81 per cent of occupational diseases in 2011) and construction (10.7 per cent of occupational diseases in 2011).⁴⁵ In 2011, CEACR⁴⁶ asked the Government to provide information on the impact of the measures taken to curb the recorded increase in occupational accidents and diseases in the construction sector, and to continue to provide information on the application of the Occupational Safety and Health Convention in practice in all sectors. Given its plans with regard to “development of infrastructure and urbanization,”⁴⁷ the Government should address and remedy issues relating to the construction industry as a matter of urgency. Despite initiatives to improve and secure occupational health and safety in mining, particularly in larger multinational enterprises, many other companies do not appear to employ occupational health and safety specialists and do not have basic safety policies and inspections in place. Health and safety is a major component of business responsibility, and the Working Group stresses that all business enterprises are obliged to establish sound practices in this area. It encourages those business enterprises that have set up internal training, monitoring and inspection processes with a proven success record to share their experiences with other business enterprises.

72. The Working Group welcomes the Government Platform statement that construction standards will be reviewed. The Government should ensure that adequate occupational health and safety regulations are adopted and enforced, and adequate financial, human and technical resources are provided to the appropriate inspection agencies. The Working Group notes the initiative of the CMTU and GASI to conduct joint inspections and training programmes,⁴⁸ and recommends that the Government draw on all available technical assistance.

4. Child labour

73. The Working Group recalls that the Special rapporteur on contemporary forms of slavery, including its causes and consequences had identified child labour in artisanal mining, including in Mongolia, as an area of concern.⁴⁹ The expert was informed that although child labour has decreased in the informal mining sector, child protection is still weak in the informal sector.⁵⁰

74. It is estimated that between 13 and 28 per cent of children aged 5-17 are engaged in child labour,⁵¹ and that children’s work is concentrated overwhelmingly in the agriculture sector, with almost all children working for their families as unpaid labourers. The Committee on the Rights of the Child (CRC) has expressed concern at the high number of working children and the various negative consequences, including school dropout rates and negative impacts on health, particularly for those engaged in hazardous work in mines.⁵² The expert was informed that children of recognized herders have access to a boarding school and rejoin their families and herding as part of their traditional way of life

⁴⁵ Conference presentation by CMTU.

⁴⁶ ILO, CEACR, Direct Request, adopted 2011, relating to the Occupational Safety and Health Convention, 1981 (No. 155)..

⁴⁷ Mongolia, Government Platform for 2012-2016.

⁴⁸ Conference presentation by CMTU.

⁴⁹ A/HRC/18/30.

⁵⁰ ILO, CEACR, Observation, adopted 2011, relating to the Minimum Age Convention, 1973 (No. 138), quoting the Government’s report.

⁵¹ UNICEF, “Multiple Indicator Cluster Survey 2010” Summary Report, (Ulaanbaatar, 2011), available at http://www.unicef.org/mongolia/mongolia_mics_summary_report_.pdf; and Understanding Children’s Work, UCW country report series, Mongolia, Executive Summary, June 2009, available at http://www.unicef.org/mongolia/UCW_Summary_english.pdf.

⁵² CRC/C/15/Add.264, para. 59.

during school holidays. Within the context of its revision of the Labour Law, the Government should address these concerns and challenges to maintaining the traditional way of life of nomadic herders, while prioritizing protection of the rights of children and the elimination of child labour, in line with the CEACR comments on the application of the Minimum Age Convention, 1973 (No. 183) and the Worst Forms of Child Labour Convention, 1999 (No. 182).⁵³ The Government should take necessary measures to adopt legislation that establishes appropriate and effective penalties for violations of the provisions relating to child labour, and draw on all available technical assistance.

75. The expert learned that more than 30,000 children participate in races as child jockeys every year, performing work which, according to the CEACR, by its nature and the extremely hazardous conditions in which it is performed, is likely to harm their health and safety.⁵⁴ The CEACR has expressed concern at the continued use of children in horse racing, and requested the Government to ensure that the protective measures in place, aimed at protecting the health and safety of child jockeys, are strictly enforced.⁵⁵ The Working Group welcomes the adoption of an action plan on the elimination of child labour, and encourages the Government to seek the assistance of the international community in meeting this aim across all sectors where child labour is still present.

5. Foreign workers and the informal sector

76. According to the International Trade Union Confederation, Mongolian law specifically prohibits forced labour, but reports continue to emerge regarding the situation of North Korean workers. The expert was informed that they are used in manufacturing and construction pursuant to an agreement signed by the Mongolian and North Korean Governments, which was extended for a further five years in 2012. She noted allegations of forced labour and that their salary is allegedly either paid in full or in part to the North Korean Government. The workers reportedly live in secured compounds and are not allowed to leave.

77. The expert was also informed that the construction sector relies heavily on Chinese labour; many of the workers do not have an employment contracts and therefore lack labour rights protection and social security. With regard to the informal sector more generally, the expert was informed that just over one third of the labour force are waged employees. Issues regarding informal labourers include lack of social protection, particularly for women, and poor working conditions.

78. The Working Group recalls that Mongolia has the obligation to protect the rights of all persons within its jurisdiction, whether or not formally employed, and recommends that the Government specifically address the situation of foreign workers and informal workers as possible vulnerable groups. It notes that the 2003 Action Programme indicates that the protection of the rights of foreign citizens residing in Mongolia should be reviewed and improved. It urges the Government to improve such protection in law and in practice; and encourages it to consider introducing social protection mechanisms for the informal sector.

79. The Government should address the issue of forced or slave labour in all economic sectors, in accordance with ILO conventions and international standards. This includes providing and effectively enforcing adequate legal protection for workers and ensuring that forced labour is punishable as a criminal offence, as required by the ILO Forced Labour

⁵³ ILO, CEACR, Observation, adopted 2011, Minimum Age Convention, 1973 (No. 138); and Direct Request, adopted 2011, Worst Forms of Child Labour Convention, 1999 (No. 182).

⁵⁴ ILO, CEACR, Direct Request, adopted 2011, Worst Forms of Child Labour Convention, 1999 (No. 182).

⁵⁵ Ibid.

Convention, 1930 (No. 29), and ensuring remedies for victims of human trafficking and forced and slave labour.

6. Corruption

80. The Working Group expert was informed that corruption is a concern in Mongolia, and that it weakens the authorities' accountability and effectiveness in preventing and addressing the negative impacts of business activities. The Working Group notes that Mongolia accepted a recommendation by the UPR aimed at tackling corruption,⁵⁶ and the efforts undertaken in this regard,⁵⁷ including the adoption of the Anti-Corruption Law in 2006 and the establishment of the Independent Authority Against Corruption. It also recalls the concerns expressed by the Committee on the Rights of the Child and its recommendation that Mongolia reinforce the State Authority on Anti-Corruption.⁵⁸ It notes that Mongolia adheres to the EITI and various other anti-corruption regimes, including the United Nations Convention Against Corruption,⁵⁹ and that all civil servants and elected officials are required to file annual income and asset disclosure forms. It further notes that the Implementation Review Group established pursuant to the Convention had highlighted areas where improvements could be made.⁶⁰ The Working Group recalls that the Government had announced several anti-corruption measures in its Platform for 2012-2016, and that corruption was listed as a priority in the President's Programme of Action. The Working Group welcomes the adoption of the specific target to "develop a zero-tolerance environment to corruption in all spheres of society," as part of Mongolia's national Millennium Development Goal 9 commitments, but notes the vast remaining challenges relating to its implementation.⁶¹

81. Article 21 of the Universal Declaration on Human Rights states that "the will of the people shall be the basis of the authority of the government". Corruption not only distorts this mandate, but engenders discrimination, compounds existing poverty and facilitates human rights abuses by businesses. The Working Group therefore recommends that corruption be tackled as a matter of urgency, and that the Government take appropriate measures in practice to develop good governance strategies and combat corruption.

IV. Conclusions and recommendations

A. Conclusions

82. **The Working Group appreciates the comprehensive and informative meetings with Government agencies and relevant stakeholders during the country visit and notes with satisfaction the NHRC's positive work for the promotion and protection of human rights. It also notes that stakeholders appear to be acutely aware of the challenges surrounding mining and, to a lesser extent, the challenges in other sectors.**

83. **It expresses concern at the confusion regarding the roles and responsibilities of the various actors in preventing and addressing business-related human rights impacts.**

⁵⁶ A/HRC/16/5, para. 84.32.

⁵⁷ UNDP, "Institutional and Context Analysis: Public Sector Governance, Anti-Corruption and Participation in Mongolia," discussion paper (Mongolia, December 2012).

⁵⁸ CRC/C/MNG/CO/3-4, para. 18.

⁵⁹ General Assembly resolution 58/4, annex.

⁶⁰ See CAC/COSP/IRG/I/1/1/Add.1; <http://www.unodc.org/unodc/treaties/CAC/country-profile/profiles/MNG.html>.

⁶¹ Mongolia, Millennium Development Goals Implementation, Fourth National Report, 2011.

B. Recommendations

1. Recommendations to the Government

84. In view of the above, the Working Group recommends that the Government:

- (a) Ensure that the report is translated into Mongolian and disseminated widely to all stakeholders;
- (b) Draw on available technical assistance to implement its recommendations.

85. On the framework for protection of human rights, the Working Group recommends that the Government:

- (a) Ensure the direct application of international treaties in practice, by clarifying in all domestic legislation the primacy of international treaties;
- (b) Effectively implement the 2003 National Human Rights Action Programme;
- (c) Proceed with the revision of legislation, including the Labour Law, in collaboration with social partners.

86. On the framework for addressing the impacts of business activities on human rights, the Working Group recommends that the Government:

- (a) Ensure that Mongolia's rapid growth is accompanied by strengthened mechanisms to prevent the negative human rights impacts of businesses, including integrating human rights considerations into relevant domestic laws and ensuring that they are robustly and systematically applied;
- (b) Follow international best practice and incorporate human rights and social issues into impact assessments;
- (c) Refer to the Guiding Principles to clarify the duties and responsibilities of actors in preventing and addressing the human rights impacts of businesses, and consider developing a national plan for the implementation of the Guiding Principles;
- (d) Comply with its duty to protect against human rights abuse within its territory and/or jurisdiction by third parties, including business enterprises;
- (e) State the expectation that all business enterprises domiciled in its territory respect human rights throughout their operations; set expectations and obligations of business enterprises and other actors in addressing business-related impacts on human rights; encourage business enterprises to communicate their policies and procedures for addressing their human rights impacts.

87. On access to remedy, the Working Group recommends that the Government:

- (a) Refer to the Guiding Principles to guide a review and amendment of existing remedial mechanisms;
- (b) Ensure that alternate, adequately resourced mechanisms are available to resolve labour rights and labour-related disputes;
- (c) Ensure that independent administrative courts are empowered to effectively review complaints against administrative organs; review the decisions and actions of public officials that violate human rights; and prevent administrative abuses and misconduct;

(d) Consider widening the mandate of the Constitutional Court to include hearing complaints from individuals with regard to violations of their rights;

(e) Reinforce the independence and capacity of judges, lawyers and prosecutors; ensure that mandatory training for judges and lawyers includes international human rights obligations, including standards relating to business and human rights;

(f) Consider broadening the locus standi provisions to enable public interest litigation, particularly with regard to the impact of business on human rights; review the level of court fees and stamp duty, and waive them for indigent plaintiffs and public interest cases;

(g) Consider increasing the number of qualified lawyers providing free legal assistance throughout Mongolia, for criminal and civil cases;

(h) Provide appropriate resources and assess the effectiveness of all grievance mechanisms, and support effective non-judicial mechanisms to complement judicial mechanisms, where appropriate;

(i) Carry out awareness-raising campaigns, together with the NHRC and civil society, to allow persons within its jurisdiction to avail themselves of the legal and non-legal remedies available to assist them.

88. On consultation, timely access to information and public participation in decision-making, the Working Group recommends that the Government:

(a) Ensure that those who are actually or potentially impacted by business activities have complete and timely access to all relevant information and are able to participate in key decisions that affect them, including with regard to investment contracts made with international investors;

(b) Take the lead in meaningful engagement directly with affected communities, and consider decentralizing access to information through local government offices.

89. On monitoring and enforcement capabilities, the Working Group recommends that the Government:

(a) Prioritize the strengthening of human resources and the technical capacity of State entities charged with monitoring and enforcing laws regulating business activity;

(b) Ensure that inspection standards are compatible with international labour inspection standards, and consider ratifying ILO Labour Inspection Convention, 1947 (No. 81);

(c) Devote adequate human, financial and technical resources to the NHRC, and increase its capacity to effectively monitor human rights impacts; and raise awareness of its competence to receive and consider complaints relating to negative business-related impacts on human rights;

(d) Ensure that any reform of the NHRC strengthens its independence and compliance with the Paris Principles.

90. On the mining industry, the Working Group recommends that the Government:

(a) Pay particular attention to the impacts on human rights given its potentially profound impacts on water, community development, and the environment;

(b) Ensure adequate access to health and social services in all *soums* and planning for infrastructure and services prior to the start of mining operations;

(c) Address as a matter of urgency the issue of restrictions on the right to vote as linked to shift work;

(d) Maintain adequate policy space to meet its human rights obligations when entering into investment treaties or contracts with business enterprises, and integrate the management of human rights risks into State–investor contract negotiations;

(e) Address as a matter of urgency the continuing human rights violations and discrimination suffered by artisanal miners;

(f) Identify and prevent any negative human rights impacts that artisanal mining may have on those working in the mines and on surrounding communities.

91. On employment and rights of workers, the Working Group recommends that the Government:

(a) Ensure stricter regulation and enforcement of labour laws and standards in line with internationally agreed treaties and standards, including on the right to freedom of association;

(b) Adopt and enforce adequate occupational health and safety regulations, and provide adequate financial, human and technical resources to the appropriate inspection agencies.

92. On child labour, the Working Group recommends that the Government:

(a) Fully resource the Action Plan on the elimination of child labour and ensure that laws are in conformity with international law and standards on the prohibition of child labour, including establishing appropriate and effective penalties for violations.

(b) Address concerns and challenges to maintaining the traditional way of life of nomadic herders, while prioritizing the protection of the rights of children and the elimination of child labour.

93. On foreign workers and informal labour, the Working Group recommends that the Government:

(a) Ensure protection for all persons within its jurisdiction, whether or not they are formally employed, and specifically address the situation of foreign and informal workers as vulnerable groups;

(b) Consider introducing social protection mechanisms for the informal sector;

(c) Address the issue of forced or slave labour in all economic sectors, in accordance with ILO Conventions and international standards.

94. On corruption, the Working Group recommends that the Government tackle corruption as a matter of urgency and take appropriate measures in practice to develop good governance strategies and combat corruption.

2. Recommendations to business

95. The Working Group recommends that business enterprises:

(a) Comply with their responsibility to respect human rights, including adopting a human rights policy, carrying out human rights due diligence with regard

to their current and planned operations, and addressing any negative human rights impacts that they cause, contribute to or are linked to;

(b) Pay particular attention to vulnerable groups and ensure that such groups are addressed in company due diligence;

(c) Ensure that any operational-level grievance mechanism reflect the criteria in principle 31 of the Guiding Principles to ensure their effectiveness in practice, namely that they are legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning;

(d) Ensure that operational-level mechanisms are based on engagement and dialogue, by consulting the stakeholder groups for whose use they are intended and focusing on dialogue as a means to address and resolve grievances;

(e) Consult regularly and directly with the communities where their operations take place, in addition to the local *hural* (parliament), and inform them as to the way their lifestyles, livelihoods and human rights may be affected;

(f) Comply with their legal obligations to restore land after mining, in the case of mining companies;

(g) Share their experiences in meeting their responsibility to respect human rights with other enterprises within and across sectors in Mongolia.

3. Recommendations to other stakeholders

96. The Working Group recommends that international development partners support the Government's efforts in the strengthening of state entities charged with monitoring and enforcing laws regulating business activity.

97. The Working Group recommends that the National Human Rights Commission of Mongolia: (a) take an active role in identifying the compatibility of laws and their enforcement with Mongolia's human rights obligations, and in providing guidance on human rights to business enterprises and (b) cover the broad spectrum of human rights in its activities, and in particular use the Guiding Principles when investigating individual complaints relating to the human rights impacts of business activities.
