

## **“July 1” and Human Rights Violation Mongolia - Stakeholders Submission to OHCHR for UPR**

1. In preparation to the upcoming Universal Periodic Review of the status of human rights in Mongolia by the Human Rights Council of UN a training workshop and consultations were held among Mongolian NGO/CSOs<sup>1</sup>. The training-seminar established a NGO Forum (the Forum) to coordinate preparation of a joint report, organization of advocacy activities and selected most pressing rights issues to report on in the joint and separate submissions and created thematic working groups for each area.
2. One of the thematic groups have formed to address the human rights violation related to “July 1” cases. The working group has incorporated the comments and inputs of NGO forum members for accuracy.
3. Parliamentary election held on June 29 2008 involved 311 candidates from 11 political parties, 1 coalition and 45 independent candidates running for 76 seats in the State Great Hural (SGH). The MPRP declaration of its “apparent win” made before official results were announced and preparation of celebration on the central square triggered protests of the electorates and civil society. Lack of organization of post-election protest allowed it to evolve into a riot resulting in violence, destruction, looting and loss of human lives. The protests demonstrated dissatisfaction of the society with years of injustice, corruption, unfair elections, political ineptness and inaction by ruling forces.
4. Under the pretext of implementing President’s Decree declaring a State of Emergency due to inability to control the crowds, over 700 people were arrested and detained as “organizers of July 1 riots”. Of these 450 were investigated, of which around 300 were charged and 270 sentenced to 6 months to 5 years imprisonment for “instigating, participating, looting and setting fire during post election protests.
5. During implementation of state of emergency, which began at 24 hours on July 1 around 20 people were injured by fire arms, 4 shot dead and 1 suffocated in fire. While it has been established that death was caused by police fire arms the case related to police action was dismissed in pre-trial stage.<sup>2</sup>
6. Human rights activists and families of detainees protesting against mass arrests were also detained for 14 days for sitting in “silent protest”, which was not permitted by Procedure on Public Demonstration requiring that an event must registered by the local authority<sup>3</sup> to take place. Two election candidates were detained for 1-2 months while they were still protected by the election candidate immunity.
7. A mentally handicapped youth was used to build case against arrested election candidate O. Magnai by running for several days a TV item where he claimed that “Magnai paid me 1 million MNT to participate in the riot and set fire to MPRP building”<sup>4</sup>.
8. The police, prosecution, courts, advocates, the National Human Rights Commission, Constitutional Tsets and the Human Rights Sub-committee of the Ikh Khural were unable to protect the rights and freedoms of citizens. This inability is caused by a deficient legal framework regulating the activities of these institutions.

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<sup>1</sup>With the technical assistance of Asia-Forum, a regional NGO, Center for Human Rights and Development and Globe International have carried out a training of Mongolian NGO/CSOs on January 10-12, 2010 in Ulaanbaatar. The workshop was attended by over 40 CSOs engaged in human rights protection activities.

<sup>2</sup> 2009 Presidential Pardon included police officers under investigation thus dismissing the case.

<sup>3</sup> Procedure on Public Demonstrations requires “registration” which allows local authority not to register and therefore treat unregistered events as violation of law.

<sup>4</sup> National Federation of Disabled People’s Organization provided evidence and protested against the use mentally handicapped for political purposes in violation of Convention of Rights of Disabled Persons.

## **I. Legal framework ensuring the restoration of infringed rights:**

9. Mongolia became signatory to the ICCPR, Convention against Torture aiming to guarantee citizens' right to freedom of thought, opinion and expression, right to fair and just trial. However, little was done to bring national legislation into conformity with the Convention against Torture with regard to creating a legal framework for preventing torture and holding officials involved in torture accountable. Government fails to submit its ICCPR reports promptly and in due course. Public education and awareness activities on UN recommendations are unsatisfactory.
10. The Constitution of Mongolia guarantees its citizens the right to personal liberty and safety, not to be subjected to torture, inhumane, cruel or degrading treatment, to receive legal assistance, not to testify against him/herself, to freedom of thought, opinion and expression, to peaceful assembly and association compliant to the provisions of the ICCPR.
11. The implementation of the right to fair and just trial is ensured by the effective Criminal Code and the Criminal Procedure Code (CPC). Some provisions of the ICCPR are incorporated into these laws. However the practice, i.e. investigation, prosecution, adjudication and disposition of the "July 1" or the so-called "riot" cases, shows that the incompetence in human rights issues of those who apply the law have caused serious violation of human rights.
12. The provisions of the Law on Demonstration specifying "unlawful" demonstrations limit the right of citizens to freedom of thought, opinion and expression, to peaceful assembly and association, and therefore contradict the provisions of the ICCPR.
13. The Human Rights Sub-committee (HRS) of the Legal Standing Committee of SGH, the National Human Rights Commission (NHRC), the Constitutional Tsets, the criminal, civil and administrative courts and civil society organizations constitute the system for the protection of human rights in Mongolia. July 1, 2008 events challenged the immunity of basic human rights and had shown that Mongolia lacks independent mechanisms to protect basic human rights of its citizens. Furthermore it demonstrated that there are no mechanisms to neither restore infringed rights nor to hold accountable offenders in the event of violation of rights by State institutions or if State institutions fail to take action to protect basic human rights of its citizens.
14. HRS is a parliamentary sub-committee of the Legal Standing Committee in charge of matters pertaining to human rights and freedoms.<sup>5</sup> It has the mandate to review all legal acts issued and/or adopted by SGH, international treaties and conventions to which Mongolia is party to with the purpose of ensuring human rights, and monitor implementation thereof. Nonetheless it failed to adequately fulfill its mandate during the July 1 state of emergency events. It was observed that activities and decisions of this sub-committee depend a great deal on the composition of its members, explicitly to what party the majority of its members belong to<sup>6</sup>. On the other hand, the fact that the HRS conducted open investigative hearings a year after to determine occurrence of violations of human rights during investigation, prosecution, adjudication and disposition of "July 1" or "the riot" cases was a step forward in the history of the Mongolian parliament.
15. The NHRC does not concentrate its activities on establishing an effective mechanism for ensuring human rights, for protecting and restoring infringed rights or compensating damages suffered. This may be explained by the fact that the Law on NHRC does not provide for its independent activities and does not conform to the Paris Principles. In addition, the HR Commissioner and members are in reality political appointees without experience or

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<sup>5</sup> Article 24.3.6 of the Law on Ikh Hural (2006)

<sup>6</sup> On July 7, 2008 one of the members of the HRS abandoned the session saying that "It's a session of the Democratic Party", Court monitoring report

expertise in human rights issues appointed for political motives. This is one reason why the NHRC made an irresponsible statement that “human rights were not infringed” during July 1-4 state of emergency<sup>7</sup>, which was used by judiciary to waive complaints about use of torture and ill treatment to sign self-incriminating confessions causing innocent people be detained and sentenced for criminal offenses.

16. The Constitutional Tsets was established in 1992 as a mechanism to ensure the protection of basic human rights of citizens from violations by Government branches. However it does not have the authority to review decisions of the Supreme Court and is not given authority to review court decisions relating to individual citizen’s complaints for consistency with the Constitution, which allows the courts to issue decisions contradictory to Constitutional provisions.
17. All three instances of the Mongolian judiciary have violated the civil and political rights, i.e. freedom of thought, opinion and expression, to peaceful assembly, right to monitor and criticize government activities, and the basic rights, i.e. right to life, not to be subjected to torture, right to legal assistance, presumption of innocence, right to defense, of citizens arrested during the July 1 events, then charged and sentenced for criminal offenses for the sake of maintaining public security, and disturbingly failed to restore the infringed rights.

## **II. Violations at the pre-trial stage**

18. The legal provisions stating that a suspect and/or defendant has the right to legal assistance<sup>8</sup> or defend him/herself were not implemented. The initial interrogations were all conducted without advocates present. Moreover persons mentally disabled, persons with speaking, hearing and visual impairment, juveniles for whom the law specifically requires the presence of advocates at all stages of criminal proceedings were interviewed and interrogated without advocates
19. The police has the duty to notify within 24 hours any adult member of the detainee’s family, or a relative, or his/her advocate about the detention, or allow the detainee to contact his/her family, friends or advocate<sup>9</sup>. The police failed to implement this statutory provision.<sup>10</sup>
20. A system allowing arrest and detention of innocent citizens without being “entitled to take proceedings before a court” remains. Judges are not required to hold hearings in approving the arrest warrants. This contradicts the principle of the ICCPR requiring proceedings before a court so that court may decide the lawfulness of the arrest or detention.

## **III. Violations at the trial stage**

21. Many court sessions were closed for the public breaching the right of citizens to fair, independent and open court proceedings. The justification for court proceedings involving juveniles to be closed in order to protect their rights was used to group 5-6 adults with 1 juvenile to conduct closed hearings.
22. The principle of issuing court decisions based on thorough and objective examination of existing exonerating and mitigating evidences is in breach. Courts tend to send cases back for additional investigation due to lack of evidence. This approach to “prove the guilt” by collecting additional incriminating evidence prevails.

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<sup>7</sup> Monitoring of means of media by Globe International NGO

<sup>8</sup> Articles 35, 36, 39 of the CPC

<sup>9</sup> Article 61 of the CPC

<sup>10</sup> From 3 to 7 days after the arrests 70 families did not know where their family members were.

23. The fact that a statement given by a witness, who was interrogated as a suspect, was admitted to court as evidence is in breach of the provisions of the CPC.<sup>11</sup>
24. The fact that inquirers and investigators with the ultimate responsibility to investigate cases were involved in activities to maintain public order is in breach of the provisions of the CPC.<sup>12</sup>
25. **If the rules of collecting and documenting evidence are not complied with or violated the evidence shall lose its probacy value and may not serve as a ground for court decision.** This principle was breached. Police officers threatened and beaten up detainees coercing them to testify against themselves, and many of these detainees were convicted for crimes they have not committed. July 1 victims were all charged with criminal offences consisting of photo-copied files of witness statements and evidence materials.
26. It is also necessary to point out the fact that the clients of advocates that referred to international treaties and conventions in their statements were convicted for longer terms. As a result advocates faced a dilemma whether they should defend their clients observing the law and the human rights principles or try to “please” the judge in order to get a lesser punishment for his/her client.

#### **IV. Juvenile rights and cases**

27. The courts have violated the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")<sup>13</sup>.
28. Mongolia became signatory to the UN Convention on Rights of the Child in 1990. Imprisonment of juveniles, a measure of last resort, is an act violating the provisions of this Convention and evidence of Mongolian Government not fulfilling its obligations under this Convention. It is necessary to refrain from practice of sentencing youths to imprisonment and establish and sustain regulatory systems and mechanisms for “least possible use of institutionalization”, for emphasizing “the well-being of the juvenile”, for ensuring “that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence” and for providing proper and effective rehabilitation measures.

#### **Recommendations:**

1. Amend the CPC in order to ensure the protection of human rights as follows:
  - amend provisions that contradict the principle of issuing court decisions based on thorough and objective examination of all existing exonerating and mitigating evidences. The current practice of courts sending back cases for additional investigation is part of the cause that an inquirer/investigator with the ultimate responsibility to detect crime and the person who committed it is concentrated on collecting incriminating evidence;
  - amend the law to allow juvenile cases to be disposed through reconciliation without going to court;

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<sup>11</sup> CPC defines a witness as “A person who knows significant circumstances of a crime and not involved in the crime shall be deemed to be a witness.”

<sup>12</sup> An investigator injured during the July events was allowed to conduct investigation and interrogate suspects in breach of the CPC.

<sup>13</sup> Adopted by the UN General Assembly resolution 40/33 of 29 November 1985

- amend the law to clarify the role of citizen's representatives in trial court proceedings, to specify the procedures for incorporating their conclusion into the court decision and for allowing consultation in issuing the conclusion.
- 2. Amend the Criminal Code to ensure suspension of rights of prosecutors and judges who involved in or failed to report on acts of torture, negligence in evaluating evidence, etc. as there are cases of coercion by law enforcement officers and detainees were compelled to confess;
- 3. Amend the Law on the Constitutional Court in order to establish a system for protecting and restoring the infringed human rights of citizens;
- 4. Judicial (in Mongolia prosecution is part of the judicial system) employees lack basic understanding and knowledge of human rights principles and thus training on human rights issues is necessary. In addition, problems in applying legal provisions and evaluating evidence are rampant. We recommend that the General Council of the Courts and the Qualifications Committee responsible for enhancing and upgrading the professional skills of judges to issue independent decisions duly fulfill their mandate;
- 5. The NHRC of Mongolia failed to abide by the Paris Principles<sup>14</sup> in conducting its mandate to independently promote and protect the rights and freedoms of its citizens. The fact that the NHRC had issued two different opinions on one same incident, specifically events that took place on July 1-3 of 2008, indicates that it failed to fulfill its mandate to independently and objectively protect the human rights and freedoms. Thus we recommend reviewing the Law on the National Human Rights Commission of Mongolia to 1) ensure its conformity with the Paris Principles and to improve the nomination and selection process of members of the Commission to ensure independence, experience and expertise in human rights issues; 2) establish an investigation mandate for complaints of human rights violations.
- 6. Create the legal framework for the implementation of independent monitoring by joining the optional/additional protocol of the UN Convention Against Torture. The right to conduct the monitoring should be accredited to an NGO based on specific requirements;
- 7. Revise current performance evaluation procedures of law enforcement officers that are based on qualitative indicators, i.e. number of case clearances, damages compensation and settlement rates, and to set performance norms based on protection of human rights as the main evaluation criteria.

The Submission was compiled by:

- Center for Law and Human Rights
- NGO Coalition for documentation and protection of human rights
- Coalition "July1"

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<sup>14</sup> Article 3.3 of the Law on the National Human Rights Commission of Mongolia