

## INCOHERENT DEVELOPMENT POLICIES & HUMAN RIGHTS

1. This communication is based on research and monitoring reports of civil society organizations and incorporates comments and feedback received through consultations held within the framework of the Human Rights NGO Forum, regional consultations in 10 provinces as well as through a national consultation in Ulaanbaatar. The communication is also informed by recommendations received through other UN mechanisms.
2. We considered eight recommendations from UPR cycle II relating to the environment and nomadic herders, migrants in urban areas, which were not effectively implemented<sup>i</sup> continue to be in the core human rights violations with more herders losing pastures and traditional nomadic livelihoods and those fleeing to urban settlements losing or being denied the right to own land, property and sustainable livelihood<sup>ii</sup> resources. These result from a lack of law enforcement, lack of coherence between sectoral development policies as well as inconsistency with the SDGs, Green Development Policy and international commitments taken under the climate, environment and human rights conventions and agreements.
3. Mongolia has joined most conventions on combating climate change and desertification; environmental and biodiversity protection and their optional protocols<sup>iii</sup>, developed implementation programs and signed commitments. However, the UNECE Environmental Performance Review (2018) report concludes that “...while Mongolia has a comprehensive body of environmental protection laws implementation is delayed... The Green Development Policy and Strategic Environmental Assessment have not been applied.<sup>iv</sup> The Law on Environmental Impact Assessment in Provision 5.1 stipulates that ...a strategic impact assessment shall be carried for any development program, policy and where necessary assessment of social impacts and impacts on the health of population; in Provision 17 “...banks and financial institutions shall not finance projects with potential negative impacts”. This report will highlight impacts of such non-compliance with law and incoherent development policies in the mining and energy sector on the enjoyment of human rights communication.

### **Lead the Coal Market<sup>v</sup>**

4. The goal of the ADB/EIB and Green Climate Fund's Ger Area Development Investment Project (GADIP)<sup>vi</sup> is to reduce air and soil pollution in the capital city. The debt financed project documents make critical assumptions that by 2040 some 64% of Mongolia's total population will have moved to live in Ulaanbaatar and that moving Ger district residents who are polluting air by burning coal to new housing will solve the pollution problems. As result of such planning, the project envisages construction of 3 more coal-fired heating plants (122.5 Mw) to provide heating for the new housing districts<sup>vii</sup>. The Mid-term Energy Program<sup>viii</sup> (MEP) approved in October 2018 plans to increase capacities of existing Ulaanbaatar CHPs 2,3,4 by 48% and expansion of the Baganuur coal mine to supply these additional installed capacities. If these are implemented as planned, there will be no reduction in air pollution in Ulaanbaatar. On the contrary, the current emissions of CO<sub>2</sub>eq 7.2 million tons will receive an addition of 6.3 million tons in CO<sub>2</sub> (Annex 1). If all items in the MEP are implemented as planned nationwide, then Mongolia's National Determined Commitments (NDC)s to reduce

emissions by 14% will not be met due to production of 60 million ton CO<sub>2</sub>eq resulting in doubling of current emissions. The MEP envisages a 150% increase in coal capacity and reduction of wind and solar by 65% will not achieve the promised 30% renewable mix by 2030. (Annex 2). This energy program which will result in considerable increase of PM<sub>2.5</sub> and other toxic emissions from large combustion plants<sup>ix</sup> with potential serious impact on the health of population was not subjected to a strategic impact assessment process and thus not considered any risk to attainment of SDG-3.9 and 13.2<sup>x</sup>.

5. The Government Resolution #62<sup>xi</sup> prohibiting use of raw coal in Ulaanbaatar was adopted without assessment of potential impact on poor and vulnerable households and does not explain nor disclose the list of exempted section of the city. Thus it is unclear how this particular policy was coordinated with the poverty reduction policy and its SDGs.
6. Decentralization of population concentration and depleting water resources are sustainable development concerns and topic of current discussions backed by research data indicating that Ulaanbaatar will run out of water by 2030<sup>xii</sup> regardless of which of the low, medium and high growth scenarios, which do not appear to have informed urban development projects nor have the SDGs and international commitments of all parties involved been considered in these projects.
7. Prohibiting use of raw coal and involuntary resettlement of Ger district residents to outskirts with **no infrastructure** is not likely to reduce pollution but is highly likely to increase their vulnerability. The “affordable housing” and “climate resilient housing” to be built within the framework of GADIP<sup>xiii</sup> project will still require electricity and heating produced by coal-fired facilities and thus will increase use/supply of coal, and of course, emissions. In addition, the plan to produce “improved coal” in four districts of Ulaanbaatar has resulted in transporting from Tavan Tolgoi and storing raw coal on bare soil (Photo 1) near Ulaanbaatar; continued practice of allowing mining companies to abandon land without reclamation, contaminating water and pastures is adding to land lost to desertification. Mineral extraction based economic development program is implemented extensively in Umnugobi (southern Gobi Desert) with mega mines depleting scarce water resources with irreversible impact on the fragile desert ecology is a clear non-conformity with commitments taken under the UNCCD but mining impact on desertification is never discussed in its reports.
8. Uncontrolled coal extraction and transport on bare soil destroying and contaminating pastures and water and living environment of nomadic herders is leading to conflicts between local herders and coal transporters with potential social divide and even transboundary conflicts which may have implications for attainment of SDG-16 targets. Transport of Tavan Tolgoi coal to Gashuin Sukhait border port statistics show 120 road accidents with at least death per month<sup>xiv</sup> is still the infamous killing “coal road” with problems not addresses in at least a decade long tragic history.
9. The projects that promised and received support for their intent to bring infrastructure to Ger areas and develop housing to reduce capital city’s ambient pollution are now engaged in involuntary resettlement of residents to city outskirts without infrastructure. This relocation is moving ahead without adequate compensation, threatening forced eviction if offered compensation is not accepted. In the process of land acquisition, land and property is valued at lowest prices; valuation often done with owners not present but forced to accept offered package using misinformation, threats and intimidation; households are being pushed off land in mid-winter<sup>xv</sup>; land offered in compensation is often subjected to another urban plan. The ADB project affects over 900<sup>xvi</sup> household with land title (over 3000 with those living on the

same plot without land title) but only 130 affected persons filed a complaint to the ADB grievance mechanism to negotiate and improve the compensation package. The improved compensation is not enough to purchase land, housing and retain livelihoods. People who were forced to give up their land near city centre<sup>xvii</sup> for low price and move to outskirts of town with no infrastructure and public services are facing the following violation of rights: 1) compensation based on non-market, arbitrary valuation prices is resulting in loss of livelihood and potential homelessness; 2) causing additional damage by making resettled people obtain land certificates which incurs them costs not included in the compensation - additional costs for new land valuation and registration; delaying payment of compensation for months results in losses due to prices increases<sup>xviii</sup>; 3) assigning land offered in compensation to yet another “urban development plan” and thus denying land certificate; 4) land acquired under involuntary resettlement is treated as “land sold back to government at high price and therefore voluntary discharge of citizen’s right to own land”. A citizen is allowed to apply to own land only once and those registering new land plots not eligible to own land again; 5) Failing to restore a land ownership certificate will result in paying land fees on land with possession certificate which is burden on income resulting in livelihood levels much below than prior resettlement; 6) lack of access to information allowing discriminative treatment in allocating compensation to affected households from poorer and vulnerable groups; 7) right to education is under risk for children who were not able to enroll in school and kindergarten in the new location; 8) mother who have not enrolled young children in kindergarten lose opportunity to find employed and earn income; 9) damages due to loss of access to health care, social benefits or having to travel far to these services; 10) not being able to include unregistered income earning micro activity due to not having tax report to show is reducing not only compensation but permanent loss as opportunity to restore such activity is not included in the compensation.

10. The fact that while resettlement started in 2017, the livelihood restoration program for resettled households was not ready in August 2019 is evidence of ADB/EIB and GCF projects in violation of their own safeguards policies but also financing housing projects which are not likely to benefit the marginalized<sup>xix</sup> and thus are in non-conformity with their commitments to climate change, poverty reduction and development support to attainment of SDGs. Evidence of implementing so-called “development projects” with resettlement<sup>xx</sup> without information disclosure, compensation and consultation in the capital and provincial centres, without prior social impacts assessment and plans for mitigation of negative impacts affecting all rights protected under the ICESCR can be found in complaints of 130 affected persons filed with the ADB Accountability Mechanism<sup>xxi</sup> and the Amnesty International (Mongolia) report on the right to housing<sup>xxii</sup>.

### **Advance from extraction to processing!**

11. Since the adoption of the Law on Environmental Impact Assessment in 2012 with a provision to carry out strategic impact assessments many development policies and programs were approved and implementation began without a SIA in mining, heavy industry, energy and infrastructure sectors. Concentrators, processing factories in the mining sector have been rushed through without assessment of potential negative impacts and mitigation measures to protect the right of population to safe and healthy living environment, to access traditional natural resources, to home and sustainable livelihood that are being violated across urban and rural areas alike. In the absence of national resettlement and compensation standards and norms<sup>xxiii</sup> valuation of property and resettlement is being handled by companies in an arbitrary

manner with legal framework permitting involuntary resettlement with police force available in case of protests, affected citizens are not protected from forced eviction. In urban “khashaa”<sup>xxiv</sup> and on nomads’ winter camps there are usually several households living together as a “hot ail”<sup>xxv</sup> on a plot with one holding title to land. Compensation procedures omit this larger group without land title denying right to any compensation together with the right to housing and livelihood. In allocating mining or processing licenses authorities do not carry out socio-economic assessment of what size land can be taken from a community without affecting negatively on livelihoods and sustainable development. The fact that 70 percent of Dalanjargalan soum<sup>xxvi</sup> land is issued in 97 licenses to 23 companies with 10 processing factories (Annex 3), 60 percent of Zaamar soum, 70 percent of Khailast Bagh<sup>xxvii</sup> are under mining licenses is evidence of not only disregarding the community’s right to development, to life and livelihood but a complete lack of consideration to sustainable social and economic development of rural settlements.

12. Implementation of the policy on advancing processing in the mining sector was carried out before procedures and standards were approved and without requiring EIAs. This has resulted in environmental contamination, water scarcity causing processing facilities stranded without water during a dry summer season. Air and water quality monitoring is not adequate or non-existent in mining areas. In addition, Mongolia’s MNS standards for water, air and some hazardous chemical substances are set lower than international standards (Annex 4) to hide serious hazards for the population living in mining areas. Standard MNS 4585:2016 for the Air Quality Index prescribes a method for calculation of such an index. The prescribed methodology makes the Air Quality Index misleading, as, in most of the cases, the values of the Index would correspond to the real PM10 concentrations.<sup>xxviii</sup>. Again a risk for attainment of SDGs 1, 2, 3, 6, 13, 15.
13. The ancient nomadic pastoralist culture protected under the UN Declaration on Indigenous Peoples is under risk as mining and infrastructure pushes out nomads from pastures restricting mobility that is a life sustaining need rather than a lifestyle of choice. Land under a winter camp that is allocated to a herder for use for 60 years and the pasture that comes is not protected from take by other sectors. Only little land for a winter camp is offered for compensation based on practices borrowed from settled cultures without restoring the right to pasture that is the source of livelihood of a herding family. Lack of protection leads to 1) loss of access to pasture entailing loss of livelihood, homelessness and eventually turning to internally displaced status; 2) attempts to use other herders’ pastures with\out permission is causing conflict among herders; 3) crowding on reduced size pastures is resulting in overuse of pasture and water resources further adding to desertification of land; 4) nomadic herding and nomadic culture is under threat of extinction; 5) increased rural to urban migration. The fact that instead of improving and protecting opportunities for livelihood in rural areas Ulaanbaatar Municipality carried out a decision<sup>xxix</sup> to ban registration of migrants until 2020 - a decision that will have negative impacts on vulnerable groups, failure to implement UPR Cycle II recommendation 108.144<sup>xxx</sup> and is yet another evidence of incoherent development policies.
14. While discussions on developing a National Action Plan to implement the UNGP on BHR have started in late 2018 were welcomed, there is an indication that business sector will narrow business’s impact on human rights to employment, workplace and child labor areas leaving untouched practice of violation of the right to safe and healthy living environment, right to life, access traditional natural resources, protection of nomadic culture by mining, energy, construction and infrastructure industries.

15. In the cases, when 80-90% of a community's land is allocated to mining disregarding local administration's development priorities to ensure the basic rights of its residents, there is often a corruption and/or conflict of interest case involved. Community's attempts to hold such companies accountable face the following obstacles: 1) judicial and legal aid at soum level is not adequate both in terms of quantity and quality; 2) case jurisdiction is often assigned based on company or state authority's registration rather than on location of damage caused which results in claimants having to travel to Ulaanbaatar<sup>xxxii</sup> to litigate. This adds considerably to the cost of litigation for residents. Example of a citizen from Gurvantes (Umnugovi) filing a claim against SGCT in 2018 regarding illegally obtained mining license travelled 33 times 910 km one way to attend pre-trial sessions with the judge dismissing the case as not eligible is a common one. 3) Companies influencing courts to rule cases ineligible; prolong pre-trial process to buy time to continue illegal operations are used methods or file reputational damage claims against activists. 4) Law enforcement establishes high penalties to harass and threaten to force local community fighters to pay compensation for causing delays in company operations is also a commonly used method to suppress any initiative to protect community rights.

#### 16. **Recommendation**

- 1) Carry out strategic impact assessment on all current energy, mining and heavy industry, transportation and infrastructure policies and programs to review to bring into coherence with SDGs, international environmental and human rights commitments as well as other UN mechanism recommendations such as the UNECE EPR;
- 2) Adopt resettlement and compensation policies compliant with international standards to apply as part of a social impact assessment BEFORE any urban development, land planning, licensing in mining and infrastructure projects are developed for implementation on any public land;
- 3) Adopt legal provisions requiring projects with high negative impact (A Category) to carry out human rights impact and human rights defender due diligence.
- 4) Create legal framework for environmental case jurisdiction to be trying assigned and tried in the jurisdiction where the damage and harm have been caused or may occur;
- 5) Create a mandate of an independent Ombudsman to receive and resolve environmental cases.<sup>xxxii</sup>
- 6) Include in the National Action Plan for UNGPs mechanisms for protection of the ancient nomadic pastoralist culture, through protection of the need to be mobile in their pastures regulated by tradition and remedy for violation of such rights;
- 7) Revise MNS standards for chemical substances applied in mining, energy, construction and other infrastructure sectors to comply with the World Health Organization standards for human health.

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<sup>i</sup> 108.162. Develop a NAP on business and human rights, for the implementation of the UNGPs on BHR, with special attention for the situation of nomadic herders and access to remedy (Netherlands) –not implemented

<sup>ii</sup> 108.144. Undertake the necessary measures to ensure sustainable development in its urban centres, ensuring that there is basic public services for the most vulnerable people, particularly, migrants coming from rural areas (Spain) – not implemented

<sup>iii</sup> [https://www.mne.mn/?page\\_id=454](https://www.mne.mn/?page_id=454)

<sup>iv</sup> UNECE Environmental Performance Review cited law provisions not implemented  
<https://www.legalinfo.mn/law/details/8665>

<sup>v</sup> Coal Mongolia 2019 –Lead the Market was the motto of this international coal gathering -  
<https://www.coalmongolia.mn/>

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- vi <https://www.greenclimate.fund/documents/20182/893456/16910 - ADB - Ulaanbaatar Green Affordable Housing and Resilient Urban Renewal Project AHURP .pdf>, хуудас 4
- vii ADB, GCF Green Affordable Housing <https://www.adb.org/projects/49169-002/main>
- viii [http://energy.gov.mn/c/914\\_approved\\_on\\_October\\_24](http://energy.gov.mn/c/914_approved_on_October_24), 2018 but not available on the official ministry website.
- ix [http://www.unece.org/fileadmin/DAM/env/epr/epr\\_studies/ECE\\_CEP\\_182\\_Eng.pdf](http://www.unece.org/fileadmin/DAM/env/epr/epr_studies/ECE_CEP_182_Eng.pdf) page 201: “According to the 2016 Emission Inventory Report, three power plants in Ulaanbaatar affect the local air quality, contributing to more than 70 per cent of emissions of SO<sub>2</sub>, NO<sub>x</sub> and PM<sub>10</sub>.”
- x This also leaves Mongolia less prepared to substantially reduce the number of deaths and illnesses from air pollution in line with SDG Target 3.9 UNECE EPR, Executive Summary, para xxxiv
- xi <https://www.legalinfo.mn/law/details/13270?lawid=13270>
- xii Alarming, modeling Ulaanbaatar’s future water demand shows that in all scenarios, the water demand will exceed the current water supply capacity before the year 2021. In the high water demand scenario, Ulaanbaatar’s demand will even exceed the maximum available resources within seven years (Figure 1). [http://www.2030wrg.org/wp-content/uploads/2014/07/2030WRG\\_MONGOLIA.pdf](http://www.2030wrg.org/wp-content/uploads/2014/07/2030WRG_MONGOLIA.pdf)
- xiii <https://www.greenclimate.fund/documents/20182/893456/16910 - ADB - Ulaanbaatar Green Affordable Housing and Resilient Urban Renewal Project AHURP .pdf>, page 4
- xiv “Evaluation of Impact of Tavan Tolgoi Coal Transport on Human Rights”. NHRC, UNDP 2018
- xv <https://www.legalinfo.mn/law/details/216> Provision 42.4. In the case of land under private housing or ger is exchanged or acquired with compensation relocation may be carried out only during May 15 to September 15 season.
- xvi Law on Land regulates relations of only licensed land holding and is silent on protection of right for land used under customary tradition <https://www.legalinfo.mn/law/details/216>
- xvii Ibid, 43.2..... any property on such land shall be valued at current rate...
- xviii Consumer index average increase at 8.1% and monthly inflation at 0.6% significantly reduces the compensation with delays of 3-6 months in paying out are common <http://www.nso.mn/content/2120#.XYsTMigzbIU>
- xix Housing mortgage programs have not benefitted the poor from Ger Districts. These programs have provided opportunity for the well off to buy 2<sup>nd</sup> and 3<sup>rd</sup> apartments.
- xx <https://www.adb.org/projects/45007-004/main>,
- xxi <https://www.adb.org/projects/45007-004/main>
- xxii <https://www.amnesty.org/download/Documents/ASA3049332016ENGLISH.PDF>
- xxiii Cabinet Resolution 22 approved in July 2018 after thousands of households have lost housing and is applicable only to settled areas. Implementation leaves much to be desired
- xxiv Fenced in plots of resident land
- xxv Hot ail – a group of 2-3 households often related living on a same plot of land
- xxvi There are over 350 such administrative divisions in the country of varying size population from 1,500 -10,000.
- xxvii Smallest administrative unit of several hundred households
- xxviii UNECE EPR, page xxxiv, para 6
- xxix <http://www.ulaanbaatar.mn/Home/Docdetail?dataID=28132>
- xxx 108.144. Undertake the necessary measures to ensure sustainable development in its urban centres, ensuring that there is basic public services for the most vulnerable people, particularly, migrants coming from rural areas
- xxxi Most large companies and TNCs are registered with the State Registration in Ulaanbaatar