

IMPLEMENTATION OF RECOMMENDATIONS ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION

LIST OF ABBREVIATIONS

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
GoM	Government of Mongolia
HR NGO Forum	Human Rights NGO Forum
LLC	Limited Liability Company
MP	Member of Parliament
NGO	Non-governmental organization
NHRC	National Human Rights Commission
UN	United Nations

PREPARATION OF INFORMATION AND CONSULTATION PROCESS

1. Seven non-governmental organizations (NGOs), including Global Meridian, Gobi Soil, the Center for Child Rights and Protection, the Mongolian Association of the Deaf, the Human Rights Center for Citizens, the Mongolian Women's Employment Support Federation, and the Psychological Responsiveness Center have participated in an online survey on the existing and newly emerging forms of discrimination, which was sent out to over 40 human rights NGOs. The Working Group comprising 4 members representing the Mongolian Women's Employment Support Federation, the Center for Child Rights and Protection and Human Rights Center for Citizens held three meetings to discuss the inputs, two meetings in person and one online discussion. The report was compiled as a result of these consultations and was discussed at the Human Rights NGO Forum (HR NGO Forum).¹

POSITIVE DEVELOPMENTS

2. One of the progressive developments since the issuance of the recommendations has been the adoption by the Government of Mongolia (GoM) of a plan of action², which includes measures to explore a mechanism to eliminate discrimination and to develop appropriate legislation.
3. Adoption of the Gender Equality Law prohibiting both direct and indirect discrimination based on gender.

¹ The Human Rights NGO Forum convened on 9, 22 August and 4 September 2014 to discuss the information to be submitted to the UN Human Rights Council.

² Attachment to the Government resolution No. 159 of 2011.

4. That the GoM has incorporated issues related to the implementation of women's rights, including the right to participate in public life in its latest national UPR report on the implementation of CEDAW, gives rise to the hope that in the future Mongolia will adopt a policy and implement actions guaranteeing women's rights to equal participation and freedom from discrimination.

IMPLEMENTATION OF THE RECOMMENDATIONS

84.17 Canada: Enact broad anti-discrimination legislation that explicitly prohibits discrimination based on sexual orientation and gender identity.

84.44 Norway: Ensure a human rights culture, inter alia, by strengthening the anti-discriminatory legislative framework and ensuring its effective implementation.

86.4 Brazil: Consider accepting individual complaints mechanisms such as those provided for in the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women.

86.5 Mexico: Adopt quick and effective measures, as well as necessary legislation, in order to explicitly prohibit, prevent, punish and abolish discrimination on any grounds, including on the basis of HIV-AIDS status.

5. Although the Government Action Plan includes a provision to "take immediate measures to adopt a law and establish an anti-discrimination mechanism," as of today, the legislation has not been passed and even the work to develop its draft has not started. Despite the adoption of the Gender Equality Law, which prohibits discrimination based on gender, so far there have been no instances of citizens using the law to reclaim their rights. Furthermore, measures to raise public awareness about the new law have been insufficient. In practice, discrimination based on age, sex, and appearance does exist, but there are no venues for lodging and resolving complaints.

Evidence 1:439 or 90.7% of cases dealing with discrimination in the workplace are cases of age-based discrimination. In other words, one in every two newly advertised vacancies on the job market specifies an age preference. In comparison, there are fewer vacancy announcements with requirements concerning the gender of the preferred candidate, this ratio being one to three. Out of 1000 job notices, 291 discriminated against job seekers on the basis of gender (Keynote report delivered at the women's forum on "Employment and family" by Ts. Oyungerel, Chairwoman of the Democratic Women's Association on 8 April 2011).

6. The individual complaints mechanism has not been accepted.

Evidence 2: The possibility of accepting Article 14 of ICERD is under review (GoM voluntary mid-term progress report on the implementation of UPR recommendations, 13 March 2014).

7. The draft of the new Criminal Code proclaims all forms of discrimination to constitute a crime, but the timing of the law's codification is still unknown.

84.45 United States: Take stronger measures to combat discrimination in both the public and private sectors while promoting greater women's participation at the highest levels of decision-making.

Women's participation in higher level decision-making has increased with the number of elected women Members of Parliament (MP) rising from 3 in the wake of the 2008 elections to 11 in 2012. Another step forward is the establishment of a Women's MP Group in the State Great Khural (Parliament). However, in arenas other than the Parliament and private sector management, notable improvements in women's participation are lacking. The law defining discrimination in public and private life as a crime has not yet been adopted, and no anti-discrimination mechanism has been implemented. Thus, discrimination based on age, appearance, and social origin/status is on the rise, especially in the private sector. Overall, no comprehensive measures are being taken to eliminate discrimination against women.

84.47 United States: Strengthen existing legal protections and enhance enforcement to combat discrimination against and mistreatment of women and girls.

8. With a view to implementing this recommendation, the Parliament has passed the Law on Witness and Victim Protection, and a revised version of the Law to Combat Domestic Violence has been submitted to the Parliament. In this way, initiatives are being put forward to create legal protections safeguarding women and girls against discrimination. However, the practice of discrimination against and mistreatment of women and girls in society still persists. Though rising birthrates as a result of the government policy to encourage women to have more children is a positive development, due to the shortage of kindergartens, young women have to stay at home and therefore, are deprived of a career. Furthermore, the prevailing practice of registering movable and immovable property in men's name prevents women from obtaining loans on collateral and from participating in economic life.

Evidence 3: Resident D living in Zuunkharaa soum of Selenge province: "...I am divorced with two children, and suffer from back pain. Because I am over 40 years old, I can't find employment. With the assistance from the World Vision international organization, I keep chicken and pigs to earn my bread. Winter is approaching, and I need to build a chicken coop, but because I don't have collateral, the bank won't give me a loan. The only property I have which can be used as collateral is my land, but because it is registered in my ex-husband's name, I can't use it"(Excerpt from the petition submitted to the Mongolian Women's Association in 2012).

Evidence 4: The economic participation of women who are of working or reproductive age decreased from 59.4% in 2013 to 57.3% in 2014 (*Statistical bulletin, July 2014, page 11*).

The following conclusions can be derived based on the above-mentioned implementation of the recommendations:

9. The political elections in Mongolia take place every 4 years, and with the change of the government, all but four functional ministries are reorganized with a subsequent change in their portfolios. This changeability has hindered the effective implementation of the recommendations issued in 2010. The implementation of the recommendations was also hindered by such factors as the lack of a unified policy planning and budget shortages.
10. That each form of discrimination is not considered as “damage” is a reflection of the absence of the legal framework as well as of an effective complaint mechanism.
11. We further highlight the following issues, which in the last four years received attention in social, economic and political circles, and serve as a reflection of serious human rights violations.
12. There is a widespread perception in society that only women engage in prostitution, which also serves as grounds for discrimination against them. In today’s legal practice, only those who sell sexual services (the overwhelming majority of whom are women) face punishment for the crime of prostitution, while those who actually commit it and buy these services (the overwhelming majority of whom are men) do not bear any responsibility. This inequality in treatment is one of the reasons for this crime to persist, and serves as a reason for discrimination against women.

Evidence 5: Article 3.1.2 of the Mongolian Law against Pornography defines pornography as including prostitution, the exploitation of prostitution, and inducement into prostitution, while Article 4.1 and 4.2 prohibit prostitution and inducement into prostitution.

13. Despite the seeming existence of a legal framework for receiving and resolving complaints regarding discrimination, the complaints mechanism is weak and no measures are being taken to hold the offenders responsible for their actions. Furthermore, although the Gender Equality Law prohibits discrimination, and there is a regulation for lodging discrimination-related complaints to the National Human Rights Commission (NHRC), the results are inadequate.

Evidence 6: A woman employee of the Millennium Challenge Account of Mongolia lodged a complaint to NHRC in 2013 about workplace sexual harassment by a project manager named P.B. The investigation uncovered evidence of P.B. sexually harassing the woman on three occasions, which led NHRC to issue official demand No. 3/09 to take appropriate measures to punish the offender. As a result, the punishment imposed by order No.13/81 from 12 April 2013 consisted of a 10 percent salary reduction for the duration of three months.

Evidence 7: The reports of the last 3 years (2011, 2012, and 2013) by NHRC provide the following statistics on resolving complaints received from citizens and enterprises:

	2011	2012	2013
Complaints received	326	311	669
Complaints regarding discrimination		1	5
Settlement of the complaint:			
Resolved by court	6	4	3
Administrative sanction imposed			16
Demand delivered	18	14	21
Returned to the complainant			148
Transferred to other organizations			429

14. Although people have started to lodge complaints regarding violations of human rights and discrimination, the fact that these complaints are not being adequately settled and no demonstrable results so far achieved, there are concerns that people might lose faith in achieving a just settlement from a complaint. Likewise, concerns remain about instances of discrimination remaining uncovered and suppressed. These are the negative consequences of the absence of a stand-alone law dealing with discrimination and poor functioning of the existing mechanisms.

RECOMMENDATIONS

15. Assign priority to adopting a stand-alone Law on the Elimination of All Forms of Discrimination, establish an effective and accessible mechanism for lodging complaints regarding discrimination and reclaiming one's rights, as well as ensure citizen participation in developing the draft of the above-mentioned law.
16. Take immediate actions to adopt the Family Law, Law to Combat Domestic Violence, and Labor Law that have been submitted to the Parliament, albeit without impairing the quality of the proposed legislation.
17. Persistently combat discrimination against women and girls, paying particular attention to supporting their economic participation, including ensuring their right to work, by, inter alia, exploring such opportunities as setting up ger³ kindergartens.
18. Modify the Law against Pornography to include a provision imposing punishments on all parties culpable of the crime.

³ The Mongolian word for a yurt, a traditional portable felt dwelling.

19. Allocate sufficient funds for measures aimed at combating and preventing all forms of discrimination.
20. Implement consistent, effective, and well-planned measures to eliminate discrimination against and downgrading attitudes toward women and girls.