

Small-scale mining & Human rights

Background information

1. The Mongolian Artisanal Miners' United Umbrella Association NGO (MASM) respectfully submits this submission concerning Small-scale mining and Human rights situation of artisanal small-scale miners in Mongolia for consideration by the Human Rights Council within its Universal Periodic Review at its 22nd session on May 4-15, 2014. The submission "Small-scale mining and human rights" was drafted in consultation with member organizations of MASM. The draft submission was presented and discussed at the National consultation: "Second UPR on Human Rights Situation in Mongolia" held by Human Rights NGO Forum at August 22, 2014.
2. MASM is a non-government organization established by Mongolian miners' NGOs in May 2013 with 35 member small-scale miners' non-government organizations representing over 7000 miners and several thousands of miners yet to be organized. Its main goal is to develop socially and environmentally responsible artisanal and small-scale mining that is recognized by the society through protecting member organizations rights and improving livelihoods of miners. Within the framework of the MASM's operations, it provides assistance and trainings to member organizations on how to solve problems related to access to mining land and dealing with local governments. MASM also makes agreements and MoUs with government and non-government organizations to cooperate on supporting responsible artisanal and small-scale mining (ASM).
3. In the 1990s, artisanal mining emerged in Mongolia as an alternative form of livelihood and income generation for thousands of people in response to persistent and widespread poverty. The majority of the artisanal miners were herders who lost their livestock in harsh winters and were left with little choice but to seek other forms of economic survival.
4. During the last decade, the State Great Khural and Government of Mongolia have taken a number of important actions to regulate the artisanal and small scale mining issues and enabling the legal environment thereof. By adopting of Law on Minerals, Law on Land, subsequent amendments to Law on Personal income derived from Private Business and Services by the State Great Khural in July 2010, SSM has been officially recognized and in December 2010, the Government of Mongolia enacted Resolution 308, "Regulation on Extraction of Minerals from Small scale mines" as the first progressive step towards formalization of SSM. In 2014, the State Policy for the Minerals Sector; 2014-2025 reflected a positive article on SSM, followed by amendments to the Minerals Law in February and July.
5. Since the February amendments to the Minerals Law on Gold Trading to improve the State Treasury Fund through gold deposits to Mongol Bank, SSM was formally recognized as a key player to stabilizing the national currency and economy. SSM have since deposited about 1 ton of gold worth 40 million USD in foreign currency reserves and about 16% contribution compared to large mining companies. Despite the significant economic contribution by SSM, only 3000 of these miners are formalized and have legal land entitlement. The country is benefiting from miners the majority of which are marginalized, and denied rights to formalize through legal mining land entitlement. Some of the miners sell their hard earned gold to middle men as there is not yet any regulation that directs sell of SSM gold at local level. The middle men buy the gold at very low

prices depriving miners of fair and competitive prices. There is a need to develop and approve the Regulation on small-scale mining gold trading.

6. Despite the progress made so far at Policy level and changes in public opinion, there are still huge polarized views on SSM amongst law and policy makers. In addition the current legal framework has limitations to formalize SSM and consequently the majority of miners remain informal and marginalized. At central and local levels, some institutions have maintained negative views and opinions on SSM and have not implemented the current legal framework. Most institutions do so contrary to their Human Rights obligations as enshrined in the Universal Declaration of Human Rights, International human rights Treaties ratified by Mongolia, International and Mongolian laws.
7. The current economic growth does not benefit the majority of rural population. They still remain poor and small scale mining provides with a viable option for livelihood and economic security. In spite of its local economic significance and legitimacy, small scale miners in selected areas are still subjected to human rights violations by both state officials and private mining companies. In some areas, small scale miners' efforts to formalize are resisted through discrimination and denial to legal entitlement.
8. Common human rights violations on small scale miners include “right to live in dignity, to be free from torture”, inhuman or degrading treatment, “right to be equal before the law”. Other rights include i) right to work and live in healthy and secure environment, ii) access to clean water; iii) land rights and titles, iv) access to health care, social security, v) right to adequate standard of living including right to earn for livelihood and vi) right to residency of choice and so on.

The legal and institutional framework and related human rights issues

9. Mongolian ASM' United Umbrella Association NGO commends Mongolia' signature of the Minamata convention on Mercury in October, 2013. There is a need to ratify the Minamata convention, confirm that Mongolia has more than an insignificant number of artisanal miners and develop the National action plan¹.
10. An establishment of SSM legal framework in 2010 was the first progressive step toward formalization of SSM. SSM related law provisions and regulations stipulate the responsibilities of the Central and local Government, related state organizations, self-governing bodies and citizens with regard to SSM. However, the implementation of the SSM related legislations was weak due to the Article 11.1.23 of the Law on Minerals which states that Mineral Resources Authority of Mongolia has to check whether the selected land is entirely or partially overlapped with the land, where prospecting, exploration and exploitation of minerals are restricted or prohibited, or the land that is taken for special purpose and reserved areas, as well as the licensed areas to determine a size and boundaries of land. In practice, almost all of the applied land for SSM falls under above mentioned criteria. As the most serious consequence, for last two years no land was granted to small-scale miners. There is a need to modify the Article 11.1.23 as “to make conclusion whether the selected land is entirely or partially overlapped with the land,

¹Minamata convention, Annex C

where prospecting, exploration and exploitation of minerals are restricted or prohibited, as well as the licensed areas.”

11. This circumstance leads small-scale miners, who have been organised, into illegal mining activities for their livelihood. Miners with insecure workplaces often spend days in risky and frustrated conditions as they are pushed away from one place to the other and affected by violence. Their tools and equipment are confiscated by police due to the illegality of their activities. Consequently, miners become victims of human rights violations because of illegal mining operations and unsecured work places. It is common for miners “to be silent” in most of cases while their rights are being neglected and abused since they assume themselves “guilty”. In fact, regardless of miners being organized or unorganized, each citizen should exercise their human rights including the right to live free of violence. However, as a consequence of the marginalised state of SSM and the negative society opinion, artisanal miners were pushed to the fringes of society, and called “ninjas” and their rights are rarely raised in the society. There are many facts and evidences provided by the artisanal miners on how they are often beaten by security guards of mining companies and police and become victims in terms of their lives, health conditions, and loss of properties. In 2011 a forced action was undertaken against artisanal miners, who entered without permission into a licensed gold mining site in Zaamar Soum, and two persons died during the action². Despite the amendments of the Minerals Law to provide land access to SSM, there are still limitations on land access to miners by Law. There is a clear demand to update Article 11.1.23 of the Law on Minerals of Mongolia, applies to the small-scale mining land, to secure mining rights to small-scale miners and formalise their operation. The Law on Minerals should include provisions for a) exploitation license holders to provide portions of their licenced areas for SSM without liability demands b) provide increased decision making power to local governments to allocate land to SSM from previously mined out or abandoned areas.
12. In Mongolia more than 60 thousand people’ livelihood depends on SSM sector. The small-scale mining is not only a mining issue. There are many issues related to SSM such as miners and their family members’ social welfare, health, safety, education and related human rights issues. However, there is no integration between concerned ministries and agencies. The Government should establish National Inter-sectorial coordination committee comprised of key ministries and agencies in order to fulfil the state duty to coordinate and formalise SSM sector and address human rights issues around SSM.
13. In 2007, the State Inspection Agency carried out an inspection on use of chemical and dangerous substances. During the inspection it was revealed that in total of 120 areas with 203508, 8 m³ soil covering 53.5 hectares of land were contaminated with chemicals and 147 roller mills used by miners were confiscated due to use of mercury. Consequently, use of mercury in the mining sector has been banned since 2008 in Mongolia. The Government officials consider that they stopped mercury use due to the State’ prohibition on mercury use and confiscation of mills. However, mercury use has gone into the “gray zone”, and ‘hidden’ as artisanal miners use it secretly in their homes using mortar and

² Report on the Human rights situation in Mongolia, 2012, by National Human Rights Commission of Mongolia

pestles. In some aimags in over 9 soums miners exploit gold and recover it using mercury despite the ban. In order to stop illegal use of mercury and protect human health and environment, the Government issued the Resolution 28 on 23 January, 2008 that states “to establish centralized processing plants in 3-4 areas on pilot basis, estimate required funding sources for the pilot activities, take appropriate measures for funding, and present relevant issues to the Cabinet Meeting for decision, if necessary”. Accordingly, in 2009 mercury free ore processing technology was introduced, and the first mercury free processing plant for small-scale miners was established in Mongolia. Later the technology was replicated successfully by miners and three more plants were established in other provinces. However, the plants are not operating until now, due to non-approval of the Detailed Environmental Impact Assessment report by the Ministry of Environment and Green Development. Consequently, small-scale miners have no choice except to clandestinely use mercury to recover the gold from other minerals, and then burn the amalgam to evaporate the mercury and recover the gold³ instead of receiving services from mercury free gold processing plants. Therefore, miners have been suffering from mercury poisoning and their rights to a healthy, safe and secure environment are being violated. The Ministry of Mining and the Ministry of Environment and Green Development jointly should take decisive actions to solve mercury use in small-scale mining sector, instead of pretending that Mongolia has effectively stopped mercury use. Part of the SSM gold sold to Mongol bank and is contributing to currency stabilization has been produced by miners using mercury in a clandestine manner and exposing themselves to health hazards.

14. Article 16.6 of the Constitution of Mongolia guarantees to all citizens to enjoy the right to the protection of health and medical care. However, health care workers in rural areas do not have capacity to prevent, identify symptoms of mercury poisoning, diagnose and treat miners, suffering from mercury poisoning⁴. It causes abuses of the right to the protection of health and medical care. There is a need to be developed a Health strategy to prevent and address mercury exposure in SSM sector by the Ministry of Health.
15. Child labor is defined by the International Labour Organization (ILO) as work that is “mentally, physically, socially, or morally dangerous and harmful to children” and “interferes with their schooling”. ILO also defined hazardous work including a number of mining activities such as work underground; work with dangerous machinery and tools, transport of heavy loads, work that exposes children to hazardous substances⁵. The Government of Mongolia has issued a list of dangerous and hazardous work, prohibited for children under age of 18. The Regulation on extraction of minerals from small-scale mines prohibits child labour. However, many children engage in artisanal mining to help

³ Study conducted by WHO (2006) and Rapid assessment of the health situation of Artisanal miners and their families in Mongolia by the Toxicology Department of the National Centre for Public Health (2011), Report on mercury

⁴ Report of study on Mercury Exposure and Health Impacts in Primary Gold Miners, Toxicology Department of the National Centre for Public Health (2014),

⁵ILO convention on Worst Forms of Child Labor , art. 3

their parents⁶. There is a need to develop and implement action plan to enforce legislations related to child right protection, address child labor in SSM sector, strengthen capacity of local government actors to protect the most vulnerable children, including children involved in small-scale mining operation, and ensure their access to health, education, and other child care services.

Recommendations:

1. Develop and approve the Regulation on small-scale mining gold trading for enabling SSM gold trade at the local level.
2. Ratify the Minamata convention, confirm that Mongolia has more than insignificant no of artisanal miners and develop the National action plan.
3. Modify the Article 11.1.23 of the Law on Minerals as “to make conclusion whether the selected land is entirely or partially overlapped with the land, where prospecting, exploration and exploitation of minerals are restricted or prohibited, as well as the licensed areas” to secure mining rights to small-scale miners and formalize their operation.
4. The Law on Minerals should be amended and added the following provisions for a) exploitation license holders to provide portions of their licensed areas for SSM without liability demands or engage in tripartite agreements with SSM b) provide increased decision making power to local governments to allocate land to SSM from previously mined out or abandoned areas.
5. Amend the Law on Minerals to specify Central and local government roles on SSM specific to different government institutions.
6. Amend the Article 5.1 of the Law on Taxation of Personal Income Derived from Private Business and Service to lower income tax amount of small-scale miner from 53,000 MNT to 10,000 MNT/month.
7. Establish National Inter-sectorial coordination committee comprised of key ministries and agencies in order fulfill the state duty to coordinate and formalize SSM sector and address issues around SSM in comprehensive way.
8. Take decisive actions to solve mercury use in small-scale mining sector through introducing and approving mercury free technologies.
9. Develop a Health strategy to prevent and address mercury exposure in SSM sector and allocate sufficient resources for its implementation.
10. Develop and implement action plan to address child labor in SSM sector.

⁶ Report on Artisanal and Small-scale miners’ survey, National Statistical office of Mongolia (2012); Report on the Human rights situation in Mongolia, National Human Rights Commission of Mongolia (2012); Report on Small-scale mining impact on children, World Vision in Mongolia (2013),