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UNDER ARTICLE 40 OF THE COVENANT**

Fifth periodic report of States parties

MONGOLIA*

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Introduction

1. Since the submission of its last report, State Great Khural (Parliament) has adopted the Law on National Human Rights Commission, an independent body whose function is duly aimed at human rights protection. According to this Law, citizen alone and/or collectively, in case of considering that the economic entities, public officials or individuals violated their rights and freedoms, which guaranteed in the Constitution of Mongolia, other laws and international conventions, may refer to the Commission (2007.12.07). Also, with purpose to strengthen the human rights organizations at municipal and national level and take comprehensive, step-by-step activity aimed at human rights protection, National Human Rights Program has been adopted by the resolution of the State Great Khural in 2003 and plan-implementing national and subsidiary committees, at aimag (province), capital city and state level, have been established.

2. In order to develop the organization structure of the law enforcement bodies, which are designated to stand as a legal guarantee for protection of human rights and freedoms and enhancement of the state responsibility before its people, also to create less bureaucratic structure and fulfill their social guarantees etc, the State Great Khural of Mongolia has adopted several related laws, such as Criminal Code, Criminal Procedural Code, Civil Code, Civil Procedural Code, Court Law, Law on Prosecution Authority, Court Decision Enforcing Law and Law on Advocacy, in 2002. Furthermore, in 2007, few amendments have been made to Criminal and Criminal Procedural Code, Civil Procedural Code and Court Decision Enforcing Law.

3. It is also remarkable that the Administrative Procedural Law (2002) has been adopted by the State Great Khural of Mongolia and eventually Administrative Case Court has been established. The main purpose of this Law has been set as to protect human rights and freedoms and any legitimate interest from illegal and arbitrary acts of administrative organs and officials, restore violated rights and promote fair legal order.

4. 2006 was a year of endeavor as the State Great Khural, not only adopted Anti-Corruption Law, Law on Legal status of Financial Regulatory Commission but also officially commenced the activities of both Anti-Corruption Authority and Financial Regulatory Commission. These laws became an impulse in combating corruption and developing the regulation of financial market and also play an additional key role in promoting human rights and freedoms and strengthening justice.

Article 1

Right of self-determination

5. Mongolia, as stated in Article 1 of the Constitution, is an independent, sovereign Republic.

6. Mongolia, without any direct or indirect involvement, exercises its authority over determining its own external and internal policy and possesses full capacity to independently participate in international relations.

7. Mongolia, by its state structure, is a unitary state. The State Great Khural of Mongolia is the highest organ of state power and the supreme legislative power shall be vested only in the State Great Khural. The State Great Khural consists of 76 members and the members of the State Great Khural shall be elected by citizens of Mongolia entitled to vote, on the basis of universal, free, direct suffrage by secret ballot for a term of four years.

8. The Government of Mongolia is the highest executive body of the state. The Government shall be established by the State Great Khural of Mongolia and the Prime Minister shall lead the Government, with duly function to execute state laws.

9. Judicial power shall be vested exclusively in courts, which have been established under the Constitution of Mongolia. Judges shall be independent and subject only to law. A General Council of courts shall function for the purpose of ensuring the independence of the judiciary.

10. The President of Mongolia shall be the Head of State. Presidential elections shall be conducted in two stages. At the primary stage of the elections citizens of Mongolia eligible to vote shall participate in electing the president on the basis of universal, free, direct suffrage by secret ballot. The President of Mongolia shall be the commander-in-chief of the Armed forces of Mongolia.

11. The territorial integrity and frontiers of Mongolia shall be inviolable. The frontiers of Mongolia shall be safeguarded by law. Mongolia shall have armed forces for self-defense. The Mongolian language is the official language of the state.

Article 2

Equality before the law and courts

12. In article 2 of this Pact, it was stated “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

13. The above clause has been set in paragraph 2 of article 14 of the Constitution of Mongolia, as “no person shall be discriminated against on the basis of ethnic origin, language, race, age, sex, social origin and status, property, occupation and post, religion, opinion or education. Everyone shall have the right to act as a legal person”.

14. So the Constitutionally protected “principle of non discrimination” has been inserted in numerous laws, such as in Article 4 of the Civil Procedural Code, Article 5 of the Criminal Code, Article 8 of the Court Law, Article 14 of the Criminal Procedural Code, Article 4 of the Family Law, Article 8 of the Law on Legal Status of Foreign Citizens and Article 7 of the Labor Law.

15. To make it more definitive, Criminal Code possesses a principle of “advantageous status should not be considered when he or she lays under penalty” while the Civil Code has its own as “no person shall be discriminated against on the basis of ethnic origin, language, race, age, sex, social origin and status, property, occupation and post, religion, opinion or education, as well as legal entities shall not be discriminated on the basis of property form and competence”.

Subsidiary laws, as accorded with their characteristics, have their own way of installment of principle of equality before court and law. For example, in the Labor Law, gaining of advantage in labor relation or in the Family Law, discrimination on ethnic origin, language, race, religion etc, in marriage are strictly prohibited.

16. Hence, the Government of Mongolia is planning to take comprehensive measures in harmonizing effective laws and within the frame of law implementation activities, to organize law implementation, supervise, reorganize the organization structure of some law enforcement bodies, revise the qualifications of professionalism, behavior and morality and standards of post and remuneration directed in increasing capacity and working result of the judicial organs and make the rule of law adaptable in state affairs and emerge social legal consciousness of law and order.

Article 3

Gender equality

17. The issues of gender equality, which deserved the Constitutional guarantee, were examined in the last 4th report.

18. In addition to International Covenant on Civil and Political Rights, Mongolia is a party to the following conventions, including:

- Convention on the Political Rights of Women (in 1965)
- Convention on the Elimination of All Forms of Discrimination against Women (in 1981)
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (in 1991)
- Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (in 1969)
- Maternity Protection Convention (in 1969)

19. As of 2008, the population of Mongolia has turned to 2,645,000 and 51.2 per cent of total population is women.

20. Mongolian citizens have a full right to education. As comparing literacy rate to Population Census of 1989 and 2000, adult literacy rate for men has bit decreased (98.2-98.0 per cent) while

rate for women increased by 2.6 per cent (94.9-97.5 per cent). A sex based screening of school attendance of persons from age 7 to 29, rate of women attendees (51.1 per cent) are higher than men (44.5 per cent).

21. While welcoming the Beijing Declaration and the implementation of Action Plan, The Government of Mongolia has changed the National Program on Improving Women Status into National Program on Fulfilling Gender Equality, in 2002, in order to implement Beijing+5 session's decision and fulfill its commitment to eliminate gender inequality among men and women, according to public demand.

22. The General purpose of the National Plan on Improving Women's Status is to provide equal attendance to men and women in development and progress and create favorable environment in equal gaining of social resources. The Program consists of the following parts, which include: family development, economic relations, rural development, gender equality in decision-making, national system on gender issues and participation of civil society. It aims to dedicate state and social power and possibilities, asset and resources of state and citizens for few concrete issues and notable points of the Beijing Action Plan are reflected to these consisted parts.

23. In order to implement the Program, a right creation of national system in gender issues is to be considered vital in reflecting those gender issues in state policy. Therefore, the measures have been taking. Considering the gender issue itself has multi-sided and inter-sectoral characteristic, the National Council for Gender issues has been changed to the National Committee for Gender issues led by Prime Minister. The Committee is a national consensus organization, with the aim to intensify the implementation of the National Program on Fulfilling Gender Equality, consult, share information on gender issues at international and national level, learn public opinions and point of views and make sure they are reflected in state and government policies, decisions and legislations. Committee comprises of Chair of Standing Committee of Social Policy of the State Great Khural, members of the Government, representatives of non governmental organizations deal with gender issues and private sectors.

24. The Program, in accordance with development stage of Mongolia, is to be implemented until 2015 and the activities to be carried out are divided as below:

First stage	2003-2004
Second stage	2005-2008
Third stage	2009-2012
Fourth stage	2013-2015

The first stage was implemented successfully and the Government has approved the plan to implementing the second stage.

25. With the aid of Asian Development Bank, on purpose to improve the Mongolian legal environment in providing gender equality, a Law on Gender Equality was drafted in accordance with the special program and plan. A Key Unit to lead the Draft Law on Gender Equality was established with aim to deal with law drafting, learn public opinion, organize lobby activities, in order to make sure that opinion is reflected in the Draft Law and to be advertised through media. The Unit, the Ministry of Social Welfare and Labor, National Committee for Gender Issues, along with well experienced civil society and women's non governmental organizations are focusing on publicly advertise the draft law and make sure the public opinion is reflected in this draft as well.

26. The purpose, scope of application, content and the relations to be regulated are formulated as below:

- The purpose of this Law is to eliminate gender-based discrimination of man and woman and provide the legal ground for gender-based equality in political, economic, social, cultural and family relations and to define core principle of gender-based equality, terminology and measures directed to eliminate gender-based discrimination. The general ideology is that an equal treatment to persons in unequal condition is not fair at all
- It particularly defined the guarantee for gender equality in main areas of political, economic, social and cultural sectors, civil service, election, political party, labor and family relations, as well as within the frame of educational, health, art and public media. Moreover, the functions of related bodies to national mechanism of providing gender equality and system are also defined by this Law
- The Law also deals with several fundamental issues, such as ground to submit complain, official who takes that complain, condition to identify and punish the person who had violated gender equality and the status of authorities, particularly state level organs whose function is to implement legislations providing gender equality

27. Recommendations from the Human Rights Committee suggested us to pay more attention to decrease in women's status, regardless of their high qualifications, in social, particularly in political sphere, organized trafficking of child and women and prostitutions and inequality in labor relation etc. In accordance with above recommendations, following activities have been taken.

28. Women are considered to play key role, as Mongolia, according to the Millennium Development Goals, to perfect democracy, form good governance, develop transparency and confirm politics with responsibility and morality and form civil, democratic society. Rate for women in parliament is known as an indicator of women participation in political and social life. In 2000, rate for women in parliament was 11.8 per cent, in 2004, it was 6.6 per cent and the result of the last Parliamentary election, which was held in 2008, shows that the women rate is 3.9 per cent out of 100 per cent. Therefore, there is an inevitable necessity, in harmonization with objectives to provide gender equality, to create favorable legal environment and establish an organ whose function is to implement related legislations.

29. As of 2008, there are more women representatives occupied the positions at policy making level and in the Government, for example two Ministers, four Vice-Ministers and two State Secretaries are appointed. Also the National Human Rights Commission of Mongolia is chaired by woman and the General Committee of Elections comprises of some women representatives. It is a quite positive trend as compared to previous Government composition.

30. Human trafficking is a new type of crime in Mongolia, as we are working on the development of its legal environment. As is stated in Article 113 of the Criminal Code of Mongolia, if, human trafficking with the purpose to gain benefits or exploitation, is conducted by using force or force with such, deceit, vulnerable status and in doing so, recruited, transported, transmitted, kept, accepted the others shall be punishable by a fine equal to 51 to 250 amounts of minimum salary or imprisonment for a term of up to 5 years.

31. The same crime committed against a person under the legal age, against two or more persons, by kidnapping, with misuse of authority or against a person who is under the domination, repeatedly, in a group, by a group at an advance agreement shall be punishable by a fine equal to 251 to 500 amounts of minimum salary or imprisonment for a term of more than 5 to 10 years. Also the same crime committed by trafficking, by an organized group or a criminal organization or it has entailed grave harm shall be punishable by imprisonment for a term of more than 10 to 15 years.

32. The Government of Mongolia, through its resolution, has approved Action plan to implement “Program on Preventing from Human Trafficking, in particular, Using Children and Women on Sexual Purposes”. In this Program some measures, for example, intensifying information, training and advertisement that support in preventing human trafficking, use of sexual proposes, also improving the general understanding and knowledge, have been inserted. Implementation at sector and/or municipal level is to be led by Minister in charge and Governors of all level and necessary financing is to be allocated from the state budget.

33. In order to achieve potential results within this Program, starting from 2007, the Ministry of Foreign Affairs of Mongolia, in close collaboration with International Organization for Migration are implementing project on saving and returning of the victims and their socialization and the Ministry of Social Welfare and Labor, along with UNICEF are implementing a project aimed at Program fulfillment in Children Protection Program and the Swiss Development Agency is also running projects in this regard.

34. More attention is to be paid in expanding cooperation with neighboring and other countries in human trafficking issues. For example, the Ministry of Foreign Affairs of Mongolia, during its consular consultative meeting with People’s Republic of China and Republic of Korea, officially presented a proposal to conclude intergovernmental agreement on cooperation in combating against human trafficking.

35. Preparatory work in acceding to the Convention 183 on Maternity Protection of the International Labour Organization is to be finalized.

36. Women make up 51.2 per cent of the population of Mongolia. An Annual Statistical Indicator of Mongolia, a compilation prepared by the National Statistical Office, reveals that in 2007, number of employees is 1,024,100 as it has grown by 5.8 per cent and 1.4 per cent each as compared to 2005 and 2006.

37. The rate for women, who earn salaries in sectors other than agriculture, was 51.1 per cent in 1990, 50.4 per cent in 2000 and 53.9 per cent in 2006. The rate for women employees was 519,900 in 2007, which has increased by 6.3 per cent and 0.4 per cent each as compared to 2005 and 2006.

38. In 2007, 59.8 per cent out of 22,800 people, who attended the training of Labor Bureaus, which are conducted through 852 interim training organizations, were women and 52.6 per cent of those, somehow, after the training, have been provided with jobs. As seen from the types of trainings, 20,431 people (90 per cent) attended vocational training, 754 (3.3 per cent) participated in retraining while 1,581 (6.9 per cent) of them were involved in skills training. At the end of the training, 52.6 per cent of total 11,991 attendees were provided with jobs.

39. In 2006, the Ministry of Social Welfare and Labor, along with State Specialized Inspection Agency, organized the “State Labor Review of Women”, which is directed to all sectors of economic entities and organizations, whose businesses are conducted in the territories of 21 aimags (provinces) and 9 districts.

40. The aim of this review was to check the implementation of measures that have been taken to support labor relation of women, safety, sanitation, social security and employment, as well as Labor Law, Law on Supporting the Employment, Package of Laws on Social Insurance etc, and make sure the revealed violations are eliminated and to create complete database of fundamental surveys and information.

41. In this regard, we prepared a questionnaire on 12 essential issues, which may create discrimination in women’s employment and participation in this questionnaire was included from economic entities, where women are the majority of employees and not less than 30 women from each soum (aimag can be comprised from few or many soums) and not less than 500 women from each aimag. In those economic entities under the review, there are 117,100 women working, in particular 1.1 per cent in the energy sector, 1.8 per cent in the mining sector, 35.6 per cent in the agricultural sector, 6 per cent in the construction sector, 4.8 per cent in the food sector and 4.7 per cent in the road, transportation and communications sector.

42. In 2006, the State Great Khural of Mongolia approved the State Policy on Unofficial Employment. The goal of this policy is to make sure the unofficial sectors are included in state services and turn their status to official by providing them with legal, labor and social security guarantees and furthermore to provide economic growth and protect the interests of employees in unofficial sectors. The policy is to be implemented in a three stages, of which the first was from 2005 to 2007, the second is from 2008 to 2011 and the last stage to be completed from 2012 through 2015. The implementing strategy is to be harmonized with macroeconomic policy, to improve the legal and social security system, also to be in accordance with employment supporting policy and to develop cooperation with that sector by way of expanding public discussion and participation.

43. Bulletins published by the National Statistical Office of Mongolia, show that 172,900 employees from 840 municipalities, 195 from the capital city, in a total of 1,035 economic entities are involved in a selective survey on average salary of fourth quarter of 2007. Average salary of employees of all types of economic entities, on the fourth quarter of 2007, has reached 205,900 tugrugs (Mongolian currency) and as compared to fourth quarter of 2006, it has been increased by 49.5 per cent i.e., 68,200 tugrugs.

44. Taking into consideration the monthly average salary of employees in the economic entities on a basis of sectors of economic activities, the information below can be revealed:

Salary for employee, who works in:

- Financial mediation is 412.200 tugrugs
- Public administration, defense, social insurance is 258.000 tugrugs
- Mining exploitation and industry is 238.700 tugrugs
- Educational sector is 219.600 tugrugs
- Healthcare, social welfare is 206.700 tugrugs

45. These are higher than the state average but lower than the average salary for employees who work in other sectors. If taking into account the monthly average salary through liability type of economic entities, salaries of employees, who work in state-owned entities and enterprises, are relatively (salary for employees at state-owned entities is 231,200 while employees at state-financed entities earn 225,800 tugrugs) higher than state average.

46. In recent years, the Government of Mongolia has taken a number of measures and policies toward salary and wages. For example, the Government, through its Resolution No. 350 of 2007, decided the lowest limit of salary for employees, who work in economic entities, as well as workers on contracts between citizens, to be 642,85 tugrugs per hour and 108,000 tugrugs per month.

47. Also, the increase in salaries for civil servants by 2.3 times between 2007 and 2008 has given potential progress to women who work in education, health care, social welfare and insurance.

Articles 4 and 5

Scope of limitations on human rights during a state of emergency or martial law

48. As stated in paragraph 2 of Article 19 of the Constitution of Mongolia, human rights and freedoms as defined by the constitution and other laws in case of a state of emergency or war shall be subject to limitation only by a law. Such a law shall not affect the right to life, the freedom of thought, conscience and religion, or the right not to be subjected to torture or inhuman and cruel treatment and the same clause is reflected in Article 18 of the Law on State Emergency.

49. It has been legalized that during the state of emergency, the Minister in charge of foreign affairs shall bear the duty to inform the Secretary-General of the United Nations of which and what reasonable measures, directed to limit human rights and freedoms, have been taken, as those measures forced Mongolia to be in derogation from its responsibilities borne before the International Covenant on Civil and Political Rights and also of when to terminate its continuation.

50. Also, the implementation limit of specific measures, which are regulated by this law must be in accordance with necessity of extraordinary circumstances and the human rights duties, which Mongolia has to bear under the international agreements. The measures to be taken must not involve discrimination solely on grounds of ethnic origin, language, race, age, sex, social origin and status, property, occupation and post, religion, opinion or education.

51. In 2000, the Law of the National Human Rights Commission of Mongolia was approved and pursuant to this Law, an independent body was established, whose function is to supervise human rights and freedoms, which is stated in the Constitution of Mongolia, laws and other international agreements to protect and promote human rights. The Commission enjoys some competences over initiating proposals on human rights and transmitting orders and recommendation to the other entities. In other words, even in a state of emergency, those competences remain effective.

52. A demonstration organized by the leaders of some of the political parties, who resisted the results of Parliamentary Elections of 2008, has led to mass disorder and in order to stop this unrest and prevent the broadening of its scope and further damages, the President of Mongolia, by his Decree No. 194, declared a State of Emergency for 4 days in the City of Ulaanbaatar and the Minister for Foreign Affairs, on behalf of the Government of Mongolia, has sent, through diplomatic note, the related information to the Secretary-General of the United Nations.

Article 6

Right to life

53. Article 16 of The Constitution of Mongolia says that the citizens of Mongolia shall be guaranteed the privilege to enjoy the right to life and the deprivation of human life shall be strictly prohibited unless capital punishment is imposed by due judgment of the court for the most serious crimes, pursuant to Mongolian penal law. Also, it is prohibited by Article 53 of the Criminal Code of Mongolia that the death penalty be imposed on persons who were under 16 years of age at the time of committing crime, men of over 60 years of age and women.

54. According to the Criminal Procedural Code of Mongolia, a person, who has been sentenced to death, shall enjoy the right to appeal to Supreme Court and submit pardon request to the President of Mongolia. According to paragraph 2 of Article 33 of the Constitution of Mongolia and Article 15 of the Law on President, the President may grant pardon and in case of pardon the death penalty shall be substituted by imprisonment in prison for a term of 30 years.

55. In terms of policy, the death penalty, which is imposed by the State of Mongolia, is not static but rather a measure, in correlation with the country's criminal situation, to combat the most serious crimes.

56. In the present Criminal Code of Mongolia, there are 7 types of crimes, for which the death penalty or imprisonment up to 25 years have to be imposed. These are: assassination of a state or public figure (Article 81.2); sabotage (Article 84); murder (Article 91.2); rape (Article 126.3); banditry (Article 177.2); terrorism (Article 178); and genocide (Article 302).

57. In Article and paragraph 2.1.1.1 of the National Program on the implementation of Human Rights in Mongolia, which was approved by the 41st Resolution of the State Great Khural of Mongolia, the Criminal Code clause prohibiting the death penalty being imposed on persons who were under 16 years of age at the time of committing crime, men of over 60 years of age and women has remained and the visionary concept on minimizing or eliminating, in the future, of the number of crimes under the death penalty was set.

Article 7

Prohibition of torture and inhuman and cruel treatment

58. As provided by paragraph 13 of Article 16 of the Constitution of Mongolia, no person shall be subjected to torture or to inhumane, cruel or degrading treatment. On November 2, 2000, the State Great Khural of Mongolia has ratified the Law on Accession to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

59. Article 7 of the revised Criminal Code of Mongolia defines that the punishment and measures of coercion to be imposed to a person who committed a crime may not have the purpose of inhumane, cruel treatment or degrading his/her honor and dignity, while Article 251 of the same Code provides that the forcing of testimony by an inquirer or investigator by threat, violence, torture, humiliation, deception or other illegal methods shall be punishable by imprisonment. Paragraph 4 of Article 10 of the Criminal Procedural Code states that no person shall be subjected to torture or to inhuman, cruel or degrading treatment.

60. Furthermore, Chapter 27 of the Criminal Code deals with crimes against the administration of justice. Inquirer, investigator, prosecutor and judge, who committed a crime, shall be punished in accordance with the following articles for example, recognizing as a suspect, charging and sentencing of a knowingly innocent person (Article 248); knowingly placing someone in illegal detention or custody (Article 249); rendering an illegal court judgment (Article 250); forcing of testimony (Article 251); falsification of evidence (Article 253); and making a witness or victim give a false testimony, an expert witness render a false opinion or an interpreter do false interpretation (Article 256).

61. By the Mongolian Criminal Procedural Code of 2002, the duty to receive any complaint, information and case regarding the cruel and inhuman treatment from police, judiciary and prosecutor officials, was assigned to the Investigation Unit, which was established at the General Prosecutor's office of Mongolia. Also, from 2002, bringing the status of custody centers in local and municipal territories, which were previously under the police authorities, to the Court Decision Enforcing Authority, was the principally significant measure.

62. As noted in the “2006 Report on Human Rights and Freedoms in Mongolia”, which was prepared by the Human Rights Commission of Mongolia, in 3 years of its establishment (2003-2005), the Commission received and reviewed 2,100 complaints and information regarding criminal activities that might have been committed by law enforcers. Eighty-nine of them (4.2 per cent) concerned information regarding the use of illegal means by the enforcers, such as force, threat, racket and beatings during the case. Also the recommendation sent to the Government of Mongolia by Mr. Manfred Nowak, the Special Rapporteur on Torture, mentioned the importance of organizing training for law enforcers on the principles of the Convention against Torture. In this regard, a recommendation to be maintained during the inquiries and investigations was developed and special training and workshops for inquirers and investigators on the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment have been organized frequently.

63. Also, the most important action is that the Government of Mongolia has established an ad hoc working group whose aim is to examine the possibilities to accede to the Optional Protocol of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Article 8

Prohibition of slavery and forced labour

64. Mongolia, as a Member of the United Nations and the International Labour Organization (ILO), has acceded to the 8 Conventions on labour rights and paying more attention to the elimination of forced labour and the worst forms of child labour and suppression of discrimination in employment. Mongolia acceded to the Protocol Amending the Slavery Convention (in 1968), convention (No. 29) concerning forced labour (in 2005) and convention (No. 105) concerning the abolition of forced labour (in 2005).

65. Pursuant to Article 16 of the Constitution of Mongolia, the citizens of Mongolia shall enjoy the right to free choice of employment, favourable conditions of work, remuneration, rest and private enterprise. No one shall be unlawfully forced to work. And in confirmation of this constitutional clause, the Labour Law, revised in 1999, defined that no one shall be forced to perform work (Article 7.1); discrimination, or the conclusion of limitations or advantage based on nationality, race, sex, social origin or status, wealth, religion, or ideology is prohibited (Article 7.2); and if, due to the nature and requirements of the work or duty to which an employee has been assigned, an employer has limited an employee’s rights and freedom, he must justify the grounds for doing so (Article 7.3). Paragraph 4 of Article 7 of the Law on Child Protection provides for the prohibition of child rape, kidnap, sale, transfer, slavery and to put him/her in condition with such.

66. In 2000, the Law on Forced Labour by Administrative Procedures and the Law on Compulsory Treatment and Labour for Drug and Psychotropic Addicts were adopted. The objective of the Law on Forced Labour by Administrative Procedures is to set procedures on repayment of services, by way of imposing forced labour, for persons during a detention period who have been arrested for their violations of laws unless they are unable to make the payment

or refuse to pay. According to this Law, forced labour by administrative procedure shall be based only on court decision and is to consider the health and labour capacity of the arrested person and the period of forced labour must not be more than his/her detention period. Forced labour shall be organized in safe and sanitary conditions, as accorded by Mongolian legislation and evaluation shall be determined by related common evaluations and norms.

67. Costs (lodging, food and others) calculated during the period of detention shall be deducted from the total salary and the rest shall be in possession of that person.

68. The objective of the Law on Compulsory Treatment and Labour for Drug and Psychotropic Addicts is to regulate the relations connected to compulsory treatment of drug and psychotropic addicts by State and taking them under supervision of medical and court decision enforcing bodies in consideration of their labour capacity.

69. As provided by this Law, the compulsory labour and treatment measures shall, based on a court decision, be applied to persons who have been identified by medical reports to be drug or psychotropic addicts, also violated public order, intentionally avoided treatment or repeatedly used drugs and alcohol after the treatment took place etc, and it is possible to take repayment, through court decision based compulsory labour, of the costs raised by the treatment and services during the period in detention. Nevertheless, measures regarding forced labour are forbidden to be taken against persons under the legal age of 16, or males over the age of 60, females over 55 and pregnant women.

70. The State Great Khural of Mongolia, in May 2008, has ratified the Law on Accession to the United Nations Convention against Transnational Organized Crime (the Palermo Convention) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime.

71. Article 121 of the Criminal Code of Mongolia considers forcing a child to labour as a less serious crime and defines that illegally forcing a child to labour shall be punishable by a fine equal to 51 to 250 times the minimum salary or imprisonment for a term of up to 4 years.

72. With the potential support of the International Labour Organization, Mongolia has succeeded in implementing “The International Program on Elimination of Worst Forms of Child Labour” and the “Sub-Program on Elimination of Worst Forms of Child Labour” was also developed and implemented accordingly, as it was reflected in the 2005-2007 Guideline of the National Program on Improving Child Development and Protection.

73. From 2006 through 2009, the second stage of the National Program on Elimination of Worst Forms of Child Labor has been implementing and to improve the public awareness of this issue, the “Influencing Strategy Directed in Elimination of Worst Forms of Child labor” has been developed and the implementation is ongoing successfully.

Article 9

Right to liberty and security

74. By paragraph 13 of Article 16 of the Constitution of Mongolia, a citizen of Mongolia shall enjoy the right to personal liberty and safety. No person shall be searched, arrested, detained, persecuted or deprived of liberty save in accordance with procedures and grounds determined by law and where a person is arrested he/she, his/her family and counsel shall be notified within a period of time established by law of the reasons for and grounds of the arrest.

75. The State Great Khural of Mongolia, on July 1, 1999, adopted the Law on Implementing the Decision regarding Course of Arrest and Detention of Accused and Suspects. The related amendments have been made on January 10, 2002 and the name of the law has been changed to Law on Arrest and Detention of Accused and Suspects.

76. Paragraph 1 of Article 10 of the revised 2002 Criminal Procedural Code of Mongolia reads “no one shall be arbitrarily arrested except on such grounds as are established by this Law” and transference of the prosecutor’s discretion regarding the arrest decision into the judge’s competence can be counted as a crucial step in human rights protection.

77. Paragraph 1 of Article 68 of the Criminal Procedural Code of Mongolia states that in the event that a suspect, accused or person who has previously been sentenced multiple times and the recidivist etc, is suspected of another crime, they shall be put into detention in order to prevent them from committing another crime, intentional blocking of the case revealing and desertion from inquiry, investigation or court.

78. Paragraph 1 of Article 68 of the same Code reads “In case the ground stated in paragraph 2 of Article 68 does not exist for the person, who has been suspected for minor cases or seriously ill, pregnant woman, person under legal age and woman with newborn child, then it shall be forbidden to use measures of restraints against them” and this clause is found to be essential in implementing international instruments on human rights.

79. As provided by paragraph 1 of Article of the same Code, inquirer or investigator is to bear the responsibility to inform the family member who is above legal age, immediate relatives, or an advocate, or to give that opportunity to the suspected person within a period of 24 hours, of his/her arrest and place of detention. Also paragraph 2 of the same Article states that if a person, who is under detention, is a foreigner then the related information, within the period in paragraph 1 of the same Article, shall be submitted, through the state organ responsible for foreign affairs, to the diplomatic mission of the state of that person.

80. Paragraph 3 of Article 10 of the Criminal Procedural Code of Mongolia reads “Prosecutor is obliged to immediately release the person who has illegally been arrested, under detention and custody or at the hospital, or has been sentenced more than a period of court decision”.

81. According to paragraph 3 of Article 38 of the Criminal Code of Mongolia, an advocate, from the commencement of the period of the person to be counted as a suspect, can be involved in any stage of criminal procedural processes.

82. As provided by paragraph 1 of Article 40 of the same Code, an advocate must be present during the inquiry, investigation or trial process of the case regarding suspect and accused in the categories below, which include:

- 40.1.1. Dumb, deaf, sightless or person, because of mental illness not able to enjoy his/her right to self advocacy or to be advocated;
- 40.1.2. Person under legal age;
- 40.1.3. Person does not know the Mongolian language;
- 40.1.4. May be sanctioned by the death penalty;
- 40.1.5. If one of the suspect and accused persons, who has an opposite interest regarding the case, has an advocate, then the other suspect and accused persons.

83. As mentioned above, about the fact that decision of arrest and detention is to be made by the judges, the standing can be shown in the below statistical chart:

No.	Indicator	Request to arrest the suspect	Court refusal on the arrest	Arrested	Request on detention	Court refusal	Detention	Annulations of detention resolutions
1.	After September 2002	548	39	509	2 043	98	1 945	10
2.	2003	1 926	185	1 741	5 768	296	5 472	296
3.	2004	1 355	87	1 286	6 110		5 907	203
4.	2005	1 876	98	1 778	5 413	175	5 703	
5.	2006	1 849	168	1 681		203	5 210	
6.	Result	7 554	577	6 995	13 224	772	18 330	509

84. The compensation issue of bodily and material sufferings of persons, who have been charged on a ground of committing crimes and eventually they have found to be innocent or had nothing to do with that crime, has been regulated by 1990 “Law on Procedure of Damage Compensation to Citizens caused by Illegal Activities of Judicial, Prosecutorial, as well as Inquiry and Investigation Authorities” and now it has been turned into an independent chapter of Criminal procedural Code of 2002.

Article 388. Right to be compensated

A citizen of Mongolia, foreign citizen and a stateless person shall have a right to be compensated for property and moral damages, which have been caused by the illegal activities of an inquirer, investigator, prosecutor or judge, take pension and restoration of right to possess apartments.

Article 389. Ground for compensation

389.1. The State, regardless of the guilt of the inquirer, investigator, prosecutor or judge, shall be responsible for compensation for damages, which have been caused in connection with illegal sentencing, arrest, detention, restriction of duty performance, under medical review and compulsory treatment.

389.2. In the following instances, a right to be compensated shall apply:

389.2.1. Person arrested or in detention has been released of his/her proven innocence;

389.2.2. Court resolution regarding his/her innocence has been issued;

289.2.3. The crime has no element nor it has been nullified of the lack of evidences;

289.2.4. Illegal court resolution regarding the compulsory medical treatment has been nullified.

85. The clause of this Code, regarding the compensation for damages caused during criminal processes is to be implemented immediately. For example, citizen Ch. Erdene-Ochir, who is suspected of murder and detained for 6 years, 8 months and 23 days from January 3, 1996, was freed on September 25, 2002, by Supreme Court Resolution regarding the nullification of his case. The Court at Bayan-Zurkh district, through its Decision No. 970 of October 20, 2004, decided the Government of Mongolia should grant him 18,010,625 tugrugs and the decision was implemented.

86. As of 2008, the Government of Mongolia, by its Resolution No. 24 and No. 193 of January 23 and May 28 of 2008, has decided, from its fund, to allocate 183,187,503 (one hundred eighty four million one hundred and eighty seven thousand and five hundred three) tugrugs to the victims of criminal process and the allocation is to be made on schedule.

Article 10

Right of detainees to be treated with humanity and dignity

87. Paragraph 1 of Article 69 of the Criminal Procedural Code of 2002 states that investigation and detention period shall be up to 14 days for suspects, up to 2 months for accused and if the extension, depending on the complication of the case, of investigation and detention period for the accused person, who has been suspected in committing less serious, serious and grave crimes, is to be necessary, then the court may do so, but the extension shall not exceed more than 24 months. In cases where the investigation and detention period is to be continued more than the period in paragraph 3 of Article 69, i.e. for assassination of a state or public figure; sabotage; murder under grave circumstance; banditry under grave circumstance; or genocide, then the court may extend the investigation and detention period up to 6 months.

88. In case the suspect has committed a serious and grave crime, or attempted to flee, sufficient evidence of serious and grave crime has been collected, or to prevent the desertion of the suspect/accused from the inquiry and investigation process, or their intentional blocking of the case revealing etc, arrest and detention measures shall be applicable to minors. Parents, legal representatives and advocates shall, within 12 hours, be informed of arrest and detention regarding their child under legal age. Also, paragraph 3 of Article 366 of the said Code provides that arrested minors shall be put into detention away from adult accused. A basic period of detention and investigation of minors shall be 1 month and shall not exceed 18 months. Minors, women, recidivists, a person who has been sentenced multiple times or a person sentenced by court shall be separated from suspect and accused. Also, a person, who has AIDS/HIV, active tuberculosis, highly infectious diseases and carrier of such and suspect and accused of a same crime etc, shall be separated from the other suspects and accused.

89. The suspect or accused can, based on his/her committed crime and private status, be in sole detention according to a proposal from inquirer and investigator.

90. According to the prohibition for a person who has been in sole detention, for example, to communicate with someone in another room, talk to them and transfer something etc, minors and women are likely to be in separate rooms.

91. As for condition in comparison to the others, prison rooms for minors and women are becoming more comfortable and also more attention is to be paid in improving their health care and its supervision, food amount and calories.

92. Court Decision Enforcing Law provides the ground for the accused to receive wage equal to the quantity and quality of his/her labour and for the employer, who has hired the accused on contract, to transfer wages to the prison account and to grant the accused permission to take up to 10 per cent of the total wage per month and the rest at the time of their release.

93. Furthermore, the Law deals with such issues such as to provide accused persons with legal information, labour expertise and vocational vision, support them in improving their education, organize traditional and other behavioural disciplinary events and in doing so, not only to include the employees of prisons in those events but provide participation of religious, charity and many other organizations and citizens. So therefore, the prison authority is paying attention to accused persons for their labour expertise and vocational vision, as well as for education improvement as provided by this Law.

94. In prisons, the industrial-training centres, whose activity is to provide specialization to accused persons in crafting, carpentry, painting, carving, hand-crafting and sewing, have been established and in collaboration with psychologists, educators and social workers, special training, advertising and convincing measures aimed at re-preparing, socialization and forming an attitude of avoiding re-committing of crimes of the accused person have been constantly undertaken.

95. Also, in the prison for minors, a training centre of hand-crafting, carpet-making, carpentry and wool producing, has been established while the activity of "Psychological Cabinet", whose proposal is to form behaviour in the minds of minor prisoners and prepare them for social life, is in process.

96. Worries regarding the death of prisoners from starvation, their medical review and sanitary conditions, as well as their personal space etc, were mentioned in the Human Rights Committee Recommendation of 2000. In this regard, the Government of Mongolia has taken some measures. Based on Article 106 of the Court Decision Enforcing Law of Mongolia and through Resolution No.155 of 2002 of the Government of Mongolia, prisons have been shifted to a centralized organization chart and clarifications have been made as to their territorial location, punishment jurisdiction and production direction.

97. For example, by maintaining a self-providing policy of food flour, confectionery and vegetables within the organization, prisons are on duty to plant wheat and vegetables and run chicken farms and flour production. The result proves that there is no more emaciation in prisons.

98. In order to satisfy the requirement to be put in prison room, as provided by Article 13 of the Law on Arrest and Detention of Accused and Suspects, in order to improve sanitation standard, lighting and air-conditioning, furnish the meeting rooms more comfortably, increase the availability and providence of mattresses, also to improve the condition of beds and ledges and to improve prisoners' private sanitation at the detention centre known as Gants Khudag, some measures, including hot water showers and the necessary equipment have been installed and a regime for prisoners to take a shower per week and to be served twice a day with hot food and boiled water, have been implemented by its own resource. This can be interpreted as the complete implementing measure of Article 23 of the Law on Arrest and Detention of Accused and Suspects, which reads "prisoners shall, at no charge, be provided with food containing over 3,400 kilocalories per day".

99. Hence, in order to improve the Center's capacity and condition, the Government of Mongolia has commenced the construction work of standard Complex Detention Center with capacity of up to 1.000 persons and designed to be connected to central heating system.

100. Also, with purpose to improve the lighting and air-conditioning of municipal detention centers and increase the square meter per person, step-by-step expansion work for some detention centers has been implementing. For instance, the detention center in Tuv province has been expanded accordingly with each room is connected to both pure and waste water system. Moreover, lighting has improved while the prisoner bed has been double fixed with floor and the most important progress is that not less than 2.5 square meters shall be allocated per person.

101. The lessons and trainings as well as research and advertising activities regarding the human rights instruments such as the "Law on Arrest and Detention of Accused and Suspects", "Court Decision Enforcing Law", "Criminal Procedural Code", and United Nations "Universal Declaration of Human Rights" and the "Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment", have been conducted among the prison officers and guards.

102. As stated by the Court Decision Enforcing Law of Mongolia "to provide the prisoners with room that merely fits the sanitation and safe condition, bed with mattress and fitting linen, uniforms of season character and also to permit the prisoners to have their own sleeveless jacket, shirt, gloves and boots and shoes", by way of paying more attention to the improvement of condition and health care of the prisoners, some notable changes have been made, including to

the ledge system, which violates ordinary sanitary and air-conditioning requirement by making rooms more crowded and measures to build-up standard 4x4 or 4x6 sized rooms and their expansions have also been concluded. Moreover, 2008 was a year of constructiveness as in total of 3,500 new buildings for prisoners have been created, all of which are in accordance with the standard requirements of security post and prisoners sanitary conditions. A single room in these buildings has a capacity of up to 6-8 persons and each floor has a toilet and is fully equipped with hot water showers. Annually in Mongolia, there are approximately 6,000 prisoners in the prison. As a result of the above measures, more than the half of those prisoners can live in new buildings. This measure is to be taken further.

103. According to paragraph 2 of Article 118 of the same Law, that states that an accused, who has an exposed tuberculosis and/or is infected by AIDS/HIV, shall be separated from the other prisoners, a construction work of six hospital colonies whose duty is to isolate prisoners with tuberculosis, under medical treatment, was started in October 2000 and finished by June 2001.

104. Furthermore, not only the preventive review and check-in by specialized practitioners has been stabilized at the hospitals, but also the "Procedure of providing the system clinics of the Central hospital of Court Decision Enforcing Authority of Mongolia with methodological administration" has been approved in 2003 by Order № A/07 of the Chief of Court Decision Enforcing Authority only to be applied in the detention, custody centres, as well as prisons, in order to implement the medical treatment measures for patients in prison. Statistics show that prisoner disease has somehow diminished.

105. Mr. Manfred Nowak, who is the United Nations Special Rapporteur on Torture, has expressed in paragraphs (c) and (d) of his 2005 Recommendation to the Government of Mongolia that "those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention, which should not exceed 48 hours" and "custody registers be scrupulously maintained, recording of the time and place of arrest etc." In this regard, "Internal Procedure of Detention and Custody Center" has been revised by the Order of Minister of Justice and Home Affairs of Mongolia and in order to supervise and prevent any torture that might be carried out at detention and custody facilities and to receive and decide immediately on the requests and complaints of prisoners etc, Review Prosecutors of the Capital Prosecutors Office, from January 2008, are working at the detention facilities for 24 hours by 4 turns. Also, as accorded by Articles 58 and 59 of the Criminal Procedural Code of Mongolia, persons with arrest resolution are to be received at the detention or custody facilities with the presence of police enforcers as provided by the related procedures and to be released by resolution of the Head of detention facility when the arrest period has been expired or judicial decision regarding his/her arrest has not been handed down by the same authority. In 2007, 3,268 suspects were taken by arrest warrant and 2,075 of them released and in 2008, 3,487 persons had been gathered at detention facilities while 1,478 of them were freed in accordance with related legislation. Prosecutors are exercising their supervising duty throughout the whole process.

Article 11

Prohibition of detention for non-performance of a contractual obligation

106. In the previous periodic report it was reported that any clause regarding the prohibition of detention for non-performance of a contractual obligation does not exist in the legislation of Mongolia and the status remains the same.

Article 12

Right to freedom of movement within one's own country; right to leave and return to one's own country

107. As mentioned in the previous 4th report, a clause regarding the right to freedom of movement within one's own country and right to leave and return to one's own country was concretely expressed in the Constitution of Mongolia and other legislation concerned.

108. Movement and residence within the country by Mongolian citizens are subject to and regulated by the Constitution of Mongolia, Law on Citizen Registration, Law on Administrative and Territorial Unit and its Control, Law on Legal Status of Capital City and other related legislations as well as Government Resolution No. 214 of 2002 and Resolution No. 69 of 1995 of the Presidium of Citizens Representative of the City of Ulaanbaatar (amended by Resolution No. 46 of 2000 and Resolution No. 8 of 2001).

109. The migration registration list of the State Centre for Civil Registration and Information of Mongolia shows that 80,400 persons, at state level, came from one town to another and 62,500 people left the Capital city. Migration flow indicates that almost half of total migrants headed to the City of Ulaanbaatar.

110. In recent years, a demand to focus on migration regulation and develop the legal environment is much needed as the migration flow intensifies from countryside to the Capital and Darkhan and Erdenet cities.

111. The main reasons for migration flow are the insufficiency of quality and accessibility of health-care and education services, centralization of higher education institutes in the cities and scarcity of post and income resource and increased risk of livestock, which are dependent on drought and disaster. One third of Mongolian citizens are residing in the City of Ulaanbaatar. In the last 5 years, the population in the capital, in annual average, has increased by 3 per cent and almost 70 per cent of the increase was a result of migration, i.e. mechanical growth.

112. Resolution No. 69 of 1995 of the Presidium of Citizens Representatives of the City of Ulaanbaatar, which imposes a "service fee" of 50,000 tugrugs for adult and 25,000 tugrugs for minors for their migration to the City of Ulaanbaatar, is annulled by the proposals of related authorities.

113. Also, there is a necessity to decrease the urban and rural difference, neutralize the improper population centralization and maintain policy to support people's interest to live in their own territories. Therefore, the Government of Mongolia attaches great importance to zonal development in the country. In this regard, for example, in 2001, the State Great Khural of Mongolia approved Concept of Zonal Development and in 2003, a Mid-term Strategy from 2001 to 2010 of Legal and Zonal Administration and Management of Zonal Development.

114. Relations in connection with travel abroad and return is, in its entirety, administrated by the Law on Travel Abroad on Private and Emigration of Citizens of Mongolia and also the Law on Citizenship of Mongolia and Law on Civil Registration of Mongolia. The enjoyment of such right has to be accorded with national security, public order, population health and the interest to protect the other's rights and freedoms. There is no limitation on travel abroad and return of Mongolian citizens, by the Government of Mongolia except the procedures enacted by the receiving country's related legislation. As noted in the "2002 Report on Human Rights and Freedoms in Mongolia", which was prepared by the Human Rights Commission of Mongolia, 508,821 Mongolian citizens traveled to 83 countries in 2000 and 495,285 Mongolian citizens returned from those countries, and in total 1,041,000 person crossed the customs border of Mongolia. Statistical data shows that in 2008, 1,056,824 citizens traveled to 182 countries while 1,050,456 citizens returned from those countries, whereby it can be estimated that 2,100,000 people have passed the customs border of Mongolia. Year to year increase in travel abroad of Mongolian citizens proves that the enjoyment of such right is fully supported by the authorities of Mongolia.

115. Harmonization of related legal regulations is much needed to settle such problems, including a person, who works abroad, is not covered by labor, health and industrial accident insurance, is not able to receive the full wage and not able to transfer money etc, to his/her home without any hindrance, getting married to foreigner by mediation, seeks political asylum when he/she travels abroad and once they get there by temporary and transition visas and by official passport and on a purpose to study abroad and refuses to return to his/her home country.

116. The events aimed at delivering some information related to legislation and traditions of those foreign countries to the Mongolian citizens and consultations of how to protect their rights and interests abroad etc, to be organized constantly.

117. And after considering there is a potential lack of legitimate activities regarding the visa mediation service and consultation on immigration, an elaboration process is underway to make sure that above issues are reflected in the Law on Travel and the Law on Legal Status of Foreign Citizens and also particularly with purpose to eliminate any difficulties that citizens would face during their visa application to third countries, an immediate form of services, which is accorded with international standard and recognizable by the foreign diplomatic missions to be introduced soon.

118. At present, there is no proposal or complaint regarding the limitation, by the authorities of Mongolia, of the right to return to home country.

Article 13

Expulsion of aliens

119. This relation is administrated by the Law on Legal Status of Foreign Citizens enacted in 1993. The above fact is concretely mentioned in the previous report. Labour relations by long term resident, permanent resident and emigrant citizens on private affairs in Mongolia is governed by the “Law on Legal Status of Mongolia”, “Law on Sending Labour Force Abroad and Receiving Foreign Labour Force and Specialists”, “Law on Foreign Investment”, “Law on Employment Promotion”, “Labour Law” and Annex to 2001 Government Resolution No. 139 “Procedure on imposing, granting and exempting of fees at working posts”, Annex to Resolution No. 72 “Procure on Visa Issuance” and Annex to 2003 Government Resolution No. 79 “Procedure on Compulsory Expulsion of Aliens”.

120. As of November 2008, 26,369 foreigners are residing in Mongolia, from which 1,930 adults and 489 minors are immigrants, 66 adults and 2 minors are stateless persons.

121. In recent years, statistics prove that illegal residence, employment and refusal to leave the country by foreigners has dramatically increased, so the Government of Mongolia is to take appropriate measures in implementing the related legislation.

122. As of 2001-2006, the decision of compulsory expulsion was effected in relation to 7 foreigners. In 2007, 1,607 Chinese, 3 South Koreans, 3 Russians and as of November 2008, 2,911 Chinese, 13 South Koreans, 29 Russian and 50 Vietnamese have been expelled from the territory of Mongolia, on grounds of refusal to leave the country after their residence period had expired and of employment without proper permission from the relevant authorities.

Article 14

Equality before court

123. Paragraph 1 of the Constitution of Mongolia reads “all persons lawfully residing within Mongolia are equal before the law and the court” and paragraph 1 of Article 8 of the Court Law proclaims that “persons regardless of their ethnic origin, language, race, age, sex, social origin and status, property, occupation and post, religion, opinion or education as well as economic entities, without any discrimination of their property forms and competences, shall be equal before the law and the court”.

124. Paragraph 2 of Article 47 of the Constitution of Mongolia states that the unlawful establishment of a court under any circumstances and the exercise of judicial power by any organization other than the courts shall be prohibited. So the judicial branch shall be executed in Mongolia only by courts established by the Constitution and other laws. According to Court Establishing Law of Mongolia, the Supreme Court, aimag court (21), the Capital city Court, soum (1) and inter-soum court (27) and District Court (8) are exercising judicial power. Also, based on paragraph 1 of Article 48 of the Constitution of Mongolia, which permits the forming of specialized courts such as criminal, civil and administrative, on December 26, 2002, the Administrative case court (21 in aimags and 1 in the Capital city) was established and the court, through this system, is settling cases and disputes.

125. A prerequisite for fulfilling the right of equality before the court is the independence of the court itself. And it is needless to say that Mongolia is on a path to court independence. In doing so, in 2000, the State Great Khural of Mongolia has approved the policy paper named “Strategic Plan on Judicial Power in Mongolia”. It is to define three main purposes and one purpose, which is connected to court independence, is to protect the independence of the political, economic, organizational and decision-making process that provides the mutual balance of legislative, executive and judicial powers in Mongolia. The measures to taken in accordance with maintaining the principles of bearing responsibility in trials, sensitivity (to be predictable in social demand and reform), fairness, accessibility and constructiveness (unambiguous application of laws at state level), have been defined.

126. Mongolia, as based on this strategic paper, has been taking numerous multilateral measures in order to achieve some results in court independence. For example, the court report of 2002-2007 has been published, so the public can acquire knowledge of its transparency. The report includes the organizational structure of courts, scope and annual briefings on proceedings of the cases that have been settled through the courts.

127. Court Law of 2002 possesses some clauses regarding the activities in providing court independence and developing positive atmosphere of stable working of judges. For instance, Article 79 of this Law formulates the ground for the judges not to be suspended, relieved or removed of their posts for reasons, which are not provided by the laws, not to be moved to another post without his/her own permission and to be free from any activity, which is completely contradictory with his/her legitimate functions.

128. Also, the legalization of adding recreation period equal to 3 working days to his/her annual leave in every 5 years and roundtrip expenses of judge’s internal and external vacation from his/her permanent residence to be paid from the court budget every 2 years has been made pursuant to Article 81 of the same Law.

129. Pension age for the judges has been made 60 and women judges, if they wish, may take their pensions at age 55. Also, at the time of taking their pension, an amount equal to 24 months salary is to be granted at once.

130. The personal, political and economic rights of the Chief Justice of the Supreme Court have been provided through this Law by stating that the person, residence and transport shall be inviolable, at official or working level, that state protocol and other events, which are in conformity of his/her duty, are to be paid from the court budget and that he/she is to enjoy diplomatic immunity and privileges during a visit and stay abroad, and accommodation fee also to be arranged from the court budget.

131. The salary rate of judges is approved by the State Great Khural of Mongolia and in order to strengthen their independence, the rate is to be increased each year. Most recently, the State Great Khural of Mongolia, through its Resolution No. 08, has increased the salary rate of judges.

132. Furthermore, social guarantees, such as granting loans for judges, who have been working efficiently and regularly, for the construction of private apartments and studies at his/her own will, have been well legalized and if it is deemed necessary, judges can also be provided with loan guarantees in accordance with related procedures. In doing so, not to re-issue the same pensions and assistance but rather leave the choice to him/her.

133. A judge not only enjoys the working conditions and guarantees, as well as additional guarantees, salary, wage, remuneration, aid and awards, which are provided by The Law on Civil Service, but also the guarantees accorded by this Law. Also, judges, in order to prevent any assault directed at their life, health and property, may enjoy the right to use a special defense tool.

134. The General Council of court, a joint operative body, whose function is to provide the judiciary independence, is exercising its duties. The Council's activities are mainly focused on choosing judges among lawyers, protecting their interest and providing the courts with a positive environment so the court can independently undertake its trials or proceedings (Article 60).

135. **Equality of all persons before court and law.** Article 5 of the Criminal Code of Mongolia provides the ground for a culprit, whose guilt has been established by court, to be subject to criminal liability irrespective of his/her ethnic origin, language, race, age, sex, social origin and status, property, official position, occupation, religion, opinion, belief and education. But when a person, according to the principle of *pacta sunt servanda*, who enjoys diplomatic immunity and privilege or other person, according to the effective laws and international agreements, who is not under the jurisdiction of criminal matter of that country has committed a crime in the territory of Mongolia, then the case is to be resolved through international agreement of Mongolia (paragraph 3 of Article 73 of the Criminal Code of Mongolia) and in case of conducting criminal proceedings involving a person, who enjoys diplomatic immunity and privilege, a related permission, through the Ministry of Foreign Affairs, must be obtained from the state of that person (paragraph 3 of Article 4 of the Criminal Procedural Code of Mongolia).

136. **Procedure on open trial and court decision.** Although the principle of open trial has been reflected in both Civil and Criminal Procedural Code of Mongolia, there are some extra situations, when a trial should be conducted in closed session. These include:

(1) According to Article 235 of the Criminal Code of Mongolia, only cases related to the state, organizational and personal secrecy shall be conducted in closed session and determining part of the decision is to be publicly announced;

(2) According to the Civil Procedural Code of Mongolia, if the evidence and events of a case are more likely to be connected with state, organizational and personal secrecy, then at the request from participants trial shall be conducted fully or partially closed and person, who has no full civil capacity, drunk or addicted or non-participant, who is under age of 18, shall not also be present during the trial. (Article 8 and paragraph 2 of Article 110 of the Civil Procedural Code of Mongolia);

(3) During the examination of any negative circumstance, which may influence a person, who is under legal age, then the court, on the basis of a proposal by the defendant's advocate, legal representative and prosecutor's review, shall order that person to leave the court room. (Article 375 of the Criminal Procedural Code).

137. **To presume innocent when his/her guilt has not been proved.** The Pact clause has been reflected in related legislations of Mongolia. The principle has been placed in the "Legal principle" part of the Criminal Code and "objective and principle of criminal proceedings" part of the Criminal Procedural Code of Mongolia. According to this Code, the main purpose of criminal proceedings is to provide ground for and prevent the innocent from being presumed guilty (paragraph 1 of Article 6 of the Criminal Procedural Code of Mongolia). In Mongolia, only the court can deliver a decision on guilt and innocence. When a person is deemed innocent, then the court shall drop the case and produce a decision regarding his/her innocence. It is forbidden for anyone, for example inquirer, investigator or prosecutor to force suspect, accused and defendant to prove their innocence before court (paragraph 2 of Article 16 of the Criminal Procedural Code of Mongolia).

138. As of first quarter of 2002-2007, the cases of 561 persons have been dropped. See the municipal chart below:

No.	Court	2002	2003	2004	2005	2006	1 st quarter of 2007
1.	Arkhangai	1		2		7	
2.	Bayankhongor		3		2	2	
3.	Bulgan	6	14	2	2	1	
4.	Govi-Altai	4	4	1	9	2	1
5.	Govisumber						
6.	Darkhan-Uul	5	3	3	3	3	
7.	Dornod		5	2	1		1
8.	Dornogovi	1		7	3	5	1
9.	Dundgovi	3		2	3	3	
10.	Zavkhan	2	1	7	4	3	2
11.	Uvurkhangai	21	6	12	8	10	1
12.	Sukhbaatar	3	2	6	5		1
13.	Selenge	1	4	4	3	1	
14.	Tuv	10	5	21	9	1	3
15.	Uvs	1	2	2	4	9	
16.	Khuvsgul	3	9	21	16	9	
17.	Khentii		2	3	5	2	
18.	Ulaanbaatar	27	35	28	16	18	
Total		88	95	123	93	76	10

139. **Right to an advocate.** Advocacy is administrated by the Mongolian Law on Advocacy of 2002. According to this Law, advocacy must be conducted by a person, who has successfully passed the selection of lawyers as provided by the Law on Selection among Lawyers and earned

a certificate, has never been sentenced or punished and has been issued with a license of advocacy after the completion of the advocacy examination in accordance with related procedures. As of April 5, 2007, 1,017 persons, of which 872 in the City of Ulaanbaatar, have been issued with an advocacy license.

140. As accorded by the Law on Advocacy, advocacy shall be conducted on a basis of the following principles. These include:

- (1) To provide human rights and freedoms and justice, as well as rule of law;
- (2) Any advocacy shall be under the state auspices and neither a public authority nor an official shall intervene in the advocacy;
- (3) The advocate, within the framework of related legislation, shall consistently defend all the rights and legal interests of clients.

141. The suspect, accused and defendant shall enjoy the right to choose his/her advocate and if he/she did not choose anybody, then the inquirer, investigator, prosecutor and court, considering his/her own proposals, shall provide him/her with the right to an advocate by not forcing them to pick one (paragraph 4 of Article 39 of the Criminal Procedural Code of Mongolia).

142. In the following circumstances, an advocate presence is required (Article 40 of the Criminal Procedural Code of Mongolia):

- (1) Dumb, deaf, sightless or persons, because of mental illness not able to enjoy the right to self advocacy or to an advocate;
- (2) Persons under legal age;
- (3) Persons not knowing the Mongolian language;
- (4) May be sanctioned by the death penalty;
- (5) If one of the suspect and accused persons, who has an opposite interest regarding the case, has an advocate, then the other suspect and accused persons.

143. Advocacy for the person who is unable to pay fees is administrated by the Law on Advocacy and Order № 69 of April 16, 2003 of the Minister for Justice and Home Affairs titled “Procedure on Establishing Standard Advocacy Fee Rate for Incapable Persons and Financing it from the State Budget and Producing Report”. According to the Law on Advocacy, an advocate bears the duty to conduct advocacy for a person who is unable to pay fees twice a year and the estimated charges are to be covered by the state budget (sub-paragraph 8 of paragraph 3 of Article 12 of the Law on Advocacy).

144. As provided in the “Procedure on Establishing Standard Advocacy Fee Rate for Incapable Persons and Financing it from the State Budget and Producing Report”, incapacity of charges shall be estimated on a basis of the minimum level of population living, which is defined by the

National Statistical Office of Mongolia. Potential lack in exercising his/her right to an advocate, which is influenced by insufficient monthly income, is to be based on definition issued by the Governor of khoroo and bag of the territory, where he or she lives.

145. Survey on incapable persons who have had an advocate at no cost in 2004, 2005 and 2006:

No.	Indicator	2004	2005	2006	Total
1.	Amount allocated from budget (million tugrugs)	12 000	12 000	12 000	36 000
2.	Number of advocates that advocated incapable persons	184	218	119	521
3.	Number of persons who have been advocated	1 056	1 161	1 070	3 287
4.	from:				
	Criminal case	1 045	1 148	1 068	3 261
	Civil cases	11	13	2	26
	Administrative cases	0	0	0	0

146. A standard wage charge, which is established by the Order of the Minister for Justice and Home Affairs:

Case	Minor	Less serious	Serious	Grave	Civil and administrative case
Wage (tugrug)	Up to 12 600	Up to 21 600	Up to 28 800	Up to 43 200	Up to 43 200
<i>Wage rate for advocates who have involved in certain period of criminal proceedings (due charge):</i>					
Inquiry and investigation		25 per cent			
Court of first instance		30 per cent			
Court of appeals		25 per cent			
Court of review		20 per cent			

147. The Mongolian Advocates Association, after considering proposals of municipal branch council of advocates, performance of previous year, increase and decrease of crimes etc, is to elaborate annual draft budget of charges, which rise in connection with advocacy to incapable persons and submit it to the state authority in charge of legal affairs within June 25 of each year. So far, 54,000,000 tugrugs have been allocated for advocacy since 2004.

148. During the inquiry and investigation process the possibility to exercise the right to an advocate, for example, to choose advocates and seek legal assistance etc, by the victim, suspect and accused is under deep consideration and the reference book, which contains the full names, addresses and phone numbers is published and used by officials of the law enforcement authorities.

149. “The National Program on Providing Legal Assistance to the Incapable Persons”, whose aim is to provide an effective system of legal assistance to incapable persons at all stages of criminal cases and to take successive measures in strengthening access to justice and public education on legal matters, was approved in 2006 by the Government of Mongolia. Within this Program, the Ministry of Justice and Home Affairs along with “United Nations Project on Access to Justice and Human Rights” and the Open Society Forum have established 30 “Centres for Legal Assistance to Incapable Persons” in all districts of the City of Ulaanbaatar and municipalities.

150. **To provide a translator and interpreter.** In case a participant, who is under criminal proceedings, does not know the Mongolian language then by using his/her mother tongue and learnt language, and if he/she is sightless, dumb or deaf then with help of translator or interpreter by using body language and special signs etc, can give testimonies, issue complaints, make a speech at court trial and meet all the related materials of the case. And the above is indispensably connected with the principle of equality before court and law.

151. As provided by both Civil and Criminal Procedural Codes of Mongolia, the inquirer, investigator, prosecutor and court, in order to protect the interest of a person who does not know the Mongolian language or is sightless, dumb or deaf, are obliged to take appropriate measures, for example, assigning a person who is capable of translating and interpreting.

152. **Participation by minors in criminal proceedings.** As accorded in the Criminal Procedural Code of Mongolia, the legal representative of a minor suspect and accused is to take part in criminal proceedings and the special procedures concerning these issues has been installed in Chapter 42 of the same Code.

153. The following special procedures are to be maintained during the case settling process of a person who was under legal age at the time of crime commitment and court trial. Those are:

(1) Not to arrest or put into custody a minor except in circumstances where he/she has committed a serious or grave crime and it has been proven by sufficient evidence, or he/she has attempted to flee or fled, or has violated the previous restraint measures (if a minor has been arrested on the above grounds then his/her parents and other legal representatives and advocates must be informed within 24 hours);

(2) To separate the arrested person from adults or minors who have already been sentenced;

(3) A basic investigation period shall be 1 month and not exceed 18 months;

(4) To hand the minor under review by his/her legal representative;

(5) Unless any other rules have been established in relation to the circumstances of the crime, to call the minor through his/her legal representatives;

(6) In cases where the minor has cooperated in crimes committed by adults and it appears not to cause any hindrance to crime detection, then to separate the case against the minor at the inquiry and investigation stage;

(7) The continuation period for a minor shall be 2 hours at a time and shall not exceed 4 hours a day and shall be adjourned every 2 hours;

(8) To allow the presence of an educator during the detainment process (compulsory presence is needed when minor intelligence has not been completed);

(9) During the examination of any negative circumstance, which may influence a person who is under legal age, then the court, on the basis of a proposal by the defendant's advocate, legal representative and prosecutor's review, shall order that person to leave the court room;

(10) If the court has examined whether there be any ground that a minor may be sentenced by punishment other than imprisonment and/or deems it is possible to postpone the punishment, then it is up to court to find and assign a public educator to that person who is under legal age (Article 364-377 of the Criminal Procedural Code of Mongolia).

154. With assistance from UNICEF, the Ministry of Justice and Home Affairs of Mongolia has developed the Code of Committee in charge of Minor Crime whose responsibility is to take care of minors at pre-trial stage, be involved in their crime settlement process, issue proposals and reports, take minors on bail, and organize disciplinary and educational activities in their own municipalities. There is some progress so far as model committees have been established in Khentii aimag and in Bayangol and Baganuur districts of the City of Ulaanbaatar.

155. Testimonial rooms for minor defendants have also been established at the police authorities and some courts. Related procedures, for example, to limit the use of rooms at police departments only to testimonial aims and make it useful for broader purposes such as in order to prevent crimes, to use them for interim facility for minors on the loose, conciliation and face-to-face activities, as well as if a person, who was under 18 at the time the crime was committed, has to give testimony as a suspect, accused and victim, then the concerned actions to be conducted only in rooms for minors etc, have been drafted. And all these activities are to be effected under the supervision of an appointed official. More actions are in process to assign a judge who is responsible for minor defendants at court and to develop a system of using minor-friendly methods during crime resolving period.

156. Also, training for inquirers, investigators, prosecutors, judges, advocates and social workers, who deal with minor cases, have been constantly taking place.

157. **Right to be compensated for damages, which occur during criminal proceedings.** A citizen of Mongolia, foreign citizen or stateless person shall enjoy the right to be compensated for moral or physical harm, which occur as a result of illegal decisions and acts by inquirers, investigators, prosecutors and judges.

158. The State shall bear the responsibility for compensating damages, which occur as a result of illegal acts by inquirers, investigators, prosecutors and judges (paragraph 1 of Article 389 of the Criminal Procedural Code of Mongolia), however, if the same illegal act is found to be a crime, then the person responsible shall not only compensate for damages but also bear criminal charges.

159. The following resolutions, regarding the compensation for the persons harmed during criminal proceedings, have been approved by the Government of Mongolia, and 16 citizens and 1 economic entity have been compensated so far through this instrument:

- 14 persons with 136,632,503 (one hundred thirty six million and six hundred thirty two thousand and five hundred three) tugrugs, by Resolution No. 24 of January 23, 2008
- 2 persons with 46,555,000 (forty six million and five hundred fifty five thousand) tugrugs, by Resolution No. 193 of May 28, 2008
- “The Ulaanbaatar Railway” Joint Stock Company with 23,152,200 (twenty three million and one hundred fifty two thousand and two hundred) tugrugs, by Resolution 286 of July 9, 2008

160. Due to the related decisions of 2008, compensation activities concerned 105 citizens and organizations with a total amount of 3,400,000,000 tugrugs are under way.

161. The Government of Mongolia has established a working group whose mission is, by way of examining an appropriate mechanism, to find legal ground for compensation caused by illegal acts and crimes.

162. Furthermore, paragraph 2 of Article 6 of the Criminal Code of Mongolia reads “A culprit shall be subjected to criminal liability once only”.

Article 15

Prohibition of retroactive criminal laws

163. Article 11 of the 2002 Criminal Code of Mongolia states that criminality of and criminal liability for socially dangerous acts (omissions) shall be determined according to the Criminal Code in force at the time of committing them and, irrespective of the time of the discovery of the harm caused by a crime, the moment it was committed shall be considered the time of its commission. Article 12 of the same Code reads “A law decriminalizing an act (omission) or mitigating the penalty for it, improving the legal status of the person who commits the crime shall apply retroactively to an accused, defendant or the person who has served the penalty but whose conviction has not been expunged. A court shall reduce the penalty of a culprit who has had a higher one imposed than the maximum amount established by a new law. A court shall reduce the penalty of a culprit who has had a higher one imposed than the minimum amount in case a new law establishes a lower one”.

164. In connection to 51 crimes, which were named in the previous Criminal Code of 1987, but are no longer considered as crimes, the Law on Procedures on Obeying Criminal Code of Mongolia has been enacted. The following retroactive procedures have been defined through this Law, which include:

- For the person, who has been sentenced before September 1, 2002 by case, which is no longer a crime according to the Criminal Code, to be freed from basic and resting punishment
- To drop the inquiry, investigation and court trials of a case, which is no longer a crime according to the Criminal Code of Mongolia
- If a sentence imposed before September 1, 2002 is found more serious than maximum or minimum level of the same types of penalty that might be imposed by related article, part and paragraph of the Criminal Code, then in order to harmonize this penalty to the clause of the Criminal Code of Mongolia, the concerned measures have to be taken by a decree of the court
- And according to Article 1 of the same Code, the decision on quashing of convictions has been presented for the persons who have been freed or finished his/her penalty by way of transforming their case into a case, which is no longer a crime according to the Criminal Code of Mongolia or released prior to his/her terms and law enforcement activities have been implemented

Article 16

Recognition of legal personality

165. According to Article 14 of the Constitution of Mongolia, everyone shall have the right to act as a legal person. Being a legal person means that the State is to bear the responsibility to regulate and protect the rights and freedoms of persons who are legally residing in the territories of Mongolia. It also recognizes that all persons, from the moment of their birth, even from their moment in mother's womb, have legal capacities. The previous report indicates that the above right was guaranteed by the Civil Code of Mongolia.

166. According to the analysis on the State Great Khural's "Program on Legal Reform", a legal environment for maintaining the Constitutional principle of "everyone shall have the right to act as a legal person" to legislative activities has been formed at certain level.

Article 17

Security of privacy and the home

167. The Constitution of Mongolia states that the privacy of citizens and their families, correspondence and residence shall be protected by law. In accordance with the Constitution of Mongolia, inviolability of citizen's private residence has been guaranteed by the Law on Personal Privacy.

168. Part of the previous report was dedicated to this issue and some concrete clauses regarding the inviolability of citizen's privacy and residence have been inserted to the Criminal and Criminal Procedural Code of 2002. For example:

In the Criminal Code of Mongolia

Article 135. Violation of the privacy of correspondence

135.1. Violation of the inviolability of secrecy of private correspondence shall be punishable by a fine equal to 20 to 50 amounts of minimum salary or by incarceration for a term of 1 to 3 months.

135.2. The same crime committed by abuse or excess of authority or with use of technical devices shall be punishable by a fine equal to 71 to 100 amounts of minimum salary, deprivation of the right to hold specified positions and engage in specified business up to 3 years or by incarceration for a term of more than 3 to 6 months.

Article 136. Disclosure of private secrets

136.1. Intentional disclosure of a citizen's private secrets protected by law learnt in the course of official or professional activities shall be punishable by a fine equal to 20 to 50 amounts of minimum salary or by incarceration for a term of 1 to 3 months.

136.2. The same crime committed by using the means of media shall be punishable by 251 to 400 hours of forced labor or by incarceration for a term of more than 3 to 6 months.

Article 137. Violation of home

137.1. Violation of home in the forms of illegal entry by force or threat with such, unauthorized occupation, illegal eviction or search shall be punishable by a fine equal to 20 to 50 amounts of minimum salary or by incarceration for a term of 1 to 3 months.

137.2. The same crime committed by abuse or excess of authority shall be punishable by a fine equal to 71 to 100 amounts of minimum salary with deprivation of the right to hold specified positions or engage in specified business for a term of up to 2 years, or by incarceration for a term of more than 3 to 6 months.

In the Criminal Procedural Code of Mongolia

Article 11. To provide inviolability of citizen's residence

11.1. Citizen's residence shall be inviolable.

11.2. No one shall, without the owner's permission, enter the residence except on such ground and procedure as are established by this Code.

11.3. Search in residences shall be conducted on prosecutor's permission and in accordance with ground and procedure as are established by this Code.

Article 12. To protect the privacy of citizens and their families, correspondence

12.1. The privacy of citizens and their families, correspondence shall be protected by law and this right is to be limited only on prosecutor's permission and according to the ground and procedure as are established by law.

Article 18

Freedom of religion and belief

169. Paragraph 3 of Article 9 of the Constitution of Mongolia states that the relationship between the state and religious institutions shall be regulated by law. The State Great Khural of Mongolia on November 11, 1993 has adopted the Law on the Relationship between the State and Churches. The aim is to establish a guarantee for citizen's freedom of conscience and religion and to regulate the relationship between the state and church.

170. The Law has been amended 3 times and legal ground for the separation of state and church activities has been embodied in more than 20 laws other than the above-mentioned Law.

171. Hence, related surveys are to be made in order to further develop the legal ground of relationship between the state and church and to harmonize the legal guarantee for citizen's freedom of conscience and religion in accordance with the Constitution of Mongolia, as well as strengthen the working correlation of law enforcing authorities and to protect the owner's right of religious institutions.

172. As of second quarter of 2008, 416 religious institutions, which are divided into 6 main sects, are registered in Mongolia, which include:

- (1) Buddhist - 226
- (2) Christian - 153
- (3) Islamic - 27
- (4) Baha'I - 3
- (5) Shamanist - 6
- (6) Moonist - 1

Thirty-three religious institutions were registered in 2005, 31 in 2006 and 51 in 2007, by the competent authority of Mongolia.

173. At present, of registered religious institutions, 54.3 per cent are Buddhist and 37 per cent are Christian. On average in recent years, the prevailing number of Buddhist institutions is more likely to have declined.

174. Most of the religious institutions, in particular Christians, are centralized in the City of Ulaanbaatar. Centralization is somehow high in the Khangai and Central zones and only 17 churches are established in the East zone.

175. Statistics for State level religion groups from the National Statistical office of Mongolia reveal that from the total of lamas and presbyters at church and other employees, as well as students of religious schools and home learners etc, 80 per cent are Buddhists, 20 per cent are Christians and less than 2 per cent are from other groups.

176. In Mongolia, it is almost legally free to run any kind of religious affairs. Because, according to the Constitution of Mongolia and the Law on Relationship between the State and Church, a citizen of Mongolia, foreign citizen or stateless persons can enjoy their freedom of religion and there is no such limitation on the establishment of any religious institutions.

Article 19

Freedom of thought, opinion and expression

177. Paragraph 16 of Article 16 of the Constitution of Mongolia states that the citizen of Mongolia shall be guaranteed the privilege to enjoy freedom of thought, free expression of opinion and speech.

178. In 1998, the Law on Press Freedom, which encompasses some of core principles clauses, was enacted. These include:

Article 1. To strengthen the freedom of thought, free expression, speech and press.

Article 2. To prohibit the adoption of any law and regulation that limits press freedom.

Article 3.1. The State is prohibited from laying down any review on the content of public media.

Article 4. To prohibit the public authorities from having their own media.

179. Within the frame of the implementation of this Law, a decision regarding the bankruptcy and privatization of all the media that previously belonged to the local and municipal organs has been issued. In early 2005, the Law on Public Media, which changed the status of said media into public ownership, was adopted.

180. In 2000, the Law on a National Human Rights Commission was adopted and this was considered a legal guarantee for the freedom of thought. The National Human Rights Commission can be described as an organ that promotes and protects human rights, whose function is to supervise the implementation of human rights and freedom clauses in the Constitution of Mongolia, laws and international agreements. A citizen may refer to the Commission in case he/she considers that their rights and freedoms have been violated by the competent authorities.

181. On the other hand, freedom of thought and expression shall legally be limited only in connection with state security, public order, health, morality and interest to protect the rights and dignity of other persons and a person who, when exercising his/her rights, has verbally assaulted or distributed incorrect information about other persons shall be punishable by related legislation.

182. Also there is a Government Action Plan to include certain objectives in developing legal environment for media. For example, as based on Article 16 of the Constitution of Mongolia that states “to seek and receive information”, the Law on Press Freedom has been drafted. The Law is to define the procedures regarding taking information except the State and personal secrecy and to grant an opportunity for journalists to hide and protect their sources of information.

183. The Government of Mongolia, in order to strengthen the public-private-partnership (PPP), make sure the public opinion is reflected in legislation and state policy and improve the possibility of receiving information from the public, has approved the “Digital Mongolia Program” and officially opened the website <http://www.open-government.mn>, which is dedicated for public discussion.

184. Since 2005, briefings on all the open issues discussed by the Government Cabinet have been put on the website of the Cabinet Secretariat of the Government of Mongolia, <http://www.pmis.gov.mn/cabinet>, for public awareness and also the information on the issues discussed by Government Cabinet are to be placed on the “Prime Minister is hearing website: <http://www.open-government.mn>”. And a possibility to search and download laws, Presidential Decrees and Government Resolutions etc, is provided as the <http://www.legalinfo.mn> website has been created.

185. Activities on publicity of law and regulations, delivery of reviews to the public and precaution to citizens from illegal acts have been intensifying and such advertisement is constantly to be forwarded through local and municipal press.

Article 20

Prohibition of propaganda for war and advocacy of hatred

186. Paragraph 1 of Article 10 of the Constitution of Mongolia states that Mongolia shall adhere to the universally recognized norms and principles of international law and pursue a peaceful foreign policy. On June 30, 1994, the Foreign Policy Concept of Mongolia has been adopted by the Resolution No. 56 of the State Great Khural of Mongolia. According to this concept, Mongolia shall maintain peace and friendly relations with other states and pursue an open and non-aligned policy.

187. The person, who calls for war among the public, shall be punishable by the Criminal Code of Mongolia approved in 2002. For example, Article 298 of the Criminal Code of Mongolia states that the propaganda of or calls for war among the public shall be punishable by a fine equal to 5 to 50 times the minimum salary or by incarceration for a term of 3 to 6 months or by incarceration for a term of 1 to 3 months. And the same crime committed with the use of mass media or by a civil servant shall be punishable by imprisonment for a term of 2 to 5 years. Also, propaganda with a view to stirring up national, racial or religious hatred between peoples, direct

or indirect restriction of their rights by discrimination or establishing privileges, shall be punishable by imprisonment for a term of 5 to 10 years (Article 86). Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such, shall be punishable by imprisonment for a term of 20 to 25 years or the death penalty (Article 302): killing of members of the group; causing grave bodily injuries to members of the group; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group; or deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part. Genocide has been counted as a grave crime and only death penalty may be applied to this kind of crimes.

188. According to the Constitution of Mongolia, no person shall be discriminated against on the basis of ethnic origin, language, race, age, sex, social origin and status, property, occupation and post, religion, opinion or education, and the national minorities of other tongues have the right to use their native languages in education and communication and in the pursuit of cultural, artistic and scientific activities. These clauses have been the cornerstone for the unity of ethnic groups in the territory of Mongolia.

Article 21

Right to peaceful assembly

189. Peaceful assembly is to be organized in accordance with the Constitution of Mongolia. The issue is administrated by the law of 1994. The aim of that law is to provide the citizens with the Constitutional right to assembly, establish the procedures regarding peaceful demonstration and to regulate relations which may arise during those activities. Some detailed information was stated in the previous 4th report.

190. The implementation of freedom of thought and right to speech is indispensably linked to a right to peaceful assembly. So therefore, the Government of Mongolia, taking as a basis the notable changes which have occurred in social relations, submitted the Draft Law on amending the Law on Demonstration, which was designed to eliminate the approval issuing regulation and create a registration system for demonstration, and the State Great Khural of Mongolia enacted this draft into Law on November 17, 2005.

Article 22

Freedom of association

191. It was stated in the previous 4th report that according to paragraph 10 of Article 16 of the Constitution of Mongolia, the citizens of Mongolia shall enjoy the right to form a party or other public organizations and to unite voluntarily in associations according to social and personal interests and opinion.

Trade unions

192. There are 12 trade unions, which have recruited 105,300 members and deal with professional and industrial matters. Also, there exist 22 trade unions and 2,300 institutions of

initial stage, which were established by territorial principle, to contain 220,000 members, of which 48.6 per cent work for state organs, 26.5 per cent belong to the private sector and 25 per cent are in the state-owned industries. The legal status of these institutions is administrated by the Law on the Rights of Trade Unions of 1991.

193. Through expanding the trilateral cooperation and partnership between the Government of Mongolia, trade unions and the United Association of Employers and by way of concluding contracts with non-governmental organizations, some governmental duties are to be performed by those institutions.

Non-governmental organizations

194. As of 2008, 6,500 non-governmental organizations have been registered so far in Mongolia since the adoption of the Law on Non-governmental organizations in 1997. The activities of the non-governmental organizations can be divided into the following categories, which are:

- Children and youth
- Gender studies
- Elders and social welfare
- Health
- Ecology and environment
- History, culture, art, literature, heritage, tradition, religion and astrology
- Human rights, democracy and law
- International friendship and cooperation
- Professional and industrial and interest groups
- Disabled persons
- Regional and municipal development
- Sport and leisure
- Food and agriculture
- Information, communication and technology
- Others

195. The above classifications would be useful in harmonizing activities and improve the efficiency of non-governmental organizations, and this allows institutions, which conduct the same type of activities, an opportunity to get to know each other and cooperate on projects etc.

Political parties

196. The Law on Political parties was revised in 2005 and is to administer the regulations concerned the establishment, registration and termination of political parties.

197. The creation of a multi-party system in Mongolia is one of the results of political democratic reform and a potential expression of the implementation of right to assembly.

198. The Law on Political parties states that the political party, according to the Constitution of Mongolia, is a voluntary united solidarity by the citizens of Mongolia, with an aim to conduct political activities according to social and personal interests and thoughts.

199. As sub-paragraph 6 of paragraph 1 of Article 7 of the Law on State Registration of Legal Entity reads “the Political party shall be registered by the Supreme Court of Mongolia”, the Supreme Court is to register the political parties and to issue certificates. At present, 18 political parties have been registered by the Supreme Court of Mongolia.

Article 23

Protection of the family

200. Paragraph 11 of Article 16 of the Constitution of Mongolia states that marriage shall be based on the equality and mutual consent of spouses who have reached the age defined by law. The state shall protect the interests of the family, motherhood and the child. This clause has been formed in the Family Law of Mongolia.

201. Considering the family as a micro-environment of human development and basic unit for society, the State Great Khural of Mongolia is paying great attention to this issue by approving state policy to be maintained in family development. The main purpose of this policy is to improve family education, support health, form grounds of equal involvement for parents in family development and taking care of their children by fostering them to have their own apartment, take appropriate measures in order to provide them with an equal participation in family property relations, centralize social welfare and security means for the vulnerable part of population in families, establish service networks for families, create a legally and behaviourally positive environment for the decrease of the violation of rights and violence to family members, and to train persons specialized in family affairs.

202. Mongolia welcomed the United Nations General Assembly Decision regarding 2004 - as the year to celebrate the 10th Anniversary of the International Family, and the Government of Mongolia had declared 2004 as “the Year of Fostering Family Development” and organized many events.

203. Within the implementing activity of State Policy towards Family and the National Program on Gender Equality, the Law on Combating Family Violence was enacted in 2004. This Law not only establishes a protective and preventive clause for a person who has suffered from family violence, but also the involvement by state, non-governmental organizations and citizens in combating this kind of crime and imposing penalties on persons who have committed violence.

204. "A Family Development Centre" has been established, whose duty is to collect information regarding the family, create information networks to provide consumers with related information, train social workers of bag, khoroo, aimag and soum and the activists of non-governmental organizations in methodologies to work with families, prepare and deliver handbooks and advertising materials and to provide family consulting centres at primary administrative units with methodological managements. By establishing this centre, the training and information base, which prepares teachers and social workers specialized in family affairs, can be created and working harmonization of institutions, scholars and researchers in this field also be improved and last, but not least, favourable conditions for the implementation of the state policy focused on family can be formed accordingly.

Article 24

Protection of the rights of the child

205. In 1989, the United Nations approved the Convention on the Rights of the Child and in 1990, during the World Summit for Children, first discussed this issue and produced the World Declaration on the Survival, Protection and Development of Children. At present, almost all countries have recognized the idea of this instrument and Mongolia is one of the first states to accede to this instrument.

206. In 2002, the Government of Mongolia, approved the National Program on Child Protection and with help from UNICEF and other donors, has been working with notable initiatives in order to solve many problems, with which children are faced.

207. In the past decade, the Government of Mongolia has summarized its objectives toward children and focused on the implementation of the Convention on the Rights of the Child and the idea of the "Declaration on a World Fit for Children", which was approved during the 2002 United Nations General Assembly Special Session on Children.

208. Mongolia has acceded to some of the international instruments, which protect the rational interest of children and has taken successive measures in reflecting the ideas of those instruments in national legislation. In 1998, Mongolia acceded to the Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption and an amendment has been made to the Family Law regarding the adoption of Mongolian children by foreign citizens.

209. In 2000, Mongolia acceded to the International Labour Organization's 182nd Convention on the Worst Forms of Child Labour.

210. In 2002, the State Great Khural of Mongolia ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child

Prostitution and Child Pornography and the International Labour Organization's 138th Convention on Minimum Age. Also, the Government of Mongolia has accepted the Yokohama Commitment to Protect Children from Sexual Exploitation and Sexual Abuse.

211. By signing a memorandum of understanding with UNESCO, the Government of Mongolia is to implement the Plan on Universal Education and the Objectives within the Dakar Framework for Action by 2015.

212. Also, while supporting the Convention on the Rights of the Child, the Declaration on a World Fit for Children and the Millennium Declaration, the Government of Mongolia is hosting events to implement the combined proposal, opinion, accord and declaration of successive Ministerial Consultative Meetings in the South East Asia and Pacific Regions.

213. More attention is to be paid to implementing the ideas of the Convention on Maternity Protection, the Convention against Discrimination in Education, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages and other international instruments related to child protection.

214. In recent years, the Government of Mongolia has elaborated and approved many instruments in the social field, which are mainly aimed at raising living standards, reducing poverty, reforming social welfare, security and services and providing family development. Such instruments, for example, "the State Policy on Population Development", "the State Policy on Family Development", "the Strategic Paper on Economic Growth and Reduce in Poverty" and "the Strategic Paper on Social Security Field", are to play a key role in settling development objectives in a globalizing world and immediate problems in the home country.

215. In April 2004, the State Great Khural of Mongolia approved the State Policy on Population Development of which the purpose is to settle population issues within the family sphere, expand assistance scope for families that directed in providing equal parental participation to child rights, development and protection and to promote welfare incentives based on family and child involvement. Also, the State Policy on Family Development of 2003, which was approved by the State Great Khural of Mongolia, established measures to be implemented in the near decade, which include suppression of family violence against children and forming of favourable family atmosphere to bring up, educate and to prepare in labour of the children.

216. Furthermore, by naming 2004 as "the Year to Support Families", the Government of Mongolia organized advertising events to register children on the loose or at orphan centres, intensify activities to give professional orientation to children of poorer and poorest families, increase parental and family responsibility and to suppress family violence. Ever since then policies have been implemented, to support the family as a micro-environment in children's life, centralize all activities for children's sake in families, enhance parental and family responsibilities for children and develop social works and services for the protection of children's rights etc.

217. Also, in 2003, by approving the Strategic Paper on Social Security Field, long-term policy and strategy to reform the social security field was defined.

218. The Government of Mongolia has approved the following instruments in order to reduce child mortality, improve training, which encompasses primary education and also to improve child protection. Those instruments are:

- National Program on Reproduction
- Strategic Plan on Maternal Mortality
- National Program on the Comprehensive Management of Child Disease
- Policy on Breastfeeding
- Expanded Program on Immunity
- National Program on Distance Learning
- National Program on Primary Education
- National Program on Developing Training of Teachers
- Program on the Equal Participation of Disabled Children in Education

219. Despite the legal environment for children's rights which has been emerging accordingly in Mongolia, some demands, for example, the necessity to establish a system of review and to develop the legal environment to harmonize certain protective issues of children's rights with related international instruments, have to be done in the future.

220. According to the Law on the Protection of Children's Rights of 1996, the State shall bear the responsibility to support children in grave circumstances to get education, rehabilitate and take care of their health condition, provide disabled children with artificial organs and other facilities at no charge and assist families which have adopted a child in grave circumstances.

221. The Government of Mongolia, according to social security legislation, not only conducts such activities to cover children living in grave circumstance and the vulnerable part of society under pension and insurance services, but also the hosting of many child protection events within the frame of programmes and projects financed by internal and external organizations.

222. A policy to confirm the rights of a child from maternal womb is to occupy a main part in health and social security policy. According to social security laws, the prevailing percentage of services of social pension, allowance and attention is directed to children's welfare and security. The State Great Khural of Mongolia amended the Law on Social Welfare of 2005 and decided to issue an allowance equal to 1,500 tugrugs per month for every child of a family whose monthly income is lower than the basic living standard and has 3 or more children under the age of 18. In 2006, the allowance was increased to 3,000 tugrugs.

223. Furthermore, by drawing on the economic growth result for the development of population and family, the State Great Khural of Mongolia, within the frame of social security policy to support the living of all citizens, enacted the Law on Child Allowance and Financial Aid to Child

and Family in May, 2006. According to this Law, a newlywed couple receive 500,000 tugrugs at once, mothers with the rank of “Honoured Mother I” receive 100,000 tugrugs per annum and mothers holding the rank of “Honoured Mother II” earn 50,000 tugrugs per annum.

224. The above allowances have been financing from the state budget and 1,200,000 persons have been issued with 62,400,000,000 tugrugs at present. Starting from 2007, in order to support children’s development and to increase the investment in children’s future, every child up to the age of 18 is to receive 100,000 tugrugs per annum from the Fund to Develop Mongolia. As of September 2008, 976,900 children have been covered by this activity.

225. The Constitution of Mongolia states that citizens of Mongolia shall enjoy the right to education and the State shall provide primary general education free of charge. The Law on Primary Education was revised in 2002 and the period of primary education extended to 11 years from 2005 and to 12 years from 2008.

226. In order to implement the objectives presented during the World Education Forum, which was held in Dakar, the Government of Mongolia approved the plan to be implemented by 2015 and established the “National Forum on Universal Education”.

227. In the past decade, the mortality of children up to the age of 5 has dramatically decreased in Mongolia. For example, from 1990 through 2000, the same indicator decreased twofold, which means there is a potential possibility to successfully implement the Millennium Development Goals by 2015. Despite the difference between official registration data and survey at family level, both show that the child mortality rate has decreased.

228. A decrease in child mortality has certain reasons, for example, the economy caused a decrease in the pregnancy rate. However, by inventing international standards to diagnose and treat acute infectious diarrhoea, which is one of the main reasons for child mortality, successfully implementing the expanded immune program and intensifying breastfeeding policy, mortality in infants and children up to age of 5 has constantly decreased.

229. Mongolia has an effective aid and service system for children and the rate for educated women is comparatively higher. The tradition of discriminating against children on the basis of education, health and nutrition has never existed.

230. The aim of reform of the health sector is to improve medical first aid and services. The principle of medical aid to be delivered by the family physician at soum and bag level is to be developed henceforward.

231. A relation of an immediate registration of child from his/her moment of birth is administered by the Law on Civil Registration and the Family Law of Mongolia. According to Article 12 of the Law on Civil Registration of Mongolia, in case both parents are in hospital or at a custody centre for a long term and as a result of which the child is not able to be registered, then his/her immediate relative or competent authority of the hospital, where the child is, shall bear responsibility for making sure the child is registered within 15 days in a local area and within 30 days in distant areas. The civil registrar at the Governor’s Secretariat of soum and district, where the parents live or a child was born in, shall examine the medical review regarding the birth of the child, parental citizens’ ID and their marriage certificate, and register

the child in the civil registration record. As regulated by law, a person who has a parentless child under his/her guardianship or the competent authority of a disciplinary organization must inform the police authority of this situation within 2 days and submit a request to register the child in the civil registration record (sex, name if available, place of birth, date of birth of the child and founder's place of residence and circumstance of the moment) to the Governor's Secretariat of soum and district, where the child was first found. In the case of registration of a child who was born 10 months later than his/her father's death, that child can be given his/her father's surname on the basis of the father's death certificate. Twins shall be registered separately and issued successive registration ID.

232. According to Article 24 of the Family Law of Mongolia, a child can be named upon parental agreement and as for a foundling child, the Governor of soum and district or the civil registrar at the registration organization are entitled to give the child a name and surname.

233. A child shall be named after his/her father and if he/she was born of a mother who has not registered her marriage or there is no such decision regarding his/her father's identification, then the child is to take the mother's name.

234. According to Article 7 of the Law on Citizenship of Mongolia, a child of parents, who were both Mongolian citizens at his/her birth moment, regardless of whether he/she was born outside Mongolian territory, shall be a citizen of Mongolia.

235. In case one of the parents is a Mongolian citizen and the other is a foreign citizen then their child, who was born on the territory of Mongolia, shall be a citizen of Mongolia. If child was born in the territory of a foreign state, then the citizenship of that child is to be settled upon written parental consent.

236. If one of the parents is a Mongolian citizen and other is a stateless person, then the child, regardless of where he/she was born, shall be a Mongolian citizen.

237. As provided by law, a child who stays on the territory of Mongolia, whose parents have not been identified, shall be a citizen of Mongolia. A child who was born on the territory of Mongolia to parents, who have no citizenship and stays permanently on the territory of Mongolia, shall choose his/her citizenship when he/she reaches age of 16. The citizenship of a child under the age of 16, who has been adopted by a stateless person, shall remain.

Article 25

Participation in public affairs

238. The previous 4th report introduced the fact that a citizen of Mongolia shall enjoy the right to take part in the conduct of state affairs directly or through representative bodies and the right to elect and to be elected to state bodies. The right to elect and to be elected has been embodied by the elections of State Great Khural and municipal khurals.

239. From 2004 through 2008, the State Great Khural of Mongolia was intended to hence develop election legislation. For example, each of the Law on Parliamentary Elections (in 2005)

and the Law on the Election of Municipal Khurals (in 2007) have been revised in their entirety and in 2008, the Law on Presidential Election was amended. Also, the Law on the Central organ of Elections was enacted in 2006.

240. Some core issues are dealt with according to the new Law, for example limit of participation of civil servants in elections, scope of election advertising, forbidden actions, election budget, organization structure of organs that conduct elections, and punishment clause for those who violate related legislation. Some principle changes have been made to terms and electorate mandates: 75 days of elections have been diminished to 45 days in accordance with the new Law and as for the electorate mandate, the previous single mandate has been changed to plural mandates. The issue of election advertisements, which were unregulated by the previous laws, has been regulated particularly as an independent chapter. According to this regulation, civil servants are forbidden to participate in election advertising activities, invest the nominee with sources of state and other assets, promise, distribute properties and materials at no charge, run industries and services and to host art and sporting events in election advertisements. Also, the quantity of propaganda posters has been defined. As for the election budget, nominees have been banned from receiving election donations from foreign companies, foreign citizens, or stateless persons, as well as Mongolian citizens under the age of 18 at the moment of the election announcement, state-owned enterprises, trade unions and religious institutions.

241. The elections of 2008 to the State Great Khural of Mongolia and the Municipal Khurals were held in accordance with the new Law and the election process of the State Great Khural of Mongolia, which was held June, 29, 2008 was observed by external and internal media institutions and voluntary observers. For example, within the frame of Asia-Pacific Democracy Partnership, a group of 16 persons, including from Australia, Canada, East Timor, Indonesia, Japan, Philippines, South Korea, Thailand and USA, worked at 110 division committees. The observers highlighted in their reports that not only was the media coverage balanced, but also the voters were provided with an opportunity to make their choice on plural political grounds, division committees worked in order and participation by women in the elections was surprisingly appreciative.

Article 26

Prohibition of discrimination

242. Paragraph 1 of Article 14 of the Constitution of Mongolia states that all persons lawfully residing within Mongolia are equal before the law and the court. Therefore, the legal status of a foreign citizen, who resides on the territory of Mongolia, shall be administered by the Law on Legal Status of Foreign Citizens and by the agreement which is established with the state that person belongs to. In case of identifying the rights and responsibilities of foreign citizens by international agreements, a principle of equality shall be maintained on this matter with the state that person belongs to.

243. However, for foreign citizens and stateless persons, some concrete limitations can be made to their political rights, for example, foreign citizens may not elect or be elected to the state bodies, participate directly in state affairs or through representative bodies and shall not take part in national opinion polls. Foreign citizens shall not be employed as full-time civil servants of Mongolia. Foreign citizens must not engage in any political activities including setting up and

joining organizations, which carry on political activities in Mongolia. Foreign citizens may only be employed in organizations classified by law as objects of State importance with the prior permission of the Cabinet of Mongolia (Article 10 of the Law on Legal Status of Foreign Citizens).

Article 27

Rights of minorities

244. The Constitution of Mongolia prohibits discrimination on the basis of ethnic origin, race and religion and the implementation of this clause was mentioned in the previous report.

245. The Kazakhs and Tsaatans are minority groups living in Mongolia. The State supports the Kazakh tradition and respects the use of their native language in education and communication. The main barrier to Kazakh children is a language problem. Therefore, in order to support them in learning Mongolian as a second language and to get education in both the Mongolian and Kazakh languages, the Ministry of Education, Culture and Science of Mongolia along with the UK's "Save the Children" have approved the Program to Support the Education of Kazakh Children. The Government of Mongolia is to assist the minorities to set up and broadcast their own television shows and events. Also, it has renewed the facilities of radio and television in Bayan-Ulgii aimag, where most Kazakhs live. And last, but not very least, the translation of the Constitution and other legislation has been started and is to be finalized very soon.

246. The Tsaatans are a unique civilized minority who worship shamanism and speak Tuvan and Mongolian. The Tsaatan's freedom of conscience and religion, right to use their own language, right to get education, right to health care, right to labour and other related rights have never been violated or discriminated by the State.

247. The Tsaatan village is located far in the high mountains 1,000 kilometres from the City of Ulaanbaatar and 50-70 kilometres from the centre of Tsagaan-Nuur soum of Huvsgul aimag and according to the survey of 2002, there are 495 Tsaatans of 114 families, comprised of 240 males and 255 females. Also, it can be detailed as follows: 39.9 per cent of persons are aged from 0 to 16; 19.8 per cent of persons are aged from 17 to 25; 20.2 per cent of persons are aged from 26 to 35; 15.2 per cent of persons are aged from 36 to 60 and 4.6 per cent of persons are above the age of 60.

248. According to the 2004 Report on Human Rights and Freedoms in Mongolia, the survey result, which was conducted among Tsaatans shows that they have no written history, the tradition is about to disappear and Tuvan is the only language of communication, specially the youth has less knowledge of their mother tongue.

249. So therefore, the Government of Mongolia pays more attention to Tsaatans by way of not only adding Tuvan language into training curriculum in order to fulfil their right to learn mother tongue and publishing textbooks on Tuvan language, but also providing the ground to take health-care and medical aid, seeking voluntary foreign institutional aid in the improvement of their education level and supporting their activities in many fields.
