

MONGOLIA: THE SITUATION OF HUMAN RIGHTS DEFENDERS WORKING ON MINING ISSUES

International Fact-Finding Mission
30 July-5 August 2012

EXECUTIVE SUMMARY

An international fact-finding mission was organised by Asian Forum for Human Rights and Development (FORUM-ASIA) and its member organization in Mongolia, Centre for Human Rights and Development (CHRД), on 30 July-5 August 2012 to investigate the situation of human rights defenders (HRDs) working on human rights violations in relation to mining activities in Mongolia, with the view to address the restrictions, violations and abuses imposed against HRDs by State and non-State actors. The fact-finding mission spent two days in Airag soum, a fluorspar mining settlement in Dornogovi province, and four days in the Mongolian capital Ulaanbaatar.

The abundance of mineral mining licenses issued by the government in critical areas of the country has affected the lives of the Mongolian people, in particular Mongolia's indigenous herders and people living in the vicinity of mining sites, who face numerous human rights violations, including the rights to live in a safe and secure environment; to access clean water; to choose and protect the source of their livelihood and income; to own property; to participate in decision-making concerning the mineral exploitation on their lands; to access justice and effective remedies; and to preserve their cultural heritage. While recent progress has been made by the government to reform the mining policies and a moratorium on the issuance of new licences was declared in 2010, Mongolia still has to come to grips with the legacy of irresponsible mining caused by inadequate monitoring as well as a lack of enforcement of environmental regulations and poor coordination among government agencies. At the same time, local citizen's participation in mining policies remains limited in practice.

In response to the adverse environmental and social effects of mineral mining, victims, affected communities and solidarity groups in Mongolia have begun to organise themselves to defend their rights and seek remedies. Due to their work of investigating or reporting human rights violations by the government in relation to mining policies and the abuses involving mining companies or individuals acting in collusion with the government, these HRDs have experienced threats and intimidation, judicial harassment as well as vilification and smear campaigns within a context where there is the absence of an enabling legal environment and a denial of their right to information which has contributed towards a lack of redress and remedies.

THREATS AND INTIMIDATION The international fact-finding mission documented a number of concrete cases of threats and intimidation faced by HRDs for their legitimate activities such as requesting and sharing information concerning business-related



abuses as well as supporting victims in their right to an effective remedy. During the fact-finding mission itself, a journalist and NGO worker was threatened by an anonymous caller after she had written on the practices of an NGO acting as a mouthpiece for a mining company looking to expand its activities. The anonymous caller threatened to file a complaint against her with the police and take the matter to court.

The fact-finding mission also found that a staff member of CHRД has faced intimidation by representatives of mining companies as well as by the Mineral Resources Authority of Mongolia, the agency responsible for the issuance of mineral mining licenses. When requested information, an official of the Mineral Resources Authority shouted at one of CHRД's staff, Mr. B.Gerel-ochir, that "If you keep on writing requests [for information], we will go to the police and investigate CHRД". Ms. Oyun, an environmental lawyer who works closely with CHRД, was also threatened by a State Environmental Inspector saying that he would file a court case against her. Another environmental lawyer and chairperson of the Association of Lawyers for the Environment, Mr. Jargalsaikhan, received an intimidating phone call from a Member of Parliament, pressuring him "to discuss things man to man" while he was working on a court case challenging an inadequate environmental impact assessment.

The situation is particularly dire for HRDs working in Airag soum, where mining companies have set up perimeter fences and ditches in the project areas. These perimeter fences block off the roads and pasture lands of the community and were constructed without any genuine consultation with the residents and the local administration. There is a constant threat to the security of the people of Airag soum and the HRDs monitoring the activities of mining companies as they are exposed to an incessant fear that something untoward might happen to them, their family or their properties. The security checkpoints situated along the perimeter of the operations of the mining companies are manned by security personnel openly carrying arms, thereby threatening members of the community. Even the members of this international fact-finding mission, who were with the local officials of Airag soum, were harassed by a security guard during an ocular inspection of the mining site.

Furthermore, Mr. Ganbaatar Gombo, Dornogovi Province Council member who has been actively supporting the work of NGOs and HRDs in Airag soum for land and environmental rights, received a telephone call where he was threatened that he would be killed. The anonymous caller added that "we killed someone in Airag

soum”, alluding to the death of the artisanal miner by a security guard of a Chinese mining company.

JUDICIAL HARASSMENT is a tactic frequently used to delegitimize the work of HRDs in Mongolia. Many Mongolian HRDs are often subject to civil defamation suits which are arbitrarily and disproportionately applied in order to suppress their freedoms of expression and association. In Airag soum, Ms. Tuulaikhuu Batsukh, who works with the NGO Motherland and Collective Power, was charged with defamation by the former governor of Airag soum. During a meeting with government officials, she drew their attention to the conflict of interest as the wife of the soum governor was also the executive director of a Chinese mining company in Airag soum. The governor’s wife filed a case against Ms. Batsukh who was subsequently called before Court and charged with defamation. Ms. Batsukh won in first instance, but the governor’s wife appealed. The Appeals Court ruled again in favour of Ms. Batsukh. However, Ms. Batsukh had to bear the sizeable costs for lawyer’s fees and transportation from Airag soum to the provincial court.

Moreover, in cases where HRDs have sued mining companies for unlawful conduct, companies frequently countersue the HRDs for defamation. Ms. Tuyatsetseg, head of the Tuul River Protection Movement, filed a case against a soum governor on charges of corruption for accepting a bribe from the mining company Tuul River Countryside. The soum governor countersued Ms. Tuyatsetseg on defamation charges, and the case is currently pending.

ABSENCE OF AN ENABLING LEGAL ENVIRONMENT Presently, no adequate legal environment exists in Mongolia for public interest litigation. NGOs are unable to file a complaint on behalf of the harmed group(s) in order to bring about a court case. Third-party standing is not allowed, unless the party claims direct harm. Under these circumstances, environmental lawyers must find an individual who has suffered actual damage and persuade him or her to pursue a claim.

In addition, there is no provision that permits a class action filing, despite the fact that in many cases, it is a group of citizens or a whole community who suffer from the same violations by the same mining company. Damage awards are also contentious since courts have only awarded nominal amounts for reparations. Finally, excessively high court fees and the absence of a mechanism to support public interest lawyers are not addressed by the government. This explains the small number of environmental lawyers in Mongolia, who only make up an estimated 10 out of 1,500 active lawyers.

VILIFICATION AND SMEAR CAMPAIGNS against HRDs, including falsely accusing them of having accepted bribes, aim to discredit local HRDs and undermine their work in the community. For instance, Ms. Ts. Tuyatsetseg has filed complaints against the Tuul River Sound LLC Company which planned to construct a golf terrain on Tuul river’s ground water source. She has been publicly accused on TV of asking a mining company for a two-bedroom apartment and USD\$ 21,500. It is alleged that the mining company had ordered to broadcast these allegations.

DENIAL OF THE RIGHT TO INFORMATION The fact-finding mission observed that HRDs working on mining issues in Mongolia face difficulties in accessing information concerning mineral mining activities. In general, license applications, environmental impact assessments and environmental plans are kept confidential and only final decisions are public information. While the Minerals Law and the Environmental Impact Assessment Law require that this information should be made public, the implementation of these provisions is weak.

A positive development to counter these difficulties was the adoption in 2011 of the Law on Information Transparency and Freedom of Information, legislating the right to information. However, the implementation of this law is also problematic because of the very detailed requirements and the lack of awareness among the people, especially at the grassroots level. Obtaining information from the Mineral Resources Authority of Mongolia has proven to be difficult since mining companies can request the Mineral Resources Authority to keep confidential the feasibility study and the conduct of exploration for their mining plans. In the case where the Mineral Resources Authority does not provide this information, NGOs are able to ask the Mineral Resources Authority for the written request of the mining company to keep the requested information confidential.

LACK OF REDRESS AND EFFECTIVE REMEDIES The absence of an enabling legal environment for public interest litigation has contributed towards problems in access to and administration of justice. Even if a verdict is reached in a public environmental interest case, the problem of lack of implementation of the court’s decision remains. The interviews with local HRDs in Airag soum also indicated that there is a lack of trust in the judiciary due to its corruption.

Furthermore, a legal framework for the protection of HRDs in Mongolia is severely underdeveloped. No witness protection is in place, nor is there any legal protection for whistle-blowers who expose alleged misconduct occurring in a government department or private company such as violations of law, fraud, corruption and threats to public interest and health. Many of these HRDs are in fact whistle-blowers.

RECOMMENDATIONS

In light of the issues raised through the international fact-finding mission, FORUM-ASIA and CHR D strongly urge the government of Mongolia and relevant authorities in the country to comply with their human rights obligations under international human rights law, including the 1998 UN Declaration on Human Rights Defenders, by actively promoting the work of HRDs and ensuring a favourable and enabling environment for HRDs to carry out their legitimate work. To this end, FORUM-ASIA and CHR D make the following specific recommendations:

To the Government of Mongolia:

1. Give full recognition to the important work carried out by HRDs in addressing human rights violations and abuses relating to mining activities, with the view to seek people-oriented development, protection of the rights of

communities to land, natural wealth and resources, and respect for the environment;

2. Ensure an enabling legal environment for public interest litigation, including establishing open standing for public interest litigation, reducing court fees and creating mechanisms to support public interest lawyers, thereby allowing any Mongolian in representation of others to file an action to enforce rights or obligations under environmental laws, as well as allowing NGOs to bring citizen suits, subject to proof of their juridical personality;
3. Develop and implement a simplified, expeditious and inexpensive procedure for public interest litigation, such as exempting or deferring payment of court fees and limiting the period of time for adjudication;
4. Mandate the Constitutional Court to act upon individual cases of violations of human rights and fundamental freedoms guaranteed in the Constitution of Mongolia, including land and environmental rights;
5. Ensure an effective implementation of the Law on Information Transparency and Freedom of Information;
6. Immediately adopt laws and mechanisms essential for the protection of victims, witnesses, whistle-blowers and HRDs; and
7. Provide more effective training for judicial and law enforcement officials to improve their understanding of the work and protection needs of HRDs.

To the National Human Rights Commission of Mongolia:

8. Undertake awareness-raising among staff members of the Commission, state authorities, NGOs as well as business enterprises including mining companies in the country on the 1998 UN Declaration on Human Rights Defenders;
9. Establish a focal point for the protection of HRDs within the Commission;
10. Assign a staff member of the Commission to monitor, document and investigate cases of human rights violations and abuses resulting from harmful mining policies and operations;
11. Monitor the compliance of local and national authorities and mining companies with international human rights norms and standards, including the Guiding Principles on Business and Human Rights;
12. Advise mining companies (local and foreign) to conduct a policy orientation on their mining operations taking into conscious account the observance of human rights of the affected individuals and communities;
13. Improve the capacity of the Commission in taking urgent protective measures when human rights violations and abuses occur due to mining, environmental destruction and pollution;
14. Improve the capacity of the Commission in providing direct assistance to victims of human rights violations and abuses, including those related to mining; and
15. Require all concerned state authorities to submit periodic reports to the Commission regarding the measures they have taken to respect, protect and fulfil the rights of HRDs.

To the UN Special Rapporteur on the Situation of Human Rights Defenders:

16. Send formal communications to the government of Mongolia with regards to threats, intimidation and judicial harassment faced by HRDs working on mining issues.

To the UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises:

17. Include the situation of restrictions, violations and abuses faced by HRDs working on mining issues and make recommendations thereto in the Working Group's official country mission report to be presented at the 23rd regular session of the UN Human Rights Council in June 2013.

To Human Rights Defenders Working on Mining Issues:

18. Monitor, document and inform the National Human Rights Commission of Mongolia about threats they face, and submit the cases to all relevant UN Special Procedures, including the Special Rapporteur on the Situation of Human Rights Defenders;
19. Raise awareness among the communities and general public on the 1998 UN Declaration on Human Rights Defenders;
20. Invite journalists to join field missions as part of a media campaign on HRDs and mining issues; and
21. Undertake awareness-raising on the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) and promote effective use of individual complaints when the OP-ICESCR enters into force.

To Local and International Media:

22. Highlight and report on the cases of violations and abuses against HRDs working on mining issues in Mongolia.

To Diplomatic Missions in Mongolia

23. Raise the abovementioned violations and abuses against HRDs working on mining issues with the government of Mongolia.

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