International Coordinating Committee Sub-Committee on Accreditation (ICC-SCA) – National Human Rights Commission of Mongolia (NHRC Mongolia) Stakeholders’ Submission

Submission by:
The Asian NGO Network on National Human Rights Institutions (ANNI)*
Centre for Human Rights and Development (CHRD)

Submitted on 30 June 2014

* The Asian NGOs Network on National Human Rights Institutions (ANNI) was established in December 2006. It is a network of Asian NGOs and human rights defenders working on issues relating to National Human Rights Institutions (NHRIs). ANNI is composed of members that are national organizations from all over Asia. ANNI currently has 30 member organizations from 17 countries or territories. The work of the ANNI members focus on strengthening the work and functioning of Asian NHRIs to better promote and protect human rights as well as to advocate for the improved compliance of Asian NHRIs with international standards, including the Paris Principles and General Observations of the Sub-Committee on Accreditation (SCA) of the International Coordinating Committee (ICC).

The Asian Forum for Human Rights and Development (FORUM-ASIA) is the Secretariat of ANNI. FORUM-ASIA has Consultative Status with the ECOSOC (UN Economic and Social Council) since 2004.

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Introduction

This stakeholder information is jointly submitted by the Asian NGO Network on NHRIs (ANNI), Centre for Human Rights and Development (CHRD, Mongolia) and partner organizations of the Human Rights NGO Forum in Mongolia for the accreditation review of the National Human Rights Commission of Mongolia (NHRC Mongolia).

Inputs are based on a half-day national consultation convened by CHRD together with national civil society organizations (CSOs). In addition, further information and feedback were also gathered via email from members of the NHRC Mongolia’s Ex-officio NGO Council members who represent diverse segments of civil society and have existing/prior experience working with the NHRC Mongolia.

This submission focuses mainly on issues that must be addressed by the government and NHRC Mongolia for the continued effective work and functioning of the NHRC Mongolia. They include recommendations previously made by the ICC-SCA that remain unimplemented as well as emergent issues, namely, amendments to the draft enabling law as well as advocacy for the NHRC Mongolia to play a greater role in ensuring adequate protection of human rights defenders (HRDs).

Nonetheless, this submission also acknowledges that the NHRC Mongolia has fulfilled its mandate commendably thus far and encourages it to continue to perform its role effectively. Since its establishment in 2001 the NHRC Mongolia has issued thirteen Annual State of the Human Rights reports. Recent noteworthy achievements of the NHRC Mongolia include the passing of Resolution No, 13 (3 July 2013) by the Standing Committee on Legal Affairs of the State Great Khural (Parliament) in response to the 10th Annual Report of the NHRC Mongolia. It formalizes in law a requirement of the government to implement the recommendations by the NHRC Mongolia through a plan of action.

Amendments to the NHRC Mongolia’s draft law

Recently in April 2014, the Office of the President hosted an open discussion on the draft Law on Human Rights. The draft law is intended to make amendments to the National Human Rights Commission of Mongolia Act (2001). It comes as part of a series of legislative reforms from voluntary pledges and commitments made by the government of Mongolia following their membership application to the Human Rights Council (2015).

However, some of the proposed changes, left in its current form, are detrimental to the independence and effectiveness of the NHRC Mongolia. The draft bill also does not address the issues raised by the ICC-SCA from previous reviews.

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1 Kazakh Women’s Arular Coalition, Open Society Forum, Oyu Tolgoi Watch, Steps without Border, CHRD and the Amnesty International Mongolia Chapter.

2 See Annex 1 for Summary of List of Recommendations by the ICC-SCA to the NHRC Mongolia
Financial resourcing and budget of the NHRC Mongolia

In recent years, the NHRC has made progress in research and reporting on the status of human rights, developing working relationships with other human rights bodies/organizations and conducting human rights training and awareness raising activities. Cooperation with CSOs and the establishment of NHRI Mongolia presence at all province levels are specific examples of good practices and laudable progress that are due to gradual increases in budget allocation to the NHRC Mongolia (mostly UNDP-funded programmes).

The ICC-SCA had recommended in November 2013 that the State should “provide the NHRCM with adequate funding and independent management and control of its budget in order to promote the independence of the NHRI by allowing it to freely determine its priorities and effectively fulfil its mandate” and that the funding should “to a reasonable degree, ensure the gradual and progressive realization of the improvement of the organization’s operations and the fulfilment of its mandate”

However, in 2014, the government reduced the budget of NHRC Mongolia by 200 million Tugrug (almost 25% of its annual budget.). The unilateral decision to reduce the budget of the NHRC Mongolia is worrying because it represents a marked departure from the collaboration and engagement that has recently been established between the government and the Commission. There was also no consultation or attempt to solicit the input of the NHRC Mongolia, such as through the submission of a strategic plan and/or an annual programme of activities to discuss budget proposals to ensure adequate financial resourcing and functional independence.

Worryingly, the draft bill also introduces a clause relating to remuneration/economic benefits of Commissioners. It stipulates a one-time allowance for Commissioners- amounting to 36 months of their salary- upon completion of their term of office. The Paris Principles stress the need to ensure a stable mandate for members to reinforce the independence and integrity of members of NHRIs. They include good practices relating to appointment, terms and renewability of membership, incompatibility, dismissal and removal, and offer of competitive salaries. However, this provision seems entirely irrelevant and unnecessary to the intended objective. It further conveys the impression that the positions of Commissioners are vulnerable to policization/political deal-making because of the substantial “rewards” attached.

Selection & Appointment of Members of the NHRC Mongolia

No positive changes have been made to the selection and appointment process for members of NHRC Mongolia. Although the NHRCM has been granted ‘A’ status by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) in 20083, the selection process is not rigorous or transparent enough to guarantee full and functional independence. It falls short of the standards prescribed in the Paris Principle B.1 and ICC-SCA General Observation 1.8 on ‘Selection and appointment of the decision-making body of National Human Rights Institutions’.

3 http://www.mn-nhrc.org/eng/main/1/
Under the current law, candidates are nominated by “the Speaker of the State Great Khural (Parliament) on the basis of proposals by the President” and “the Parliamentary Standing Committee on Legal Affairs and the Supreme Court”\(^4\). In the draft bill, minor changes are proposed. Three entities - Parliamentary Legal Standing Committee, Supreme Court and Chancery of the President - make open calls for job vacancies through their respective channels for 10 days following which two individuals are nominated for Parliament to select and appoint.

While the selection process is slightly expanded, it does not meet the requirements for a participatory, transparent and merit-based appointment process. Furthermore, there is no stipulation that public consultations, nominations or hearings be held. At the same time, it completely overlooks the role and involvement of the ex-officio NGO Council members who work with the NHRC Mongolia in the designing/implementing of activities and programmes on a regular basis.

In addition, the draft Human Rights Law eliminates “appropriate” from the previous language found in the enabling law that requires “appropriate level of human rights knowledge” of Commissioners and makes no mention of experience, expertise or capacity of prospective candidates. Today, the NHRC Mongolia, has expanded in size and scope where they have established a presence in each of the 21 provinces. However, such a problematic selection process cannot ensure the diverse and plural representation of society among its staff and Commission members.

**Human Rights Defenders and Systematic Human Rights Violations**

The rapid expansion of the mining industry in Mongolia has resulted in human rights violations and abuses relating to poor business practices. Environmental rights defenders, in particular, have been subject to various forms of reprisals, harassment and intimidation by State and non-State actors for their legitimate human rights work. A prime example is the arrest and sentence of Goldman Environmental Prize winner Ts. Munkhbayar on trumped up charges (national security, terrorism, illegal demonstrations).

In accordance with the enabling law governing the activities of the NHRC Mongolia, it has the mandate to comment and advise on all issues relating to human rights situation in the country, including guiding the Government regarding their human rights obligations and ensure international human rights principles and standards are incorporated into the law and mainstreamed and implemented in public policymaking.

It is thus commendable that the NHRC Mongolia plans to include a mapping and assessment of the status of HRDs in their annual report this year.

However, despite the enactment of legislation that protects affected communities and HRDs against the harmful practices of the extractive industry, there have been repeated attempts to undermine the law by introducing amendments that give concessions to mining companies.

As such, there is a pressing need for improvements to the legal, administrative and institutional framework for adequate protection to HRDs. Given the worsening and

\(^4\) [http://www.mn-nhrc.org/eng/main/1/](http://www.mn-nhrc.org/eng/main/1/)
recurring human rights violations relating to the extractive industry, the NHRC Mongolia must perform its role in the fight against impunity and ensure protection for HRDs, including advocating in favour of a safe and enabling environment for HRDs as well as collectively address systematic violations and take action that can lead to institutional change in the country.⁵

Recommendations

To the NHRC Mongolia:

1. Consult with HRDs and undertake to establish or review existing protection programmes and ensure adequate financial resourcing of protection programmes;

2. Continue to engage and harness the expertise of members of the Ex-officio NGO Council in monitoring and implementing human rights programmes and activities;

3. Advocate for improvements to the legal, institutional and administrative framework governing the work of HRDs, including a safe and enabling environment for HRDs;

4. Ensure timely pronouncements, quality of responses and interventions and develop a systematic follow-up plan to monitor implementation of its recommendations;

5. Commit to the implementation of the Edinburgh Declaration (2010) by engaging proactively on the issue of corporate responsibility and corporate abuse of human rights, including with reference to the new UN Guiding Principles on Business and Human Rights.

To the Government and Parliament of Mongolia:

6. Scrutinise all proposed amendments in the draft Human Rights bill with a view to ensuring the independence and effective functioning of the NHRC Mongolia, and carry out consultation with the members of the Commission, civil society organizations and all other stakeholders;

7. Ensure that amendments to the NHRC Act reflect positive changes and implementation of the ICC-SCA recommendations in compliance with the Paris Principles;

8. Ensure that the NHRC Mongolia is provided with broad and solid mandates in the draft bill and make sure that they are adequately resourced to be able to operate independently and to be credible and effective;

⁵ The public inquiry on torture by the NHRC Mongolia was an example of a good practice where they responded to the exigencies of the human rights situation in the country.
9. Publicly acknowledge and support the important role of the NHRC Mongolia, in particular in relation to protection of HRDs and combating impunity.
ANNEX 1: Summary of Recommendations

Mongolia: National Human Rights Commission of Mongolia (NHRCM)

November 2008: The SCA recommended that the NHRC be re-accredited status A.
November 2013: The SCA recommended that consideration of the reaccreditation of the NHRCM be deferred to its second session of 2014.

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<th>Recommendation</th>
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<tr>
<td><strong>Adequate funding</strong></td>
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<td>* refer to Paris Principle B.2 and ICC-SCA General Observation 1.10</td>
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<td>For the State to provide the NHRCM with adequate funding and independent management and control of its budget in order to promote the independence of the NHRI by allowing it to freely determine its priorities and effectively fulfil its mandate (2013)</td>
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<td>The funding should, to a reasonable degree, ensure the gradual and progressive realization of the improvement of the organization’s operations and the fulfilment of its mandate (2013)</td>
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<td><strong>Selection and appointment</strong></td>
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<td>* refer to Paris Principle B.1 and ICC-SCA General Observation 1.8 on ‘Selection and appointment of the decision-making body of National Human Rights Institutions’</td>
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<td>A clear, transparent and participatory selection process that promotes merit-based selection, ensures pluralism and promotes the independence of, and public confidence in, the senior leadership of a national human rights institution (2008 &amp; 2013)</td>
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<td>To continue to pursue proposed amendments that would include the following requirements (2013):</td>
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<td>- Publicize vacancies broadly;</td>
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<td>- Maximize the number of potential candidates from a wide range of societal groups;</td>
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<td>- Promote broad consultation and/or participation in the application, screening, selection and appointment process;</td>
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<td>- Assess applicants on the basis of pre-determined, objective and publicly available criteria; and</td>
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<td>- Select members to serve in their own individual capacity rather than on behalf of the organization they represent</td>
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<td>To seek advice and assistance from the OHRCR and the Asia-Pacific Forum of NHRIs (2013)</td>
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<td><strong>General</strong></td>
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<td>* refer to ICC-SCA General Observation 2.6 on ‘NHRIs during the situation of a coup d’état or a state of emergency’</td>
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<td>* refer to ICC-SCA General Observation 1.11 on ‘Annual reports of NHRI’</td>
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