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**Совет по правам человека**

**Тридцать седьмая сессия**

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**Поощрение и защита всех прав человека,  
гражданских, политических, экономических,  
социальных и культурных прав,  
включая право на развитие**

**Доклад Специального докладчика по вопросу  
о правозащитных обязательствах, касающихся  
пользования безопасной, чистой, здоровой и устойчивой  
окружающей средой, о его поездке в Монголию\***

**Записка секретариата**

Секретариат имеет честь препроводить Совету по правам человека доклад Специального докладчика по вопросу о правозащитных обязательствах, касающихся пользования безопасной, чистой, здоровой и устойчивой окружающей средой Джона Х. Нокса о его поездке в Монголию, состоявшейся 19–27 сентября 2017 года. В ходе своего визита Специальный докладчик выявил передовую практику и рассмотрел проблемы, стоящие перед страной в области поощрения и защиты прав человека, которые связаны с окружающей средой.

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\* Настоящий доклад был представлен с опозданием, с тем чтобы учесть самую последнюю информацию и замечания правительства.



**Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment on his mission to Mongolia\*\***

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\*\* Circulated in the language of submission only.

## I. Introduction

1. The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, visited Mongolia from 19 to 27 September 2017, at the invitation of the Government. The purpose of the visit was to examine how Mongolia is implementing human rights related to environmental protection, to identify good practices and to consider the challenges the country faces in the promotion and protection of environmentally related human rights.

2. During his visit, the Special Rapporteur met with government officials, representatives of civil society, academics, attorneys, students, stakeholders from the private sector, and representatives of the Asian Development Bank and the World Bank. Most of the meetings were held in Ulaanbaatar, the capital, but the Special Rapporteur also visited the *soums* of Nalaikh and Zaamar, in the *Tov aimag*.<sup>1</sup> During the visit, the Special Rapporteur met with officials from government agencies, including the Minister of Environment and Tourism and representatives from the ministries of foreign affairs, finance, justice, mining and heavy industry, health, and construction and urban development, as well as the General Agency for Specialized Inspection. The Special Rapporteur also met with the Chair of the parliamentary Subcommittee on Human Rights, and with a member of the Supreme Court. At the municipal level, he met with officials of the office of the mayor and of the chief prosecutor of Ulaanbaatar, and with local government officials in Zaamar. He also met the National Human Rights Commission and took part in a public lecture and discussion organized by the Commission.

3. The Special Rapporteur expresses his gratitude to the Government for its invitation and cooperation throughout the visit. He also thanks the United Nations Resident Coordinator and the country team in Mongolia for their support.

4. The Special Rapporteur is particularly grateful to the many individuals and community members he met in Ulaanbaatar, Nalaikh and Zaamar. He was highly impressed with the local representatives, environmental inspectors, herders, citizen activists, rangers, local residents and parents who showed great appreciation of the Mongolian environment and commitment to its continued protection.

## II. Legal and policy frameworks

### A. Legal framework

#### 1. International law

5. Mongolia has ratified many human rights treaties, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Mongolia was elected as a member of the Human Rights Council for the period 2016–2018.

6. Mongolia has also ratified a large number of multilateral environmental agreements, including the United Nations Framework Convention on Climate Change, the Paris Agreement, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Convention on Biological Diversity, the Stockholm Convention on Persistent Organic Pollutants and the Minamata Convention on Mercury.

#### 2. Domestic laws and institutions

7. The President of Mongolia, who is elected to a four-year term, may initiate and veto legislation and issue decrees. The Cabinet, which is the highest executive organ of the State, is responsible under the Constitution (art. 38) for, among other things, enforcing the laws of the State and undertaking measures for protection of the environment, and the sustainable

<sup>1</sup> Mongolia is divided into 21 *aimags*, or provinces, and 1 provincial municipality, Ulaanbaatar. Each *aimag* is divided into *soums*, or districts.

use and restoration of natural resources. The Cabinet is made up of ministers who are appointed by the parliament on the basis of proposals submitted by the Prime Minister in concurrence with the President.

8. Mongolia has a unicameral parliament, the State Great Khural, which has 76 members elected for four-year terms. The State Great Khural enacts and modifies legislation, and can override presidential vetoes by a two-thirds vote. It includes subcommittees on sustainable development (under the committee on social policy, education, culture and science) and on human rights (under the committee on justice). The parliament also appoints the Prime Minister upon the proposal of the President.

9. Article 16 of the Constitution lists the rights and freedoms that the citizens of Mongolia are guaranteed to exercise. The second right listed, after the right to life, is the right to a healthy and safe environment, and to be protected against environmental pollution and ecological imbalance.

10. Mongolia has a large number of statutes relevant to the environment, which include: the Law on Environmental Protection, which addresses, among other things, environmental standards, monitoring, research and information, inspections and the participation of civil society; the Law on Environmental Impact Assessment; the Law on Air; the Law on Water; the Law on Soil Protection and Desertification Prevention; the Law on Special Protected Areas and on Buffer Zones; and the Law on Prohibition of Mineral Exploration and Exploitation in Runoff Source Areas, Forested Areas and Protection Zones of Water Bodies (known in Mongolia as the Law with the Long Name), which attempts to protect many vulnerable areas from the effects of mining operations.

11. The Law on Licensing provides for community participation in environmental protection and management of natural resources. The General Administrative Law, enacted in 2015, sets out the rights of citizens and legal entities to challenge decisions made by government authorities, and regulates general and procedural affairs within the public administration sector. The Criminal Code includes a chapter on environmental crimes.

12. The Ministry of Environment and Tourism is the primary institution overseeing environmental protection in Mongolia. The General Agency for Specialized Inspection, under the Office of the Deputy Prime Minister, carries out inspections to determine compliance with environmental standards.

13. The National Human Rights Commission, established by the parliament in 2000, has the responsibility to promote human rights and monitor their implementation. It is also mandated to review complaints of human rights violations and initiate proposals and recommendations to State authorities.

## **B. Policy framework**

14. Mongolia has adopted sustainable development as its guiding strategy. In 2013, it became the first country in the world to join the Partnership for Action on Green Economy, a United Nations programme that promotes the transition to sustainable practices. In 2014, the parliament adopted a National Green Development Policy, and the Government approved an action plan for its implementation for the period 2016–2030.

15. In 2016, Mongolia adopted the Sustainable Development Vision 2030, the aims of which include: ensuring that 80 per cent of the population is supplied with safe drinking water by 2020 and 90 per cent by 2030; ensuring that 40 per cent of the population uses improved sanitation and hygiene facilities by 2020 and 60 per cent by 2030; increasing specially protected areas to 25 per cent of the territory by 2020 and 30 per cent by 2030; and eliminating air pollution in Ulaanbaatar by 2020.<sup>2</sup>

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<sup>2</sup> Mongolia Sustainable Development Vision 2030. Available from [www.un-page.org/files/public/20160205\\_mongolia\\_sdv\\_2030.pdf](http://www.un-page.org/files/public/20160205_mongolia_sdv_2030.pdf).

### III. Environmental conditions

16. Mongolia has many diverse ecosystems, including alpine habitats in the Altai Mountains in the west, coniferous boreal forests in the north, the Gobi Desert in the south, and steppe grasslands throughout much of the country. It is the home of many species of wildlife whose numbers are declining in other parts of the world. For example, the Daurian Steppe, which has been called the Serengeti of the East,<sup>3</sup> may be the most undisturbed steppe ecosystem remaining in the world; it supports the migration of the Mongolian gazelle (*dzeren*), one of the last mass ungulate migrations in Central Asia.<sup>4</sup> Its wetlands and rivers provide critical habitat for millions of migratory birds, including red-crowned and white-naped cranes, swan geese and great bustards.

17. Mongolia is famous throughout the world for its nomadic herding culture, which has lasted for thousands of years and continues to shape the values and practices of Mongolians today. More than one third of Mongolians are herders. Historically, the nomadic culture has allowed humans to live in harmony with the natural ecosystems on which they and their herd animals depend. Pastoral livestock herding has traditionally adapted well to the challenging geographical conditions and seasonal climatic changes in Mongolia, and it has been a particularly successful strategy for the sustainable use of semi-arid and arid grasslands. However, in recent years, nomadic herding and the grasslands on which it relies are increasingly under threat.

18. One of the main threats is overgrazing, which has degraded the resilience of grasslands.<sup>5</sup> The number of herd animals in Mongolia has more than doubled, from approximately 25 million to over 50 million, in a relatively short period of time.<sup>6</sup> Over the same period, the proportion of goats has also greatly increased, to over 40 per cent of the total. Goats are more destructive than other species because they eat a wider range of plants and dig up their roots. They have traditionally not been one of the most important herd animals in Mongolia, but their numbers have increased in response to growing demand for cashmere wool products.

19. Another growing threat is climate change. Between 1940 and 2014, the mean air temperature in Mongolia increased by more than 2°C, more than twice the global average.<sup>7</sup> The Government expects climate change to increase the extent and frequency of natural disasters, including *dzuds*, an event in which a summer drought is followed by a severe winter, leading to shortages that cause the large-scale death of animals and food insecurity for herders. Historically, *dzuds* have been expected to occur roughly once a decade, but in the past thirty years, their frequency has increased to less than every four years.<sup>8</sup>

20. Mining is another source of pressure on the Mongolian environment. About 7 per cent of Mongolian territory is currently licensed for mining exploration or exploitation. Mining contributes greatly to the economy, but it also causes serious environmental problems,

<sup>3</sup> See International Union for Conservation of Nature, "The Serengeti of the east", 9 August 2013. Available at [www.iucn.org/content/serengeti-east](http://www.iucn.org/content/serengeti-east).

<sup>4</sup> Russian Federation and Mongolia, "Landscapes of Dauria: proposal for inscription on the UNESCO World Cultural and National Heritage List", May 2017, p. 5. Available at [www.nhpfund.ru/files/Dauria-nomination.pdf](http://www.nhpfund.ru/files/Dauria-nomination.pdf).

<sup>5</sup> See Mongolia, "Fifth national report: Convention on Biological Diversity", 2014. Available at [www.cbd.int/doc/world/mn/mn-nr-05-en.pdf](http://www.cbd.int/doc/world/mn/mn-nr-05-en.pdf).

<sup>6</sup> In 2015, the number of livestock in Mongolia included nearly 25 million sheep, over 23 million goats, nearly 4 million cattle, over 3 million horses, and about 400,000 camels. United Nations Economic Commission for Europe (ECE), *Environmental Performance Reviews: Mongolia (draft)*, November 2017 (ECE/CEP/185), p. 271. Available at [www.unece.org/fileadmin/DAM/env/epr/epr\\_studies/ECE.CEP.185\\_Eng.pdf](http://www.unece.org/fileadmin/DAM/env/epr/epr_studies/ECE.CEP.185_Eng.pdf). The ECE report is a comprehensive review of Mongolia's environmental conditions, laws and policies. Unless otherwise noted, references to statistics in the present report are taken from that report.

<sup>7</sup> Mongolia, Ministry of Environment and Green Development, *Mongolia Second Assessment Report on Climate Change 2014*; ECE, *Environmental Performance Reviews: Mongolia*, pp. 166–167.

<sup>8</sup> ECE, *Environmental Performance Reviews: Mongolia*, p. 271.

including pollution of air and water, overuse of underground water resources and destruction of pasturelands.

21. These pressures threaten the traditionally harmonious relationship between Mongolians and the environment. In addition to contributing to the loss of biological diversity,<sup>9</sup> they make nomadic herding more difficult, leading many herders and their families to migrate from the grasslands to live in Ulaanbaatar and other urban settlements. The rising urban population, in turn, contributes to increasing levels of air and water pollution. The problems are particularly acute in Ulaanbaatar, which now has roughly 1.5 million residents, or almost one half of the population of the country. It is estimated that approximately 60 per cent of the residents of Ulaanbaatar live in *ger* districts, so named because families there typically live in *gers*, rather than houses or apartments.<sup>10</sup> The residents of the *ger* districts burn coal and other solid fuels for warmth, which greatly contributes to air pollution, especially in winter.

#### IV. Good practices and challenges

22. Although many aspects of the storied culture and history of Mongolia are unique, the overall challenge it faces is similar to that facing many other countries: how can it use its natural resources in ways that continue to improve the economic condition of its population, without destroying the environment on which its people depend? In other words, how can Mongolia achieve sustainable development?

23. Although the specific answers to that question can only be provided by Mongolians themselves, it is clear that for development to be truly sustainable, it must be based on human rights. Human rights and environmental protection are interdependent: the exercise of human rights helps to ensure environmental protection, and a safe, clean, healthy and sustainable environment is necessary for the full enjoyment of human rights. As a result, States have obligations under human rights law to protect the environment on which human rights depend (see A/HRC/37/59).

24. Those obligations include procedural duties, such as assessing environmental impacts on human rights and making environmental information public, facilitating participation in environmental decision-making, and providing access to remedies for environmental harm. Ensuring that those most affected by development and environmental policies are able to obtain information, freely express their views and participate in the decision-making process not only promotes human dignity, equality and freedom, the benefits of implementing all human rights; it also improves the effectiveness of policymaking by ensuring that the policies benefit those who are most affected by them.

25. To protect against environmental harm and to take necessary measures for the full realization of human rights that depend on the environment, States must also establish and maintain legal and institutional frameworks for the enjoyment of a safe, clean, healthy and sustainable environment (see A/HRC/37/59, annex, framework principle 11). Ideally, environmental standards would be set and implemented at levels that would prevent all environmental harm from human sources. However, limited resources may make it more difficult to attain the full realization of the rights to health, food and water and other economic, social and cultural rights. The obligation of States to achieve progressively the full realization of these rights by all appropriate means<sup>11</sup> requires them to take deliberate, concrete and targeted measures towards that goal, but they have some discretion in deciding which means are appropriate in the light of available resources.<sup>12</sup>

<sup>9</sup> See World Wide Fund for Nature, Mongolia Programme Office, *Filling the Gaps to Protect the Biodiversity of Mongolia*, August 2010.

<sup>10</sup> A *ger* is a round tent, usually covered with felt, which is easily portable. *Gers* have long been an integral part of the nomadic herding culture.

<sup>11</sup> See International Covenant on Economic, Social and Cultural Rights, art. 2 (1).

<sup>12</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations.

26. For the most part, Mongolia has adopted strong environmental standards. It has recognized the linkage between human rights and environmental protection by incorporating a right to a healthy and safe environment in its Constitution. It has enacted detailed environmental laws, including on pollution and mining. Moreover, in 2012, it reviewed its environmental legislation with the goal of strengthening its provisions and making them more coherent and consistent. Although some gaps remain, the chief problems are not in the quality of the standards, but in their implementation.

27. To be effective, environmental standards must be implemented (see A/HRC/37/59, annex, framework principle 12). Governmental authorities must comply with the relevant environmental standards in their own operations, and they must also monitor and effectively enforce compliance with the standards by preventing, investigating, punishing and redressing violations of the standards by private actors as well as governmental authorities.

28. During his visit, the Special Rapporteur repeatedly heard of examples of failures to effectively implement the laws. An example is water pollution, especially in the Tuul River around Ulaanbaatar. The Special Rapporteur saw uncovered mountains of coal ash being dumped next to the river in the city, and pollution from mining both upstream and downstream. He also heard of incidences of untreated sewage being discharged into the river. The Law on Water Pollution Fees, enacted in 2012, establishes fees for the discharge of wastewater, but as at mid-2017, the law had not been implemented, because the required subsidiary legislation had not been enacted.

29. Another example is environmental impact assessment. In addition to the assessment of the possible impacts of proposed projects, Mongolia introduced two new types of assessment in 2012: strategic environmental assessment for proposed policies, development programmes and plans; and cumulative impact assessment to evaluate the effects of various projects implemented within a defined area. However, five years later, in 2017, the practical application of strategic environmental assessment had not yet started, and cumulative impact assessment had only been conducted in two cases.<sup>13</sup> The Special Rapporteur also heard reports that the environmental impact assessment reports were submitted to the Government by project proponents were often “cut-and-pasted” from other reports, so that the assessment report on a proposed mining operation in the Gobi Desert, for example, might include an analysis of its effects on coniferous forests found near the northern border.

30. The problem appears to be due, at least in part, to the lack of sufficient resources. It is disturbing that the budget of the Ministry of Environment and Tourism has dropped significantly in recent years, from 1.9 per cent of the overall government budget in 2011 to only 0.5 per cent in 2016 and 2017. The United Nations Economic Commission for Europe (ECE) reports that the environmental assessment and audit division of the Ministry has only six staff members, each with between one and four years of experience, who are responsible for supervising environmental impact assessment. Each month, they produce general conclusions on 50 to 60 projects, and check another 30 to 40 detailed reports for conformity with legal requirements. ECE concludes that this highly demanding workload prevents a thorough examination of each report.<sup>14</sup>

31. Similar resource constraints hinder the implementation of other legal requirements. For example, in 2012 Mongolia amended its law to require all entities whose activities involve the use of natural resources to undergo an environmental audit every two years. In 2013, it adopted subsidiary legislation to clarify the methodology of the audits and to provide for the licensing of approved private auditors. Since then, about 25 environmental audit firms and 200 individuals have been certified as auditors. However, only one staff member at the Ministry is responsible for supervising environmental audits, and there do not appear to be any sanctions for non-compliance. As a result, ECE finds that in practice, audits result from voluntary commitments or investor pressure, not the legislation.<sup>15</sup>

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<sup>13</sup> ECE, *Environmental Performance Reviews: Mongolia*, p. 26.

<sup>14</sup> *Ibid.*, p. 71.

<sup>15</sup> *Ibid.*, p. 64.

32. Other agencies and departments appear to face similar issues. For example, the General Agency for Specialized Inspection reports that it lacks mobile testing equipment and has an inadequate number of staff.<sup>16</sup> The Criminal Code addresses a number of environmental crimes, including illegal mineral exploration and extraction, poaching and illegal logging, but the Special Rapporteur heard complaints that few cases had been prosecuted.

33. In the following sections, the Special Rapporteur examines good practices and challenges in four areas: air pollution, mining, conservation, and the rights to information, participation and remedy.<sup>17</sup> In each of these areas, Mongolia has written strong standards into its law, but it faces serious challenges in their implementation and enforcement.

## A. Air pollution

34. Perhaps the most pressing environmental challenge in Mongolia is air pollution. Levels of fine particulate matter (PM<sub>2.5</sub>) in the ambient air of Ulaanbaatar average nearly 70 µg/m<sup>3</sup> on an annual basis, which is higher than Mongolian air quality standards (25 µg/m<sup>3</sup>) and far higher than World Health Organization (WHO) guidelines (10 µg/m<sup>3</sup>).<sup>18</sup> Other pollutants, such as sulphur dioxide and nitrogen oxides, are also at levels that exceed domestic and international standards.<sup>19</sup>

35. Exposure to such high levels of air pollution interferes with the human rights to life and health because it can cause respiratory and cardiopulmonary diseases that lead to premature mortality. It has been estimated that as many as 10 per cent of the deaths of adults over thirty years old in Ulaanbaatar, and 4 per cent of such deaths throughout the country, may be attributed to ambient air pollution.<sup>20</sup> As high as these numbers are, they actually understate the problem, because they do not take into account indoor air pollution or examine the effects of air pollution on children.

36. A recent study conducted by the United Nations Children's Fund (UNICEF) estimates that over 400 children under the age of five die every year in Ulaanbaatar as a result of pneumonia related to air pollution.<sup>21</sup> Exposure to air pollution during childhood may also contribute to the incidence of chronic disease related to air pollution later in life, including pulmonary disease, cardiovascular disease and lung cancer. In that context, in 2017 the Committee on the Rights of the Child expressed serious concern about the effects of air pollution on Mongolian children, particularly in Ulaanbaatar, including reduced fetal growth, preterm birth, reduced lung function leading to acute respiratory disease and chronic respiratory disease later in life, and pneumonia.<sup>22</sup>

37. The high levels of air pollution have multiple causes. One is the increasing migration of herders to Ulaanbaatar and other urban settlements, driven in large part by environmental pressures, including overgrazing, climate change and the loss of land to mining. Environmental infrastructure is lagging behind the demands of the growing population. When herders move to cities, they typically continue to live in their *gers*, which have poor insulation and inadequate connections to electric and other utility services. The residents of the *ger* districts contribute to air pollution by burning solid fuel to stay warm, especially in the extremely cold winter months.

<sup>16</sup> *Ibid.*, p. 65.

<sup>17</sup> These are not the only areas of potential concern, but they were the subject of the most attention during the visit of the Special Rapporteur.

<sup>18</sup> ECE, *Environmental Performance Reviews: Mongolia*, p. 354. With diameters of 2.5 micrometres or less, fine particulates can penetrate into the lungs and cause adverse short-term and long-term effects on human health. See WHO, *Ambient air pollution: A global assessment of exposure and burden of disease*, 2016, p. 19.

<sup>19</sup> ECE, *Environmental Performance Reviews: Mongolia*, p. 190.

<sup>20</sup> *Ibid.*, p. 354.

<sup>21</sup> See UNICEF, "Understanding and addressing the impact of air pollution on children's health in Mongolia", June 2016.

<sup>22</sup> See CRC/C/MNG/CO/5, para. 34. See also E/C.12/MNG/CO/4, para. 26.

38. Steps have been taken to address the contribution of *ger* districts to air pollution, but none has proved very effective. For example, the 2012 Law on Air provided for the creation of the Clean Air Fund, which dispersed US\$ 45 million to subsidize cleaner coal fuel for the residents of the *ger* districts to use in stoves and air filters. However, the fund was later abolished. The World Bank supported a “clean stove” initiative, which succeeded in introducing more than 130,000 low-emission stoves in *ger* districts in Ulaanbaatar.<sup>23</sup> However, that initiative failed to create a sustainable market for such stoves, and the Special Rapporteur was informed that the initiative is no longer being pursued. At the municipal level, the government of Ulaanbaatar is continuing to pursue efforts to reduce air pollution from *ger* districts, including programmes to provide better quality coal to people in poverty and to provide discounts on electricity charges when major air pollutants reach maximum concentrations.<sup>24</sup>

39. The municipal government has also announced that it will enforce restrictions on movement into the city. Efforts to restrict entry into the city would appear to violate the International Covenant on Civil and Political Rights (art. 12), which provides that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose their own residence. Restrictions on this right are allowed only if they are provided by law and are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with other rights recognized in the Covenant. Given the availability of other measures to address air pollution, including providing for cleaner sources of heat and encouraging residents of *gers* to move into better insulated buildings, it seems highly unlikely that a flat prohibition on movement into Ulaanbaatar can be justified as necessary for public health.

40. Discussions of air pollution in Ulaanbaatar and other urban settlements in Mongolia should not focus solely on the *ger* districts; other sources contribute to air pollution as well. Ulaanbaatar relies on three ageing coal-fired combined heat and power (CHP) plants, known as CHP-2, CHP-3 and CHP-4. The oldest, CHP-2, is the most heavily polluting and is understood to require urgent closure, but the Government believes that the rapidly growing demand for electricity and heating in the city precludes doing so until another plant, currently being planned for eastern Ulaanbaatar, comes on line. The economic growth in Mongolia has also resulted in an increasing number of automobiles, which contribute to air pollution in urban centres. In addition, Ulaanbaatar is located in a valley, which tends to contain emissions rather than disperse them.

41. Mongolian law provides for fees on emissions of air pollutants, including on vehicle owners and owners of power plants and other major stationary sources. However, there does not appear to be regular monitoring of emissions from stationary sources, which would be necessary to establish the basis for the fees, and the fees are not collected.<sup>25</sup> Similarly, while the Law on Air purports to require major stationary sources to install monitoring and abatement equipment, the fines prescribed by the law for violating standards are too low to serve as an incentive to install the equipment.<sup>26</sup>

42. The longer-term solution for Mongolia seems clear: it needs to take more rapid steps to take advantage of its vast capacity for renewable energy. The southern desert region, for example, with 300 days of sunshine a year, low moisture, low temperatures and high winds, is well suited for wind and solar farms. The aim of the Government is to increase renewable energy sources to 20–25 per cent of total energy production by 2025, but there is still a long way to go. As at 2017, only 7 per cent of installed capacity came from renewable sources. One innovative programme pursued between 1999 and 2010 is particularly worth noting: the Government set a goal of supplying 100,000 herding households in rural areas with solar panels. The effort was a qualified success: it is estimated that 70 per cent of nomadic

<sup>23</sup> See World Bank, “Mongolia national low emission stove strategy: completing the transition to a sustainable market for cleaner stoves”, 2015.

<sup>24</sup> See Kh. Aminaa, “National program on air pollution reduction to be intensified”, *Montsame News Agency*, 2 July 2017. See also “National Committee on Environmental Pollution Reduction meets”, *Montsame News Agency*, 2 August 2017.

<sup>25</sup> ECE, *Environmental Performance Reviews: Mongolia*, pp. 78 and 197.

<sup>26</sup> *Ibid.*, p. 206.

Mongolian households have access to green electricity. More generally, the 2012 Law on Renewable Energy set favourable feed-in tariffs for electricity generated by wind power, which have assisted in the development of the Salkhit Wind Farm project, the first commercial wind farm project in Mongolia, which began operating in 2013.<sup>27</sup>

43. In March 2017, Mongolia approved the National Programme on Reduction of Air and Environmental Pollution for the period 2017–2025. The objectives of the Programme include: reducing pollution; establishing better accountability systems; re-establishing the Clean Air Fund; building the capacity of environmental monitoring; and increasing community participation. The Programme devotes significant attention to the *ger* districts, not only by promoting the construction of more houses within *ger* districts and encouraging resettlement of *ger* residents to apartments, but also by limiting migration to the capital. Again, the Special Rapporteur reminds the Government that international human rights law prohibits restrictions on movement within a country except pursuant to justifications that do not appear to be present here.

44. Another growing threat to air quality is dust, particularly dust from mining regions, where mining operations and the transportation of equipment on unpaved roads cause dust pollution. Airborne dust can travel long distances, damage forests and crops, affect the water quality of rivers and streams and adversely affect human health. The Mongolian laws on air pollution focus on urban areas to the almost complete exclusion of air pollution concerns elsewhere. The Special Rapporteur encourages the Government to close this gap by improving its monitoring and regulation of air pollution and dust emissions in mining regions.<sup>28</sup>

## B. Mining

45. Mining can cause grave harm to the environment and to human rights, especially to the rights of the individuals and communities who directly depend on the ecosystems that are damaged or destroyed by the extraction of mineral resources. States should only allow mining activities that respect and protect human rights, especially the rights of those who reside most closely to the activities, and corporations should comply with their responsibility to respect those rights.

46. For mining to be in accordance with human rights obligations, it must be carried out only after prior assessment and consultation with the people most affected. Effective remedies must be provided for violations of their rights. Mining activities should be authorized only if they avoid, minimize and, to the extent possible, restore the site and offset environmental harm. Mining permits should result in benefits not only for the country as a whole, but also for the local communities most directly affected by the mining. The Government must impose restrictions that ensure that mining activities proceed only if these requirements are met, and the regulations themselves must be considered, adopted and implemented in a transparent manner that allows for free and informed public debate. Everyone must be able to exercise the rights to freedom of expression, association and peaceful assembly in the context of mining operations, without fear of harassment or detention.

47. In Mongolia, mining has become a key driver of economic growth. Mongolia is rich in mineral resources, including coal, copper, gold, silver, iron ore and uranium. In 2015, the mining sector contributed 16.1 per cent of gross domestic product, 19.6 per cent of budget revenue, and 79.3 per cent of export revenue.<sup>29</sup> As at May 2017, there were over 2,000 outstanding exploration licences and over 1,500 exploitation licences, covering 6.2 per cent

<sup>27</sup> Of course, renewable energy projects, including hydro projects, can cause environmental and human rights issues of their own, and Mongolia must comply with its obligations to respect and protect the rights of those affected by them.

<sup>28</sup> See ECE, *Environmental Performance Reviews: Mongolia*, p. 27.

<sup>29</sup> United Nations Development Programme, “Corruption risk assessment in mining sector of Mongolia”, 2016, p. 15.

and 0.9 per cent of the territory respectively.<sup>30</sup> The Government estimates that only about 30 per cent of the licensed area is actually used; the rest is idle for many reasons, including low prices, inadequate infrastructure and concerns over environmental effects.

48. There is also widespread illegal mining. Many Mongolians, including herders who have lost their livestock, engage in artisanal and small-scale mining, much of which is not pursuant to permits or licences.<sup>31</sup> These activities are characterized by unsafe working conditions, the mistreatment and abuse of workers, and the use of dangerous chemicals such as mercury or cyanide without proper training.

49. Legal and illegal mining operations pose serious threats to the environment and to the health and safety of Mongolians, especially to herder communities. Mining operations contribute to dust and other forms of air pollution, and draw down and pollute water sources. Dredging for alluvial mining destroys the natural ecosystem of the river and makes the water unsafe to drink. Dumping mining waste in or near rivers causes pollution downstream. Mining operations dig new wells that lower water tables, causing wells used by herders to dry up and making it more difficult for them to adapt to droughts.<sup>32</sup> By displacing herders from the pasturelands that they have traditionally used, mining operations contribute to pressures on their traditional culture.

50. The Special Rapporteur witnessed some of the adverse effects of mining during his visits to the *soums* of Nalaikh and Zaamar. In Nalaikh, he saw coal mining taking place on the banks of the Tuul River, next to a densely populated neighbourhood. He spoke with residents who showed him cracks and damage to their houses, which they attributed to the mining operations occurring a very short distance away. In Zaamar, he saw gold mining dredges operating in the Tuul River upstream from Ulaanbaatar, and heard from herders and other residents about the effects of gold mining on their pasturelands and their drinking water. In both locations, children could easily enter the mining areas, and he was told of injuries and deaths that had occurred as a result.

51. Under Mongolian law, the State is the owner of all mineral deposits, and it grants licences for exploration and mining rights. The number of licences has reached high levels in the recent past.<sup>33</sup> In response to concerns that mining was having too great an effect on the Mongolian environment and culture, the State temporarily banned the issuance of exploration licences in 2010. The ban was lifted in 2014, but some areas are to remain off limits for mining, for example because they are specially protected areas or because they are covered by the Law with the Long Name, which provides for the protection of the most vulnerable water resources by prohibiting mining and exploration licences in the headwaters of rivers, protected zones in water basins and forested areas. Under the Law, the Government cancelled over 200 exploration and exploitation licences in areas within 200 meters of water sources and in forests.<sup>34</sup> However, the Special Rapporteur heard reports that mining operations continue in many nominally protected areas.

52. Mongolian law provides that environmental assessment, public consultation, and the approval of the local community are required before approval of a mining licence. Mining operations are supposed to be conducted only after a survey by an organization with ethnographic and archaeological expertise, to ensure that the operations do not harm cultural heritage. In addition, the proponent of a mine must provide an environmental management plan, which provides for reclamation to restore the land to a natural or economically usable

<sup>30</sup> ECE, *Environmental Performance Reviews: Mongolia*, p. 52. This is a significant reduction from recent years; as recently as 2008, exploration licences covered over 30 per cent of the land.

<sup>31</sup> See E/C.12/MNG/CO/4, para. 16.

<sup>32</sup> The Government reports that, of the more than 34,000 wells in Mongolia in 2014, over 26,000 belonged to mining operations. See Mongolia, "Fifth national report: Convention on Biological Diversity", pp. 11–12. Numerous other factors also contribute to pressures on Mongolian water resources, including climate change, deforestation, irrigated agriculture and other competing land uses. Cane, I. and others, *Responsible Mining in Mongolia: Enhancing Positive Engagement* (Brisbane, Sustainable Minerals Institute, 2015), pp. 28–29.

<sup>33</sup> The Government reported that from 2008 to 2010, the number of licences decreased from 5,202 (4,111 exploration and 1,091 exploitation) to 4,137 (2,979 exploration and 1,158 exploitation).

<sup>34</sup> ECE, *Environmental Performance Reviews: Mongolia*, p. 31.

state. To ensure that mining companies meet their responsibilities for reclamation, each operator of a mine is required to deposit one half of its annual environmental protection budget into a special fund, to be managed by the governor of the relevant *soum* or district. In 2015, the Law on the budget was amended to provide that at least one third of income received from royalties from mining operations goes to local development funds in the *soums* or districts where the licences are issued.

53. On paper, these laws provide worthwhile protections against abuses of human rights and environmental harm. There remain some gaps and inadequacies in the laws, however, and serious problems in implementation. For example, the environmental impact assessment occurs too late in the process to influence decision-making, although it may affect the environmental management plan, and the assessment usually pays little or no attention to the social and cultural effects of proposed projects.

54. Similarly, the requirement to obtain local government approval, while excellent in principle, often fails in practice. First, the law provides only about a month for the local governments to express their views, which is not enough time to circulate the environmental assessment and have an informed public consultation. Second, local government officials may not have sufficient information, or may not adequately represent the views of their people. Local officials may use their ability to block a mine as a method of soliciting illegal payments. Third, the agreements between local governments and mining enterprises are not required to be made public. Lastly, when local authorities oppose mining licences, their views are sometimes overturned by the national Government or simply ignored.

55. The visit of the Special Rapporteur to the Zaamar *soum* illustrated some of these problems. He observed the extensive gold mining that has already taken place as a result of the “Gold-1” programme, which began in 1993 and resulted in more than 100 licences for mining operations, covering more than 50,000 hectares of the roughly 280,000 hectares in the *soum*. Massive dredgers, each as large as an office building, churn up the river; children play near unguarded, dangerous open pits; dust clouds cause respiratory illnesses; wells dry up; fish have disappeared; and pasturelands for herders have greatly decreased. Rather than focus on rehabilitation, the Government has decided to pursue a new “Gold-2” programme, which would lead to many more mining licences in the *soum*. The new mines would destroy much of the remaining pastureland. Understandably, the local community has opposed the project, but the Government has nevertheless begun to issue licences.

56. To comply with its human rights obligations to the local communities, the Government should conduct a full-scale, strategic environmental assessment of the proposal for Gold-2, looking at the environmental and social effects of Gold-1 and examining the cumulative effects of granting additional licences. It should make that assessment public and provide for the effective rehabilitation and compensation for the effects of Gold-1. The Government should ensure well-informed and meaningful public consultations, and it should abide by the decision of the local community as to whether and how Gold-2 should be allowed to go forward.

57. More generally, Mongolian law should set clearer requirements for the reclamation of mining sites. A comprehensive assessment of the needs for each site is typically not conducted, and the Special Rapporteur was informed by interlocutors both within and outside the mining industry that, in practice, reclamation often involves only filling in open pits or is simply not conducted at all. Sites left without reclamation may be taken over by artisanal miners working illegally. The Special Rapporteur was informed that often the funds required to be paid into escrow for reclamation are either not transferred or are redirected for other purposes. There are also concerns about the expertise and competence of reclamation companies: of roughly 400 companies with reclamation licences, only a few dozen operate in practice, and some reclamation companies reportedly engage in continued exploitation of the mine, under the guise of reclamation.

58. Some problems of implementation are undoubtedly due to insufficient resources. For example, the Special Rapporteur heard concerns that the General Agency for Specialized Inspection does not have sufficient technical resources and capacity to adequately inspect

mining operations.<sup>35</sup> When the Special Rapporteur visited coal mining sites in Nalaikh, he was shown sites of apparently illegal mining taking place next to residential homes. The houses there have suffered damage that seems to have been caused by underground mining. In spite of their efforts to seek help from the Agency and to complain to other government agencies, local residents seem to have been provided with no recourse.

59. Lastly, the Special Rapporteur heard many allegations that corruption is an obstacle to effective implementation and enforcement of the laws regulating mining. In 2015, the Committee on Economic, Social and Cultural Rights expressed its concern about the prevalence of corruption in the country, including in the judiciary and the civil service (see E/C.12/MNG/CO/4, para. 11). The Committee urged Mongolia to redouble its anti-corruption efforts, including by implementing a zero-tolerance policy against corruption and making judges, prosecutors and the police aware of their responsibilities regarding the strict enforcement of the law. It stated that Mongolia should protect the human rights of those engaged in anti-corruption activities, particularly victims, whistle-blowers, witnesses and their lawyers.

60. The Committee also expressed concern about the adverse impact of mining projects on herders' human rights (*ibid.*, para. 8).<sup>36</sup> In particular, it was concerned that the free, prior and informed consent of herders was not obtained when the Government issued licences for mining in territory that the herders had traditionally used, and that herders who were adversely affected by mining projects had not been provided with adequate compensation (para. 8). The Committee recommended that Mongolia: (a) carry out human rights and environmental impact assessments before granting mining licences; (b) ensure that all stakeholders affected by such projects effectively participated in the assessment processes; (c) carry out effective and meaningful consultation with herders before granting mining licences that affected their rights; (d) create effective grievance mechanisms that were accessible and affordable to herders; and (e) guarantee that they were provided with adequate compensation (paras. 8–9).

61. In that light, an example of a good practice in resolving disputes between herder communities and mining operators is the recent resolution of a conflict between herders in the Gobi Desert and the Oyu Tolgoi mine, one of the largest copper mines in the world. In 2012, herders filed a complaint with the Compliance Adviser/Ombudsman, the independent recourse mechanism for the International Finance Corporation, arguing that the mining operations were destroying their livelihoods, health and culture. With the mediation of the Ombudsman, the herders and the operator agreed to form a tripartite council, consisting of representatives from the herders, Oyu Tolgoi and the Government, which acted as an independent, free-standing forum to resolve the complaints and deal with any future issues. They reached agreements that included commitments on the part of the mining company to construct new wells, improve the monitoring of the effects of the operations (including participatory monitoring with the herders) and improve health services for the local communities.<sup>37</sup> The case can be a model for how mining companies can consult with herders to ensure that the companies meet their responsibility to respect human rights.<sup>38</sup>

<sup>35</sup> See ECE, *Environmental Performance Reviews: Mongolia*, p. 65.

<sup>36</sup> See also similar concerns expressed by the Committee on the Rights of the Child (CRC/C/MNG/CO/5) and the Working Group on the issue of human rights and transnational corporations and other business enterprises (A/HRC/23/32/Add.1).

<sup>37</sup> The agreements are available at [www.accountabilitycounsel.org/wp-content/uploads/2017/08/Complaint-Resolution-Agreement-1\\_ENG.pdf](http://www.accountabilitycounsel.org/wp-content/uploads/2017/08/Complaint-Resolution-Agreement-1_ENG.pdf); and [www.accountabilitycounsel.org/wp-content/uploads/2017/08/Complaint-Resolution-Agreement-2\\_ENG.pdf](http://www.accountabilitycounsel.org/wp-content/uploads/2017/08/Complaint-Resolution-Agreement-2_ENG.pdf).

<sup>38</sup> See Sophie Edwards, "How a group of Mongolian herders took on a mining giant — and won", 9 August 2017. Available at [www.devex.com/news/how-a-group-of-mongolian-herders-took-on-a-mining-giant-and-won-90765](http://www.devex.com/news/how-a-group-of-mongolian-herders-took-on-a-mining-giant-and-won-90765).

### C. Conservation and protected areas

62. The full enjoyment of human rights depends on healthy ecosystems, which in turn depend on biological diversity (see A/HRC/34/49, paras. 9–21). Mongolian culture has long recognized the importance of protecting sacred spaces within the natural environment. In the thirteenth century, Chinggis Khan designated four sacred mountains, one of which, the Great Burkhan Khaldun Mountain, is considered to be his birthplace and the site of his tomb. In the early eighteenth century, as part of the “Khalk Juram” Law, 16 mountains were designated as protected from hunting and logging. In 1778, the Bogd Khan Mountain, just south of Ulaanbaatar, was designated as a strictly protected area. Bogd Khan is generally considered to be the oldest national park in the world.

63. Since the United Nations Conference on Environment and Development in 1992, Mongolia has developed an extensive system of protected areas. The national system currently includes 20 strictly protected areas, covering almost 7.9 per cent of the entire territory of the country, and 32 national parks, covering over 7.6 per cent. In addition, Mongolia has designated 36 nature reserves (2.3 per cent of the territory) and 14 national monuments (another 0.9 per cent). Mongolia has thus already reached the target set by the Parties to the Convention on Biological Diversity for each country to designate at least 17 per cent of its territory as protected by 2020. Mongolian law also authorizes the designation of locally protected areas, which cover another 12 per cent of its territory. In addition, the Government has ambitious plans to expand the network of nationally protected areas to cover 30 per cent of the country by 2030.

64. The protected areas play key roles in conserving the habitats of endangered and threatened species, including the snow leopard, wild ass, red deer, musk deer, argali and ibex. With the dedicated work of conservationists and rangers and the support of local communities, protected areas can allow species to maintain or even increase their numbers. For example, in recent years, the population of snow leopards in the Turgan and Tsagaan Shuvuut protected areas has gradually increased, after many years of decline. The most famous conservation success story in Mongolia may be the *takhi*, or Przewalski’s horse, the last truly wild horse. After their numbers fell to under 40 and they became extinct in the wild in the 1960s, conservationists around the world worked for their recovery. They were reintroduced into the wild in the 1990s, including at three sites in Mongolia. The largest herd, at Hustai National Park, now has more than 300 mature individuals.<sup>39</sup>

65. Mongolians can be proud of their long history of respect for and preservation of the natural environment. However, today, the ecosystems in each of its four ecoregions are under increasing pressure from overgrazing, climate change, mining operations, agriculture and expansion of urban areas. One telling sign of these increasing pressures is the migration of herders to Ulaanbaatar and other urban settlements. Another is that many species, such as the snow leopard and the wild Bactrian camel, remain endangered; some, including the Gobi bear and the red deer, are critically endangered. Moreover, many species, including the saiga antelope and the red deer, have seen their numbers decline in recent years.<sup>40</sup>

66. With respect to some ecosystems, the protected areas have not provided adequate coverage.<sup>41</sup> Mongolia lacks systematized information on biodiversity protection. More generally, the Law on Special Protected Areas does not define criteria for the designation of protected areas or require the development and implementation of management plans.<sup>42</sup> While there are interesting initiatives involving the co-management of some protected areas by civil society organizations and local communities, the legal framework for community-based management has not yet been adopted. Moreover, there are again problems in implementation. The Special Rapporteur heard concerns that the network of protected areas has inadequate resources for effective monitoring and inspection.

<sup>39</sup> See Paige Williams, “The remarkable comeback of Przewalski’s horse”, *Smithsonian Magazine*, December 2016.

<sup>40</sup> ECE, *Environmental Performance Reviews: Mongolia*, p. 260.

<sup>41</sup> See World Wide Fund for Nature, Mongolia Programme Office, *Filling the Gaps to Protect the Biodiversity of Mongolia*, August 2010.

<sup>42</sup> ECE, *Environmental Performance Reviews: Mongolia*, p. 274.

67. While conservation is and should be a national priority, States must ensure that they comply with their human rights obligations in adopting and implementing conservation measures, just as they do in other areas. For example, restrictions on hunting and other uses of forests should be imposed only after consultation with local communities, especially communities that have long relied on such uses for their material and cultural existence. In particular, the Special Rapporteur is aware of complaints concerning restrictions on hunting in the Tengis Shishged protected area, in the forests of northern Mongolia near the border with the Russian Federation. Anti-poaching laws have been strictly applied to the small ethnic minority of the Dukha, also known as the Tsataans, who follow herds of reindeer and rely on the forests for their traditional way of life.<sup>43</sup> The Government should consult with them, and with others in their position, to find ways of including them in its management of the protected area and ensuring that the restrictions on hunting and other uses of the natural ecosystems do not prevent them from enjoying their culture and traditions.

68. The Special Rapporteur understands that the Government is considering revisions to its legislation on protected areas. This is a good opportunity to strengthen the laws, including by providing clearer guidelines for designation and management of protected areas, increasing the resources for monitoring and enforcement, and facilitating the participation of local communities in the monitoring and protection of protected areas.

## **D. Access to information, public participation and effective remedies**

69. The procedural rights of access to environmental information, public participation in environmental decision-making and access to effective remedies are crucial to ensure that members of the public are able to understand environmental issues, make informed contributions to decisions with environmental effects, and have access to judicial and other oversight bodies to ensure that human rights and domestic environmental standards are implemented.

### **1. Access to information**

70. The human right of all persons to seek, receive and impart information includes information on environmental matters (see A/HRC/37/59, annex, framework principle 7). Public access to environmental information enables individuals to understand how environmental harm may undermine their rights, including the rights to life and health. Access to information also supports their exercise of other rights, including the rights to freedom of expression and association, participation and remedy. States should regularly collect, update and disseminate environmental information, and should provide affordable, effective and timely access to environmental information held by public authorities, upon the request of any person or association, without the need to show a legal or other interest.

71. In Mongolia, the primary online platform for access to environmental information is the Environmental Information Centre ([www.eic.mn](http://www.eic.mn)), which is maintained by the Ministry of Environment and Tourism. The Ministry also makes information about its activities available on its own website ([www.mne.mn](http://www.mne.mn)). Information on the two websites is not always consistent, and it is not always clear why information is available on one website and not the other. Other ministries are not as proactive in making information about their work available. The 2011 Law on Information Transparency and Right to Information sets out the procedure for requesting information. In general, the law requires that public requests for information be answered within seven working days, which may be extended for another seven working days.

72. In practice, the accessibility of information varies greatly. On the positive side, the Special Rapporteur was impressed by the availability of information about air quality in the capital. For example, the municipal city authorities provide data on air quality on outdoor screens around the city; they also make the data broadly available on the Internet and through

<sup>43</sup> See Marine Gauthier and Riccardo Pravettoni, “‘We have nothing but our reindeer’: conservation threatens ruination for Mongolia’s Dukha”, *Guardian*, 28 August 2016.

mobile phone applications.<sup>44</sup> However, the availability of data on air pollution in the capital is not matched by monitoring in other regions, nor is there specific monitoring of the emissions of major polluters. Even in the capital, there is a lack of automated, consistent monitoring of air quality in *ger* districts — a particularly significant gap in the light of the attention paid to reducing air pollution emitted by their residents.<sup>45</sup>

73. Information is less available with respect to other environmental problems, including water quality, mining operations and pollution from dust. A recent report by the World Resources Institute concludes that information about water quality, in particular, is often unavailable, and that requests to the Government seeking such information have often received no response.<sup>46</sup> There appears to be no publicly available information about individual facility discharges, the permits regulating these discharges, or the compliance record of specific companies. No governmental agency requires the proactive release of information regarding discharges by large industries at a facility level, including permit information. Details of ownership, locations, and names of industries with permits to discharge pollutants into water bodies are not available.<sup>47</sup> Similarly, it appears to be difficult or impossible to access information on enforcement actions. More generally, environmental management plans, which are required as part of the environmental permitting process, are often not accessible.<sup>48</sup>

## 2. Public participation

74. The right of everyone to take part in the government of their country and in the conduct of public affairs includes participation in decision-making related to the environment (A/HRC/37/59, annex, framework principle 9). To be effective, public participation must be open to all members of the public who may be affected, and must occur early in the decision-making process.

75. The Special Rapporteur was very impressed by the dedication, knowledge and energy of the representatives of civil society he met during his visit. However, the Special Rapporteur heard many complaints from civil society about the difficulty of participating in environmental decision-making. For example, while the environmental impact assessment procedure provides for public participation, it only allows 30 working days for consulting the public. This is typically not enough time to organize consultations, especially when the proposed project affects herders, who may be dispersed over a large area and therefore difficult to reach. Moreover, there is often a lack of capacity in governmental agencies and business enterprises to run an effective, inclusive consultation process. As a result, the widespread feeling is that the consultation for such projects is often meaningless.

## 3. Access to effective remedies

76. The obligations of States to provide for access to effective remedies for violations of human rights encompass remedies for violations of human rights relating to the environment (A/HRC/37/59, annex, framework principle 10). States should ensure that individuals have access to judicial and administrative procedures that meet basic requirements. The procedures must: (a) be impartial, independent, affordable, transparent and fair; (b) review claims in a timely manner; (c) have the necessary expertise and resources; (d) incorporate a right of appeal to a higher body; and (e) issue binding decisions, including for interim measures, compensation, restitution and reparation. States should provide guidance to the public on how to seek access to these procedures, and should help to overcome any obstacles to access, such as difficulties relating to language, illiteracy, expense or distance.

77. In Mongolia, members of the public and civil society organizations have the right, in principle, to bring challenges concerning the legality of environmental decisions. In practice, however, there are serious obstacles to bringing environmental cases. Most significantly, the

<sup>44</sup> Available, in Mongolian only, at [www.tsag-agaar.gov.mn/](http://www.tsag-agaar.gov.mn/).

<sup>45</sup> ECE, *Environmental Performance Reviews: Mongolia*, p. 205.

<sup>46</sup> World Resources Institute, “Thirsting for justice: transparency and poor people’s struggle for clean water in Indonesia, Mongolia, and Thailand”, 2017, pp. 42, 43 and 50.

<sup>47</sup> *Ibid.*, p. 42.

<sup>48</sup> ECE, *Environmental Performance Reviews: Mongolia*, p. 64.

law requires the payment of stamp duties, which are often too expensive to allow the cases to be brought. Under the 2016 Law on Decision of Administrative Cases, costs may be waived when the claimant is representing the public interest. However, it appears that this provision has not yet been applied, due to resource constraints.<sup>49</sup> There are also widespread concerns in the environmental community that courts may not have the necessary technical expertise and that they may not be sympathetic to public interest cases brought by environmental organizations against mining interests, which may bring powerful pressure (including, allegedly, corruption) on the courts.

## E. Protection of environmental defenders

78. Human rights defenders include individuals and groups who strive to protect and promote human rights relating to the environment (see A/71/281, para. 7). Those who work to protect the environment on which the enjoyment of human rights depends are protecting and promoting human rights as well, whether or not they self-identify as human rights defenders. They are among the human rights defenders most at risk; on average, four environmental and land defenders are killed every week, somewhere in the world. States must provide a safe and enabling environment for defenders to operate free from threats, harassment, intimidation and violence. Among other things, States must provide for appropriate training for security and law enforcement officials, and ensure the prompt and impartial investigation of threats and violations and the prosecution of alleged perpetrators (see A/71/281, chaps. V–VI, A/HRC/25/55, paras. 54–133).

79. Although Mongolia has not experienced threats and violence directed against environmental defenders to the degree that many other countries have, the Special Rapporteur was still alarmed to hear from some environmental defenders during his visit that they have been threatened or even subjected to violence, especially when they have tried to oppose illegal mining or poaching. He heard numerous testimonies indicating higher risks for those defenders who operate in remote areas or raise sensitive issues.

80. The most disturbing case is the death of Lkhagvasumberel “Sumbee” Tumursukh, whose body was found on 11 November 2015 in Khuvsugul Lake. The police ruled his death to be suicide-by-drowning, despite the fact that over the preceding two years he had been attacked on at least three separate occasions, apparently as a result of his work with the Mongolian Snow Leopard Conservation Foundation to enforce protected area laws at Tost Uul, a mountain in the Altai Mountains in the Gobi Desert.<sup>50</sup> This progression is all too typical of the untimely deaths of environmentalists around the world: threats, followed by violence, followed by murder. Understandably, many people are not satisfied with the official explanation of the loss of this young conservationist. To avoid the signal of impunity that such an inconclusive investigation sends, the national Government should open its own investigation into the death. In addition, it must take steps to ensure that other members of the conservation organization are safe from attack.

81. The Special Rapporteur also heard of the use of defamation laws to silence environmental defenders, along with journalists and other critics of mining operations. While noting that the general defamation provision has been removed from the Criminal Code, he echoes concerns that have been expressed by the Human Rights Committee about the remaining provisions on defamation in the criminal law, and reports about the increasing use of civil law defamation clauses, which has a chilling effect that may unduly restrict the exercise of freedom of expression.<sup>51</sup>

82. The National Human Rights Commission has prepared a draft law on the protection and promotion of human rights defenders, which is under review by the parliamentary Subcommittee on Human Rights. Enacting the law should be among the State’s highest priorities.

<sup>49</sup> *Ibid.*, p. 125.

<sup>50</sup> See [www.justice4sumbee.weebly.com/uploads/6/6/4/8/66489409/sumbee\\_letter.pdf](http://www.justice4sumbee.weebly.com/uploads/6/6/4/8/66489409/sumbee_letter.pdf).

<sup>51</sup> See CCPR/C/MNG/CO/6, para. 37.

## V. Conclusions and recommendations

83. It is symbolic of the challenges facing Mongolia that the Bogd Khan mountain, long a jewel of its system of protected areas, is increasingly being encroached upon, as Ulaanbaatar expands across the Tuul River. For Mongolia to preserve its natural heritage, it will have to make hard decisions and say no to some proposals for economic expansion. More fundamentally, it will have to devote the necessary resources to protect its environment not just on paper, but in practice. The following paragraphs highlight some of the principal recommendations relating to the areas discussed in the present report.

84. With respect to air pollution, the Special Rapporteur recommends that Mongolia:

- (a) Give more sustained, high-level attention to the problem in the capital, especially air pollution from the *ger* districts, in order to determine which approaches tried in the past have been most successful and to build on them;
- (b) Avoid restrictions on the human right of free movement;
- (c) Enforce existing laws, including by imposing the required fees on emissions of pollutants, and provide the resources necessary to implement the National Programme on Reduction of Air and Environmental Pollution;
- (d) Move much more rapidly to shift away from coal production towards renewable sources of energy, especially wind and solar energy;
- (e) Further improve the mechanisms for obtaining and publicizing data on concentrations and emissions of air pollutants;
- (f) Establish monitoring and regulation of dust pollution.

85. As Mongolia reviews its laws on minerals and mining, civil society should have opportunities for informed and meaningful participation in this process. The Special Rapporteur encourages Mongolia to:

- (a) Clarify and strengthen the standards for reclamation of mines, and provide more effective oversight of reclamation practices;
- (b) Provide local communities with more time to conduct consultations on proposals for mines;
- (c) Increase the transparency of agreements between mining companies and local authorities;
- (d) Ensure that the conclusions of environmental assessments are taken into account in the environmental management plans for mines;
- (e) Provide for full transparency of payments by mining companies into reclamation funds, and of payments of royalties to local development funds;
- (f) Provide for effective grievance mechanisms that are accessible to affected communities, including herder communities, taking into account the positive resolution of the conflict between herders and the Oyu Tolgoi mine.

86. In addition, the Special Rapporteur urges Mongolia to:

- (a) Conduct a strategic environmental assessment of the proposal for Gold-2, and provide for effective rehabilitation and compensation for the effects of Gold-1;
- (b) Increase the resources for inspection of mining operations by the General Agency for Specialized Inspections, to ensure that mining companies comply with all relevant laws;
- (c) Redouble efforts to eradicate corruption, in accordance with the recommendations of the Committee on Economic, Social and Cultural Rights and the conclusions of the United Nations Development Programme.

87. With respect to conservation, the Special Rapporteur applauds Mongolia for its plans to continue to expand its system of protected areas. He encourages Mongolia to ensure that its protected areas cover the range of different ecosystems and species habitats in the country, and to greatly increase the resources devoted to monitoring and enforcement.

88. The Special Rapporteur urges Mongolia to strengthen its conservation laws, including by:

- (a) Providing clearer guidelines for designation and management of protected areas;
- (b) Providing for more systematic and complete information on biodiversity conservation, including on the status of ecosystems and species;
- (c) Providing for and facilitating greater participation by local communities in the monitoring and protection of protected areas;
- (d) Ensuring that restrictions on hunting and other uses of natural ecosystems respect the human rights of traditional communities.

89. With respect to information, public participation and access to remedies, the Special Rapporteur encourages Mongolia to:

- (a) Strengthen its mechanisms for acquiring and publicizing information on environmental quality and threats, especially with respect to air pollution, water pollution and mining operations;
- (b) Ensure that environmental impact assessments, reclamation plans, environmental management plans and other relevant information are made easily accessible;
- (c) Ensure that civil society and concerned individuals have the opportunity to participate meaningfully in decision-making on mining projects;
- (d) Reduce obstacles to bringing environmental cases, including by implementing provisions that allow stamp duties and other fees in public interest litigation to be waived;
- (e) Provide for training of law enforcement and judicial personnel in environmental matters.

90. The Special Rapporteur suggests that the Government consider establishing an environmental ombudsperson with a mandate to serve as chief environmental advocate and focal point for environmental information and complaints. The environmental ombudsperson would not take the place of other agencies or duplicate their duties. Instead, the office would serve as a kind of “green door” to the Government. Mongolians raising complaints or seeking information on environmental matters would be able to contact the office of the environmental ombudsperson, which would then direct the inquiry to the correct office and ensure that the person received a response in a timely manner. It would follow up with public reports and recommendations. The ombudsperson would also proactively bring together environmental information from throughout the Government and make it publicly available in a user-friendly format. The ombudsperson could also support local communities in understanding the effects of proposed mines, and in negotiating agreements with mining companies.

91. The Special Rapporteur urges Mongolia to ratify the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention). Becoming a party to the Convention would assist the Government to ensure that it is meeting international standards, and it would benefit from international cooperation to assist it to implement the standards effectively in practice.

92. With respect to the protection of environmental defenders, the Special Rapporteur urges the Government to:

(a) Open its own investigation into the death of Lkhagvasumberel Tumursukh and take steps to ensure that other environmental defenders, including the other members of his conservation organization, are safe from harassment and attack;

(b) Enact the law on the protection and promotion of human rights defenders drafted by the National Human Rights Commission.

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