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促进和保护所有人权——公民权利、政治权利、
经济、社会及文化权利，包括发展权

对蒙古的访问

人权维护者处境特别报告员的报告*

概要

人权维护者处境特别报告员米歇尔·福斯特于2019年4月30日至5月13日访问了蒙古。此次访问的主要目的是，根据该国在国际人权法包括《个人、群体和社会机构在促进和保护普遍公认的人权和基本自由方面的权利和义务宣言》之下的义务和承诺，评估人权维护者的状况。

特别报告员在报告中分析了保护人权维护者的法律和体制框架及人权维护者开展工作的环境。他发现，该国有大量法律普遍保障人权维护者的权利和自由，但他对该国未能在实践中有效执行这些法律感到关切。对人权维护者而言，蒙古总体上是一个相对安全的国家，他对此表示赞赏；但他认为，环境相对安全并不意味着人权维护者在活动中能够得到鼓励、扶持和赋权。污名化、压力、刑事定罪、社交媒体上的仇恨言论以及最近的政治言论和立法修正案等种种障碍，阻碍了人权维护者的工作。他最后指出，蒙古政府在特别报告员到访之前就开始着手制定一项严格保护人权维护者的法律，这将成为该国承认和保护人权维护者的有力举措。

* 报告概要以所有正式语文分发。报告正文附于概要之后，仅以提交语文分发。



Annex

Report of the Special Rapporteur on the situation of human rights defenders on his visit to Mongolia

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I. Introduction

1. The Special Rapporteur on the situation of human rights defenders conducted an official visit to Mongolia from 30 April to 13 May 2019, at the invitation of the Government. The main objective of the visit was to assess the situation of human rights defenders in the context of the State's obligations under international human rights law, including the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders).

2. The Special Rapporteur held meetings in Ulaanbaatar, Airag, Saynshand and Zuunbayan. During his visit, he met with the President of Mongolia, the Minister of Foreign Affairs, the Minister of Environment and Tourism, the State Secretary of the Ministry of Justice and Internal Affairs and the Chief Adviser to the Prime Minister. He also met with the Deputy Governor of the City of Ulaanbaatar in charge of urban development issues, and the Governors of Zuunbayan and Airag. He also had the opportunity to meet with the Speaker of the Parliament and the head of the subcommittee on human rights of the Parliament. Moreover, he met with the Chief Commissioner of the National Human Rights Commission, the Director of the Data Protection Unit and the Chair of the General Authority of State Registration. He also held meetings with representatives of the Office of the Prosecutor General and of the Supreme Court. In addition, he met with members of the international community, including the country director of the Asian Development Bank, and representatives of the private sector – in particular, representatives from the company Orano Mining.

3. The Special Rapporteur met with over 100 human rights defenders, including representatives of non-governmental organizations, journalists and media workers, environmental defenders, children rights advocates, trade unionists, herder activists, anti-corruption advocates, whistle-blowers, lawyers and individuals fighting discrimination against persons who are lesbian, gay, bisexual, transgender and intersex).

4. The Special Rapporteur is very grateful to the Government of Mongolia for its invitation and its very good cooperation and support throughout the visit. He also thanks the Office of the United Nations Resident Coordinator in Mongolia for its valuable support prior to and after the visit. He expresses his sincere gratitude to the individuals who took the time to meet with him and share their testimonies, insights and recommendations.

5. The Special Rapporteur also appreciates the dialogue with the Government of Mongolia, which continued after his visit. In September 2019, he notably took an active part in a seminar related to a proposed law on human rights defenders, organized by the Office of the United Nations High Commissioner for Human Rights, the National Human Rights Commission of Mongolia and the Ministry of Foreign Affairs.

II. International and national legal frameworks

A. International legal framework

6. Mongolia is party to most core international human rights treaties and protocols, including the International Covenant on Civil and Political Rights and its Second Optional Protocol, aiming at the abolition of the death penalty; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the International Convention for the Protection of All Persons from Enforced Disappearance; the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights; and the Convention on the Rights of the Child and its Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. However, Mongolia has yet to become a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Special Rapporteur

expresses his concerns at a presidential initiative aimed at restoring the death penalty for brutal offences of child sexual abuse, which if adopted would violate the State party's international human rights obligations.

7. The Special Rapporteur commends Mongolia for its engagement at the Human Rights Council, including in relation to the adoption of resolutions on human rights defenders, civic space and many more issues.

8. Mongolia has a standing invitation to all Special Procedures of the Human Rights Council. The Government's cooperation with international human rights mechanisms is demonstrated by its acceptance of no less than five visits by special rapporteurs on issues particularly important to the country – including human rights and the environment, the right to water and sanitation, or the effects of foreign debts on the enjoyment of human rights – in just the past three years. It will soon undertake its third review under the Universal Periodic Review of the Human Rights Council.

B. National legal framework

1. Constitutional guarantees

9. The Special Rapporteur welcomes the constitutional guarantees for numerous rights and freedoms that are essential to the work of human rights defenders. Of significant importance is article 16 of the Constitution, which recognizes the right of citizens to take part in the conduct of public affairs, the right to form a party or a public organization, the right to submit a petition or a complaint to State bodies, the right to personal liberty and safety, the right to justice, the right to seek and receive information, as well as the freedom of conscience and religion, the freedom of thought and expression and the freedom of movement. Article 19 of the Constitution further affirms that the State is responsible for creating economic, social, legal and other guarantees to ensure human rights and freedoms, to prevent violations of human rights and freedoms and to restore any infringed rights. The Constitution also enshrines the principle of equality and non-discrimination in its article 14.

10. According to article 10 of the Constitution, international treaties to which Mongolia is a party shall become effective as domestic legislation upon the entry into force of the laws or on their ratification or accession. In the case of conflict with domestic laws, the Constitution specifies that the provisions of the international treaty take precedence.

2. Law protecting human rights defenders

11. The Special Rapporteur warmly welcomes current discussions for the adoption of a specific law to protect human rights defenders. He appreciates the political commitment of the Cabinet to consider this law. Given that no other country in the region has adopted a law to protect defenders, the adoption of legislation on this matter would prove to be a powerful step forward in the country and the region as a whole.

12. Human rights defenders in Mongolia do not face the same challenges faced by their fellow colleagues in the region; however, the adoption of a robust law to protect their rights would be instrumental in ensuring they can conduct activities to promote and protect human rights free from intimidation, pressures, violence, reprisals or unreasonable restrictions from State and non-State actors. Protections granted by a new law on human rights defenders might not be used on a daily basis, but such a law would give people the assurance that their important work is recognized and protected.

13. However, the Special Rapporteur regrets the alleged resistance from the Ministry of Justice and Home Affairs to adopt the law on human rights defenders. The resistance is reportedly related to concerns that the new law might duplicate public service functions and increase public expenditure. According to information received, the Cabinet most recently discussed the draft law on 11 December 2019. Although most Cabinet members were said to be in favour of the adoption of the law, or at least neutral, the Cabinet could not agree on the matter and decided to reconsider it at its next session.

14. The Special Rapporteur is firmly convinced that there is no duplication in adding legal guarantees that protect individuals and groups against attacks or undue interference. Protective guarantees may well exist in other laws, but such laws are neither designed for the specific needs of defenders, nor are they intended to provide them with adequate redress, as set forth in article 9 of the Declaration on Human Rights Defenders.

15. In order to address the concern that a new law might imply an increase in public spending, the Special Rapporteur holds the view that the protection mechanism provided for in the current draft law could be adopted at a later stage. Adequate financial, human and other resources will undeniably need to be allocated to the mechanism. Even more so, the budget and the independence of the national human rights institution where the mechanism would be placed will also need to be increased and strengthened. In particular, the Special Rapporteur believes that the protection mechanism should be equipped with the ability to coordinate actions with the relevant line ministries and institutions with a view to ensuring that those responsible for violations and abuses against defenders are held accountable. It should focus on long-term protection measures and on prevention strategies to assess and mitigate the risks faced by defenders.

16. The Special Rapporteur congratulates the participatory process that accompanied the drafting of this law. He commends the Government for giving the National Human Rights Commission and civil society the opportunity to have a significant role in the drafting process.

17. The current draft law complies to a large extent with international standards, in particular with the Declaration on Human Rights Defenders. It contains numerous protective provisions, including a detailed list of rights guaranteed to human rights defenders, and proposes the creation of a committee on the protection of human rights defenders, which would be integral to recognizing and protecting their work.

18. The Special Rapporteur feels that the concept of human rights defenders is not sufficiently known, understood and recognized in the Mongolian society. By advocating for freedom of expression, justice or equality of rights for men and women and courageously speaking out against corruption, injustice, discrimination or environmental destruction, human rights defenders contribute to ensuring inclusive, accountable and prosperous societies. The Special Rapporteur firmly believes that the adoption of this law could play a decisive role in recognizing the important role played by human rights defenders in the country, including, but not limited to, women and children human rights defenders, environmental defenders, media workers, trade unionists, anti-corruption advocates and whistle-blowers. In the light of Council resolution 40/11, adopted in March 1979, the Special Rapporteur believes that an explicit reference to environmental human rights defenders would provide an adequate recognition of their work; ensure their rights, protection and safety; and be extremely useful in enabling their activities, with due consideration to the specific challenges they face. Naturally, however, any list made in the law would necessarily have to be indicative and non-exhaustive.

19. The Special Rapporteur warmly encourages the Government to continue working with civil society in this process and to adopt this important legislation that would place Mongolia at the forefront of human rights defender protection in the region and beyond.

III. Situation of human rights defenders

A. General context

20. Human rights defenders can often conduct their human rights work freely in Mongolia. A good body of laws that generally guarantees the rights and freedoms of human rights defenders is in place. Although the implementation of these legal guarantees is not yet fully effective, in general, Mongolia is a relatively safe country for human rights defenders.

21. However, this relatively safe environment does not translate into a situation where human rights defenders are encouraged, enabled and empowered in their activities. Their

work is hindered by obstacles such as stigmatization, pressure, criminalization, hate speech on social media, the lack of understanding of who human rights defenders are, and the lack of access to information and to effective participation in decision-making processes. During his visit, the Special Rapporteur was informed about various forms of violations and abuses against human rights defenders, including intimidation; surveillance; blaming and stigmatizing statements, especially on social media; and civil law proceedings initiated under the guise of defamation. Several defenders also mentioned that if they were to get more vocal or involved in what one might consider more-sensitive issues, their relatives could face social or economic reprisals, such as obstacles to access to jobs, scholarships or projects. Some individuals who met the Special Rapporteur during the visit indicated that more defenders would have liked to have met with him but did not dare to do so for fear of reprisals. Some also referred to the recent presidential elections, during which an increasingly divisive discourse emerged, which had deterred some defenders from speaking out.

22. Given that the community in Mongolia is small and interconnected, these pressures and stigmatization can at times create an environment of self-censorship owing to the fear that any position on political or economic matters could result in retaliation, anonymous threats, pressure from relatives or worse. It is imperative that any form of violence – including threats of violence, online or offline, against human rights defenders – is investigated and perpetrators brought to justice. Impunity for rights violations or abuses not only denies the right of the victim to justice, but it also has a serious deterrent effect for anyone standing up for human rights. In a context where the work of defenders is insufficiently known, attacks, pressure or hate speech against defenders for cheap political gains adversely impact those that defenders serve: the society as a whole.

23. During the visit, human rights defenders also repeatedly referred to the murder of Zorig Sanjasuuren as an example of the possible risks faced when promoting human rights and democratic principles. Mr. Sanjasuuren was a Member of Parliament and a pro-democracy activist who was stabbed to death by attackers in 1998. In fact, the visit of the Special Rapporteur took place just a few weeks after the revelation of a classified video showing acts of torture committed against the two individuals imprisoned for the murder. The revelation of the video profoundly affected the public, because doubts about the guilt of the convicted have never been allayed fully.¹ Defenders also raised concerns at the lack of effective investigation into the recent troubling deaths of two human rights defenders: Lkhagvasumberel “Sumbee” Tumursukh and Luntan Bolormaa. There is a general fear within the defenders’ community in Mongolia that working on certain issues, such as human rights and the environment, anti-corruption or business accountability, may be dangerous. As the Government continues to work on the elaboration of a law on human rights defenders, the pressures that defenders face or perceive, from State institutions, private sector representatives or the general public, need to be considered very seriously.

B. Corruption and independence of the judiciary

24. During his visit, the Special Rapporteur heard reports that corruption continues to exist within the three branches of the State – the executive, the legislative and the judiciary – in the capital and in the countryside, thereby undermining the confidence of the public in the political and justice systems. The Special Rapporteur is seriously concerned about the adverse impact of corruption on human rights in general, and human rights defenders who report or strive to address wrongdoing and malpractice, in particular.

25. With the purported objective of countering corruption practices, in 2019 the Parliament passed new amendments to the law on the legal status of judges, the law on the public prosecutor’s office and the anti-corruption law. The amendments were passed in an emergency session of the Parliament without hearings or public consultations. The

¹ Inter-Parliamentary Union, “Committee on the Human Rights of Parliamentarians: report on the mission to Mongolia – 11–13 September 2017”. Available at www.ipu.org/sites/default/files/documents/report_mission_mongolia-e.pdf.

amendments allow the National Security Council – chaired by the President of Mongolia and composed of the Speaker of the Parliament and the Prime Minister as core members – to make recommendations to revoke judges and the heads of the public prosecutor's office and the anti-corruption agency.

26. One day after the amendments were passed, the Chief Justice of the Supreme Court, the Prosecutor-General and the Deputy Prosecutor were dismissed by presidential order, issued upon recommendation of the National Security Council. Later, on 2 May 2019, the head of the anti-corruption agency was also dismissed. Reportedly, this initiative came at a time when several parliamentarians were being investigated by public prosecutors and the anti-corruption agency over allegations that they embezzled public funds in the context of a scandal involving small and medium-sized enterprises.

27. The Special Rapporteur is gravely concerned that the involvement of the National Security Council in the procedure for the dismissal of judges constitutes a serious breach to the principles of independence of the judiciary and separation of powers, which in turn can have a detrimental impact on democracy and human rights.² The Special Rapporteur is seriously concerned that these reforms may deter judges and prosecutors from taking action against corruption, as they may feel compelled, in politically sensitive cases, to follow the instructions received from the executive branch to avoid or minimize the risk of being dismissed. He recalls that in its general comment No. 32 (2007) on the right to equality before courts and tribunals and to fair trial, the Human Rights Committee stressed that the requirement of competence, independence and impartiality of a tribunal, in the sense of article 14 (1) of the International Covenant on Civil and Political Rights, is an absolute right that is not subject to any exception. In general comment No. 32, the Committee made it clear that the dismissal of judges by the executive – for example, before the expiry of the term for which they have been appointed – without any specific reasons given to them and without effective judicial protection being available to contest the dismissal, was incompatible with the independence of the judiciary (para. 20).

28. The Special Rapporteur wholeheartedly supports efforts to fight corruption that are in line with international human rights law. He notes positively that the rank of Mongolia on the Transparency International Index has improved from 103rd place in 2017 to 93rd place in 2018. He firmly believes that combating corruption is paramount to generating indispensable public revenue and to restoring public trust in the ability of the State to hold perpetrators of malpractice into account. However, he believes that the amendments made to the law on the legal status of judges, the law on the public prosecutor's office and the anti-corruption law constitute a wrong remedy to a real problem. He has serious concerns that those reforms could prevent defenders from addressing or even speaking out against human rights violations. They present a serious risk of limiting the capacity of the judiciary to combat corruption and impunity. He underscores that appropriate measures need to be put in place to ensure legitimate action against corruption does not adversely affect judicial independence, which is a fundamental pillar of any democracy.

29. Transparency and accountability are indispensable in addressing the key challenges facing Mongolia for the future, which include irresponsible mining investments, rural exodus and related air pollution, preservation of the nomadic culture and environmental protection. The Special Rapporteur is convinced that a professional, accountable and transparent public service, upholding the highest standards of efficiency, competence and integrity, is one of the essential components of good governance and human rights protection. In turn, good governance is essential for sustained economic growth and sustainable development.

² See the communication sent by the Special Rapporteur, together with the Special Rapporteur on the independence of judges and lawyers, after his visit to Mongolia, OL MNG 1/2019, 14 May 2019. Available at spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24599.

C. Freedom of expression

30. The Special Rapporteur is concerned that public authorities, the private sector and members of the general public have, in recent years, stigmatized, blamed, discredited or even filed lawsuits against human rights defenders in the name of defamation. The Special Rapporteur welcomes the removal of the criminal offence of defamation in the 2015 revised Criminal Code. He further welcomes that article 1.4.4 of the revised Criminal Code adequately protects critics from criminalization, since the article indicates that no criminal offence should be imposed for individual's opinion and faith. However, he is concerned about repeated rumours heard during his visit that the defamation clause might be reintroduced in the Criminal Code in the future. The Special Rapporteur warns that any regression on this matter would have a chilling effect on freedom of expression, which may contradict international human rights law and principles.

31. Further, the Special Rapporteur expresses serious concerns at the use of a civil law defamation provision to silence critics. Under article 6.21 of the law on administrative offences, the distribution of false information affecting the honour and reputation of a person or a legal entity should be punishable. Article 6.21 further stipulates that breaching the provision will result in a fine equal to 2,000 units (about \$765) for libel concerning an individual, and 20,000 units (about \$7,650) for libel relating to legal entities. Article 6.21 can be used – and in the past has been used – as a threatening tool against human rights defenders. Further, articles 497 and 511 seem to place the burden of proof on the defendant. The articles indicate that the party responsible for distributing information that damaged the honour, dignity and business reputation of others must prove the accuracy of the information it disseminated. If it fails to do so, it shall be liable to compensate the non-material damage in monetary or other form separately from the material damage.

32. According to data provided by human rights organizations, between July 2017 and March 2018, a total of 230 journalists, media staff and social media users were investigated under article 6.21 of the law on administrative offences.³ A total of 95 defamation cases were reportedly filed against media outlets and journalists during this period, for fines amounting to about 98 million Mongolia Tughrig (about \$40,000).⁴ Between May 2018 and May 2019, a total of 374 complaints were filed, with a total of 118 million Mongolia Tughrig (about \$45,000) ordered on 57 individuals and two legal entities.

33. Human rights defenders opposing extractive industries or corruption practices are at particular risk from the misapplication of the law on administrative offences. The Special Rapporteur urges the Government to ensure that article 6.21 of the law does not adversely affect journalists, civil society activists or whistle-blowers who report on the activities of State and local authorities, as well as that of private companies and others. Given its potential deterrent effect on critical voices who may be exposed to particularly heavy fines, he strongly advises putting effective legal safeguards in place to ensure that criticism does not lead to persecution or harassment.

34. Furthermore, during the visit, the Special Rapporteur was apprised about new requirements for Internet users that could inhibit their freedom of expression online. Since 2014, private Internet providers and mobile phone operators have been required to display the Internet protocol address of users posting comments on their websites. In addition to this already invasive requirement, the Special Rapporteur learned that the Parliament was, at the time of the visit, considering amendments to the Communications Law of Mongolia. If passed, the amendments would require social media users to divulge their national registration number on social media platforms. If adopted, the ID of individuals, which is currently attached to telephone numbers, would be made available online.

35. The Special Rapporteur echoes the concerns voiced by some officials that he met: the disclosure of personal information online is a threat to privacy. He strongly advises

³ Forum Asia, "Mongolia: time to move from promises to actions", 14 November 2018. Available at www.forum-asia.org/?p=27678.

⁴ Globe International Center NGO, "Media freedom report: May 2017–May 2018" (Ulaanbaatar, 2018). Available at www.globeinter.org.mn/images/upld/Media_freedom_report_2017eng.pdf.

disassociating telephone numbers with national registration numbers, and suggests linking them to random digits. He is seriously concerned that the sharing of the personal details of users with social media companies could breach the rights of users to privacy and to freedom of expression and association, noting that some information contained in the national registration is personal and confidential by nature, such as one's age or gender. He is also wary that such a new requirement would provide private companies with the ability to collect consumer data and information and use it for their own interests, including for commercial purposes.

D. Access to information and participation in decision-making

36. The right to freedom of expression is intertwined with the right to seek, receive and impart information. Effective access to information is particularly important in a country that is resource-driven and exposed to private investment that may have an impact on communities or the environment. While Mongolia was the fastest-growing economy in the world with an impressive 17.3 per cent growth in 2011, it faced a sharp slowdown in the following years, which were marked by high-level debt. The economy is now again on the rise but the financial arrangement between Mongolia and the International Monetary Fund – amounting to about \$5.5 billion – leaves it accessible to investors, who do not systematically disclose information or ensure public participation. During the visit, the Special Rapporteur heard repeated testimonies from civil society actors that mining licences had at times been granted despite public protests. Although restoring the confidence of investors is essential, it is equally vital to ensure economic growth is made sustainable, in order to benefit the society as a whole. As for any country, economic development must go hand in hand with respect for the environment, preservation of people's culture, respect for workers' labour rights, and public involvement and participation.

37. The legal framework governing access to information complies to a large extent with international norms in this respect. Although some improvements may still be necessary, the Law on Information, Transparency and Freedom of Information of 2011 has many admirable aspects for the participation of civil society. However, more efforts are needed to effectively implement it and make it known to State officials and the public. The Special Rapporteur is mindful that implementing this law in such a vast but sparsely populated country may pose some challenges, but he is concerned that the law is often violated.

38. The Law on Information, Transparency and Freedom of Information requires that public consultations be organized and that the approval of local community be obtained in order for a mining project to start its extractive work. Local authorities can also participate in the process, thus guaranteeing that the public interest will be given primary consideration. At times, some mining operations have been stopped after community meetings have exposed risks to human rights and the environment. However, the Special Rapporteur learned that public consultations are too often pro forma. For instance, it is reported that consultations only last for a period of 30 working days, which is insufficient to discuss projects that are often complex and multidimensional. Given that the population is nomadic and dispersed over a large area, the time proposed to gather affected communities and organize consultations is too short to be inclusive. Some have also voiced concerns at the collusion between local authorities and the business sector outside the capital, undermining public participation and accountability. The Special Rapporteur is also concerned that the unbalanced economic relationship between family herders and major companies has not always allowed for public consultations and participation. Others voiced concerns that too often, companies consult and rely only on those who are favourable to their extractive schemes and exclude those more reluctant to their projects. Reports received also claim that in some cases, development projects, such as scholarships, were given to supporters of the mining operations, or were initiated only after wrongdoings had been discovered.

39. During his visit, the Special Rapporteur met with local governors, herders, community leaders and private companies in the regions of Airag and Saynshand/Zuunbayan. In the majority of the projects visited, prior consultations had been

held by companies – often with the presence of a representative of the State – but their effectiveness had been questioned by the affected communities and human rights defenders. A large percentage of the population in those areas felt pressured and not sufficiently consulted for large-scale development projects. Local communities felt that, in many cases, companies came to the area to sell their projects rather than to engage meaningfully with the local population. Local authorities that were met acknowledged the challenges posed by some economic projects, and some reported experiencing difficulties in regulating the relationship between herders and companies. At times, the disagreement between those in favour of and those against mining operations has led to polarization in the community, which requires an effective response from the State in order to avoid further human rights violations. Responsible and accountable business behaviours, together with an open and participatory public process, are essential for sustainable development.

40. Ensuring public participation and protection is a responsibility of both the State and the private companies involved in large-scale development projects. Realizing the right to participation requires effective measures for the population to receive reliable and pluralistic information and to be in a position to freely express its views and form an informed opinion. The Special Rapporteur underlines that participation goes beyond mere consultations: it implies active involvement and empowerment of defenders and the building of their capacity to interact effectively with other stakeholders (A/68/262, para. 46). It also requires that relevant authorities provide justifications for decisions made and avenues for effective redress.

41. In order to enforce the right to access information and to participate in decision-making processes, the Special Rapporteur echoes the call made by the former Special Rapporteur on human rights and the environment, who recommended that Mongolia create an environmental ombudsperson. The ombudsperson could have the role of focal point, ensuring the provision of publicly available and easy-to-understand environmental information, including reasoning for the mining projects, independent inspections and rehabilitation. The ombudsperson would also have the authority to receive complaints from defenders and the general public.

E. Freedom of association and of peaceful assembly

42. The Special Rapporteur welcomes the existence of a vibrant civil society in Mongolia. According to the information provided by the General Authority for State Registration, there are currently over 8,000 registered non-governmental organizations in the country, including more than 90 dealing with human rights.

43. The Law on Non-Governmental Organizations of 1997 complies to a large extent with international standards. However, the Special Rapporteur is concerned about a parliamentary initiative aimed at reforming the law. A key justification of the reform is to combat money-laundering, but a closer examination seems to indicate an inclination to follow a more global trend towards restricting foreign funding. Reportedly, the concept section of the proposed law on non-profit legal entities states that the funding of civil society organizations is prone to risks of terrorism financing and money-laundering and mentions the minimal direct involvement from the Government (2 per cent of total funding).⁵ Civil society representatives who met with the Special Rapporteur expressed serious concerns regarding the initiative, which could bring new obstacles to registration and to foreign funding. They also highlighted that current discussions take place in an increasingly nationalist and populist context with some public officials making public statements suggesting that foreign-funded organizations did not work for the national interest, which could expose defenders to various forms of harassment.

44. In the context of article 13 of the Declaration on Human Rights Defenders, the Special Rapporteur recalls that the Human Rights Council, in its resolution 22/6, called upon States to ensure that reporting requirements placed on individuals, groups and organs

⁵ Jargalsaikhan Dambadarjaa, “Three risks looming over our civil society”, *The Defacto Gazette*, No. 1 (102), 18 July 2019.

of society did not inhibit functional autonomy, and that they did not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders other than those ordinarily laid down for any other activity unrelated to human rights to ensure transparency and accountability. He stresses that no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding. He warmly encourages the Government to continue working with civil society, the National Human Rights Commission of Mongolia, international experts and others who can provide strategic advice to ensure that any amendment to the existing legislation meets international standards pertinent to freedom of association.

45. The right to freedom of peaceful assembly is well protected by the domestic legal framework. For protests to happen, individuals just need to declare to the local authority the time and place where their assembly will take place. In practice, however, some groups such as trade unionists, lesbian, gay, bisexual, transgender and intersex persons and children human rights defenders, reported facing some hurdles. Reportedly, they are at times requested to find another location or another day because a concurrent demonstration or a public event had already been scheduled. It is also reported that for some demonstrations, such as those organized by the lesbian, gay, bisexual, transgender and intersex community, police sometimes check the identity cards of participants prior to their joining demonstrations, which may deter individuals from exercising their right of peaceful assembly. In other cases, authorities simply refused to register the event, alleging moral grounds. This has happened repeatedly in the past few years when the metropolitan Ulaanbaatar city government restricted access to the Sukhbaatar Square for activities of the Equality and Pride Day organized by the lesbian, gay, bisexual, transgender and intersex community.

46. The Special Rapporteur also heard testimonies that trade unions at times face hindrances to exercise their right to strike. The Special Rapporteur underlines that the right to strike should be guaranteed during all phases of collective bargaining agreements, including in situations where the collective bargaining agreements fail to be implemented. While noting that several business owners sit in the Parliament, he encourages the authorities to ensure any changes to the labour code provide for greater protection for the rights of unionists and workers.

F. Access to justice and remedies

47. The Special Rapporteur is deeply concerned about the disturbing deaths of Lkhagvasumberel “Sumbee” Tumursukh, whose body was found in Khuvsgul Lake on 11 November 2015, and of Luntan Bolormaa, who was found dead at her home with a brain haemorrhage caused by a concussion in the occipital bone on 21 November 2015. In both cases, the defenders had been working on sensitive matters, including allegations of corruption. Both individuals had also been subjected to threats and appeared to have died in mysterious circumstances. It is vital for the Government of Mongolia to reopen the cases, investigate them properly with due consideration to the fact that they were both human rights defenders, and provide their families and the public with detailed reports on the investigations conducted. These two cases are highly troubling because they also instilled fear among the human rights defender community and deterred some of them from pursuing their work.

48. Access to justice is essential in realizing the right to effective remedies. On 9 May 2019, the Parliament approved amendments to the Administrative Courts Procedure Law. According to the amendments made, administrative courts that adjudicate disputes between individuals and public authorities are no longer in a position to oversee decisions made by the Cabinet when these are made in accordance with directives and guidance from the Parliament. These amendments were approved with a slight change, after the President had initially vetoed the text. The Special Rapporteur is seriously concerned that these amendments will prevent individuals and civil society groups from claiming damages from government action or inaction, notably those concerning mining and exploration licences or those related to land issues. Although non-governmental organizations have had the possibility to lodge class actions on behalf of others on matters of public interest since

2016, the Special Rapporteur is deeply concerned that these positive improvements have now lost all meaning. He urges the Government to repeal these amendments.

49. Until recently, Mongolia had an independent marshal service and a security protection unit, created to protect victims and witnesses of crimes during criminal proceedings. The work of that office was very much praised by many interlocutors during the visit, but the programme was discontinued in 2016 for budgetary reasons. Most of the functions previously undertaken by the marshal service have now been transferred to the Central Police Department but no additional means, resources or training have been provided to the police. The Special Rapporteur believes the restoration of an independent body in charge of victim and witness protection would prove extremely useful in ensuring justice and remedies.

G. Specific groups of human rights defenders at risk

1. Children and young people as human rights defenders

50. According to the various testimonies received during the visit, many children in Mongolia face violence, abuse, neglect and exploitation. In this context, children human rights defenders have an essential role to play in exposing abuses and ensuring better conditions for children and young people. However, several interlocutors who met with the Special Rapporteur reported that the majority of young people were not familiar with the concept of human rights defenders and did not identify themselves as such. Children civically engaged in denouncing child abuse, environment pollution or human rights violations with whom the Special Rapporteur spoke highlighted that children human rights defenders are too often being questioned, not being taken seriously and sometimes even blamed and penalized by teachers or relatives when addressing these issues.

51. The Special Rapporteur believes the Day of General Discussion on the protection and empowerment of children as human rights defenders, organized by the Committee on the Rights of the Child in September 2018, and its follow-up meeting from June 2019, provide a solid basis for actions to support the voice of children defenders. He encourages Mongolia to do more to stimulate children's agency and ensure a suitable children-driven approach to address today and tomorrow's challenges.

2. Women human rights defenders

52. The situation of women human rights defenders in Mongolia does not differ from the trend that exists in other parts of the world. In essence, women human rights defenders face the same risks as their male counterparts but they are also exposed to gender-specific threats. In other words, they face additional and different threats that are shaped by entrenched gender stereotypes and deeply held ideas about who they are and how they should behave. Women are also attacked for promoting and protecting human rights because of their identity and the nature of their work.

53. The Special Rapporteur encourages States to implement the recommendations contained in his thematic report on women human rights defenders presented to the Human Rights Council in 2019 (A/HRC/40/60). In the report, he underscores the need to address the systemic and structural discrimination, sexism and violence that women and girls in general, and women defenders in particular, experience, especially in online spaces. He encourages the Government of Mongolia to prioritize the equal and meaningful participation of women human rights defenders at every level and in every institution in society. Noting that attacks against women often take place on social media, he highlights the need to ensure safe spaces for women both online and offline (see A/HRC/38/47). He further encourages the promotion and dissemination of the Declaration on Human Rights Defenders and General Assembly resolution 68/181, which recognizes the important role of women defenders who work in defence of women's rights or on gender equality.

3. Lesbian, gay, bisexual, transgender and intersex rights defenders

54. In late 2015, the Government of Mongolia passed a landmark amendment to the Criminal Code, which made discrimination on the grounds of sexual orientation and gender identity a crime. However, social attitudes and prejudices and stigmatization are still prevalent against lesbian, gay, bisexual, transgender and intersex persons and those defending their rights. The Special Rapporteur believes that greater efforts are needed to ensure that lesbian, gay, bisexual, transgender and intersex persons and organizations access effective redress when they are subject to attacks, threats and other violations or abuses.

55. The Special Rapporteur concurs with the analysis made by officials he met during the visit that lesbian, gay, bisexual, transgender and intersex persons and organizations are at times the victims of subjective interpretation of the assembly law, and he believes more should be done to ensure that they can effectively exercise their rights to freedom of peaceful assembly, association and expression.

4. Land, environmental, housing rights and anti-corruption defenders

56. In a country where about 40 per cent of the workforce is nomadic, with livestock herding in extensive pasturelands, and over 30 per cent of the population lives in the capital, the role played by environmental and housing rights defenders is fundamental. By promoting sustainable development and livelihood preservation, as well as by encouraging the business sector to accept its responsibility to respect human rights, their role is crucial in promoting transparency and accountability and exposing discrimination and corruption. However, when reporting on air pollution, water contamination and rapid urbanization, defenders face obstacles and risks, including threats, smear campaigns and intimidation. In Ulaanbaatar, the Special Rapporteur was appalled to hear about the threats faced by a human rights defender after he opposed the selling by a private company of plastic bags that had previously been used to transport hazardous waste.

57. The Special Rapporteur notes that some companies seem to make an effort to involve local communities in their development projects, yet he deplores that others seem to have been more reluctant to do so. In Ulaanbaatar, the Special Rapporteur heard various testimonies from individuals who had been penalized under article 6.21 of the law on administrative offences after they had opposed urban redevelopment projects. The Special Rapporteur is alarmed about the apparent misuse of this legislation. He is also seriously concerned at the situation of some residents who seem to have been deceived by private companies. Reportedly, in a number of cases, an agreement on environment protection and relocation compensation that inhabitants signed with the companies was used to complete their eviction. The Special Rapporteur emphasizes that the redevelopment plan in Ulaanbaatar should be an opportunity for genuine consultation with civil society and the affected persons, who should be provided with all feasible alternatives prior to any eviction.

58. In Airag, inhabitants and herders who had been living in the area for generations complained about exposure to contaminated dust, which was allegedly caused by a fluor mining site operated by the Chinese company Yantai Uul. While the site has been sealed by the authorities, reports received indicate that some children from the area suffer from skin irritation and respiratory diseases that may be the result of an ineffective rehabilitation of the mining site.

59. In the same area, the Special Rapporteur received complaints from two family herders living a few hundred metres away from a fluor mining site owned by the company Dompaloma MCTT. The families reportedly spoke about their respiratory problems in a television programme and were subsequently subjected to threats and acts of harassment from the company. The families were accused of fabricating accusations for money through the posting of derogatory comments by the company on social media, which, in such a small remote village, had serious adverse consequences for the individuals affected. Reportedly, the National Human Rights Commission of Mongolia suggested that the families be resettled at the expense of the company. One family reportedly declined the offer until they received a decent compensation from the company for the damage caused.

60. In Saynshand, the Special Rapporteur received concerning information that representatives of the Hamryn Hiid Monastery had not been consulted prior to the granting of a mining licence to exploit not less than about one third of a recognized protected area where the Monastery was located. After the monks, together with the local community, engaged in peaceful protests against the company settlement, the local governor reportedly announced in early 2019 that the licence had been revoked. However, at the time of the visit of the Special Rapporteur, the mining site was reportedly still in operation, albeit with only a few employees, which may adversely affect the right to freedom of religion and belief of those visiting the place.

61. In Zuunbayan, the information provided by the mining company Orano, which exploits resources in the vicinity of the village, did not clear up the doubts that some community members have regarding the contamination of their water sources. The Special Rapporteur visited the sites of Zoovch Ovoo and Dulaan Uul, where he could speak with the representatives of the company who are engaged with local communities, including those protesting against the company's work. The Special Rapporteur is convinced that the apparent lack of trust between some herders and the company in this area can only be solved by ensuring that the company, as well as independent inspectors, provide the public with the results of environmental impact assessments on a regular basis.

62. The Special Rapporteur is convinced that the adoption of a national action plan on business and human rights, based on international human rights norms and standards, would prove useful in disseminating and implementing the Guiding Principles on Business and Human Rights, articulating the State's priorities to protect against business abuses and regulating the relationship between companies and communities. The Special Rapporteur welcomes the establishment of a working group to draft the national action plan on business and human rights, composed of representatives of government departments, agencies, the National Human Rights Commission and civil society. He further praises the announcement made by the Government, at the end of a consultation on business and human rights, organized in May 2019 by the Office of the United Nations High Commissioner for Human Rights, that it would complete the drafting of the national action plan on business and human rights by 2021. The Special Rapporteur encourages the Government to work closely with civil society organizations and affected communities, as well as representatives from the business community, in the drafting of the plan so that the work of businesses can benefit the whole population.

63. In the same vein, the Special Rapporteur believes that international financial institutions could play a role in identifying and refusing to work with irresponsible businesses that do not respect the Guiding Principles on Business and Human Rights.

5. Journalists, media workers and whistle-blowers

64. Journalists, bloggers, media workers and whistle-blowers are probably among the human rights defenders most at risk in Mongolia. According to the data compiled by a human rights organization that conducted a survey in the period 2018–2019 on the safety of journalists, half of all journalists or their family members report being threatened, intimidated or insulted. These data also include the censorship of publications or attempts to ban programmed broadcasts, damage to or confiscation of equipment, obstacles to the accessing of information and pressure to reveal sources of information. Internalized as part of a working routine, these acts, which may affect family members of journalists, are reportedly rarely brought to the attention of the authorities; hence they contribute to an atmosphere of self-censorship.

65. Journalists operate in a difficult context characterized by a strong media concentration in the hands of a few private entrepreneurs who protect the interests of their owners. Although media pluralism exists in Mongolia, several media outlets are majority-owned by politicians or private companies that are not necessarily independent or just not interested in distributing independent information. In a national context where politics has lately grown increasingly fractious with populist and divisive discourse, with accusations of corruption in all classes of power, reporting news independently is becoming increasingly challenging.

66. During his visit, the Special Rapporteur met with whistle-blowers who exposed corruption scandals. A journalist explained that he was followed, surveilled and intimidated by police and intelligence, and had to be temporarily relocated in a safe house, following the publication of some of his articles. He was also subjected to smear campaigns, which has continued to present him with serious challenges in obtaining a new job. The Special Rapporteur believes that the adoption of a law on the protection of whistle-blowers would be integral to protect them against any forms of retaliation, threats or charges for disclosing information.

IV. National Human Rights Commission

67. The National Human Rights Commission of Mongolia is mandated to promote and protect human rights provided for in the Constitution, laws and international treaties to which Mongolia is a party. It is also mandated to review complaints of human rights violations and to initiate proposals and recommendations to State authorities. By working together with the Government, the Commission makes an effective contribution to the realization of human rights and can also be considered as a human rights defender.

68. Human rights defenders met by the Special Rapporteur during the visit have all reported that the National Human Rights Commission of Mongolia was well aware of human rights issues affecting the country. They explained that representatives from the Commission travel regularly to non-urban areas to meet with local communities. The Special Rapporteur firmly believes that a strong and independent national human rights institution is essential to protect defenders who may be at risk. In this context, the Special Rapporteur is concerned that the National Human Rights Commission is operating with very limited resources, with only a few staff outside the capital. The Special Rapporteur echoes the recommendations made regarding the National Human Rights Commission during the universal periodic review of Mongolia (see A/HRC/30/6) and those made by the Human Rights Committee, which both recommended that the Commission be provided with adequate financial and human resources to ensure its independent, transparent and effective functioning (CCPR/C/MNG/CO/6, para. 8). The Special Rapporteur also believes that the inclusion of the national preventive mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment into the purview of the Commission would adequately contribute to detecting and eliminating risks of torture.

V. Conclusions and recommendations

69. Over the past 30 years, Mongolia has transformed itself greatly, building a multiparty democracy with strong institutions, democratic standards and solid frameworks for the participation of civil society, including human rights defenders. The legal framework affecting the work of human rights defenders complies to a large extent with international standards. However, more needs to be done to implement national laws in practice. During the visit, the Special Rapporteur received various testimonies from human rights defenders who reported that defenders – including environmentalists, investigative journalists working on corruption, and children rights defenders, are subjected to pressure, discrimination and harassment. Others reported some more-hidden threats of possible retaliation against defenders or their relatives. The repeated use of the administrative offence of libel to counter criticisms is another serious source of concern that hinders the work of human rights defenders. Essentially, there is a general sense of fear and self-censorship among the defender community, which relates to the perception that exposing human rights violations or abuses will result in economic and social sanctions.

70. Under international human rights law, States have the duty to guarantee the right of everyone, individually and in association with others, to strive for the protection and realization of human rights. It is imperative for Mongolia to recognize and support the important work of human rights defenders. In order to ensure human rights defenders can carry out their activities freely and independently, an enabling environment must be put in place.

71. Mongolia has often – and rightly so – been depicted as a champion of democracy in East and Central Asia, but recent political discourse and legislative amendments send mixed messages. Given the proximity of the political sphere with the business sector, amendments to the legislation – whether recently adopted or under discussion – that tend to concentrate the power in a few hands are worrying, as they can be used to shield the executive from any forms of criticism. Political interference in the judiciary not only gravely undermines the principle of separation of powers, but also impairs the ability of human rights defenders to play their important role in reporting and contributing to addressing human rights violations and abuses.

72. Legal safeguards should therefore be maintained to ensure there is no retrogression in the protection of human rights defenders. The unique role defenders play in the protection of the rights of communities, the fight against corruption and the promotion of new social models that are respectful of the environment must be acknowledged, developed and encouraged. A new, robust law on human rights defenders would be effective in doing just that: recognizing, protecting and supporting the vital role played by human rights defenders in the society.

73. In that connection, the Special Rapporteur recommends that the Government of Mongolia:

(a) Enact the law on human rights defenders, not only to protect the rights of human rights defenders, but also to recognize and promote their vital and legitimate work, and to end impunity for attacks against defenders in a concrete way;

(b) Restore the independence of the judiciary, the autonomy of the prosecution service and the separation of powers by repealing the amendments to the law on the legal status of judges and the law on the public prosecutor's office, in order to eliminate any interference by the National Security Council in the independence of the judiciary and the prosecution service;

(c) Repeal amendments to the administrative courts procedure law and ensure that administrative courts are provided with the ability to oversee decisions made by the Cabinet;

(d) Integrate a human rights perspective into anti-corruption strategies to ensure that necessary measures to combat acts of corruption or corrupt behaviour do not adversely affect human rights. Implement a zero-tolerance policy towards corruption and ensure the independent functioning of the existing anti-corruption institutions;

(e) Enact the law on the protection of whistle-blowers to protect them against any forms of intimidation, threats or criminalization;

(f) Ensure that any revision to the law on non-governmental organizations is in line with international standards, especially with regard to registration and funding. Make sure that any amendments made to this law do not restrict but rather enable the work of human rights defenders and civil society organizations;

(g) Ensure respect for the right to privacy and the right to freedom of expression in all aspects of Internet regulations, including by adopting a data protection law. Restrictions to those rights should strictly follow the principles of legality, necessity and proportionality;

(h) Establish policies to promote media pluralism and independence, including by ensuring the independence of the media regulatory authority;

(i) Develop, in consultation with human rights defenders, and enact a national action plan on business and human rights in order to disseminate and implement the Guiding Principles on Business and Human Rights and regulate the relationship between companies and herders and other communities;

(j) Ensure prompt and impartial investigations into all cases of violations, abuses and violence against human rights defenders, and also ensure an effective remedy is provided to those whose right has been violated;

(k) Reopen the investigation into the deaths of Lkhagvasumberel “Sumbee” Tumursukh and Luntan Bolormaa, taking into account the particular vulnerabilities they were facing, owing to their human rights work;

(l) Ensure that journalists, media workers and civil society activists are able to engage in their activities freely, without any fear of intimidation, threats and punishment. Condemn unequivocally any acts of intimidation or harassment against human rights defenders. Enforce legal safeguards to protect critics from any forms of retaliation. Bring perpetrators of any act of reprisal, intimidation or stigmatization to justice and ensure effective remedies for victims;

(m) Ensure prior, meaningful, transparent and effective consultations prior to granting operating licences to companies, with timely, pluralistic and reliable information made available to civil society and affected communities. Integrate the findings from impact assessments and take appropriate action to respond to the concerns, opinions and suggestions of affected people in the areas concerned, including, where relevant, by refraining from implementing business projects where human rights concerns cannot be prevented and mitigated. Make sure companies apply a broad understanding of the concept of “affected people”, in order to include nomadic people and herders;

(n) Take appropriate judicial action against companies, their private security companies and other subcontractors that contribute or cause any acts of intimidation, harassment or violence against human rights defenders and affected communities;

(o) Allow human rights organizations to monitor mining projects and make recommendations that are aimed at addressing any human rights violations or abuses;

(p) Establish the position of environmental ombudsperson with the roles providing environmental information to the public, carrying out independent inspections and receiving complaints;

(q) Ensure sufficient funding to civil society organizations and provide them with political recognition for the valuable role they play in society;

(r) Strengthen the independence and capacity of the National Human Rights Commission of Mongolia by enhancing its human and financial resources and reinforcing its legal framework to ensure its full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles);

(s) Institutionalize victim and witness protection outside of the law enforcement authority, through the re-establishment of the marshal service.

74. The Special Rapporteur recommends that business enterprises:

(a) Adopt and implement international human rights standards pertinent to private companies, including the Guiding Principles on Business and Human Rights;

(b) Take effective measures to ensure defenders are not subjected to any attacks or intimidation;

(c) Establish grievance mechanisms necessary to avoid, mitigate and remedy any direct and indirect impact of human rights violations;

(d) Ensure that an environmental impact assessment precedes the operations of businesses, with a view to identifying and addressing any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships, including through timely and meaningful consultation with potentially affected communities and relevant stakeholders and incorporations of inputs received;

(e) Disclose information related to planned and ongoing business projects in a timely and accessible manner, and ensure the meaningful participation and integration of views of affected communities, civil society and human rights defenders;

(f) Ensure that private security companies and other subcontractors respect the rights and freedoms of defenders and do not cause or contribute to any forms of acts of harassment or violence against affected communities.

75. The Special Rapporteur recommends that the international community continue to monitor the situation of human rights defenders in Mongolia and to strengthen efforts to empower and support them, including through regular meetings with them, public communication when violations or abuses occur and the provision of financial assistance, in order to help them to implement their activities in a sustainable manner.

76. The Special Rapporteur recommends that human rights defenders:

(a) Publicize the Declaration on Human Rights Defenders widely among members of society;

(b) Continue to contribute to the protection and promotion of human rights through meaningful participation in public and political affairs.
