

Mongolia - Stakeholders Submission on Human Trafficking to OHCHR for UPR on November 23, 2010

1. In preparation for the UPR submission by stakeholders, 8 NGOs that are actively involved in combating human trafficking have gathered 3 times at the Human Rights and Development Center to finalize the draft of the present report that was reviewed at two meetings assembling representatives of 40 NGOs. The present report was completed by the the Human Security Policy Studies Centre (hereinafter to be referred to as “HSPSC”).
2. The shift of Mongolia from a one party system with a centralized economy to a democratic market oriented society in 1990 had induced the crime of trafficking in persons, specifically of young girls and women. Though democracy had opened to Mongolian citizens many opportunities for enjoying human rights and freedoms such as the right to study and work abroad it also had triggered negative trends and instigated new types of crime.
3. Unemployment and poverty/low income caused by the transition period that started in 1990 had become the main reason for instigating human trafficking within and out of the country, specifically of women and children. According to official records only 1 case of human trafficking was recorded in 2001. In 2008 300 human trafficking cases were recorded and investigated.¹ However we assume that these statistics do not correspond to the reality.
4. The forms of human trafficking in Mongolia are as follows:
 - a. Sexual exploitation
 - b. Labor exploitation
 - c. Fraudulent marriage
5. **Sexual Exploitation and Human Trafficking:** Mostly young girls and women are vulnerable to cases of sexual exploitation. A survey revealed that 30% of victims of this crime are 18-21 years of age, 20% - 21-26 years of age and 11% under aged.² The victims are lured and deceived by fraudulent newspaper advertisements inviting to high paid jobs or scholarships abroad and forced to prostitution in Mongolia as well as in China, Malasia, Macao, Hong Kong and some European countries by taking advantage of their desire to study and work abroad. The Gender Equality Center reports that in 2003 - 1, in 2004 - 4, in 2005 - 3, in 2006 - 11, in 2007 - 42, in 2008 - 27, in 2009 - 51 in total 139 victims of sexual exploitation have received the assistance of the Center.
6. **Human rights violations, challenges:** In 2002 Mongolia had included Article 113 “Sales and Purchase of Humans” in the Criminal Code. In 2008 the Article was amended and in March of the same year the Supreme Court issued an interpretation of the provision which was a significant step forward in criminalizing human trafficking compliant to the norms of international treaties and conventions. However the court practice shows that there is a tendency to apply Article 124 of the Criminal Code in adjudicating human trafficking cases. The punishment for human trafficking is 5-15 years of imprisonment whereas the punishment for the crime of “Inducing others to engage in prostitution and organizing of prostitution” as

¹ Specifics of Prosecutorial Supervision over the Investigation of Human Trafficking Cases (2008), H. Batchimeg, Presentation at the National Consultative Meeting on Combating Human Trafficking, p. 84

² Legal Case Study Research Paper on cases prosecuted or dismissed in 2004-2007, p. 12, SDC, HSPSC, Gender Equality Center, National Legal Institute (2009)

stated in Article 124 of the Criminal Code is fining, incarceration for 3-6 months, forced labor or imprisonment for a lesser term. Additionally, 85%-90% of investigated cases are dismissed by the prosecution due to “lack of evidence proving that the person was forced to prostitution or sold” or to “lack of grounds to consider that the victim was deceived or forced to prostitution because the victim knew that services as a singer or a dancer imply sexual intercourse, if the client will request so”.³

7. The legal framework does not provide for the protection of victims and witnesses of human trafficking cases. Moreover the Government has not taken any steps neither for the protection of victims, nor for assisting them, for compensating their damages, restoring their reputation or for their rehabilitation. There were disturbing incidences when victims threatened by perpetrators were forced to take their statements back and were charged for providing false testimony.⁴ Victims of this crime suffer emotional and psychological damages, and there are no mechanisms or legal instruments to measure those damages.
8. The Constitution of Mongolia declares that “The State shall be responsible to the citizens for the creation of economic, social, legal and other guarantees ensuring human rights and freedoms, to fight against violations of human rights and freedoms and to restore infringed rights.”⁵ Article 6 of the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children states that “In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential ... Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, ... the provision of: (a) Appropriate housing; (b) Counseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities ... Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”
9. **Labor Exploitation and Human Trafficking:** Not only women but also men become victims of human trafficking for purposes of labor exploitation. Mongolian citizens are trafficked within the country or to countries such as the Republic of South Korea, Czech Republic, Turkey, Kazakhstan through fraudulent advertisements of workforce intermediary companies and/or individuals. There are also cases of trafficking of Mongolian citizens to other countries through intermediaries of neighboring countries. According to the Gender Equality Center report 92 persons requested and received assistance as victims of labor exploitation as of January 1, 2010. So far there are no convictions for trafficking with the purpose of commercial exploitation in Mongolia.⁶ Additionally, surveys need to be conducted due to lack of information on this form of trafficking.

³ Report of the Survey on Human Trafficking in Ulaanbaatar in 2004-2008, p. 3, SDC, HSPSC, Capital City Intelligence Department (2009)

⁴ These victims requested assistance from Gender Equality Center and the fact that they were forced to prostitution was proven by the relevant legal institutions.

⁵ Article 19 (1) of the Constitution of Mongolia

⁶ The case of one of the clients of the Gender Equality Center was adjudicated by applying Article 161 of the Criminal Code (Engaging in prohibited production, services or trade).

10. Human rights violations, challenges: Law on Sending Out Workforce and Bringing In Workforce (Specialists) from Abroad adopted in 2001 regulates issues relating to workforce intermediary activities. The license for conducting such activities is given by the State administrative authority in charge of labor issues. According to the law companies conducting such activities are required to register and comply with certain requirements in order to obtain the license. Though there are no regulations with regard to individuals conducting such activities.⁷ This loophole allows individuals to sell people to “slavery” and increases the risk of Mongolian citizens to become victims of human trafficking.
11. Companies that recruit workforce to send abroad for the most part select men. This reduces opportunities for women to find jobs abroad, and that is why women are forced to agree to any conditions and even to illicit activities. This inevitably increases the risk and probability of women to become victims of human trafficking.
12. Additionally, there are numerous cases of exploitation of Mongolian citizens by Mongolian and foreign companies/entities operating on the territory of Mongolia. The working conditions are inadequate and the pay is sufficient just for scratching out a living. For instance, employees of some cafeteria in Ulaanbaatar earn 30,000-50,000 tugrugs per month⁸. A joint venture with Chinese investment producing building blocks locks up the workers⁹.
13. The Constitution and the Labor Code (1999) of Mongolia states that “No one shall be subjected to forced labor.”¹⁰ Mongolia became signatory of the International Labour Organization (ILO) C29 Forced Labour Convention (1930) and C105 Abolition of Forced Labour Convention (1957) in 2005. However the current situation shows that the implementation and enforcement of the domestic legislation as well as of conventions is insufficient. Lack of monitoring instruments and of information and data on the implementation of the abovementioned legislation points toward the necessity for action by relevant authorities.
14. **Fraudulent Marriage and Human Trafficking:** “Mediation” of marriages in Mongolia, especially of young girls and women, with foreign citizens for a certain fee is widespread. From 2003 till 2007 the number of Mongolian citizens married to foreigners increased by 446 persons or by 54.1%. Out of which 90-95% were women. The majority or 70% of these women got married to citizens of South Korea.¹¹ A survey revealed that the majority of Mongolian citizens that used the services of “mediators”, companies or individuals, had been subject to violence, intimidation and slavery.¹² The Gender Equality Center provided assistance to 45 and the Human Rights and Development Center to 2 persons that had become victims of this form of human trafficking.
15. Human rights violations, challenges: Currently there are no provisions that regulate activities relating to cross-border marriage intermediaries. The legislation on licensing does not foresee any authority responsible for these matters. Therefore any company or individual is entitled to place advertisements and gain profit through match making. Citizens that use the services

⁷ Review of the National Legislation in Relation to Human Trafficking (2009), SDC, HSPSC

⁸ Report of the Survey on Poverty (2006), ADB, Human Rights and Development Center

⁹ Presentation by Ms. Tsetseg at the “Forced Labor and Trafficking Issues” workshop organized by ILO and Mongolian United Employers Association (2008)

¹⁰ Article 16 (4) of the Constitution and Article 7 of the Labor Code of Mongolia

¹¹ Survey on Cross-border Marriages (2008), SDC, HSPSC

¹² Same as above

of these companies or individuals are required to sign agreements and pay penalty for the following:

- rejection of marriage after submitting the application – 4,000 US dollars
- rejection of marriage after engagement – 2,000 US dollars
- fictive marriage or divorce without any specific reason – 10,000 US dollars

If a woman runs away after crossing the Mongolian border her parents should pay the company 4,500 US dollars.¹³ It is obvious that women who agree to sign such agreements are most likely to be subject to intimidation and harassment, and that their rights are violated.

16. Article 16 (11) of the Constitution of Mongolia states that "... Marriage shall be based on the equality and mutual consent of the spouses who have reached the age determined by law. The State shall protect the interests of the family, motherhood and the child". Article 16 of the Universal Declaration of Human Rights states that "... Marriage shall be entered into only with the free and full consent of the intending spouses". Mongolia joined the UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages in 1991. Article 1(1) of this Convention states that "No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law." Therefore match making contradicts the above provision of the convention.¹⁴
17. Mongolia is signatory to almost 50 human rights conventions including the following conventions relating to human trafficking:
 - the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) from 1980;
 - the 1990 UN Convention on Rights of the Child in 2000 and its Optional Protocols on the Involvement of Children in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography from 2002;
 - the 2000 UN Convention Against Transnational Organized Crime and its supplementing protocols:
 - Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
 - Protocol against the Smuggling of Migrants by Land, Sea and Air;
 - Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their parts and Components and Ammunition from 2008.
18. In 2005 the Mongolian Government adopted a program for "Protection of Women and Children from Human Trafficking and Sexual Exploitation" and established a National Council to monitor its implementation. The Government Program for 2008-2012 included 2 clauses¹⁵ relating to combating human trafficking. However the main authority, the Ministry of Labor and Social Welfare, responsible for implementing the program has not been efficient in fulfilling its mandate. The Government activities are limited to organizing meetings and

¹³ Undesired Marriage and Korean Heaven, Zuuni medee (2008)

¹⁴ Review of the National Legislation in Relation to Human Trafficking (2009), SDC, HSPSC

¹⁵ Article 1.5.9

seminars. It is the combined effort of international and foreign donors¹⁶ and of the NGOs and the civil society of Mongolia that had and has tangible results in combating human trafficking. Without donor assistance and the combined efforts of NGOs it is apparent that the activities to combat human trafficking will not be sustained.

19. **Recommendations:** Taking into account the above situation we submit the following recommendations to the Government of Mongolia. It is advised to:

- develop and implement sound and coherent Government policies to reduce unemployment and alleviate poverty, which are the causes inciting human trafficking;
- set standards for labor cost and increase salaries/wages;
- adopt a comprehensive anti-trafficking law addressing issues on protection and assistance to victims and witnesses of human trafficking, on compensation and restoration of the reputation of victims, and on prevention and combating of human trafficking;
- revise (alter and/or amend) and harmonize the anti-trafficking legislation, including the related laws, i.e. the Criminal Code, Criminal Procedure Code, Family Law, Law on Prohibiting Child Pornography and Sexual Exploitation, Law on Foreign Travel and Emigration of Mongolian Citizens, Law on Unattended Children, Law on Crime Prevention, Law on Sending Out Labor Force and Bringing In Labor Force (Specialists) from Abroad, Law on Advertisement, etc.;
- revise the National Program on “Protection of Women and Children from Human Trafficking and Sexual Exploitation” adopted in 2005 and allocate sufficient funds in the State budget for its implementation;
- create staff positions in charge of human rights issues at embassies and representative missions of Mongolia in countries with resident Mongolian communities or in countries frequently visited by Mongolians;
- finance the 2 shelters for victims and witnesses of human trafficking launched by the HSPSC project funded by the Swiss Agency for Development and Cooperation from the State budget starting year 2011. The costs include recurrent expenses, salaries of employees and services provided to victims and witnesses;
- expand and enhance crime prevention activities among the general public, especially the vulnerable part of the population, and awareness campaigns on how to exercise the right to compensation for damages caused by crime;
- and enhance the capacity of relevant NGO’s.

¹⁶ International organization for Migration, ILO, UNICEF, UNDP, SDC, US State Department, USAID, TAF and World Vision.