

**Mongolia - Stakeholders Submission on Right to elect and to be elected
to OHCHR for UPR on November 23, 2010**

1. The NGO Forum established for preparation of civil society submissions to the UPR of the status of implementation of human rights in Mongolia organized Right to elect and to be elected thematic working group consisting of 3 NGO's (Women for Social Progress, Voter Education Center, Philanthropy Center) members coordinated by the Voter Education Centre. The report was discussed by the NGO Forum as part of its open discussions with representation of over 40 civil society organizations.
2. On July 1, 2008 the first time ever a state of emergency was imposed to control massive post-election public protests triggered by dissatisfaction with the State Great Hural (SGH - Parliament) election results. The majority of principles and standards of the right to elect and to be elected, endorsed by international conventions have been translated into the Constitution of Mongolia and election related laws. However, inadequate implementation has resulted in public criticism of the election processes as means of illegal capture of state power under the name of "democratic elections", in protests and demonstrations and invalidation of election outcome due to insufficient voter turnout. Furthermore, negligence in fulfilling obligations taken under international conventions continues to exist: reluctance to fully incorporate¹ the concepts and principles of conventions in national laws; lack of timely reporting on their implementation²; taking temporary or half-measures in reducing discrimination.
3. In 2003, SGH adopted a "National Human Rights Action Programme" which includes a number important goals aimed at enhancing the right of citizens to elect and to be elected. However, SGH failed to incorporate these goals in the 2005, 2006, and 2008 newly adopted and/or amended laws: Law on Parliamentary Election, Law on Central Election Organization and the Law on Election to Local Representative Hurals. Due to this, electoral committees continue serving interests of political parties allowing arbitrary implementation of election procedures; lack of transparency in election and political party financing is leading to extralegal activities such as vote buying, promising and handing out cash and goods - all resulting in public trust in election outcomes further entailing falling voter turnout rates. In addition, voter educated and voter information has not been sufficient with the Central Election Commission neglecting its responsibilities prescribed by law.
4. Election laws provide for openness of all election processes with an exception of balloting. In reality access is not given to these processes and continues to be closed for monitoring by civil society and other independent monitors. While monitoring on behalf of voters by civil society organizations has been carried out randomly it needs to be institutionalized by

¹ To date, Article 25 of ICCPR has not been translated into the Constitution and relevant laws

² The report on implementation of ICCPR has been delivered with 6 months delay.

a legal provision, which ensures effective independent monitoring to guarantee fair election outcome³.

Most common violations of principles of democratic elections:

5. **Voter registration.** One of the most important components which ensure the principle of universal and equal suffrage is registration of all eligible voters in the voter register. Mongolia has not established the number of eligible voters to date. Its three institutions assigned to accomplish registration of voters came out with three different set of numbers, with the discrepancy equaling to 20-24% of the total number of voters⁴. The most recent case of this irregularity surfaced when the difference between the number of voters registered for 2008 June Parliamentary elections and October 2008 elections to local parliaments arrived to 237,272 or equal to 14-18% of the total number of voters. The citizens' right to vote and to be elected is violated⁵ through illegal exclusion and/or overlapping of registration due to "apparent poor registration procedures, incomplete and uncertified registers"⁶. The results of monitoring of voter registration revealed the fact that the organizations entitled to list the voters can reduce or increase the number of voters by an average of 30%. Example: during the by-elections held in October 2009 at an electorate with 98,747 voters⁷, under an excuse of reviewing the list the polling station committee has managed to omit 27,043 voters from the register, which denied the right to vote to citizens in this by-election. The committees violate the terms of providing access to voter registers set by law and thus restrict independent monitoring of voter registration by civil society organizations.⁸
6. **Rights of persons with disabilities and citizens residing overseas.** 85% of 49,174⁹ eligible disabled voters have never cast their vote. Furthermore, 60% of those who do vote due to their disability to not have access to objective, impartial information on election candidates and thus make a free and informed choice.¹⁰
7. An informal survey established the number of eligible voters residing overseas at 250,000, which makes up to 18% of the total number of voters. As prescribed by existing laws, only citizens living in the country are entitled to cast their votes in Parliamentary elections thus denying the voters residing overseas their right to participate in elections.

³ A network of NGO's for Fair Elections was initiated by OSI Mongolia, to monitor election processes

⁴ As of 1 January 2007, the total number of voters set by local governments is 1,550,585; the State Centre for Civil Registration came out with 1,331,000, while the National Statistics Office officially set the number at 1,651,819.

⁵ NHRC. Results of the Survey "Right to Elect and to be Elected"

⁶ The Asia Foundation: Survey "The State of Voter Registration Assessment"

⁷ Voter register provided by the GEC

⁸ Philanthropy Foundation, Report on Monitoring of 2008 Parliamentary Election

⁹ OSI, Monitoring of Implementation of Voter Rights of Disabled Voters, 2007

¹⁰ Ibid

8. **Women's right to be elected.** A provision stating that “the ratio between male and female party and coalition candidates shall not be less than 30%” was added in the amendment of the Law on Parliamentary Elections on 26 December 2005. However, this provision was annulled by SGH prior to 2008 elections. Between 2004 and 2008, there were 5 women MPs in the Parliament comprising of 76 members, while in 2008 only 3 women candidates were elected. Today, Mongolian women, who represent 51% of the total population, have only 3.9% representation in the legislature.
9. **Equal suffrage.** The right to equal suffrage is not articulated in the Constitution of Mongolia and election related laws¹¹. This leads to loss of principle of equality: One Person One Vote One Value¹², the requirement to set equal number of voters for each electorate, equal opportunity to be provided to all candidates. Due to these disparities, while one MP is represented by 39,617 voters, the other one can represent only 13,398 citizens¹³. Other unfair conditions include but are not limited to: election campaign for incumbent public officials starts earlier, use of public resources by candidates from ruling parties despite it being banned by law and stricter registration criteria¹⁴ set for independent candidates. Compared to representatives from big parties, candidates from small parties and independent candidates compete under severe conditions. For example, after the 2008 parliamentary elections 3 candidates from smaller parties were detained¹⁵ while they were under election candidate immunity before election results were announced and without approval of the District Election Committee as prescribed by law.
10. **Organization of fair elections.** The principle of fair elections is violated at all stages of election process, e.g. during casting and counting of ballots. During the 2008 Parliamentary elections, polling station election committees worked continuously for a total of 87 hours with actual vote-taking lasting 15 hours and counting of ballots 72 hours¹⁶. It is clear that with such a workload, both efficiency of the committee and reliability of vote counting results become questionable. In addition, only two big parties are represented in the polling station committees, while the smaller parties¹⁷ have some access, independent candidates are denied access¹⁸ to these committees as well as observer status. This is the main reason

¹¹ CC's 1993 Resolution 04 and 2008 Decision 04 reveal that the principle of equal suffrage is a “principle which is not incorporated in the Constitution”. In accordance with provision 10 of the Constitution, the provisions of international conventions ratified by the country have equal to local law provisions enforceability

¹² Depending on the size of the electorate, a voter may cast ballots for 2-4 candidates. In other words, a voter from one jurisdiction have the right to elect 2 candidates, while another voter from different electorate vote to elect 4 candidates, in the same election process

¹³ NDI, Mongolia reform alternatives, Study, 2009

¹⁴ In order to establish a party, one should collect signatures of 801 voters, an independent candidate is also requested to collect the same number of signatures from the electorate

¹⁵ This irregularity restricts the citizens' right to file a complaint on the results of the elections

¹⁶ These activities are under jurisdiction of election committee members, and law requires that it be an uninterrupted process.

¹⁷ 51% of all nominees to the 2008 elections, were candidates from smaller parties not represented in the legislature

¹⁸ Independent candidates formed 13% of nominees at the 2008 Parliamentary elections.

for due distrust and suspicion of fraud committed by members of the election polling stations. Polling station committees consist of 13-15 members for average stations with 2000-6000 registered voters. It is unlawful to require a team of 15 people to dully observe 15-hour long balloting of 6,000 voters and continue with vote counting immediately after closing the balloting process. It must be noted that General Election Commission before the elections commenced informed workers of polling station committees that casting and ballot counting may take up to 87 hours. It is therefore concluded that GEC knowingly violated the rights of these workers protected by UN and ILO conventions. Such poor management of the election processes leads to creation of long queues, many not getting to vote, violation of the right to safe and healthy work environment, right to rest all again leading to distrust in the results of elections.

11. **Resolution of election disputes, adjudicating.** Reluctance to incorporate provisions and mechanisms to protect political rights of citizens in election laws and court procedures, assigning judicial jurisdiction for protection or restoration of violated right to elect or to be elected continues to allow violation of these rights and refusal by courts to bring cases when complaints are filed. The Law on Parliamentary Election provides for election disputes to be resolved by election committees of all levels, before they are brought to courts. However, election committees refuse to receive and resolve complaints, or act on those received, impunity for in-action of committee members result in the loss of complaints before they reach courts¹⁹. Although the Constitutional Court may review decisions made by the General Election Commission, it is not mandated to adjudicate cases in which the GEC failed to comply with provisions of laws other than the Constitution.
12. Therefore, stage is set for election law violations to stay outside the courts and committee members' "arbitrary action" to go unpunished. Furthermore, the very fact that both the judiciary and the Constitutional Court have no procedures in place to penalize illegal and unconstitutional acts or in-action by electoral committee members evidence the fact that citizens rights to elect and to be elected are not protected by law.

Recommendations

13. The following measures need to be undertaken, in order to guarantee the voter's right to elect and to be elected and to ensure that provisions of national laws are in conformity with the relevant international conventions:
14. Incorporate in the Constitution and election laws the principle of equal suffrage, and revise the content, concept and the language of the laws to conform to this principle. Improve legal environment to guarantee the right to vote and to be elected by adding provisions enabling monitoring of election processes by civil society, involve civil society in the process of law amendments.

¹⁹ Those organizations cannot resolve the disputes objectively, as they lack authority to adjudicate

15. Revise the polling room standards to conform to the principal of secret balloting, with due regard to providing suitable conditions for collecting ballots from disabled voters (introduce advanced technology, special tools, sign language and Braille system, etc.);
16. Bearing in mind the impact of administration of electoral processes on guaranteeing free and fair elections with reliable outcome, make radical changes to procedures on composition of election committees, create favorable working conditions (environment, working hours, etc.);
17. Develop procedures to enable enjoyment of the right to vote by citizens residing abroad;
18. Re-establish the provision on “no less than 30% women candidates” quota set for political parties;
19. Incorporate provisions in the laws regulating election disputes, its jurisprudence and procedures, and enforceable accountability system.