

Asian NGOs Network on National Human Rights Institution (ANNI)

**Monitoring Report on the
Performance of National Human Rights Institutions**

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MONGOLIA

BALANCING NEEDS IN MONGOLIA

By

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I. INTRODUCTION

During the year under review 2006-2007, the National Human Rights Commission of Mongolia (NHRCM) implemented key activities to emphasize human rights – a national inquiry was carried out examining allegations of torture by the authorities, and, following up on a recommendation in the Commission’s report, the Parliament issued a decree requesting the Government to take action against its officers that were found to have committed torture. However, information on the implementation was not available at the time of the conclusion of this report.

Another keenly watched event was the appointment of new members of the Commission, which took place in the first quarter of 2007. The pioneer group, who had taken office in 2001, completed their six-year term on schedule.

a. Appointment of new commissioners

The State Great Khural (SGK)¹ appoints commissioners, who then report back to it. The selection of the second batch of commissioners failed the test of plurality as recommended in the Paris Principles. Also, the process did not involve consultation with non-governmental organizations (NGOs) working on human rights or appointment of their representatives to the Commission.

b. National inquiry on torture

The inquiry – backed by related research – was conducted from 2005-2006, to look into serious allegations of torture and cruel or humiliating penalties. This proved to be one of the more effective activities of the Commission as use of torture is common in the preliminary stages of criminal investigations.

The Commission’s report on *Torture and Human Rights* in 2006 was discussed at the plenary session of the SGK, which issued a decree to the Government to impose penalties on officials found guilty; and to allocate more than US\$1 million from the state budget to improve conditions at detention centres where preliminary investigations take place.

This was a major coup for NGOs, who have been striving to shed attention on a severe problem without access to police lock-ups. The inquiry showed that it is possible to detect and correct wrongs. It further proved that the Commission can be effective as a force in preventing human rights violations.

c. Selection of ex-officio members

New members were selected to the Informal Committee (IC), a significant structure in developing relations and co-operation between the Commission and NGOs. The IC also has a crucial role in ensuring plurality of representation, especially when this is missing in the Commission. 11 members of the IC were appointed, representing civil society groups including media, trade union and human rights organizations. Unlike in the past, the selection process was carried out in open and participatory manner.

¹ Parliament of Mongolia

The Commission announced the call for the nomination of IC members among the civil society community through the media and NGOs networks. 10 human rights NGOs who met with the IC members' criteria nominated their representatives, and 5 of them were selected by around 30 NGOs through secret ballot. However, some NGOs felt the Commission set the criteria for IC membership too high, by requiring NGOs to have been in existence for more than eight years before qualifying for the IC elections. This criterion excluded some competent human rights NGOs from nominating representatives. This criterion does not, however, apply to the selection of the members of the Commission itself.

The IC's rules of operation were also revised in 2007. Some of the more important revisions related to the IC's reporting procedure and the mandate of its members. The IC is now required to report to the general public and to NGOs about its activities, in addition to its regular reporting to the Commission. IC members' mandates were also expanded, and they now can provide policy advice to the Commission.

II. INDEPENDENCE

The Commission has broad powers² to promote and protect human rights. Under its enabling law passed in 2001, it is obliged to adhere to the principles of the rule of law, independence, protection of human rights, freedoms and legitimate interests, justice and transparency in its operations.³ The law specifically prohibits "any business entity, organization, official or individuals" from influencing or interfering with the activities of the Commission and its members.⁴

However, those who violate this provision can get away with small fines or administrative sanctions that do not have sufficient deterrent effect.⁵ There is a need to review the system of penalties to enhance the independent operation of the Commission.

Since no parties were held liable for interference during the period under review, the implication is that the Commission was able to perform its duties without influence from the SGK, government, judiciary, and other organizations and individuals.

a. Relationship with Parliament

Another feature of the independent operations of the Commission involves transparent reporting of the Commission's operations and the submission of its annual report on situation of human rights and freedom in Mongolia to the Parliament (State Great Khural or SGK) by the first quarter of every year. Based on current practice, the report is first discussed at the level of the Human Rights Sub-Committee, following

² In Article 3.1 of the NHRCM enabling law, the commission "is an institution mandated with the promotion and protection of human rights and charged with monitoring implementation of the provisions on human rights and freedoms, as provided in the Constitution of Mongolia, laws of Mongolia and international treaties".

³ Article 3.3 of NHRCM Law

⁴ Article 3.4 of NHRCM Law

⁵ Article 26.1.1 of NHRCM Law "A citizen who has violated Art 3.4 of the Law shall be liable to a fine of Tg 5,000-40,000; an official to Tg 10,000-50,000; and a business entity or organization to Tg 50,000-150,000".

which the Legal Standing Committee will decide to table it at a parliamentary plenary session. By law, the annual report must be published in the *State Gazette*. Copies are regularly distributed to human rights groups, providing widespread opportunities to assess the Commission's activities.

Previous reports have not always been discussed in a plenary session, only reaching the committee stage. The 2006 Annual report was first to be debated in a plenary session of SGK. Human rights NGOs saw this as a major success for the Commission. Besides the annual report, comments and urgent recommendations were also submitted to the Human Rights Sub-Committee in the period 2006-2007 on the issue of obtaining justice for a citizen, Altantuya Shaariibuu, who was allegedly murdered in Malaysia in October 2006. Comments and recommendations were also issued on the rights of victims of the bankruptcy of savings credit co-operatives. These were new features.

The discussion of Commission reports in the SGK is held in open and NGOs are able to observe. However, so far neither Commission nor NGOs has used this platform as an advocacy tool to improve the responsibility of the SGK on human rights issues.

The Commission's co-operation with the Human Rights Sub-Committee is significant as a positive influence on promoting and protecting human rights through legislation. Therefore, it is important use every opportunity to expand this relationship.

For example, the Commission organizes a National Assembly on International Human Rights Day every year. It is now a tradition to organize this activity under the auspices of the President, in co-operation with the Office of the President. The event opens up possibilities for effective operations at national level on a selected area of human rights. The 2006 National Assembly was themed 'Disabled People's Rights'. The 2007 Assembly proposes to address the 'Rights of Victims'.

However, to date the SGK, which holds supreme legislative power, and its Human Rights Sub-Committee have not involved themselves constructively in this annual activity. If the Commission was to involve the SGK in the National Assembly, it could lead to better integration of human rights provisions in the legislative process.

b. Relationship with the Government

The Commission works with the Government in several ways, by providing training, investigating violations within administrative processes, and co-organising promotional events such as public forums. These are held in collaboration with the Office for the Human Rights Action Plan, under the Ministry of Justice and Internal Affairs, and the National Committee on Gender Equality.

Special training sessions are held for employees at different levels of government organizations in order to increase knowledge and understanding of human rights. Under the Commission's 2007 Action Plan, there are proposals for training police and court personnel, local government officers, teachers and prosecutors.

During the period under review, it also carried out monitoring activities at dozens of government organizations, and dispensed recommendations and advice. But the Commission could not provide information on the outcome of its interventions.

c. Relationship with the Judiciary

According to Article 11.2 of the NHRCM Law, commissioners shall not receive complaints about criminal and civil cases and/or disputes, which are at the stage of registration/inquiry of cases, or where investigations and/or on trials have been already decided.

While this provision protects the judiciary and police from third-party influence, it poses a barrier to the Commission when it monitors actions such as use of excessive force by the police, for example, during the investigations and trial stage of criminal proceedings. The Commission is thus prohibited from being pro-active in relation to human rights violations suffered by citizens. Although the Commissioners and civil society groups know about this barrier, nothing has been done to date to dismantle it.

However, this does not mean that the Commission is unable to supervise police and court activities. It has powers under Article 18.3 of NHRCM Law to get acquainted with decisions made in civil and criminal cases. Therefore, the Commission has access to documents relating to cases that are dropped or rejected by these two authorities for the purposes of conducting research on human rights and later making appropriate recommendations on police and court activities. Still, this is far less effective than being able to conduct direct investigations, and it represents a lost opportunity to prevent the recurrence of violations.

d. Appointment of new commissioners

There was no transparency in this process even if the SGK Human Rights Sub-Committee seems to think there was. NGOs were unable to observe the process or to participate in it, since they did not know who had been nominated, when the list was submitted to the SGK, or when the selection was discussed.

The Sub-Committee claimed that the nomination process was conducted according to the law, but there is obviously much room to include NGOs. Furthermore, this was not the only case of exclusion. As such, NGOs have been demanding that state organs include different stakeholders in the decision-making process. Without such pressure, state agencies often ignore compliance with the principle of participation.

Only one positive aspect has been seen in the new batch of commissioners; there is better gender representation.

e. Financial autonomy

Article 22 of the NHRCM Law regulates funding to the Commission. Its operational draft budget is approved by the SGK, but the state provides the funds. The Ministry of Finance has sole authority in allocating funds for the Commission's activities each year. It often cuts the budget due to financial constraints, which affects the Commission's ability to deliver on its mandate to promote and protect human rights.

The Commission's budget was around US\$81,000 in 2006, and is US\$106,000 for the current year. In 2006, only US\$2,400 (or 2.2%) was spent on operations, with the rest covering administrative costs like salaries, insurance and rental. Information provided by the Commission reveals that it is unable to extend its operations to rural areas, or to organize training sessions and activities to promote public awareness and monitor human rights, despite the increasing demand for human rights protection in the country. It is clear that the Commission is facing serious financial problems and that it needs to resolve this through pro-active measures.

Judging from similarities in the 2007 budget, the Commission presumably will not be able to exercise its mandate effectively. The Commission needs to ensure its financial security to satisfy expectations in Mongolia.

III. MANDATE

a. Decisions on complaints

The Commission receives complaints about violations of human rights and freedoms that are guaranteed by the Constitution, domestic laws and international treaties ratified by Mongolia. In recent years, the number of complaints has been increasing.

In 2006, the Commission received 220 complaints. Of these, 81 were transferred to the relevant agencies for action, 49 were closed, and advice was offered to 49 other complainants. Another 39 complaints were referred to organizations and citizens with appropriate recommendations and advice. Two cases were resolved by way of compromise.

Although the Commission is legally bound not to intervene in cases being investigated by the police and judiciary, it can assist complainants by referring them to the relevant authorities, giving legal advice and helping to mediate towards a compromise.

Two cases referred to the courts were resolved. One involved a claim by five complainants that they were jailed for between 201 and 1,252 days on trumped-up charges for which there was no evidence. The court ruled that they were entitled to compensation.

The Commission was particularly successful in focusing attention on law reform, drawing its arguments from international conventions that prohibit torture, and provide for compensation for damages involving the government and its officials, among other parties.

b. Implementation of recommendations

18 comments and recommendations on promoting and protecting human rights are provided in the Commission's annual reports in 2006, on issues relating to torture, freedom of association and freedom of assembly. In 2007, the focus is on the rights of military employees and the disabled, and on supporting human rights education, with 23 recommendations having been submitted to the SGK and its units for deliberation.

The Commission conducted a number of investigations of complaints – 14 in 2006 and 25 up until the first half of 2007. As a result, in 2006, the Commission responded with 3 demands, 3 recommendations and 155 official letters. For the first half of 2007, it issued 5 demands, 2 recommendations and 145 official letters.

The Commission appears to be making progress in monitoring human rights and investigating complaints. However, no information is available as to whether its recommendations, comments and demands are being taken seriously, even though a monitoring unit has been set up. It does not mean that implementation is not being monitored, but it is certainly a sign that monitoring is weak.

This should not be the case, as the Commission is empowered by law to check on action taken. For instance, parties are required under Article 19.4 to respond to the Commission within a stipulated time. Under Article 19.5, the Commission may approach the courts to complain about agencies that refuse to implement the proposals.

Currently, a working group under the Commission is undertaking monitoring of recommendations prepared by the 2006 National Human Rights Assembly.

IV. INTERACTION WITH NGOS

In 2006-2007 the Commission worked with NGOs, the Mongolian Trade Union, universities and institutes to extend public awareness and training. These activities comprised the greater part of the Commission's work, as is evident from the 2007 action plan. Although these are important, strategies to prevent violations are equally needed. It has been shown that holding public hearings is a powerful way to enlighten violators. More attention should be given to active measures that lead to protection of human rights.

During the period under review, 13 NGOs took part in a survey to gauge the effectiveness of the Commission. The main finding was that certain serious human rights issues have been sidelined in its work. These include neglect of the rights of those arrested during public demonstrations; and problems faced by herders due to environmental damage from mining activities that have been widened in last decade.

Another key finding was that the Commission's independence is suspect. This was attributed to the fact that commissioners are appointed from those in government agencies only, and because the Commission relies on state funding. Without plural representation, the Commission must depend on the knowledge, experience and commitment of those appointed in order to extend human rights protection.

V. RECOMMENDATIONS

➤ To the Commission:

1. Target plural representation in appointing commissioners
2. Be pro-active in seeking sufficient funding to carry out the mandate

3. Bring about legal reform to prevent violations of human rights
4. Systematically monitor implementation of comments, recommendations and decisions on human rights
5. Expand protection of freedom of assembly and freedom of expression
6. Protect the rights of herders affected by mining activities

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