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Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Visita a Mongolia

Informe del Experto Independiente sobre las consecuencias de la deuda externa y las obligaciones financieras internacionales conexas de los Estados para el pleno goce de todos los derechos humanos, sobre todo los derechos económicos, sociales y culturales*

Resumen

El Experto Independiente sobre las consecuencias de la deuda externa y las obligaciones financieras internacionales conexas de los Estados para el pleno goce de todos los derechos humanos, sobre todo los derechos económicos, sociales y culturales, Juan Pablo Bohoslavsky, realizó una visita oficial a Mongolia del 2 al 11 de septiembre de 2019. La visita tenía cuatro objetivos principales: a) examinar las políticas macroeconómicas, incluidas las cuestiones relativas a la deuda, desde una perspectiva de derechos humanos; b) comprender en qué medida las rentas procedentes de la minería se traducen en políticas sociales y ambientales inclusivas y amplias que contribuyen a la realización progresiva de los derechos humanos y al desarrollo sostenible; c) evaluar las medidas adoptadas por el Gobierno para prevenir y combatir las corrientes financieras ilícitas y sus repercusiones en los derechos humanos; y d) examinar los préstamos para proyectos de infraestructura y minería y otras inversiones extranjeras directas desde una perspectiva de derechos humanos. En el informe se presentan los resultados, conclusiones y recomendaciones del Experto Independiente.

* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo del resumen, se distribuye únicamente en el idioma en que se presentó.



Annex

Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, on his visit to Mongolia

I. Introduction

1. Pursuant to Human Rights Council resolutions 34/3 and 37/11, the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky, conducted an official visit to Mongolia from 2 to 11 September 2019.

2. The visit had four main objectives: (a) to examine macroeconomic policies, including debt issues, from a human rights perspective; (b) to gain an understanding of the extent to which mineral rents are translated into inclusive and comprehensive social and environmental policies, contributing to the progressive realization of human rights and to sustainable development; (c) to assess the efforts deployed by the Government to prevent and combat illicit financial flows and their impact on human rights; and (d) to examine lending for infrastructure and mining projects and other foreign direct investment from a human rights perspective.

3. The Independent Expert held meetings with various ministries, agencies, local government and other stakeholders, including international financial institutions, scholars, civil society and the private sector. He thanks them for their time and for the open dialogue held with them during the country visit.

II. Human rights obligations and international commitments

4. Mongolia ratified both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights on 18 November 1974. It is also party to most human rights conventions, including the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities. Although it is a party to all the fundamental conventions of the International Labour Organization (ILO), Mongolia has not yet signed the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

5. The Constitution of Mongolia includes provisions on the rights to life, a healthy and safe environment, equality and non-discrimination, access to health, education, social protection and cultural life. While a significant number of economic, social cultural rights are explicitly cited, some – such as the right to an adequate standard of living – are not, despite Mongolia having ratified the relevant international human rights conventions. The Constitution defines the status of the State's natural resources, including land and subsoil (art. 6 (1)), a provision of particular relevance given the nomadic heritage, traditional pastoral practices and mineral rich subsoil in Mongolia.

6. Pursuant to article 2 of the International Covenant on Economic, Social and Cultural Rights, States parties have the obligation to take steps, to the maximum of their available resources, with a view to achieving progressively the full realization of economic, social and cultural rights. Since the ability to devote the maximum resources to fulfil this obligation is, in practice, directly linked to current economic, debt, tax, monetary, financial,

environmental and social policies,¹ it is understood that this normative perspective defines the scope of the present report.

7. Building on its commitment to the 2030 Agenda for Sustainable Development, Mongolia adopted the Sustainable Development Vision 2030 in 2016. It summarizes the State's aspirations regarding sustainable development: "By 2030, Mongolia aspires to be amongst [the] leading middle-income countries based on per capita income. It hopes to be a multi-sector stable economy, and a society dominated by middle and upper-middle income classes, which would preserve ecological balance, and have stable and democratic governance."² It is important to highlight the clear commitment of Mongolia to the 2030 Agenda; it submitted a voluntary national review in 2019.³

8. The Independent Expert notes the efforts deployed by the Government to ensure sustainable and inclusive growth through the adoption of the Sustainable Development Vision 2030. He encourages the Government to align its implementation with the realization of the Sustainable Development Goals and to ensure systematic and comprehensive monitoring of its implementation. This could be complemented by the adoption of a national human rights action plan and by ensuring that the Sustainable Development Vision 2030 explicitly refers to international human rights law.

9. The Independent Expert commends the Government for its commitment to developing a national action plan on business and human rights.⁴ He encourages it to pay particular attention to mining companies of all sizes and to businesses operating in the financial sector, including banking and non-banking institutions under the supervision of the Financial Regulatory Commission, which is in charge of monitoring a range of activities including savings and credit cooperatives and microcredit institutions.

III. Macroeconomics, debt and human rights

A. Macroeconomics and human rights

10. Mongolia is extremely rich in natural resources, with significant deposits of gold, copper, coal, silver and other minerals. The mining sector amounted to 79.6 per cent of the country's exports in 2017.⁵ The animal products sector, an area to which herders have been traditionally contributing for generations, amounted to 6 per cent of the total exports for 2017.⁶ The current economic model is mainly based on the exploitation of natural resources, the mining sector being at the centre of the State's economy and contributing 21 per cent of total government revenues on average between 2010 and 2017.⁷

11. For many States, overreliance on natural resource extraction has proved to be both an economic opportunity and a challenge. Studies have demonstrated that while it has significant potential, mining exploitation needs to meet several conditions to ensure the effective translation of mineral revenues into sustainable growth. Resource abundance has at times been associated with a hampering of growth through reinforcement of structural, monetary and policy constraints in the development process.⁸ It has been observed that

¹ See the guiding principles on human rights impact assessments of economic reforms (A/HRC/40/57), principle 9.

² Mongolia, Secretariat of the State Great Hural, *Mongolia Sustainable Development Vision 2030* (Ulaanbaatar, 2016), p. 9.

³ See Mongolia, *Mongolia Voluntary National Review Report 2019: Implementation of the Sustainable Development Goals* (Ulaanbaatar, 2019).

⁴ See www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx.

⁵ Mongolia Extractive Industries Transparency Initiative, *Mongolia Twelfth EITI Report 2017* (Ulaanbaatar, 2017), p. 10.

⁶ Bank of Mongolia, *Annual Report 2017*, p. 16.

⁷ World Bank Group, *Mongolia: Growing without Undue Borrowing – Enhancing Efficiency of Spending and Revenue* (Ulaanbaatar, 2018), p. 43.

⁸ Katja Hujo "Introduction and overview: blessing or curse? Financing social policies in mineral-rich countries", in *Mineral Rents and the Financing of Social Policy: Social Policy in a Development Context*, Katja Hujo, ed. (London, Palgrave Macmillan, 2012).

mineral-rich countries that have succeeded in consolidating sustainable growth have provided incentives for productive investment and economic diversification, safeguarded macroeconomic stability, been successful in establishing consensus among social and economic groups, and invested in comprehensive social policies.⁹

12. The growth rate reached significant peaks over the past years, culminating at 17 per cent of gross domestic product (GDP) in 2015. During the 2010s, Mongolia also recorded considerable progress on the human development index, going from 0.697 in 2010 to 0.741 in 2017. Yet, on average, almost a third of the population lives in poverty, while in some regions approximately half of the population lives below the poverty line.¹⁰

13. The economy was repeatedly affected by mineral price cycles and economic downturns, including three periods of low GDP growth (below 2.5 per cent), in 1996, 2000 and 2009, the most considerable having been -1.3 per cent in 2009. More recently, due to the sharp fall of mineral prices in 2015 and 2016, the growth rate fell by 16 points to 1.2 per cent of GDP in 2016, while public debt amounted to 87 per cent of GDP. The economy and State revenues were once again deeply affected and the mineral rent cycle translated into negative consequences for the population, as suggested by several indicators.

14. More specifically, during the latest period of economic hardship, the maternal mortality ratio almost doubled, going from 26 to 48.6 maternal deaths per 100,000 live births from 2015 to 2016. An increase was also observed in the under-5 mortality rate. Economic inequality¹¹ and poverty increased, despite having been on a downward trend over the past decade, with the national poverty rate going from 21.6 per cent in 2014 to 29.6 per cent in 2016.¹² Furthermore, although the prevalence of undernourishment had been decreasing until 2013, the rate stabilized in the following years.¹³

15. In this downturn context, on 24 May 2017, Mongolia entered into a three-year arrangement of \$425 million with the International Monetary Fund (IMF) under the Extended Fund Facility. It is part of a \$5.5 billion multi-donor financing package comprising loans from a range of financial institutions, including the World Bank, Asian Development Bank (ADB), Japan, and Korea,¹⁴ that supports the Government's economic recovery plan aimed at restoring economic stability and confidence.

16. This plan included a range of measures, from fiscal consolidation to changes in the social programme architecture. It comprised efforts aiming at better targeting the "Child Money Programme", a public sector wage freeze, the suspension of civil servants' grade advancement and a restriction on hiring. The plan also included a projected increase in the retirement age, which had the potential to translate into concrete impacts on the human rights of children, older persons and women, the latter of whom often work in the public sector, mainly in education and health sector.

17. The increase in the retirement age to 65 years old, as advised by IMF, was later reversed, but remained an important concern for the population. As some of the Independent Expert's interlocutors underlined, given the life expectancy of 66 years old for men and 74 years old for women according to the World Health Organization (WHO),¹⁵ even small changes in the retirement age had a significant impact on the enjoyment of retirement. Further challenges are to be considered with the low retirement pensions and increasing number of people retiring, including creating social welfare conducive to their

⁹ United Nations Research Institute for Social Development (UNRISD), "Mineral rents and the financing of social policy: options and constraints", Research and Policy Brief, No. 16 (Geneva, 2012).

¹⁰ World Bank Group, "Mongolia's 2018 poverty rate estimated at 28.4 percent", 21 June 2019.

¹¹ World Bank Group, "GNI per capita, Atlas method (current US\$)", DataBank. Available at <https://data.worldbank.org/indicator/NY.GNP.PCAP.CD?locations=MN> (accessed on 30 December 2019).

¹² Mongolia, *Voluntary National Review Report 2019*, p. 19.

¹³ United Nations, Department of Economic and Social Affairs, "SDG country profile: Mongolia". Available at <https://country-profiles.unstatshub.org/mng>.

¹⁴ In addition, the People's Bank of China agreed to extend its swap line with the Bank of Mongolia.

¹⁵ See www.who.int/countries/mng/en (accessed 30 December 2019).

needs, preventing older persons from entering into poverty and ensuring access to basic services.¹⁶

18. Of particular concern is the fact that the expansion of the Child Money Programme would be financed by cutting one of the two current poverty programmes (the Poverty Benefit Programme). In its latest review, IMF indicated that the Child Money Programme had been insufficient to improve the living standards of the most vulnerable, and encouraged the Government to complement it with social programmes that better targeted those living in poverty.¹⁷ While well-targeted social programmes and more efficiency in the social policy sector are essential, the principle of universal coverage of social protection should always be the ultimate objective. In this regard, it is of concern that the number of beneficiaries under the Child Money Programme decreased from 994,159 in 2014 to 912,000 in 2018, despite the child population having been on an upward trend during the same period.¹⁸

19. The general budget allocated to social sectors has been subjected to relatively minor changes in comparison with the beginning of the decade, even with fiscal consolidation. This also means that when it comes to the health and education sectors, while the level of spending has remained relatively similar during growth peaks,¹⁹ the Government acknowledges that it has not increased sufficiently over that period.²⁰ Public spending on education increased from 14–16 per cent of total government spending in 2006–2010 to 18–19 per cent in 2013–2014, but declined to 13 per cent in 2016.²¹

20. Primary, secondary and high school enrolment all remained above 98.6 per cent in 2017–18.²² While recurrent expenditures appeared to be the most important budgetary line, significant maintenance disbursements are to be expected in the coming years for public equipment and infrastructure.²³ Furthermore, the Government has recently underlined that educational facilities do not always meet required standards, with, for instance, only 54 per cent of schools connected to centralized water and sanitation systems.²⁴ Access to quality education can be challenging for some segments of the population, including for children from poor families, herders' children and children with disabilities. Moreover, although the proportion of women graduating from secondary and higher-level education is greater than that of men, women are overrepresented in low-paid jobs and the informal sector. Besides occupational segregation, the wage gap remains significant, with men earning on average 11.4 per cent more.²⁵ Women's asymmetric unpaid care workload is high, yet often neglected in public policy design and national accounts. In 2011, it was estimated that, on average, the time dedicated by women to unpaid work on a weekly basis was more than twice that of men.²⁶

21. When it comes to the health sector, while a slight increase in spending has been observed over the past 10 years, that rise has not resulted in improved quality of services.²⁷ Despite 90 per cent of the population being covered by health insurance, it appears that quality, high-cost diagnostics and treatments, and medicine reimbursement remain important challenges.²⁸ Specific areas have suffered further from the lack of funding, with important consequences on human rights. For example, although the 2018 family planning supplies budget amounted to 1.8 billion tugriks, a budget reduction between 2010 and 2017

¹⁶ Mongolia, *Voluntary National Review Report 2019*, p. 47.

¹⁷ IMF, *Mongolia: 2019 Article IV Consultation – Press Release, Staff Report and Statement by the Executive Director for Mongolia* (Washington, D.C., 2019), p. 17.

¹⁸ Figures provided by the Government (on file).

¹⁹ *Ibid.*

²⁰ Mongolia, *Voluntary National Review Report 2019*, p. 17.

²¹ World Bank Group, *Mongolia: Growing without Undue Borrowing*, p. 107.

²² Mongolia, *Voluntary National Review Report 2019*, p. 21.

²³ World Bank Group, *Mongolia: Growing without Undue Borrowing*, p. 113.

²⁴ Mongolia, *Voluntary National Review Report 2019*, pp. 21–22.

²⁵ *Ibid.*, p. 22.

²⁶ Otgontugs Banzragch, "Mongolia: time use surveys and policy case study", May 2019.

²⁷ World Bank Group, *Growing without Undue Borrowing*, p. 119.

²⁸ WHO, "Mongolia – WHO country cooperation strategy 2017–2021" (Manila, 2017), p. 4.

resulted in a considerable increase in the rate of abortions due to the inability of the public health sector to match the population's demands and needs in family planning supplies.²⁹

22. A study established that out-of-pocket payments for health care constituted 41 per cent of the total health expenditure in 2011,³⁰ and, according to WHO figures, remained unchanged for 2014. The same study found that catastrophic health expenditures were experienced by approximately 5.5 per cent of households, and that approximately 20,000 people were forced into poverty as a result of paying for health care.³¹ The Independent Expert is particularly concerned about the potential additional financial burden on households when facing unexpected, non-covered or poor-quality medical treatment and having to resort to out-of-pocket expenditures to fulfil their right to health.³²

23. States should demonstrate that every effort has been made to mobilize all available resources, even in times of economic crisis. In particular, States must generate, adequately allocate and make use of the maximum of their available resources to move as expeditiously and effectively as possible towards the achievement of the full realization of economic, social and cultural rights.³³

24. The Independent Expert notes the commitment of Mongolia to diversifying its economy while increasing competitiveness,³⁴ and encourages the State to deploy additional efforts on the matter. He encourages Mongolia to take concrete steps to implement the industrial policy adopted in 2015 and ensure policy coherence. While industrial policy should include investment in research, technology and innovation,³⁵ only a very small share of the State's GDP is currently invested in research, technology and innovation, the figure standing, for instance, at only 0.1 per cent of GDP in 2017.³⁶

25. Over recent years, the Government has implemented important economic reforms. A number of these reforms were recommended by IMF with the aim of restoring macroeconomic stability and fiscal discipline. Orthodox monetary policies normally imply a negative effect on human rights.³⁷ Yet human rights impact assessments of the reforms have not been common practice in the State, either in the judiciary or in the executive branch.

26. In March 2019 the guiding principles on human rights impact assessments of economic reforms (A/HRC/40/57) were presented to the Human Rights Council.³⁸ From a general standpoint, the guiding principles can help address various issues, including the conformity of policies with human rights standards and the potential repercussions of economic reforms on the human rights of the population or of certain groups (see principle 11).

27. In this regard, the 2016 Law on Legislation is an interesting tool, as it already provides for economic, social and regulatory impact assessment of policy reforms. However, the Independent Expert learned that this exercise has not been regularly carried out. A number of interlocutors highlighted a lack of disaggregated data and technical capacity, shedding light on potential areas for improvements. To ensure that these

²⁹ See United Nations Population Fund, *Situation Analysis of Family Planning in Mongolia* (Ulaanbaatar, 2016), p. v.

³⁰ Javkhlanbayar Dorjdagva and others, "Catastrophic health expenditure and impoverishment in Mongolia", *International Journal for Equity in Health*, vol. 15, article No. 105 (2016), p. 1.

³¹ *Ibid.*

³² See A/HRC/43/45.

³³ Guiding principles (A/HRC/40/57), principle 9.

³⁴ Government of Mongolia, letter of intent, 13 April 2017, in IMF, *Mongolia: 2017 Article IV Consultation and Request for an Extended Arrangement under the Extended Fund Facility – Press Release, Staff Report and Statement by the Executive Director for Mongolia* (Washington, D.C., 2017), p. 51.

³⁵ See *Trade and Development Report, 2016* (United Nations publication, Sales No. E.16.II.D.5).

³⁶ UNDP, "Mongolia: human development indicators", Human Development Reports. Available at <http://hdr.undp.org/en/countries/profiles/MNG> (accessed 30 December 2019).

³⁷ See A/74/178.

³⁸ See Council resolution 40/8.

assessments become systemic practice, as prescribed by law, improved data collection and strengthened technical capacity are key.

B. Public and private debt

28. According to the Ministry of Finance, the public debt of Mongolia went from 78.8 per cent of GDP in 2016 to 58.9 per cent of GDP in 2018. From the outset, the significant decrease in public debt since the most recent economic downturn should be underscored.

29. This was also highlighted by international financial institutions, although relying on different figures, taking into consideration that neither State-owned enterprises' debt nor the central bank's liabilities for swap lines were included in official numbers. Despite this discrepancy, a considerable decrease in public debt, from 87.6 per cent in 2016 to 73.3 per cent in 2018, was also observed by the IMF.³⁹

30. The Fiscal Stability Law, adopted in 2010, aims to establish fiscal management principles and requirements to ensure fiscal stability and provides that the country's net public debt should not exceed 40 per cent of GDP from 2014 (art. 19.3). Since 2015, the public debt level has remained within the debt ceiling set by law; however, the debt ceiling has been adjusted numerous times over the years.⁴⁰ In this regard, principle 12 of the guiding principles provides that debt sustainability analysis should incorporate human rights impact assessments.

31. The total outstanding external debt has, overall, been on an upward trend. Figures indicate a jump of approximately \$4 billion since 2016, from \$24.6 billion at the end of 2016 to \$28.7 billion at the end of 2018.⁴¹ According to IMF, the figure could reach \$33 billion by 2021.⁴²

32. In terms of debt to GDP, the debt decreased slightly, by 20 percentage points, in 2018. Currently amounting to 220 per cent of GDP, it is still extremely high. According to IMF, the high level of external debt is the result of several factors, including the financial needs of the mining sector.⁴³

33. The remaining, private, part of external debt is composed of domestic debt (mortgages, consumption and companies) and other external debt (mainly mining corporations).⁴⁴ While public debt has not reached alarming levels, debt sustainability analysis should incorporate a human rights dimension so that the implications of debt levels on these rights are duly taken into account by the relevant financial authorities.⁴⁵ A very high level of private debt can pose systemic risks to the economy, which needs to be prudently managed.⁴⁶ The guiding principles provide that States should have a transparent and democratically discussed bailout and interest rate formation regime established by law and use a mix of tools to ensure appropriate global and domestic financial market regulation with the aim of curbing excessive credit growth, including measures of prudential regulation, debt sustainability analysis and capital controls (A/HRC/40/57, para. 11.10).

34. State-owned enterprises' liabilities are not included in official debt figures, although this does not prevent Government's liability in case of default. This is not a purely technical disquisition: Mongolia has borrowed from various private partners to conduct a number of projects, including for the Oyu Tolgoi mine. In the same vein, closer attention should be paid to debt generated in the context of public-private partnerships.

³⁹ IMF, *Mongolia: 2019 Article IV Consultation*, table 1.

⁴⁰ David Mihalyi and Liliana Fernández, "How did fiscal rules hold up in the commodity price crash?", Natural Resource Governance Institute, June 2018, p. 18.

⁴¹ Bank of Mongolia, *Annual Report 2018*, p. 17.

⁴² IMF, *Mongolia: 2019 Article IV Consultation*, p. 51.

⁴³ *Ibid.*

⁴⁴ See www.mongolbank.mn/eng/liststatistic.aspx?id=4_3.

⁴⁵ See guiding principles (A/HRC/40/57), principle 12.

⁴⁶ *Trade and Development Report 2019* (United Nations publication, Sales No. E.19.II.D.15), p. 76.

35. From a private individual debt perspective, it is important to highlight that while loan providers vary, including financial institutions and non-banking businesses, the obligations of the State remain the same: protect, respect and fulfil human rights.⁴⁷ Businesses also have a corporate responsibility to protect human rights in conducting their operations.

36. Although banks are legally limited in terms of borrowers' interest rates – which remain quite high, with bank rates for borrowing against pensions reaching 18 per cent, for example – the non-banking financial system is not subject to any ceiling. It has been reported that these financial institutions charge very high interest rates, sometimes on a daily basis, particularly through microloans. This can put individuals at risk of not having the resources to enjoy their most basic social and economic rights, including their rights to food, education, health and adequate housing. In this regard, the Independent Expert urges governmental intervention to impose interest caps on all businesses operating in the area, regardless of whether they conduct banking activities.⁴⁸

37. It is the Independent Expert's view that the banking and financial sectors should, without delay, start implementing the Guiding Principles on Business and Human Rights, and that the national action plan currently being developed should include this issue as one of its priorities.

IV. Mineral rents, social and environmental policies

A. Collecting mineral rents

38. Licence fees, royalties, corporate income tax and custom duties constitute the mining sector's fiscal contribution to the Mongolian economy.⁴⁹ Corporate income tax is applicable to all businesses operating in Mongolia; mining businesses are no exception and are subject to standard tax brackets, as explained in chapter V of the present report. A portion of mineral rents is devoted to ensuring macroeconomic stability and equitable social fairness for future generations.

39. In this regard, the Independent Expert commends the State for the establishment of the Fiscal Stability Fund and the Future Heritage Fund, which can play a key role in ensuring that mining profits can benefit all. This is in line with the Government's acknowledgement of the need for it to build up buffers during the good times.⁵⁰

40. However, withdrawals from the Future Heritage Fund will not be allowed until 2030, when 10 per cent of the Fund's net investment income is to be transferred to the State budget on a yearly basis.⁵¹ In the meantime, public revenues from the mining sector and other domestic revenues such as taxation and social insurance contributions are to be mobilized to create sustainable linkages between intergenerational and socioeconomic groups. Currently, the fund is provisioned by two main sources of income: (a) the dividends distributed for State shares in licensed companies operating in mining deposits; and (b) 65 per cent of mining royalties from all deposits collected in the budget.⁵² However, a recent report points out that while most State-owned companies in the region pay 100 per cent of their profits to the Government as a dividend, the same regularity has not been observed for Erdenes Mongol and its subsidiaries, which still do not pay regular dividends to the Mongolian treasury.⁵³

41. When it comes to the Fund's management, the Government of Mongolia favours an "arm's-length" investment approach. The authorities are therefore prohibited from

⁴⁷ See the Guiding Principles on Business and Human Rights.

⁴⁸ See A/HRC/43/45, recommendations.

⁴⁹ See <https://eiti.org/mongolia#tax-and-legal-framework>.

⁵⁰ Government of Mongolia, letter of intent, 13 April 2017.

⁵¹ Law on the Future Heritage Fund, art. 9.

⁵² *Ibid.*, art. 7.

⁵³ Bauer and Namkhajantsan, "Wild growth", p. 3.

investing in a range of activities, including military, weapons, tobacco and alcohol production.⁵⁴ While such criteria are relevant in terms of guiding responsible investments, human rights-based criteria should also be considered.

42. A number of tax agreements have been concluded for particular projects, such as the taxation clause included in the investment agreement concluded to develop the Oyu Tolgoi mine in 2009. Tax agreements of this nature have not only deep but also intergenerational implications for the country, from both a fiscal and a human rights point of view. For instance, the Oyu Tolgoi agreement included a 30-year tax stabilization clause, meaning that the tax rate agreed upon in 2009 was frozen and would be unalterable for the following three decades. A resolution was adopted by the parliament in late 2019 aimed at protecting the Mongolian people's rights and interests in terms of the Oyu Tolgoi deposits.⁵⁵ The Independent Expert encourages the Government to consider the findings of the present report in this implementation.

43. It is the Independent Expert's view that tax stabilization clauses should be looked at from two different angles. First, as inclusive growth is usually explicitly cited as mining project goals, it would be difficult to argue that full private appropriation of profits – produced at the expense of the natural resources of Mongolia – was a socially and politically legitimate approach. Second, from an international law perspective, should certain profits not have been envisaged at the time when the stabilization clause was agreed upon, fundamental changes in circumstances should allow for reconsideration. Circumstances such as unforeseen earnings due to windfall profits could be thus considered, allowing for distribution or redistribution between parties. In addition, such an approach would allow for more inclusive growth and an opportunity for the population to enjoy a greater share of the benefits resulting from the exploitation of natural resources.

44. Various avenues exist to address issues related to the taxation of mineral revenues, including implementing a floating royalty system that would evolve according to the market price. While such a system is currently used with success in a number of mining businesses in Mongolia, it is important to stress that development is not only about shared economic growth, but also about shared losses for society.

B. Human rights impact of mining: improving the assessments

45. A range of mining activities of varying scale and nature is being undertaken all over the country. As of 2016, 27,068 hectares of land had been degraded owing to mining activities.⁵⁶ Mining activities have been associated with serious adverse impacts on human rights, including the right to health, housing, and water and sanitation.⁵⁷

46. Since pastureland in Mongolia is public property, when herder families have to relocate, specific challenges may include having to coordinate with local communities and other herder families already using the same land for animal grazing. Furthermore, mining activities can have specific adverse health implications for workers, including cardiovascular and respiratory diseases,⁵⁸ and exposure to mercury, whose adverse properties include neurodevelopmental toxicity.⁵⁹

47. Health assessments of the impact of mining on workers, mobile support staff and the surrounding populations are not systematically conducted, especially in small mines. In this

⁵⁴ Law on the Future Heritage Fund, art. 12.

⁵⁵ "Will the Mongolian Government improve the Oyu Tolgoi agreement?", *DeFacto Gazette*, 28 November 2019.

⁵⁶ National Human Rights Commission of Mongolia, *17th Status Report on Human Rights and Freedoms in Mongolia* (Ulaanbaatar, 2018), p. 20.

⁵⁷ See, for instance, E/C.12/MNG/CO/4, para. 25; and United Nations Development Programme (UNDP) and United Nations Environment Programme, *Managing Mining for Sustainable Development: A Sourcebook* (Bangkok, UNDP, 2018), p. 32.

⁵⁸ ILO, "Briefing note: occupational safety and health in mining in Mongolia", 18 October 2016, p. 4.

⁵⁹ Nadine Steckling and others, "Mercury exposure in female artisanal small-scale gold miners (ASGM) in Mongolia: an analysis of human biomonitoring (HBM) data from 2008", *Science of the total environment*, vol. 409, No. 5 (1 February 2011), p. 995.

regard, close monitoring should be regularly carried out to ensure that health assessments are effectively undertaken and their conclusions taken into consideration. A joint agency among the relevant ministries, including the Ministry of Health, could be established for this purpose and to ensure close follow-up, and to ensure that environmental impact assessments are conducted in parallel and that each of the evaluations mutually informs the other.

48. By law in Mongolia, there is an obligation to conduct environmental impact assessments for mining licences to be granted, and a monitoring system to assess the impact during and after mining operations is included in legislation. Such assessments go beyond environmental issues, including, even partially, social and economic dimensions, but are incomparable to the comprehensive impact assessment of coal mining and transportation activities from Tavan Tolgoi coal mines commissioned by the National Human Rights Commission of Mongolia in 2018.⁶⁰ It was brought to the Independent Expert's attention that following that assessment, the Government has tackled some of its recommendations, addressing gaps in infrastructure.

49. However, at the heart of the current environmental impact assessment system lies an inner conflict of interests that is worrisome: mining corporations are identifying, contacting, contracting and paying private consultancy firms that prepare an assessment to be submitted for licensing purposes, posing serious questions regarding the independence of the evaluator. The delegation of this exercise to private corporations or third parties does not free the State from its obligations under international human rights law, nor is the private actor absolved from applying all the legal substantive and procedural standards enumerated guiding principles on human rights impact assessments of economic reforms.⁶¹

50. There is a need to develop a domestic, professional and independent policy analysis capacity within the public sector to avoid dependence on private consultancy firms that are ultimately paid by the mining corporations requesting licences. The Government must also take further steps to support the ability of affected communities and civil society at large to participate and provide parallel information to assessment processes.

51. Progress has been made since the 2017 visit of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, who noted the limited number of staff members in the Ministry of Environment and Tourism's environmental assessment and audit division.⁶² Nevertheless, a team of only seven people is in charge of reviewing the environmental assessments of all mining projects in the country. There is an obvious and immediate need to invest further human resources in this key responsibility, given the importance of mining activities for Mongolia and the scale of their potential environmental and human rights impacts.

52. In this regard, the Independent Expert welcomes the efforts being deployed by the Government to develop a national action plan on business and human rights. The Guiding Principles on Business and Human Rights are relevant for the whole mining sector, as they provide specific guidance on the corporate responsibility to respect human rights, particularly the obligation to do no harm and prevent and mitigate potential human rights impacts.

53. Measures to ensure the investment of a fair share of mining activities to adequately compensate local communities for the use of their traditional lands, such as community development agreements, are not always fully implemented or do not result in concrete benefits for local populations and those particularly affected. In this regard, the Independent Expert shares the concerns of the Committee on Economic, Social and Cultural Rights about the impact of the extractive industries on herder communities' economic, social and cultural rights, particularly their rights to their pasture, hay land and water resources.⁶³

⁶⁰ Mongolian Institute for Innovative Policies, *Human Rights Impact Assessment of Mining and Transportation of Coal from Tavan Tolgoi* (Ulaanbaatar, 2018).

⁶¹ Guiding principles (A/HRC/40/57), para. 15.3.

⁶² A/HRC/37/58/Add.2, paras. 30–31.

⁶³ E/C.12/MNG/CO/4, para. 8.

C. Oyu Tolgoi

54. The Independent Expert had the opportunity to visit Oyu Tolgoi mine, which is located in Khanbogd District in Umnugovi Province. The project started more than a decade ago and was made possible with the managerial and technological investment of Rio Tinto, the commitment of the Government and the contributions of a range of public and private lenders, including the European Bank for Reconstruction and Development and the World Bank Group.

55. Having lived in the province for centuries, communities of nomadic herders have thus been cohabiting with the mine since the beginning of this large-scale project. Herders, who move around freely, sustaining their livelihood on the region's pastureland and making the best of the desert's scarce water resources, have seen the region change drastically over the last years.

56. A total of 34 per cent of Oyu Tolgoi's shares are owned by the Government and managed by Erdenes Oyu Tolgoi, a State-owned company. The remaining 66 per cent is owned by Turquoise Hill Resources, a company whose major shareholder is Rio Tinto. Oyu Tolgoi's sales revenue in 2018 amounted to \$1.18 billion, and taxes, fees and other payments to the Government amounted to \$200 million.⁶⁴ From 2010 to 2019, the company spent \$9.5 billion overall in Mongolia in salaries, payments to Mongolian suppliers, taxes, donations and other payments to the Government. The project, currently employing thousands of people, includes an open pit mine (phase 1) and the future underground mine (phase 2), intended to be in operation soon.⁶⁵

57. Oyu Tolgoi's efforts to create jobs in the region and to support local businesses through its procurement policy should be highlighted. In 2018, 95 per cent of the workforce was locally recruited, in compliance with the cap of 10 per cent on foreign workers provided for in the mining sector's legislative framework.⁶⁶ Oyu Tolgoi is also committed to promoting gender equality among employees and creating more equal opportunities for women. Nevertheless, these efforts should also be integrated into targeted policies to balance the structural asymmetric distribution of unpaid care work responsibilities among men and women. The enterprise's commitment to ensuring health and safety is notable and stands out within the industry, although some gaps need to be addressed.⁶⁷

58. In 2012 and 2013, two groups of local herders submitted complaints to the World Bank Group's Compliance Advisor Ombudsman about the mine's resettlement plan of 2004 and economic displacement compensation programme of 2011. Their complaints outlined specific concerns that the diversion of the Undai River for the mine would deplete local water sources, deteriorate pastureland and threaten the community's spiritual practices. They also alleged that they had been inadequately compensated. In 2017, an agreement was reached between Oyu Tolgoi, the local authorities and herder communities. In this regard, the Independent Expert would like to salute the engagement of all three parties in the mediation process and commend them for reaching an agreement after years of mediation and taking into account the intrinsic power imbalances among the parties involved.

59. A total of 200 square kilometres of pastureland have been reallocated due to the mining activities. Herder communities who have been using the land for generations have had to expand their pasture practices and look for other grazing areas, resulting in potential pressure on other herder families already living there. In addition, dust from the mining operations has reportedly been affecting animals, and waste rock dump has been affecting pastureland and spiritual practices.⁶⁸ Despite progress on some issues, such as the paving of

⁶⁴ Oyu Tolgoi, *Year in Review: 2018* (Ulaanbaatar, 2019), pp. 18–19.

⁶⁵ Oyu Tolgoi, *Past, Present and Future: Summary Version* (Ulaanbaatar, 2018), p. 16.

⁶⁶ Christopher Melville and Erdenedalai Odkhuu, "Mining in Mongolia: overview", Thomson Reuters, 1 July 2019.

⁶⁷ See ILO, "Briefing note".

⁶⁸ See Tripartite Council of Khanbogd soum, Umnugovi aimag, *Multidisciplinary Team and Independent Expert Panel Joint Fact-finding: Summary of the Experts' Reports* (Oxford, JSL

roads leading from the mine with a view to addressing dust-related issues, many challenges remain.

60. Oyu Tolgoi is water-intensive, even if it allegedly recycles more than 80 per cent of the water used. While the Independent Expert acknowledges the mine's commitment to saving water, the reality is that mining relies on water usage, and this resource is of specific importance for communities living in deserts. Past, current and future impacts on local communities must therefore be taken very seriously.

61. Over recent years, herders, local communities and the local government in Khanbogd have expressed their deep concerns about how wells have been gradually drying up since Oyu Tolgoi started its operations. For nomadic communities, access to water in the Gobi desert is what separates life from death and the base of their livelihood. Megaprojects can have a range of impacts on the human right to water in terms of availability, accessibility and quality. Megaprojects can have a range of impacts on the human right to water in terms of availability, accessibility and quality. Other rights can also be affected, such as the right to adequate housing and the right to health.⁶⁹

62. As a mitigation measure, Oyu Tolgoi has put in place a programme to help herders to pump water and drill new wells. However, this solution has come with complications.⁷⁰ First, it has allegedly not left the aquifers untouched, and there is great concern that flaws in the design of the pump have contributed to the shallow aquifer leaking into the deeper one, leaving users of the traditional wells with little water to pump.⁷¹ Second, herders need to have access to and use energy for water-pumping machines, whereas previous wells were easily accessible and could be operated at no cost. Third, the increasing difficulties in obtaining access to water is altering the way in which herders and their animals move around, as many of the millennia-old waterholes no longer exist, meaning that ancestral nomadic practices are being changed.

63. The exploitation of the underground mine, the largest phase of the project, is yet to come, and the Independent Expert urges the Government, Oyu Tolgoi and investors to conduct a multidimensional impact assessment with human rights, environmental, health and social components. This assessment should also include a thorough examination of the underground mining operations in both hydrologic and geohydrologic terms. Such an exercise should ensure that potential adverse impacts on human rights and other areas are prevented, while providing for mitigation and remedy for those potentially affected.⁷²

64. Particular attention should be paid to the potential impacts on specific groups and communities, including herders. The impact assessment, including a detailed and independent hydrologic study and its conclusions, should be easily accessible online both in English and Mongol. The responsibility of the lenders should also be highlighted in this regard.⁷³ The parties' efforts to set up a local participatory water-monitoring programme should be underlined and the Independent Expert would like to encourage them to take further steps to ensure that data are collected regularly from all sides in order to gather further evidence on the impact of the mining operations on water. The findings should be made public on a regular basis and should be easily available. Past reports on water resources that have not been disclosed to date should also be made publicly available.

65. In parallel, the Independent Expert also recommends that the Government establish a permanent multi-stakeholder platform to channel discussions between mining corporations operating in the country and potentially affected communities. Mining,

Consulting, 2017). Available at http://www.cao-ombudsman.org/cases/document-links/documents/MDTIEP_FINALREPORT_ENG_January292017_001.pdf.

⁶⁹ See A/74/197 and A/HRC/39/55/Add.2.

⁷⁰ See Tripartite Council, *Multidisciplinary Team and Independent Expert Panel Joint Fact-finding*.

⁷¹ See Committee on Economic, Social and Cultural Rights, general comment no. 15 (2002) on the right to water, para. 23.

⁷² This assessment should take into account the recommendations in the reports of the Multidisciplinary Team and Independent Expert Panel.

⁷³ See A/74/197, para. 69.

environmental and human rights authorities, along with corporations and those affected, should be part of these discussions.

66. The human rights to access to water, land, food, livelihood, housing and cultural practices and heritage are at stake. In this regard, article 14 of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), provides that measures must be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities, and that particular attention must be paid to the situation of nomadic peoples. This point has also been considered by the Committee on Economic, Social and Cultural Rights in several of its general comments and observations, including in its general comment No. 15 (2002) on the right to water (para. 16 (e)), in which it refers to States parties' obligation to ensure that nomadic and traveller communities have access to adequate water at traditional and designated halting sites.

67. The tripartite council that was established as a result of the mediation process should not replace the legal requirement to consult with the community. In the short term, Oyu Tolgoi should continue its conversations with local communities until a solution that is satisfactory to all parties is reached, in line with international human rights standards.

V. Tax and illicit financial flows

68. From a human rights perspective, fiscal policy is of particular importance, as it constitutes a tool for States to mobilize revenue and ultimately contribute to making resources available for the progressive realization of economic, social and cultural rights, as required under article 2 of the International Covenant on Economic, Social and Cultural Rights. Both legislative and policy frameworks aimed at regulating tax matters and combating illicit financial flows, including tackling tax evasion, tax avoidance, money-laundering and corruption, are of specific relevance from a human rights perspective.

A. Tax framework

69. In 2019, amendments were adopted on various tax-related matters, including non-resident taxation and corporate tax rates. Although the IMF observed fiscal overperformance in 2018, it is of concern that the individual income tax system in Mongolia is based solely on a flat rate of 10 per cent, complemented by a real estate corporate tax of 0.6 to 1.0 per cent. From a human rights perspective, it is difficult to argue in favour of supporting a tax policy that imposes similar rates on multimillionaires and the lowest income quintile. In 2018, of the 25.4 per cent tax revenue income, corporate tax accounted for 15.6 per cent whereas personal tax of 10.4 per cent.⁷⁴ The proportion of public revenues collected by both taxes is similar, despite considerable differences in taxable income. Domestic resource mobilization can be a tool to ensure the realization of human rights and promote inclusive growth: increasing government revenues depends on robust redistributive and progressive taxation regimes.⁷⁵

70. Until 2019, the tax rate for a business income of less than 3 billion tugriks was of 10 per cent, and for income above this threshold, 25 per cent. As a result of the most recent legislative amendments, the threshold for business income will be raised to 6 billion tugriks as of January 2020, thus allowing a greater number of enterprises to benefit from the 10 per cent rate. While non-resident corporate withholding profit tax is currently set at 20 per cent, double tax agreements can establish a lower tax rate between States parties. As a result of their implementation, non-residents can benefit from a withholding tax rate as low as 10 per cent, for instance.⁷⁶ While this may result in a 50 per cent reduction in tax collection for a

⁷⁴ Figures provided by the Government (on file).

⁷⁵ Guiding principles, para. 11.2.

⁷⁶ Vincent Kiezebrink, Rhodante Ahlers and Sukhgerel Dugersuren, *Mining Taxes: The Case of Oyu Tolgoi and Profitable Tax Avoidance by Rio Tinto in Mongolia* (Amsterdam, Centre for Research on Multinational Corporations; Oyu Tolgoi Watch, Ulaanbaatar, 2018), p. 20.

specific business, on a larger scale it has potential consequences for public resources and ultimately for human rights.

71. The General Taxation Law was also amended and concerns were raised about the reduction of the statute of limitations for tax crimes to four years.⁷⁷ The Independent Expert is also particularly concerned about the recurrent adoption of tax amnesty laws and about the fact that information on taxes and taxpayers who benefit from these amnesties is unavailable. It is worth highlighting that the IMF recommended that Mongolia should avoid establishing tax amnesty schemes and consider alternatives such as payment instalment agreements, voluntary disclosure programmes, simplification of the tax policy regime and strengthening of the legal framework.⁷⁸

72. Of specific concern is the proposal by IMF in a recent paper to consider the reintroduction of a pasture tax, aimed at reducing herd size and in turn helping reduce land degradation and wealth inequality, and the introduction of incentives, aimed at boosting product quality and productivity.⁷⁹ While IMF recommends exempting small- and medium-scale herders from such a pasture tax, it is essential to highlight the importance of access to pastureland for nomadic herder communities, for both their subsistence and their traditional activities.⁸⁰ Should the Government decide to consider this proposal, the authorities should conduct a human rights impact assessment,⁸¹ in consultation with communities potentially affected, before going any further.

73. Observers have underscored the considerable share of the shadow economy in Mongolia: despite the unemployment rate being on a downward trend, a rise in informal employment has been noted over recent years. The Government should consider conducting a study in order to assess the importance of untapped fiscal revenue and ensure more robust and sustainable tax mobilization and tax collection while ensuring potential accountability.

B. Efforts to prevent and combat illicit financial flows

74. The notion of illicit financial flows includes a range of phenomena, from tax evasion and tax avoidance by transnational corporations to money-laundering, bribery, corruption and other criminal activities.⁸²

1. Tax-related and anti-money-laundering measures

75. The Independent Expert commends the Government for having joined the Global Forum on Transparency and Exchange of Information for Tax Purposes in 2018, and the Inclusive Framework on Base Erosion and Profit Shifting.

76. The Asia/Pacific Group on Money-Laundering, in its second follow-up report on anti-money-laundering and counter-terrorist measures, highlighted the considerable progress made by Mongolia in terms of technical compliance and upgraded the status of 16 recommendations. Issues leading to the categorization of Mongolia as a “grey list” country were also raised, paying particular attention to areas that were not subjected to a compliance upgrade, including issues related to money or value transfer services and money-laundering sanctions. The Independent Expert encourages the Government to continue its efforts to tackle circumstances allowing unlicensed or unregistered money or value transfer services to continue operating in such conditions.⁸³

77. Mongolia was just “grey listed” by the Financial Action Task Force for presenting serious deficiencies in terms of measures to combat money-laundering and the financing of

⁷⁷ EY, “Mongolia reforms its key tax legislation”, 4 June.

⁷⁸ IMF, *Mongolia: Selected Issues* (Washington, D.C., 2019), p. 7.

⁷⁹ *Ibid.*, p. 23.

⁸⁰ See ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 14.

⁸¹ See guiding principles (A/HRC/40/57), principle 11, particularly para. 11.6.

⁸² See A/HRC/31/61.

⁸³ Asia/Pacific Group on Money-Laundering, “2nd follow-up report: mutual evaluation of Mongolia”, Financial Action Task Force, October 2019. Available at www.fatf-gafi.org/media/fatf/documents/reports/fur/APG-Follow-Up-Report-Mongolia-2019.pdf.

terrorism.⁸⁴ It is worth underscoring the country's high-level political commitment to addressing money-laundering challenges through its national action plan, under which it is addressing a number of issues, including demonstrating increased numbers of investigations and prosecutions, demonstrating further seizure and recovery of assets, monitoring compliance by designated non-financial businesses and professions, and demonstrating cooperation and coordination between authorities to prevent the evasion of sanctions.

78. Base erosion and profit shifting, which the Organization for Economic Cooperation and Development (OECD) has defined as planning strategies used by multinational enterprises that exploit gaps and mismatches in tax rules to avoid paying tax,⁸⁵ is an issue of paramount importance given the size and complexities of multinational businesses, including those involved in the mining sector.

79. While underlining the important step forward taken by Mongolia in joining the Inclusive Framework, the Independent Expert recommends that the State ensure that it has clear and concise laws and regulations that make it illegal to intentionally incorrectly or inaccurately state the price, quantity, quality or other aspect of trade in goods and services in order to move capital or profits to another jurisdiction or to manipulate, evade or avoid any form of taxation, including customs and excise duties. Customs officials should be required to use available databases of information about comparable pricing of world trade in goods to analyse imports and exports and identify transactions that require additional scrutiny.⁸⁶

80. Of note is the introduction of the "ultimate holder" concept in the legislative framework, which provides that any changes to title ownership should be treated as a commercial transaction, with a 30 per cent corporate income tax rate.⁸⁷ The adoption of this measure is an additional effort towards a greater transparency and more robust tax mobilization.

81. The Independent Expert is also concerned about the past occurrence of criminal amnesties, including for economic and tax-related offences with a direct impact on a number of judicial cases. For example, in 2015, an amnesty was granted in connection to a significant number of offences: while no money-laundering investigations were dropped under the amnesty, a total of 80 inquiries, investigations or judicial proceedings related to economic crimes were dismissed.⁸⁸

2. Corruption

82. Mongolia has been a State party to the United Nations Convention against Corruption since 11 January 2006. A national anti-corruption strategy was adopted in early 2017 to reinforce efforts deployed.⁸⁹

83. While Mongolia climbed from 103rd to 93rd in its ranking on the Transparency International Corruption Perceptions Index in 2018, many interlocutors expressed their concerns about the vulnerability of public services to corruption and its potential impact on public revenues, development and human rights.⁹⁰ These concerns unfortunately echo the concluding observations of the Committee on Economic, Social and Cultural Rights on the

⁸⁴ See Financial Action Task Force, "Improving global AML/CFT compliance: ongoing process", 18 October 2019. Available at www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/fatf-compliance-october-2019.html.

⁸⁵ See www.oecd.org/tax/beps/about/.

⁸⁶ A/HRC/31/61, para. 87 (c).

⁸⁷ See <http://taxsummaries.pwc.com/ID/Mongolia-Corporate-Taxes-on-corporate-income>.

⁸⁸ Asia/Pacific Group on Money-Laundering, *Anti-money-laundering and Counter-terrorist Financing Measures: Mongolia – 2017 Mutual Evaluation Report* (Sydney, 2017), p. 51. Available at www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/Mongolia%20MER%202017%20-%20published%20version.pdf.

⁸⁹ See Transparency International, "Mongolia: overview of corruption and anti-corruption", 8 June 2018.

⁹⁰ Asia Foundation, *2018 Study of Private Sector Perceptions of Corruption* (San Francisco, 2018), p. 53.

issue, in which it highlights the prevalence of corruption within the State party.⁹¹ It was highlighted during the mission that corruption was common in the business sector, including in mining activities, an issue also raised by the Special Rapporteur on environment in 2017.⁹²

84. The 2019 voluntary national review report also underscores that corruption remains a major issue and is not reducing. From the population's perspective, the results of a 2018 survey on the perception of corruption in Mongolia revealed that the frequency and scope of corruption by public sector actors was perceived to be less in 2018 than in 2017, while also highlighting the particular vulnerability of government services to corruption. The need to address grand corruption cases also appears to be a concern.

85. The Independent Authority against Corruption is a key institution in charge of raising public awareness and education, undertaking corruption prevention activities, carrying out undercover operations, inquiries and investigations in detecting corruption crimes, and reviewing and inspecting assets and income declarations.⁹³ Regarding prevention, the Authority's recent efforts, such as carrying out State fund inspections and conducting corruption risk assessments in 24 ministries in 2018, should be noted.⁹⁴

86. While more than 239 alleged criminal cases were investigated by the Authority in 2014, less than 30 per cent have been prosecuted.⁹⁵ Of note is the significant discrepancy between the number of cases submitted to the Authority and those referred to the General Prosecutor's Office. It is of concern that undue political pressure and lack of cooperation by public agencies were reported among the challenges faced by the Authority.⁹⁶

87. The Sustainable Development Vision 2030 aims to "build professional, stable and participative governance, free of corruption that is adept at implementing development policies at all levels".⁹⁷ Nonetheless, it should be noted that the current Sustainable Development Vision 2030 strategy does not set specific action to address this issue.

88. Effective regulation is needed to tackle a range of challenges, including: (a) conflict of interest, by ensuring that legislation is shaped by all relevant principles applicable in the field, such as separation of powers, legality, publicity of administrative acts, fairness and efficiency, and that this legislation is effectively implemented; (b) prevention of lobbying by various sectors; and (c) more robust protection of whistle-blowers in line with international human rights standards.

89. Lastly, ensuring the independence of the judicial system is key to effectively preventing and combating corruption. In this regard, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers recently expressed their concerns to the Government about the amendments in March 2019 to the law on the legal status of judges and the law on the General Prosecutor's Office, introducing a new procedure for the dismissal of judges and heads of the prosecution service on the basis of a recommendation from the National Security Council of Mongolia.⁹⁸

⁹¹ E/C.12/MNG/CO/4, para. 11.

⁹² A/HRC/37/58/Add.2, para. 59.

⁹³ See www.iaac.mn/page/55?menu=17.

⁹⁴ OECD, *Anti-corruption Reforms in Mongolia: 4th Round of Monitoring of the Istanbul Anti-corruption Action Plan* (Paris, 2019), p. 35.

⁹⁵ See www.iaac.mn/page/67?menu=38; the most common offences were abuse of power by public officials and receiving or giving a bribe.

⁹⁶ OECD, *Anti-corruption Reforms in Mongolia*, p. 8.

⁹⁷ Mongolia, *Mongolia Sustainable Development Vision 2030*.

⁹⁸ See

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24599>.

VI. Lending for infrastructure projects from a human rights perspective

90. Foreign direct investment has increased significantly in Mongolia over recent years. Despite the drastic drop in total net investments in 2016 during the economic downturn, totalling -\$4.156 billion, the impressive increase to \$1.952 billion in 2018 should be noted.⁹⁹ As highlighted by the Government, the importance of managing private investment and foreign direct investment is crucial in the implementation of the Sustainable Development Goals.¹⁰⁰ This is also vital for the realization of human rights. The guiding principles on human rights impact assessments of economic reforms provide that States should enact foreign investment laws in such a way that includes an obligation on investors to undertake human rights impact assessments through neutral entities in a transparent and inclusive manner. States and investors should undertake to use such assessments as a means of enhancing the sustainability and development impact of investments in such a way that is beneficial to all stakeholders, including investors.¹⁰¹

91. In the context of the Ulaanbaatar urban redevelopment plan, various projects are currently being conducted, including with the support of ADB. For instance, ADB is currently implementing the Ulaanbaatar Urban Services and Ger Areas Development Investment Programme with the aim of helping Mongolia upgrade basic infrastructure and services in “ger” or peri-urban areas of Ulaanbaatar, where the majority of the capital city’s poor residents live. The project intends to develop roads and water infrastructure social services.

92. The Independent Expert learned that, in Selbe, a number of residents have been and will be relocated, with a serious impact on a number of their rights, particularly on their right to housing. In this context, complaints were submitted to an ADB mechanism highlighting many deficiencies in the development of this project, including regarding informed consultation and compensation.¹⁰² While many of the residents were satisfied with the outcomes of the resolution of one complaint, other important aspects still need to be addressed, such as adequate compensation for those who were not satisfied.¹⁰³ Moreover, the implementation of such projects can result in important issues related to the right to adequate housing such as homelessness, land issues and involuntary resettlement and the right to information. In this context, those implementing the project should offer adequate compensation that allow people to access alternative housing, and ensure informed consultations (and transparent updates) in the future.

93. The legislation on procedures of resettlement and compensation does not include non-urban resettlements. The Independent Expert advises the Government to close this gap by adopting, after broad consultation with relevant stakeholders, a robust and consolidated relevant legislation on the basis of existing international human rights norms and standards. Improving transparency, consultation and participation of potentially affected people is essential.

94. Over various discussions, international lenders and development partners have highlighted their respective safeguards and environmental, social and gender impact assessment (if any). International financial partners in their various projects – be it related to mining activities, energy, roads and infrastructure to establish – should establish more robust frameworks to assess the human rights implications of the projects, covering both substantive and procedural rights. “Human rights” are usually not even mentioned in the lenders’ safeguards nor their impact assessments.

⁹⁹ World Bank Group, “Foreign direct investment, net inflows (BoP, current US\$) – Mongolia”, DataBank. Available at <https://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD?locations=MN> (accessed on 30 December 2019).

¹⁰⁰ Mongolia, *Voluntary National Review Report 2019*, p. 36.

¹⁰¹ Guiding principles (A/HRC/40/57), para. 14.4.

¹⁰² See www.adb.org/sites/default/files/page/42458/mon-45007-004-complaint-form.pdf.

¹⁰³ ADB, “Mongolia: Ulaanbaatar Urban Services and Ger Areas Development Investment Program (Tranche 1) – monitoring report of the Special Project Facilitator”, July 2019. Available at www.adb.org/sites/default/files/page/42458/mon-45007-004-monitoring-report-final-201907-en.pdf.

VII. Conclusion and recommendations

95. The Mongolian economy is highly dependent on the exploitation of natural resources. Any significant drop in commodity prices on international markets therefore has the potential to affect the economy and the progressive realization of economic, social and cultural rights using the maximum of the State's available resources. Measures such as true economic diversification are thus key to ensure the sustainability of the social and economic model and to prevent the human rights of the population from being affected.

96. Facing significant debt and macroeconomic challenges, Mongolia entered in an extended arrangement under the IMF Extended Fund Facility in 2017. Under the economic recovery programme, a range of measures were put in place, including fiscal consolidation, orthodox monetary policy and adjustment reforms. Some social programmes, such as the Child Money Programme and the Poverty Benefit Programme, were particularly affected despite having been in place for years, with potentially important impacts on the human rights of their beneficiaries.

97. Although the level of public debt is not alarming, further economic challenges may arise as external private debt remains high. Regarding debt management, it is essential that a holistic and human rights-based debt sustainability analysis is systematically carried out. Taxation remains an important issue, with the current individual flat tax rate being regressive and reforms in corporate taxes of concern. As highlighted by the Financial Action Task Force, despite recent progress, there is also a need to deploy further efforts to combat illicit financial flows and money-laundering, including for the purposes of continuing to strengthen the independence of institutions, addressing tax fraud, and dealing with the occurrence of corruption in both the public and the private sectors.

98. It is vital that economic, social, tax, financial, monetary and debt policies are fully consistent with and actually promote the realization of human rights. One notable tool in this regard is the regular conduct of human rights impact assessments of economic reforms in line with the guiding principles (A/HRC/40/57).

99. The mining sector has the potential to play a truly transformative role and serve as a catalyst to spur social and economic development, which should be intergenerational, equitable, respectful of the environment and conscious of pastoral and nomadic heritage. The Independent Expert commends the State for the adoption of the Fiscal Stability Fund and the Future Heritage Fund to ensure macroeconomic stability and a fairer share of the mining sector's spin-offs in the future. To accompany this important initiative, it is essential to deploy consistent macroeconomic, monetary, regulatory, tax, social, environmental and industrial policies. The capture, management and sharing of mineral revenue should be implemented with a view to catalysing the sector's spin-offs and ensuring fair benefits for the population.¹⁰⁴ It is also essential that robust independent environmental impact assessments are duly conducted prior to natural resource exploitation projects, in consultation with potentially affected communities.

100. While Oyu Tolgoi has a great potential in terms of promoting growth and development in Mongolia, there are also serious risks involved, particularly for local communities. An agreement was reached between parties, following the complaints submitted by a group of local herders. However, the largest phases of the project are still to come and the mine is expected to be in operations for decades. It is thus vital that independent ex ante and ex post human rights, social, health and environmental impact assessments of the various phases of the project are regularly conducted, potential adverse consequences prevented and affected communities given access to adequate remedy. It is essential that contemporary and future potential issues,

¹⁰⁴ See Pascale Hatcher, Etienne Roy Grégoire and Bonnie Campbell, "The political economy of enhancing children's rights through mineral rents: the case of Mongolia", Working Paper 2016–2017 (Geneva, UNRISD, 2016).

including in connection with tax management, are addressed in a timely manner from a human rights perspective while ensuring the participation of and consultation with local communities, particularly herders.

101. While number of infrastructure projects being financed in Mongolia by international partners ultimately aim to achieve more inclusive sustainable growth or complement social safety net programmes, both positive and negative impacts on human rights need to be carefully examined beforehand to ensure that potential adverse consequences are prevented and the projects truly benefit all. The fact that none of the international financial institution safeguards even mentions human rights is revealing.¹⁰⁵ A robust and comprehensive law on impact assessment is needed, based on substantive and procedural international human rights standards.

102. The Independent Expert recommends that the Government:

(a) Conduct a gender-sensitive, participatory human rights impact assessment of economic reforms, in line with the guiding principles;

(b) Carry out debt sustainability analysis from a human rights perspective;

(c) Continue mobilizing public revenues from the mining sector and other domestic revenues such as taxation and social insurance contributions to create sustainable intergenerational and virtuous linkages between the various socioeconomic groups;

(d) Deploy further effort to implement the industrial policy while ensuring policy coherence, and consider including a dimension concerning investment in research, technology and innovation;

(e) Invest more human and financial resources in the Ministry of Environment and Tourism to conduct more robust, systematic and comprehensive environmental and human rights impact assessments in the mining sector;

(f) Develop a domestic, professional and independent policy analysis capacity within the public sector to avoid dependence on private consultancy firms;

(g) Take further steps to support the technical capacity of affected communities, particularly at the local level, and civil society to participate in independent impact assessment processes;

(h) Consider conducting a study to assess the extent of the shadow economy and illicit financial flows in the country;

(i) Ensure that banks and financial intermediaries exercise due diligence with clients, particularly politically exposed persons, high-net-worth individuals and large corporations and corporate groups, and assess the effectiveness of the existing regulatory framework;

(j) Require customs officials to use available databases of information about comparable pricing of world trade in goods to analyse imports and exports and identify transactions that require additional scrutiny;¹⁰⁶

(k) Adopt effective regulation to tackle conflict of interest, prevention of lobbying by various sectors and more robust protection of whistle-blowers in line with international human rights standards;

(l) Establish a joint agency among the relevant ministries, including the Ministry of Health, to monitor the health impacts of the mining sector on workers, local communities and the environment, paying specific attention to the most vulnerable groups, including children, older persons and people with disabilities;

(m) Ensure that independent environmental impact assessments for the granting of mining licences are systematically conducted; in this context, ensure

¹⁰⁵ See Amnesty International, *Falling Short*.

¹⁰⁶ A/HRC/31/61, para. 87 (c).

regular monitoring and follow-up, making sure that potential unexpected impacts are both identified and addressed;

(n) **Establish a permanent multi-stakeholder platform to channel discussions between mining corporations operating in the country and potentially affected communities. Mining, environmental and human rights authorities, along with corporations and those affected, should be part of these discussions;**

(o) **Adopt robust and consolidated legislation on urban resettlement and compensation based on existing international human rights standards after broad and informed consultation with relevant stakeholders;**

(p) **Consider ratifying the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169);**

(q) **Continue to develop the national action plan on business and human rights with the view of starting its implementation in a timely manner.**

103. **The Independent Expert recommends that international financial partners, in their various projects related to mining activities, energy, roads and infrastructure:**

(a) **Establish a more robust framework to assess the human rights implications of the projects, covering both substantive and procedural rights, including from a gender perspective;**

(b) **Continue participating in current and future mechanisms established by the Government to assess, prevent and mitigate the potential human rights and environmental impact of projects financed in the country;**

(c) **Take further steps to support the ability of affected communities and civil society at large to participate in the process and provide information.**

104. **The Independent Expert recommends that the private sector:**

(a) **Consider and fulfill the international human rights obligations of businesses, as outlined in the Guiding Principles on Business and Human Rights;**

(b) **Take part actively in the development of the national action plan on business and human rights and in its future implementation;**

(c) **Publish all environmental and social impact assessments and scientific studies conducted to date, as requested by the relevant regulatory frameworks, on their websites in Mongol and English;**

(d) **Take further steps to support the ability of affected communities and civil society to ensure their effective participation and receive sufficient information in a timely manner in the context of impact assessment processes;**

(e) **Enhance reporting by financial institutions of suspicious transactions related to corruption, money-laundering and tax evasion.**
