

National Human Rights Commission of Mongolia

International standards on the rights of women” and comparative study of national legislation

Article 10.1 of the Constitution provides “Mongolia shall adhere to the universally recognized norms and principles of international law and pursues a peaceful foreign policy,” Article 10.2 “Mongolia shall fulfill in good faith its obligations under international treaties to which it is a Party,” and Article 10.3 “The international treaties to which Mongolia is a Party shall become effective as domestic legislation upon the entry into force of the laws on their ratification or accession.” Mongolia is currently a party to 40 international human rights treaties and conventions and fulfills its obligations under these treaties and conventions. To that end, Mongolia is required to include the provisions of international treaties and conventions in its constitution and other relevant laws and enforce them.

Mongolia has acceded to the following treaties and conventions on the rights of women.

- Convention on the Elimination of All Forms of Discrimination Against Women
- Convention on the Political Rights of Women
- Convention on Consent to Marriage, Minimum Age for Marriage
- ILO Equal Remuneration Convention ILO Convention No. 100
- ILO Maternity Protection Convention No. 103
- ILO Convention Concerning Discrimination in Respect of Employment and Occupation No. 111
- ILO Convention Concerning Nightwork No. 171

Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women provides that the State Parties are obliged to undertake all appropriate measures including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Article 16.11 of the Constitution provides “Men and women shall enjoy equal rights in political, economic, social, and cultural fields and in marriage.” There are many provisions in Mongolian legislation that don’t meet norms and standards of international law.

Legal Regulation on Mothers Article 3.5 of the Maternity Protection Convention No. 103 specifies “In case of illness medically certified arising out of pregnancy, national laws or regulations shall provide for additional leave before confinement, the maximum duration of which may be fixed by the competent authority” and Article 3.6 “In case of illness medically certified arising out of confinement, the woman shall be entitled to an extension of the leave after confinement, the maximum duration of which may be fixed by the competent authority.” However, there is no legal regulation in Mongolian legislation with respect to provision of leave for mothers before and after confinement.

Article 4 of the Convention provides “While absent from work on maternity leave the woman shall be entitled to receive cash and medical benefits and the rates of cash benefit shall be fixed by national laws or regulations so as to ensure benefits sufficient for the full and healthy maintenance of herself and her child in accordance with a suitable standard of living.” However the Labor Law has no provision with respect to provision of cash benefit for parents with an infant who are on leave after or before confinement for the duration of their leave. Article 19.2 of the Law on Pensions and Benefits from the Social Insurance Fund provides “pre-natal and post-natal benefit shall be given to the mother who is covered by benefit insurance and has paid its

premiums and who is a state employee or works based on an employment agreement, for the period of 4 months from the social insurance fund at the rate of 70 percent of the average salary in last 12 months that the benefit premium was paid” and “pre-natal and post-natal benefit shall be given to the mother who is voluntarily covered in benefit insurance, for the period of 4 months from the social insurance fund at the rate of 70 percent of the average salary in last 12 months that the benefit premium was paid or other equivalent income.” Inaccessibility of additional benefit to a mother who is on 4-month or 120-working day leave and insufficiency of benefits for daily food and nutrition requirements leads Mongolia’s failure to fulfill its obligation as a party to the Maternity Protection Convention No. 103.

The General recommendation No. 16 (tenth session, 1991) of the Committee on the Elimination of Discrimination Against Women “Taking into consideration that a high percentage of women in the States Parties work without payment, social security and social benefits in enterprises owned usually by a male member of the family, recommends to take the necessary steps to guarantee payment, social security and social benefits for women who work without such benefits.” There is no legal regulation in Mongolian legislation for evaluating the labor of women who work on farming, cattle breeding, and private manufacturing and servicing sectors, and provision of social welfare services for them.

In order to ensure the equality of men and women in employment provided for by international treaties, it is required to create legal regulation of training and re-training of women who have taken pre-natal and post-natal leave or other leave due to illness caused by reproduction activities in national legislation.

“In all actions concerning children ... the best interests of the child shall be a primary consideration” provided in Article 3.1 of the Convention on the Rights of the Child is the primary principle of the Convention. Article 111.5 of the Law on Court Decision Enforcement provides “The convict who has given birth while serving an imprisonment sentence may be allowed to be with her 0-1-year old child.” However, as the provision is legal regulation that doesn’t comply with the principle of the Convention on the Rights of the Child and could lead to a violation of the rights of child, it is recommended to create optimal regulation with respect to this issue.

The provisions of Article 24 of Law on Family (1999) “A child’s first name, last name, and clan name” and Article 24.3 “A child shall adopt his/her father’s or last name” contradict with Article 24.1 “Parents shall give a first name and last name to their child based after they agree thereon” as well as violates Article 5 (a) of the Convention on the Elimination of All Forms of Discrimination Against Women “to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes”

Women’s Participation Article 2 of the Convention on the Political Rights of Women specifies “Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination” and Article 7 of the Convention on the Elimination of All Forms of Discrimination Against Women provides “States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies.” Moreover, the Article 16.9 of the Constitution ensures that a Mongolian citizen has the “... right to vote and to be elected to state bodies” without any discrimination.

Moreover, we emphasize that the repeal of the provision of the Law on Parliament that requires that no less than 30 percent of nominees from parties and coalitions be women, was a step backward in adopting temporary special measures aimed at accelerating de facto equality between men and women set forth in Article 4 of the Convention on Elimination of All Forms of Discrimination Against Women.

Violence Against Women and Sexual Exploitation Articles 1, 2, 4, 7, 16, and 17 of the Universal Declaration of Human rights and Article 8.2 of the International Covenant on Civil and Political Rights “No one shall be held in servitude,” Article 17 “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks,” and Article 26 “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law” ensure the freedom of everyone, in particular, women from violence and right to the protection of the law in the case of violence.

The Declaration on the Elimination of Violence Against Women adopted by the United Nations General Assembly in 1993 became a document of dual nature of law and customs that gives deeper understanding of the provisions of the above international instruments and determines a methodology for implementing them. Article 1 of the Declaration defines “violence against women means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”

The Law on the Fight Against Domestic Violence adopted in 2004 was a crucial step in addressing pressing issues of women. However, there is a need to revise some of the provisions of the law and in particular, clearly define punishment for perpetrators, taking account of the provisions of the Declaration on the Elimination of Violence Against Women.

Article 17 of the General recommendation No. 19 (1992) of the Committee on the Elimination of Discrimination Against Women, specifies “Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace” and urges the States Parties to take effective action against such violence. There is a lack of legal regulation of imposing punishment on perpetrators of crimes of sexual harassment at the workplace in nature.

The Law on the Fight Against Pornography was adopted and means of fighting this kind of crimes were enacted in 1998 and however, there are issues with regard to legal regulation that need due consideration. Provision “Prostitution is prohibited” of Article 4.1 of the Law is ineffective regulation of the fight to pornography and helps prostitution go underground thus, providing conditions for a serious violation of the rights of women. Also, provision “The police shall officially notify administration of an institution where the prostitute worked or studied, and the governor of a relevant khoroo, bag, soum, or district, if the prostitute isn’t employed, doesn’t to school/college, or has no definite address of residence of the violation or to announce it publicly” of Article 12.2 is contrary to the privacy, dignity, and reputation guaranteed by the international human rights treaties and conventions.