

**Statement by member of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Ms. Margaret Jungk: End of country visit to Mongolia**

Ulaanbaatar, 17 October 2012

Members of the press, ladies and gentlemen,

Good morning. I'm Margaret Jungk. I am a member of the UN Working Group on Human Rights and Business, an independent group of experts appointed by the UN Human Rights Council, and I have just concluded a ten day official visit to Mongolia. The purpose of my visit was to examine the human rights impacts of business activity in Mongolia, and to make recommendations to government, business, and civil society on how to address them. On the basis of my visit, the Working Group will submit a report to the UN Human Rights Council in June 2013. I would like to take this opportunity to share some of my early observations.

But first, I would like to warmly thank the Government of Mongolia for inviting the UN Working Group and for giving their full support to this mission. I would also like to thank the Office of the High Commissioner for Human Rights in Geneva and the United Nations Resident Coordinator's Office in Mongolia for their valuable advice and assistance organizing my programme of meetings and visits in Ulaanbaatar and Omnogovi aimag.

This is the UN Working Group's first country mission since its establishment in June 2011. The willingness of the Government of Mongolia to engage with the Working Group on its first country visit, I believe, is an indication of its intention to examine and address the impacts that businesses are having on the human rights of people here in Mongolia. This intention is also reflected in the emphasis on human rights in the Government Platform for 2012-2016.

I want to clarify the boundaries of my mission from the outset. Though my visit has focused on identifying negative impacts, these are not the only impacts of business activity here in Mongolia or elsewhere around the world. Business activities can and do have a positive impact on the full spectrum of human rights, from creating employment, to driving economic growth, to developing products and services which advance living standards. The key challenge for any country, especially one that is undergoing rapid economic development like Mongolia, is to maximize these positive effects and, at the same time, minimize the negative effects.

My primary aim on this mission, as per the mandate of the UN Working Group, was to observe the *negative* impacts of business activity on human rights and make recommendations on how government and businesses can uphold their responsibilities to address these impacts, and how civil society, international donors and other stakeholders can play a supportive role.

During my stay, I met with several authorities, including the Vice-Minister of Foreign Affairs, the ministers of Construction, Economic Development, Mining, Justice, Population Development and Social Protection, and Nature, Environment and Green Development. I also met the President's Advisor on Human Rights, the Deputy Speaker of Parliament and the Commissioners of the National Human Rights Commission. I met representatives

from the United Nations system, international cooperation agencies, business enterprises and organisations, trade unions and civil society organizations, including representatives from nomadic herders and artisanal miners. I also travelled to Omnogovi province and held meetings with a range of stakeholders in Tsogtsetsii and Khanbogd soums and visited two mining sites.

I'd like to thank all those who so generously gave their time and ideas to this effort. I am truly overwhelmed and grateful for all the engagement and openness I encountered here in Mongolia. These meetings and exchanges gave me a vivid portrait of the challenges Mongolians face, and the actions they are taking to address them.

Today I want to share with you my initial findings and recommendations for how Mongolia can minimize the negative human rights impacts of business activities. I will limit myself to five preliminary recommendations on some issues that, along with others, will be explored in more detail in the report of my visit, which the UN Working Group will present to the UN Human Rights Council in June 2013.

**My first observation is on the need to clarify the roles and responsibilities of business and government.**

I have observed an unfortunate lack of clarity about the respective roles and responsibilities of the government and business with regard to human rights. In many mining communities, I heard residents' expectations that hospitals and schools would be built in their soums by companies, without any mention of the government's responsibility to do so. In other conversations, I heard of severe workplace accidents caused by companies unwilling to take safety precautions. These companies were not sanctioned for their actions, and remedies were not available for victims or their families.

This is a fundamental challenge, but one with a ready solution at hand. I recommend that communities, companies and the government use the UN Framework and Guiding Principles on Human Rights and Business for clarity on the responsibilities of different actors for preventing and addressing human rights abuses by companies. This global authoritative standard was the result of a six year long process at the UN, and those six years were marked by an incredibly robust debate and intense global consultation process involving thousands of stakeholders from business, government and civil society around the world. The result was a global agreement which maintains that:

- Governments have the duty to protect against human rights abuses that happen in the context of business operations through establishing the right mix of policies, laws and regulations that facilitates an environment in which companies operate with respect for human rights. Governments must also monitor and enforce the compliance of companies with such policies and regulations. Governments also have the responsibility to hold companies to account and ensure the provision of an effective remedy for the victims when companies negatively impact on human rights.
- Companies have the responsibility to respect human rights across their activities and operations. This means avoiding having a negative impact on human rights either directly through their own operations or through their business relationships, for example with suppliers, business partners or with governments. This ranges from applying internationally agreed labour standards for the rights of their workers and those of their contractors, to good health and safety practices, to ensuring that

communities are not adversely affected by their operations. This also means that companies have the responsibility to repair the damage when things go wrong.

Why is getting this clarity so important? Because without that clarity, companies and government will continue to finger point at each other “to do something”, obscuring who exactly has responsibilities for what, and human rights risk falling in the gap in between. Because without that clarity, we may be tempted to push companies into taking on the role of governments, that is providing basic services for the population, and in the course of doing so, we weaken pressure on governments to serve their democratically elected functions. And without that clarity, those adversely affected by business will not know where or how to access remedy for violation of their human rights.

**My second observation is that it is essential to ensure that those who are impacted by business activities participate in key decisions that affect them. This, in turn, requires that those potentially affected have access to relevant information on a timely basis.**

I don't mean to imply that every single business decision should involve direct participation, from where the company locates its offices to where it buys its supplies. But the decisions that will have a substantial impact on people's lives should be made with the participation of those people. This includes what we call 'big community footprint projects' such as where a mine is located, or where a big commercial complex is built.

During my visit, I met with around a dozen nomadic herders. They told me of a time when they only found out a mining operation was coming to their area when the trucks and equipment began arriving. I also talked to Soum (local) and Aimag (regional) government officials who said they too were not involved in the decisions of the central government around exploration and mining activities. They maintained that even though the current law has some requirements about consultation with local government, in practice these laws were selectively applied or simply ignored.

In addition to these negative stories of lack of adequate information and opportunity to participate, I also heard some positive stories. These included the provisions in the new budget law for oversight by the local residents of government expenditure at the soum level, as well as independent experiments of citizens' councils that meet with companies and local government in a tripartite structure to identify and address the impacts of projected operations on local residents. These also included town hall meetings held by companies in areas of local impact, to openly discuss that impact and answer any questions or concerns.

Allow me to offer a few preliminary concrete recommendations in relation to participation:

1. Companies must engage regularly with the communities where their operations take place. Whether through joint-cooperation councils, or through other forms, companies must ensure that communities are consulted and notified before operations begin, and are fully informed of the way their lifestyles, livelihoods and human rights may be affected. I would also encourage companies to share the lessons of these efforts with others in their industry sector and geographic region.
2. The role of the government on this issue is crucial: it has the opportunity to set the stage for how these engagements are undertaken. I recommend that the government of Mongolia ensure that community engagement is an essential component of all stabilization agreements made with international investors. I have

also been told that the government aims to strengthen the community engagement provisions in the new Minerals Law, which it will submit to Parliament in 2013.

**The third recommendation is for government and business to work together on issues of collective business impacts.**

By collective business impacts, I am referring to things like damage to the environment, overuse of water resources, long-term damage to community health and unstable tenure of land. These are challenges not caused by the activities of one project or company alone, but rather by many companies operating in a particular geographic region or industry sector, such as mining.

While Mongolia's economic transition from a lower-income country to a middle-income country is itself a positive thing, there is a need to take into account the impact of economic activities on the environment and on the traditional way of life of nomadic herders, as they might affect various internationally recognized human rights as well as relevant provisions in the Mongolian Constitution.

Many of these issues are already being addressed by the Government and businesses that are leading the country's rapid development. But businesses cannot be the leaders of this effort. The Government must be responsible for leading the management of collective impacts.

I welcome the efforts to develop transparent and participative assessments of the nationwide impacts of business activity, and clear action plans for addressing them. This includes an upcoming assessment of the collective impacts of the mining sector, not just in one area, but across all of Mongolia. I welcome the assessment's focus on determining the global impact of mining on water resources, including the impact of increased internal and external migration to mining regions and the growing demands placed on hospitals, schools and other public services in those areas. I encourage similar exercises for other sectors. During my visit I was also told of assessments and action plans at project and local level. All of these assessments and resulting action plans should involve business and local governments as partners in developing solutions.

In Omnogovi, on several occasions I saw a statue of a bird holding an apple while standing on top of a rabbit, standing on top of a monkey, standing on top of an elephant. I asked my Mongolian colleague what it was, and she explained that the statue related to the famous fable of 'four cooperating animals'. None of them could reach the apple alone, but together they were able to get the treasured fruit. In a similar way, Mongolia has a treasure under its soil. No one can reach it alone. But the partnership between the national and local government, the companies, local communities and civil society, is the partnership that is needed to get the treasure under the ground, in a manner that doesn't sacrifice the treasure above the ground, namely the people, the environment and Mongolia's beautiful culture.

**The fourth recommendation is the need to integrate human rights considerations into laws and their application.**

The Government of Mongolia has an ambitious Action Plan for its upcoming 4-year term. It has already put some laws in place, and is currently considering other legislation, which could affect the way businesses impact human rights.

For example, my attention was drawn to the new Environmental Law, adopted in May 2012, which requires environmental impact assessments for large-scale business projects. I recommend that the government include human rights and social issues in the assessment criteria. All leading international standards relating to environmental impact assessments now include these criteria, and I would encourage the Mongolian government to follow international best practice in this area.

I have also been informed of a new 'Conflict of Interest law' which requires that government officials declare their ownership or interests in business. Enforcement of this is absolutely critical to establishing a firewall between business and government so that the government represents the will of the people, rather than the interest of business. I would strongly encourage the government to continue along this track and consider other measures as well to ensure that a separation between business and politics is kept, so that both democracy and business are flourishing in Mongolia and so that Government can play its full role in protecting the population from adverse impacts of business. In the same line, I also welcome the Government's plan to reform and strengthen the independence of oversight bodies, particularly on audit, human rights and corruption, as these play a key role in preventing and addressing adverse business impacts.

I have also been informed of a new Procurement Law that will enable civil society to review government procurement, with participation in the assessment and selection of bids. This is crucial for information about environmental, social and human rights impacts to be given greater visibility.

I have also learnt of a comprehensive exercise that was started last year to address gaps between the current labour law and the international labour standards that Mongolia has ratified. I urge the new Government to continue this initial work carried out in a tripartite manner with employers and trade unions, and that, it is hoped, will provide an even stronger legal framework to uphold the rights of workers in Mongolia.

My capacity to comment on all the relevant laws and pending regulations relating to human rights and business is limited, and further reference and analysis of these relevant laws will be included in the report. However, during my visit I have also been made aware of two crucial mechanisms for ensuring that laws and regulations are in conformity with international human rights.

The first is the Ministry of Justice's initiative to review all existing and draft laws with a view to assessing their conformity with international human rights law. I welcome and commend this initiative, and hope that it will strengthen the compliance of Mongolian laws with human rights standards. At the same time, the implementation of such laws is fundamental, and I have heard of a number of obstacles for individuals, particularly those most disadvantaged, to access effective remedy through the courts. I know that the new Government has emphasized safeguarding the rights of individuals. I want to encourage this emphasis, and would urge the Government to strengthen the access of ordinary people to remedy when their rights have been impacted by businesses.

The second mechanism for safeguarding human rights is the National Human Rights Commission of Mongolia. During my visit, the Commission co-organised a conference on human rights and mining. I was impressed to see the considerable attention that the Commission is giving to challenges related to mining, not only gathering data, but taking the time to visit each aimag and hear directly from people about how mining operations are affecting their lives and livelihoods. It is a remarkable undertaking, particularly given

the Commission's limited resources, and I encourage all stakeholders to carefully consider the final conclusions and recommendations from the conference. The Commission has a key role to play in the prevention as well as the monitoring of business impacts on human rights, as well as supporting individuals and communities in accessing remedy.

**My fifth suggestion is to ensure that national and local government has sufficient capacity to effectively monitor and enforce company compliance with relevant laws and regulations**

During my visit I heard frequent reports of fatal accidents caused by construction companies ignoring basic health and safety requirements. This appears to be due in part to the lack of sufficient inspectors and technical expertise required for construction projects. I was informed that in many cases victims and their families did not have recourse to grievance mechanisms or remedy, and that companies were not sanctioned for their failure to observe legally required safety standards.

Indeed all the stakeholders I met with raised the issue of lack of government human resources and technical expertise to monitor the increasing private sector activity. This lack of capacity is particularly acute at the aimag and soum level.

I know the Government has included the strengthened enforcement of laws in its Action Plan, and that local and national Government have taken action recently to address the lack of compliance with safety measures. I strongly urge the Government to prioritize the strengthening of human resources and technical capacity of state entities charged with the monitoring and enforcement of laws regulating business activity. I also encourage international development partners to support the Government's efforts in this area.

Finally, I urge Mongolia's vibrant civil society to continue its work in shedding light on the impacts of business on human rights in Mongolia, and its participation in the various mechanisms I have highlighted throughout this presentation.

The list of issues I have mentioned here is not comprehensive. These are my initial impressions, and the areas that were most often expressed to me during my country mission.

The next step is to produce a report for submission to the UN Human Rights Council in June 2013. That report will contain more information and concrete recommendations for all actors. The report will serve as the basis of an interactive dialogue between the Mongolian Government and the UN Working Group on actions that could be taken.

The UN Working Group aims to produce a report that can be used by all stakeholders to continue identifying and addressing human rights challenges related to business operations, and it will be publicly available. Although the delegation leaves Mongolia tomorrow, I invite you to submit any relevant information or recommendations that the Working Group should consider for its report. I strongly encourage you to read and consider the report and its recommendations when it is released.

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