



**STUDY ON THE FUNDAMENTAL
PRINCIPLES AND RIGHTS AT WORK
IN SMALL AND MEDIUM-SIZED
ENTERPRISES IN MONGOLIA**

Ulaanbaatar
2018

This publication has been produced with the financial support of the European Union. Its contents are the sole responsibility of the National Human Rights Commission of Mongolia and do not necessarily reflect the views of the European Union.

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FOREWORD

The National Human Rights Commission of Mongolia (NHRCM) has studied the implementation of rights at work in private small and medium-sized enterprises (SMEs) in the trade and services and wool/cashmere manufacturing sectors with the financial support of the European Union (EU) and technical inputs of the International Labour Organization (ILO).

The ILO Declaration on Fundamental Principles and Rights at Work, which was adopted in 1998, reaffirms universality of rights and principles at work in the following four categories: freedom of association and the effective recognition of the right to collective bargaining, the effective elimination of all forms of forced labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation. Mongolia has ratified the eight fundamental ILO Conventions covering these fundamental principles and rights at work. Ensuring full compliance with these Conventions is Mongolia's international commitment.

For realizing the fundamental principles and rights at work, it is crucial that parties to employment relations are well aware of and are able to exercise their rights and fulfil their duties. The government, employers' and workers' organizations need to focus on stopping and preventing violations of labour rights, and improving awareness of these rights.

In order to integrate into the global market, international trade and value chains in the face of globalization, Mongolia is required to meet economic and social needs and to comply with human rights obligations including the fundamental principles and rights at work in producing goods and services.

Major trading partners of Mongolia, in particular the EU through its GSP+ scheme have promoted the implementation of human and labour rights, and environmental issues.

For Mongolia to keep its international commitments, the government, employers' and workers' organizations should closely cooperate in conducting research on application of international labour standards, making evidence based policies and allocating adequate funds to ensure their implementation.

This study is special for examining the implementation of the fundamental principles and rights at work in SMEs in the trade and services and wool/cashmere manufacturing sectors for the first time. The NHRCM has delivered findings and recommendations of this study to law and policy makers by reflecting them into its annual report-the 16th Report on Human Rights and Freedoms in Mongolia-submitted to Parliament of Mongolia.

I express my gratitude to the research team led by Ms. Ts. Bujidmaa, Consultant for "Career Development Institute" NGO, Mr. Tim De Meyer, Director, of the ILO Office for China and Mongolia, Ms. Parissara Liewkeat, ILO Programme Analyst, Mr. Faraz Shibli and Mr. G. Amarmend, ILO consultants for their



cooperation and contribution to make the study happen. Special thanks goes to the EU and its delegation for the financial support to conduct this study.

This publication will help provide information on the application of the fundamental principles and rights at work to the government, employers' and workers' organizations, academia, civil society organizations, business entities, citizens and

the public in general. Furthermore, I believe that this will contribute to the implementation of the 2030 Agenda for Sustainable Development and the labour law reform.

Dr. Byambadorj Jamsran
Chief Commissioner
National Human Rights Commission of
Mongolia

WHAT IS GSP+?

The Special Incentive Arrangement for Sustainable Development and Good Governance, also known as “GSP+”, is an instrument of EU trade policy that offers non-EU countries preferential, tariff-free access to the EU market.

In return, the EU requires beneficiary countries to ratify and effectively implement core international Conventions on human and labour rights, environmental protection and good governance. Beneficiaries must also commit to cooperating with both the monitoring procedures imposed by those Conventions and the EU’s monitoring procedure on the GSP+.

Mongolia is a GSP+ beneficiary, so its goods enter the EU market duty-free. In 2015, the Mongolian clothing and apparel sector benefited the most from GSP+ status, exporting around 15 million Euros (EUR), or 43 billion tugrik, duty-free.

This gives Mongolian products better access to the EU market and contributes to Mongolia’s economic growth and sustainable development.

For Mongolia, the EU is one of its main trading partners. In 2016, the total trade value

of goods between the EU and Mongolia was EUR 380 million. Mongolia exported EUR 67 million of goods to the EU and imported EUR 313 million from the EU.

Mongolia’s main exports to the EU are clothing, textiles and raw materials (especially hair of cashmere goats), while EU exports to Mongolia consisted mainly of machinery, chemicals and food products.

This study was designed and implemented with support from ILO as part of the EU-funded project “Support GSP+ beneficiary countries to effectively implement ILS and comply with reporting obligations-Mongolia” with a view to strengthen the realization of the fundamental principles and rights at work in SMEs in Mongolia.

Further information

European Commission and Mongolia: https://eeas.europa.eu/delegations/mongolia_en

GSP+: <http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/>

EXECUTIVE SUMMARY

1. BACKGROUND: AIMS AND RATIONALE

This document succinctly summarises a study conducted in 2017 by the Career Development Institute on behalf of the NHRCM. It forms part of the NHRCM's activities under its mandate to promote and protect human rights and freedoms provided for in the Constitution of Mongolia, Mongolian laws and international treaties to which Mongolia is a party. The ILO supported the design and implementation of the study under the EU-funded project "Support GSP+ beneficiary countries to effectively implement ILS and comply with reporting obligations-Mongolia".

The aim of the study was to examine violations of, and make recommendations on improving respect for, the fundamental principles and rights at work in SMEs in Mongolia. It covers issues including freedom of association and collective bargaining, forced labour, child labour and discrimination.

The study serves as a significant means of ensuring the protection of labour rights in Mongolia, which is of central importance for a number of reasons.

Safeguarding these rights promotes sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all, in line with Goal 8 of the UN Sustainable Development Goals. Ensuring respect for international labour standards not only protects workers and their livelihoods, but also benefits employers and the national

economy. It can lead to more satisfied and better-trained workers, lower turnover of staff, higher levels of employment and increased productivity. It is also increasingly important in exporting goods and services to global markets, and trading with foreign partners, who place increasing importance on corporate social responsibility and ethical trade in global supply chains.

The study will help provide information on the application of the fundamental principles and rights at work to the Government and other parties concerned with the state of labour rights in Mongolia, such as the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR). The CEACR requires Mongolia to report regularly on measures it has taken to implement ratified ILO Conventions, examines these reports and provides comments, designed to assist countries in improving the application of international labour standards. Indeed, between 2014 and 2016, it made three observations¹ and eight direct requests² to Mongolia as regards its application of the eight fundamental Conventions, which relate to freedom of association and collective bargaining, forced labour, child labour and discrimination.³ The study allows Mongolia to more accurately respond to and address the issues underlying these questions.

Furthermore, identifying areas for improvement in implementing the fundamental principles and rights at work enables Mongolia to more successfully pursue and monitor

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- 1 Observations contain comments on fundamental questions raised by the application of a particular Convention by a state. These observations are published in the CEACR's annual report.
 - 2 Direct requests relate to more technical questions or requests for further information. They are not published in the CEACR's annual report but are communicated directly to the governments concerned.
 - 3 List of comments adopted by the CEACR in relation to Mongolia: http://www.ilo.org/dyn/normlex/en/?p=1000:13201::NO:13201:P13201_COUNTRY_ID:103142.

the achievement of goals set in its various policies and agreements related to labour administration and economic development, including the Mongolia Sustainable Development Vision-2030, the State Policy on Employment 2016-2026, the 2016-2020 Government Action Plan and the State 2017-2018 Tripartite Agreement for Labour and Social Consensus.

The study examined labour rights violations in 78 registered businesses with fewer than 200 workers in the trade and services and wool/cashmere manufacturing sectors in Ulaanbaatar city and Orkhon and Darkhan-Uul provinces. It used questionnaires and interviews to obtain data from 1,639 participants, including workers, employers and experts (trade union officials, state labour inspectors, lawyers and representatives of human rights organizations), as well as document analysis of legislation, internal rules and regulations, and employment contracts.

2. KEY FINDINGS

Disclaimer: The study covers only a sample of SMEs in the trade and services and wool/cashmere manufacturing sectors in Ulaanbaatar city and Orkhon and Darkhan-Uul provinces. It is not suggested that its findings apply outside of these sectors and locations. As the study covers only registered businesses and access to workers was gained by approaching their employers, it is considered likely that labour rights violations in the sectors and locations studied will be higher than reported.

The most common aspects of **forced labour** found were the withholding of workers' personal documents and salary by employers. Participants reported very low levels of **child labour**, and the research team did not directly observe any such incidences. However, there is potential for child labour due to some employers not checking the age of their workers. **Harassment** of workers is relatively common, with women and younger

workers being more likely to be subjected to harassment. However, workers rarely report harassment, and some employers do not provide them with the opportunity to do so. Workers have minimal understanding of the role and benefits of **trade unions**, and workers and some employers lack understanding of **collective bargaining and collective agreements**. **Employment contracts** are frequently used, although copies are often not given to workers, and probationary periods are sometimes used to avoid paying workers. A significant proportion of employers pay workers below the **minimum wage** and many do not give workers sufficient **rest/pay** in accordance with the law. A significant proportion of employers also do not take necessary precautions to prevent **occupational accidents and injuries**. By law, businesses must be given prior notice of **labour inspections**, leaving room for abuse by employers.

3. RECOMMENDATIONS

The NHRCM organized a workshop with stakeholders to validate findings and recommendations from the study on 15 September 2017 in Ulaanbaatar. It was attended by representatives of the Secretariat of the Parliament of Mongolia, Ministry of Labour and Social Protection, Ministry of Foreign Affairs, Ministry of Food, Agriculture and Light Industry, National Commission on Gender Equality, Mongolian Employers' Federation, Confederation of Mongolian Trade Unions, Mongolian National Chamber of Commerce and Industry, district governors' offices, lawyers, academics, researchers, and NGOs. All expressed their views on the timeliness of the study and the importance of its findings, as well as the need for action in accordance with the recommendations and continued, collective monitoring of labour practices.

Further to the aforementioned findings and stakeholder discussions, the NHRCM calls for action and commitments from

the Government, workers' and employers' representatives, and civil society organizations as set out below.

3.1. Forced labour and child labour

- Workers' and employers' representatives train workers and employers to understand and recognize the different types and characteristics of forced labour and child labour and understand their impacts;
- Government, NHRCM and/or NGOs conduct public information campaigns to raise awareness of the different types of forced labour and child labour and their impacts;
- Government amend the Labour Law to prohibit the withholding of workers' personal documents by employers;
- Government amend the Labour Law to require employers to check and record the age of their workers;
- Government monitor the child labour situation closely and continue to collect data on child labour for better monitoring and policy formulation;
- Government amend the Law on State Inspection to enable unannounced labour inspections and ratify the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129); and
- Government amend the Labour Law to require the list of jobs prohibited for minors to be set by the Government upon consultation with workers' and employers' representatives, as opposed to by the Minister alone.

3.2. Discrimination

- Workers' and employers' representatives train workers and employers to understand and recognize the different types and characteristics of discrimination and understand their impacts, particularly in relation to women and young people;
- Government, NHRCM and/or NGOs

conduct public information campaigns to raise awareness of the different types of discrimination and understand their impacts, particularly in relation to women and young people;

- Government, workers' and employers' representatives engage in tripartite dialogue to establish national guidelines or a code of practice for the prevention and management of harassment in the workplace; and
- Employers' representatives provide services to support employers to adopt and implement policies on workplace harassment.

3.3. Freedom of association and collective bargaining

- Workers' representatives expand their coverage of workers in private-sector SMEs;
- Workers' and employers' representatives train workers and employers on the benefits of trade unions and the use of collective agreements; and
- Government, NHRCM and/or NGOs conduct public information campaigns to raise awareness of the benefits of trade unions and collective agreements.

3.4. Employment contracts

- Employers' representatives produce and promote standard employment contract templates for use by employers, including during probationary periods;
- Workers' and employers' representatives train workers and employers on the legal duty of employers to provide workers with a copy of their contract and remunerate workers for probationary periods; and
- Government, NHRCM and/or NGOs conduct public information campaigns targeting youth in particular to raise awareness of the rights of interns and apprentices.

3.5. Remuneration

- Workers' representatives expand coverage of workers in the private sector, particularly in SMEs;
- Employers' representatives train employers to understand the impacts of paying workers below the minimum wage;
- GASI increase labour inspection activities, advise employers on compliance with legislation and enforce penalties in respect of paying workers below the minimum wage;
- Employers' representatives train employers to understand the impacts of giving workers insufficient rest/pay; and
- GASI increase labour inspection activities, advise employers on compliance with legislation and enforce penalties in respect of giving workers insufficient rest/pay.

3.6. Occupational safety and health

- Employers' representatives provide technical advice to help employers produce rules and regulations on safety and health; and
- GASI increase labour inspection activities, advise employers on OSH compliance and

enforce penalties in respect of lack of rules and regulations on safety and health and lack of protective equipment.

The NHRCM will communicate the above recommendations to the relevant actors and monitor and report on their implementation, including through future studies of the fundamental principles and rights at work in SMEs in Mongolia.

4. CONTACT

Any enquiries in relation to the study should be directed to the NHRCM using the following contact details:

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LIST OF ABBREVIATIONS

UN	United Nations
EU	European Union
ILO	International Labour Organization
UNDP	United Nations Development Program
SCD	Swiss Agency for Development and Cooperation
...	State Great Khural
...	Supreme Court of Mongolia
...	Judicial General Council
NHRCM	National Human Rights Commission of Mongolia
NSO	National Statistical Office
MLSW	Ministry of Labour and Social Welfare
...	General Executive Agency of Court Decision
GASI	General Agency for Specialized Inspection
...	Governor's Office
MONEF	Mongolian Employers' Federation
MNCCI	Mongolian National Chamber of Commerce and Industry
CMTU	Confederation of Mongolian Trade Unions
NGO	Non-governmental Organization
...	Business entity
LDSC	Labour Dispute Settlement Commission
MHT	Mongolian tugrik
OMCB	Occupational Medicine Expert Board
OSH	Occupational safety and health
SME	Small and medium-sized enterprise

1. BACKGROUND: AIMS AND RATIONALE

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The aim of the study was to examine violations of, and make recommendations on improving respect for, the fundamental principles and rights at work in SMEs in Mongolia. The principles concerning these fundamental rights are:

- freedom of association and the effective recognition of the right to collective bargaining;
- the elimination of all forms of forced or compulsory labour;
- the effective abolition of child labour; and
- the elimination of discrimination in respect of employment and occupation.

The study addresses a lack of recent research into labour rights in SMEs in Mongolia, particularly that which examines the fundamental principles and rights at work in a comprehensive and unified manner. This is of central importance for a number of reasons.

Safeguarding these rights provides opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.

The promotion of labour rights and human rights is often connected with more satisfied workers, lower turnover of staff and increased productivity, as well as a better-trained workforce and higher levels of employment, which can attract foreign direct investment.

Moreover, implementing international labour standards is increasingly important in exporting goods and services to global markets, and trading with foreign partners. Growing interest in corporate social responsibility and ethical trade in global supply chains has led to the incorporation of labour rights and human rights provisions into many free-trade agreements and companies' codes of conduct.

Indeed, the Special Incentive Arrangement for Sustainable Development and Good Governance, also known as "GSP+", is an instrument of EU trade policy that offers non-EU countries preferential, tariff-free access to the EU market. Mongolia is a GSP+ beneficiary, and therefore its goods enter the EU market duty-free. In 2015, the Mongolian clothing and apparel sector benefited the most from GSP+ status, exporting around €15 million, or 43 billion tugrik (MNT), duty-free.

In return, the EU requires beneficiary countries to ratify and effectively implement core international Conventions, including those on human and labour rights, and cooperate with both the monitoring procedures imposed by those Conventions, and the EU's monitoring procedure on the GSP+.

The study will help provide information on the application of the fundamental principles and rights at work to the Government and other parties concerned with the state of labour rights in Mongolia, such as the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR). The CEACR requires Mongolia to report regularly on measures it has taken to

implement ratified ILO Conventions, examines these reports and provides comments, designed to assist countries in improving the application of international labour standards. Indeed, between 2014 and 2016, it made three observations¹ and eight direct requests² to Mongolia as regards its application of the eight fundamental Conventions, which relate to freedom of association and collective bargaining, forced labour, child labour and discrimination.³ The study allows Mongolia to more accurately respond to and address the issues underlying these questions.

Identifying areas for improvement in implementing the fundamental principles and rights at work also enables Mongolia to more successfully pursue and monitor the achievement of goals set in its various

policies and agreements related to labour administration and economic development, including the Mongolia Sustainable Development Vision-2030, the State Policy on Employment 2016-2026, the 2016-2020 Government Action Plan and the State 2017-2018 Tripartite Agreement for Labour and Social Consensus.

The findings and recommendations of this study are therefore highly relevant to the social and economic progress of Mongolia, and its achievement of Goal 8 of the UN Sustainable Development Goals, which relates to the promotion of sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.

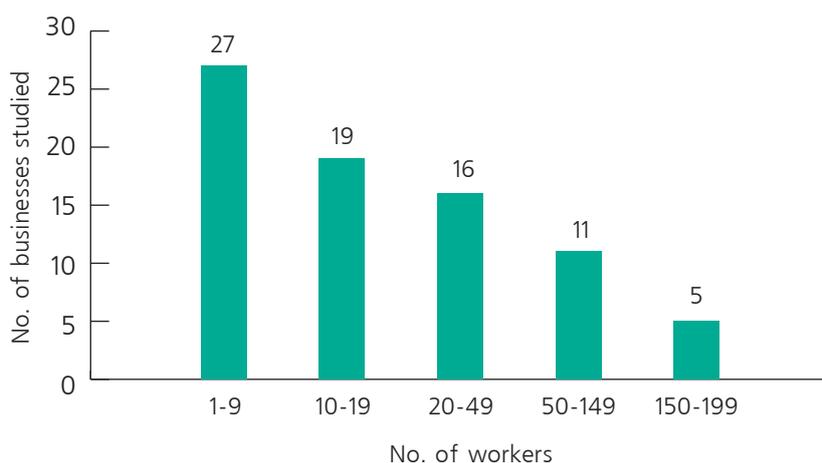
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2. METHODOLOGY

Outside of the agriculture sector, most workers in Mongolia are employed in the trade/vehicle repair and manufacturing sectors, according to 2016 statistics from the NSO.⁴ The trade/vehicle repair sector employs more women than men, whereas the manufacturing sector employers more men than women. The study therefore examined workplaces within these two sectors, specifically trade and services businesses, on the one hand, and wool/cashmere manufacturing businesses, on the other.

Businesses in Ulaanbaatar city and Orkhon and Darkhan-Uul provinces-the three most populous cities in Mongolia, which contain large numbers of SMEs-were selected for study. The research team approached the leadership of 93 registered businesses, of which 78 agreed to participate in the study-59 trade and services businesses, and 19 wool/cashmere manufacturing businesses. They cover a range of different business sizes, as outlined below.

Chart 1. Size of businesses studied



Participants included workers, employers and experts, including trade union officials, state labour inspectors, lawyers and representatives of human rights organizations. The anonymity of participants was ensured to enable them to communicate their responses as freely as possible.

As mentioned above, the study covers only registered businesses and access to the field was gained by approaching their leadership. It is assumed that labour rights violations are

more likely to occur in unregistered businesses, as the informal sector falls outside the formal jurisdiction of the GASI-the government agency in charge of state labour inspection. Furthermore, the leadership of businesses with more serious or more frequent labour rights violations are less likely to have agreed to participate in the study in the first place. It is also likely that some workers may have refused to participate, or may have been less forthcoming in their responses to questions,

4 Available at: <http://www.1212.mn>.

due to fears of reprisals from their employer (despite reasonable steps having been taken to alleviate such fears). It is therefore considered likely that labour rights violations in the sectors and locations studied will be higher than reported.

The study used a combination of quantitative and qualitative research methods to obtain both large amounts of hard data, suitable for statistical analysis and generalization, and smaller amounts of rich, deep data, enabling researchers to probe certain issues in greater detail. Specifically, the following methods were used:

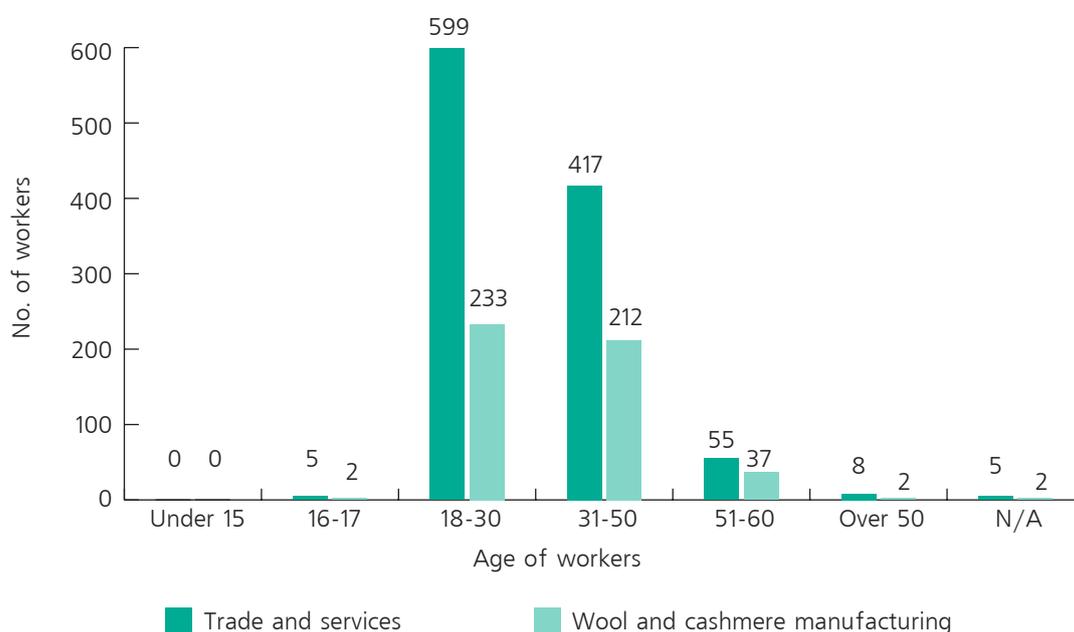
- questionnaires, focusing largely on the fundamental principles and rights at work and containing a maximum of 87 questions for workers and 69 questions for employers;
- individual and group interviews; and

- document analysis, assessing the integration of ILO Conventions into national legislation, internal rules and regulations, and employment contracts.

Questionnaires were administered to 1,639 participants, comprising 1,577 workers and 62 employers. Individual interviews were conducted with 39 workers, 11 employers and 19 experts, and group interviews were conducted with 42 workers.

Of all participants, 73 per cent are women and 27 per cent are men. Of all workers, 1,089 (69 per cent) work in trade and services businesses, 488 (31 per cent) work in wool/cashmere manufacturing businesses and 85 (5.3 per cent) are persons with disabilities. In both the trade and services and wool/cashmere manufacturing businesses, the majority of workers studied are aged 18-50.

Chart 2. Age of workers studied



3. KEY FINDINGS

Disclaimer: The study covers only a sample of SMEs in the trade and services and wool/cashmere manufacturing sectors in Ulaanbaatar city and Orkhon and Darkhan-Uul provinces. It is not suggested that its findings apply outside of these sectors and locations. As the study covers only registered businesses and access to workers was gained by approaching their employers, it is considered likely that labour rights violations in the sectors and locations studied will be higher than reported.

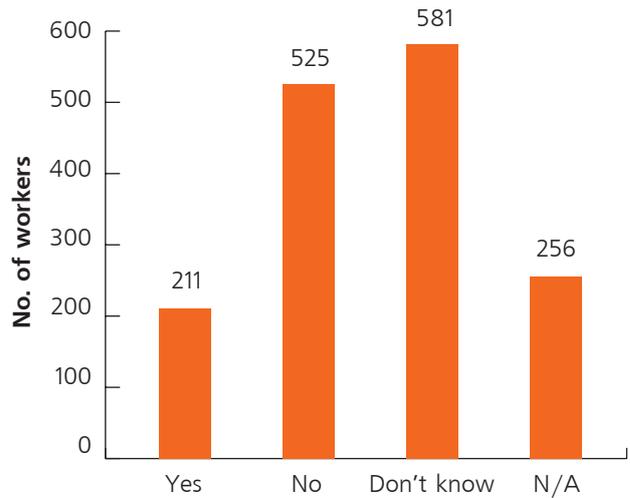
3.1. FORCED LABOUR

Some workers (13 per cent) reported that their employer uses forced labour. For those who made such allegations, the most common aspects of forced labour reported were the withholding of workers' personal documents (44 per cent) and salary (19 per cent) by employers.

The state's ability to detect forced labour is limited by labour legislation, which requires

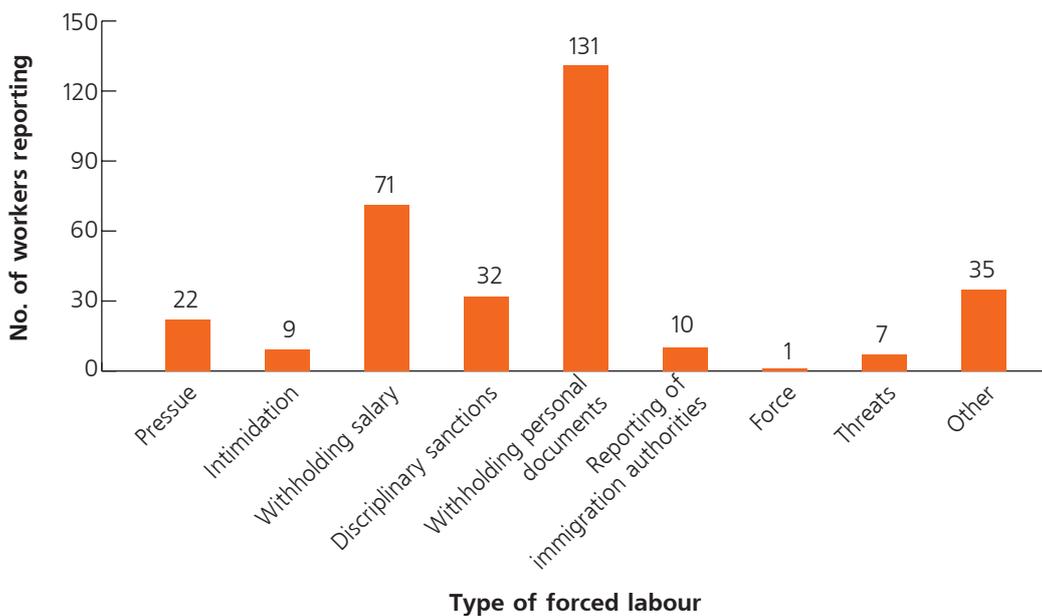
that inspectors must notify businesses in advance of a labour inspection. This applies regardless of whether the inspection is planned according to an annual schedule or unplanned as a result of a complaint.

Chart 3. Reports of forced labour



Does your employer use coercion against workers?

Chart 4. Types of forced labour reported

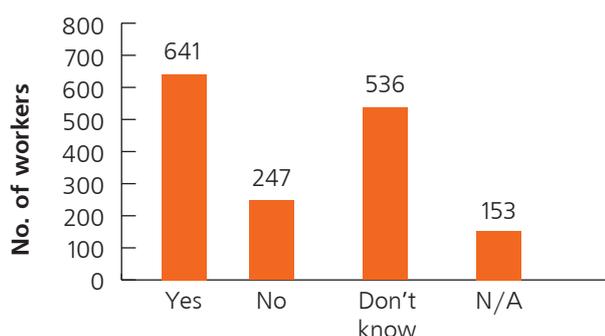


3.2. CHILD LABOUR

Only 1 per cent of workers reported that their employer hires children under 15. However, some workers (16 per cent) reported that their employer does not check the age of workers, indicating that there is potential for child labour to take place, even if unintentionally.

The state's ability to detect child labour is limited by labour legislation, which requires that inspectors must notify businesses in advance of a labour inspection. This applies regardless of whether the inspection is planned according to an annual schedule or unplanned as a result of a complaint.

Chart 5. Age checks on workers



Does your employer check the age of workers?

3.3. DISCRIMINATION

A significant proportion of workers (25 per cent) reported that their superiors harassed workers. Some workers, such as a security guard and a hotel maid, described in individual interviews being harassed by their employer to perform duties not stated in their job description and being scolded or threatened with dismissal if they refused. More women (28 per cent) than men (24 per cent) reported harassment, as did more workers aged 18-30 (55 per cent) than those aged 31-50 (39 per cent).

Most workers who witnessed harassment in the workplace (74 per cent) did not lodge

a complaint and some of them (15 per cent) stated that they did not have any opportunity to lodge a complaint, suggesting a lack of clear policies on workplace harassment.

Chart 6. Harassment of workers



Do your superiors harass workers?

3.4. FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Trade union membership is low and workers have a minimal understanding of the role and benefits of trade unions. Workers and some employers lack understanding of collective bargaining and collective agreements.

Most businesses (75 per cent) do not have trade unions. Few workers (7 per cent) are members of trade unions and most (70 per cent) do not know whether it is important for workers to join them.

Many workers (40 per cent) do not know if collective agreements are used in their workplace, compared to 25 per cent who reported that they are and 24 per cent who reported that they are not. Some employers (19 per cent) do not know if collective agreements are used in their workplace, compared to 19 per cent who reported that they are and 50 per cent who reported that they are not.

3.5. EMPLOYMENT CONTRACTS

Most workers (88 per cent) have established an employment contract with their employer, although many (30 per cent) have

not received a copy of their contract. Some workers (12 per cent) were required to work without a contract for up to 14 days, indicating that, although contracts are frequently used, they are not necessarily established at the beginning of the employment period.

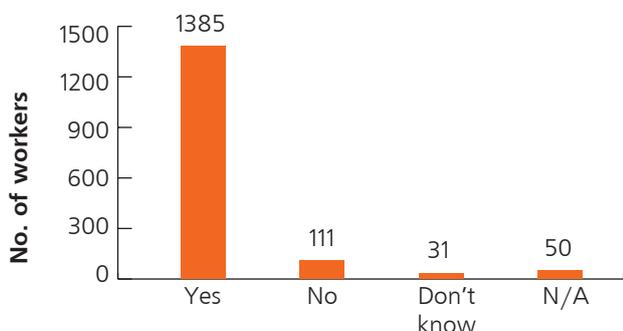
Some workers described in individual interviews being required to complete an unpaid probationary period. In some cases, they described being dismissed after this period for reasons suggesting that the employer never intended to employ them after the probationary period in the first place.

3.6. REMUNERATION

A significant proportion of workers (13 per cent) is paid below the minimum wage (MNT 240,000 per month). This is more pronounced in trade and services businesses, where 15 per cent of workers are paid below the minimum wage as compared to 7 per cent of workers in wool/cashmere manufacturing businesses.

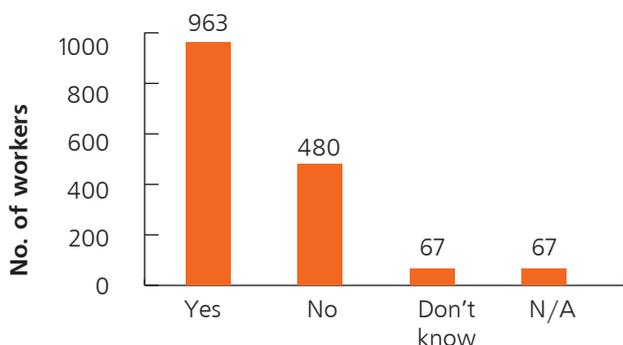
Many workers (42 per cent) reported that their employer did not follow the Labour Law requirement that workers who work on public holidays and are not given an extra rest day must be given double pay.

Chart 7. Employment contracts



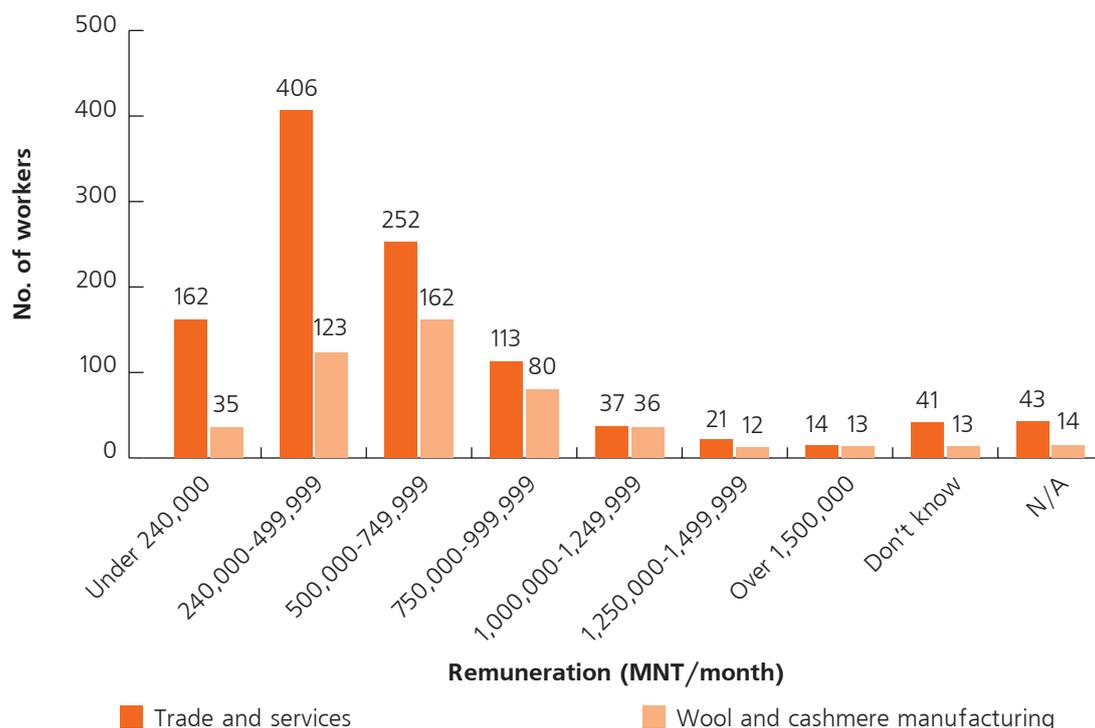
Have you made an employment contract with your employer?

Chart 8. Copies of employment contracts



Has your employer given you a copy of your employment contract?

Chart 9. Remuneration



3.7. OCCUPATIONAL SAFETY AND HEALTH

A significant proportion of employers do not take necessary precautions to prevent occupational accidents and injuries. Some workers (17 per cent) reported that either their employer does not have rules and regulations on safety and health or they are

unaware whether such regulations exist, some (16 per cent) reported that their employer does not have officers in charge of safety and health, and some (15 per cent) reported that their employer does not provide them with all necessary work wear and protective equipment.

4. IMPACTS

Infringements of the fundamental principles and rights at work are likely to result in a less happy workforce, higher turnover of staff, lower productivity and lower profits. Labour rights violations may also cause reputational damage to businesses, have negative impacts on trade and investment, and restrict opportunities for business and economic growth.

In addition, the fact that some employers do not check the age of workers, as reported by 16 per cent of workers, allows for the possibility of child labour, which has negative impacts on the health, education and development of children.

Discrimination, which was more often reported by women and workers aged 18-30, may make these workers feel discouraged from participating in the workforce. This can lead to underperformance, businesses losing talented staff and a lack of diversity in the workplace.

Employers not providing workers with a copy of their contract can result in workers having a lower understanding of their rights and duties, being less likely to enforce their rights and being less likely to perform all of their duties. The practice of using probationary periods to avoid paying workers or paying them below the minimum wage can lead to them living below the poverty line, and not giving those who work on public holidays a rest day or double pay as required by law can have a negative effect on their health and wellbeing.

The various OSH failings reported by some workers may cause workers to have a lower understanding of safety and health in the workplace and be more likely to suffer occupational accidents and injuries.

Freedom of association and collective bargaining is an important tool to promote dialogue between workers and employers;

give workers a greater ability to negotiate better working conditions; enable employers to understand workers' opinions and increase worker satisfaction and productivity, leading to business growth; foster a better relationship between workers and employers; and produce a better-trained workforce. The lack of understanding of collective bargaining and collective agreements prevents workers and employers from harnessing this full potential.

Closing these gaps in alignment between international labour standards and their application in the workplace therefore stands to benefit workers, employers and the economy as a whole through the promotion of sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.

4.1. RECOMMENDATIONS

The NHRCM organized a workshop with stakeholders to validate findings and recommendations from the study on 15 September 2017 in Ulaanbaatar. It was attended by representatives of the Secretariat of Parliament, Ministry of Foreign Affairs, Ministry of Food, Agriculture and Light Industry, National Commission on Gender Equality, technical working group on SME development under the Economics Standing Committee, Confederation of Mongolian Trade Unions, Mongolian National Chamber of Commerce and Industry, district governors, lawyers, academics, researchers, and NGOs. All expressed their views on the timeliness of the study and the importance of its findings, as well as the need for action in accordance with the recommendations and continued, collective monitoring of labour practices.

Further to the abovementioned findings and stakeholder discussions, the NHRCM calls for action and commitments from

the Government, workers' and employers' representatives, and civil society organizations as set out below.

4.2. FORCED LABOUR AND CHILD LABOUR

- Workers' and employers' representatives train workers and employers to understand and recognize the different types and characteristics of forced labour and child labour and understand their impacts;
- Government, NHRCM and/or NGOs conduct public information campaigns to raise awareness of the different types of forced labour and child labour and their impacts;
- Government amend the Labour Law to prohibit the withholding of workers' personal documents by employers;
- Government amend the Labour Law to require employers to check and record the age of their workers;
- Government monitor the child labour situation closely and continue to collect data on child labour for better monitoring and policy formulation;
- Government amend the Law on State Inspection to enable unannounced labour inspections and ratify the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129); and
- Government amend the Labour Law to require the list of jobs prohibited for minors to be set by the Government upon consultation with workers' and employers' representatives, as opposed to by the Minister alone.

4.3. DISCRIMINATION

- Workers' and employers' representatives train workers and employers to understand and recognize the different types and characteristics of discrimination and understand their impacts, particularly in relation to women and young people;

- Government, NHRCM and/or NGOs conduct public information campaigns to raise awareness of the different types of discrimination and understand their impacts, particularly in relation to women and young people;
- Government, workers' and employers' representatives engage in tripartite dialogue to establish national guidelines or a code of practice for the prevention and management of harassment in the workplace; and
- Employers' representatives provide services to support employers to adopt and implement policies on workplace harassment.

4.4. FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

- Workers' representatives expand their coverage of workers in private-sector SMEs;
- Workers' and employers' representatives train workers and employers on the benefits of trade unions and the use of collective agreements; and
- Government, NHRCM and/or NGOs conduct public information campaigns to raise awareness of the benefits of trade unions and collective agreements.

4.5. EMPLOYMENT CONTRACTS

- Employers' representatives produce and promote standard employment contract templates for use by employers, including during probationary periods;
- Workers' and employers' representatives train workers and employers on the legal duty of employers to provide workers with a copy of their contract and remunerate workers for probationary periods; and
- Government, NHRCM and/or NGOs conduct public information campaigns targeting youth in particular to raise awareness of the rights of interns and apprentices.

4.6. REMUNERATION

- Workers' representatives expand coverage of workers in the private sector, particularly in SMEs;
- Employers' representatives train employers to understand the impacts of paying workers below the minimum wage;
- GASI increase labour inspection activities, advise employers on compliance with legislation and enforce penalties in respect of paying workers below the minimum wage;
- Employers' representatives train employers to understand the impacts of giving workers insufficient rest/pay; and
- GASI increase labour inspection activities, advise employers on compliance with legislation and enforce penalties in respect of giving workers insufficient rest/pay.

4.7. OCCUPATIONAL SAFETY AND HEALTH

- Employers' representatives provide technical advice to help employers produce rules and regulations on safety and health; and
- GASI increase labour inspection activities, advise employers on OSH compliance and enforce penalties in respect of lack of rules and regulations on safety and health and lack of protective equipment.

The NHRCM will communicate the above recommendations to the relevant actors and monitor and report on their implementation, including through future studies of the fundamental principles and rights at work in SMEs in Mongolia.

5. CONCLUSIONS: RECOMMENDATIONS

Ensuring the right of citizens the right to choose their jobs, favourable conditions of work, remuneration, and entrepreneurship is an essential part of contributing the economic and social development of Mongolia, as well as raising the income level and quality of life of citizens.

Labour rights are basic human rights. If people, either employed or unemployed, know about the fundamental principles and rights at work, it will help somehow prevent violations of these rights.

However, due to the lack of effective enforcement of labour rights, the number of labour disputes that have been resolved in court over the last few years has been on the rise.

For example, out of 40,674 cases handled in the civil court of first instances in 2015, 1487 (3.7 per cent) cases have been resolved according to the Labour Code. Out of these 1487 cases, 910 (61.2 per cent) cases concern wrongful dismissal, and 415 (27.9 per cent) cases concern remuneration disputes.

In 2016, civil court of first instances settled 46,173 cases, and 2220 (4.8 per cent) cases had been resolved according to the Labour Code. 1213 (54.6 per cent) out of 2220 cases on labour disputes were about wrongful dismissal, and 653 (29.4 per cent) were remuneration disputes.

The purpose of this study is to define the issues on the fundamental principles of labour including, the freedom of association and collective bargaining, the elimination of forced labour and the worst forms of child labour, and the elimination of discrimination in employment and to develop recommendations on improving the implementation of the fundamental principles and rights at work in SMEs in the field of trade and services and wool/cashmere manufacturing sectors.

1. Lack of implementation of freedom of association and collective agreement

Out of 78 businesses involved in the study, 3 businesses have trade unions, and 75 have not trade unions. Seven per cent of participants are trade union members and elected officials. Unfortunately, workers and employers have a minimal understanding of the role and benefits of trade unions.

In addition, the freedom of association cannot be realized in SMEs in the field of trade and services, and wool/cashmere sectors. Furthermore, the absence of representative body of workers is one of the reasons why the business entities cannot successfully achieve collective agreement. On the other hand, the decrease in the number of workers results in lack of possibility to establish trade unions.

2. Some forms of forced labour detected

All forms of forced labour are prohibited by the Constitution of Mongolia and other relevant laws/regulations. However, the study reveals cases of the most common aspect of forced labour which is the withholding of workers' personal documents or salary by employers.

This is because of the lack of understanding of any form of forced labour. Therefore, it is necessary to identify and mitigate forced and compulsory labour and to identify the ways to eliminate the causes and the factors.

Forced labour is still in the scope of concern at the international level. In particular, as forced labour penetrated in global supply chains, there are more and more needs to identify products and services that may have been produced through forced labour. The use of direct or indirect forced labour is adversely affecting commerce and business. Mongolia has joined the GSP+ system of the EU, and it is necessary to fully implement the treaties

and conventions related to the forced labour in order to continue the trade discounts and incentives.

3. Wages are lower than the average which was mentioned in the statistical data for this sector

12.5 per cent of the participants were paid below the minimum wage, which is 240,000 MNT, in January 2017.

34.2 per cent of the participants believe that “equal pay for equal work” does not apply. However, this principle is understood by the participants in the case of works with similar employment or similar occupations.

This is largely due to inadequate labour valuation and job evaluation methodologies in Mongolia and lack of knowledge in this area. Even the employers have insufficient understanding of this principle.

4. Workplace harassment of management detected

In Mongolia, “workplace harassment” has not been defined yet, and the awareness of this is insufficient. However, workplace harassment is only emphasized on “workplace sexual harassment”. Therefore, there have been training and awareness raising activities in this regard.

18-25 per cent of participants believe that “superiors do harassment at workplace from time to time”.

According to the study results, women and youth aged 18-30 and people with disabilities are more likely to be subjected to harassment.

The “harassment at workplace” is done more in making decisions with regard to treatment of superiors, workplace conditions, wages, allowances, and women along with age and sex discriminations elements.

Workers cannot distinguish various forms of workplace harassment and got used to some forms of harassment.

5. Absence of Labour Dispute Settlement Commission

According to Labour Code, the Ex-Officio Board of LDSC resolves individual labour disputes, except for those under jurisdiction of the court. Business entities and organizations of all types of property in the territory of Mongolia as well as with foreign invested or joint ventures must establish LDSC. However, in practice, the law and regulations are not implemented.

As a result, individual labour disputes cannot be resolved, and workers suffer. The experts involved in the study pointed out that this kind of case cannot be dealt by only with the effort of the specialized inspection agency and the employees’ representatives’ efforts. Out of 78 business entities involved in the study, 4 business entities have formed the LDSC.

6. Despite the improvement in the establishment of employment contract, however Failure to give a copy of the employment contract and to pay during the probationary period detected.

87.8 per cent of the participants have established employment contract with their employers. Participants noted that the cases of not establishing employment contract are decreasing during the interview with experts.

The fact that the employment contract was signed for up to 1-6 months and paid up to 60-85 per cent of the basic salary during the probationary period was observed in the business entities.

In addition, workers have no clear knowledge on how to work without remuneration for 3-14 days and without establishing an employment contract for 14 days up to 1 month.

This is due to insufficient knowledge and understanding of employers and workers on international treaties and conventions and national legislation regulating labour relations.

Therefore, it is necessary to conduct a study on determining knowledge, understanding and attitudes of employers and workers on the right to work and to develop relevant policies and programs.

Based on the conclusions of the research on rights at work in SMEs in the private sector of Mongolia which have engaged in trade and services and wool/cashmere industry, recommendations are set out as follows.

ONE. TO THE STATE GREAT KHURAL

1.1 Include the following amendments to the Labour Code with regard to labour inspection system;

- Change the concepts and approaches of the labour inspection system in line with the fundamental principles and norms of the labour;
- Expand the structure for preventing from and advising on violation of rights at work and create structure to implement it;
- Change the internal oversight system of the business entities and establish regulations to take oversight on the implementation of the rights, principles and norms of labour;

1.2 Amend the Labour Code to prohibit the employer to withhold the personal documents of the worker;

1.3 Make amendments to the Labour Code to require the employers to verify the workers' age;

1.4 Create a legal provisions to conduct an unannounced labour inspections;

1.5 Ratify ILO Convention No. 81 Labour Inspection Convention (Industry and Trade), 1947 and the Convention No. 129 concerning Labour Inspection in Agriculture, 1969 respectively;

1.6 Make amendments to the Labour Code on preventing workplace harassment and sexual harassment;

TWO. TO THE GOVERNMENT OF MONGOLIA

2.1 Focus on child labour, collect and analyse child labour data, and develop evidence-based policies and oversee their implementation;

2.2 Understand and identify the types, characteristics, and negative impacts of child labour, and integrate them into the issues of women and youth, organize an awareness raising campaign jointly with the NHRCM and NGOs;

2.3 Update regularly the list of jobs prohibited by the government to minors based on research and consultation with employers and workers' representative organizations;

2.4 Start a tripartite dialogue between the Government, employers and workers on national guidelines or procedures aimed at preventing and dealing with the workplace harassment;

2.5 Organize awareness raising campaign on the benefit of trade unions and collective agreements jointly with the NHRCM and NGOs;

2.6 Organize awareness raising campaign, including awareness raising on apprentice worker's rights jointly with the NHRCM and NGOs;

2.7 Develop and implement policies and programs to raise awareness of rights at work within the framework of multilateral partnerships of ILO, NHRCM, the Ministry of Labour and Social Welfare, CMTU, MONEF, business entities, and training institutions;

- Implement a media campaign covering media and social networks; (Including TV programs; TV and radio discussions; public service ads, etc.)

- Develop and implement policies and programs to create workplace culture;

2.8 Implement specific measures to raise workers' awareness of the fundamental principles and rights in work in labour, including benefits of representative organizations and the importance of collective bargaining and to increase the capacity of worker to protect

their interests, and develop and promote counselling services in this area;

2.9 Organize activities to include the obligation of the employer to implement the preventative measures of the forms of workplace harassment within the organization's internal labour regulations and the job description of the employer;

2.10 Revise guidelines to develop internal regulations of the organization, to establish employment contract, to establish a Labour Dispute Settlement Commission;

2.11 Analyse the regulations governing labour relations of SMEs and support the consultancy services through policy;

2.12 Implement ILO recommendations or international best practices through pre-planned and organized activities known as "equal pay for equal work programs" by:

- Introducing the job evaluation methodology;
- Revising the work norms and normative and determining workplace values in cooperation with representatives of employers and workers;
- Comparing the gender segregated statistics of jobs which are predominantly occupied by a single gender; and
- Making pay adjustments in accordance with the principle "equal pay for equal work";

2.13 GASI increase labour inspection activities, provide counselling for employers on laws, hold them accountable in case of failing to pay salaries and wages for less than the minimum wage;

2.14 GASI increase labour inspection activities, provide counselling for employers on laws, hold them accountable in case they do not provide working and off hours in accordance with the law;

2.15 GASI increase labour inspection activities, provide counselling for employers on laws, hold them accountable in case they don't have occupational safety and health rules and lack protective gears;

THREE. TO THE REPRESENTATIVE ORGANIZATIONS OF EMPLOYERS AND WORKERS

3.1 Freedom of association and collective bargaining

- Workers' representatives expand their coverage of workers in private-sector, especially SMEs;
- Representative organizations of employers and workers conduct public information campaigns to the employers and workers to raise awareness of the benefits of trade unions and collective agreements;

3.2 Forced labour and child labour

- Representative organizations of employers and workers conduct public information campaigns to raise awareness of the different types of forced labour and child labour and their impact;

3.3 Discrimination

- Representative organizations of employers and workers conduct public information campaigns to raise awareness of the different types of discrimination and understand their impacts, particularly in relation to women and young people;
- Employers' representatives provide services to support employers to adopt and implement policies on workplace harassment;

3.4 Workplace harassment

- Define "workplace harassment", prepare manuals and training materials, and organize special training for business entities;
- Representatives of employers and employees provide services to support for adopting and implementing policies on harassment at workplace;

3.5 Employment contracts

- Employers representatives produce and promote standard employment contract templates for use by employers, including during probationary periods;
- Workers' and employers' representatives train workers and employers on the legal

duty of employers to provide workers with a copy of their contract and remunerate workers for probationary periods;

3.6 Remuneration

- Employers' representatives train employers to understand the impacts of paying workers below the minimum wage rate;
- Employers' representatives train employers to understand the impacts of giving workers rest hours in accordance with;

3.7 Occupational safety and health

- Employers' representatives provide technical advice to help employers produce rules and regulations on safety and health.

RESOURCES

UN CONVENTION

1. Convention on the Rights of Child

ILO CONVENTION

1. ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize;
2. ILO Convention No. 98 on Right to Organize and Collective Bargaining;
3. ILO Convention No. 29 on Forced labour;
4. ILO Convention No. 105 on Abolition of Forced labour;
5. ILO Convention No. 138 on Minimum age;
6. ILO Convention No. 182 on Worst Forms of Child Labour Convention
7. ILO Convention No. 100 on Equal Remuneration
8. ILO Convention No. 111 on Discrimination (Employment and Occupation)

NATIONAL LAWS

1. Constitution of Mongolia (1992)
2. Law of Mongolian People's Republic on the rights of trade unions (1991)
3. Law on Non-governmental organizations (1997)
4. Labour Code (1999)
5. Civil service law (2002)
6. Law on state supervision and inspection (2003)
7. Law on small and medium-sized enterprises (2007)
8. Law on Occupational Safety and Health (2008)
9. Law on Minimum Wage (2010)
10. Law on the Promotion of Gender Equality (2011)
11. Criminal code (2015)
12. Law of Mongolia on Defense (2016)
13. Law on the Legal Status of Military personnel (2016)
14. Law on Police (2017)
15. Law on Violation (2017)
16. Law on Enforcement of Court Decisions (2017)
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