

Overview of Human Trafficking in Mongolia: Current Circumstance and Legal Framework

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Abstract

Recent years have witnessed growing research interest in human trafficking in Mongolia. The purpose of this study is to introduce current circumstance and legal framework of human trafficking in Mongolia. Most of this research focused on legal framework on this crime. Little research focused on current circumstance of this crime. To accomplish the purpose I analyzed legal framework of human trafficking and findings of the survey was conducted by the Center for Human Rights and Development Gender Equality Center, Human Security Policy Studies Center. In Mongolia, the issues of human trafficking regulated by the Constitutional Law, criminal law and criminal procedure law have been the main focus, so that there is little research to improve on legal framework of human trafficking and effectiveness of laws on human trafficking.

Keywords - Human Trafficking, Mongolia, Legal Framework

I. INTRODUCTION

In the end of 1990's, when first cases of human trafficking were registered, Mongolia had small population, of which children and young people under 35 years old accounted for over 70 percent. The government of Mongolia viewed that in such conditions spread of human trafficking might present high risk of negative effect on national security and in 2005 it approved the national program on combating human trafficking and protection of specially children and women from using them with a purpose of sexual exploitation (The program was adopted on November 30, 2005 by directive 234 of the Government of Mongolia). This step made a real contribution to prevention of human trafficking and protection of rights of citizens. The program is being implemented successfully in 3 stages until 2015; first stage in 2006-2007, second stage in 2008-2011, third stage 2011-2014 [1].

A number of activities were implemented in such field as creating legal environment in the frame of program implementation, joining conventions and protocols that determined norms and standards at international levels, ratification of the declaration, making agreement on cooperation, allocation of budget resources for program implementation,

training and specialization of civil servants working in this field, formation of an accurate understanding among general public. For example, Mongolian government has ratified several agreements with Korea including extradition and legal assistance agreement on criminal and civil case between 1999 and 2008 [2].

However, a number of questions need to be resolved and paid attention to for successful implementation of the program and further work. This paper will examine some of the strategies which have been implemented in Mongolia.

Previous studies on human trafficking issues repeat each other and have contradictory statistics. They also tend to only describe the situation of human trafficking. There is lack of surveys that examine causes and conditions for emergence of human trafficking, give evaluation to the situation, reflect changing conditions and new risks, determine future objectives and strengthen the legal framework for better protection and prosecution, carry out prevention and awareness raising activities. Since studies use different criteria and research methodologies, it leads to difficulties in comparing them and limits possibilities for objective evaluation.

The primary interest of this study is in determining and introducing overview of human trafficking in Mongolia. Based on prior research in Mongolia it was predicated that researchers would do research papers and reports on combating human trafficking in Mongolia.

In order to introduce overview of human trafficking tried to determine general condition and circumstances of human trafficking in Mongolia and legal Framework for Combating Trafficking and types of trafficking laws particularly laws related to trafficking and prosecution, laws regulating international and Domestic migration, such as Criminal code, Civil law, law on combating human trafficking, Labor law, Family law, law on the Rights of the Child, Laws Regulating International and Domestic Migration and laws Regulating the Media.

There are two components to this research paper: comprehensive analyses of (1) General

circumstances of Human Trafficking in Mongolia, (2) Mongolia's legal framework for combating human trafficking. The survey data utilized in this study were linked to the research center at the Supreme Court, the Center for Human Rights and Development, Mongolian Gender Equality Center and Human Security Policy Studies Centre which was conducted. Also the survey data were obtained from textbooks and articles which was published between 2010 and 2014 .

II. GENERAL CIRCUMSTANCES OF HUMAN TRAFFICKING IN MONGOLIA

In 2002-2009 Research Center at the state Supreme Court conducted a survey on human trafficking, inducing others to engage in prostitution, organization of prostitution. Survey findings show that 8 persons were convicted in 8 cases under Article 113 of Criminal Code of Mongolia /human trafficking/ and 53 persons were convicted in 32 cases under the Article 124 inducing others to engage in prostitution, organization of prostitution.

Since human trafficking is committed in a hidden way, it is impossible to make a direct conclusion on the growth or reduction of such cases based only on registered crime statistics. Although there is some progress in a legislative and legal environment on protection of human rights of trafficking victims, due to hidden nature of crime few cases are brought to the court. Survey result shows that sexual exploitation of children has increased in Ulaanbaatar and towns and settlement at border checkpoints, while there is lack of information about such crime in rural areas.

As of 2009 human trafficking is committed in the forms of sexual exploitation, brokered marriage, and forced labor [1].

A. Sexual Exploitation

According to the Gender Equality Center data, 11, 42, 27, 51 persons became victims of human trafficking in the form of sexual exploitation in 2006, 2007, 2008 and 2009 respectively. The number of persons, who fell victims to sexual exploitation and got direct assistance and support, increased in 2009 by 89.0 percent compared to the previous year.

Traffickers mostly emphasize choosing girls and young women aged 18-25 from poor households with low income, or orphans, whom nobody will look for and enquire, or families with violence and alcoholism. 96 percent of victims receive false information about their future work abroad before they are trafficked into a foreign country.

Of 4683 prostitutes in the capital city of, 99.1 percent are women, 0.9 percent are men, and

their average age is 34. There is lack of consolidated statistics at national level Ulaanbaatar [3].

53 girls aged 15-18 who were registered more the 3 times in the course of observation, participated in the survey. Of them 53 percent reported that they dropped out school and started working as prostitutes because they fell victims to sexual exploitation and violence [3].

B. Forced Labor

Between 2003 and 2010, total 92 people became victims of forced labor. Men apart from women are often victims of this kind of crime. Companies and individuals trafficked Mongolian citizens under pretense of mediating work of labor force abroad. They sent them within the country and to neighboring countries with a purpose to exploit their labor, from the neighboring countries they were sent to South Korea, Czech Republic, Turkey, Kazakhstan and other countries and were forced to work there. There is lack of any information about prosecution of cases on labor exploitation [1].

The Government of Mongolia is trying to deal with the issues effectively by providing better aid and protection to the victims. Much more is needed to be done; moreover the civil society can come forward to give a helping hand to the Government in combating the crime against women of Mongolia.

C. Children without Supervision

A large part of victims of human trafficking is persons under 18, i.e. children. Young children are trafficked mostly with propose of forcing them to beg, to steal or to exploit their labor at labor market. As of 2008, 121 children aged 9-17 lived in the manholes, of them 46 lived on the streets for 1-3 years, 53 lived on the streets for 3-9 years and the rest escaped from their home from time to time. It is necessary to register these street children, to adjust correctly legal relations in order to prevent their trafficking and sexual exploitation, to improve links between different organizations [1].

D. General Profile of Traffickers

Persons, who committed the crime of human trafficking in Mongolia, were mainly mail aged 20-50, while the recruiters were mostly female, girls and women, who previously became victims of trafficking. Participation of adolescents, who are used to observe victims and deliver information, has increased [1].

Of 16 persons convicted for human trafficking in the last 5 years, 7 or nearly half were women. Of 70 persons convicted for involving others in prostitution and organization of prostitution 46 or 65.7 percent were women. Of them women aged 22-30 accounted for 54.2 percent. Of criminals 20.8

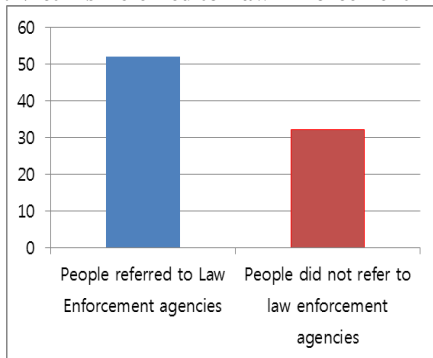
percent had higher and secondary education, 25.0 percent had special secondary education. 45.8 percent had complete secondary education and 8.4 percent were persons with primary education [1].

Criminals cleverly use gaps in the legislation, regularly change forms and methods of committing the crime and improve organization of their activities.

E. Victims of Human Trafficking

In 2008, when the legal environment was not stable, the differences between the articles 113,124 of Criminal Code were not clarified; in 36 criminal cases of that kind 106 persons were investigated as victims [4]. When victims of the above crimes were classified by their age, of them: 3 were aged 16-18, 80 were aged 18-22, and 23 were aged over 22. Men were not registered as victims.

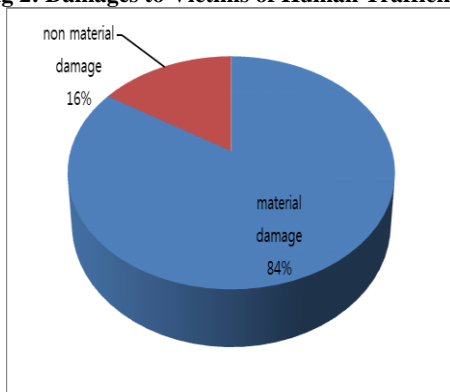
Fig 1: Victims Referred to Law Enforcement Agency



Source: National Statistical Office, 2010

Although severe damage inflicted to the person because of this crime was included in the interpretation by the Supreme Court, there is lack of coordination on how to determine this damage.

Fig 2: Damages to Victims of Human Trafficking



Source: National Statistical Office, 2010

Of 19 cases covered by the survey, 86.7 percent requested for compensation of material damages of victims and 15.3 percent requested compensation of non-material damage with treatment costs, burial costs, and value of lost property included in material damage and moral damage included in

non-material damage [5]. It can be viewed that activities on determining the level of injury or the degree of damage to the health caused by the crime are done at the appropriate level. In other words, defining the degree of injury based on expert evaluation complies with the law and it becomes a criterion for classification of the crime.

III. MONGOLIA’S LEGAL FRAMEWORK FOR COMBATING HUMAN TRAFFICKING

In 1992 Mongolia adopted a new Constitution, ensuring fundamental rights of Mongolian citizens, including the right to life, to freedom of religion, to free expression of opinion, to be free discrimination, and to freedom movement. It also establishes the right to free choice of employment, to favorable work conditions, and to be free forced labor. In addition, the Constitution provides that all international treaties to which Mongolia is a party shall be effective as domestic legislation upon the entry into force of their provisions.

Since 1992 Mongolian laws has been substantially revised to comply with Constitutional protections (According to Mongolian Criminal Procedure Law-discussed in more detail in section 5.2 below- the courts shall not uphold any law that does not comply with the Constitution). In fact all of the legislation described below has been adopted in the years since the new Constitution was promulgated.

In order to coordinate social relationships emerging in relation to activities on combating human trafficking and its prevention in Mongolia, several legal acts programs were approved, so responsibilities taken in the frame of international agreements are being implemented in certain measures.

Therefore, Mongolia has enacted the special law on combating human trafficking in 2012. This law coordinates the relations including preventing, combating human trafficking and determining the cause of human trafficking as well as protecting trafficked victim’s rights.

Also this law provides the power of the government organizations and special organizations which implement the measures such as combating, preventing and providing specialized management and controlling implementation of law on human trafficking. The law on combating human trafficking provides provisions for assisting victims in obtaining appropriate housing, legal counseling as well as physical or mental health service. This law also includes adequate provisions for ensuring the safety and privacy of victims and protecting them from intimidation and retaliation from their traffickers.

In addition, this law defines penalties for legal entity, media and individuals who fail to follow binding demand according to the law on combating human trafficking, article of 17.1.2 legal entity shall be fined in 1,000,000 MNT (approximately USD 690), media shall be fined 5,000,000 (approximately USD 3,448), and in persons 500,000 (approximately USD 344)

A. Criminal Code

The criminal code is the central piece of legislation in Mongolia's criminal justice system, and it is the only law that carries prison sentences for violations (Though short-term detentions of up to 30 days may be provided under other legislation). Over the last years, Mongolia's Criminal Code has been amended to better address trafficking offences. In 1999 a provision was added to the code making it a crime to send women to a foreign country for the purpose of prostitution (The law does not apply to men).

Then, in September 2002, new Criminal Code went into effect, with a provision prohibiting "the buying and selling of human being" The first section of the article –Article 113.1 –defines the crime as "rather heavy" (See more on the four crime classifications below) and provides penalties of fine of 15-250 the Mongolian minimum wage, 300-500 hours of compulsory labor, or up to 3 years imprisonment for violations. Section 113.2 provides heightened penalties of up to 5-10 years imprisonment if the crime committed (1) against two or more persons; (2) against child under the age of 18; (3) repeatedly; (4) for the purpose of the illegal use of human blood, tissue, or organs; (5) for the purpose of exploitation of prostitution; or (6) by a group acting together with premeditation (These offences quality as 'felonies'). Finally under Article 113.3, if the crime is committed an organized group and is done repeatedly and or with severe harm to the victims, the offence is considered 'lese majeste' (the most serious crime classification) and is subject to 10-15 years imprisonment.

Mongolian government amended its Criminal Code in 2008 and 2012 and it is compliant with Palermo Protocol, Mongolia has also acceded to Palermo Protocol and developed National Action Plan against Trafficking. However, there is no centralized system or complex policy to prevent from trafficking, protect victims and prosecute traffickers.

"In the prosecution stage, the Mongolian government made some progress in enforcing its anti-trafficking laws during the last years. Mongolia criminalizes all forms of human trafficking through Article 113 of its criminal code, which was amended in 2012 and which prescribes penalties that are

sufficiently stringent – up to 15 years' imprisonment – and commensurate with those penalties prescribed for other serious offenses.

The government secured the convictions of 10 trafficking offenders under Article 113, compared to seven convictions in the previous reporting period. Those convicted under Article 113, including a woman who trafficked five young Mongolian women to Macau, received sentences of from 10 to 15 years' imprisonment.

However, crime committed by foreign nationals (or stateless persons) outside the territory of Mongolia can only be prosecuted in Mongolia, if they reside in a country with which Mongolia has an extradition agreement. Currently, Mongolia has extradition agreements only with Hungary, Bulgaria, Romania, Yugoslavia, the Czech Republic, North Korea, South Korea, Cuba, China, Kazakhstan, Poland, Russia, Ukraine, Vietnam, Turkey, France, Kyrgyz, and India. Moreover, Mongolian citizens are protected under the Constitution from being extradited to foreign country for prosecution under any circumstances, though Mongolia will extradite foreign nationals who are residing in Mongolia if an extradition treaty is in place.

B. Civil law

A new civil law also went into effect in September 2002. The civil law regulates the relationship between persons and material and non-material property, ensuring the sanctity of property and freedom of contracts. It is only law under which financial compensation can be collected for loss and damages (under Part 18 of the law).

According to the civil law, perpetrator is liable for damage caused to person's right, life, health, dignity, business reputation, or property, either deliberately or due to negligent action or inaction. The civil law also provides that if a government official causes such damage as a result of wrongful decision or other misconduct (including inaction), the administrative body that employs the official shall be liable, unless otherwise provided by law. The perpetrator must take the necessary steps to return the injured party to the state in which he or she existed before the harm may be compensated with cash. For example, if the victim of the offences was rendered unable (or less able) to work or if the victim's expenses increased due to injury, the perpetrator must make monthly payments to the victim for support and care.

The amount of compensation ordered is determined based on the needs and interests of the victim, the circumstances under which the harm was inflicted, the degree of the perpetrator's guilt, and extent of damage or loss, The procedure for assessing

physical injuries is outlined in Article 156 of the Criminal Procedure law: an expert is appointed to judge the damage by examining the victim and viewing reports from the Forensic hospital. The Criminal Procedure Law also specifies procedures for assessing victims for depression and other mental health problems. However, these assessments are used to determine the victim's ability to testify accurately and to provide useful information to investigators. They are not used to assess psychological or emotional damage for the purpose of ordering compensation.

Under the civil law, in the case of non-material harm, victims may not demand cash compensation. Mongolia's civil law provides victims with access to compensation for financial loss and physical harm, but it lacks the necessary provisions for compensating for the psychological damage that victims of trafficking often suffer.

C. Laws Regulating Prostitution

Prostitution and pornography are regulated under the Law against Pornography, which came into force in July 1998. This law defines pornography as including prostitution, the exploitation of prostitution, and organizing, mediating, and promoting prostitution (Article 3.1.2). Under Article 13.2.1, persons engaging in prostitution shall have their income from such activities confiscated and be subject to 14-30 days detention. In addition, any hotel, bar, or other location knowingly used for the purpose of prostitution shall be closed, any vehicle knowingly used to facilitate prostitution, shall be confiscated.

D. Laws Regulating International or Domestic Migration

Prior to the 1990s, Mongolian citizens needed special permission to travel abroad, only limited travel to socialist countries was permitted. However a new law regulating international travel came into force in February 1994: the law on international travel and Emigration. This law ensures the right to travel abroad for personal or business purposes and the right to emigrate to foreign country, as well as the right to return Mongolia at any time (Article 4). (As mentioned above, children must be accompanied by their parents or legal guardian to travel abroad.) The right to travel abroad may be suspended by the national State Center for Civil Registration and Information or by local police departments only if a person is suspected of or accused of crime, if their travel would violate the right and legal interests of another person, or if a person has used false travel documents in the past.

Mongolians new freedom to travel abroad - along with the other major social, economic, and

political changes that occurred in the 1990s - led to dramatic increase in the number of Mongolians going abroad to work and study. As a result, new legislation was needed to regulate such activities, and in June 2001, the Law on Mediating International Employment went into effect to regulate the employment of Mongolia citizens abroad and foreign citizens in Mongolia.

According to this law, the Ministry of Labor and Social Welfare (MLSW) shall grant individuals or organization permission to engage in mediating the sending and receiving of workers out of and into Mongolia. MLSW is also charged with monitoring the well-being of Mongolians employed abroad and taking steps to protect their rights. This prohibits the overseas employment in occupations that are prohibited under international law.

Under Article 6.9, permission to mediate overseas employment will be withdrawn if the individual or organization: 1) engages in deception, 2) induces persons to accept employment that puts their safety and health risk, 3) sends persons to countries other than those for which mediation permission has been granted or 4) charges an unjustifiable amount order to gain large profit. In addition, under Article 12, mediators who violate the provisions of this law shall reimburse Mongolian citizens sent abroad or foreign citizens brought into Mongolia for any loss they have suffered as a result. Violators are also subject to fines: depending on severity of the offense, individual mediators are liable for fines of MNT 30,000-60,000 (approximately USD 26-52) or MNT 50,000-100,000 (approximately USD 43-86) organizations involved in illegal mediation may be MNT 150,000-250,000 (approximately USD 130-220) MNT 500,000-1,000,000 (approximately USD 434-860) and government officials who did not properly monitor mediators may be subject to fines of MNT 30,000-60,000 (approximately USD 26-52) or MNT 50,000-100,000 (approximately USD 43-86).

Migrating within Mongolia is regulated under the law on Civil Registration, adopted in 1999, and the General Regulation to Register Civil Migration, adopted by Government Decree No.47 in 1996. Under these provisions, citizens who migrate to different province or city must register with relevant administrative unit within 10 days of arrival. Until recently, registering carried a fee of MNT 50,000 (approximately USD 43) for an adult and MNT 25,000 for a child, making it difficult for migrant families to access the services and entitlements that registration brings, such as social welfare, education, health care, and Land ownership rights. The Supreme Court has since ruled that there will no longer be registration fee in Ulaanbaatar.

E. Laws Regulating the Media

Among the major changes that took place in Mongolia in the 1990s were steps to ensure freedom of the press. In August 1998, the law on Freedom of the Media came into force, ensuring the rights free speech and free expression of opinion guaranteed in the 1992 Constitution. This law prohibits the enactment of any law that censors the press or curtails its freedom and it prohibits the state from financing any other organization that engages in such censorship. The same month that the law took effect, the Parliament issued a decree describing measures that would be taken to enforce it, including privatizing state-controlled radio and television agencies and closing the state newspaper (No 103 Decree on some measures for enforcement of law on press freedom. 28 August 1998).

With this new freedom of press came a new need to regulate advertisements, and in May 2002 the law on Advertisements came into force. This law prohibits advertisement that deceive or mislead consumers (or otherwise obstruct fair market competition); that promote violence or pornography; that include actions that lead to person's death or injury; that violate Mongolian ethics or customs; or that contain words or phrases that insult a person's origin, language, race, social status, age, gender, profession, education or religion.

The law also states that persons or organizations engaging in activities that require special permission - such as international employment must produce proof of permission in order to publish a related advertisement. According to the law, persons who submit such advertisements without the proper permission are liable for a fine of MNT 10,000-50,000 (approximately USD 9-43), and the media outlets that post them will be fined MNT 50,000- 250,000 (approximately USD 43-216). In addition, the individual at the newspaper responsible for the violation will personally be fined MNT 25,000-60,000 (approximately USD 22-52).

The national-level State Monitoring Office of Intellectual Property (an independent state agency) bears primary responsibility for monitoring advertisement and imposing fines for violations. Additional monitoring is conducted by local governors or officials they appoint, and, if advertisements are related to Criminal Code violations, the police also become involved. (Individual interview with Shinebayar, the head of Chancellery Department, State Intellectual Office)

IV. INTERNATIONAL STANDARDS: IS MONGOLIA IN COMPLIANCE?

In 1945 the first international protocol dealing with sex slavery was the 1949 UN

Convention for the Suppression of the traffic in Persons and Exploitation of Prostitution of Others. Although it can occur at local levels, human trafficking has international implications, as recognized by the United Nations in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, an international agreement attached to the UN Convention against Transnational Organized Crime (CTOC) which entered into force on December 2003. This protocol is one of the three which supplement the CTOC (Convention on Transnational Organized Crime). The Trafficking Protocol is the first global, legally binding instrument on trafficking in over half a century, and the only one with an agreed-upon definition of trafficking in persons. One of its purposes is to facilitate international cooperation in investigating and prosecuting such trafficking. Another is to protect and assist victims of human trafficking full respect for their rights as established in the Universal Declaration of Human Rights [6].

Trafficking women and children is a transnational crime and thus requires a coordinated, transnational response to effectively respond to it. Mongolia, as a member of the United Nations and a party to over 30 international human rights and humanitarian agreements [7]

The United Nations Protocol to Prevent Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (UN Protocol on Trafficking) is the most comprehensive anti-trafficking instrument in international law. It is the first to substantially define the term "Trafficking in persons" and to call for response that includes strengthened law enforcement efforts to investigate and punish traffickers, as well as measures to assist trafficking victims and protect them from further violations [8].

Together with the provisions in the main Convention, the Protocol provides some important protections for trafficked persons, especially in the context of legal proceedings against their traffickers. Thus, Mongolia has ratified this main Convention in 2008.

In addition to on February 1, 2008 amendments were made to Article 113 of Criminal Code according to Palermo Protocol and resolution number 26 of the State Supreme Court on March 26 made in interpretation, which led to certain changes in the legal environment. The State Ikh Khural /Mongolian parliament/ approved the amendments on May 16, 2008.

The Supreme Court of Mongolia issued a decree on "Utilization of norms, standards and principles accepted by international treaties and

international legal community in the court practice of Mongolia”, which created conditions for implementation in the real life of provisions of international conventions ratified by Mongolia along with the laws of Mongolia.

There are references to trafficking and to its key components, such as forced labor and forced prostitution, in various other agreements as well, most of which Mongolia has ratified.

These include the Supplementary Convention on Abolition of Slavery, the Slave Trade, and Institutions and Practice Similar to Slavery, as well as documents specially focused to the rights of women and of children, such as the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of Child (CRC), CRC’s Optional protocol on the Sale of Child, Child prostitution, and Child Pornography, and ILO Convention 182 regarding the worst forms of child labor.

Along with international instruments, regional organizations have been adopted instruments and agreements aimed at combating the trafficking in persons at regional level, For example, the countries of the South Asian Association for Regional Cooperation (SAARC) negotiated the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. There are also bilateral agreements to promote cross-border cooperation in anti-trafficking efforts. For example: Mongolia and China negotiated a bilateral Memorandum of cooperating in combating on human trafficking in 2010 [9].

Together, these documents clearly establish that trafficking in persons is a grave human rights violation that governments around the world are obligated to prevent and punish. To provide obligation of these international legal resources, the State of Mongolia has been taking measures such as adopting law on combating human trafficking, amending Criminal code and enhancing legal framework on this crime. Report on trafficking in persons the State department of United States which conducted Mongolia is standing at second ranking.

V. CONCLUSION

Despite improvement to Mongolia’s legal frame work, Mongolia continues lack comprehensive anti-trafficking legislation. Measures was taken to clarify and prohibit all elements of the trafficking process - including recruitment, transportation and transfer - for all of the proposition listed in the United Nation protocol’s definition. Although objective measures were taken in direction of developing legislation related to human trafficking, including development material norms and standards, work on

enhancing the process law and appropriate provisions to examine and determine whether the given norms are violated, to coordinate relations on responsibility to guilty subject, is unsatisfactory. As the process law is not well developed, some necessary activities in resolution of human trafficking cases cannot be implemented, among them a lack of realization of certain provisions of Mongolian laws as well as international treaties and conventions, including protection victims, requesting legal assistance from other countries, proving crime in cooperation with legal organizations in foreign countries.

To officially certify and print given agreements and conventions related to human trafficking, to coordinate and link them, to create opportunities for implementation mechanism to work fully in Mongolia, which will give an opportunity to understand terms used in conventions in one way at national level.

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