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Prison labour and employment conditions of convicts in Mongolia

An empirical study

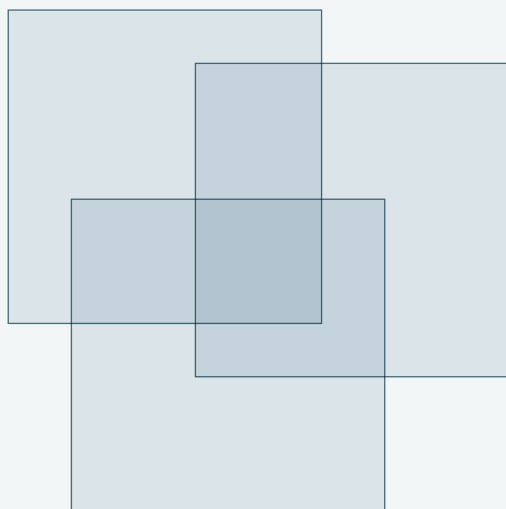


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Foreword

In the past two decades Mongolia has made a successful transition into a multi-party democracy and a rapidly growing, if not highly diversified, market economy. The Mongolian economy is increasingly integrated into global markets, in particular through trade and investment liberalization schemes with major trading partners including the European Union and the United States. The planned economy era has however left a legacy of certain practices that still raise concerns among international and national human rights bodies and Mongolia's trade partners alike. One such practice is hiring of prisoners to private individuals, companies or associations.

This report presents the results of a study carried out by the National Human Rights Commission of Mongolia (NHRCM) with technical support from the International Labour Organization (ILO) Forced Labour Action in the Asian Region (FLARE project). The study reviews Mongolia's legal framework, and documents nature and organization of prison labour in Mongolia. Field research for the study was carried out in prisons No. 407, No. 417 and No. 421 between June and November 2013, with a total of 522 prisoners participating in the survey.

The ILO Forced Labour Convention, 1930 (No. 29) sets specific requirements for the employment of prisoners. When properly organized, voluntary vocational rehabilitation and employment in prisons can bring benefits to inmates, including enhanced employability and easier work reintegration upon release. However, if convicts doing compulsory work are hired to or placed at the disposal of private individuals, companies, or associations or the work or service is not carried out under the supervision and control of a public authority, this constitutes a violation of Convention No. 29, which Mongolia ratified in 2005. The findings of the present study suggest that prisoners are hired or placed at the disposal of private companies without their formal consent or adequate conditions of work, which raises questions about compliance with Convention No. 29.

In 2014, the International Labour Conference adopted a new legally binding Protocol designed to strengthen global efforts to eliminate forced labour. The Protocol is a renewed call to action to prevent forced labour, to protect victims and to provide access to remedy, such as compensation for material and physical harm. The new standards are a response to the contribution forced labour continues to make to the

perpetuation of poverty while standing in the way of the achievement of decent work for all. There are currently an estimated 21 million forced labour victims worldwide. An estimated US\$150 billion in illegal profits are made in the private economy each year through modern forms of slavery. The 2030 Development Agenda targets “immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking” as part of the wider goal to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all (SDG Goal 8).

The report identifies various areas in which Mongolian national law and practices may be reviewed to ensure that the private employment of prisoners is organized in a manner that is in full compliance with Mongolia’s international obligations and is beneficial for the prisoners themselves. We hope that this report will inspire continued policy discussions on prison labour in Mongolia and on international fora.

Byambadorj Jamsran

Chief Commissioner

National Human Rights Commission
of Mongolia (NHRCM)

Tim De Meyer

Director

ILO Country Office for
China and Mongolia

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The research results were discussed at a validation workshop organized by National Human Rights Commission of Mongolia. We would like to thank everyone for sharing their experience and expertise during this workshop.

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Executive summary

In Mongolia, all convicts are under the obligation to work, and prisoners work both inside and outside of prisons. The National Human Rights Commission of Mongolia (NHRCM) became aware of prison labour practices that raised questions regarding compatibility with the Forced Labour Convention, 1930 (No. 29), and asked the International Labour Office (ILO) for support to carry out further empirical research. Consequently, in 2013, the ILO Forced Labour Action in the Asian Region project (FLARE) supported the NHRCM to conduct research on the organization of labour and working conditions of inmates in three selected correctional facilities.

Field research in female Prison No. 407 and male prisons No. 421 and No. 417 was carried out between June and September 2013. A total of 522 prisoners participated in the survey. At the time of the survey all three prisons had contracts with private enterprises.

Findings on compulsory prison labour

Findings from the three surveyed prisons indicate that prisoners carry out work that they perceive as compulsory and for the benefit of private employers. A total of 68 per cent of male survey respondents and 72 per cent of female respondents stated they had performed work by order of prison authorities, and some of this compulsory work benefited private employers. This raises concerns regarding compliance with conditions established in Convention No. 29.

Convention No. 29 permits compulsory prison labour only provided that convicts 1) work under the supervision and control of a public authority; and 2) are not hired to or placed at the disposal of private individuals, companies or associations. This means that private employment of convicts is only permitted on a voluntary basis.

According to the current Mongolian legislative framework, all convicts are obliged to work. The legislation in force explicitly provides that such work shall be carried out under the supervision of public authorities, indicating observance of the first of the above conditions set out in Convention No. 29. However, under Mongolian law, prisoners may be hired to perform labour for the benefit of private entities, agencies or individuals, without requiring their explicit consent to do so.

To ensure compliance with Convention No. 29, it is important to ensure that prisoners undertaking compulsory work cannot, in law or in practice, be hired to or placed at the disposal of private companies in Mongolia. Private employment of prisoners should be permitted only on a voluntary basis, adhering to the specific conditions established in the ILO standards.

Findings on private employment of prisoners

Findings of the present survey indicate that between 7 and 13 per cent of all work carried out by prisoners in the three prisons surveyed is done for private employers (including both work perceived as voluntary and work perceived as compulsory).

As noted above, Convention No. 29 permits private employment of prisoners only on a voluntary basis. Due to a context of lack of freedom with limited choices, convicts' work can only be considered voluntary under certain condition. Firstly, where formal consent of the prisoner is given, for example in the form of an individual employment contract. Secondly, the ILO Committee of Experts has found that conditions of work approximating a free labour relationship are the most reliable indicator of the voluntary consent of the worker. Survey findings on these two conditions are assessed below.

As regards formal consent to work, the survey findings show that 54 to 70 per cent of respondents had not signed employment contracts for any work they were carrying out (including both work perceived as voluntary and work perceived as compulsory). Furthermore, 33 to 64 per cent affirmed they had faced threats or punishments if they refused to perform work. Evidence found on hiring or placing prisoners at the disposal of private companies under these conditions raises concerns about compliance with the Convention No. 29.

As regards conditions of work, the Mongolian regulatory framework provides that prisons employing inmates on the basis of agreements with a factory, an individual or a business entity shall adhere to the national minimum wage rate, and provide prisoners with overtime wages. In practice, however, the survey data shows that 36 to 59 per cent of prisoners did not receive wages for any work they carried out (including both work perceived as voluntary and work perceived as compulsory). Among those who received wages, deductions for electricity, water and heating charges, cleaning, transportation and vocational training, as well as to the repayment of compensation ordered by courts were common.

In addition, virtually none of the respondents had received overtime pay. The Committee of Experts has stated that deductions may be made from prisoners' remuneration for the board and lodging provided, but conditions for this need to be strictly controlled by the public authority. However, in the context of private employment of prisoners, evidence of unpaid labour and wage deductions that bring prisoners' net wages close to zero raise questions about compliance with the Convention No. 29.

While these figures should be treated as approximations due to data limitations, the above evidence showing the absence of formal consent and inadequate conditions of work for the private employment of prisoners raises questions about compliance with the Convention No. 29.

ILO recommendations

Compulsory prison labour:

1. Ensure that compulsory work is only permitted when: 1) prisoners work under the supervision of a public authority and 2) prisoners are not hired to or placed at the disposal of private individuals, companies or associations. Revise national legal provisions to explicitly state these two requirements.
2. Prohibit hiring or placing prisoners undertaking compulsory work at the disposal of private individuals, companies or associations.

Voluntary private employment of prisoners:

1. Permit the employment of prisoners by private individuals, companies or associations only when: 1) prisoners have consented to undertake the work; and 2) their conditions of employment approximate those of a free labour relationship. Revise national legal provisions to explicitly state these two requirements for voluntary private employment of prisoners.
2. Ensure that prisoners provide free, informed, formal consent to work for a private employer in writing before undertaking private employment. Consider creating a sample employment contract for obtaining prisoners' formal consent.
3. Establish and enforce clear national standards for the employment of convicts by private individuals, companies or associations. These standards should, as a minimum, specify:
 - wage levels;
 - permitted wage deductions;
 - social security; and
 - occupational safety and health applicable to voluntary private employment of prisoners.

NHRCM recommendations and impact of the research

Based on the research findings, the NHRCM made a set of recommendations to the members of the Mongolian Government, the Minister of Justice, and the General Authority for the Enforcement of Court Decisions. These recommendations and initial findings of the study were discussed and validated in a meeting organized by the NHRCM with representatives from the Ministry of Justice, Ministry of Labour and the General Authority for the Enforcement of Court Decisions in October 2013.

During the meeting, representatives from the Ministry of Justice and the General Authority for the Enforcement of Court Decisions acknowledged the issues addressed by the study. The Representative of the Ministry of Justice noted that the recommendations made by the NHRCM would be taken into consideration in the context of ongoing legal reforms. Representatives of the General Authority for the Enforcement of Court Decisions noted that relevant rules governing convicts' labour norms and pay scheme would be reviewed to take recommendations from the study into account. In addition, breaches revealed by the study would be investigated and action taken to address them.

As of December 2015, the appropriate amendments and revisions recommended by the NHRCM have not been made in the relevant laws and government policies.

Acronyms and abbreviations

CEACR	Committee of Experts on the Application of Conventions and Recommendations (ILO)
FLARE	Forced Labour Action in the Asian Region project (ILO)
ILO	International Labour Organization
MNT	Mongolian Tugrig
NHRCM	National Human Rights Commission of Mongolia

1. Research approach

1.1 Background

The National Human Rights Commission of Mongolia (NHRCM) is a national human rights institution consistent with the Paris Principles on the Status of National Institutions and reporting to The State Great Khural of Mongolia. The NHRCM is charged with monitoring the implementation of the provisions on human rights and freedoms provided in the Constitution of Mongolia, as well as laws and international treaties to which the country is a party. Within its mandate, the Commission has the power to conduct inquiries at its own initiative on the basis of information regarding violations of human rights and freedoms or at the request of business entities, organizations or officials.¹

In its monitoring activities, the NHRCM has identified cases in which prisoners were ordered to perform labour under circumstances that raised questions regarding their compatibility with the Forced Labour Convention, 1930 (No. 29) of the International Labour Organization (ILO). Therefore, additional empirical research was required in order to examine the nature and organization of prison labour in Mongolia, as well as the working conditions of convicts. In 2013, the ILO Forced Labour Action in the Asian Region project (FLARE) supported the NHRCM to conduct research on the organization of labour and working conditions of inmates, including through a quantitative survey of employment practices in three selected correctional facilities.

Mongolia ratified both the Convention No. 29, and the Abolition of Forced Labour Convention, 1957 (No. 105), in 2005. While considerable efforts have been made to bring national laws, policies and practice into conformity with both Conventions, some challenges remain. In this regard, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR; hereafter referred to as the Committee of Experts) has repeatedly requested the Government to provide information on the work of prisoners for private enterprises, including with respect to the measures taken to ensure that such work is only carried out with the formal, free and informed consent of convicts.²

¹ Section 18, Act on the National Human Rights Commission of Mongolia.

² ILO CEACR. Direct request concerning the application by Mongolia of the Forced Labour Convention, 1930 (No. 29), Geneva, 2013, 2012, 2011 & 2009. Available at: <http://www.ilo.org/normlex> [accessed 7 May 2015].

1.2 Objectives of the research

The objective of the study was to assess conformity of prison labour in Mongolia with regards to the requirements of Convention No. 29. In particular, the present study aims to:

1. document the organization and nature of prison labour in Mongolia through empirical research;
2. assess conformity of the organization of prison labour with the requirements of Convention No. 29;
3. make recommendations on the improvement of legislation, policy and practices related to prison labour to relevant authorities; and
4. raise awareness among prison administrators on the requirements of Convention No. 29 with regard to prison labour and the rights of inmates.

1.3 Methodology and surveyed sites

The study involved a combination of both qualitative and quantitative research. For data collection, the NHRCM carried out field visits in three of the 25 prisons under the jurisdiction of the General Authority for the Enforcement of Court Decisions. The visits were carried out between 12 June and 2 September 2013.

Research sites were selected to represent prisons with different profiles and in different locations, namely:

- Prison No. 407, a female prison, located in Bayanzurkh district, Ulaanbaatar city;
- Prison No. 421, a regular discipline prison, located in Amgalan district, Ulaanbaatar city; and
- Prison No. 417, a regular discipline prison, located in a logging area in Mungunmorit district, in the remote Tuv Aimag province.

For context, in 2014, the prison population of Mongolia was estimated at 8,015 persons, of which 6,716 were convicts (sentenced prisoners) (ICPR, 2014). According to the 2010 Census, the population of Mongolia was approximately 2.8 million (NSO, 2010). The survey findings were not intended, however, to be representative of the entire prison population of Mongolia.

1.3.1 Questionnaire design

Survey questionnaires for male and female prisoners were jointly developed by the NHRCM and the ILO FLARE project. The questionnaires consist of the following sections:

Section A: respondents' personal data

Section B: issues related to prison labour (types of work; work by order of the authorities; voluntary work)

Section C: issues related to prisoners' occupational safety and health

Section D: general requests addressed to the NHRCM

In addition to survey questionnaires, the research methodology included individual and group interviews, a desk review of internal rules and orders governing the work of inmates, as well as a desk review of financial records and other relevant documents. Individual research subjects were informed of the researchers' affiliations, as well as of the scope of the research project, and freely consented to participate.

1.3.2 Sample characteristics

A total of 522 persons participated in the survey. Of these, 233 were males from prisons No. 417 and No. 421, and 289 were females from Prison No. 407. Tables 1 and 2 display a basic profile for male and female survey respondents.

Table 1: Distribution of sample respondents by age group and gender

Age group	Males	Females
Under 18	3	1
18-30	106	64
31-44	67	139
45+	30	70
Total	206	274

Table 2: Distribution of sample respondents by ethnicity and gender

Ethnicity	Males	Females
Mongolian	215	256
Kazakh	2	3
Tuvan	1	0
Other	2	5
Total	220	264

1.4 Analytical framework and limitations of data

The survey questionnaires were designed to collect data on practices associated with compulsory and voluntary work performed by inmates, with a view to assessing compliance of these practices with Convention No. 29. The survey was designed under the assumption that prisoners would be able to distinguish between compulsory and voluntary work, and answer separate sets of questions on these types of work.

However, during data collection and analysis, it became evident that making a distinction between compulsory and voluntary work was not easy for the respondents. In addition, the survey findings showed no substantial or systematic difference between conditions of compulsory work and voluntary work carried out by the prisoners. As the analysis could not be based on self-identification of compulsory and voluntary work by the prisoners, it was decided to analyse the two datasets side by side to produce general information on the prisoners' conditions of work.

Due to these limitations and the possible overlap between the two datasets, the outcomes of the data analysis should be treated as approximation rather than as a reliable indicator of compliance or non-compliance with the requirements of Convention No. 29. In spite of these limitations, the empirical evidence produced by the study is important in highlighting areas where further efforts are needed to bring the national legal framework and practices into full compliance with Convention No. 29.

2. International and national legal framework, and analytical framework, of the study

2.1 Requirements of Convention No. 29 on prison labour

Convention No. 29 prohibits the use of forced or compulsory labour in all its forms. Article 2(1) of the Convention defines forced or compulsory labour as:

all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

Nonetheless, certain forms of compulsory work or services are expressly excluded from the above definition of forced or compulsory labour. Among the exceptions listed by the Convention is Article 2(2)(c) which states:

any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations.

In the context this exception, permitted compulsory labour may take the form of **compulsory prison labour**, or work imposed as a consequence of other kinds of sanctions, such as a sentence of community work. However, the imposition of compulsory prison labour is subject to the observance of three conditions set out in Article 2(2)(c) of the Convention. Compulsory work by prisoners is permitted only if these three conditions are jointly met (see Chapter 2.1.1 for details).

It should be noted that the conditions set in Convention No. 29 do not prevent prisoners from being offered the opportunity to enter into **voluntary work** at the individual's own consent. However, due to the situation of captivity faced by inmates, the ILO Committee of Experts has applied specific criteria when assessing whether work carried out

by prisoners can be considered truly voluntary³ (see Chapter 2.1.2 for details).

2.1.1 Conditions for permitted compulsory prison labour

Convention No. 29 permits compulsory prison labour if the three conditions below are jointly met.

1. Conviction in a court of law

According to Article 2(2)(c) of Convention No. 29, a person can be ordered to perform compulsory work or services **"as a consequence of a conviction in a court of law"**. Firstly, it follows that persons in pre-trial detention or detained without trial should not be obliged to work.

Secondly, the wording of Article 2(2)(c) indicates that no compulsory labour may be imposed unless the person concerned has been found guilty of an offence as a result of a due process of law. Therefore, compulsory labour imposed by administrative or non-judicial bodies or authorities is not compatible with Convention No. 29. Reference to the term "in a court of law" implies that guarantees such as presumption of innocence, equality before the law, impartiality of proceedings, and independence and impartiality of courts are observed.⁴

2. Supervision and control of a public authority

In order to be excluded from the definition of forced or compulsory labour under Convention No. 29, compulsory work or services imposed on convicted persons must be carried out under the supervision and control of a public authority, such as prison administration authorities and probation officers. This requirement aims to ensure that the rights of inmates performing labour are safeguarded, and that their conditions of work remain within acceptable limits. Therefore, the supervision and control of work performed by inmates by a State authority must be permanent and consistent, rather than limited to periodic inspections.⁵

³ ILO. 2007. Eradication of forced labour, General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), Report III (Part 1B), International Labour Conference, 96th Session, Geneva 2007, para 51.

⁴ Ibid., para 52.

⁵ Ibid., para 53.

3. Prohibition on hiring convicts to, or placing them at the disposal of private individuals, companies or associations

In addition to the above conditions, Convention No. 29 establishes that compulsory work or services imposed on a convicted person are excluded from the definition of forced or compulsory labour only if the person “is not hired to or placed at the disposal of private individuals, companies or associations”. This means that private employment of prisoners is permitted only at the individual’s own request, on a voluntary basis.

This prohibition of compulsory private employment of prisoners applies to work performed both inside and outside prison premises, especially since workshops inside correctional institutions may be operated by private entities. In monitoring the practical application of the Convention, the Committee of Experts has considered that the prohibition of **“hiring”** prisoners’ for compulsory labour for private individuals, companies or associations encompasses a variety of prison labour contracting systems, including:

- systems in which the State hires out prisoners to a private contractor responsible for the boarding, lodging, clothing, guarding and payment of prisoners. In turn, the contractor acquires the right to employ convicts for a determined period;
- systems in which the contractor pays a lump sum to the State for the use of prison labour. Under this system, prisoners are hired out to a contractor whose responsibility is to provide prisoners with boarding, raw materials and tools. Prisoners are lodged and guarded by the State;
- systems in which prisoners are selected by the prison administration to work for the contractor inside the prison premises. The contractor supplies the raw materials and tools, and the contractor’s staff directs the work inside the prison.⁶

With regard to the prohibition of “placing convicts at the disposal” of private entities, the Committee of Experts has considered that it applies to situations in which the State subsidises a private contractor to run a prison where prison labour is compulsory.⁷

In all cases, however, the Committee of Experts has stressed that the

⁶ Ibid., para 57.

⁷ Ibid., para 58.

prohibition of hiring prisoners to, or of placing them at the disposal of private individuals, companies or associations, is not limited to situations where a contractual relationship exists between the prisoner and the private entity.⁸

2.1.2 Conditions for permitted voluntary private employment of prisoners

Private employment of prison labour can be compatible with Convention No. 29 in cases where prisoners voluntarily agree to perform such work or services. Given the lack of freedom and limited options available to prisoners, prisoners' free, informed and formal consent to work for a private employer should be provided in writing, for example by signing an employment contract. In addition, the Committee of Experts has considered that safeguards need to be put in place to ensure that prisoners have truly voluntarily accepted employment with private employers, without being subjected to pressure or the menace of any penalty.

The Committee of Experts has also considered that the most reliable indicator of voluntary consent to work by prisoners is conditions of work which approximate those of a free labour relationship. The main aspects to be taken into consideration include wage levels (leaving room for deductions and attachments), social security and occupational safety and health.

In this regard, while it is possible to accept certain differences in wage levels and social security benefits, all prisoners must enjoy the same occupational safety and health protections as free workers. Deductions from prisoners' remuneration may be made for board and lodging, or remuneration lowered to take into account these expenses, under conditions that are strictly controlled by the public authority.⁹

2.2 Mongolian legal framework on prison labour

According to Article 16(4) of the Constitution of Mongolia (1992), citizens have the right to free choice of employment, favourable conditions of work, and remuneration and rest. Further, the Constitution provides that "no person shall be unlawfully forced to work." Forced labour is also

⁸ Ibid., para 107.

⁹ Ibid., para 60, 113-120.

prohibited under Section 7 of the 1999 Labour Code.

Pursuant to section 8(2)(4) of the Law on Enforcement of Court Decisions (2002), prison labour is compulsory for convicts. Section 120(4) of the same law establishes that prisoners may engage in labour contracts with legal entities, agencies or individuals; and that such work shall be performed under the supervision of the authorities. According to section 120(6), convicts in maximum security prisons can only perform labour in factories belonging to the same correctional institution.

The working conditions of inmates, including with regard to the payment of wages, are regulated by sections 120(1) to (8) and 121 of the Law on Enforcement of Court Decisions, as well as by the Rules governing convicts' labour norms and pay scheme, issued by order A/32 of the General Authority for the Enforcement of Court Decisions in 2013.

According to clause 3.1 of the above Rules, prisons employing inmates on the basis of agreements with a domestic factory, an individual or a business entity shall adhere to the national minimum wage rate established under the legislation in force. Inmates performing overtime work shall receive additional pay (clause 3.2).

Section 127 of the Law on Enforcement of Court Decisions establishes disciplinary sanctions applicable to convicts. Among other measures, inmates might be ordered to perform unpaid labour (section 127(1)(1)), or might face changes in their conditions of employment (section 127(1)(2)).

3. Findings of the survey

3.1 Employment status and nature of work

Of the 205 male inmates who responded to the question regarding their employment status, 177 (86 per cent) affirmed to have worked in the 12 months preceding the survey. In the case of female inmates, the 68 per cent (177 out of 261 respondents to the question) said they were employed at the time of the survey.

Both compulsory and voluntary work were carried out by prisoners in all surveyed prisons. Among male respondents, 109 out of 168 inmates (65 per cent) responded that they had carried out work they were ordered to perform in the 12 months preceding the survey. A total of 53 male inmates (32 per cent) said they had performed work that they had voluntarily agreed to undertake, and six indicated they had performed both types of work (3 per cent).

In the female prison, 152 out of 211 respondents (72 per cent) stated they had performed work they were ordered to carry out, while 59 prisoners (28 per cent) affirmed they had undertaken work they voluntarily agreed to perform.

3.2 Employment activities in surveyed prisons

The three prisons selected for the present survey provided prisoners with an opportunity to engage in work inside or outside the prisons. At the time of the survey, all three prisons had contracts with private enterprises.

Female Prison No. 407 has employment units specializing in garments and textiles, and handicraft production. Inmates manufacture uniforms for convicts. They also produce other items, including ger¹⁰ covers and cashmere products, which are supplied to 12 companies with which the prison has signed contracts.

Male Prison No. 417 is located in a logging area in Mungunmorit district and has employment units specializing in logging, forestry, livestock farming and woodwork, including ger-making. Part of the forestry work done by inmates benefits the State forestry foundation. The prison also engages in contracts with private institutions and enterprises.

¹⁰ Traditional Mongolian dwelling.

Male Prison No. 421 was established in 1965 as a construction unit focusing on the construction of warehouses. In recent years the prison has expanded the capacity of its construction units and inmates have also been involved in the construction of residential buildings, schools and public buildings, as well as in road maintenance. The prison engages in contracts with private institutions and enterprises, including construction companies.



Picture 1. Contract work for production of ger covers, Prison No. 407.



Picture 2. Sawmill and lumber production, Prison No. 417.



Picture 3. Sawmill and lumber production, Prison No. 417.



Pictures 4. Woodwork products, Prison No. 417.



Pictures 5. Ger production, Prison No. 417.



Picture 6. Window factory, Prison No. 421.



Picture 7. Light bricks production, Prison No. 421.

Box 1

Employment activities in Mongolian prisons

As of 2012 there were 25 correctional facilities for sentenced prisoners in Mongolia (NHRM, 2012). Of those, 15 had employment units constituted by factories or other types of enterprises.

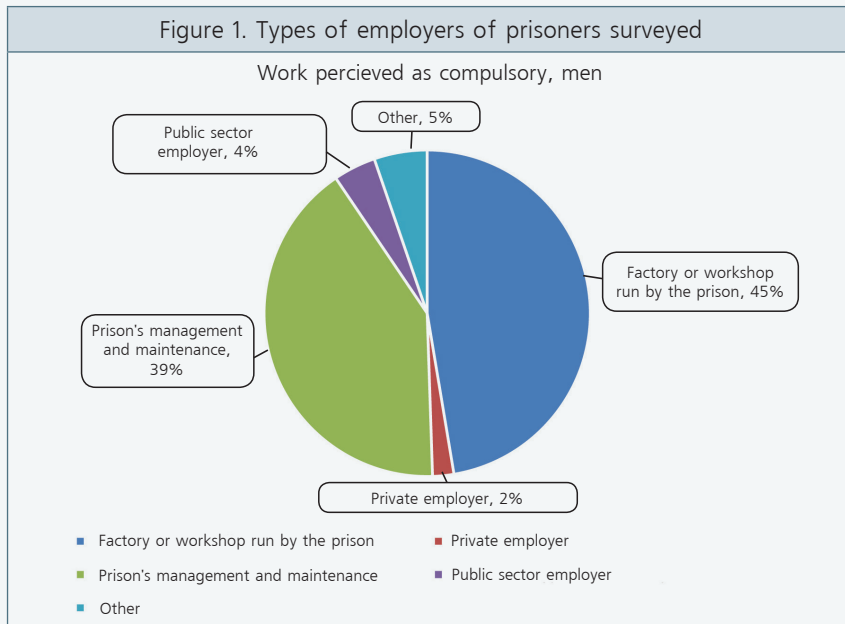
Nº	Prison	Location	Employment unit	Prison type
1	No. 403	Avdrant	Stone making	Male - General
2	No. 405	Takhrsoyot	Printing factory	Male - Strict
3	No. 407	Ayanzurkh	Garment factory and handicraft	Female
4	No. 409	Toosgo (Bayanzurkh district)	Brick factory	Male - Strict
5	No. 413	Zuunkharaa	Woodwork factory, agriculture	Male - Strict
6	No. 417	Mungunmorit	Woodwork factory, logging	Male - General
7	No. 419	Khentii	Brick factory	Male - General
8	No. 421	Amgalan	Construction, windows and light bricks factory	Male - General
9	No. 433	Darit	Woodwork factory, agriculture	Male - Strict
10	No. 437	Orkhon	Brick factory	Male - General
11	No. 439	Bulgan	Chalk factory	Male - Special
12	No. 443	Khuvsgul	Coal industry	Male - General
13	No. 415	Maanit	Limestone factory	Male - Strict
14	No. 457	Khovd	Brick factory, agriculture	Male - General
15	No. 423	Kharkhorin	Woodwork, logging	Male - General

Source: NHRM 11th Annual Report on Human Rights and Freedoms in Mongolia, 2012.

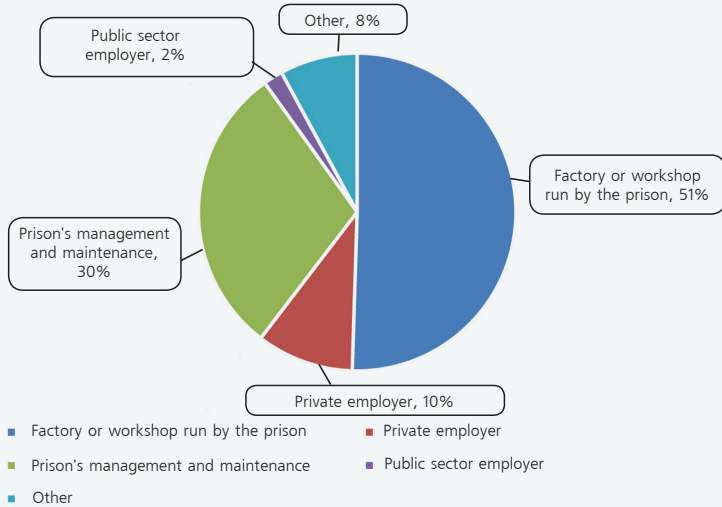
3.3 Types of employers

Among male respondents, 10 out of 137 respondents (7 per cent) stated they had been ordered to do compulsory work for private employers. Slightly less than half of the respondents (61 men, totalling 45 per cent of respondents) had been ordered to work in the prison factories or workshops; 6 (4 per cent) were ordered to work for public sector employers; and 53 (39 per cent) were ordered to work for prison management and maintenance. In terms of work performed voluntarily, 13 out of 82 male respondents indicated they had voluntarily performed work for private employers (16 per cent), while others had worked for prison factories or workshops, for prison management and maintenance, or for public sector employers.

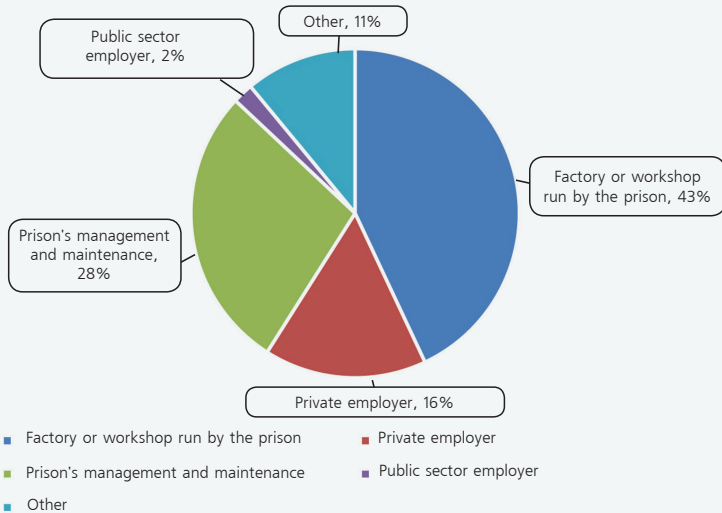
As regards female inmates, 21 out of 212 respondents (10 per cent) said they had been ordered to perform compulsory work for private employers. Just over half of these respondents (108 women, totalling 51 per cent) were ordered to undertake work in prison factories or workshops, and 64 (30 per cent) for prison management and maintenance. In terms of voluntary work, 19 out of 146 female inmates (13 per cent) affirmed they had voluntarily carried out work for private employers, while others had worked in prison factories or workshops, for prison management and maintenance, or for public sector employers.

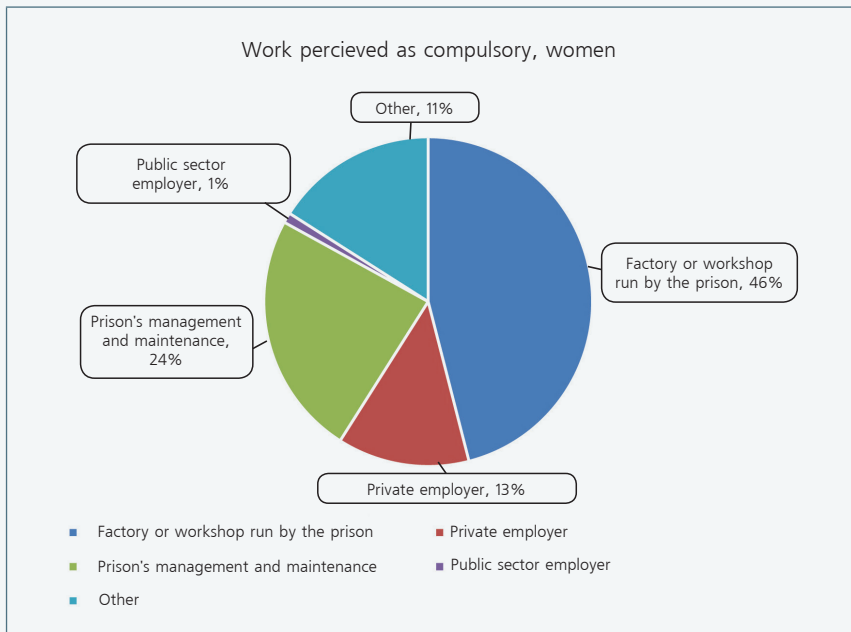


Work perceived as compulsory, woman



Work perceived as compulsory, men

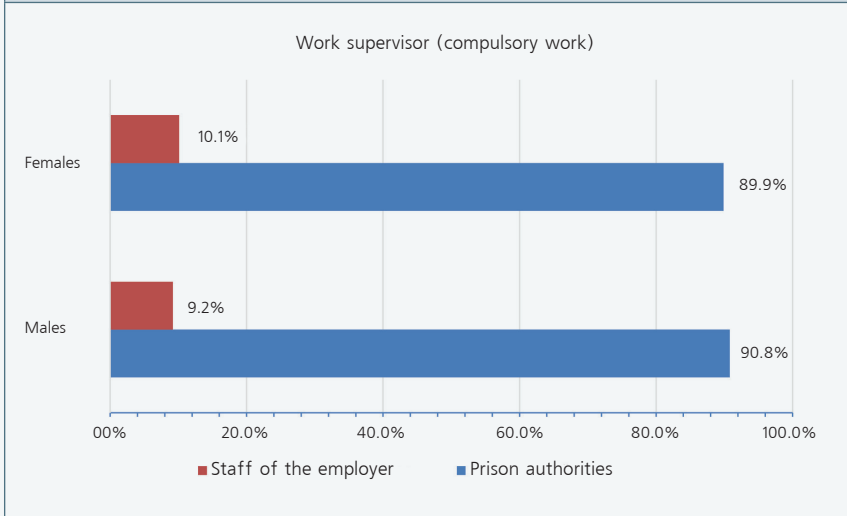




3.4 Supervision of work

Survey respondents were asked who supervised their compulsory work. Both in the case of male and female respondents, the vast majority said the work they had been ordered to perform was supervised by the prison authorities. A total of 109 out of 120 male respondents (approximately 91 per cent), and 196 out of 218 female respondents (approximately 90 per cent), said compulsory work was supervised by the prison authorities. Eleven male respondents (approximately 9 per cent) and 22 female respondents (approximately 10 per cent) stated their work had been supervised by staff of the employer.

Figure 2. Main supervisors of prisoners' compulsory work

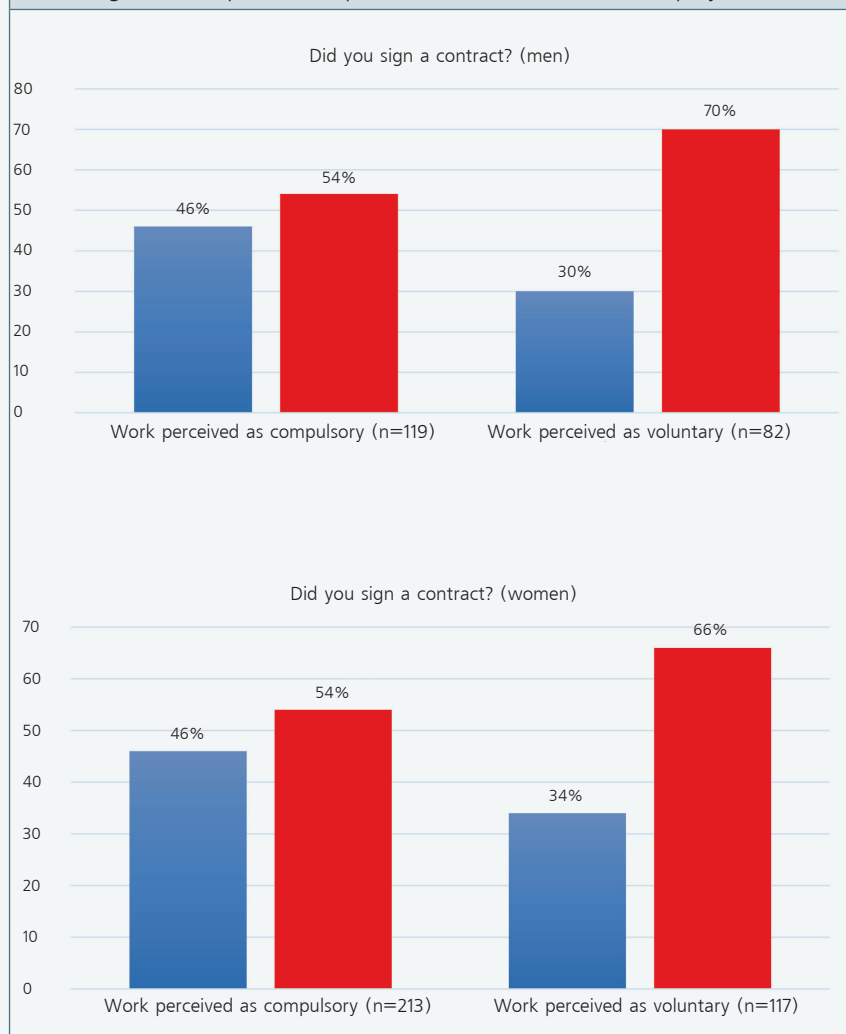


3.5 Employment contracts

A slight majority of male respondents (54 per cent, or 64 out of 119 respondents) who answered the question regarding employment contracts in the context of work they were ordered to perform stated they had not signed a contract. In the case of work that was voluntarily performed, 70 per cent of respondents (or 57 out of 82) said they had not signed a contract defining wages and conditions of employment.

In the female prison, the majority of respondents to this question (54 per cent or 115 out of 213) indicated they had not signed an employment contract when undertaking work by order of prison authorities. A total of 77 out of 117 respondents (66 per cent) said they had signed contracts when performing this type of work.

Figure 3. Proportion of prisoners with contracts of employment

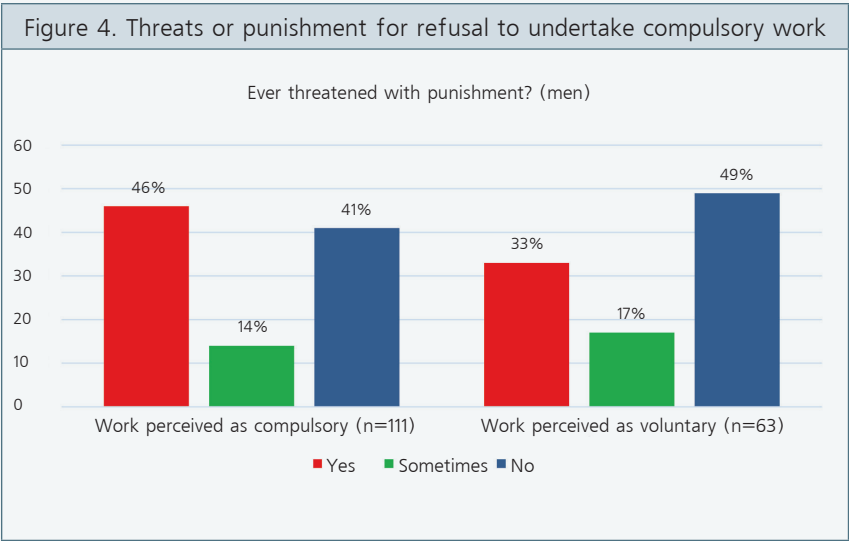


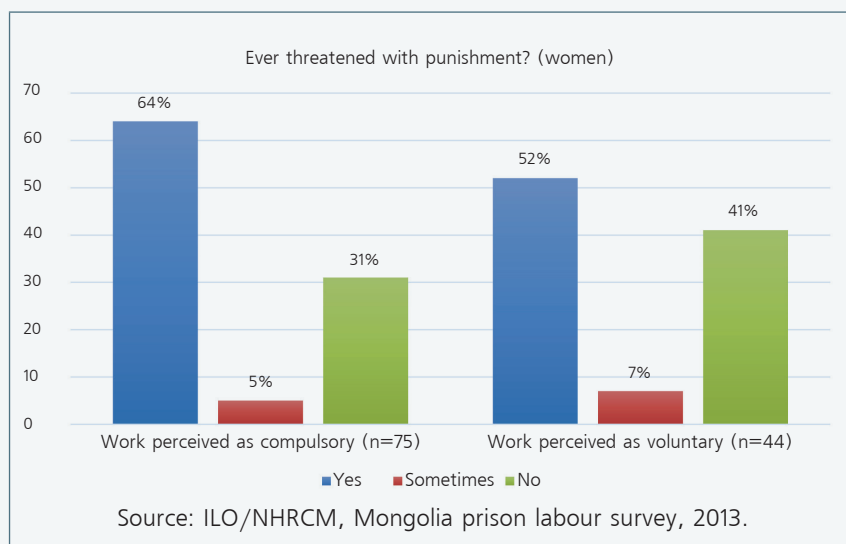
3.6 Consent and ability to refuse work

Among male respondents, 63 out of 123 inmates (51 per cent) stated that their willingness to work had not been taken into account when they were ordered to work by prison authorities. Thirty-one male inmates (approximately 25 per cent) said their willingness had been taken into

account, while 29 (approximately 23 per cent) stated it had sometimes been taken into consideration. As regards female inmates, 81 out of 154 respondents (52 per cent) said their willingness had not been taken into consideration when they were ordered to work by prison authorities. Thirty-four (22 per cent) stated their willingness had been considered, and 39 (approximately 25 per cent) indicated it had sometimes been taken into account.

Among male respondents, 51 respondents (46 per cent) affirmed they had faced threats or punishment if they refused to perform compulsory work. A total of 45 respondents (41 per cent) stated they had not been threatened or punished, while 15 respondents (14 per cent) said they had faced these issues sometimes. Among surveyed female inmates, 48 respondents to the question (64 per cent) affirmed they had been punished or threatened if they refused to undertake compulsory work.





3.7 Payment of wages

Among male inmates who responded to the question, 59 per cent (53 out of 90 respondents) stated they had not received wages when undertaking work by order of prison authorities. Half of those respondents (or 20 out of 40 respondents) who were paid for work they had been ordered to perform said they had received less than the minimum wage (140,400 Mongolian Tugrig¹¹ per month (MNT)). In the case of work undertaken voluntarily, 47 per cent of male respondents to the question (30 out of 64 respondents) also affirmed they had not received wages. Most of the respondents who were paid for the work performed voluntarily stated they received less than the minimum wage (MNT140,400 per month).

As regards female inmates, 43 out of 74 respondents (58 per cent) affirmed they had been paid when performing work by order of prison authorities. In respect of wage rates, 29 out of 37 female inmates (78 per cent) who answered to this question stated the wage received was below the national minimum (less than MNT140,400/monthly). In the case of work undertaken voluntarily, a slight majority of female respondents said they had not received wages.

¹¹ US\$70.55 based on UN operational rate of exchange, December 2015.

Box 2

Regulatory framework on prisoners wages in Mongolia

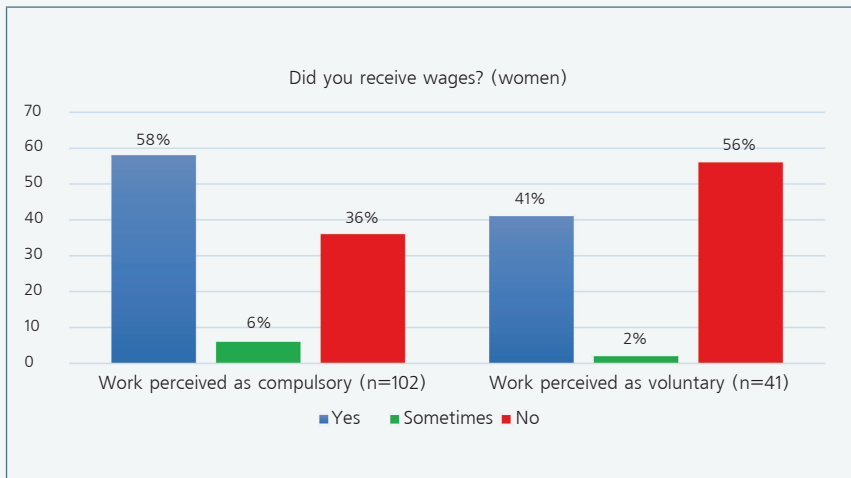
Section 121(1) of the Law on Enforcement of Court Decisions (2002) establishes that “inmates shall be paid a salary appropriate to the amount and quality of work he/she has performed”. Pursuant to section 121(3), employed inmates shall receive their wages directly into their accounts after “all allocations” have been settled according to section 121(2) on labour cost deductions.

According to clause 3.1 of the Rules governing convicts’ labour norms and pay scheme, issued by order A/32 of the General Authority for the Enforcement of Court Decisions (2013), prisons employing inmates on the basis of agreements with a domestic factory, an individual or a business entity shall adhere to the national minimum wage rate established under the legislation in force. Inmates performing overtime work shall receive additional pay (clause 3.2).

At the time of the survey, the national minimum wage was set at a monthly rate of MNT140,400 , or MNT835.71 per hour (US\$0.42).

Figure 5. Payment of wages to prisoners surveyed





3.8 Overtime pay

With regard to payment for performed overtime, virtually none of the respondents any of the prisons surveyed had been paid for extra working hours. In the context of work they were ordered to perform, this was the case for 55 out of 59 male respondents (93 per cent), and 105 out of 108 female respondents (97 per cent). In the case of work undertaken voluntarily, 24 out of 26 male respondents (92 per cent) and 45 of 46 female respondents (98 per cent) said they had not received overtime pay.

3.9 Wage deductions

Both in the case of work performed by order of prison authorities and work undertaken voluntarily, the majority of male respondents stated that deductions had been made from their payments. For work performed by order of prison authorities 51 out of 65 male respondents (78 per cent) had deductions made from their salaries, while for work performed voluntarily 33 out of 49 respondents (67 per cent) had deductions made. In the female prison, 70 out of 78 respondents (90 per cent) indicated that deductions had been made from their wages in the case of worked carried out by order of prison authorities.

Figure 6. Wage deductions as reported by prisoners surveyed



The analysis of prisons' financial records indicated that inmates performing labour were often required to pay fees related to electricity; water and heating; cleaning; transportation; vocational training; and payment of compensation ordered by courts. Key findings from this analysis include:

- Contracts signed between Prison No. 407 and private companies for the supply of ger covers in 2012 stipulated wage rates that

were in compliance with the national minimum wage. However, payrolls found during NHRCM's research indicated that inmates received only 20 to 30 per cent of the agreed wages, while the remaining 70 to 80 per cent was allocated to cover prison costs.

- Prison No. 417 produced MNT4,590,000 (US\$2,735) worth of timber and wood in May 2012, but according to the records found by the NHRCM only 30 per cent of this amount (MNT1,377,000 or US\$820) was paid to inmates.
- In Prison 421, the NHRCM found that deductions and miscalculation of wages occurred in the context of various contracts signed between the prison and private enterprises, including construction companies. In two cases, inmates were paid between 60 and 85 per cent of their wages until April 2013. After May 2013, however, inmates started receiving the full wage, which was in accordance with the national minimum.

3.10 Occupational safety and health

More than half of the male respondents and two thirds of the female inmates who answered this question indicated they had received instructions regarding safety rules, as well as special working clothes and safety equipment (48 of 90 men; 32 of 44 women).

The majority of male and female respondents to this question stated they had never had a work accident or injury while working during their imprisonment. Yet, 13 out of 87 male respondents and 21 of 55 female respondents said they had suffered accidents or injuries while working as inmates.

4. Analysis of findings and ILO recommendations

4.1 Findings on compulsory prison labour

Findings from the three surveyed prisons indicate that prisoners carry out work that they perceive as compulsory for the benefit of private employers. A total of 68 per cent of male survey respondents and 72 per cent of female respondents stated they had performed work by order of prison authorities, and some of this compulsory work benefited private employers. This raises concerns regarding compliance with conditions established in Convention No. 29.

Convention No. 29 permits compulsory prison labour only on the condition that convicts 1) work under the supervision and control of a public authority and 2) are not hired to or placed at the disposal of private individuals, companies or associations. This means that private employment of convicts is only permitted on a voluntary basis.

According to the current Mongolian legislative framework, all convicts are under the obligation to work. The legislation in force explicitly provides that such work shall be carried out under the supervision of public authorities, indicating observance of the first of the above conditions set out in Convention No. 29. However, under Mongolian law, prisoners may be hired to perform labour for the benefit of private entities, agencies or individuals, without requiring their explicit consent to do so.

To ensure compliance with Convention No. 29, it is important to ensure that prisoners doing compulsory work cannot, in law or in practice, be hired to or placed at the disposal of private companies in Mongolia. Private employment of prisoners should be permitted only on a voluntary basis, adhering to the specific conditions established in by ILO standards.

4.2 Findings on private employment of prisoners

Findings of the present survey indicate that between 7 and 13 per cent of all work carried out by prisoners in the three surveyed prisons is done for private employers (including both work perceived as voluntary and work perceived as compulsory).

As noted above, Convention No. 29 permits private employment of

prisoners only on a voluntary basis. Due a lack of freedom with limited choices, convicts' work can only be considered voluntary, firstly, with the formal consent of the prisoner – for example in the form of an individual employment contract. Secondly, the ILO Committee of Experts has considered that conditions of work approximating a free labour relationship are the most reliable indicators of the voluntary character of the offer of work.¹² Survey findings on these two conditions are assessed below.

As regards formal consent to work, the survey findings show that 54 to 70 per cent of respondents had not signed employment contracts for any work they were carrying out (including both work perceived as voluntary and work perceived as compulsory). Furthermore, 33 to 64 per cent affirmed they had faced threats or punishment if they refused to perform work. Evidence found on hiring or placing prisoners at the disposal of private companies under these conditions raises concerns about compliance with the Convention No. 29.

As regards conditions of work, the Mongolian regulatory framework provides that prisons employing inmates on the basis of agreements with a factory, an individual or a business entity shall adhere to the national minimum wage rate, and provide prisoners with overtime wages. In practice, however, the survey data shows that 36 to 59 per cent of prisoners did not receive wages for any work they carried out (including both work perceived as voluntary and work perceived as compulsory). Among those who received wages, deductions for electricity, water and heating charges, cleaning, transportation and vocational training, as well as to the repayment of compensation ordered by courts, were common. In addition, virtually none of the respondents had received overtime pay. The Committee of Experts has stated that deductions may be made from prisoners' remuneration for the board and lodging provided, but conditions for this need to be strictly controlled by the public authority.¹³ However, in the context of private employment of prisoners, evidence of unpaid labour and wage deductions that bring prisoners' net wages close to zero raise questions about compliance with Convention No. 29.

While these figures should be treated as approximations due to limitations

¹² See ILO. Eradication of forced labour, General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), Report III (Part 1B), International Labour Conference, 96th Session, Geneva, 2007, para 60.

¹³ See ILO. Eradication of forced labour, General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), Report III (Part 1B), International Labour Conference, 96th Session, Geneva, 2007, para 117.

of data (see Chapter 1.4), the above evidence on absence of formal consent and conditions of work for prisoners' private employment raises questions about compliance with the Convention No. 29.

4.3 ILO recommendations

On the issue of compulsory prison labour, authorities should:

1. Ensure that compulsory work of prisoners is only permitted when
 - 1) prisoners work under the supervision of a public authority and
 - 2) they are not hired to or placed at the disposal of private individuals, companies or associations. Revise national legal provisions to explicitly state these two requirements.
2. Prohibit hiring or placing prisoners doing compulsory work at the disposal of private individuals, companies or associations.

Regarding the voluntary private employment of prisoners, authorities should:

3. Permit the employment of prisoners by private individuals, companies or associations only when
 - 1) prisoners have consented to undertake the work and
 - 2) their conditions of employment approximate those of a free labour relationship. Revise national legal provisions to explicitly state these two requirements for voluntary private employment of prisoners.
4. Ensure that prisoners provide their free, informed, formal consent to work for a private employer in writing before undertaking private employment. Consider creating a sample employment contract for obtaining prisoners' formal consent.
5. Establish and enforce clear national standards for the employment of convicts by private individuals, companies or associations. These standards should, as a minimum, specify:
 - wage levels;
 - permitted wage deductions;
 - social security; and
 - occupational safety and health applicable to voluntary private employment of prisoners.

5. NHRCM recommendations and impact of the research

5.1 NHRCM recommendations

In October 2013, the NHRCM made the following recommendations to the members of the Mongolian Government and the Minister of Justice of Mongolia:

1. Align the draft Law on Imprisonment Procedures with ILO Convention No.29 and Convention No.105 on the prohibition of forced labour in order to arrange labour relation of inmates, and as well as to make other legal amendments. For instance, clarify the provision that prohibits transferring prisoners to authority of individuals and business entities for hire and forcing them to work outside the prisons.
2. Revise, or remove altogether, Article 8.2.4 of the Law on Court Decision Enforcement, which specifies that inmates can be involved in compulsory work and obtain certain work experience. This provision allows for the forced labour of inmates. Currently Article 8.2.4 provides for "involving the prisoner in forced labour and giving him/her work experience in his/her line of trade activity." This should be revised to provide for "involving the prisoner in labour in line with the conditions stipulated in international treaties and giving him/her work experience in his/her line of trade activity".
3. Clarify Article 121.3 of the Law on Court Decision Enforcement, which states that according to Article 121.2 an inmate who is working at a prison factory shall receive his/her wage directly into his/her bank account after all allocations are settled. At this point the term "all allocations" is not clear and therefore should be refined or not included in a new draft law.
4. Disciplinary punishments stated in articles 127.1.1 and 127.1.2 of the Law on Court Decision Enforcement requiring inmates to work without wages, and the use of poor working conditions as a disciplinary measure contravene international law. Therefore, those articles should be changed or should not be included in a draft law.

The following recommendations were made to the General Authority for Implementing Court Decisions:

5. Amend the Rules governing convicts' labour norms and pay scheme, issued by order A/32 of the General Authority for the Enforcement of Court Decisions from 6 February 2013, to set a limit on permitted deductions from prisoners' wages. The regulations should be amended to bring the deductions from the wages of inmates into line with Article 63 of the Labour Law.
6. Undertake regular monitoring of net and gross wages, taking measures to increase wages to meet minimum wage standards.
7. Ensure that prisoners' wages for work based on employment contracts are paid via bank transfer to the inmate's account in accordance with Article 121.2 of the Law on Court Decision Enforcement. Currently the wages of inmates working under contracts with individuals and small enterprises are allocated to the correctional facilities in cash instead of a bank transfer.

5.2 Consultations held

The initial findings of the study were discussed and validated in a meeting organized by the NHRCM with representatives from the Ministry of Justice, Ministry of Labour and the General Authority for the Enforcement of Court Decisions in October 2013.

During the meeting, the NHRCM introduced the research report, as well as the findings of the survey conducted in Prisons No. 407, No. 417 and No. 421. Discussions focussed on the following issues:

- Improvement of legal framework for prisons according the international obligations of Mongolia;
- Elimination of illegal prison labour;
- Follow-up action.

During the meeting, representatives from the Ministry of Justice and the General Authority for the Enforcement of Court Decisions acknowledged the issues addressed by the study. Representative of the Ministry of Justice noted that the recommendations were provided at a time when legal reform is underway. Thus, the recommendations from the NHRCM would be taken into consideration in the context of draft laws.

Representatives of the General Authority for the Enforcement of Court Decisions noted that Rules governing convicts' labour norms and pay scheme, issued by order A/92 of the General Authority for the Enforcement of Court Decisions of 6 February, 2013 issued by the Chief of the General Authority for the Enforcement of Court Decisions will be reviewed to take recommendations of the study into account. In addition, breaches revealed by the study would be investigated and action would be taken in order to address them, and the General Authority would arrange certain actions to fulfil the recommendations made by the NHRCM.

As of December 2015, the appropriate amendments and revisions recommended by the NHRCM have not been made in the relevant laws and government policies.

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Annex I. Validation meeting: List of participants

The initial findings of the study were discussed and validated in a meeting organized with representatives from the Ministry of Justice, Ministry of Labour and the General Authority for the Enforcement of Court Decisions in October 2013.

List of participants:

- Mr Byambadorj J., Chief Commissioner, National Human Rights Commission of Mongolia (NHRCM)
- Mr Ganbayar N., Commissioner, NHRCM
- Ms Dashdeleg A., Executive director, NHRCM
- Mr Bataa B., Senior officer, NHRCM
- Mr Agar-Erdene A., Head of Complaints, Inquiry and Policy Analysis Division, NHRCM
- Mr Altangerel O., Head of Coordination of policy implementation department, Ministry of Justice
- Colonel Yadamdorj D., Chief of the General Authority for the Enforcement of Court Decisions
- Colonel Khosbayar P., First deputy chief of the General Authority for the Enforcement of Court Decisions
- Colonel Amardorj B., Head of the decree implementation unit, the General Authority for the Enforcement of Court Decisions
- Lieutenant Munkhjargal N., Head of the economy and investment unit, the General Authority for the Enforcement of Court Decisions
- Ms Bolormaa P., ILO National Coordinator