# AN ASSESSMENT
# OF MONGOLIA'S
# LABOUR DISPUTE RESOLUTION SYSTEM

**Ministry of Labour and Social Protection**

**2020**

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## LIST OF ABBREVIATIONS

CMTU - Confederation of Mongolian Trade Unions
CSL – Civil Service Law
ILO – International Labour Organization
GASI - General Agency for State Inspection
GEACD – General Enforcement Agency for Court Decisions
LCM – Labour Code of Mongolia
LDSC - Labour Dispute Settlement Committee
MLSP - Ministry of Labour and Social Protection
MONEF - Mongolian Employers Federation
NTCLSC – National Tripartite Committee for Labour and Social Consent

# I. INTRODUCTION

## A. Objective and focus of the assessment

This assessment is a component of the labour dispute prevention and resolution project of the International Labour Organization (ILO) and the Ministry of Labour and Social Protection (MLSP) aimed at supporting initiatives to improve Mongolia's labour dispute resolution (LDR) system.[1]

The Constitution of Mongolia guarantees the right of citizens to free choice of employment, favourable conditions of work, remuneration and private enterprise.[2] This is implemented mainly by the Labour Code of Mongolia (LCM) which was enacted in 1999. The Constitution also guarantees the right of persons to appeal to the courts for violations of their rights or freedoms, [3] including those arising from labour laws. This is implemented through the Judiciary Law of 2012 which establishes and defines the jurisdiction of the courts.

Within the framework of the Constitution, the country's LDR system has two tiers:

1. The **administrative tier,** consisting of several **administrative labour dispute resolution (ALDR) mechanisms** established through the Labour Code. These include bipartite and tripartite labour dispute settlement committees, mediators and arbitration courts.

2. The **judicial tier,** consisting of the district courts, court of appeals and the Supreme Court established through the Judiciary Law. Independent from the administrative and executive branches of the State, the judiciary has its own rules of procedure and a highly-professionalized corps of justices, judges and court personnel.

The assessment focused mainly on the institutions, laws and procedures within ALDR mechanisms. To broaden the analysis, the assessment also considered the relationship between the administrative and judicial tiers of LDR, and the country's socio-economic and development indicators that impact on labour laws and on efforts to reform the LDR system.

The assessment started in November 1919 and was completed in September 2020. It is based on a review and analysis of relevant laws and regulations, analysis of available statistics and administrative data from various sources, and research on related papers and official documents; and information obtained from interviews, round-table discussions and consultations with key informants.[4]

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[1] MLSP formed a tripartite Technical Working Group (TWG) to spearhead the assessment, composed of Ms. B. Alimaa and Ms. Sh. Maya, Director and Senior Officer, respectively, of the Labour Relations Policy Implementation and Coordination Department, MLSP; Ms. Ts. Otgontungalag, Director, Labour Monitoring and Legal Policy Department, Confederation of Mongolian Trade Unions (CMTU); and Mr. B. Enkhjin, Officer, Mongolian Employers Federation (MONEF). The TWG worked in close collaboration with the ILO, through Ms. Lkhagvademberel Amgalan, the national project manager at the ILO Mongolia Country Office, and Mr. Benedicto Ernesto R. Bitonio Jr., the international consultant for the project.

[2] Constitution, Art. 16.4.

[3] *Idem*, Art. 16.14.

[4] Among the key informants were Member of Parliament Mr. Ts. Munkh-Orgil, Chief Judge Mr. Myangaa Bayasgalan of District Civil Court of First Instance of Bayangol District, and selected representatives of stakeholders from CMTU, MONEF, enterprise and city level labour dispute settlement committees (LDSC), and the General Agency for State Inspection (GASI).

## B. General background and relevant developments

The Labour Code defines the rights and duties of employers and employees who are parties to a labour relationship based on a contract of employment, collective agreement or collective bargaining; provides rules in the resolution of collective and individual or single employee labour disputes and of violations of working conditions including liabilities for such violations; sets up the machinery for labour administration; and seeks to ensure the mutual equality of the parties.[5] The Code also established the National Tripartite Committee for Labour and Social Consent (NTCLSC), an advisory body whose functions include settlement of labour disputes.[6]

The Code covers employees in private business organizations as well as public servants involved in State administration functions and in support services as defined in the Civil Service Law (CSL). Under the CSL, "the legal status of public support service employees shall be established by the Labour Law, this Law and other legislative acts" and that "[o] ther issues related to labour relations of civil servants which are not regulated by this Law, shall be regulated by Labor law and other laws."[7] Collective bargaining involving core public servants[8] is covered by the Labour Code. However, the CSL has a separate dispute settlement process for violations of certain rights of core civil servants and candidates to civil service positions. This process, administered by the central civil service authority, is not included in this assessment.[9]

By providing a framework for collective bargaining, the Code complements the exercise of the right to self-organization as defined in the Trade Union Law of 1991. The Code defines a "collective agreement" as an agreement between an employer and the representatives of employees of a business entity or organization ensuring labour rights and legal interests more favourable to the employees than those guaranteed by law, and providing for other matters not directly regulated by this law.[10] "Collective agreement" is distinguished from "collective bargaining." The latter refers to an agreement among an employer, the representatives of the employer's employees, and a state administration organization, either at the national or regional level or with respect to an administrative territorial unit, economic sector or profession, for the purpose of protecting the labour rights and related legal interests of the employer and employees.[11] In practice, collective bargaining appears to mostly involve employees in the public sector in relation to the state administrative organization which employs them.

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[5] LCM, Art. 1.
[6] LCM, Art. 138.
[7] Civil Service Law of Mongolia (2017, as revised in 2019), Unofficial Translation, Arts. 4.3-4.4; see also Arts 41-50; 57.11-12.
[8] *Idem*, see Arts. 10.1.2. and 10.1.3. Core public servants are those occupying positions classified as public administration positions and special state service positions.
[9] See *idem*, Chapter 22 Article 75. Settlement of disputes in regard to violation of rights of core civil servant and candidates for civil service positions. Art. 75.1. provides that the central civil service authority shall resolve the disputes between the authorized nominating body / official and candidate for the public position in relation to issues stated in Articles 25, 26, 27, 45, 46, 47, 48, 52.2 and 66.1.11 of this Law, and disputes on salary and wages, work conditions and social guarantees delivered by a core civil servant, unless otherwise provided in laws and regulations.
[10] LCM, Art. 3.1.4.
[11] *Idem*, Art. 3.1.5.

Bipartite labour dispute settlement commissions (LDSCs) to settle individual labour disputes were institutionalized immediately after the enactment of the Code.[12] In 2001, a Central Government resolution established a special procedure to settle collective disputes.[13] In 2008, the NTCLSC established a non-permanent or *ad hoc* Tripartite Committee for Labour Dispute Resolution to resolve individual labour disputes at the pre-court stage with fair participation from social partners. Along with this were established tripartite "rapid labour dispute resolution" committees at the *soum*, district, capital city, *aimag* and national levels.[14]

Led by the State Great *Khural* (Parliament) and the Ministry of Labour and Social Protection (MLSP), Mongolia's Central Government has been carrying on a continuous process to improve, modernize and enhance the capacity of its labour and industrial relations institutions. On-going are parallel initiatives for legislative and administrative reforms to enhance labour administration capacity, including the administration of labour justice.

The most challenging part of this process – one that has spanned several years - is the amendment of the Labour Code. This is being led by a Parliamentary Technical Working Group on Labour Code amendments. The most critical policy question is how to make legal protection more inclusive so that labour laws will apply to a broader spectrum of work relationships heretofore effectively excluded from coverage, such as those in small enterprises with less than ten employees, the informal sector, and working persons where no employment relationship exists. In reference to labour relations, there is also a need to clarify and strengthen the supervisory role of labour inspection, improve the use of mediation and arbitration, and reduce the need for the courts to intervene in the final resolution of labour disputes. [15]

## C. Assessment framework and parameters

A labour dispute resolution (LDR) system consists of the laws, institutions and procedures to prevent or resolve open disagreements or conflicts between employers and workers involving their rights and interests. It aims to ensure an outcome where the rights and obligations of the parties are respected and enforced so that their relationship is characterized by fairness and justice. This outcome, in turn, is expected to help realize the larger societal goals of labour protection, decent work, improved productivity and social development.

From this perspective, the assessment examines Mongolia's LDR system in terms of its ***inclusiveness, efficiency*** and ***effectiveness***. Inclusiveness refers to the availability of the system to as wide a range of labour relationships as possible, and to the ability of and ease by which users can access the system. Efficiency refers to the capacity of the system to prevent or to resolve and put an end to disputes at the source, within the shortest possible time, and at the least cost. Effectiveness refers to the relevance, appropriateness, and responsiveness of the system not only to the needs of its users but also to the country's economic and social conditions.

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[12] LCM, Arts. 125-126 in relation to "Rule Establishing the Labour Dispute Settlement Commission," Attachment No. 2 to Government Resolution No. 122 [1999].

[13] LCM, Arts. 115-118 in relation to "Regulation on Settlement of Collective Labour Dispute Through Mediation," Attachment to Government Resolution No. 78 [2001], No. 1.

[14] LCM, Arts. 138 and 118.8 in relation to "Rule Establishing Tripartite Sub-Committees and Branch Committees for Rapid Resolution of Labour Disputes," Attachment 1, Resolution by the National Tripartite Committee Meeting, 1 April 2008, No. 1.1.

[15] Member of Parliament Ts. Munkh-Orgil, Chairperson of the Parliamentary Technical Working Group on Labour Code Amendments, Interview, November 19, 2020.

To situate the system with ground-level realities, the first part of the assessment includes the country's development priorities and key economic and labour market indicators. The assessment will then proceed to review the technical elements of ALDR mechanisms. It concludes with a set of points for consideration to improve the system.

## II. COUNTRY CONTEXT

### A. Development framework

The Constitution of Mongolia provides the broad strokes of the country's overall development policy. The current road map for development is contained in the country's Sustainable Development Vision 2030, which was approved in 2016 by the State Great *Khural*. Anchored on the United Nations 2030 Agenda, the 2030 Vision charts Mongolia's development path toward a modern economy over a 15-year period. Vision 2030, among others, aims to reduce income inequality and improve social protection, to have Mongolia ranked among the first 40 countries by the Doing Business Index and among the first 70 countries in the Global Competitiveness Index, and to build professional, stable and participative governance, free of corruption that is adept at implementing development policies at all levels.

Building on the 2030 Vision is the newly-approved and longer-term Vision 2050. This outlines the country's aspiration of "becoming a leader with its economic growth and social development and a country that achieved sustainable preservation of its nature, language, territorial integrity and culture." The vision is founded on nine fundamental values, namely shared values of the nation, human development, life quality and strong middle class, economy, good governance, green growth, peaceful and safe society, regional development, and building people-centered cities. It emphasizes on creating a nation with common principles and consciousness, improving the systems related to human development, health care, education, family, science, innovation and labour, fostering middle class growth, engaging in reforms to the social protection and insurance systems, creating an efficient system of affordable housing provision, supporting startup businesses and promoting healthy and active lifestyle.[16]

Vision 2030 and 2050 both strive to establish a strong, united, resilient, progressive, and prosperous nation where "no one is left behind" and following a "whole of nation" and "whole of government" approach. Mongolia's efforts in modernizing its labour laws, and in particular strengthening the LDR system, fall under the development priority of improving governance which is common to Vision 2030 and 2050. Long-term policy choices, including those on labour reforms, are therefore expected to be guided by these two development documents.

[16] http://www.mongolianbusinessdatabase.com/base/newsdetials?id=20648&lang=en, accessed October 2, 2020.

B. Relevant macro-economic and labour market indicators

B.1. Labour force and structure of employment

As of end of 2019, Mongolia had a total population of 3,225,167 and a labour force of 1,342,479.[17] The labour force participation rate stood at 60.5%.[18] The economy grew by 5.1%, lower than the 7.247% growth in 2018.[19]

Total employment stood at 1.146 million, down from 1.253 million in 2018, with over 48% in informal employment. Non-agriculture accounted for 856 thousand, down from 918 thousand in 2018, of which over 68% were in formal employment. Unemployment stood at 10%. Incidence of unemployment was highest among the youth (from 15-24 years old) at 25.3%. [20] It has been noted that the benefits of economic growth have not been well-reflected in improved livelihoods for the population; the number of people living in poverty has not decreased and opportunities for employment have not expanded. Even in periods when GDP increased, unemployment did not drop significantly. Youth unemployment rate, in particular, remains high. Along with poverty and inequality, certain groups of people are systematically excluded from being able to benefit from overall development. Specific groups at risk of being left behind are children, youth, elderly, people with disabilities, herders and internal migrants to urban areas that require the government's prioritized social policy.[21]

By economic sector, 25.3% of the employed were in agriculture, 21.6% in industry and 53.1% in services including civil servants. By occupational groups, the share of managers, professionals including associates, and technicians was 26.2%, indicating a large number of those employed in lower skill categories.[22]

The industrial sector base has remained narrow and largely low-tech. In 2018, around 70% of total industrial production was from the mining sector, approximately 20% from manufacturing, and 8% from other sectors. In terms of exports, only 10.7% of total exports were from the manufacturing sector, while low technology products accounted for 97%. Manufacturing value added per capita was $ 215, and the proportion of medium and high-tech in total manufacturing was 6.66% (compared to 55.34% in Japan, 80.38% in Singapore, and 41.38% in China). This indicates that production lines and technology are not renewed and the knowledge-based economy base is still weak. Low funding for science has become one of the factors negatively affecting the development of production based on high technology and innovation.[23]

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[17] World Bank, https://data.worldbank.org/indicator/SL.TLF.TOTL.IN?locations=MN, accessed October 6, 2020.

[18] ILO, https://ilostat.ilo.org/data/country-profiles/, accessed October 6, 2020.

[19] World Bank, https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=MN, accessed October 6, 2020.

[20] ILO, https://ilostat.ilo.org/data/country-profiles/, accessed October 6, 2020.

[21] Government of Mongolia, Voluntary National Review Report on Implementation of Sustainable Development Goals, 2019, https://sustainabledevelopment.un.org/content/documents/23342MONGOLIA_VOLUNTARY_NATIONAL_REVIEW_REPORT_2019.pdf, p. 18.

[22] ILO, https://www.ilo.org/shinyapps/bulkexplorer29/?lang=en&segment=indicator&id=IFL_4IEM_SEX_ECO_IFLNB_A, accessed October 6, 2020.

[23] Government of Mongolia, Voluntary National Review Report, *idem*, p. 28.

B.2. Earnings and working hours

Average monthly earnings in local currency is 1,124,300 tugriks (approximately US$ 393 at current exchange rate). Men have higher average monthly earnings of 1,222,600 tugriks (approximately US$427) compared to 1,021,300 tugriks (approximately US$ 357) for women. Average actual hours worked per week is 49.7 hours, with men logging an average of 52.3 hours and women 46.8 hours. On average, 46.7% work in excess of 48 hours per week, with men accounting for 53.8% and women 38.8%.[24]

Women are better educated than men, but on average participate less in paid work. Although 91.2 % of women compared to 86.3% of men aged 25 years and above have secondary education and higher, women's labour force participation is only 52.2% while men's is 67.5%. Moreover, the average wage difference between men and women is 11.4% and employed women are more likely than men to be additionally responsible for unpaid housework and care. Although women's participation in economic, social and political life has improved and women's share at the "expert" level is nearly double that of men, their share in higher decision-making positions remains lower than men's. In 2016, women occupied 36.7% of senior management positions only 17% of parliamentary seats. This has been the trend for the past ten years.[25]

B.3. Industrial relations: main players

The main tripartite industrial relations players are the MLSP, the Confederation of Mongolian Trade Unions (CMTU), and the Mongolian Employers Federation (MONEF).

MLSP is the Central Government agency that serves as the national authority in charge of labour. Its mission is to ensure human development through a comprehensive policy on labour, social development and social protection; creation of a favourable environment for people to work; and improvement of social security. Its priorities are to enhance employment, create jobs, and coordinate cross-sectoral activities; create favourable conditions for wage and labour relations and create a favourable working environment; develop vocational education and training system based on labour market demand, prepare skilled workers, create appropriate workforce resources, and increase competitiveness of the workforce; improve the quality and accessibility of employment services, increase unemployment, poverty reduction, improve the living standards of the population; develop and implement a comprehensive social policy aimed at improving the quality of life of Mongolia and creating a favorable social environment for population development; improve the social protection of the population by improving the quality and efficiency of social insurance and social welfare services in line with the needs of the population groups, taking into account social and economic changes and the age structure of the population; and improve the efficiency and effectiveness of its operations by improving human resources, management capabilities and organization. [26] In relation to LDR, the MLSP has coordination linkages with several other agencies, a matter to be discussed later in this assessment.

CMTU is the single, central union in all of Mongolia. It is composed of 36 unions – 22 territorial unions in *aimags* and Ulaanbaatar city and 14 professional unions – with

[24] ILO, https://ilostat.ilo.org/data/country-profiles/, accessed October 6, 2020.
[25] Government of Mongolia. Voluntary National Review Report, *idem*, p. 23.
[26] Development Aid, https://www.developmentaid.org/#!/donors/view/180547/ministry-of-labour-and-social-protection-mongolia, accessed on October 2, 2020.

approximately 230,000 total members. CMTU's mission is to protect workers' rights and interests through its active participation in national tripartite dialogue and negotiation of tripartite agreements. In the past few years, the CMTU has taken a leading role in setting up the labour dispute settlement mechanism and public sector wage fixing. It offers legal advisory services to its members and their citizens.[27]

MONEF is an independent, non-government and self-financing organization, with the objective to support employers' interests and promote private sector development. It is a nationwide organization composed of 21 regional employers' associations, 45 professional associations and 12 sector associations. It is present in 60 *soums* and *aimags*. As CMTU's counterpart, MONEF represents collectively some 8,500 private enterprises and businesses in manufacturing, construction, transportation, banking, insurance and services. It provides members and member-organizations with relevant information and consultancy services on a variety of business-related issues, such as training on entrepreneurship, occupational safety and health management systems and human resource development. MONEF represents employers in national tripartite dialogue.[28]

The key industrial relations indicators are trade union membership and density rate, employers' organization rate,[29] and collective bargaining coverage rate.

Statistics on trade union membership by sex and type of member are generated by CMTU based on the number of officially-registered organizations and companies in the country.[30] As of the end of 2016, there were 226,504 membership dues-paying members, of whom 99,867 were male (44.1%) and 126,637 (55.9%) were female employees. This represents a trade union density rate of 19.7%.[31] Internal statistics of CMTU as of end of 2019 show that membership declined to 209,686, of whom 115,756 were female.[32]

On the other hand, the employers' organization density rate in 2016 was at 30.5 per cent.[33]

Apart from the above, industrial relations statistics are generally limited. CMTU's statistics on trade union membership do not disaggregate public and private sector membership. MONEF's data mentions only the number of member-enterprises without indicating the number of unionized enterprises. There is no data on collective bargaining coverage rate and on workers actually covered by collective agreements or collective bargaining. It has been observed that union membership and coverage of collective agreements and collective bargaining are concentrated in the public sector, but this remains to be validated.

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[27] ILO, Accelerating the 2030 Sustainable Development Goals through decent work SDG monitoring and country profile for Mongolia [2019], https://www.ilo.org/wcmsp5/groups/public/---asia/ --- ro-bangkok/---ilo-beijing/documents/publication/wcms_673936.pdf, p. 45, accessed September 29, 2020.

[28] See *Idem*, pp. 45-46.

[29] The employers' organization density rate indicator is the share of total employees in enterprises belonging to an employers' organization. It is a measure of representativeness of employers' organizations in, among others, tripartite and social dialogue bodies.

[30] ILO, i*dem*, p. 4.

[31] *Idem*, p. 65.

[32] CMTU, Internal Statistical Report of Trade Union Confederations, 2020, data provided by ILO Mongolia Country Office.

[33] ILO, *idem*, p. 46.

On labour disputes, data is also very limited. Except for some quantitative data on collective disputes mentioned in later parts of this assessment, disaggregated data on individual, collective, rights and interest disputes are not available. Also unavailable are statistics on the state of implementation or enforcement of basic rights under the Labour Code and contracts of employment, incidence of occupational injuries or deaths, and activities and performance of the labour inspectorate. Statistics of this nature reportedly can be produced from data available in MLSP, which in turn can further strengthen evidence-based assessment of the LDR system.[34]

## III. POLICY AND INSTITUTIONAL FRAMEWORK

### A. Legal instruments

The two rights guaranteed in the Mongolian Constitution critical in shaping the country's LDR system are the right to free choice of employment, favourable conditions of work, remuneration and private enterprise, and the right of persons to appeal to the courts for violations of their rights or freedoms. The Constitution also incorporates universally recognized norms and principles of international law, and declares that international treaties to which it is a party shall become part of domestic legislation upon ratification or accession.[35] The major laws and instruments to implement these guarantees are the following:

1. The 1999 Labour Code of Mongolia (LCM)[36] which, among others, defines the rights and obligations of workers and employers, and establishes mechanisms and procedures to resolve labour disputes.

2. The eight ILO core conventions and two governance conventions (Convention 144 [Tripartite Consultation] and ILO Convention 135 [Workers Representatives]), given effect as domestic legislation by the Constitution.

3. The 2012 Judiciary Law, which establishes and defines the jurisdiction of the district courts, the Court of Appeals, and the Supreme Court. The courts have jurisdiction over specific disputes arising from the Labour Code.

4. The 2012 Mediation Law which includes labour disputes among the cases that can be mediated through the courts

5. The 2017 Infringement Law or Law on Offenses.[37]

6. The 1991 Trade Union Law.[38]

7. Various resolutions, rules and regulations issued by the Government, including rules on individual disputes, collective disputes, and labour inspection.[39]

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[34] ILO, *idem*, p. 66.
[35] Constitution of Mongolia, Art. 10.1 and 10.3.
[36] Unofficial translation sourced online from ILO NATLEX.
[37] Unofficial translation provided by ILO Mongolia Office.
[38] Unofficial translation sourced online from ILO NATLEX.
[39] Unofficial translations provided by ILO Mongolia Office.

B. System of labour administration

Mongolia's system of labour administration, or management and organization of labour,[40] is made up of several institutions at central and local levels. At the apex is the State central administrative, executive and regulatory organization responsible for labour issues under the guidance of a Member of the Government. Currently, the central authority is the MLSP, but other agencies are also involved in the administration and enforcement of labour laws (see C.1 below). Under the central authority is an employment and supervising organization at the local level, which includes the *aimag*, capital city and district employment offices, and the labour inspector or officer of the *soum* under the guidance of local governors. The central administration provides local organizations with "professional and methodological guidance." On the other hand, governors at local levels shall, within their jurisdiction, enforce the system.[41]

Monitoring and oversight in the administration and enforcement of labour laws generally resides in the State *Ikh Khural* and Central Government. Governors and authorized organizations at various local levels are responsible for implementing and enforcing labour laws within their respective jurisdictions.[42] In terms of operational coordination, the governors and their offices in the *aimag*, capital city, *soum* or district are directly responsible for labour monitoring together with organizations representing and protecting the rights and legal interests of employees, non-government organizations, and the public within their jurisdictions.[43] In terms of policy coordination, the State office on labour monitoring works under the guidance of the Member of Government responsible for labour issues, and the local labour monitoring offices and state inspectors work under the guidance of the local governor concerned. The labour monitoring procedure is regulated by the rules on State labour inspection approved by the Central Government.[44]

In line with ILO Convention No. 144, Mongolia institutionalized tripartism and social dialogue through the TNCLSC. This Committee is composed of an equal number of representatives from Government and the national organizations representing the rights and legal interests of employees and employers. It performs an advisory role to central Government on labour and employment policies generally, but more specifically can also function as an ALDR mechanism. It is mandated 1) to influence development and implementation of State policies concerning labour issues and promote tripartism; 2) to settle collective disputes initiated within the scope of protection of the citizens' labour rights and associated economic, social, and legal interests; 3) to monitor the implementation of the national agreement of social consent and consult on common economic and social policy issues; and 4) to exercise other rights provided by law.[45]

[40] LCM, Chapter 13, Arts. 137-138.
[41] LCM, Art. 137, 137.1-4.
[42] LCM, A 139, 139.1.
[43] LCM, Art. 139, 139.1.2-3.
[44] LCM, Art. 140, 140.1-3.
[45] LCM, Art. 138, 138.1-5.

C. Design of the LDR System

Within the overall labour administration system, the two-tiered LDR system consisting of ALDR and judicial tiers is made up of permanent State agencies, and *ad hoc* bipartite and tripartite structures constituted only when a labour dispute arises for the sole purpose of resolving that particular dispute.

C.1 National and local State agencies

The State agencies involved in the settlement and resolution of labour disputes are the following:

1. MLSP which is deemed to be the State central administrative organization responsible for labour issues, with mandate to provide local organizations professional and methodological guidance.

2. Governors at *aimag*, capital city, *soum* or district level.

3. General Authority for State Inspection (GASI) whose scope of authority includes labour inspection.

4. Prosecutor's Office under the Parliament which initiates prosecution of offenses under the Infringement Law, including offenses arising from violations of labour laws.

5. The Courts, which adjudicate appeals from settlements or decisions issued by ALDR mechanisms and complaints directly filed by concerned parties or by the Prosecutor's Office.

6. The General Executive Agency of Court Decisions (GEACD) under the Ministry of Justice and Home Affairs, which executes decisions and orders of the courts, including those on labour disputes.

All the above agencies are permanent in nature, are staffed by full-time public servants, and operate with regular budgets allocated by the State.

C.2. Bipartite and tripartite structures

The bipartite and tripartite structures that operate at or above the level of enterprises are the following:

1. Labour dispute settlement commission (LDSC) at the enterprise level composed of representatives of the employer and the employees in enterprises with ten or more employees.

2. Tripartite Sub-Committees and Branch Committees, also known as "rapid labour dispute resolution" committees (the equivalent of LDSCs outside the enterprise) at the *aimag*, capital city or *soum* or district level composed of three representatives from the governor's office who are public servants, and three representatives each

from employers and employees concerned, constituted by the governor to resolve individual labour disputes.

3. Mediators invited by the parties or appointed by the concerned governor to help resolve collective labour disputes.

4. Arbitration courts composed of a panel of three arbitration judges constituted by the concerned governor to resolve collective labour disputes.

5. The TNCLSC as described above.

Except for the TNCLSC which is a standing committee, these mechanisms are *ad hoc* in nature, constituted only when there is a dispute. From the national to the local levels, members of committees representing workers and employers typically come from CMTU and MONEF. On the other hand, mediators and arbiters are neutral third persons appointed by the concerned governor in accordance with the Labour Code.

C.3. Who may access the LDR system: parties to labour disputes

Persons or entities who are parties to the labour relationship may access the LDR system. These include:

1. A citizen of Mongolia and domestic or foreign business units or organisations conducting operations in the territory of Mongolia;

2. A citizen of Mongolia and another citizen of Mongolia, a foreign citizen or a stateless person;

3. A domestic entity or organisation and a foreign citizen or stateless person;

4. Foreign entities, organisations, citizens, and stateless persons that are conducting operations in the territory of Mongolia, unless otherwise provided in international treaties to which Mongolia is a party.[46]

Also considered as parties are representatives of employers and employees in collective agreements and collective bargaining, including the relevant State administrative organ in case of tripartite collective bargaining.[47] Operationally, the representatives of employers and workers are those designated by MONEF and CMTU, respectively.

The Labour Code regulates two types of labour contracts – one is work under a contract of employment[48] and the other is work under an independent contract.[49] To establish the employment or independent contracting relationship, the contract must be in writing[50] and is effective on the date it is signed.[51] More than being a documentary formality, a written contract

[46] LCM, Art. 4.
[47] LCM, Arts. 3.1.6-7 and 20.1.
[48] LCM, Art. 21.
[49] LCM, Art. 22.
[50] LCM, Arts. 24.1 and 25.1.
[51] LCM, Art. 27.1.

is a substantive precondition for one to be considered a party to a labour relationship and consequently to a labour dispute, whether under a contract of employment or under an independent contract.

While a labour relationship includes an employer-employee relationship and independent contracting relationships, the authority of ALDR mechanisms does not include labour disputes arising from independent contracting relationships.

C.4. ALDR mechanisms and the Judiciary

The relationship between ALDR mechanisms and the Judiciary, particularly the authority of ALDR mechanisms *vis-à-vis* the jurisdiction of Courts, is a central issue in amending the Labour Code.

ALDR mechanisms established under the Code are vested with authority to facilitate settlement of disputes. But they do not have the power of jurisdiction in the legal sense. As such, they cannot hear and decide a case in a way that is binding, final and executory. Legal jurisdiction is a power reserved only to the regular courts.

ALDR mechanisms aim to provide parties accessible avenues for alternative dispute resolution (ADR) in which they can settle their disputes without the litigiousness and expense associated with judicial proceedings. Operationally, however, the question remains whether this aim is being effectively operationalized to respond to the larger development objective of making them accessible to as many disputants as possible at the least cost.

The allocation and structuring of authority and power between ALDR mechanisms and the Judiciary can be summarized as follows:

1. ALDR mechanisms, specifically the LDSCs, tripartite rapid labour dispute resolution committees, intermediaries, and arbitration courts have authority to discuss the dispute with the parties, reconcile their conflicting claims, and recommend a solution. If the parties accept the recommendation, this will become the decision on the matter in dispute.

2. District courts have appellate jurisdiction to review settlements or agreements arrived at through ALDR mechanisms. Parties are generally obliged and expected to comply with and implement a settlement, agreement or decision arrived at through these mechanisms. If this is not complied with or implemented by one party, the other party must first secure judicial approval to make the decision binding and enforceable, or the refusing party can file an appeal to the district court. Either way, the court will review the decision, decide the rights of the parties, and order enforcement as appropriate.

3. District courts have original jurisdiction over specific labour disputes and work-related complaints defined in the Labour Code, and to impose sanctions arising from labour law violations specified in the Infringement Law. They also have the jurisdiction to authorize the enforcement of settlements arrived at through ALDR mechanisms and orders of labour inspectors if the concerned parties do not comply with such settlements or orders.

Whether in the exercise of appellate or original jurisdiction, district court decisions can be further appealed to the Court of Appeals up to the Supreme Court. Thus, whether a labour dispute enters the LDR system through the ALDR mechanisms, or otherwise directly through the district courts, how and when it will be finally resolved, terminated and enforced ultimately rests with the courts.

## IV. RULES AND PROCEDURE IN ALDR MECHANISMS

### A. When is there a labour dispute; types

The Labour Code provides the basic rights, obligations and terms and conditions of employment, without prejudice to more advantageous terms and conditions that may be provided in applicable individual or collective agreements at the enterprise, industry, sectoral, geographical or national level. A labour dispute exists the moment differences or conflicts over these rights, obligations and terms and conditions arise which the parties cannot settle or resolve by themselves, and one or both parties request the intervention of the appropriate dispute resolution mechanism.

Labour disputes are either individual or collective and can arise at the enterprise, industry or national level. An "individual labour dispute" is between the parties to a contract of employment concerning labour rights and related legal interests. A "collective labour dispute" involves the parties to a collective agreement or bargaining concerning the negotiation, enforcement, monitoring or supervision of such collective agreement or bargaining.[52] The distinction between collective and individual labour disputes determines which administrative mechanism and procedure will be followed for their resolution.

### B. Collective labour disputes: administrative mechanism and procedure

#### B.1. Premises and subject matter

As a general concept, collective bargaining is a process by which an employer or organization of employers and an organization or organizations of workers, through their representatives, negotiate and come to an agreement on terms and conditions of employment and the regulation of their relationship. Collective bargaining is itself an LDR mechanism. But where negotiation fails to lead to an agreement or where the terms of an existing agreement are not honored, this gives rise to a collective labour dispute.

The Labour Code of Mongolia incorporates the general concept of a collective labour dispute. Such dispute is predicated on inaction or disagreements arising from the negotiation or fulfillment or implementation of collective contracts or agreements.[53] It arises when the party receiving notice to negotiate has not replied or started negotiations within the period of time specified, or there is a disagreement that has not been resolved during negotiation.[54] The subject matter of collective disputes may be terms and conditions of employment 1) arising from the implementation or enforcement of the substantive content of existing collective contracts (technically, rights disputes), or 2) those that are still being negotiated by the parties

[52] LCM, 3.1.8-9. The law does not define "rights disputes" or those arising from law or contract, and "interest disputes" or those arising from the negotiation of labour agreements. Inclusion of these definitions is among the proposed amendments to the Labour Code.

[53] LCM, S 8 to 20.

[54] LCM, S 12.5.

and which are proposed to form part of the substantive content of the contract (interest disputes).

The specific issues in a collective dispute vary depending on the type of the collective contract. There is a distinction between ***collective agreement*** and ***collective bargaining***. The former refers to collective contracts that set terms and conditions of employment and regulate labour relations at the enterprise level.[55] The latter refers to an agreement including the process of entering into such agreement at the 1) national or sectoral level; 2) administrative or territorial unit level such as those within a region, *aimag*, capital city, *soum* or district; or 3) at the level of a specific professions setting professional tariffs.[56]

Based on the law and sample contracts, ***collective agreements*** contain specific terms and conditions of employment which are enforceable as rights of the parties. In a company operating a power plant, for example, a collective contract includes specific entitlements such as minimum wage not less than 1.6 times the energy sector equal to 672 thousand MNT; five days paid leave to a worker who just married or has a family issue; and one-time payments of 10 times the minimum wage in case of death of the worker, 420,000 MNT for a parent's death, and 210,000 MNT for a parent-in-law's death. [57]

On the other hand, depending on the level of bargaining that takes place, ***collective bargaining*** covers more general matters. Specifically,

1. Rights to social benefits, and a citizen's labour rights and related legal interests are determined through ***national collective bargaining***.

2. Compensation, labour conditions, organisation of the employees' labour, and production quotas or norms for employees with special skills are determined through ***bargaining at the industrial sector level***, such as in the health and education sectors and in the geology, mining and heavy equipment industry.

3. Minimum compensation, citizens' right to work, and related legal interests are determined through ***bargaining at the regional level.***

4. Employment and labour relations of employees of administrative or territorial units are determined through ***bargaining at the aimag, capital city, soum or district level***.

5. Labour relations of persons employed in certain specialized occupations are regulated by ***professional tariff bargaining***.[58]

The outputs of collective bargaining are mostly framework agreements. Generally, they contain commitments or formulas which provide a basis for further action by the parties or by proper authorities. One example is the commitment in the geology, and heavy equipment industry to increase remuneration depending on inflation, industrial profit, labour productivity

[55] See LCM, Art. 18.
[56] LCM, Art. 20.3.
[57] See LCM, Art. 118.1. Model or sample agreements were provided by the MLSP and ILO Mongolia Country Office.
[58] See LCM, Art. 119.1. Model or sample agreements were provided by the MLSP and ILO Mongolia Country Office.

and increase of consumer and production price, or to increase the industry minimum wage to twice the national minimum wage. Another is the commitment in the education and culture sector, which includes a government agency as party, to propose to the Ministry of Finance a budget plan to increase basic salary in the sector by at least 50% during the agreement period and to increase average wage to 1 million MNT.

For both collective agreements and agreements arrived at through collective bargaining, there is a requirement to register the agreement within ten days from the time it is signed. The employer is assigned the responsibility to deliver the contract for registration to the Governor of the *soum* or district where the employer has its principal place of business.[59] Registration is a condition for validity of the agreement. It involves a review by the concerned government officer of the contents of the agreement to determine its compliance with laws and regulations. If found non-compliant or defective, the agreement is deemed invalid and registration shall be denied. The parties, however, may negotiate again to correct any defects.[60] Thus, registration is significant to determine whether there still exists a collective labour dispute and, if there is, whether this is a rights or an interest dispute.

B.2. Mediation

A collective dispute is to be resolved first through an intermediary or mediator invited by the parties or appointed by the concerned *soum* or district governor.[61] The mediator is a neutral third person bound to adhere to the principles of rule of law, non-interference, justice and fairness, transparency and objectivity when conducting the mediation. If s/he is employed, s/he shall be released from her/his main job during the period that s/he is a mediator but compensation equal to her/his average salary shall be paid by from her/his employer. If the mediator is not employed, the disputing parties shall negotiate the rate of compensation with the mediator and equally share in the payment.[62]

Resort to mediation is proper in case of an interest dispute, that is, if an employer does not respond to a claim or demand submitted to it by the representatives of employees within three working days, or if such representatives determine that the employer's reply is not acceptable,[63] or in case of conflicts of opinions during the negotiation of collective agreement. It is also proper in case of a rights dispute when the employer refuses to accept the demand of workers' representatives to implement the agreement or fails to promptly respond to such demand.[64]

The mediator shall attempt to facilitate a "reconciliation" of the dispute within five working days from the date of his or her appointment.[65] Within this period, the parties and the mediator shall consider the dispute and thereafter jointly issue a written decision agreeing to a settlement,[66] which is subject to approval by the Government.[67] If there is no settlement, the

[59] LCM, Art. 15.1.
[60] See LCM, Art. 15.
[61] LCM, Art. 117.
[62] LCM, Arts. 117-118 as implemented through "Regulation on Settlement of Collective Labour Dispute with Participation of Mediator," Attachment to Government Resolution No. 78 [2001], Nos. 4-4.
[63] LCM, Art 117.1 in relation to Art. 115.4.
[64] "Regulation on Settlement of Collective Labour Dispute with Participation of Mediator," *Idem,* No. 1.
[65] LCM, Art. 117.
[66] LCM, art. 117.7.
[67] LCM, Art. 117.2.

mediator shall send a note to the concerned governor that the parties still have not come to an agreement, after which the process shall be deemed finished.[68]

Failure of the employer to participate in the reconciliation process, or to comply with a settlement reached through mediation, gives the "representatives of employees" a right to strike.[69]

B.3. Arbitration

If the reconciliation process does not result in an agreement, the dispute may be elevated to labour arbitration. The primary purpose of arbitration is to reconcile disputes between the representatives of employees, trade union representing the community, and representatives of employers who have specific requirements regarding the establishment, implementation, performance and monitoring of a collective contract.[70]

Arbitration is done through a "labour arbitration court," consisting of a panel of three arbitrators recommended by the parties to the dispute and by the *soum* or district Governor. In case, the parties cannot agree on their appointment, the Governor shall appoint the arbitrators.[71] Like mediators, arbitrators are neutral third persons bound to adhere to the principles of the rule of law, non-interference, justice and fairness, transparency and objectivity, and to comply with the Labour Code and other applicable laws and rules during the arbitration proceedings.[72] If employed, the arbitrator shall be released from her/his main job in the course of the arbitration proceedings. The arbitrator's fee shall be "equal to her/his average salary and shall be paid by the employer or by the disputing party; in case the arbitrator is not employed, s/he shall be paid equal to triple[d] the minimum wage."[73]

The arbitration court has authority to hear, examine and discuss the dispute with the parties, and enlist the assistance of experts if necessary. But it has no authority or jurisdiction to decide the dispute. Instead it is expected, within five working days from its constitution, to discuss the dispute and issue a recommendation or an "arbitral award" supported by at least majority of the members for consideration of the parties which the latter may either accept or reject.[74] If the recommendation is accepted, it becomes the settlement of the dispute.

The rules further clarify that in case the disputing parties have accepted the arbitral award and mutually agreed to implement it, the final written arbitral award shall be issued, stipulating the ways to implement every clause of it by the concerned party.[75] There is no available information or sample of how this rule has been operationalized. Unlike in mediation where a settlement accepted by the parties is subject to government approval, neither the Labour Code nor the rule explicitly requires government approval of an arbitral award. It is simply stated

[68] LCM, Art. 117.7.
[69] LCM, Art. 119.1.1-2.
[70] See LCM, Art. 118.1 as implemented by "Rule on Labour Arbitration," Attachment to the Great State Hural Resolution No. 55 [2001], Nos. 1-2.
[71] *Idem*, No. 4.
[72] *Idem*, No. 5.
[73] *Idem*, No. 6. In the English translation of the Rule that was used as reference during the assessment, it is not clear who will pay the arbitrator if s/he is not employed.
[74] See LCM, Art. 118 in relation to "Rule on Labour Arbitration," *Idem*, Nos. 17-19.
[75] "Rule on Labour Arbitration," *Idem*, No. 18. As translated, the rule is ambiguous as to who shall pay the fee.

that the parties shall be obliged to implement any settlement agreed to pursuant to the arbitration procedure.[76]

On the other hand, if the arbitral award is rejected by one or both of the disputing parties, they shall issue a written notice of this fact to the arbitration court and to the governor who constituted it.[77] It is notable that under the law, if the recommendation is not accepted or if no agreement is reached, or if the employer fails to comply with a settlement based on an accepted recommendation, the "representatives of employees" shall have the right to strike.[78]

B.4. Strikes as part of the ALDR process

Subject to pre-conditions, employees may stage a strike as part of the ALDR process to help break an impasse or deadlock in collective negotiations. Thus, the representatives of employees have the right to strike:

1. If an employer fails to participate in reconciliation measures.

2. If an employer fails to comply with a settlement reached following processes involving the participation of an intermediary.

3. If an employer fails to comply with a settlement based on acceptance of a recommendation made by the labour arbitration court.

4. If, even though the collective labour dispute was discussed by the labour arbitration court, its recommendation was not accepted or a decision was not issued.[79]

The law opens the possibility of a strike even after the employer had previously accepted a settlement though mediation or arbitration but later on refuses to comply with it. In this regard, the law is silent on the consequence of an employer's failure to comply with a settlement that it had previously accepted.

C. Individual labour disputes: administrative mechanism and procedure

Individual labour disputes shall be resolved by the LDSCs or the courts, within their respective jurisdictions.[80] As the initial administrative mechanism for resolving individual disputes, an LDSC is constituted at the bipartite or enterprise level, consisting of the representatives of the employer and the employee. The latter may be represented by a union, or if there is no union by a person elected by the employees.[81] The LDSC shall meet to resolve the dispute with at least 75% of the total members and representatives of each party in attendance.[82] It is then expected to make a "decision" by the majority vote of members in attendance. The decision shall be binding on the parties concerned. Specifically, the employer

[76] LCM, Art. 118.7.
[77] *Idem*, No. 19.
[78] LCM, Art. 119.1.3-4.
[79] LCM, Art. 119.
[80] LCM, Art. 125.1.
[81] See "Rule Establishing the Labour Dispute Settlement Commission," Attachment No. 2 to Government Resolution No. 122 [1999], Nos. 4-7.
[82] *Idem*, No. 17.

is bound to follow a decision that complies with legislations.[83] The law and rules do not require government approval of the decision. But if the decision is questioned by a party, that party shall have the right to appeal to the relevant *soum* or district court within 10 days after the receipt of such decision.[84]

In 2008, the NTCLSC established a non-permanent Tripartite Committee for the rapid resolution of individual labour disputes at the pre-court stage with fair participation from social partners.[85] This Committee functions like the LDSCs but it is tripartite in nature. It has a two-layer structure. The upper layer is the "tripartite branch committee" for rapid resolution of labour disputes, referred to as "Sub-Committee," consisting of representatives from the Government, CMTU and MONEF. The lower layer is another tripartite sub-committee referred to as "Branch Committee," which shall consist of an equal number of three representatives each from the government, the trade union, and the employers at the *aimag*, capital city, *soum*, or district level.[86] As a rule, sub-committee and branch members shall be professional lawyers or shall have proficiency in labour and social protection.[87] Further, the designation of branch committee members is subject to the approval of the relevant sub-committee for labour and social consent.[88]

The sub-committee or branch committee has five days from the filing of a complaint within which to facilitate settlement or resolution.[89] It does so by providing the parties a recommendation, supported by a plurality vote of the members, to rectify the breach giving rise to the labour dispute.[90] If the sub-committee or branch committee recommendation is accepted by the parties, it becomes the decision on the dispute which the parties are obliged to comply with.[91]

Given the structure described above, a complaint filed through the rapid labour dispute resolution committees may undergo more than one stage of processing depending on where the complaint is initiated. If the complaint is initiated at the *soum* or district branch committee but the parties do not accept its recommendation, the complaint may then be elevated to the *aimag* or capital city branch committee, which shall resolve the complaint within five days after receiving it.[92] If still the parties do not accept the recommendation of the *aimag* or capital city branch committee, the complaint may then be elevated to the upper layer or the Sub-Committee, which shall resolve the complaint within five days from receipt.[93] In all, a labour dispute processed through the rapid resolution committees may go through three distinct administrative stages of processing.

A sub-committee or branch commitee within a particular occupation can also be organized with a bipartite or tripartite structure.[94] This suggests that such committee may

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[83] *Idem*, No. 18.
[84] LCM, S 127.1.
[85] "Rule Establishing Tripartite Branch and Sub-Committees for Rapid Resolution of Labour Disputes," Attachment 1, Resolution by the National Tripartite Committee Meeting, 1 April 2008, No. 1.1.
[86] *Idem*, No. 1.2.
[87] *Idem*, No. 2.5.
[88] *Idem*, No. 2.2.
[89] *Idem*, Nos. 6.1-6.2.
[90] *Idem*, Nos. 1.1-1.5 and Nos. 2.2-2.5.
[91] *Idem*, No. 7.3.
[92] *Idem*, Nos. 6.3-6.4.
[93] *Idem*, No. 6.5.
[94] *Idem*, No. 2.3.

resolve an individual labour dispute even at the enterprise level. Conversely, this also suggests that an individual labour dispute cognizable at the LDSC may be brought to the sub-committee or branch committee, as the case may be, if the LDSC is not convened or if no settlement is reached therein.

While the procedures for individual labour disputes are detailed, the Labour Code does not actually specify the individual labour disputes that may be brought to the LDSCs or the tripartite rapid labour dispute resolution committees.

In practice, common issues raised before LDSCs are wages and wage payments, hours of work and holiday pay. Matters arising from collective agreements are also sometimes submitted to LDSCs. On the other hand, matters within the competence of the LDSCs can also be resolved through labour inspection.[95] It can also be noted that there is no explicit prohibition against any party going directly to the appropriate district court to file a complaint or assert a claim.

Given the loose and undefined scope of authority of LDSCs or rapid resolution committees, it is possible for a party to file any type of complaint with any of these mechanisms. In theory, this can be advantageous as it seems to encourage the use of these mechanisms. But conversely, it is also possible for a party to bypass these mechanisms altogether and go directly to the courts, thereby negating the primary objective of the same mechanisms. The latter appears to have been the more likely outcome because of the procedural difficulties and inconvenience, not to mention the time and costs, required to constitute LDSCs and tripartite committees.

## D. Other administrative agencies within the ALDR system

Apart from the MLSP, there are other administrative agencies which are assigned important preventive, remedial and enforcement functions in the LDR process. These are the General Authority for State Inspection (GASI), the Prosecutor's Office under Parliament, and the General Executive Agency of Court Decisions (GEACD) under the Ministry of Justice and Home Affairs.

### D.1. Roles in relation to ALDR mechanisms

In individual labour disputes, where the dispute is not resolved at the LDSC or where a party refuses to honor a decision that it previously agreed to, the concerned party may appeal to the competent district court. When the court's decision becomes final, the winning party can seek enforcement through the GEACD.

In collective disputes, the recommendations of mediators and the arbitration courts that are accepted by the parties impose upon the latter a legal obligation to comply. But key informants claim that many employers do not honor their obligations. In such cases, employees are forced to go on strike to compel the employer to negotiate, effectively undoing the decision previously agreed upon and reviving the disagreement. In the alternative, they may go to court to compel compliance or fulfillment. If the court decides in their favour, they may then seek enforcement by the GEACD.

[95] LCM, Art. 126.

D.2. Labour inspection

GASI is the national authority for all inspections, including labour inspection. Part of its main mandate is to ensure that enterprises comply with all labour laws, including those on occupational safety and health. MLSP exercises technical guidance and supervision over inspectors by issuing rules on labour inspection. On the other hand, GASI's labour inspectors are under the administrative supervision of local governors and are not part of the organic structure of the MLSP. It may be assumed that MLSP, GASI and local governors have existing coordination arrangements in the implementation of the inspection rules and the actual performance of the labour inspectorate. However, no documented evidence of such arrangements was available during the assessment.

The authority and process of the labour inspectorate can be summarized as follows:

1. GASI authorizes the inspection of enterprises either upon its own initiative, or upon complaint by an employee or his or her representative, or by a trade union. Employees who file complaints must in all cases identify themselves.

2. Enterprises are given prior notice before inspection.

3. Inspectors can impose fines for breaches in labour laws that do not carry a criminal liability, such as when an employer conceals an occupational disease or accident, does not pay proper wages, requires a minor to work overtime or on holidays or perform tasks prohibited by law or under unsafe conditions, among others.[96] If the employer does not comply with the inspector's order, the remedy is to file the case in the competent district court, through the Prosecutor's Office following the procedures under the Infringement Law. If the court affirms the inspector's order, they may then seek enforcement by the GEACD.

4. For violations uncovered by a labour inspector that constitute an offense and carry a criminal liability, the remedy is to file the case in the competent court, through the Prosecutor's Office following the procedures under the Infringement Law. If the court affirms the inspector's order, the winning party may then seek enforcement by the GEACD.

Labour inspectors conduct inspections using a "labour relations" checklist.[97] They are to examine, among others, if the employer has issued employment contracts and job descriptions for its employees, paid the appropriate remuneration, provided adequate working conditions, or established LDSCs. A properly conducted inspection can be a very effective ALDR mechanism to immediately correct a violation and prevent it from escalating into a full-blown rights dispute. Labour inspection can even make the constitution of an LDSC unnecessary, which is a problem in itself considering that a majority of enterprises do not have LDSCs. However, no data was available as basis in assessing whether labour inspection is being used in this manner.

[96] See LCM, Art.141.
[97] Checklist template provided by MLSP and ILO Mongolia Country Office.

E. Role of the Courts

The jurisdiction of the courts on labour matters can be summarized as follows:

1. Jurisdiction of *soum* or district courts of first instance over labour disputes can be exercised in two ways:

   - ***Original jurisdiction*** over labour disputes directly filed before the court as specified in the Labour Code and other laws.

   - ***Appellate jurisdiction*** over decisions of LDSCs or settlements from the tripartite sub-committees and branch committees or from the arbitration courts.

2. A labour dispute filed with court is adjudicated and resolved following the judicial rules of civil procedure.

   - Before adjudication and with the agreement of the parties, the *soum* or district court may allow for mediation under the Mediation Law.

   - The decision of the *soum* or district court can likewise be appealed by the aggrieved party to the appropriate appellate court, and ultimately to the Supreme Court. Once a decision becomes final, the order of the court can then be referred to the GEACD for implementation or execution.

3. On individual labour disputes, the Code specifies eleven (11) matters that must be filed directly with and resolved by the *soum* or district court, namely: 1) an appeal made from the decision of the LDSC; 2) a complaint of an employee concerning wrongful dismissal or wrongful transfer to other work by the initiative of the employer; 3) an employer's claims for compensation for loss or damage inflicted on the employer's business entity or organisation, by an employee fulfilling his working obligations; 4) an employee's claims for compensation for damage inflicted as a result of injury to his body or decline of his health while fulfilling his working obligations; 5) a dispute of the matters specified in Section 69 of this law;[98] 6) a dispute raised in relation to a labour contract between citizens; 7) a complaint of an employee concerning wrongful imposition of disciplinary punishment; 8) an employee's claims of deterioration of the terms and conditions of the labour contract worse than those provided in the legislation or collective contract; 9) an employee's claims of non-conformity of the internal labour regulation with the legislation; 10) a labour dispute between persons working by combining their property and labour, unless otherwise provided in law or the contract; and 11) other disputes that are within the jurisdiction of the court pursuant to the legislation.[99]

4. In addition to the 11 specific issues, the district courts have sole jurisdiction –

[98] LCM, Section 69.1 provides that if an employee has been reinstated to his/her previous job or position as provided in Section 32.1.2 of this law, he/she, for a period during which he/she was out of work, shall be paid the remuneration which he/she previously received; or during which he/she was transferred to a job or a position with a lower remuneration, shall be paid the difference.

[99] LCM, Art. 128.1.1-11.

- To impose sanctions on violations of labour laws specified under the Infringement Law.

- To declare illegal a strike or a temporary denial of access to the workplace.[100]

- To impose sanctions in the form of fines against breaches of labour laws that do not amount to a crime.[101]

- To adjudicate matters involving forced labour, discrimination and violations of collective rights arising from collective disputes.[102]

5. The district courts have concurrent jurisdiction with labour inspectors on matters involving concealment of occupational disease or accident, improper payment of wages, prohibited employment of minors, and violation of safety and sanitation standards.[103] Key informants note that in practice, many employers ignore orders of labour inspectors. In such situations, the labour inspector or aggrieved employee will have to elevate the matter to the courts.

## V. CHARACTERISTICS AND OUTCOMES OF THE LDR SYSTEM

### A. The LDR system has characteristics and attributes similar to other modern systems

In general, Mongolia's overall industrial relations system follows a mixed model of labour regulation common in modern systems. Thus, the State:

1. Prescribes per-emptory minimum labour standards through the Labour Code and related legislation.

2. Recognizes the reasonable exercise by employers of their prerogatives through adoption of internal rules that are consistent with law and regulations.

3. Institutionalizes voluntarist and consensual labour relations elements by recognizing the rights and providing avenues for the parties to regulate their own relationship through negotiation, be it through individual employment contracts, collective contracts, or contracts arrived at through collective bargaining.

The country's LDR system also has the basic characteristics and structure of a modern LDR system.

1. The system has a two-tiered structure consisting of ALDR mechanisms and the courts, in which the courts have jurisdiction to review settlements or decisions arrived at through ALDR mechanisms.

[100] LCM, Arts. 123.2-3.
[101] LCM, Art. 141.
[102] LCM, S 141, 141.1.1, 141.1.3, 141.1.8-14.
[103] LCM, S 141.1.2, 141.1.5-7.

2. The existence of an employer-employee relationship is a precondition to access the LDR system.

3. The LDR system seeks to get the parties involved in resolving individual and collective labour disputes by themselves, through their duly elected representatives or through a union.

    - The system incorporates a preference for a voluntary and consensual solutions. It is structured on the sequential principles that 1) prevention is better than resolution; 2) if preventive measures fail, the parties themselves should resolve the problem based on their consent or agreement; and 3) if the parties cannot resolve the problem, intervention of a neutral 3rd person should involve the parties as much as possible. It allows the use of grievance, conciliation and mediation processes. Solutions recommended by neutral third persons are subject to the acceptance of the disputing parties.

4. The system has standards of efficiency, consisting of step-by-step procedures to constitute the appropriate ALDR mechanism and timelines within which to file and to resolve complaints.

5. Tripartism is integrated and institutionalized in the LDR process, from formulation of rules on ALDR to direct participation of the tripartite partners in actually resolving labour disputes.

B. Unique features

The system also has unique features, some of which can limit access and effectiveness. For example:

1. The jurisdiction of the courts over labour disputes is wide-ranging and pervasive. A party can completely bypass the administrative tier of LDR because all complaints, including minor ones such as transfers or assignments of employees, can be filed directly with the courts.

2. The nature and structure of ALDR mechanisms tend to inhibit the development of an efficient and professionalized institution for conciliation, mediation and arbitration.

    - The *ad hoc* nature of these mechanisms means that these are convened only on a case-to-case basis, with a different composition in each case.

    - All ALDR mechanisms except for mediation in collective disputes are committee-type bodies regardless of the number of employees or parties, or the nature of issues involved in the dispute.

    - Qualifications and competencies of those designated to ALDR mechanisms are not explicitly provided, except for those in tripartite rapid labour dispute resolution committees who are required to be lawyers or labour relations professionals

- Technical rules of procedure or trial-type proceedings of regular courts are not applicable to "discussions" at the LDSC, tripartite rapid labour dispute resolution committees, mediation, and arbitration. Nevertheless, some devices seen in regular courts are recognized, like the conduct of hearings as well as the exercise of "rights" to require the production of documents (similar to a regular court's power to issue summons and subpoenas) and to enlist the assistance of experts as necessary (similar to a trial by commissioners and experts in a regular trial court).

- Settlements or agreements on labour disputes initially processed through LDSCs, tripartite rapid labour dispute resolution committees, mediation and arbitration are non-binding. They are reviewable by the courts and are not implementable or final until the courts say so.

- An employer has a perverse incentive not to comply with settlements or decisions of ALDR mechanisms, or with orders of labour inspectors. There is no immediate consequence on the employer if it disagrees or refuses to comply with settlements arrived at in individual and collective labour disputes, or with orders or findings of a labour inspector.

- The employer who is the respondent in a complaint incurs little or no cost for the fees of mediators or arbitrators called to resolve the dispute. Under the rules, the cost is either borne by the disputing party or complainant, who is almost always an employee or a group of employees, or by the employer of the mediator or arbitrator chosen to help resolve the dispute who is a total stranger to the dispute.

3. The Labour Code's emphasis is to structure ALDR mechanisms and define the procedural rights of parties, rather than to open up the ALDR system to a wider variety of labour disputes so that these are prevented from being escalated to the judicial system.

4. Possibly an offshoot of the fact that labour relations in government agencies and State-owned enterprises are covered by the Labour Code, collective bargaining is subject to a high degree of State control and coordination. The Code organizes collective bargaining at several levels, prescribes the subject matters for collective bargaining, and requires agreements to be scrutinized and registered by government authority before these can take effect.

5. The administrative institutions that play a part in the entire LDR cycle, namely the MLSP, Offices of the Governors, GASI, the Prosecutor's Office, and the GEACD are fragmented and disjointed.

    - MLSP, GASI, the Prosecutor's Office and the GEACD are all Central Government agencies with specific roles in the LDR cycle, they are structurally distinct and separate from each other.

    - The MLSP is constrained from effectively exercising its general function of technical supervision and monitoring in the implementation of the Labour

Code, related laws, and implementing regulations as its role from the initiation to the final resolution of a labour dispute is actually minimal and indirect.

- Institutionalized rules and guidelines to delineate functions and responsibilities and to ensure coordination are needed for ALDR agencies to work efficiently and seamlessly. However, there is no evidence of functioning and effective institutional arrangements between and among these agencies consistent with the "whole of government" approach advocated in the country's development documents.

## C. Performance and outcomes

### C.1. Bipartite and tripartite committees

Conciliation, mediation and arbitration have not gained significant traction in spite of Parliament's initiatives in 2008. Among the identified contributory factors are inadequacy of the enabling legislation, implementing mechanisms and institutional capacity; costs associated with mediation; attitude that parties are entitled to access to the courts as a matter of constitutional right; and tendency of parties to regard LDSCs and mediation simply as mere formality that they must have to go through before they can exercise their right to strike or their constitutional right to go to the courts.

Quantitative data to measure the use and performance of ALDR mechanisms is limited. Data from the Mongolian Statistical Information Service on industrial or collective disputes, including strikes, show that in 2017, there were 239 industrial disputes with 5,924 workers involved, with 5,717 workers involved in strikes with duration of one or more days. In 2018, there were 90 industrial disputes with 6,375 workers involved, and 5,007 workers involved in strikes with duration of one or more days. In 2019, only two collective disputes were recorded. The ILO country office in Mongolia explains that the number of workers involved in strikes were high in 2017-2018 because public school teachers and medical workers were involved. They went on strike because government allegedly did not implement the public service salary as agreed upon in a national tripartite agreement.[104]

As statistics on individual labour disputes are not yet available, the information provided by ground-level officers and users of the system who served as key informants during the assessment are useful in shedding light on how ALDR mechanisms are functioning and what improvements are needed.

Representatives of GASI[105] said that labour inspectors are required to monitor whether employers have set up LDSCs as required by regulations. Based on latest inspection data, only approximately 40% of 1,700 enterprises inspected had LDSCs.

- In relation to the role of labour inspectors in ALDR, the inspector may direct the employer to rectify violations and comply with the law. However, it is not uncommon for employers to ignore the inspector's directive. In such cases, the

[104] Information provided by ILO Mongolia National Project Manager Ms. Lkhagvademberel Amgalan.

[105] Mr. G. Erdenetugs and Mr. S.Bayaraa, Director and Senior Inspector, respectively, of the General Authority for State Inspection.

inspector has to secure an order from the court, through the Prosecutor's Office, authorizing enforcement. This order will then need to be endorsed to the GEACD for implementation.

- Employees are wary to report violations of their rights to the inspectorate because they must identify themselves when they do so. Termination of employment of workers who file complaints is common. The law does not provide protection to an employee who files a complaint against retaliatory action from the employer.

- Employees have little incentive to invoke the assistance of either LDSCs or inspectors. In matters covered by the Infringement Law, the worker may bring the matter to the LDSC or directly with the inspectorate within five days from the time of infringement. If the employee opts to go to the LDSC first, the time it takes for the LDSC to resolve the case will be deducted from the time an employee has if he or she subsequently decides to file a case in court. Thus, the employee tends to bypass the LDSC for fear of losing standing to file the case in court later on.

One representative of CMTU[106] who is a member of a tripartite rapid labour dispute resolution city committee said that her committee handles 40 to 50 cases annually. Half of this usually results in accepted recommendations while the rest are referred to courts or are dismissed for being filed out of time. Common issues raised are those related to payment of holiday pay, wages, and implementation of collective agreements. The primary objective of the committee is to resolve a dispute as soon as possible. However, there are practical challenges such as –

- The rules and procedures on LDR are not well-set.

- LDSCs are set up only in large enterprises, leaving employees in small enterprises with no choice but to go to the tripartite dispute resolution committees.

- Attendance of representatives is spotty. The committee oftentimes has to proceed with the settlement meeting so long as a simple majority of the members is present.

- Implementation of recommendations at the LDSC level is low, at approximately two out of ten cases. Recommendations that are not implemented are elevated to the court.

Another representative of CMTU[107] noted that of the 21 committees that are supposed to be in place around the country, only five are actually active. For the current year, a total of 41 cases were filed in two of the active committees. Thirty-one resulted in recommendations while the rest were elevated to the courts. Most of the cases involved wages and wrongful dismissal. Among the obstacles limiting the effectiveness of tripartite committees are –

- Tendency of employers not to honor a recommendation even if this has been previously accepted by them.

[106] Ms. Sh. Samal, CMTU Officer.
[107] Ms. M. Tsengelbat, Legal adviser, Secretary of the Capital City sub-committee for Rapid resolution of labour disputes, Capital City TU Federation, CMTU.

- Committee representatives are not competent to engage in tripartite dialogue; minimum qualifications, experience and training should be required before they can act as such.

- When cases are elevated to the court, recommendations of the committee, even if these were already accepted, are not given substantive weight but treated simply as evidence that mediation took place.

- Government representation is ineffective and undermines the dispute resolution process.

A chairperson of an LDSC in the aviation industry[108] pointed out some obstacles hampering the effectiveness of these committees such as lack of information on rules and regulations on LDR and imbalance of knowledge that puts employees at a disadvantage because they are non-lawyers. She also noted the practice of some companies within the industry of restructuring the business to abolish positions and thereby terminate the employment of workers, only to later on restructure these positions back and hire a different set of workers. She proposed that this practice be addressed in the ongoing amendments of the Labour Code as it undermines workers' rights.

A representative from MONEF[109] noted that representatives of employers and employees at the tripartite committees are relatively capable and competent. But government representation is weak. Government representatives are usually the ones who do not attend meetings and therefore could not sign off on recommendations, thereby diminishing their acceptability. Further, the authority of city level or area-based tripartite committees should be clarified, particularly in respect to sectoral labour disputes such as those involving teachers and other professionals. The rules should make clear that the proper venue to settle disputes involving them is the national tripartite committee.

C.2. Individual labour disputes in the courts

Documentary sources outside the MLSP provide a picture on the incidence and subject matter of individual labour disputes that are filed with the courts. A recent study shows that out of 40,674 cases handled in the civil courts of first instance in 2015, 1487 (3.7%) cases were resolved according to the Labour Code. Out of these, 910 (61.2%) cases concerned wrongful dismissal, and 415 (27.9 %) cases concerned remuneration disputes. In 2016, civil courts of first instance handled 46,173 cases, and 2220 (4.8%) were resolved according to the Labour Code, of which 1213 (54.6%) were about wrongful dismissal, and 653 (29.4%) were remuneration disputes.[110] On the other hand, an archival survey covering 281 Supreme Court decisions on individual labour disputes from 2010 to 2015 shows that 219 dealt with wrongful

[108] Ms. U. Dashkhorol, Chairperson of Trade Union, Chair of the Labour Dispute Settlement Commission and representative of the Civil Aviation Authority of Mongolia.
[109] Mr. J. Yundendorj, Officer and Member of the Capital City sub-committee for rapid resolution of labour disputes and representative of MONEF at the Capital City Tripartite dispute resolution committee.
[110] National Human Rights Commission of Mongolia, Study on the Fundamental Principles and Rights at Work in Small and Medium-Sized Enterprises in Mongolia [2018], p. 24.

termination of employment, 7 related to wrongful transfer of employment, and the remaining judgments related to various other disputes, including payment of salary and compensation.[111]

A chief judge of a district court[112] estimated that individual labour rights disputes constitute 5% of all cases in the courts of first instance. He offered several insights from experience.

- Mediation in the court system was introduced in 2014 for civil, family and individual labour disputes to simplify dispute resolution processes, and to save time and costs for all parties concerned. It was a promising alterative in the first year of implementation. By 2018, however, cases being submitted for mediation represented only 1% of the cases filed with the courts. In his view, mediation is not effective when it involves violation of rights such as wrongful termination, which constitutes the bulk of labour disputes brought to the courts.

- Parties to a labour dispute both have incentives to prefer resolution by courts rather than through mediation. For workers, there is a perception that their chances of winning in courts are high. For employers, they want to exhaust the process. This is especially so in termination cases because it affords them a venue to avoid re-instating the employee even if his or her dismissal was wrongful.

- Making mediation mandatory in all labour disputes may increase costs and create more inefficiencies. But it may be appropriate for minor issues so as not to overburden the courts. Further, appeals on LDSC and arbitration decisions can be limited to the courts of first instance and need not be elevated to the Supreme Court.

- Courts are bound to ensure that parties are able to present and prove their cases in formal, trial-type proceedings. Nevertheless, in relation to labour disputes, courts are also mindful of equitable considerations. For example, 1) even if a complaint has been filed outside the period prescribed by law, courts may still entertain it if there are justifiable grounds to do so; 2) to establish facts and in the interest of justice, courts may direct employers to submit certain documents (this is not done in other cases) if it is apparent that a complaining worker is not in a position to submit these; 3) the burden of proof in wrongful termination disputes rests on the employer, who must show proof that the termination is not illegal. This is a principle already recognized by a Supreme Court ruling; 4) courts may still mediate and explore a settlement even if a complaint is deemed to have been properly filed to bring about a more speedy and less expensive resolution mutually acceptable to the parties.

## VI. ANALYSIS AND OBSERVATIONS

### A. General observations

The introduction of bipartite and tripartite administrative LDR mechanisms through the Labour Code in 1999, the creation of tripartite rapid labour dispute resolution committees in

[111] European Commission and ILO, A Summary Note: A Review of the Implementation of the Labour Law of Mongolia [2016] under the framework of the project "CAMELS – Sustaining GSP-Plus status by strengthened national capacities to improve ILS compliance and reporting – Mongolia."

[112] Mr. Myangaa Bayasgalan, Chief Judge, First Instance Civil Court of Bayangol District

2008, and the implementation of the Mediation Law by the courts in 2014, were all aimed at broadening and strengthening the use of negotiation and bargaining, conciliation, mediation, and arbitration as modes of LDR. As in similar systems, the desired public policy outcomes were to promote consensus-based approaches, make the parties direct participants in preventing and resolving their own disputes, reduce the number of cases entering the courts, promote faster and less expensive resolution of cases, and improve overall access to and quality of labour justice.

Although gains have been made, these outcomes have yet to be attained. Data from available statistics and studies and ground-level information from labour administrators and industrial relations players all point to the persistence of the problems of inclusiveness, efficiency and effectiveness.

Will the proposals to amend the Labour Code address these problems? The main proposals include:

- Vest LDSCs and tripartite rapid labour dispute resolution committees concurrent authority with the courts on rights disputes arising from the employer's decision to terminate or end the employment relationship, or transfer the employee to another position or rotate him or her to another. This proposal aims to reduce the matters or disputes that must be filed directly with the courts.

- Retain committee-type settlement, conciliation, mediation and arbitration is retained. The provisions on arbitration in collective interest disputes are strengthened but there is no mention of arbitration on collective rights disputes. For individual disputes, arbitration remains unavailable.

- The mandate of the NTCLSC is expanded but its role in actual dispute resolution is not clarified.

These proposals are procedural in nature and appear to preserve the existing structures. None directly addresses the limited inclusivity of and access to the system.

While Mongolia's LDR system incorporates principles, characteristics and attributes of a modern LDR system, how these have been combined actually create barriers and gaps that prevent, impede, inhibit or limit the LDR system from delivering desired policy outcomes. Some of these are obvious, some are hidden. Some are intrinsic, others are extrinsic and structural. To optimize the benefits of the reform process, these must be seriously considered and significantly addressed.

B. Intrinsic barriers and gaps

Intrinsic barriers and gaps directly arise from the way the Labour Code and other laws define and structure rights, obligations, remedies and institutions. These may be addressed by amendment of laws and regulations, capacity-building measures, and strengthening of inter-agency coordination that leverages on the "whole of government" approach. Some of the major intrinsic barriers and gaps are discussed below.

1. ***Coverage of the Labour Code is limited and is not inclusive***. As defined in the Code, a labour relationship can be work under either an employer-employee relationship or an independent contracting relationship.

    - The Code as a whole does not cover the informal sector. Consequently, this sector has no recourse to ALDR mechanisms under the Code.

    - Workers under an independent contracting relationship have rights recognized under the Labour Code but do not have access to ALDR mechanisms.

2. ***Requirement of written employment contract can limit access.*** Access to both ALDR and the courts is conditioned on the existence of a written and signed employment contract. From general accounts, employment contracts are frequently used. However, copies are often not given to workers at the beginning of employment if at all, and probationary periods are sometimes used to avoid paying workers.[113] Requiring a written contract to be the primary evidence of an employer-employee relationship, and therefore a precondition to access to justice mechanisms, has unjust and exclusionary effects.

    - It is not compatible with the universal principle that establishing the existence of an employment relationship is a factual question. What is material is not the form, but the fact that the employing entity has the power to control the means and methods by which work is performed, or the economic dependency of the worker on the employing entity.

    - It tends to be disproportionately disadvantageous not only to employees in small and micro-enterprises, but also to workers whose employment has inherent characteristics of informality such as herders and those in domestic work as well as workers under ambiguous or disguised employment relationships. In these instances, workers are typically not issued employment contracts.

    - In any case, a written employment contract can be used to simulate compliance with statutory terms and conditions of employment, as well as to conceal prohibited forms of employment like forced labour and child labour.[114]

3. ***Limited sphere of authority of ALDR mechanisms vis-à-vis the jurisdiction of civil courts***.

    - In individual labour disputes, the Code does not mention the labour disputes over which the LDSCs and tripartite rapid labour dispute resolution committees have authority and competence. On the other hand, the matters that must be filed directly with the civil courts covers the entire range of

[113] In a report, it has been observed that underpayment of remuneration is the most common type of forced labour in Mongolia. See National Human Rights Commission of Mongolia, Study on the Fundamental Principles and Rights at Work in Small and Medium-Sized Enterprises in Mongolia [2018], pp. 8, 18-19.

[114] National Human Rights Commission of Mongolia, Study on the Fundamental Principles and Rights at Work in Small and Medium-Sized Enterprises in Mongolia [2018], p. 8.

substantive rights defined in the Labour Code, leaving hardly anything of substance for LDSCs and rapid resolution committees to resolve.[115]

- In collective disputes, the sphere of competence of ALDR mechanisms on interest disputes appear clearer, following the general principle that any matters on employment can be subject of negotiation. However, the Labour Code actively guides negotiations by specifying the matters that can be subject of collective agreements and bargaining. In addition, the Code prescribes levels of collective bargaining and what matters can be the subject of negotiation at each level. These per-emptory provisions effectively limit not only the matters that can potentially be brought to ALDR mechanisms, but also the opportunities of the parties to use negotiation as a joint-problem solving and dispute prevention process.[116]

- Whether it is an individual or collective dispute, parties can bypass the ALDR mechanism and go directly to the courts. The law does not require them to exhaust administrative remedies as a jurisdictional condition for access to the courts.

4. ***Ad hoc, committee-type ALDR mechanisms are impractical and inefficient.*** LDSCs, tripartite dispute resolution committees, mediators and arbitration courts require effort, time and costs to organize and to use. Employees and workers have little or no resources for these.

   - Committee-type ALDR mechanisms are impractical and inefficient especially in small enterprises and in disputes involving minor issues.

   - Activating committee-type ALDR mechanisms without delay is a problem. In enterprises where there is no union presence, the complaining employee is to be represented in the LDSC by elected representatives of employees. Unclear in the law is who has responsibility to organize or call for the election.

   - Matters taken up at the LDSCs and rapid resolution committees may only be minor issues involving individual workers, yet it takes a committee of at least six members within the enterprise and at least nine members outside the enterprise to resolve them. In contrast, in collective labour disputes which involve more parties and where the issues are inherently more complex, only one mediator is invited by the parties or appointed by the Governor.

   - ALDR mechanisms can be duplicitous, increasing costs and prolonging periods of resolution. For instance, in tripartite rapid labour dispute resolution committees, there may be up to three stages of administrative discussion (*soum*/district level branch committtee, *aimag*/capital city committee, and the national sub-committee on dispute resolution). In collective disputes, the mediation and arbitration are distinct stages. There

[115] Mr. G. Erdenetugs , GASI.

[116] The possible implications of this arrangement on ILO Convention 87 and ILO Convention 98, both ratified by Mongolia, are not included in this assessment.

are no substantial distinctions and little value-added in the process and procedures across these distinct mechanisms.

- There is no pool of neutral third persons from which mediators and members of dispute resolution committees and arbitration courts can be drawn. There are likewise no qualifications, competence and experience standards that are required, except in tripartite rapid labour dispute resolution committees where neutral third persons must be lawyers or labour relations professionals. In the latter, there is no information whether this is being followed.

5. ***Limited authority of ALDR mechanisms to resolve disputes with finality creates preference for court resolution.*** Dispute resolution mechanisms should be seen as having the authority and ability to resolve disputes with finality. This is not the case with the country's ALDR mechanisms.

   - Decisions through LDSCs, tripartite rapid labour dispute resolution committees, intermediaries, and arbitration courts are in the nature of voluntary agreements or settlements which, in law and practice, are not final and binding.

   - The power of the courts to review settlement or decisions from ALDR mechanisms is broad and has no limitations except periods of prescription.

   - The fulcrum of the entire cycle is the courts, whose exercise of original and appellate jurisdiction ultimately encompasses all types of labour disputes. The courts ultimately determine whether or not a complaint will prosper, or when an agreement or decision arrived at through ALDR mechanisms can be enforced.

   - In this regard, one proposed legislative amendment is to give concurrent authority to the LDSCs and tripartite dispute resolution committees and to the courts for specific cases. This need to be examined carefully as it could have the unintended consequence of affirming the *status quo* and further encouraging direct resort to the courts.

6. ***Unintended consequences of law and rules.*** Although obviously intended to promote the use ALDR mechanisms, some provisions of the law and rules actually operate as disincentives against it.

   - Resort to ALDR mechanisms has costs to the parties, especially to the worker as the complaining party. Resort to courts is free. Coupled with the free option to bypass ALDR mechanisms, complainants will always be more likely to go direct to the courts.

   - In counting the three-month prescriptive period to initiate a complaint with the courts, the time spent by the complainant opts to go to ALDR mechanisms first is included. Given this, a complaining party would rather go directly to court to preserve his/her legal standing to sue.

- In relation to LDSCs, the employer suffers no consequence if it does not convene the LDSC. Its refusal will simply force the employee to go to court, if he or she is minded to do so, which is very likely what the employer prefers in the first place. Most enterprises do not have bipartite LDSCs, thus limiting access to the LDR system.

- The employer who is the respondent in a complaint incurs little or no cost for the fees of mediators or arbitrators called to resolve the dispute. Under the rules, the cost is to be borne either by the disputing party or complainant, who is almost always an employee or a group of employees, or by the employer of the mediator or arbitrator chosen to help resolve the dispute who is a total stranger to the dispute. Employers which have nothing to do with the dispute will naturally be averse to releasing their employee for dispute resolution duties.

- There are prescribed periods for resolution of disputes in ALDR mechanisms. These are necessary to ensure speedy disposition of cases. To prevent parties from treating the process as a mere formality before going to court and to encourage them to exert their best efforts toward settlement, they should be given flexibility to extend the periods without prejudice to their right to resort to the courts if necessary.

- Key informants acknowledged that parties are obliged to comply with or honor settlements or decisions through ALDR mechanisms. But they also noted that since these are non-binding, a party can walk away from the effects of an administrative decision without legal consequence. This could lead to mischievous and undesirable results. For example, if it is a collective dispute involving interests, the employees have to go on strike to force the employer to comply or to go back to the negotiating table, effectively reviving the dispute. Such an outcome is both inefficient and unfair. Not only does it negate the value of arbitration as a means to end a dispute, it also forces the employees to forego their wages by going on strike thereby effectively penalizing the parties who are willing to honor the decision. This kind of outcome inhibits the parties from becoming more responsible and accountable in resolving disputes by themselves and developing trust in ALDR mechanisms.

7. ***Limited role of labour inspection in ALDR***. The important role of labour inspection in preventing and resolving labour disputes is not well-emphasized in the administrative process.

8. ***Fragmented labour administration, management and monitoring***. The LDR system has centralized monitoring and management through the MLSP, and decentralized and multi-layered implementing mechanisms that allow for the direct participation of parties in settling or deciding disputes, and centralized enforcement. Though neat in theory, it needs to be more coordinated in practice.

- The full cycle of LDR from inception of the dispute to enforcement of a decision involves administrative and judicial stages, namely the LDSC or tripartite dispute resolution process, intermediation, arbitration, prosecution,

judicial proceedings in court, and enforcement. Except the stage where a labour dispute is being adjudicated by the courts, all other stages of the cycle is to be guided, supervised and monitored by MLSP as the central agency in charge of labour affairs. However, none of the stages of the cycle is directly or effectively handled or controlled by MLSP itself. Other agencies independent of MLSP are involved. The claimant must pass either through the administrative LDR mechanisms or through GASI, the Prosecutor's Office in infringement cases, the Courts, and the State Enforcement agency before he or she gets to have the dispute finally resolved and to receive any award or compensation to which he or she may be entitled.

- Given its design, the ALDR model is vulnerable, among others, to problems of dis-coordination and fragmentation. All these can produce unwanted outcomes such as inconsistencies in implementation, more bureaucratic delays and high costs. In the long term, this can discourage parties – and workers in particular - from using the ALDR mechanisms and effectively bar them of access to channels of labour justice.

- For the ALDR model to work, a highly developed sub-system of inter-agency coordination in the form of inter-agency guidelines, reporting, monitoring, case management, and shared management information is required. During the period of assessment, however, no information was available of this level of coordination or of an integrated management and information system for the administrative agencies involved in the LDR cycle.

D. Extrinsic and structural barriers and gaps

The design of the country's ALDR mechanism and the larger LDR system is a complex one. Its orientation is toward an industrial, highly developed market economy with a relatively large and stable formal sector and industrial base. For it to work well, it needs strong institutions on freedom of association and collective bargaining, a well-coordinated and cohesive labour administration bureaucracy at national, regional and local levels, and industrial relations players who are suitably knowledgeable and capable in the dynamics of industrial relations, negotiation and conflict resolution in a market economy.

While the country's Vision 2030 and Vision 2050 are roadmaps toward these ends, delivering labour justice for the current generation of Mongolians requires a system that is accessible and appropriate to present needs and realities. Efforts to enhance the existing system need to recognize extrinsic and structural barriers arising from the country's economic, social and political conditions, and which in turn define the relative positions of power between employers and workers.

Under the current system, the burden to put the ALDR mechanisms in motion lies on employees. They have to be vigilant of their rights and interests, be knowledgeable in the workings of the system, and be assertive in filing complaints and choosing who will represent them. Whether the average or ordinary employee, especially one working in a private enterprise, has these capabilities is doubtful.

- The low trade union density necessarily limits an employee's access to union assistance and representation, as well as protection arising from collective agreements and collective bargaining.

- Directly correlated to employees' capability to assert - or more precisely the lack of it – in using the system is the relatively low quality of jobs and skills requirements in the formal sector, the dominance of small and micro-enterprises, and the high incidence of disguised, precarious and vulnerable employment in both formal and informal sectors.

- Job insecurity, especially in a labour-surplus economy like Mongolia's, is a major structural barrier, particularly among private sector employees. Under the Labour Code, the term of a contract may be fixed or open-ended.[117] For individual contracts, the term shall not be more than five years.[118] In practice, the determination of the term as well as the renewal of the contract effectively and exclusively rest with the employer. This arrangement leaves the employee little or no incentive and leverage in asserting her/his rights and interests.

Reforming the LDR system will assume a greater development dimension if the peculiar socio-economic and political conditions of the country and the capability of constituents to access and use it are taken into consideration. Simplifying the system combined with careful adjustments to remove the intrinsic and structural barriers are the necessary strategic approaches to transform the system into an inclusive, efficient and effective instrument of labour justice.

## VIII. POINTS FOR CONSIDERATION AND RECOMMENDATIONS

### A. Addressing the barriers and gaps in ALDR mechanisms

A combination of administrative and legislative measures can be considered to address the barriers and gaps. Administrative measures can be implemented immediately while legislated reforms are being debated. With tripartite endorsement, pilot measures and programs that incrementally improve the system, then institutionalizing them through legislation if proven successful, can be both a strategic and practical approach in moving forward. Below are points for policy-makers and the social partners to consider, clustered into administrative, legislative and capacity-building measures.

#### A.1 Administrative measures

The following measures can be implemented through administrative rules, guidelines and procedures:

1. Promote enterprise-level grievance and workplace cooperation mechanisms. Formulate a set of rules that includes -

[117] LCP, Art. 23.1.
[118] LCP, Art. 25.2.

- Policy that parties have a primary and shared responsibility in preventing or resolving their disputes, whether individual or collective, through cooperative and consensual approaches.

- A simple and efficient procedure in constituting workplace cooperation and grievance mechanisms.

- A rule that requires differences or issues arising from the implementation of internal rules and company personnel policies, and issues between supervisors and employees to be processed through the grievance mechanism.

- Recognition of the right of an employee with a grievance to represent him/herself or to choose who may assist him/her. In enterprises with a union, representation of the employee in a grievance process should be part of the union's duty.

- Guarantee that an employee who raises a grievance, or who participates in a workplace cooperation or grievance mechanism, shall not lose pay or suffer any form of retaliation, harassment or discrimination by the employer or other persons by reason of having raised or participated in a grievance process.

- Adopt the rule of exhaustion of the grievance process before one can seek recourse outside the enterprise, except when the grievance mechanism is unavailable or ineffectual without the fault of the employee.

- Include grievance and arbitration clauses in employment contracts, collective agreements and collective bargaining.

2. Review and amend the Government rules on individual and collective dispute resolution, particularly those on establishment of rapid labour dispute resolution committees, settlement of labour disputes through mediation, and labour arbitration. Emphasis should be on ease of access, simplicity and efficiency.

    - Downsize ALDR structures by eliminating overlapping and duplicitous layers of processes and proceedings.

    - Consider single-person rather than committee-type ALDR bodies in resolving disputes, especially in individual disputes and in those involving minor issues.

    - Recognize voluntary arbitration as an option that the parties may agree upon in resolving any labour disputes.

    - Institutionalize a mediation-arbitration process.

    - Professionalize conciliation, mediation and arbitration by prescribing minimum qualification standards and evolving a Code of Conduct.

- Develop a pool or registry of conciliators, mediators and arbitrators from which parties can choose in case of disputes.

- Consider government subsidy for fees of conciliators, mediators and arbitrators.

3. Set clear, simple and accessible rules for all ALDR mechanisms.

    - Consolidate in an integrated document the rules for grievance, conciliation, mediation and arbitration, with clear delineation of authorities and processes.

    - For collective disputes, differentiated procedures may be considered for the public and private sectors.

4. Create enabling environment for open communication, problem-solving and consensus in conciliation and mediation proceedings. Communication between and information exchanged by the parties during such proceedings should be treated as confidential and privileged communication that cannot be used for other legal proceedings.

5. In response to the issues of access, inclusivity and relevance, consider pilot strategies and programs on the following:

    - Set up toll-free hotlines and help desks at national and local levels to quickly respond to requests for assistance and complaints from constituents.

    - Set up a separate special conflict resolution channel for micro and small-enterprises with less than ten employees, domestic workers, herders, labour relationships outside an employer-employee relationship, and informal employment. This channel should incorporate basic features such as: community-based or village-based orientation, with coordination linkages to the local government concerned; directly accessible at no expense to the disputant; use of conflict resolution approaches based on customs and traditions, including tapping the assistance of village leaders and elders; summary and informal procedures but with binding settlements; and capacity to provide counselling and guidance for parties to solve their problems and honor their solutions.

    - Consider a mobile "Access to Justice" or "Justice on Wheels" program where ALDR services can be brought to areas far from local government centers.

6. Fine-tune how the TNCLSC performs its mandate.

    - Refocus and strengthen role of the Committee in policy advisory to Central Government on substantive areas of labour relations and labour standards (such as wages).

    - Strengthen supervisory role of the Committee in LDR, among others, through formulation of rules of procedure in mediation, conciliation and arbitration;

setting qualification and accreditation standards and formulation of code of conduct for mediators, conciliators and arbitrators; and formulation monitoring the performance of the ALDR system.

- Define role of the Committee in actual dispute resolution. Role can be focused on interest disputes with a national scope arising from sectoral, industry or professional bargaining.

A.2. Legislative measures

The following measures require legislation and may be added to the existing proposals to amend the Labour Code:

1. Remove the requirement that an employment contract exists and is valid only when it is in writing. Incorporate the principle that the existence of an employer-employee relationship is based on the facts of the work relationship, using ILO Recommendation No. 198 (Employment Relationship Recommendation) as reference.

2. Reduce the issues or matters that are filed directly with the courts. Parties must first exhaust the appropriate administrative remedies before going to the courts.

3. Strengthen labour inspection as an administrative mode of dispute prevention and resolution.

   - Resolve disputes arising from violation and enforcement of statutory technical labour standards through inspection.

   - Remove the requirement of advance notice to employers prior to inspection.

   - Provide whistleblower protection for workers who file complaints or who give testimony on violation of labour standards.

4. Clarify the scope and authority of conciliation, mediation, arbitration and labour inspection.

   - As stated above, resolve disputes arising from violation and enforcement of statutory technical labour standards through inspection

   - Settle or resolve rights and interest disputes arising from employment contracts, collective agreements and collective bargaining through conciliation, mediation, or arbitration.

5. Establish a permanent and specialized public agency for conciliation, mediation and arbitration, with the following key features -

   - Single-person rather than committee-type conciliation, mediation and arbitration services, unless parties agree to a committee-type mechanism.

- Simplified and downsized ALDR processes and structures.

- ALDR committees have the authority to facilitate or make binding and enforceable settlement or decisions that are enforceable without need of court approval. Court review available only in specified exceptional cases.

- Professionalized pool of conciliators, mediators and arbitrators with defined minimum qualification standards and governed by a Code of Conduct.

6. Strengthen arbitration –

    - Make arbitration available for individual rights disputes.

    - Recast arbitration as a means to end a labour dispute rather than as a pre-condition for staging a strike or lockout.

    - Empower arbitrators to exercise quasi-judicial powers and issue binding decisions or awards.

    - Institutionalize a mediator-arbitrator process where the mediator can also be the arbitrator if no settlement is arrived at through mediation.

    - Provide option for committee-type arbitration in collective disputes, and for voluntary arbitration in all disputes.

7. Strengthen collective bargaining as a preferred mode in regulating terms and conditions of employment and preventing as well as resolving collective disputes.

    - Adopt an explicit provision on the duty of the parties to bargain collectively in good faith.

    - Consider simplifying the levels of bargaining to ensure that outputs are coherent and consistent.

    - Consider differentiated rules in collective bargaining involving employees in the public sector and State-owned enterprises on one hand, and employees in the private sector on the other.

    - Make the enumeration of matters for bargaining in the Labour Code illustrative rather than prescriptive.

    - Make collective agreements and agreements from collective bargaining effective upon conclusion and acceptance by the parties. Remove approval by the government as a condition for validity and enforceability of the contract, with a saving clause that terms of the contract that are lower than labour standards or contrary to law shall be deemed void.

- Recognize the rights to strike and lockout as instruments not only to enforce an agreement, but also to reach an agreement. Specify the proper grounds and preconditions for the exercise of these rights.

- Include grievance and arbitration clauses in collective agreements.

7. In cases involving termination of employment, institutionalize the presumption that termination is illegal and the burden to show otherwise lies on the employer.

8. Clarify the mandate of the TNCLSC.

B. Conclusion: some practical steps forward

Even while efforts on amending legislation and administrative rules are ongoing, MLSP and Central Government can immediately undertake practical measures to improve the functioning of ALDR mechanisms and start laying the groundwork for more institutionalized reforms. These measures will address actual needs, such as strengthening labour administration capacity for ALDR; enhancing public knowledge and awareness on ALDR laws, regulations, guidelines and processes; and continuously building human resource capacity on basic and advanced ALDR competencies. Central Government will also need to initiate high-level engagement with the Judiciary to generate its support in the advocacy for reforms.

B.1. <u>Strengthening labour administration</u>

The priority measures or activities in this area are:

1. For MLSP and its local counterparts in the *soum*, district, city or *aimag* levels, other ALDR agencies, and offices of the governors:

    - Enhancement of management competencies for LDR

    - Development of the appropriate tools and instruments for planning, data gathering, monitoring and evaluation, and overall technical supervision over ALDR targets, outputs and outcomes.

    - Development of performance standards and indicators

    - Convening of regular high or executive-level dialogue mechanisms at both central and local levels to develop leaders and champions of ALDR goals and objectives.

2. Establishment of clear and functioning lines of coordination between and among administrative agencies involved in the various stages of the ALDR process. This can be formalized through a top-level memorandum of understanding or cooperation among agencies concerned. Terms of coordination shall include agreements on:

    - The common objective of achieving accessible, speedy and inexpensive labour justice.

- Delineation of agency responsibilities in achieving the common objective.

- Joint activities and projects, with corresponding budget and resources required.

3. Establishment of shared ALDR case management information system within MLSP that interconnects all ALDR agencies, with indicators on case volume, disposition, and progression of cases until their final resolution.

4. Strengthening the National Tripartite Committee on Social Consent as a consultative and recommendatory body.

    - Continuous enhancement of policy analysis competencies for members of the Committee.

    - Provision of a technically equipped, adequately resourced, and fully-functioning Committee Secretariat

    - Holding of a national tripartite summit/conference to discuss policy options and priorities and to generate support for reforms.

B.2. Enhancing public awareness and knowledge on ALDR

1. Production of a consolidated and official ALDR Manual of Rules and Procedures.

    - Inventory all current administrative rules, guidelines, templates and flow charts for consolidation.

    - Publicize the Manual and conduct orientation sessions targeting key implementers at national and local levels, to include labour inspectors and workers and employers representatives.

2. Development and implementation of effective communication, information and education strategy to enhance public awareness and knowledge and to provide direct services on matters pertaining to the LDR system.

    - Creation of a website or portal in the MLSP website where stakeholders can access ALDR materials and information.

    - Establishment of toll-free hotlines and on-site and online help desk within MLSP and its local offices to respond to public inquiries (also included under A.1 above)

    - Offering basic orientation on ALDR to local government executives and officials, companies and workers.

B.3. Capacity-building, training and human resource development

There is a continuing need to enhance core management and technical competencies of persons involved in ALDR at all stages of the process. A comprehensive capacity-building and

development programme can be designed for this purpose to include development and implementation of training modules and programs that target priority needs, such as -

1. Basic, intermediate and advanced supervisory and management training modules on managing an LDR system.

2. Leadership/management seminar for national and local officials and executives and key officers of the workers' and employers' organizations to promote awareness, understanding and action on the importance of an effective LDR system to achieve common goals.

3. Training/Workshop on designing and operationalizing a case management system.

4. Seminar/Workshop on policy analysis and formulation for members of the National Tripartite Committee on Social Consent and of other tripartite bodies.

5. Training/Workshop on development of information, education and training materials.

6. Trainers' training on conducting LDR education programs.

7. Basic, intermediate and advanced skills training on the following:

    - Workplace cooperation, dispute prevention and grievance handling

    - Collective bargaining as an approach in preventing and resolving labour disputes

    - Conciliation and mediation

    - Arbitration

B.4. Policy engagement and advocacy for reforms with the Judiciary

Central Government may consider initiating policy discussions, engagement and advocacy with the Judiciary for the latter to consider or support reforms. The basic agenda can include:

1. Rationalizing the labour disputes over which courts have direct and original jurisdiction. Consider limiting these disputes to those involving violations constituting an offense, violations relating to the core ILO conventions or civil liberties of workers, and award of civil damages.

2. Making exhaustion of administrative remedies a precondition to access to the courts, provided measures to easily activate administrative mechanisms are also in place.

3. Specifying the grounds for appeal of administrative settlements or decisions to the courts. In this regard,

- If there are no grounds for appeal or if the period for appeal has expired, the winning party may directly go to the GEACD to enforce the settlement or decision.

- A classification of major and minor violations can be considered. Settlements or decisions on minor violations need not be subject to appeal, or at least the appeal should be available only at district or *soum* level.

4. Making the role of the courts in the enforcement of settlements or decisions issued through ALDR mechanisms ministerial. That is, the main function of the court in such cases should generally be to note or confirm the agreement or decision and order its implementation. Judicial scrutiny and trial-type proceedings should be allowed only on justifiable grounds to be specified in the law.

5. Considering simpler, less technical and summary procedures for labour disputes. Consider specialized, less technical and summary procedures for labour disputes, including those arising from the Infringement Law.

6. Establishing a facility that provides free legal representation and assistance to workers.

7. Strategically re-launching the Mediation Law in relation to labour disputes.

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## REFERENCES


Confederation of Mongolian Trade Unions *CMTU). Internal Statistical Report of Trade Union Confederations, 2020, data provided by ILO Mongolia Country Office.

Constitution of Mongolia. At https://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@ilo_aids/documents/legaldocument/wcms_117392.pdf

Civil Service Law of Mongolia (2017). At https://procurement-notices.undp.org/view_file.cfm?doc_id=147133, unofficial translation.

Development Aid. At https://www.developmentaid.org/#!/donors/view/180547/ministry-of-labour-and-social-protection-mongolia.

European Commission and ILO. A Summary Note: A Review of the Implementation of the Labour Law of Mongolia [2016] under the framework of the project "CAMELS – Sustaining GSP-Plus status by strengthened national capacities to improve ILS compliance and reporting – Mongolia." http://www.mongolianbusinessdatabase.com/base/newsdetials?id=20648& lang=en.

Government of Mongolia. Voluntary National Review Report on Implementation of Sustainable Development Goals, 2019. At https://sustainabledevelopment.un.org/content/documents/23342MONGOLIA_VOLUNTARY_NATIONAL_REVIEW_REPORT_2019.pdf.

ILO. Accelerating the 2030 Sustainable Development Goals through decent work SDG monitoring and country profile for Mongolia [2019]. At https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-beijing/ documents/publication/wcms_673936.pdf.

ILO. ILOSTAT. At https://ilostat.ilo.org/data/country-profiles/.

ILO. ILOSTAT. At https://www.ilo.org/shinyapps/bulkexplorer29/?lang=en&segment=indicator & id =IFL_4IEM_SEX_ECO_IFLNB_A.

Infringement Law. Unofficial translation provided by MLSP.

Judiciary Law Mongolia, https://iaac.mn/files/d8faf0f3-92d8-470f-bb01-c1b0b25490be/9.Law%20on%20Judiciary%20of%20Mongolia.pdf, unofficial translation.

Labour Code of Mongolia. At https://www.ilo.org/ dyn/natlex/ docs/WEBTEXT/57592/65206/E99MNG01.htm, unofficial translation.

Mediation Law of Mongolia. At https://www.legislationline.org/download/id/8424/file/Mongolia_Mediation_Law_2012_am2015_Eng.pdf, unofficial translation.

National Human Rights Commission of Mongolia, Study on the Fundamental Principles and Rights at Work in Small and Medium-Sized Enterprises in Mongolia [2018]. At https://www.upr-mongolia.mn/images/xupld/docs/201905/ReportJDU-iin_HEAsuudalen.pdf.

"Regulation on Settlement of Collective Labour Dispute with Participation of Mediator," Attachment to Government Resolution No. 78 [2001], unofficial translation provided by MLSP.

"Rule Establishing the Labour Dispute Settlement Commission," Attachment No. 2 to Government Resolution No. 122 [1999], unofficial translation provided by MLSP.

"Rule Establishing Tripartite Sub-Committees and Branch Committees for Rapid Resolution of Labour Disputes," Attachment 1, Resolution by the National Tripartite Committee Meeting, 1 April 2008, unofficial translation provided by MLSP.

"Rule on Labour Arbitration," Attachment to the Great State Hural Resolution No. 55 [2001], unofficial translation provided by MLSP.

Trade Union Rights Act of Mongolia. At https://www.ilo.org/dyn/natlex/docs/SERIAL/35023/29144/F1022696078/MNG35023.pdf.

World Bank. At https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=MN.

World Bank. At https://data.worldbank.org/indicator/SL.TLF.TOTL.IN?locations=MN.

**KEY INFORMANTS**

Mr. Ts. Munkh-Orgil, Member of Parliament, Chairperson of the Parliamentary Technical Working Group for Labour Code Amendments

Mr. Myangaa Bayasgalan, Chief Judge, District Civil Court of First Instance of Bayangol District

Mr. G. Erdenetugs, Director, General Authority for State Inspection (GASI)

Mr. S. Bayaraa, Senior Inspector, GASI

Ms. U. Dashkhorol, Chairperson of Trade Union, Chair of the Labour Dispute Settlement Commission and representative of the Civil Aviation Authority of Mongolia.

Ms. Sh. Samal, CMTU Officer.

Ms. M. Tsengelbat, Legal adviser, Secretary of the Capital City sub-committee for Rapid resolution of labour disputes, Capital City TU Federation, CMTU.

Mr. J. Yundendorj, Officer and Member of the Capital City sub-committee for rapid resolution of labour disputes and representative of MONEF at the Capital City Tripartite dispute resolution committee.

**ASSESSMENT TEAM**

Tripartite Technical Working Group

Ms. B. Alimaa, Director, Labour Relations Policy Implementation and Coordination Department, Ministry of Labour and Social Protection (MLSP)

Mr. B. Enkhjin, Officer, Mongolian Employers Federation (MONEF)

Ms. Sh. Maya, Senior Officer, Labour Relations Policy Implementation and Coordination Department, MLSP

Ms. Ts. Otgontungalag, Director, Labour Monitoring and Legal Policy Department, Confederation of Mongolian Trade Unions (CMTU)

International Labour Organization (ILO)

Ms. Lkhagvademberel Amgalan, National Project Manager, ILO Mongolia Country Office

Mr. Amarmend Amartuvshin, National Consultant

Mr. Benedicto Ernesto R. Bitonio Jr., International Consultant