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**MONGOLIAN SUPREME COURT  
REVIEW OF CIVIL CASE TRIAL  
VERDICT**

October 20, 2011

Number 687

Ulaanbaatar city

“United Movement of Mongolian Rivers and Lakes” (UMMRL) NGO’s  
Civil case petition

Civil case court trial review was held in the courtroom by judicial team comprised of Justice D. Tungalag as moderator and judges Ts. Amarsaikhan, A. Dorjgotov, T. Urantsetseg, B. Undrakh of Mongolian Supreme Court, which reviewed and discussed the following:

Civil case with a petition requesting assignation of assessment of environmental damages caused to the river basin areas of Onggi, Zavkhan, Tuul, Khangiltsag, Khuder, Ulz, Yruu, and Gachuurt rivers within 2 months, as well as notification to the public of said assessment, environmental damages caused to these river basin areas to be recovered by the Respondent, assignation of restoration of forenamed river basin areas to be carried out by UMMRL under contractual terms to the Respondent, damages totalling 68.908.512 tugrug caused to the Petition submitter to be paid, enforce the Law to Prohibit Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas, and make a Resolution that would revoke the licences of the entities operating in the regions of forenamed river basin areas.

Decision 447 of March 15, 2011 of Sukhbaatar District Court,

Verification 493 of June 10, 2011 of Capital City Court of Appeals

Petition submitter: UMMRL’s petition

Respondent: The Government of Mongolia

which was recalled by B. Undrah, the Chairman of the Chamber  
based on the complaint submitted by the petition submitter’s trustee.

The trial was attended by the Petition submitter as follows: M. Bayasgalan, Secretary, D. Enkhtur and Ts. Munkhbayar, representatives of the Petitioner, and G. Dashdemberel, Trustee of the Petitioner; similarly, it was attended by the Respondent as follows: A. Sainbayar, representative of the Respondent, and Ts. Tserenjeje, attorney of the Respondent.

The petition submitted by UMMRL, in which it requested assignation of assessment of environmental damages caused to the river basin areas of Onggi, Zavkhan, Tuul, Khangiltsag, Khuder, Ulz, Yruu, and Gachuurt rivers within 2 months, as well as notification to the public of said assessment, environmental damages caused to these river basin areas to be recovered by the Respondent, assignation of restoration of forenamed river basin areas to be carried out by UMMRL under contractual terms to the Respondent , damages totalling 68.908.512 tugrug caused to the Petition submitter to be paid, enforce the Law to Prohibit Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas, and make a

Resolution that would revoke the licences of the entities operating in the regions of forenamed river basin areas.

Justification of the Petitioner's demand:

The Respondent failed to fulfil its obligations specified in Provision 2, 7.2 Article 3, 1-6, Article 11, of the Law on Government, Provision 1, 3, Article 14, of the Law on Environmental Protection, Article 9.1.1, of the Minerals Law. As a consequence, the Mongolian environment suffered significant destruction and reached a critical condition. We consider the Mongolian government to be responsible for this destruction. Thus, this complaint submitted to the court is based on Provision 32.1.1, of the Law on Environmental Protection. The government has violated Provisions 19.1, 38.2.1, and 38.2.4, of the Constitution of Mongolia by failing to fulfil its obligations. This is in violation of Provision 16.2 or "right to live in healthy and safe environment, to be protected against environmental pollution and ecological imbalance" of the Constitution of Mongolia. It is evident that the environmental pollution of subject river basin areas is extensive and it has been caused by wrongful human activity.

We request the Respondent to carry out assessment of the environmental damages according to the methods approved by Resolution A-156 of the Minister of Environment and Tourism in 2010. Further, it should be required of the Respondent to notify to the public, based on Provisions 3.2, 4.2, 4.2.2 of the Law on Public Radio and Television.

The basis for suing the Respondent for the damages lies the fact that we believe that the environmental pollution was caused by mining operations. Failure to fulfil the related provisions of Articles 38 and 39 of the Minerals Law led to massive environmental pollution, shortage of natural resources and ecological destruction. Governors of soum and state administrative bodies in charge of environment have the authority to monitor these matters. Unfortunately, aforementioned human rights specified in the Constitution of Mongolia are being violated due to failure of these officials to fulfil their obligations specified in the relevant laws.

According to Provision 498.2, of the Civil Code, the Government is liable for faulty actions of its governmental officials. The resulting damages must be compensated for in accordance with what is specified in Article 49, of the Law on Environmental Protection, and Articles 38 and 39, of the Minerals Law and 19.1 of the Constitution of Mongolia. This money should only be spent for the river basin areas after the assessment of the damages is carried out. Expenditure of this money must be carried out under independent monitoring by the citizens and non-governmental organizations.

There is doubt that the restoration will be carried out completely. Therefore, we have made a request of to assign the restoration to be carried out under contractual terms, based on 32.2 of the Law on Environmental Protection and 19.1, Article 19, of the Law on Government.

UMMRL was founded in 2008 and was officially registered as a non-governmental legal body on July 16, 2009. The Government of Mongolia has developed policies and passed regulations which are hazardous to Mongolian rivers and lakes. Thus, the organization was founded to intervene on behalf of the environment, to reshape misguided state policies and influence the state to make environmentally sound decisions. It has been revealed that the officials are involved in illegal actions. For example, illegal action conducted by the chairman of Geology and Mining Cadastre Department of Mineral Resource and Petroleum Authority has been proven and verified in a decision of the Capital City Administrative Court. Thus, the

Respondent must fulfil its obligations provided for in Provision 498 of the Civil Code, 19.1 of the Constitution of Mongolia and pay for related damages.

The Law to Prohibit Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas has not been enforced for 1 year and 8 months. The Government claims that it is impossible to enforce this law.

Hence, the Government is not fulfilling its obligations specified in 3.2, 7.2 of the Law on Government. For this reason, we petition that an order be placed upon the government to enforce the law and revoke licences granting permissions to operate inside the boundaries territories protected under the Law. We are petitioning that the claims be settled.

The representative of the Respondent provided explanations to the Court as follows: a term "river basin area" does not exist in either the Law on Environmental Protection or the Law on Water. Instead, the representative of the Respondent understood it as "water basin area" and gave an explanation. The compensation will be paid when the damages are calculated into a sum of money according to the approved methods. "Methods and procedures for carrying out environmental damage assessment, charging compensation" was approved by the A-156 Resolution of the Minister of Environment and Tourism in 2010. Measures are being taken to carry out ecologic and economic damage assessment and compensation for caused damages, to be performed teams of professionals appointed by the minister as well as the governors of soum and district are given an order to claim relevant expenses from the faulty parties.

The parliament has criticized the Government for failing to fulfil its obligations on behalf of its citizens, as was noted in connection with its obligations under the Constitution of Mongolia. In order to fulfil its obligations, the Government is to engage in structural organization, as specified in the Law on Government and other laws, as well as cause to implement through its ministries tasks to enforce and promulgate 30 laws and programs passed by the Parliament of Mongolia for environmental protection. According to these laws and regulations, responsibilities of the person at fault, responsibilities of offenders are all reflected. If the Government is considered in breach of the Constitution of Mongolia, a complaint can be submitted to the Constitutional Court (Tsets).

The Government is fulfilling its sovereign rights specified in the law. Since 1992, it has developed and passed laws for environmental conservation issues, policies on ecology, development programs and regulations. The Government implements conservation of the environment, carry out reclamation, protect ecology, and build monitoring systems within the framework of the laws and programs. In July 2010, the Government made amendments to the Law on Environmental Protection, which gave NGOs the right to public litigation, to demand elimination of violations, and to recover any damages caused within the framework of these activities.

In 2006, the Government passed Resolution 308 and has since been implementing "a program to use mineral resources with less impact and damages" On May 27, 2010, "Methods of environmental damage assessment, charging compensation" was approved in the form of the A-156 Resolution by the Minister of Environment and Tourism, and a team selected from professional organizations was appointed to work on this matter. It is a time consuming activity that requires deep knowledge of the relevant ecosystems, and actions are being taken to identify damages caused to the aforementioned river basin areas. The petition claims in relation to the proceeding action are not related to the rights of non-governmental organizations provisioned in the law. The Government partners with organizations engaged in environmental

conservation activity under specific terms and conditions in accordance with the laws and regulations. There is no legal basis to partner and make a contract directly with a single organizations. Reclamation activity is technical activity carried out by business entities and Thus, it is against the rules and objectives followed by the Petitioner, a non-governmental entity. However, monitoring of the reclamation activity is legally permissible for non-governmental organizations. The petition against the Government will not be accepted for the reason that it did not clearly name the offender and amount of the estimated damages of the forenamed river basin areas are. There is no legal basis for the Government to direct responsibility for the environmental damages.

According to provisions of the Minerals Law, Budget Law, Non-Governmental Organization and Advocacy, there is no legal basis for the Government to recover expenses necessary for performance of the Petitioners mission. . For this reason, we will not accept the petition.

On March 15, 2011, the Sukhbaatar District Court issued Decision 447, which states that the petition submitted by UMMRL has been dismissed based on 9.4.2, 9.4.3, Article 9, 497.1, Article 497, 510.1, and Article 510 of the Civil Code; and, Provision 1.1, Article 32, of the Law on Environmental Protection.

The Capital City Court of Appeals did not amend Verification 493 of the Court of trial dated June 10, 2011.

The Trustee of the Petition submitter noted in the complaint that the Court of Appeals has incorrectly interpreted and applied the law. For this reason, the court made a decision to dismiss the petition that is to mandate the Government fulfil its obligations as specified in 9.4.2, 9.4.3, 9.4.4. This has no legal basis. In addition, the court settled the case based on the explanation given orally by the Respondent about actions to improve legal environment, such as enforcement of a development program on environment and ecology, and to advance its monitoring system.

There is no evidence nor basis for considering that the actions which are taken by the Government to draw land cadastre in order to stop mining activities of entities and citizens at the forenamed river basin areas, revoke mining licences, and develop methods to carry out assessment of caused damages, are slow in regard to time taken, although the actions are proceeding step by step. Therefore, we are making a request to dismiss both the Court Decision and Verification, and return the case to the first instance trial court for final resolution.

## CONCLUSION

UMMRL made the following 5 demands in its petition submitted to the court: “assign to assess environmental damages caused to the river basin areas of Onggi, Zavkhan, Tuul, Khangiltsag, Khuder, Ulz, Yruu, and Gachuurt rivers within 2 months: notify the public of said assessment; environmental damages caused to these river basin areas to be covered by the Respondent, assign reclamation of forenamed river basin areas to be carried out under contractual terms with the Respondent, damages amounting to 68.908.512 tugrug to be paid to the Petition submitter; enforce the Law to Prohibit Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas by issuing a resolution revoking licences of the entities operating in the regions of forenamed river basin areas.

Review of some of the petition demands made in the framework of explanations given and documented by the first instance trial court, the Court of Appeals by the court stenographers establishes that the case was settled in compliance with the Provision 40.1-40.3, Article 40, and 116.3, Article 116 of the Law on Civil Case Settlement at the court.

There is no evidence provided for the case in relation to the damages caused to the forenamed river basin areas proving that these were result of direct faulty actions of the Government. The Petition submitter did not present any evidences and denied the explanation given by the Respondent regarding impacts of various factors that have caused the environmental damages, as well as there is no legal basis to support for the 68.9 million tugrug to be paid and rehabilitation to be carried out by the Petitioner under contractual terms.

For this reason, it is concluded that when the court dismissed the first four petition demands, it considered that the Sections 11, 12, Provision 2, Article 3, Provisions 16, 26, 32, 49, of the Law on Environmental Protection, Article 56, of the Minerals Law, and Provision 1, Article 3, of the Law on Government, it has correctly interpreted and applied to this subject case.

Although the basis for the conclusion made by the court in relation to the last demand of the petition is not solid enough.

The Law to Prohibit Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas, and the Law on Regulations to Follow the Law to Prohibit Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas was passed by the Parliament of Mongolia on July 16, 2009; a claim is made on the Respondent to issue Resolution 55 on measures to be taken in relation to above mentioned passed laws, take relevant measures to enforce these laws.

The concept of the last demand of the petition is requesting to assign enforcement of the Law to Prohibit Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas to the Government and/or demanding it to fulfil the provisions of the Resolution 55, which was passed in 2009 by the Parliament of Mongolia. The court dismissed the case by applying the Minerals Law or other irrelevant laws, which violated Provision 116.2, Article 116, of the Law on Civil Case Settlement at the court.

The Respondent did not provide any evidence that proves the government has fulfilled provisions of Parliamentary Resolution 55 of the Mongolian Parliament, dated July 16, 2009. Thus, the court of review team has reviewed and concluded that there is legal basis for amending the decision and verification, in order to meet this demand of the petition.

Based on the Provision 176.2.2, Article 176, of the Civil Procedure Code RESOLVE:

1. Amend Provision 1 of Ordering section of Verification # 493 of the Capital City Court of Appeals dated June 10, 2011 and Decision # 447 of the Sukhbaatar District Court dated March 15, 2011: "Dismiss the petition submitted by UMMRL requesting an order to be placed upon the Government of Mongolia to issue a resolution that would revoke mineral resource exploration and mining licences owned by enterprises according to the "Law to Prohibit Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas" within 15 days from date of court decision is made" to add to: "Dismiss a petition submitted by UMMRL..." ... "Order the Government of Mongolia to enforce Article 1, of Law on Regulations to Follow Law to Prohibit Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested

Areas and Law to Prohibit Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas, and the Parliamentary Resolution 55 of Mongolian Parliament dated July 16, 2009 on measures to be taken in relation to the passed Law that Prohibit Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas.

2. Mention the Petition submitter did not pay stamp fee when submitting a complaint for review.

MODERATOR JUDGE

signature/ stamp

D. TUNGALAG