



Rights & Accountability in Development | PO Box 778, Oxford, OX1 9GU | United Kingdom  
Tel: (+44) (0)1865 436245 | Fax: (+44) (0)1865 612001 | <http://www.raid-uk.org> | E-mail: [tricia.feeney@raid-uk.org](mailto:tricia.feeney@raid-uk.org)

3 July 2011

H. E. Gombojav Zandanshatar  
Ministry of Foreign Affairs and Trade  
Peace Ave - 7a, Ulaanbaatar  
14210  
Mongolia

E-mail: [mongmer@magicnet.mn](mailto:mongmer@magicnet.mn)

Dear Minister,

**RE : Arrests of Leaders of Fire Nation (*Gal Undesten*) and United Movement of Mongolian Rivers and Lakes (UMMRL)**

I am writing to you as a matter of some urgency regarding the reports we have just received concerning the recent arrests of leaders of Mongolia's environmental movement. I am the Executive Director of Rights & Accountability in Development (RAID), a non-governmental organization that works to promote human rights and responsible corporate conduct. I am also a member of the Steering Board of the British Government's National Contact Point for OECD Guidelines for Multinational Enterprises— a government-backed code of conduct for promoting responsible corporate behaviour.

The arrests on 23 June 2011 of the leaders of Fire Nation and the United Movement of Mongolian Rivers and Lakes (UMMRL) would appear to be related to their opposition to mining undertaken in areas where such activities are prohibited by law because of the risk to Mongolia's rivers and key water sources. They have organized demonstrations in Ulaan Baatar, the capital and visited companies in certain areas to dissuade them from mining in protected zones in contravention of Mongolian law.

According to information that we have received four UMMRL members were arrested on 23 June after they had accepted an invitation to attend a public meeting issued by a local

government official of Uvurkhangai *aimag*. On arrival Tsetsegee Munkhbayar, N. Sambuu-Yondon, D. Tumurbaatar and M. Baatarkhuyag were immediately arrested. They are now being held at the Gants Khudag detention centre. Only in the case of Mr Ts. Munkhbayar was there a warrant for the arrest for damage to property. This relates to an incident that occurred in September 2010 when Mr Munkhbayar and three other UMMRL members allegedly fired shots with their hunting rifles at gold mining equipment belonging to two foreign companies, Centerra Gold and Puuram LLC in the mountains of Selenge, one of the provinces with the highest concentration of gold production. The incident is under investigation. Munkhbayar is also alleged to have fired shots on 22 June 2011 at equipment belonging to the gold mining company, Irmuun Bosgo LLC, in Uvurkhangai.

Other arrests of environmental activists took place on 23 June in Ulaan Baatar: G. Boldbaatar, Ts. Enkhayar and G. Dashdemberel, who are leaders of UMMRL and the Fire Nation were arrested allegedly on the orders of Sukhbaatar District Judge N. Sukhbaatar because they had helped organize unauthorized demonstrations in Sukhbaatar Square, Ulaan Baatar's main square. These demonstrations took place in April, May and early June. Dozens of nomads and herders from regions surrounding the capital converged on Sukhbaatar Square to demand the adoption of draft legislation to demarcate the boundaries of the protected areas.

This is not the first time that the international community's attention has been drawn to the social tension in Mongolia arising in relation to the rapid expansion of mining activities and the apparent failure of the Government to find a balance between the interests of mining industry and the rights of the wider population to an adequate standard of living and a healthy and safe environment. Indeed the concerns about the human rights impact of mining was raised in a submission signed by a group of civil society organizations during Mongolia's Universal Periodic Review:<sup>i</sup> The United Nations has also expressed its concern about the problems associated with poorly regulated mining:

According to the Constitution, land is the property of the State. The rights of indigenous nomadic people to use the pastureland are recognized in customary law but there are no individual rights to pasture use or ownership. Mining licenses are issued by the Ministry of Mineral Resources and Energy and local stakeholders are barely consulted in the decision making process. In recent years, 40% of the land has been conceded to mineral licenses. As from April 2010, the President has stopped the mineral affairs authorities delivering new mining and exploration licenses for an indefinite period, until a legal environment has been created. In 2009 a law was introduced to prohibit mining near important natural resources. Mining is prohibited within Protected Areas, which cover 14 percent of the Mongolian territory. The law requires mining companies to rehabilitate the environment, but it is not adequately enforced. People's right to a safe and healthy environment is threatened by exhausted deposits which leave the land damaged, soil and water sources extensively polluted, especially with mercury and altered or dried up waterways.<sup>ii</sup>

In 2009 the Mongolian Parliament passed legislation prohibiting mining in protected zones including forested areas, river headwaters and water reservoirs.<sup>iii</sup> But before this law can be

implemented, the boundaries of the protected lands must be defined for the whole territory of Mongolia. In 2010 UMMRL worked with the Water Agency and local representatives to set these boundaries in the regions. The draft law covers an area of about 30 percent of the country. Its enactment is therefore an important step towards ensuring the ecological balance of Mongolia and a healthy and safe environment for its inhabitants, as well as towards preserving its territorial integrity and biological diversity. Boundaries of protected lands are enacted by decisions of local governments, but they require final authorization by the Government of Mongolia. The demonstrations in the capital had the objective of encouraging parliament to pass the law.

Many mining companies, such as the Toronto-listed Centerra Gold, which has a 100% equity interest in the Boroo gold mine (110 kms NW of the capital), have allegedly expressed their opposition to attempts to strengthen Mongolia's environmental laws. A group of MPs with links to the mining industry have also tabled amendments to the 2009 law protecting water resources, which would enable companies, who already have mine licenses, to continue to mine for gold in protected zones. While the Government of Mongolia has banned the activities of some smaller Mongolian companies, foreign mining companies have been allowed to continue, allegedly because they have threatened legal action if their licences are revoked.

Over the past 15 years gold extraction has diverted or dried up rivers and the use of toxic chemicals has polluted many rivers and streams. In June 2011, the Fire Nation delivered letters to a number of companies including Centerra Gold, calling on them to cease their operations.

We would urge the Government of Mongolia to respect the right to freedom of expression of the members of Fire Nation and UMMRL. Those alleged to have committed firearms offences or damage to property should be formally charged or released. All should be granted access to their families and lawyers. There is an urgent need for the Government to enter into dialogue with Mongolian civil society so as to avoid further confrontation and to enact legislation to protect the country's ecosystem on which the lives and livelihoods of the rural population depend. It is only through dialogue that the problems underlying the opposition to the mining sector can be addressed. Many foreign mining companies such as the Canadian Centerra Gold are expected to adhere to the provisions of the OECD Guidelines for Multinational Enterprises. The OECD Guidelines seek 'to encourage the positive contribution which multinational enterprises can make to economic, social and environmental progress, and minimise and resolve difficulties which may arise from their operations'. Companies are also expected to:

Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to human rights, environmental, health, safety, labour, taxation, financial incentives, or other issues. [OECD Guidelines 2011 Chapter II (v)]

On 16 June 2011 the UN Human Rights Council endorsed Guiding Principles on Business and Human Rights. The Guiding Principles remind States that they have an obligation to 'Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights and periodically to assess the adequacy of such laws and address any gaps'. States should also 'maintain adequate domestic policy space to meet their human rights obligations when

pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.’<sup>iv</sup>

It is my hope that these human rights principles will guide the Government of Mongolia in its efforts to reach a speedy and just solution to the conflict that has arisen in relation to mining in protected zones.

Yours sincerely,

A handwritten signature in black ink that reads "Patricia Feeney". The signature is written in a cursive, flowing style.

Patricia Feeney  
Executive Director

This letter is being sent to: H. E. Bulgaa Altangerel, Ambassador of Mongolia in London; Andrew Kavchak, the Canadian National Contact Point for the OECD Guidelines for Multinational Enterprises; Sergio Moreno, the UK National Contact Point for the OECD Guidelines; and Catherine Coumans, MiningWatch Canada

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<sup>i</sup> Environment-Mining-Human Rights Mongolian Stakeholders’ Joint Submission To UPR of OHCHR

<sup>ii</sup> United Nations Country Team in Mongolia Universal Periodic Review – 19 April 2010, Available at: [http://lib.ohchr.org/HRBodies/UPR/Documents/session9/MN/UNCT\\_UnitedNationsCountryTeam.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/session9/MN/UNCT_UnitedNationsCountryTeam.pdf)

<sup>iii</sup> “Law on prohibiting mining operations at headwaters of rivers, protected zones of water bodies and forested areas” 2009

<sup>iv</sup> Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy Framework’, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. A/HRC/17/31