

Complaint to the City Criminal Court of Appeals No. 10

February 24, 2014

Protecting legal and destined rights of all Mongolians, fulfilling our civil duties, using the means of choice we have been able to stop indisputable threat to the land, very root of integrity, national security, Mongolian independence.

In order to prevent danger to our nation we had to choose the means we resorted to and have strictly followed the principal of not causing any harm to anyone during the implementation.

We had fully restrained a danger of explosion or involuntary discharge of any firearms.

The imminent threat (on September 10, 2013 the government has presented to the parliament a draft law on altering the Law on Prohibiting Mineral Exploration and Extraction Near Water Sources, Protected Areas and Forests and the parliament was planning to discuss it during its special session on September 16, 2013) is in full breach of court order, Mongolian Constitution, Criminal Law, articles from International Treaties Mongolia joined in, is evidently lawless blunt attempt of attack on Mongolian National Rights with a threat of causing major damage had lead us to an attempt to protect our rights.

In this regard I would like to point out legal grounds and evidence from the case materials:

1. Regarding non action and actions of the government on the court ruling

- 1.1. It has been already 2 years and 4 months since the Higher Court of Mongolia on October 20, 2011 has ruled in its decree number 687 “Government of Mongolia has to fulfill its duties set forth in chapter 1 of the regulations following the implementation of Law on Prohibiting Mineral Exploration and Extraction Near Water Sources, Protected Areas and Forests and Decree Number 55 from July 16, 2009 of the Parliament of Mongolia” however they have not abide nor trying to.
- 1.2. The fact that the government has presented a draft law on altering the Law on Prohibiting Mineral Exploration and Extraction Near Water Sources, Protected Areas and Forests September 10th 2013 goes against a valid court ruling and attacks authority of the court.
- 1.3. Evidence on non-action and actions of the government are taken in the folder 14 pages 149-153, 237-246 of the case materials.

2. Regarding breach of the Mongolian Constitution by the Government

- 2.1. The government of Mongolia has not abided neither to the Law on Prohibiting Mineral Exploration and Extraction Near Water Sources, Protected Areas and Forests (further referred as LAW) which has been passed 4 years and 7 months ago nor the Higher Civil Court ruling, which was made 2 years and 4 years ago.
- 2.2. Chapter 6 of the Mongolian Constitution states: “Land, its content, forests, water, animals, plants and other natural resources belong only to the people of Mongolia and are under state protection”. Clause 2 chapter 50 states: Ruling of the Higher Court of Mongolia shall be final and all courts and relevant bodies should abide its decision. Clause 2.1. chapter 38 says: to protect the environment, rationally use natural resources, conduct reclamation”, clause 2 of chapter 16 “shall have a right to live in a healthy, safe

environment, have a right to be protected from lost ecological balance”, 2 clause chapter 1 “ honoring the rule law is fundamental principal of the state”, 1 clause chapter 70 “all actions of organizations and individuals shall be conducted in accordance with the constitution”. All of above clauses are broken.

3. Regarding breach of Criminal Law

3.1. Clause 258.1. of the Criminal Law of Mongolia states: those who purposely do not abide active court orders and rulings or hindering the implementation shall be fined, detained, sentenced to labor or imprisoned”.

3.2. Clause 1.1. says: the purpose of Mongolian Criminal Law is to protect Mongolian Independence, National Security, human rights, freedom, public and private property, national treasures, environment, legal framework, peace and tranquility of humankind from any criminal offence.

3.2.1. In modern days a term of legal war has been circulating and became more known to public. The act of presenting a draft law on altering the long named law on September 16 2013 is a criminal act and goes against valid court orders with a purpose to hinder its implementation. It has been done by the government by the order of domestic and international political and economic groups and is a direct threat to the Mongolian Independence and National Integrity. (I am ready to testify in court to elaborate further on this point).

3.2.2. If on September 16m 2013 we have not have stopped the unlawful attempt to alter the Law on Prohibiting Mineral Exploration and Extraction Near Water Sources, Protected Areas and Forests automatically 1782 special mining licenses would have been reinstated, re-launching explorations around the country to repeat the history of last 20 years when we lost over 4000 rivers, streams and springs, over 1300 lakes and pools have dried up causing disruption to the delicate ecological balance of the nature. When back in 2011 some studies have been done in accordance with approved standards to evaluate environmental damages caused by 235 mines out of above 1782 the amount came up to staggering 1,161,451,800,000 MNT.

3.2.3 If we would have not stopped this unlawful attempt under mechanized pressure from 1872 license holders 180,000 households engaged in our traditional Mongolian animal husbandry, inherited from our ancestors would have been squeezed out of their pasturelands.

3.2.4. Geographically Mongolia is situated in a uniquely important location of fresh water sheds of the entire region. Thus Mongolia plays a vital role in shaping up the quality of fresh water running to the Arctic, Pacific and Central Asian watersheds. The fact of above attempt to alter protection laws is a criminal act of endangering a special role Mongolia plays within international community to protect fresh headwater source in the region.

4. About breaching international conventions Mongolia is a part of

4.1. The fact that government of Mongolia has not abided neither to the Law on Prohibiting Mineral Exploration and Extraction Near Water Sources, Protected Areas and Forests (further referred as LAW) which has been passed 4 years and 7 months ago nor the Higher Civil Court ruling, which was made 2 years and 4 years ago goes in breach of following International Conventions.

4.2. United Nations Framework Convention on the Climate Change: it is time to realize that global climate change and its negative affects are a worry for all of the humankind;

all countries

should undertake a responsibility not to cause any harm and damage to the neighboring countries within its responsibilities and actions;

in order to protect interests of current and future generations there should be firm decisions made in regard to protection of the climate.

4.3. Ramsar Convention on Wetlands (specifically nesting areas of water and shorebirds):

- prevent growing danger of utilizations of wetlands for industrial purposes and negatives affects of it;
- all parties concerned should be providing proper protection for birds not only on the list but all species found in the area and guarantee their habitat in the wetlands.

4.4. The Human Rights Act

- every member of a humankind is entitled to dignity and recognition of it is a roof of freedom, justice and peace;
- disrespect of basic human rights leads to acts of brutality. Everyone has the right to freedom of thought, conscience and religion;
- in order to prevent people's armed resistance to oppressing governments one should protect basic human rights.

4.5. International Covenant on Civil and Political Rights

- all nations are entitled to usage of natural resources for its own benefit, on the basis of mutual benefit, in line with all rights and responsibilities set forth in international economic and legal contracts;
- by no means any nation should be deprived of their basic means of existence;
- all countries united under this covenant shall not discriminate anybody based on race, nationality, sex, language, religion, political views, national and social background, wealth.

5. Regarding investigation, court hearing being one sided and non-complete

5.1. Despite our numerous requests from prosecutor Enkhbayar B. and judge Aldar to question important witnesses who would contribute immensely to coming up with a complete and actual picture of the events concerned without any grounds they were dismissing our requests, this way limiting and ignoring our constitutional rights and restraining the trail of information on what and how the decisions were made.

6. Regarding conclusions of the ruling conflicting with reality

6.1. Because the whole investigation was conducted improperly without considering whole a lot of valuable evidence the court was lead by conclusions and evidence provided by prosecutors office only the ruling came out far away from reality.

It is impossible to express how regretful it is to see how court has ruled against previous court decision, ignored the fact government breached Mongolian Constitution, Criminal Law, International Agreements in order to cover up for the government this way breaching the fundamental rights and common human values.

6.2. The court ruling mentions that we have threatened to blow bombs unless our demands are met, however we have never done that. Opposite as a result of our timely actions

we were able to stop criminal attempt from the side of the government to change the laws and this is the truth.

Also on page 25 of the ruling it is said that the incrimination of clause 149 of the Criminal Law has been dropped towards defendant Munkhbayar Ts. in compliance with clause 24.1.1. of the Law of Criminal Procedures. This statement goes against conclusion on page 15, where it is said that the attempts of defendants to gain profit have full characteristics of an organized group.

Our goal is “to save our nation” and we have sworn to give our lives for protection of national rights.

We have never intended nor did threaten and endanger our fellow Mongolians. It is proven by the expertise that all weapons carried were secured by safety locks and grenades and trotyl were dismantled. However the court based its decision on possible results, using future conditional time in its language as if it was protecting the prosecutors groundless conclusions.

The court dismissed the fact that in order to assist the investigation we have voluntarily brought remaining ammunition to intelligence agency staff and informed of their locations to both journalists and police.

7. About conflicts in the most important evidence material and court taking sides

7.1. The court used our demand to withdraw draft law on altering of the Law on Prohibiting Mineral Exploration and Extraction Near Water Sources, Protected Areas and Forests (further referred as DRAFT LAW) and approve submitted decree to implement the Law on Prohibiting Mineral Exploration and Extraction Near Water Sources, Protected Areas and Forests from the parliament. At the same time they do not mention whether action of the government to try to change existing laws is legitimate, whether it is right of the government not to abide higher court ruling on its actions and non-actions regarding implementation of the Law on Prohibiting Mineral Exploration and Extraction Near Water Sources, Protected Areas and Forests. However Higher court ruling number 687 from October 20, 2011 clearly orders the government to implement the clause 1 of the Law on implementation of the Law on Prohibiting Mineral Exploration and Extraction Near Water Sources, Protected Areas and Forests as well as decree number 55 of the Parliament from July 16th 2009 on Some Measures related to passing of the new law.

Without considering and studying of Higher court ruling number 687 from October 20, 2011 clearly orders the government to implement the clause 1 of the Law on implementation of the Law on Prohibiting Mineral Exploration and Extraction Near Water Sources, Protected Areas and Forests, decree number 55 of the Parliament from July 16th 2009 on Some Measures related to passing of the new law, list of 1782 exploration licenses eligible for termination in accordance with above law, estimated damages caused by 234 of above licenses the court could not possible come to a legitimate decision.

8. Regarding omission of laws which should have been used

8.1. Our struggle of September 16, 2013 to put to an end to illegal attempts of the government to threaten Mongolian Independence, National Security, right of Mongolians to live in a healthy and safe environment should be considered as:

In accordance with clauses 40.1. and 40.2. of the Criminal Law forced defense, in other words our actions in the interests of state and society for the rights of people to live in safety should not be considered as crime.

- every citizen, not depending on profession, legal duties, special training have a right to perform forced defense;
- guard's right to forced self defense shall not be affected by avoiding socially dangerous acts or having had an opportunity to seek for assistance from officials or other people;
- in accordance with clause 42.1 of the Criminal Law: if in an attempt to protect social interests, right to live, freedom and other rights actions drawn in special section of this law and caused damages are lesser than the ones which have been avoided, and if there was no other means of stopping this act those actions should not be considered as criminal act;

8.2. Because actions of September 16, 2013 have not caused any harm to others, no victim has been identified, no harm to society was caused, was conducted in a pure attempt to protect fundamental rights of people, in accordance with clause 16.2. of the Criminal Law Special Chapter despite having a form of criminal act, because it didn't cause any damage to the society should be treated as per rehabilitation laws.

8.3. The fact that we have called 102 to point out to the locations where trotyl was hidden, given information to secure them, and that we have voluntarily shown places where remainder of grenades were hidden and delivered them to intelligence agency officer should qualify as per clause 177.2 of the Criminal Law:

it is possible to drop criminal charges if information was provided to legal agency, or person has actively participated in stopping of a crime and if there are no other incriminations.

In the description of the clause 185.2 of the Criminal Law it is said that in case fire arms, military weapons, explosives have been stored without proper permits but have been voluntarily brought to concerned organizations people involved could be freed from criminal charges.

Thus we are asking to dismiss District Court No. 1 Ruling number 126 from January 21, 2014 because we have been falsely accused based on wrongful interpretation of laws and reinstate our freedom and name.

Please provide us with the right to fair trial as per clause 14 chapter 16 of the Mongolian Constitution and provide us with a right to represent ourselves in court.

Complaint written by

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