



## Report to the Government

Assessment of the social security  
legislation for the ratification of  
the Social Security (Minimum  
Standards) Convention, 1952  
(No. 102)

Protección  
**Social**

Protection  
sociale

Social  
Protection

# **Mongolia**

## **Report to the Government**

**Assessment of the social security legislation for the  
ratification of the Social Security (Minimum Standards)  
Convention, 1952 (No. 102)**

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The ILO initiated this comprehensive study in 2008, with a team comprised of Ms Ursula Kulke, former Coordinator for Standards and Legislation, Social Security Department, ILO Geneva, and currently Senior Social Security Specialist, ILO Regional Office for Arab States, Beirut, and Ms Aidi Hu, Coordinator for Asia and the Pacific, Social Protection Department, ILO Geneva, at the request of the former MSWL. The work was continued and completed in the following years, and more recently in 2013, at the request of and in cooperation with MPDSP.

A first report was prepared by Ms Emmanuelle St-Pierre Guilbault, Legal Specialist, Social Protection Department, ILO Geneva, under the guidance of Ms Ursula Kulke, and Ms Aidi Hu, following a series of consultations that took place in Ulaanbaatar in 2009 and 2010, and further exchanges with Mongolian constituents in 2011 and 2012. The report was substantially revised in 2015 to take into account legislative modifications and other significant developments in the field of social protection in Mongolia, under the coordination of Ms Emmanuelle St-Pierre Guilbault and Ms Céline Peyron Bista, Chief Technical Adviser of the ILO/Japan Project “Income security and employment promotion for vulnerable groups in Mongolia, learning from ASEAN”, with the guidance of Mr Tim De Meyer, ILO Country Director for China and Mongolia. Substantial inputs were also provided by Ms Lkhagvademberel Amgalan, National Project Manager of the ILO/Japan Project “Income security and employment promotion for vulnerable groups in Mongolia, learning from ASEAN”, Ms Maya Stern Plaza, Legal Officer, Social Protection Department, ILO Geneva, Mr Kroum Markov, Social Security Standards Specialist, International Labour Standards Department, ILO Geneva, and Ms Bolormaa Purevsuren, as ILO National Coordinator for Mongolia.

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The preliminary findings of the assessment were presented to Mongolian constituents by Mr Kroum Markov and Ms Céline Peyron Bista at the tripartite national workshop in Ulaanbaatar on 21 May 2015, under the ILO/Japan Project “Income security and employment promotion for vulnerable groups in Mongolia, learning from ASEAN”. Further discussions on the way forward were held between Mr Tim De Meyer, Ms Celine Peyron Bista and Mongolian constituents in September and December 2015.

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## Executive summary

### Context

Mongolia's social security system is comprised of contributory (social insurance) and tax-financed (social welfare) schemes covering all the classical contingencies of social security. The system is founded on both the legacy of a socialist style social welfare regime and an insurance scheme introduced following the economic transition from a centrally planned economy to a market oriented economy in the 1990's. As such, Mongolia currently provides its population with a wide range of social protection benefits, including through social insurance, social assistance means-tested and universal schemes. Mongolia has also made a lot of efforts to restore the previously high population coverage rates, reduced as one of the initial consequences of the transition.

Economic growth, especially in the last decade, has been dramatic largely due to the booming mining industry. Nevertheless, poverty and substantial gaps in social security coverage remain and inequality and disparity increase. This is particularly true of certain vulnerable groups such as herders, self-employed, informal workers and the elderly.

The recently launched report of the Assessment Based National Dialogue (ABND) on social protection completed during 2013-2014 confirmed the political readiness to ensure that growing economic wealth is shared equitably among the whole population, including through social protection measures for redistribution. Moreover, there is political consensus among the Government and social partners on the need to address the gaps in the current social security system and, at a minimum, implement a social protection floor in Mongolia.

Given the existing comprehensive social security structure, the resources, the means and the political will, Mongolia is in an ideal position to take concrete actions to further reform and improve the current social security system.

Within the context of the long-lasting collaboration between the Government of Mongolia and the ILO, this report has been prepared at the request of the Ministry of Social Welfare and Labour – the former Ministry in charge of social security, with a view to verifying whether Mongolia would indeed be in a position to ratify the ILO Convention Concerning Minimum Standards of Social Security, 1952 (No. 102). Convention No. 102, the flagship Convention of the ILO in the field of social security, embodies an internationally accepted concept of social security. It is a key tool used by countries to guide reform leading to the establishment of comprehensive social security systems at national level, and it also serves as a reference at the regional and international levels. It defines the nine classical branches of social security – medical care, sickness benefits, unemployment benefits, old-age benefits, employment injury benefits, family benefits, maternity benefits, invalidity benefits and survivor's benefits – and sets minimum requirements for each branch. This Convention also establishes common rules for collective organization, financing and management of social security, and upholds the principles of good governance of the system under the general responsibility of the State, the right to due process and the principle of equality of treatment of non-national residents.

It is worth noting as well that although Mongolia has so far ratified none of the 8 up-to-date ILO Social Security Conventions, the country has ratified the Maternity Protection Convention, 1952 (No. 103).



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## Key findings

This report contains a detailed legal assessment of existing social security provisions taking into account the requirements of Convention No. 102, and is intended to serve as a reference in view of a possible future ratification of Convention No. 102 by Mongolia. It formulates a number of recommendations and, on the basis of the analysis with the information made available to the ILO at the time of preparing this report, concludes that Mongolia is indeed in a position to ratify the Convention by meeting its minimum requirements.

More specifically, this report concludes that Mongolia could accept the following Parts of the Convention, subject to clarifications and/or minor parametric adjustments as the case may be, namely:

- (1) **Medical Care (Part II)**: subject to confirmation that non-national persons who reside in Mongolia are covered for medical care in case of a morbid condition and pregnancy, confinement and their consequences. In addition, subject to confirming that safeguards exist to ensure that cost-sharing rules are designed so as to avoid hardship.
- (2) **Sickness Benefit (Part III)**: subject to removal of the yearly limitation on the duration of payment of benefits, and to the formulation of a declaration in accordance with Article 3 of the Convention of a temporary exception (as to the duration of the benefit).
- (3) **Unemployment Benefit (Part IV)**
- (4) **Employment Injury Benefit (Part VI)**
- (5) **Family benefit (Part VII)**: subject to extending coverage to non-national residents in Mongolia, in respect of their children.
- (6) **Maternity Benefit (Part VIII)**, subject to confirmation that non-national resident women are entitled to receive universal medical care in case of pregnancy, confinement and their consequences.

Ratification of two other parts of the Convention, namely, **Invalidity Benefit (Part IX)** and **Survivor's Benefit (Part X)** would be possible subject to amending certain provisions of the national legislation and clarifying the manner in which the different legal provisions concerned are applied in practice.

Noting the ongoing pension reform as this report comes to completion, the ILO advises the Government to delay its consideration of the ratification of **Part V of the Convention, Old-Age Benefit**, until the future of the pension scheme is determined.

Ratification also requires compliance with the provisions of **Part XII and Part XIII of Convention No. 102**, which apply to all schemes and benefits covered by the Convention. Generally, the Mongolian legislation appears in line with the provisions found therein; however, certain clarifications would be required with respect to: (1) the coverage of non-national residents and their dependents for primary medical care benefits, including

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maternity medical care benefits as well as the coverage of non-national resident children under the Child Money programme (**Equality of treatment of non-national residents, Article 68**); (2) suspension of unemployment benefits where the employee fails to provide good justification to assume temporary paid work (**Suspension of benefits, Article 69**); (3) whether insured persons are represented in the dispute mechanism (**Right to appeal and complain, Article 70**); and (4) finally how the State assumes the general responsibility for the due provisions of the benefits and takes all measures, including actuarial studies, for such purposes (**General responsibility of the Government, Article 71**).

## Why ratify Convention No. 102?

There would be a number of advantages for Mongolia in ratifying Convention No.102. Primarily, in ratifying Convention No. 102, Mongolia would be following the guidance provided by the latest international standards, including the Social Protection Floors Recommendation (No. 202), adopted by the International Labour Conference in June 2012. Convention No. 102 can serve as **guidelines and reference for minimum standards for the reform of the social security system**, in terms of objectives, benefits, personal coverage and administration principles, the need of which is widely recognized, in particular to extend coverage to herders, self-employed, and informal economy workers. In periods of reform, ratification can give a particularly strong signal to society and social partners of the State's commitment to comply with minimum social security standards. Once ratified, Convention No.102 constitutes an **internationally recognized and monitored safeguard** of the Mongolian social security system that serves to guarantee that the protection provided to workers and their families is not reduced below the internationally agreed minimum level with future reforms. The implementation of the principles and standards of Convention No.102 will also contribute greatly to decent work and poverty alleviation by providing for adequate basic levels of income security and access to basic social services.

Secondly, in addition to the commitment that a country shows to its population by ratifying the Convention and thereby increasing their confidence in the system, it demonstrates to the international community its **political acceptance** of the minimum standards and basic social security principles set out in the Convention.

Thirdly, international instruments have served and continue to serve as important sources for the development of the Mongolian social framework. It marks a concrete step for a country towards meeting **its obligations under international instruments for the protection of human and labour rights**, thereby setting an environment conducive to political and social stability, and creating an environment attractive to business and international investments. Mongolia has already ratified a number of international labour standards instruments. Ratification of Convention No.102 would set an example for other countries. In this respect, it should be underlined that following Japan, Mongolia would be the second country to have ratified Convention No. 102 in the Asia and Pacific region.

## The way forward

The ILO is confident that a number of components of Mongolia's social security legislation are already consistent with the Convention and that ratification would provide a solid and sustainable basis for the development and progressive extension of social security in the medium and longer term. In the continuity of its collaboration with the Government of Mongolia, the ILO is readily available to provide the Government with the necessary

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technical assistance required to complete the ratification process, as well as that needed to ensure greater conformity of national law and practice with the requirements of Convention No. 102 and to guide any restructuring process the Government undertakes in accordance with the principles and standards outlined in Convention No. 102 and Recommendation No. 202.

In addition, the ILO would keenly work with the social partners to build a national social protection floor, within the framework outlined by the new Recommendation No. 202 which would effectively complement the measures envisaged within the perspective provided by Convention No. 102.

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## Abbreviations

ABND	Assessment based national dialogue
CMP	Child Money Programme
CMTU	Confederation of Mongolian Trade Unions
GDP	gross domestic product
HDF	Human Development Fund
ICESCR	International Covenant on Economic, Social and Culture Rights
ILC	International Labour Conference
ILO	International Labour Organization
MONEF	Mongolian Employers' Federation
MPDSP	Ministry of Population Development and Social Protection
MSWL	Ministry of Social Welfare and Labour
NSO	National Statistical Office
SIGO	Social Insurance General Office
UN	United Nations



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## Introduction

In the 1990s Mongolia underwent a transition from a centrally planned to a market based economy. Prior to the transition, Mongolia's social security system was based on a socialist style social welfare regime built around centrally financed benefits and extensive social services, including medical care, maternity benefits, pensions and many others provisions. With the transition, Mongolia recognized the need to restructure its social security system to address its new economic and social situation. It began a process of substantial reforms which included the introduction of social insurance and a number of universal and targeted social welfare programmes. Today, Mongolia has a comprehensive social security system covering all the classical contingencies set out in ILO Social Security (Minimum Standards) Convention, 1952 (No. 102), through a combination of contributory social insurance schemes and non-contributory social welfare programs.

Mongolia currently has one of the fastest growing economies in the world. The growth in GDP averaged at around 9 per cent during the period 2012-2013, largely a reflection of ongoing development of the mining sector. However, Mongolia continues to have high poverty levels and considerable gaps in social security coverage, particularly among vulnerable groups such as the group of herders, self-employed and informal workers who account for over half the labour force in Mongolia and are mostly not covered by social insurance scheme. Providing effective and efficient social security protection is also made difficult by Mongolia's unique physical and human geography. Stretching over a large geographical area, Mongolia is one the most sparsely populated country in the world. Its population is made up of a large number of herders who maintain a nomadic (or semi-nomadic) lifestyle over large rural spaces and a growing number of rural-to-urban migrants especially in the direction of the capital Ulaanbaatar but also to other large cities such as Erdenet and Darkhan. This reality sets clear challenges for the delivery and administration of social security benefits.

Alongside economic growth, there has also been political awareness about the need to address gaps and shortcomings in the current social security system. In this respect, a Human Development Fund was created with the apparent objective of sharing the wealth stemming from mining resources among the population. A universal child money benefit is among the programmes included under the Law of Mongolia on Human Development Fund. This commitment was also felt in the elections held in June 2012 where both main political parties placed the strengthening of the provision of social security high on their agendas. Following these elections, the Ministry of Social Welfare and Labour has been replaced by two new ministries, the Ministry of Population Development and Social Protection and the Ministry of Labour. The current Government has demonstrated a political willingness to carry out such reforms, willingness which is now accelerating with the next general elections approaching (June 2016).

With the assistance of the ILO/Japan Project "Income security and employment promotion for vulnerable groups in Mongolia, learning from ASEAN", between September 2013 and December 2014, the ILO has supported the government in facilitating a national dialogue aimed at assessing the social protection situation and defining a social protection floor for Mongolia, with an estimate of its cost. The report of the *Social protection assessment based national dialogue: Definition and cost of a social protection floor in Mongolia* was launched on 15 May 2015. The report sets the main direction for extending social protection in the country. Among the policy recommendations, the national dialogue

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discussed the reform of the old-age pension scheme. In this respect, the ILO has provided policy advice since 2010, and more recently has facilitated a **national consensus on the adoption of a multi-pillar system for extending pension coverage to all**. The ILO is also supporting the extension of social security coverage among rural populations through the piloting of better linkages with employment promotion and business development among young herders.

The current report responds to a request from the Minister for Social Welfare and Labour of Mongolia, following a first tripartite seminar on ILO Convention No. 102 during an ILO mission in March 2009, to conduct an informal assessment on the application of Convention No. 102 by the Mongolian legislation in order to determine whether the country was in a position to ratify the Convention. Such request was then reiterated when the new Government took office in 2012. The creation of a separate Ministry of Population Development and Social Protection marked a clear commitment to promote social protection in Mongolia. Accordingly, this report contains a detailed legal assessment of existing social security provisions against the requirements of Convention No. 102, and is intended to serve as a reference in view of a possible future ratification of Convention No. 102. It is worth noting that Mongolia has already ratified the Maternity Protection Convention, 1952 (No. 103).

Chapter I of the report provides an overview of the main provisions and minimum requirements of ILO social security standards and most particularly those of Convention No. 102, which are used as the benchmarks against which the social security statutory provisions currently in force in Mongolia are assessed. This chapter also contains a description of Mongolia's social security legal framework and an inventory of the laws establishing and governing the functioning of the various social security schemes in place in the country. The importance of ratifying Convention No. 102 is assessed in light of Mongolia's particular economic, social and political circumstances and preliminary remarks, introducing the assessment done in Chapter II, are provided.

Chapter II examines the compatibility of the Mongolia's social security legislation and the branches it covers with the minimum standards and principles set out in Convention No. 102 under each of its respective Parts.

In Chapter III, the prospects of ratification of Convention No. 102 by Mongolia are examined against the background of the compatibility analysis done in Chapter II. Conclusions are drawn as to the Parts of the Convention that have implications related to legislation, and areas which would necessitate parametric or substantial changes to ensure compliance. Recommendations are then formulated as to the Parts that could be accepted by the Government in the ratification, and as to the way forward.

Convention No. 102 is a key reference in that it envisages social security as being provided through an integrated, comprehensive and coherent system that meets minimum requirements for the protection of the population against life risks or contingencies and that applies basic principles of good governance. It provides a valuable framework that could be used as a road map and guide projected reforms in Mongolia. It can also support efforts to extend coverage and create greater coherence, provide a response to poverty and address governance issues and gaps in the provision of social security. The ILO is well prepared to assist the Government in this process and to provide the assistance needed for ratification and implementation of Convention No. 102.

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## Chapter I

### **The legal framework: international human rights instruments, ILO social security standards and national social security system**

This chapter first sets out the international legal framework, and notably ILO Conventions and Recommendations, in the field of social security. It further provides an overview of the main provisions and minimum requirements found in ILO's flagship social security Convention, namely the Social Security (Minimum Standards) Convention, 1952 (No. 102). The importance of ratifying Convention No. 102 is assessed in the light of the national context. Finally a general overview of the existing Mongolian social security legal framework is provided alongside preliminary remarks preparing the way for the legal assessment undertaken in Chapter II.

#### **A. The International legal framework**

Concern for social security at the international level first manifested itself with the creation of the ILO in 1919. Initially charged with the mandate to promote workers' social security rights, the ILO was later entrusted with a wider task in 1944, that of contributing to achieving the extension of social security to "all those in need". Some years later, social security was recognized by the world community, united in the General Assembly of the newly established United Nations, as an international human right, part of those "basic rights and freedoms to which all humans are entitled". Since then, social security has been explicitly recognized as a human right, and enshrined as such in international legal instruments and standards for its implementation which have been formulated in ILO Conventions and Recommendations.

##### **a) *The right to social security in international human rights instruments***

From an international legal perspective, the recognition of the right to social security has been developed through universally negotiated and accepted instruments that establish social security as a basic social right to which every human being is entitled. In this way, the right to social security has been enshrined in several human rights instruments adopted by the United Nations, and is expressly formulated as such in fundamental human rights instruments, namely the Universal Declaration of Human Rights,<sup>1</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>2</sup>

Specifically, Article 22 of the Universal Declaration of Human Rights lays down that:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

And states in its Article 25, that:

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<sup>1</sup> UN: *Universal Declaration of Human Rights*, General Assembly Resolution 217 A (III), 1948.

<sup>2</sup> UN: *International Covenant on Economic, Social and Cultural Rights*, General Assembly Resolution 2200A (XXI), 1966.



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- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, invalidity, widowhood, old age or other lack of livelihood in circumstances beyond his control.
  - (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

The International Covenant on Economic, Social and Cultural Rights (hereinafter “ICESCR”) stipulates in its Article 9 that:

[t]he States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

While the Universal Declaration of Human Rights constitutes an unchallenged statement of fundamental human rights, the ICESCR has the quality of a treaty, open for signature and ratification and thus, a means for enforcing these human rights. States’ obligation in the implementation of these rights is one of progressive realization, as they undertake, upon ratification, to take steps towards the full realization of the rights, “to the maximum of their available resources” (Art. 2, para. 1).

#### **b) Social security for all: at the core of the ILO’s mandate**

The promotion of social security and the furtherance of this right is an important part of the ILO’s mandate, since its foundation in 1919.<sup>3</sup> From then onwards, the ILO was established as the authority in this field. To this effect, the preamble of the ILO Constitution states that the Organization’s mandate is to improve conditions of labour through, inter alia,

the prevention of unemployment, ... the protection of the worker against sickness, disease, and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury.

The ILO’s mandate was widened by the Declaration of Philadelphia, the first international legal instrument to stipulate the right to social security as a right belonging to all, and the first expression of the world community’s commitment to the extension of social security to all. The Declaration of Philadelphia, made part of the ILO Constitution, lays down the:

solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve”, among others, “the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care”, as well as “provision for child welfare and maternity protection.”<sup>4</sup>

More than 50 years later, in 2001, social security was reaffirmed by the International Labour Conference as a fundamental human right and its extension to all in need was restated as a fundamental part of the ILO’s mandate, and a challenge that needed to be addressed seriously and urgently by all member States.<sup>5</sup> Consequently, the ILO launched in 2003 the Global Campaign on Social Security and Coverage for All. The ILO Declaration on Social Justice for a Fair Globalization, adopted by the International Labour Conference in 2008, again reaffirmed the tripartite commitment to extend social security to all in need

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<sup>3</sup> ILO: *Constitution of the International Labour Organization*, 1 April 1919, Preamble and Article 1.

<sup>4</sup> ILO: *Declaration concerning the aims and purposes of the International Labour Organization (Declaration of Philadelphia)*, adopted by the International Labour Conference at its 26th Session, held in Philadelphia, on 10 May 1944, Article III(f) and (h).

<sup>5</sup> ILO: Resolution and Conclusions concerning social security, International Labour Conference, 89<sup>th</sup> Session, 2001.

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of such protection in the framework of the Decent Work Agenda.

The International Labour Conference in 2009 recognized the crucial role of social protection policies in crisis response, and the Global Jobs Pact called for countries to “give consideration, as appropriate, to building adequate social protection for all, drawing on a basic social protection floor”. The High-level Plenary Meeting of the UN General Assembly on the Millennium Development Goals (MDG Summit) in September 2010 recognized that “promoting universal access to social services and providing social protection floors can make an important contribution to consolidating and achieving further development gains” and hence endorsed the social protection floor initiative which the UN Chief Executives Board had launched in 2009.

Regional tripartite ILO meetings in Latin America, Arab States and Asia and the Pacific during 2007 and 2008 discussed social security extension strategies. A generic **twodimensional extension strategy** emerged, combining the extension of coverage to all through nationally defined social protection floors and the progressive implementation of higher levels of social security through comprehensive systems. This strategy was endorsed at the Asia Pacific Regional High Level Meeting on Socially Inclusive Strategies to Extend Social Security Coverage in New Delhi, India in 2008 (Social Security Policy Briefings, Paper 6 (Geneva, 2008)).

More recently, the International Labour Conference (ILC), in June 2011, adopted a Resolution and Conclusions which set out the strategy of the International Labour Organization with regard to addressing the challenge of extending coverage and further developing social security systems.<sup>6</sup> Based on the premise that social security is a human right, and a social and economic necessity, the ILC noted that closing coverage gaps is of highest priority for equitable economic growth, social cohesion and Decent Work for all women and men, and called for the extension of social security coverage through a two-dimensional approach, with a view to building comprehensive social security systems.

Effectivenational strategies to extend social security, in line with national circumstances, should aim at achieving universal protection of the population by at least minimum levels of income security and health care (horizontal dimension) and progressively ensuring higher levels of protection guided by up-to-date ILO social security standards, and notably ILO Convention No. 102, (vertical dimension). In line with national priorities, resources and circumstances, such two-dimensional strategies should aim at building comprehensive social security systems.

The two dimensions of the extension of coverage are consistent with moving towards compliance with the requirements of the **Social Security (Minimum Standards) Convention, 1952 (No. 102)**, are of equal importance and should be pursued simultaneously where possible.<sup>7</sup>

In order to strengthen the normative basis of the extension of social security, the ILC concluded that there was a need for a new international labour standard in the form of an

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<sup>6</sup> ILO: *Resolution and conclusions concerning the recurrent discussion on social protection (social security)*, International Labour Conference, 100th Session, Geneva, 2011, in Record of Proceedings (Geneva, 2011), No. 24: *Report of the Committee for the Recurrent Discussion on Social Protection* (Geneva), 2011.

<sup>7</sup> ILO: *Provisional Record No. 24, Report of the Committee for the Recurrent Discussion on Social Protection, conclusions concerning the recurrent discussion on social protection (social security)*, ILC, 100th Session, Geneva, 2011. (Conclusions concerning social security (2011)), paras. 8-9.

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autonomous Recommendation on this subject to provide flexible but meaningful guidance to member States in building national social protection floors within comprehensive social security systems. Accordingly, the **Social Protection Floors Recommendation, 2012 (No. 202)** was discussed and adopted by the ILC in June 2012.

**c) *Main ILO social security standards***

The ILO, in the pursuit of its mandate in the field of social security, and in its capacity as the responsible UN agency, has over the years adopted a range of standards, namely Conventions and Recommendations, laying down concrete obligations and guidelines for States to implement this right.

Historically and conceptually, social security standards can be classified into three different groups or generations of standards, according to the approach of social security that they embodied at the time of their adoption.

The first generation of standards corresponds to the instruments adopted since the creation of the ILO until the end of the Second World War. These standards are aimed at establishing compulsory social insurance systems for specific branches and at covering the principal sectors of activity and the main categories of workers.

The second generation of standards corresponds to the era of social security. The new approach consisted in unifying and coordinating the various social protection schemes within a single social security system covering all contingencies and extending social security coverage to all workers. This new conception is reflected in the flagship social security Convention, namely the Social Security (Minimum Standards) Convention, 1952 (No. 102).

The third generation of standards corresponds to the instruments adopted after Convention No. 102. Modelled on the latter, they offer a higher level of protection in terms of the population covered and the level of benefits and revise first-generation standards.

The adoption of the new Recommendation concerning national floors of social protection, 2012 (No. 202)<sup>8</sup> marks the beginning of a new phase in ILO social security standard-setting, which could be referred to as “universal social security coverage and comprehensive systems” (2012 and on-wards). Recommendation No. 202 envisages the development of comprehensive social security systems and the extension of coverage. It is the first ILO standard that sets forth as its priority objective the provision of basic levels of social security, i.e essential health care and basic income security, to all members of society, with a view to realizing the human right to social security and to progressively ensure higher levels of protection. Recommendation No. 202 also complements existing standards by providing guidance on how to cover the unprotected, the poor and most vulnerable, including workers in the informal economy and their families. In this way, it addresses poverty, vulnerability and social exclusion as «contingencies». It further envisages a systemic approach to social security that should be reflected in national social security extension strategies seeking to close gaps in basic protection and raise levels of protection, with explicit linkages to more advanced ILO social security standards and notably Convention No. 102 which should serve as a reference for such purposes.

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<sup>8</sup> It may also cited as the Social Protection Floors Recommendation, 2012.

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Since the establishment of the ILO, the International Labour Conference has adopted 31 Conventions and 23 Recommendations on social security. In 2002, the ILO Governing Body confirmed eight out of these 31 Conventions as up-to-date social security Conventions. These are included, together with the most important Recommendations in the Box 1 below:

**Box 1**

**List of the main up-to-date ILO social security standards**

- Income Security Recommendation, 1944 (No. 67)
- Medical Care Recommendation, 1944 (No. 69)
- Social Security (Minimum Standards) Convention, 1952 (No. 102)
- Equality of Treatment (Social Security) Convention, 1962 (No. 118)
- Employment Injury Benefits Convention, 1964 (No. 121)
- Invalidity, Old-Age and Survivors' Benefit Convention, 1967 (No. 128)
- Medical Care and Sickness Benefit Convention, 1969 (No. 130)
- Maintenance of Social Security Rights Convention, 1982 (No. 157)
- Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)
- Maternity Protection Convention, 2000 (No. 183)
- Social Protection Floors Recommendation, 2012 (No. 202)

Source: [www.ilo.org](http://www.ilo.org)

**d) *Short overview of the minimum standards and basic principles laid down in Convention No. 102***

Convention No. 102 is the flagship of the six up-to-date ILO social security Conventions. It is the only international Convention, which defines the nine classical branches of social security and sets minimum standards for each branch. Therefore, it is now widely considered as the key reference for the establishment of comprehensive social security systems. The nine branches for which Convention No. 102 make provision are: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit.

The **minimum standards** are set for each contingency with regard to:

- minimum percentage of the population protected in case of occurrence of one of the contingencies;
- minimum level of benefits to be paid in case of occurrence of one of the contingencies, and

- conditions for and periods of entitlement to the prescribed benefits.

Table 1 displays the minimum legal requirements of Convention No. 102 in relation to cash benefits to be provided under the different social security branches.

**Table 1. Legal requirements of convention No. 102 - Cash benefits**

Minimum standards				
Benefits	Coverage	Minimum benefit	Duration of payment of benefits	Entitlement conditions
Sickness	At least 50 per cent of all employees; or  Economically active population constituting at least 20 per cent of all residents; or  All residents with limited means	45% of reference wage	Benefit has to be granted for at least 26 weeks in each case of sickness	Possibility to prescribe qualifying period; but no longer than to preclude abuse;  Possibility to establish waiting period of 3 days
Unemployment	At least 50 per cent of all employees; or  All residents with limited means	45% of reference wage	Benefit has to be granted for at least 13/26 weeks, within period of 12 months	Possibility to prescribe qualifying period; but no longer than to preclude abuse.  Possibility to establish waiting period of 7 days
Old-age	At least 50% of all employees or  Economically active population constituting at least 20 per cent of all residents, or  All residents with limited means	40% of reference wage	Pension has to be paid until death	Prescribed age: not more than 65 years; possibility of fixing higher age with due regard to working ability of elderly persons in country;  pension of 40% has to be paid after qualifying period of 30 years of contributions/ employment or 20 years of residence; reduced pension to be paid after 15 years of contributions/employment
Employment injury	At least 50 per cent of all employees and their wives and children		Possibility of converting pension into a lump sum where (1) the degree of incapacity is slight or where (2) the competent authority is satisfied that the lump sum will be properly utilized	Benefit has to be granted from first day of
■ Temporary invalidity		50%		the occurrence of the employment injury;
■ Permanent invalidity		50%		Benefit must be granted at least to a person having been employed in the territory at the time of the accident
■ Survivors		40% of reference wage		

<b>Minimum standards</b>				
<b>Benefits</b>	<b>Coverage</b>	<b>Minimum benefit</b>	<b>Duration of payment of benefits</b>	<b>Entitlement conditions</b>
Family	At least <i>50 per cent of all employees</i> ; or  Economically active population constituting <i>at least 20 per cent of all residents</i> ; or  <i>All residents with limited means</i>	3% or 1.5% of reference wage	In case of periodical payment it shall be granted at least until child reaches school-leaving age or age 15	Possibility of prescribing a qualifying period, either not more than 3 months of contribution or employment, or one year of residence
Maternity	At least <i>all women</i> in prescribed classes, constituting <i>not less than 50 per cent of all employees</i> ; or  <i>All women</i> in prescribed classes of the economically active population, constituting <i>not less than 20 per cent of all residents</i>	45% of reference wage	Cash benefit has to be granted for at least 12 weeks, unless a longer period of absence from work is required/ authorized by national legislation	Possibility to prescribe qualifying period; but no longer than to preclude abuse
Invalidity	At least <i>50 per cent of all employees</i> ; or  Economically active population constituting <i>at least 20 per cent of all residents</i> ; or  <i>All residents with limited means</i>	40% of reference wage	Benefit is to be granted throughout the contingency or until old-age benefits become payable	Pension of 40% of reference wage has to be paid at least after completion of a qualifying period of 15 years of contribution/ employment or 10 years of residence; reduced benefit to be paid after 5 years of contributions/ employment
Survivors'	At least <i>Wives and children of employees constituting not less than 50 per cent of all employees</i> ; or  <i>Wives and children of breadwinners</i> in prescribed classes of the <i>economically active population</i> , constituting not less than 20 per cent of all residents; or  All resident widows and resident children with means below certain limit	40% of reference wage	Benefit has to be granted throughout contingency	Pension of at least 40% of reference wage has to be paid at least after a qualifying period of 15 years of contribution/ employment or 10 years of residence; reduced benefit to be paid after 5 years of contributions/ employment; In case of a widow, the right to benefit may be made conditional on her being presumed to be incapable of self-support (due to e.g. advanced age, invalidity or caring for child of deceased)

These minimum standards should be reached by the application of the following basic social security principles anchored in Convention No. 102, which have to be complied with irrespective of the type of scheme established. These are the:

- ***general responsibility of the State for the due provision of the benefits and the proper administration of the scheme***, which requires that the social security system is based on a proper legal frame, and that the sustainability of the systems is ensured through i.e. regular actuarial valuations;

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- *collective financing of social security schemes*, in a manner which avoids hardship for people of small mean, where the total of contributions paid by workers must not exceed 50 per cent of the total resources of the scheme;
  - *guarantee of defined benefits by the State*;
  - *adjustment of pensions in payment*;
  - *right of appeal in case of refusal of the benefit or complaint as to its quality or quantity*.

Convention No. 102 contains a number of clauses which allow member States a high degree of flexibility in reaching its objectives. This is done first by allowing ratifying States to accept as a minimum three out of the nine branches of social security, with at least one of those three branches covering a long-term contingency (i.e. old age, invalidity, loss of breadwinner or employment injury) or unemployment and with a view to extending coverage to other contingencies at a further stage (Article 2). In addition, the scope of personal coverage under Convention No. 102 provides alternatives that take into account differences in the employment structure and in the socioeconomic situation of member States, as well as between the different categories of residents within a State. Hence, for each branch accepted, the Convention requires member States to cover a certain minimum proportion of their active population or residents. Furthermore, in the implementation of social security branches it allows member States whose economy and medical facilities are insufficiently developed to make use of temporary exceptions relating, for example, to the proportion of people covered (Article 3). The Convention also provides for flexibility as to the type of schemes member States may establish for implementation of the Convention and to reach its objectives. Such objectives can be reached through: universal schemes, social insurance schemes with earnings-related or flat-rate components or both, or a combination of both.

#### **e) *Relevance of Convention No. 102***

As already mentioned, amongst the up-to-date social security Conventions, Convention No. 102 is central as it is the one that sets out the framework within which comprehensive social security systems should operate in order to comply with the internationally agreed principles and minimum standards. It was the first international Convention which defines social security by reference to its nine classical branches deemed to embody the internationally accepted definition of social security, sets minimum standards for each and lays down standards and principles for the sustainability and good governance of those schemes.

Over the years, Convention No. 102 has had, and continues to have, substantial influence on the development of social security in various regions of the world. In fact, “many developing countries, inspired by the Convention, have embarked upon the road to social security”.<sup>9</sup> Moreover, as noted by the ILC, “several member States currently implementing successful and innovative social security extension policies have recently ratified Convention No. 102 and others have indicated their intention to do so”.<sup>10</sup> Convention No.102 has also provided the blueprint for the European Code of Social Security and a

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<sup>9</sup> ILO: *Social Security and the rule of law*, 2008, para. 81.

<sup>10</sup> ILO: *Conclusions ILC 100th Session*, June 2011, para. 28.

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main reference for the elaboration of the Code on Social Security in the Southern African Development Community which in its Article 4.3 requires that every Member State maintain its social security system at a satisfactory level at least equal to that required for ratification of Convention No.102.

The uniqueness and relevance of Convention No. 102, as underlined by the ILO constituents, is therefore undeniable.

**f) Importance of ratification of Convention No. 102**

Ratification of Convention No. 102 is recognized for bringing about to the following advantages:

**A path to decent work, strategy for reducing poverty  
and contribution to the Sustainable Development Goals**

Primarily, once ratified and implemented through law and applied in practice, Convention No. 102 can **contribute greatly to decent work and poverty alleviation by providing for adequate minimum levels of benefits for the nine classical social security contingencies** which are designed to guarantee life in health and decency. As highlighted by the ILC in the ILO's strategy for the extension of social security (2011) Convention No. 102 "sets out principles that guide the design, financing, governance and monitoring of national social security systems (... and which) continues to serve as a benchmark and reference in the gradual development of comprehensive social security coverage at the national level".<sup>11</sup>

In Mongolia, despite the high rates of economic growth and the rise in households' income in the recent years, income disparity is increasing and poverty persists. The high and persistent inflation, particularly as relates to food and heating, associated with the boom of the economy and revenues, makes life more difficult and less secure for the poor living on very low incomes. In this respect, Convention No. 102 can serve to guide the development of effective policy measures to safeguard and strengthen the existing social security system by setting rules aimed at securing adequate and periodically-reviewed levels of benefits that take into account the cost of living and ensure that economic growth translates into a generalized improvement of living standards and a reduction in poverty.

**An international legal framework for fair and stable globalization  
and for ensuring a level-playing field**

One of the most important features of the Convention is that it lays down the basic minimum social standards agreed upon by all players in the global economy. Therefore, an international legal framework based on these standards ensures a level playing field. It acts as a safeguard of workers' and their families' rights; and overall, it enhances countries' competitive advantage in international trade by ensuring decent conditions for its workforce and therefore more productive work. Studies have shown that in their criteria for choosing countries in which to invest, foreign investors rank workforce quality and political and social stability above low labour costs. International experience proves that ILO social security Conventions and Convention No. 102 more particularly, serve as a means for preventing the levelling down of social security systems worldwide as they constitute

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<sup>11</sup> ILO: *Conclusions ILC 100th Session*, June 2011, para. 28.



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benchmarks for assessing whether their requirements have been reached and contribute to the creation of a worldwide level playing field for social conditions.

As such, when ratifying Convention No. 102, a country demonstrates to the international community that it accepts these minimum standards and the basic social security principles prescribed by the Convention. This is particularly true when a country becomes the forerunner in its region, as the first one to ratify an international Convention. Besides Japan, there is currently no other Asian country that has ratified Convention No. 102. Thus, Mongolia has the opportunity to become a model and an example for other Asian countries to follow by ratifying, and applying, the milestone international technical Convention translating into substance the human right to social security.

### Tools for policy and legal action and guidance for reform

International labour standards also serve as *targets for harmonizing national law and practice* in a particular field. The standards therefore represent worldwide agreed guidelines for national social policies. Since its adoption Convention No. 102 has had and continues to have a strong influence on the design and development of formal social security systems worldwide; more than 50 years after its adoption, it still constitutes the reference for the establishment and reform of social security systems globally and is thus considered as a symbol.

Mongolia has a comprehensive but poorly integrated social security system, a combination of the legacy of former socialist regime and the incomplete reforms conducted after the transition. The framework and guidelines offered by Convention No. 102 can therefore be used to harmonize existing legislation and practice and ensure that national social policies are in line with international agreed standards.

Ratification of Convention No. 102 can especially lead to policy and legal progress where the political and economic setting is favourable. The current Mongolian Government, elected in June 2012, has shown the political interest and willingness to make social security a priority and place it high on its agenda. The growth of the Mongolian economy, mainly due to the boom of the mining industry, should be able to provide the resources to undertake necessary reform. In this respect, the Human Development Fund, established with the objective of distributing the increased national revenues among Mongolia's population, could play an important role by providing the necessary fiscal resources for reform, the opportunity of which does not always exist in other countries who are struggling in extending and/or maintaining their social security coverage. Moreover, there appears to be general agreement among the government and social partners for the need to reform the current social security system with a view to better protecting its population. Under such exceptional and favourable circumstances, Convention No. 102 can contribute to the development of Mongolia's social security system.

More precisely, Convention No. 102 can serve as a catalyst for reform and provide an internationally agreed framework to guide the reform process.

Firstly, in periods of reform, the ratification of Convention No. 102 can give a particular strong signal to society and social partners of the State's commitment to comply with minimum social security standards, whatever design the social security system retains. Convention No. 102 can thus facilitate the social dialogue process by becoming an integral

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component (in terms of the standards, benchmarks, and principles) of social security reform.

Moreover, Convention No. 102 can serve as a road map for social security reform. This Convention is a key reference in that it envisages social security as being provided through an integrated, comprehensive and coherent system. In Mongolia, social security protection encompasses social welfare, social insurance, and universal benefits. Convention No. 102 can help to streamline these and create greater coherence while addressing current gaps in the provision of social security. The requirements of Convention No. 102 can therefore serve to complete the existing framework by reinforcing the technical parameters of existing schemes, thereby ensuring that minimum standards are met, in terms of scope, level of benefits, the financial sustainability of social security schemes and good governance.

When a member State ratifies Convention No. 102, it benefits from the provision of ILO technical assistance on a priority basis. Such assistance may be provided, notably, to assist the country in: preparing its first report on the application of the Convention in law and practice; improving the application of the Convention with respect to accepted parts; and extending the ratification to other parts.

### **Social security frameworks act as social and economic stabilizers in times of crisis**

The social impact of financial and economic crises on workers and their families can be mitigated by social security, notably income replacement measures, i.e. unemployment benefit scheme and cash transfers which act as safeguards against poverty and health care protection. By ratifying Convention No. 102, a country undertakes to implement minimum social security standards through a legal framework; this ensures that the levels of social security provided in compliance with Convention No. 102 are maintained at all times. Convention No. 102 therefore acts as a powerful tool for the maintenance of worldwide agreed minimum standards of social security at the national level (and therefore preserving decent standards of living and the health of its people) and for preventing countries from backsliding and suffering from long-term social consequences of the crisis.

In this regard, the ratification of Convention No. 102 and its application in practice will enhance the confidence of insured persons in the scheme, in the national social security administration, and in the political system of the country in general. However, if a country does not comply with its commitments under the Convention, workers and employers' organizations have at their disposal an array of international procedures aimed at securing compliance with the Convention. On a regular basis, the Committee of Experts on the Application of Conventions and Recommendations makes a thorough assessment of the national situation in law and practice based on periodic reports sent by the Government on which employers' and workers' organizations can make comments. In parallel, these organizations also have at their disposal special procedures (representations and complaints) based on the ILO Constitution.

### **A tool for the improvement of social security administration and services and increased confidence in the system**

Convention No. 102 lays down basic principles for the sound governance and proper administration of social security (e.g. government's responsibility in securing the necessary financing for the benefits at least at the levels stipulated by the Convention and

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periodical actuarial review of contributions and benefit Schedule, tripartite representation in administration, etc). These principles, when taking a legal form, provide a solid basis for the establishment or reform of social security institutions. A commitment to Convention No. 102 and to these principles enables the provision of regular and sustainable benefits and the sound governance of institutions thus enhancing insured persons' confidence in schemes and in the national administration.

Mongolia is characterized by its unique physical and human geography. The country spreads over a large territory but is one of the most sparsely inhabited States in the world. A considerable portion of the population is composed of nomadic (or at least partially nomadic) herders who are generally thinly scattered over a large geographical area. The urban population is mainly concentrated in the capital Ulaanbaatar. Such unique circumstances have made the delivery of provision and administration of social protection challenging. Although in 2011, the Government introduced One-Stop-Shop services that support the delivery of social security and social services across the country, at *aimag* and *soum* levels, there has been an increasing need for strengthening the capacity of policy makers, social security institutions, social partners and other interested bodies. Convention No. 102 can serve as part of the fundamental substances for capacity building and training courses

#### Convention No. 102 as a tool for the progressive implementation of social security and the extension of coverage

Convention No. 102 is considered as a tool for the extension of social security coverage, and provides ratifying countries with an incentive for doing so by offering flexibility in its application, depending on the socio-economic level of the countries. As mentioned above, this is done through *flexibility clauses* allowing ratifying member States to gradually attain universal coverage. Based on the notion that each country should have the discretion to determine how best to ensure its income security, thereby reflecting in its choices its social and cultural values, history, institutions and level of economic development, the Convention fixes a set of objectives or standards based on commonly agreed principles that constitute a socially acceptable minimum for all member States. It thus prescribes certain minimum requirements to be observed by ratifying States while aiming at the progressive realization of a more comprehensive protection, both in terms of the number of contingencies covered and of persons protected.

#### A tool that provides the flexibility required to address new trends in the labour market and new social security policy paradigm

With respect to the adoption of policies aimed at establishing a *new balance between expenditure and income in pension schemes*, Convention No. 102 offers a range of options to ratifying States. With respect to *changes in retirement age*, Convention No. 102 sets out that “the prescribed age shall be not more than 65 years or such higher age as may be fixed by the competent authority with due regard to the working ability of elderly persons in the country concerned” (Article 26, paragraph 1). It is obvious that the working ability of the insured persons depends on their individual health situation. In light of this provision, Convention No. 102 does not oppose such reforms as the insured persons have the right to retire earlier. Convention No. 102 further stipulates that the minimum pensions levels have to be maintained throughout the contingency and that they shall be reviewed “following substantial changes in the general level of earnings where these result from

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substantial changes in the cost of living” (Articles 65, paragraph 10, and 66, paragraph 8, of Convention No. 102).

To date, 51 countries have ratified Convention No. 102 and several other countries have demonstrated a strong interest in doing so (see in Annex 1 the list of ratifications of Convention No. 102). In recent years, the ratification of Convention No. 102 was of particular importance for countries undergoing political change or comprehensive labour market reforms including Bulgaria (2008), Brazil (2009), Romania (2009), Uruguay (2010), Honduras (2012) and Jordan (2014).

## **B. The social protection system of Mongolia**

### **a) *General overview***

Mongolia’s social security system is comprised of a contributory scheme, founded mainly on social insurance principles, and a non-contributory social welfare scheme financed by the Government’s annual budget. This system is governed by a comprehensive legal framework, based on an inherited social welfare system, which underwent substantial reforms in 1994 with the introduction of contributory obligations via the Law on Social Insurance. The social security legislation has since been amended on various occasions with the main innovation being the design of a three tier pension system since 1999 which is expected to start operating in the coming year following the adoption and/or amendment of the required legal provisions.

The national legislation covers all of the classical contingencies found under Convention No. 102, namely: medical care, sickness, unemployment, old-age, employment injury, family benefits, maternity, invalidity and survivorship. More particularly, medical care is provided through a combination of a universal and a social insurance scheme. Sickness, unemployment, employment injury, and maternity benefits and old-age, invalidity and survivor’s pensions are provided through the social insurance scheme. The non-contributory scheme, discussed in greater detail below, also provides pensions, allowances and services in case of old-age, invalidity, maternity, children and numerous other family-related benefits, especially to households with low income.

Coverage, under the social insurance scheme, is compulsory for all employees, and applies equally to Mongolian citizens, foreigners working in Mongolia, public servants and Mongolian citizens working abroad under a labour contract. Voluntary coverage is also possible for all other persons with regard to pensions (old-age, invalidity and survivor’s scheme), sickness, maternity and employment injury. The Social Insurance General Office is the legal entity in charge of the implementation of the social insurance legislation in Mongolia, of the collection of contributions and payment of benefits and of the management of social insurance Fund. It is administered by a tripartite body, with representation from the main Government ministries and departments concerned with social security, workers’ and employers’ organisation. The Government of Mongolia, and in particular Ministry of Population Development and Social Protection (MPDSP)<sup>12</sup> has the overall responsibility for the administration of social security and proper implementation of the social insurance legislation in the country.

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<sup>12</sup> Formerly the Ministry Social Welfare and Labour was responsible for the social security system but this responsibility shifted after the elections of June 2012.

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In parallel to the social insurance scheme, the non-contributory universal and targeted schemes provides pensions, allowances and services such as old-age, survivors, invalidity, family and maternity benefits to persons not entitled to an old-age pension under the legislation on social insurance and/or who have met the requirements and conditions for entitlement to social welfare. These are primarily regulated by the Law on Social Welfare and the Law on the Human Development Fund. The benefits provided under the Law on Social Welfare are granted to all citizens of Mongolia, foreign citizens and stateless persons residing permanently and legally in Mongolia who have met the requirements and conditions through a universal or means-tested approach. The General Office of Social Welfare and Services is the administrative and organizational body responsible for implementing the social welfare scheme under the supervision of the Government of Mongolia and in particular the MPDSP. Benefits provided under the Law on Human Development Fund are granted to all Mongolian citizens, registered with the Population and Household Registration, with no breach of citizenship rules or regulations. The State central administrative body in charge of finance matters is responsible for the general administration of the Human Development Fund.

For the purposes of this report, the non-contributory schemes that has been assessed are the universal Child Money Programme (CMP) provided under the Law of Mongolia on Human Development Fund and the universal tax financed health scheme, set out in the Law on Health. Though acknowledging the array of benefits provided under the Law on Social Welfare, this family benefit has a design that most closely aligns with the parameters of Convention No. 102. Without further information on the level of the pensions and allowances provided and on their duration and frequency, the analysis will also focus on the contributory scheme to assess compliance as regards old-age, invalidity and maternity cash benefits. However it is clear that in the larger context of social protection, and in particular following the adoption of the ILO Social Protection Floors Recommendation, 2012 (No. 202), non-contributory schemes and benefits contain some essential elements of a national social protection floor. These schemes and benefits play an indispensable role in protecting the population - particularly the most vulnerable - from poverty and should be given due consideration. A more thorough assessment of the Mongolian social protection floor could be conducted in the future.

Further detailed description of the overall social security system of Mongolia is provided in the report of the Assessment Based National Dialogue (ABND) on social protection, endorsed by all stakeholders in May 2015.

## **b) *Preliminary remarks***

The assessment of the social security legislation in Mongolia is made in view of a possible future ratification of Convention No. 102. It is based on the social security legislation of Mongolia that was made available to the Social Protection Department of the ILO at the time the analysis was carried out as listed below. It was further complemented by the legislation that was found on the website of the Social Insurance General Office and by information provided by the Ministry of Population Development and Social Protection and through the report of the ABND on social protection. The analysis made in respect of Part V of the Convention, Old-Age Benefits, was further enhanced by reference to the State Policy of Pension Reform (2015-2030), Appendix to Decree No. 53 of 2015, adopted by the Parliament of Mongolia 11 June 2015 (unofficial ILO translation).

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- Law on Social Insurance, 31 May 1994 (as amended in 2015)
  - Law on Pensions and Benefits provided by the Fund of Social Insurance, 7 June 1994 (as amended in 2015)
  - Law on Pensions, Benefits, and Payments provided by the Fund of Social Insurance Against Employment Injury and Occupational Diseases, 7 June 1994 (as amended in 2015)
  - Law on Unemployment Benefit provided by the Fund of Social Insurance, 9 June 1994 (as amended in 2015)
  - Law on Social Welfare, 19 January 2012, (as amended in 2015)
  - Law on Individual Pension Insurance Contribution Accounts, 10 June 1999 (as amended in 2015)
  - Law on Health, 5 May 2011 (as amended in 2015)
  - Law on Human Development Fund, 18 November 2009 (as amended in 2015)
  - Law on Health Insurance (29 January 2015, entered into force on 1 July 2015) (formerly Law on Citizen's Health Insurance 25 April 2002 (as amended in 2009))
  - Government Resolution No. 49 dated 22 September 2012
  - Government Resolution No. 70 dated 29 September 2012
  - Government Resolution No. 92 dated 10 June 1998
  - Government Resolution No. 153 dated 2 May 2012
  - Government Resolution No. 168 dated 11 May 2013
  - Government Resolution No. 171 dated 28 September 1994
  - Presidential decree No. 42 dated 29 March 2013
  - Parliamentary decree No. 19 dated 16 February 2012

The application of each of the provisions of Convention No. 102 is analysed against the above mentioned legislative framework for the following parts, and more particularly the contingency, coverage, level of the benefit, qualifying period and duration of the benefit:

- Part II: Medical Care
- Part III: Sickness Benefit
- Part IV: Unemployment Benefit
- Part V: Old-age Benefit
- Part VI: Employment Injury Benefit
- Part VII Family Benefits
- Part VIII: Maternity Benefit
- Part IX: Invalidity Benefit
- Part X: Survivor's Benefit

It is important to note that the ratification of Convention No. 102 requires the acceptance of at least three of the listed parts of the Convention, one of which is a pension

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or unemployment benefits. Ratification of Common Provisions found under Parts XII and XIII are mandatory. The Convention also allows Member's, whose economy and medical facilities are insufficiently developed to avail themselves, by a declaration appended to its ratification, of the temporary exceptions found under specific Articles of the Convention in regards to the personal coverage, extent and duration of the benefit of certain contingencies, for so long as the competent authority considers necessary.

Finally, it should be noted that the ratification of any ILO Convention entails for the State who has ratified the obligation to ensure its application not only in law but also in practice. Although this report is based on a legal assessment of Mongolia's social security system, the ABND on social protection, conducted in 2013-2014, and identified a list of implementation issues for each of the benefits that are available in its report.

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## Chapter II

### Assessing the compatibility of the social security legislation of Mongolia with Convention No. 102

As mentioned in Chapter I, a State that wishes to ratify Convention No. 102 must accept obligations under the Convention in respect of at least three of its nine branches and one of those three branches covering a long-term contingency or unemployment. This requirement needs to be considered in the assessment of a possible future ratification of Convention No. 102 by Mongolia. This part thus examines the compatibility of existing social security legislation in Mongolia for each contingency covered, with the minimum standards and principles set out under each respective Part in Convention No. 102 in accordance with the *Report Form for the Social Security (Minimum Standards) Convention, 1952 (No. 102)*.<sup>13</sup> Chapter III will conclude on the prospects of ratification of Convention No. 102 by Mongolia in light of the compatibility assessment made in Chapter II.

#### A. Medical care benefit (Part II of Convention No. 102)

Medical care in Mongolia is provided through a combination of a universal tax financed scheme, set out in the Law on Health, and a health insurance scheme, set out in the Law on Health insurance, formerly the Law on Citizen's Health Insurance.

#### Contingency

Article 8 of Convention No. 102 provides that the contingencies covered shall include any morbid condition, whatever its cause, and pregnancy and confinement and their consequences.

As detailed below, in Mongolia most of the medical treatments and services in case of a morbid condition listed in the Convention are provided through the universal medical care scheme, which makes provision for primary and emergency medical care and services as well as pre-natal, pregnancy and post-natal care, and the health insurance scheme, which provides primary and specialist care as well as pregnancy, confinement and its consequences. The medical care provided under each scheme is detailed further below.

Medical care provided in Mongolia through the universal medical care scheme and the health insurance scheme complies with the requirements of Article 8 of Convention No. 102.

#### Coverage

Article 9 of the Convention provides as follows:

The persons protected shall comprise:

- (a) prescribed classes of employees, constituting not less than 50 per cent of all employees, and also their wives and children; or
- (b) prescribed classes of economically active population, constituting not less than 20 per

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<sup>13</sup> Available on the ILO's NORMLEX database at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:51:0::NO:51:P51\\_CONTENT\\_REPOSITORY\\_ID:2543094:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:51:0::NO:51:P51_CONTENT_REPOSITORY_ID:2543094:NO)



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cent of all residents, and also their wives and children; or

(c) prescribed classes of residents, constituting not less than 50 per cent of all residents.

Under the universal medical care scheme, all citizens of Mongolia are covered, regardless of whether they are covered by the health insurance scheme (Article 24.6, Law on Health). With regard to the health insurance scheme, the Law on Health insurance covers every resident of Mongolia on a mandatory basis (Article 4.2). The State subsidizes the contribution of national resident children and vulnerable groups.<sup>14</sup> On 1 July 2015, the Law on Health Insurance extended mandatory coverage to foreign nationals and stateless persons who are in contracted employment, including in foreign organizations on Mongolian territory, diplomatic missions, international organizations and projects (if not provided otherwise in international agreements) (Article 4.3). Non-national dependent spouses and children of employed non-nationals can register to the social health insurance on a voluntary basis. While the newly reformed Law on Health Insurance extended access to medical care to non-nationals, non-nationals remain excluded from the universal health care scheme, under which primary medical and maternity care are provided.

All citizens and all employed foreign nationals are entitled to medical care under the social health insurance scheme in accordance with Convention No. 102. The dependent family members of foreign nationals are however only voluntarily covered under this scheme. In addition, all non-national persons who reside in Mongolia are excluded from medical care provided through the tax-funded universal medical care scheme, which covers primary and maternity medical care. Full compliance with the Convention would require that non-national residents be covered, even though special rules (such as the completion of a period of residence) may apply for coverage under the universal, tax-financed, medical care scheme (Article 68(1), Convention No. 102)).

### ***Extent of the benefit***

Article 10, (1) requires that the benefit shall – in the case of a morbid condition – include at least (i) general practitioner care, including domiciliary visiting; (ii) specialist care at hospitals for in-patients and out-patients, and such specialist care as may be available outside hospitals; (iii) the essential pharmaceutical supplies as prescribed by medical or other qualified practitioners; and (iv) hospitalization where necessary. Furthermore, Article 10(2) of the Convention provides that where the beneficiary is required to share in the costs of medical care, the applicable rules should be designed so as to avoid hardship.

According to Article 24.6 of the Law on Health, the following services are provided free of charge for citizens, and financed out of the State budget:

- Examinations, diagnosis and treatment during pregnancy and childbirth and 45 days of post-delivery care as instructed by a physician (only cases related to pregnancy and childbirth);
- Medical services for children provided by public hospitals;
- Epidemiological and sanitation measures for communicable diseases, including

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<sup>14</sup> State subsidies for the health insurance scheme are provided to: Children of age 0–18; people without income except for those receiving old-age, disability and survivor pension either from SIGO and/or social welfare department; members of poor households identified as beneficiaries of the social welfare support program; parents looking after their babies until 2 years old (in case of twins until 3 years old); and persons in compulsory military service (conscripted). Contribution will be fully subsidized by the State at the rate of, at least, 1 percent of a monthly minimum wage for children and at least 2 percent of a monthly minimum wage for others (from 1 January of 2016). In addition to these groups, contributions of university students are currently fully subsidized and financed by the Human Development Fund (HDF).

- disinfection and routine immunization;
- Public health services, ambulance services, some services provided by the family, *soum* and village health centers, services during disasters and infectious disease epidemics;
- Treatment of individuals who have been injured or become ill while saving lives of others under emergency or unavoidable self-defense situations;
- Some of treatment of tuberculosis, cancer and mental illness;
- Some drugs for diseases that require lengthy treatment and palliative care;
- Health and mental rehabilitation services to victims of physical and sexual abuse / exploitation;
- Drugs for children with disabilities under 16 years of age.

According to Article 9.1 of the Law on Health Insurance the benefit package (services to be financed by the Health insurance fund) shall include:

- inpatient services;
- outpatient/ ambulatory services, follow up, diagnostics and treatment;
- day care;
- palliative care for cancer and other illnesses;
- traditional care, rehabilitative and sanatorium services;
- some high cost medical services and required medical tools;
- pharmaceuticals prescribed by medical doctors at family, *soum*, *bagh*, *aimag* and district clinics (Note: pharmaceuticals included in the essential drug list approved by the National health insurance council);
- certain kinds of artificial tubes, prosthetics and orthopedic implants for rehabilitative care;
- some rehabilitative, home and day care services provided by family, *soum* and village health centers and diagnostic tests;
- day care for cancer chemotherapy and radiotherapy;
- treatment of associated diseases preceding the 37th week of pregnancy and post-natal period.

In addition, prevention, early detection or routine diagnostic tests defined by the National Health Insurance Council will be paid by the Health Insurance Fund under the Law on Health Insurance (Article 9.4).

In view of the above, it would appear that general practitioner care, including domiciliary visits, specialist care, and essential pharmaceuticals as well as hospitalisation are provided in conformity with Article 10(1)(a) of Convention No 102.

Appropriate medical care and services should also be provided in the event of pregnancy, confinement and their consequences as stated in Article 10(1) b) of the Convention. According to Article 24.6 of the Law on Health, examinations, diagnosis and treatment during pregnancy and childbirth and 45 days of post-delivery care as instructed by a physician are covered under the universal medical care scheme. In addition, Article 9.1 of the Law on Health Insurance covers the treatment of associated diseases preceding the 37th week of pregnancy and post-natal period under the health insurance scheme.

In the light of the above, the Mongolian legislation meets the listed medical treatments and services required in case of a morbid condition and pregnancy and confinement as specified at Article 10 of Convention No. 102.

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### *Cost sharing*

As regards the health insurance scheme, insured persons appear to be required to share in the cost of some treatments and services. Under Article 11.1 of the amended Law on Health insurance, costs of health care services stipulated in Article 9 of the law shall be shared by the insured and the health insurance fund. The cost of health care services payable by the Health Insurance Fund and the insured and the payment methods and procedures shall be determined by the National Council on Health insurance based on recommendations from the Health Insurance Organization, and Central state administrative bodies in charge of social insurance, finance and budget, and health matters (Article 11.2 of the Law on Health insurance). It is further important to note that the law provides for an annual upper limit of treatment costs received by insured persons (Article 14.9.4 of the Law on Health insurance). In other words, once an insured person exceeds the limit of medical care costs established by the National Council, he/she appears to become entirely responsible for the cost of medical care provided. According to the Law on Health insurance, insured individuals (excluding those subsidized by the government) whose payments for health-care services have exceeded their entitled threshold are entitled to use family members' remaining portions once a year (Article 7.1.8). There is however no indication in the legislation as to whether there exists a ceiling or a maximum in the legislation that would limit insured person's participation in the costs of medical care and services, so as to avoid hardship in cases that require long-term or extensive care. It is worth observing however that, legally, an insured person, in so far as they are a citizen of Mongolia, would still be entitled to free medical care services through the universal medical care system after exhausting their and their family's annual medical care credits (Article 24.6, Law on Health).

This issue could be further clarified in the future so as to make sure that persons of small means do not face hardship upon receiving the medical care to which they are entitled under the Convention.

As regards cost sharing rules, treatments and services, including maternity medical care, provided under the universal health care system are free of charge. Yet, participation in the cost of other treatments and services provided under the health insurance scheme is required in the manner listed above. Given that the legislation establishes an annual limit regarding the medical care costs covered by the Insurance Fund beyond which the cost is to be entirely borne by insured persons and that no ceiling regarding the participation in costs borne by the insured person seems to have been established to prevent hardship, further clarifications could be requested in this regard (bearing in mind that Mongolian citizens would still be entitled to free medical care under the universal system. In view of the above and subject to receiving further clarifications, it would seem that the requirements of Article 10, paragraph 2, of the Convention are met.

### **Qualifying period**

Article 11 specifies that the benefit, in a contingency covered, shall be secured at least to a person protected who has completed, or whose breadwinner has completed, such qualifying period as may be considered necessary to preclude abuse.

There is no qualifying period prescribed in the Mongolian legislation for entitlement to medical care, neither under the universal scheme nor under the health insurance scheme.

Mongolia is in compliance with Article 11 of Convention No. 102 as the national legislation does not provide for a qualifying period preceding entitlement to medical treatments and services.

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## ***Duration of the benefit***

According to Article 12 of Convention No. 102, the medical care benefit shall be granted throughout the contingency covered, except that, in case of a morbid condition, its duration may be limited to 26 weeks in each case. The benefit shall however not be suspended while a sickness benefit continues to be paid, and provision shall be made to enable the limit to be extended for prescribed diseases recognised as entailing prolonged care.

In Mongolia, the legislation does not limit the duration of medical care, which thus appears to be provided throughout the contingency, even in the case of morbid conditions requiring prolonged care.

Medical care provided under the Mongolian legislation appears to be in compliance with the requirements of Article 12 of Convention No. 102 since the benefits are provided throughout the contingency even in the case of morbid conditions requiring prolonged care, and the benefit is not suspended while sickness benefits are being paid.

## **B. Sickness benefit (Part III of Convention No. 102)**

In Mongolia sickness benefits are paid by the Fund on Social Insurance according to the Law on Pensions and Benefits provided by the Fund of Social Insurance (hereafter “the Law on Pensions and Benefits”) and the Law on Social Insurance.

### ***Contingency***

Article 14 of Convention No. 102 specifies that the contingency covered shall include incapacity for work resulting from a morbid condition and involving suspension of earnings.

Section 17, (1) of the Law on Pensions and Benefits stipulates that an insured person shall be eligible to a sickness benefit in case of *loss of capacity for work caused by a non-occupational disease or accident*.

The contingency covered under Mongolian legislation is in compliance with the requirements of Article 14 of Convention No. 102 as it covers incapacity from work resulting from a morbid condition (here referred to as non-occupational disease or accident) and involving loss of earnings.

### ***Coverage***

Under section 4, paragraph 2, in conjunction with section 3, paragraph 1, of the Law on Social Insurance, the following persons are compulsorily covered in case of sickness: Mongolian citizens, foreigners, stateless persons contracted to work in all types of entities, organisations, non-governmental and religious organisations, and for individuals, and public servants as well as Mongolian citizens working abroad under a labour contract.

From the above the statutory personal coverage under the sickness benefits scheme in Mongolia exceeds the minimum requirements of Article 15(a) of Convention No. 102 in that all employees are protected.

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## **Level of the sickness benefit**

Article 16 of the Convention states that the amount of the sickness benefit must be calculated in conformity with the rules established in Article 65, 66 or 67 of Convention No. 102 and should be a periodical payment attaining, for a standard beneficiary indicated in the Schedule appended to Part XI, at least 45 per cent of the reference wage determined in accordance with these provisions. Additionally, for social security systems providing benefits representing a portion of previous earnings, Article 65 of the Convention allows for the establishment of an upper limit on the amount of wages or earnings which may be considered when calculating the benefit. However, this ceiling should be set in such a way that a skilled manual male employee, determined in accordance with the provisions of the Convention, would still receive a benefit equal to at least 45 per cent of their previous earnings.

A skilled manual male employee, determined according to Article 65, (6), (d), is a person whose earnings are equal to 125 per cent of the average earnings of all the persons protected. Where the national average wage in 2014 was 796,600 *tugrug* (MNT)<sup>15</sup> per month, the monthly earnings of a standard beneficiary for 2014 would amount to MNT995,750.

According to section 18, (1) of the Law on Pensions and Benefits, sickness benefits shall correspond to a percentage of the insured person's last three month wages in full-time employment prior to the occurrence of sickness. The percentage varies depending on the number of years of contributions, as follows: 50 per cent of the person's wages with up to 5 years of contributions, 55 per cent of the person's wages with 5 to 14 years of contributions and 75 per cent for 15 and more years of contributions. However, while these replacement rates exceed that established by the Convention with respect to sickness benefit, it is not clear from the available legislation whether the sickness benefit takes the form of a periodical payment, as required by the Convention and suggested from section 19 of the Law on Pensions and Benefits, or the form of a lump sum as suggested by the definition provided in the Law on Social Insurance (section 2, (9)).

Additionally, according to Article 15.7 of the Law on Social Insurance, the Government shall define a ceiling on the earnings for the payment of contributions by employees and employers, and the calculation of pensions and benefits, based on the national average of insured/contributory wages and the national average wage declared by the National Statistical Office, taking into account the proposals of the National Council on Social Insurance. Under the Government Resolution No. 92 dated 10 June 1998 the above mentioned ceiling was set at ten times the monthly minimum wage (e.g monthly minimum wage for 2014 is MNT192,000 so the ceiling in 2014 was MNT1,920,000). This ceiling is still in force and applied for calculating the benefits. It can be reminded that the monthly wage of the skilled manual male employee is set at MNT995,750.

On the basis of the above, the monthly ceiling on the wages taken into account for the calculation of the benefit would not prevent the skilled manual male employee to receive the actual replacement rate established by the national legislation at 50 per cent of previous earnings, i.e. above the minimum replacement rate established by Convention No. 102 at 45 per cent.

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<sup>15</sup> NSO: *Mongolian Statistical Yearbook*, 2014, p. 59

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The current level of sickness benefit set out in the Law on Pensions and Benefits, which corresponds to at least 50% of former earnings, is in compliance with Article 16 of Convention No. 102 which requires a minimum replacement rate of 45 per cent.

Clarification would be necessary on certain points regarding the manner in which the benefit is awarded i.e. periodical payment or lump sum.

### ***Qualifying period***

Convention No. 102 provides that entitlement to sickness benefits may be made subject to the completion of a qualifying period as may be considered necessary to preclude abuse.

Under Section 17.1 of the Law on Pensions and Benefits, the entitlement to sickness benefits is conditional upon the insured person having paid contributions for at least 3 months. Once the maximum duration of the benefit (66 days, as explained here below) is exhausted, the insured person needs to re-qualify by completing another 3-month contributory period to become entitled to the benefit again.

The length of the qualifying period for sickness benefits under the Mongolian legislation is not disproportionate to the need to preclude abuse and would therefore be in line with Article 17 of the Convention.

### ***Duration of benefits***

Article 18 of Convention No. 102 provides that the sickness benefit shall be granted throughout the contingency, except that the benefit may be limited to 26 weeks in each case of sickness, in which event it need not be paid for the first three days of suspension of earnings. As mentioned above, a Member whose economy and medical facilities are insufficiently developed may, if and for so long as the competent authority considers necessary, avail itself, by a declaration appended to its ratification, of the temporary exceptions provided for in the Convention, including regarding the duration of the sickness benefit. As such, the benefit may be limited to 13 weeks in each case of sickness.

The payment of the benefit is limited to 66 working days (or approximately 13 weeks, where a work week counts 5 days) in each case of sickness and 132 working days (which corresponds to approximately 26 weeks) in case of tumor or tuberculosis contracted for the first time (Section 19, (2)) or 132 working days in total per calendar year in case of “repeated sickness” (Section 19, (3)). According to the information provided by the Social Insurance General Office (SIGO) regarding the practical application of this provision, it appears that this yearly limitation applies to all cases of sickness and in respect of any illness. This means that an insured person who has contributed to the Benefits insurance Fund for at least 3 months and who has an illness (morbid condition) due to an ordinary disease (except in case of a first time tumor or tuberculosis) or injury which is not employment-related, would be entitled to a sickness benefit of up to 66 working days. The person needs to contribute to the same fund for at least another 3 months to become entitled to a sickness benefit again. All in all, the total number of days of sickness benefits to which an insured person is entitled on a yearly basis, provided he/she meets the qualifying period, cannot exceed 132 working days.

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Article 18, paragraph 1, of the Convention allows the duration of sickness benefits to be limited to 26 weeks in each case of sickness, or, exceptionally and temporarily, to 13 weeks for countries whose economy is insufficiently developed. However, no limitation is permitted as to the number of cases of sickness in respect of which the benefit should be provided each year.

The limitation of the sickness benefit in each case of sickness to 13 weeks and to 26 weeks per year in case of repeated sickness is not in conformity with the requirements of Article 18 (1) of the Convention, according to which a benefit must be paid for at least 26 weeks per case of sickness.

However, the duration of the “standard” sickness benefit, i.e. 13 weeks could be accommodated under Article 18(2) of the Convention, which allows temporary exceptions to be invoked in respect of certain of its provisions to ease the ratification of the Convention for countries whose economy and medical facilities are insufficiently developed. Should Mongolia wish to ratify the Convention and accept obligations under Part III, a declaration would need to be made at the moment of the ratification invoking the provisions of Article 18(2).

The yearly limitation on the benefit period to 13 weeks, or 26 weeks in case of repeated sickness, per year, is nevertheless more restrictive than what is required by the Convention under Article 18, paragraph 1, i.e., that a benefit be paid for a minimum duration of 26 weeks (or 13 weeks, exceptionally and temporarily) in each case of sickness. Conformity with the Convention would thus require that this yearly limitation be removed.

### ***Waiting period***

In cases where the duration of the sickness benefit is limited (and therefore not provided throughout the contingency), Article 18 of Convention No. 102 provides that the benefit need not be paid for the first three days of suspension of earnings.

Section 19, (1) the Law on Pensions and Benefits sets forth the obligation for the employer to pay the sickness benefit for the first 5 days. As of the 6th day, the benefit is paid by the Fund of Benefits Insurance for the duration of 66 days (i.e. approximately 13 weeks). Since a benefit is paid initially by the employer during the first 5 days, there does not appear to be a suspension of earnings as permitted by Article 18, (1) of the Convention. This is common practice in many countries and has been accepted by the Committee of Experts on the Application of Conventions and Recommendations for short periods.

Where the employer pays the benefit for the initial 5 days of illness in each case of sickness, it can be concluded that the Law on Pensions and Benefits is in conformity with Convention No. 102 since there is no period of suspension of earnings in practice.

### **C. Unemployment benefit (Part IV of Convention No. 102)**

The Social Insurance Fund in Mongolia is responsible for granting unemployment benefits according to the Law on Unemployment Benefit by the Fund of Social Insurance (hereafter the Law on Unemployment Benefit) and the Law on Social Insurance.

### ***Contingency***

Article 20 of Convention No. 102, provides that the contingency covered shall include suspension of earnings due to inability to obtain suitable employment in the case of a person protected who is capable of, and available for, work.

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Under the Law on Unemployment Benefit, an unemployment benefit is payable to an insured person who becomes unemployed following his/her dismissal.

The contingency covered in Mongolia in the case of unemployment benefits is in conformity with the definition provided at Article 20 of Convention No. 102.

## **Coverage**

Under section 4, paragraph 2, in conjunction with section 3, paragraph 2(5), of the Law on Social Insurance, the following persons are covered mandatorily in case of unemployment: Mongolian citizens, foreigners, stateless persons contracted to work in all types of entities, organisations, non-governmental and religious organisations, and for individuals, public servants, Mongolian citizens working abroad under a labour contract.

From the above, it may be concluded that the statutory personal coverage under the unemployment benefits scheme in Mongolia is in conformity with the requirements of Article 21(a) of Convention No. 102 in that all employees are protected.

## **Level of the unemployment benefit**

Article 22 of the Convention states that the amount of the unemployment benefit must be calculated in conformity with the rules established in Article 65, 66 or 67 of Convention No. 102 and should be a periodical payment attaining, for a standard beneficiary indicated in the Schedule appended to Part XI, at least 45 per cent of the reference wage determined in accordance with these provisions.

Additionally, for social security systems providing benefits representing a portion of previous earnings, Article 65 of the Convention allows for the establishment of an upper limit on the amount of wages or earnings which may be considered when calculating the benefit. However, this ceiling should be set in such a way that a skilled manual male employee determined in accordance with the provisions of the Convention would still receive a benefit equal to at least 45 per cent of previous earnings.

A skilled manual male employee, determined according to Article 65, (6), (d) of the Convention, is a person whose earnings are equal to 125 per cent of the average earnings of all the persons protected. Where the national average wage in 2014 was MNT796,600<sup>16</sup> per month, the monthly earnings of a standard beneficiary for 2014 would amount to MNT995,750.

Under section 3, (1) of the Law on Unemployment Benefit, unemployment benefit is at least equal to the level prescribed by the Convention as it correspond to at least 45 per cent of the insured person's last three month wages of full-time employment, prior to the occurrence of unemployment. The actual replacement rate varies according to the number of years of contributions: 45 per cent of previous earnings of a person with up to 5 years of contributions, 50 per cent of previous earnings of a person with 5 to 10 years of contributions, 60 per cent of previous earnings of a person with 10 to 15 years of contributions and 70 per cent of previous earnings of a person with contributions of 15 years or more (section 3, (1)). As regards the payment of the benefit, section 7 of the law specifies that it shall be made periodically, up to twice a month.

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<sup>16</sup> NSO: *Mongolian Statistical Yearbook*, 2014. p. 59



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Additionally, according to Article 15.7 of the Law on Social Insurance, the Government shall define a ceiling on the earnings for the payment of contributions by employees and employers, and the calculation of pensions and benefits, based on the national average of insured/contributory wages and the national average wage declared by the National Statistical Office, taking into account the proposals of the National Council on Social Insurance. Under the Government Resolution No 92 dated 10 June 1998 the above mentioned ceiling was set at 10 times monthly minimum wage (e.g monthly minimum wage for 2014 is MNT192,000 so the ceiling in 2014 was MNT1,920,000). The ceiling is still in force and applied for calculating the benefits. It can be reminded that the monthly wage of the skilled manual male employee is set at MNT995,750.

On the basis of the above, it is observed that the monthly ceiling on the wages taken into account for the calculation of the benefit would not prevent the skilled manual male employee to receive the actual replacement rate established by the national legislation at 45 per cent of previous earnings, i.e. equal to the minimum replacement rate established by Convention No. 102 at 45 per cent.

The requirements of Article 22 of the Convention are met by the Mongolian legislation, as the amount of the benefit under the law corresponds to at least 45 per cent of former earnings of a standard beneficiary and since the benefit is paid periodically.

### ***Qualifying period***

Article 23 of Convention No. 102 provides that any qualifying period for benefits must be such as to “preclude abuse”.

According to section 2, (1) of the Law on Unemployment Benefit, an insured person is eligible for an unemployment benefit after 24 months of contributions, including 9 months of continuous contributions before the occurrence of unemployment. Under section 2(2), a new qualifying period of 12 months is required for renewed entitlement to another unemployment benefit. This is in line with case law emanating from the Committee of Experts on the Application of Conventions and Recommendations, who have determined that a qualifying period of 24 months is considered suitable to preclude abuse and would thus be in compliance with Convention No. 102.

Furthermore, it is also worth noting that payment of unemployment benefit is conditional upon the insured person registering with the local Labour Exchange in the area of his/her residence or, in the absence thereof, with the Social Insurance Office within 14 days following the termination of employment (section 5 of the Law) or within 3 months if there is substantial justification for such delay. Such a requirement under the Mongolian law would not be in contradiction with the Convention.

The length of the qualifying period for entitlement to unemployment benefits in Mongolia complies with the requirements of Convention No. 102.

### ***Duration of the benefit***

Article 24 of Convention No. 102 provides that the duration of the benefit may be limited to 13 weeks within a period of 12 months in cases where classes of employees

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(rather than all residents) are protected, such as in Mongolia. In addition, Article 24(2) stipulates that in cases where the duration of the benefit varies with the length of the contribution period, the average duration of benefits must be at least 13 weeks within a period of 12 months.

According to the national unemployment legislation, in case of dismissal, the duration of unemployment benefit is 76 working days (section 4) or approximately 15 weeks (where a work week counts 5 days). As every unemployment benefit period under the legislation is nearly 15 weeks, and since the contribution period for re-qualifying for the benefit is 12 months for each case of unemployment, it would therefore seem to comply with the Convention, as the benefit is paid for nearly 15 weeks within a period of 12 months.

From the above it is concluded that the duration of unemployment benefits in Mongolia is in conformity with the requirements of Article 24 of Convention No. 102 in that a beneficiary can receive an unemployment benefit for approximately 15 weeks within a 12-month period.

### ***Waiting period***

Article 24, (3) of Convention No. 102 allows for a maximum waiting period of seven days before benefits are payable.

Unemployment benefits are payable from the day following the registration with the local Labour Exchange Office, or in the absence thereof, with the Social Insurance Office (section 4 of the Law on Unemployment Benefit). Under section 5 of the Law on Unemployment Benefit, the insured is required to get registered within 14 days following the day of loss of employment. However, pursuant to the legislation, the Labour Exchange Office, or Social Insurance Office, has 14 days following the receipt of a claim for unemployment benefits to make a decision regarding its provision. The rules and procedures to pay out unemployment benefits shall be approved by the National Council on Social Insurance (Article 6.3 of the Law on Unemployment benefits provided by the Social insurance fund). It appears therefore that a claimant must wait up to 14 days for a decision of the responsible authority. (Article 6.2 of the Law on Unemployment benefits provided by the Social insurance fund) The payment is however retroactive to the day following the registration with the Labour Exchange Office or the Social Insurance Office (Article 4.1 of the Law on Unemployment benefits provided by the Social insurance fund).

While it is admitted under the Convention that the receipt of unemployment benefit be made conditional on the registration with the Labour Exchange Office (LEO), the benefit may however not be paid during the first 7 days of unemployment as required by the Convention, since the insured has a maximum 14 days to register. **The timeframe for registering with the LEO should therefore be established at a maximum of 7 days following the day of loss of employment.**

### **D. Employment injury benefit (Part VI of Convention No. 102)**

In Mongolia, employment injury benefits are awarded by the Fund of Social Insurance against Employment Injury and Occupational Diseases (hereafter “the Law on Benefits”) as provided by the Law on Social Insurance.

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## Contingency

Article 32 of Convention No. 102 provides that the contingencies covered shall include the following where due to accident or a prescribed disease resulting from employment:

- (a) a morbid condition;
- (b) in-capacity for work resulting from such a condition and involving suspension of earnings, as defined by national laws or regulations;
- (c) total loss of earning capacity or partial loss thereof in excess of a prescribed degree, likely to be permanent, or corresponding loss of faculty; and
- (d) the loss of support suffered by the widow or child as the result of the death of the breadwinner; in the case of a widow, the right to benefit may be made conditional on her being presumed, in accordance with national laws or regulations, to be incapable of self-support.

Section 2(1) of the Law on Benefits defines employment injury as an injury “due to the adverse effects of employment and similar thereto in the pursuit of duties/functions”. This includes acute toxicity, i.e. “being under toxic effects of radiation or chemicals in the prosecution of employment duties”, according to this law. The law further stipulates, under paragraph 2 of section 2 that a benefit shall be paid to insured persons when the employment injury or acute toxicity occurred while the insured person was “discharging employment duties at the workplace or other places”, outside working hours when “arranging the workplace and equipment”, and when commuting from/to the workplace. Insured persons suffering from occupational diseases, defined under section 3(1) as “diseases caused by adverse effect of employment in the course of discharging duties” also give rise to employment injury benefits, subject to the approval of the relevant authorities (section 3, (1)).

The Law on Benefits further provides for the payment of a “disability pension”, where an insured person has lost their working capacity for a long duration or permanently, due to a work accident or occupational disease (section 5, (1) and 6, (1)). “Temporary disability benefit” in case of temporary incapacity for work due to employment injury or occupational disease are also provided (section 13).

Lastly, the Law on Benefits grants dependent’s pensions to family members of an insured person who dies as the result of an employment injury or occupational disease (section 10). According to section 12 and 15 of the Law on Pensions and Benefits dependents include: children under the age of 19 and husbands or wives who are incapacitated or, regardless of age and working capacity, who are caring for children under 8. Benefits are provided for the length of the loss of capacity for work and, for persons of retirement age, until the end of the following calendar month after their death.

Given the above, it can be concluded that, in Mongolia, employment injury benefits are awarded where a morbid condition results in total or partial temporary or permanent disability and in the case of the death of the insured person for the loss of support suffered by the widow or widower, in a manner which complies with Article 32 of Convention No. 102.

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## **Coverage**

According to section 4, paragraph 2, together with section 3, paragraph 2.4, of the Law on Social Insurance, all employees are covered under the employment injury scheme as well as their dependents in case of death of the insured person resulting from an employment injury (section 10, (1) of the Law on Benefits and section 9.1 of the Law on Health Insurance).

## **Medical care**

Article 34(2) of Convention No. 102 provides that the employment injury benefits shall include medical care and shall comprise:

- (a) general practitioner and specialist in-patient care and out-patient care, including domiciliary visiting;
- (b) dental care;
- (c) nursing care at home or in hospital or other medical institutions;
- (d) maintenance in hospitals, convalescent homes, sanatoria or other medical institutions;
- (e) dental, pharmaceutical and other medical or surgical supplies, including prosthetic appliances, kept in repair, and eyeglasses; and
- (f) the care furnished by members of such other professions as may at any time be legally recognised as allied to the medical profession, under the supervision of a medical or dental practitioner.

As detailed under Part II (Medical Care) here above, health care is provided under a universal scheme for all citizens and under an insurance scheme which mandatorily covers several groups of persons, such as employees. Most of the treatments and services that should be provided according to the Convention are granted under the Mongolian legislation under either scheme including general practitioner comprising domiciliary visits and specialist in-patient and out-patient care; nursing care in hospitals and other medical institutions; pharmaceuticals; prosthetic appliances; rehabilitation services; and hospitalisation (Article 24.6 of the Law on Health and Article 9 of the Law on Health Insurance).

Further paragraph 2(d) and (e) of the Convention, i.e. “maintenance in sanatorium” and (e) “prosthetic appliances”, would be covered by the “rehabilitation payment” provided for under section 16 of the Law on Benefits, this should be clarified. The rehabilitation payment is payable to a victim of employment injury or occupational disease who has lost more than 30 per cent of his/her capacity for work, to cover the cost of prosthetic appliances and orthopaedics made in Mongolia (100 per cent on first and subsequent occurrences if the beneficiary is still contributing; and 50 per cent if the beneficiary is not contributing) and mineral water therapy in sanatoriums (limited to one treatment per year) (section 17).

In addition, dental care (by the diagnosis related groups K00-K19) is covered by the Health insurance scheme under Order no. 380 of the Minister of Health dated 5 November 2014. Furthermore, people with disabilities are entitled to receive reimbursement, at the established rate, for eyeglasses once every three years by the Social Welfare fund.

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In light of the above, it is concluded that Article 34 of Convention No. 102 is applied.

## **Reintegration**

Article 35(1) of Convention No. 102 provides that the institutions or Government departments administering the medical care shall co-operate, wherever appropriate, with the general vocational rehabilitation services, with a view to the re-establishment of handicapped persons in suitable work.

According to section 9.1 of the Law on Health Insurance and 16 of the Law on Benefits, rehabilitation services including rehabilitation payment are provided in case of employment injury. No further information is available regarding vocational rehabilitation services.

The national legislation provides for medical rehabilitation and rehabilitation payment in case of employment injury. In case of ratification of the Convention and acceptance of this Part, the Government could supply information as to the measures taken to ensure the cooperation between the institutions responsible for medical care administration and those responsible for general vocational rehabilitation services, with a view to re-establishing disabled persons in suitable work.

## **Level of the employment injury benefit**

Article 36(1) of Convention No. 102 provides that, in respect of incapacity for work, total loss of earning capacity likely to be permanent or corresponding loss of faculty, or the death of the breadwinner, the benefit shall be a periodical payment calculated in such a manner as to comply with the requirements of Article 65 and should attain for a standard beneficiary indicated in the Schedule appended to Part XI at least 50 per cent of their previous earnings in the case of incapacity for work, 50 per cent of such earnings in case of permanent total invalidity and 40 per cent of such earnings for loss of support suffered by survivors, according to the Schedule appended to Part XI.<sup>17</sup>

In case of partial loss of working capacity, Article 36(2) of Convention No.102 states that the periodical payment should represent a suitable proportion of that specified for total loss of earning capacity or corresponding loss of faculty. Furthermore, subparagraph 3 allows for the periodical payment to be commuted into a lump sum where the degree of incapacity is slight or where the competent authority is satisfied that the lump sum will be properly utilised by the beneficiary.

Additionally, for social security systems providing benefits representing a portion of previous earnings, Article 65 of the Convention allows for the establishment of an upper limit on the amount of wages or earnings which may be considered when calculating the benefit. However, this ceiling should be set in such a way that a skilled manual male employee determined in accordance with the provisions of the Convention would still receive a benefit equal to at least the abovementioned replacement rates.

A skilled manual male employee in Mongolia, determined according to Article 65, (6) (d) of the Convention, would be a person whose earnings are equal to 125 per cent of the

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<sup>17</sup> Given the characteristics of the Mongolian social security system, it has been decided to have recourse to Article 65 of the Convention for determining compliance with the requirements of the Convention as regards the level of employment injury benefit.

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average earnings of all the persons protected. Where the national average wage in 2014 was MNT796,600 per month, the monthly earnings of a standard beneficiary for 2014 would amount to MNT995,750.

As mentioned above, the Law on Benefits provides for the following benefits in case of employment injury: temporary disability pension, disability pension, and dependents' pension (survivor's benefit), as well as rehabilitation payments.

### ***Temporary incapacity***

With regard to the temporary disability benefit, the Law on Benefits stipulates that it shall correspond to 100 per cent of the insured person's previous earnings (section 14, (1)).

### ***Permanent disablement (invalidity)***

The employment injury cash benefit is calculated according to the degree of disability of the injured person, based on his/her former earnings, in a proportion corresponding to 10 per cent of former earnings for a loss of work capacity of up to 10 per cent, and is set at a "corresponding percentage" for each case of over 10 per cent incapacity, (section 6(1) of the Law on Benefits). This means that the benefit is increased in a proportion of 10 per cent per degree of disability of 10 per cent, which would amount to a 100 per cent replacement rate in case of total disability. The Law on Benefits also indicates that the disability pension of an insured person who has lost over 30 per cent working capacity shall amount to at least 75 per cent of the monthly national minimum wage (section 6(2)).

### ***Partial loss of earning capacity***

Section 6, (1) of the Law on Benefits makes provision for a reduced benefit to be paid in case of reduction of work ability. This law further stipulates that, upon the request by an insured person suffering from incapacity for work corresponding to less than 30 per cent and likely to be permanent, the periodical payment can be replaced by a lump sum benefit "in proportion to 6 years", or in case of long term incapacity of less than 30 percent corresponding to a period as determined by the medical authorities responsible for ascertaining the degree of the incapacity and its permanent/temporary character (section 8, (2) of the Law).

With regards to what constitutes a slight degree of incapacity that could give rise to a lump sum meeting the requirements of the Convention, the ILO Employment Injury Recommendation, 1964 (No. 121)<sup>18</sup> provides, on an indicative basis, that it should be less than 25 per cent. In its previous observations regarding the employment injury branch in other countries, the supervisory body of the ILO determined that an incapacity that is slight would be incapacity for work below 25 per cent. Convention No. 102 however allows for other considerations to be taken into account in this appreciation. Should there be measures in place for the competent authority to assess whether the lump sum will be properly utilised by the beneficiary, and that it will fulfil its purpose of ensuring adequate income security to that person in a manner that palliates his/her reduced earning capacity and ensure that his/her needs are met through the contingency, subparagraph 3(b) of Article 36 could be deemed to be satisfied.

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<sup>18</sup> This Recommendation accompanies the ILO Employment Injury Benefits Convention, 1964 (No. 121), which sets higher standards than Convention No. 102 as regards the employment injury branch.

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## ***Dependents' benefit***

With regard to the dependents' pension, i.e. survivor's benefit, section 11 of the Law on Benefits states the benefit will amount to 100 per cent of the insured person's former earnings for three or more dependents, 75 per cent for two dependents and 50 per cent for one dependent. Section 10, (2) further indicates that the family dependents eligible for such a pension are those defined in section 12 of the Law on Pensions and Benefits and discussed here above under the definition of the contingency (for more precision, see here below under Part X (Survivors' benefit)).

## ***Ceiling on insurable earnings and benefit***

According to Article 15.7 of the Law on Social Insurance, the Government shall define a ceiling on the earnings for the payment of contributions by employees and employers, and the calculation of pensions and benefits, based on the national average of insured/contributory wages and the national average wage declared by the National Statistical Office, taking into account of proposals of the National Council on Social Insurance. Under the Government Resolution No. 92 dated 10 June 1998 the above mentioned ceiling was set at 10 times monthly minimum wage (e.g monthly minimum wage in 2014 was MNT192,000 so the ceiling in 2014 was MNT1,920,000). This ceiling is still in force and applied for calculating the benefits. If the insured chooses wages/earnings for the period before the 5th of April 2011, however, the flat rate ceiling (MNT1,080,000) is applied instead (the Government Resolution No 153 dated 2 May 2012) when calculating old age, invalidity and survivor pensions.

The monthly ceiling in 2015 is MNT1,920,000 which does not affect the replacement rate of the benefit that a standard beneficiary, as defined in Article 65 of the Convention, would receive.

With respect to temporary incapacity for work, the requirements of the Convention are applied given that the 100 per cent replacement rate of the benefit exceeds the minimum of 50 per cent required by the Convention. The replacement rate of the benefit in the case of total permanent loss of earning capacity also complies with the requirements of the Convention, which prescribes a minimum replacement rate of 50 per cent of former earnings. In the case of partial permanent loss of earnings, the national legislation is also in compliance as it provides for a proportionate benefit where loss of earning capacity is partial. The national legislation also allows for the payment of the benefit in the form of a lump sum when the degree of incapacity is slight; further information could however be supplied by the Government in case of acceptance of this Part as to the manner in which this provision is applied in practice. Furthermore, given that the Convention allows that the benefit, with respect to partial loss of earnings, be a periodical payment representing a suitable proportion of the benefit awarded for total loss of earning capacity, this requirement is also met by the national legislation on partial invalidity. Benefits provided to survivors are also at levels in line with the Convention, providing a replacement rate to survivors, i.e. the spouse and 2 children (3 dependents) significantly above the 40 per cent required by the Convention.

## ***Duration of benefit***

Article 38 of Convention No. 102 specifies that the benefit must be granted throughout the contingency, except that, in respect of incapacity for work, the benefit need not be paid for the first three days in each case of suspension of earnings.

It is concluded from the analysis undertaken under Part II (Medical care) here above that medical care in case of employment injury is provided throughout the contingency.

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As for the cash benefit, section 7 of the Law on Benefits, in conjunction with section 10 of the Law on Pensions and Benefits, provide for the payment of disability benefits from the date of disability until the day of rehabilitation, or until the end of the following calendar month after the death of the beneficiary. Temporary disability benefits are also, under section 15(1), provided to the insured person from the first day of loss of working capacity, until rehabilitation, or until the person becomes eligible for a disability pension for a maximum duration of 180 days (section 15(2)).

The above provisions of the national legislation appear to be in line with Article 38 of the Convention which requires the provision of employment injury, medical care and cash benefit, throughout the contingency.

### ***Waiting period***

Article 38 of Convention No. 102 provides that the benefit in the case of incapacity for work need not be paid for the first three days.

In Mongolia, there is no waiting period for the payment of employment injury benefits in the legislation; the payment of temporary and permanent invalidity benefits are paid from the first day of loss of working capacity (section 15(1) Law on Benefits and section 10 and 15 Law on Pensions and Benefits).

The waiting period for employment injury benefits in Mongolia appears to be in conformity with the requirements of Article 38 of Convention No. 102.

### **F. Family benefit (Part VII of Convention No. 102)**

The main social protection measures for children are the universal Child Money Program (CMP) provided under the Law on Human Development Fund and a number of social welfare benefits targeting vulnerable children. These are provided under the Law on Social Welfare, 2012 including, but not limited to, non-contributory benefits for single parent headed families, benefits for orphans, children with disability or children with chronic conditions. A cash allowance for livelihood improvement is also provided to the ethnic minority in Taiga according to Presidential decree No. 42 dated 29 March 2013 and Government Resolution No. 168 dated 11 May 2013. Universal and free primary and secondary education and free access to health services for children are also provided.

The analysis will focus on the Universal CMP, which provides benefits for the maintenance of all children between age of 0 and 18. Other programmes are limited in scope as they cover only specific groups of children or do not meet the requirements of the Convention and will therefore not be examined for the purpose of this report. The universal CMP is further regulated by Government Resolution No. 49, 2012 and Government Resolution No. 70, 2012.

### ***Contingency***

Convention No. 102, Article 40, requires benefits to be provided to cover responsibility for the maintenance of children. The term “child” is defined as a child under school leaving age or under 15 years of age.



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According to the Law on Human Development Fund (Art. 17.1), a cash benefit (child money) is provided in respect of all children aged 0 to 18 who are Mongolian citizens, including those who live in orphanages, institutional care services, in correctional services, prisons and detention centres and overseas (section 1.2, 3.4, and 3.6 of Government Resolution No. 70).

The family/child benefits are paid under the Child Money Programme for the maintenance of children. The contingency defined in Article 40 of Convention No. 102 is therefore covered.

## **Coverage**

The CMP benefits are financed by public funds and provided on a universal basis, in respect of all Mongolian children. The scope of personal coverage goes beyond the requirements of Convention No. 102, Article 41, which allows such programmes to make entitlement to benefits subject to a means-test. The Convention, however, requires that such benefits be provided on the basis of residency. Non-nationals may however be subject to qualifying conditions different than nationals in respect of benefits financed through public funds, such as the CMP (e.g. completion of a prescribed period of residency).

According to section 15.1 of the Law on the Human Development Fund, child benefits under the CMP are paid to Mongolian citizens, registered with the Population and Household Registration, with no breach of citizenship rules or regulations. There is no provision in the law stating whether residents who are not Mongolian citizens are entitled to CMP benefits under special conditions.

The national legislation is partially in accordance with the requirements of Convention No. 102 in that all citizens are entitled to family benefits under the CMP programme. It seems however that non-national residents are not entitled to the benefit in respect of their children, which falls short of meeting the requirements of the Convention. Full compliance with the Convention would thus be achieved if non-nationals residents were also entitled to the CMP benefit, noting that the Convention allows entitlement to family/child benefits financed by public funds to be subject to completion of a period of residence up to one year for non-nationals.

## **Level of the Benefits**

In the case of family benefits, Article 42 Convention No. 102 permits the provision of benefits either in cash and/or in kind, including food clothing, housing, holidays or domestic help.

Contrary to other benefits, the level of family benefit is not determined as a function of a standard beneficiary. Instead it is measured as a global level. The total value of the benefits for the whole country, whether granted in cash or in-kind, should amount to 1.5 per cent of the wage of an ordinary adult male labourer, multiplied by the total number of children of all residents.

According to Government Resolution No. 70, the CMP benefit is provided on the 20<sup>th</sup> day of the month. The CMP benefit value is determined according to regulation approved by the Government (section 17.5 of the Law of Mongolia on Human Development Fund). In other words, the amount of the CMP benefit is decided when the total expenditure for the CMP is allocated by the Law on Annual budget of the Human Development Fund every year.

In 2013, the benefit was equal to MNT240,000 per year per child (MNT20,000 per month).<sup>19</sup> This benefit was provided to 960.3 thousand children. The total value of this family benefit in 2013 amounts therefore to MNT230,400,000,000.

According to UN data, the total number of children in Mongolia amounted to 989,723 in 2014. The following table provides a summary of the total amount of family benefits awarded in 2013 in order to measure compliance with Convention No. 102.

Since information regarding the wage of an ordinary adult male labourer calculated according to Article 66 of Convention No. 102 is not available, the calculations below have been based on the earnings of a skilled manual male labourer according to Article 65 which is higher than that of the unskilled worker determined under Article 66. The table below demonstrates that the actual expenditure on the CMP far exceeds the minimum established by Part VII of the Convention even though the reference wage chosen is higher than the one required by the Convention.

**Table 2.**

Total value of family benefits in 2013	230 400 000 000 (annual)
The total number of children of all residents	989 723
Wage of an ordinary adult male labourer according to Article 65	995 750 x 12 = <b>11 949 000 (annual)</b>
Total value of the benefits in cash and in kind	1,5% x 11 949 000 = 179 235
1.5% of the wage of the ordinary adult male labourer multiplied by the total number of children of all residents (100%)	179 235 x 989 723 = 177 393 001 905 230 400 000 000 > 177 393 001 905

The total value of the benefits in cash is higher than the value prescribed by the Convention No.102. Therefore the level of benefits of the CMP complies with requirements of the Convention No.102.

### **Qualifying period**

Entitlement to family benefits can be made subject to the completion of a qualifying period, which may be three months of contributions or employment, or one year of residence (Article 43, Convention No.102).

According to section 15.1 of the Law on Human Development Fund all Mongolian citizens registered with the Population and Household Registration are entitled to the CMP benefit. There is therefore no qualifying period in the manner defined in the Convention No. 102.

The national legislation does not prescribe a qualifying period and is therefore in conformity with Article 43 of Convention No. 102.

<sup>19</sup> UN/ILO/Government of Mongolia: *Report on Social protection assessment based national dialogue: Definition and cost of a social protection floor in Mongolia*, 2015, p. 27

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## ***Duration of the Benefit***

According to Article 45 of Convention No. 102, benefits provided for the maintenance of children should be provided throughout the contingency, i.e. at least up to the fifteenth year of the child or up to school-leaving age.

Government Resolution No. 70 provides that the CMP benefit should be granted until children reach the age of 18, or until the child dies or renounces his citizenship (section 4.1). However, the CMP is financed through the Human Development Fund which is accumulated from mineral resource taxes (section 3.2 of the Law of Mongolia on Human Development Fund). The Law of Mongolia on Human Development Fund further explains that the annual deficits of the Fund may be financed by issuing government bonds and securities and loans (section 3.4). It can be assumed that the sustainability of the program depends on the continuation of the mineral extraction. It is therefore not to be excluded that the payment of the benefit could be discontinued due to the lack of resources in the Human Development Fund.

It should be observed in this respect that, if this Part of the Convention was to be ratified by Mongolia, the Government would continue to assume, under its general responsibility for the due provision of the benefits, obligations under family benefit regardless of the existence of current sources of funding.

## **G. Maternity benefit (Part VIII of Convention No. 102)**

In Mongolia, maternity cash benefits are granted in accordance with the Law on Pensions and Benefits and the Law on Social Insurance and maternity medical benefits are provided under the Health Insurance Law, the Law on Social Insurance, and the Law on Health.

In addition, other maternity benefits are provided by the social security system including a universal cash benefit under the social welfare scheme that is fully financed by the State budget and is provided to all national and non-national pregnant women and mothers, regardless of their employment status, as of the fifth month of pregnancy for a duration of 12 months. If the mother dies after giving birth, the father of the child, or legally authorized person, qualifies to receive the benefit. (Article 13.1.4, 13.7 and 13.8 of the Law on Social welfare, and Parliamentary Decree No.19, 2012). The amount of the social welfare maternity benefit was MNT40,000 per month in 2014.

For the purpose of demonstrating compliance with the minimum requirements contained in Part VIII of the Convention, the analysis below will focus exclusively on the maternity benefits provided under the social insurance scheme based on the protection provided to classes of employees.

## ***Contingency***

At its Article 47, Convention No. 102 holds that in the case of maternity benefits, the contingencies covered include pregnancy and confinement and their consequences, and suspension of earnings.

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As regards maternity medical care, it is provided under the general health system, which includes both a tax-financed and contributory social insurance component. According to the Law on Health, the state budget finances examinations, diagnosis and treatment during pregnancy and childbirth and 45 days of post-delivery care as instructed by a physician (section 24.6). Furthermore, the Law on Health insurance provides that the treatment of associated diseases preceding the 37th week of pregnancy and post-natal period shall be covered by the Health insurance fund (Article 9.1.11). It is understood that hospitalization is also provided when necessary through the Law on Health insurance according to Article 9.1.

In the case of cash benefits, the Law on Social Insurance provides for such benefits in the case of maternity and pregnancy in the definition of “benefits insurance” (see sections 2(9) and 3(2.2) of the Law).

In view of the above it can be concluded that the Mongolian legislation provides maternity cash benefits and maternity medical care in a manner compliant with the definition provided under Convention No. 102.

## **Coverage**

Maternity cash benefits are provided under the social insurance scheme which covers all persons holding labour or certain types of civil contracts, including foreigners, public servants, etc. hence, all women working in Mongolia with a labour contract would be compulsorily covered for maternity cash benefits.

With regard to medical care benefits, all women who are Mongolian citizens, whether insured or not, are entitled to such benefits in case of maternity, under the universal health care scheme (see Article 24.6.1 of the Law on Health). Under the health insurance scheme, the legislation specifically provides for the coverage of employed women (section 4(2) of the Law on Social Insurance and Article 6.1.1-6.1.3 of the Law on Health insurance). The Law on Health insurance covers employees and has extended mandatory coverage to foreign nationals and stateless persons who are in contracted employment, and in foreign organizations on Mongolian territory, and diplomatic missions, international organizations and projects (if not provided otherwise in international agreements) (Article 4.3) in addition to all citizens (Article 4.2). There is however no provision guaranteeing provision of medical benefits to the dependent foreign wives of insured men.

All national and non-national women are entitled to maternity cash benefits in Mongolia. All women employees and all Mongolian citizens are also covered for maternity medical care under the law at the level required by Convention No. 102 (i.e. 50 per cent of all employees). As noted under Article 9, Part II – Medical Care – of the Convention here above, a gap in compliance however remains in respect of foreign national dependent wives, as they do not have access to universal medical care in case of pregnancy, confinement and their consequences. It is thus concluded that this Article is partially applied.

## **Extent of the medical care benefit**

Article 49 of Convention No. 102 prescribes that the medical care should at least include pre-natal, confinement and post-natal care either by medical practitioners or qualified midwives, and hospitalisation where necessary. In addition, it specifies that the beneficiary should not be required to share in the cost of the medical benefit provided. Finally, the medical care provided must be aimed at maintaining, restoring and improving the health

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of the woman protected, and the institutions or government departments administering the maternity medical benefit must encourage the women protected to avail themselves of the general health services placed at their disposal.

Maternity medical care benefits are provided according to section 24.6 of the Law on Health and includes following examinations, diagnosis and treatment during pregnancy, childbirth and post-delivery for 45 days as instructed by a physician. In addition, Article 9.1 of the Law on Health Insurance covers the treatment of associated diseases preceding the 37th week of pregnancy and post-natal period as well as hospitalization. It appears that maternity medical care benefits are provided in conformity with Article 49 of Convention No. 102.

### ***Amount of the maternity cash benefit***

Article 50 of the Convention states that the amount of the maternity benefit must be calculated in conformity with the rules established in Article 65, 66 or 67 of Convention No. 102 and should be a periodical payment attaining, for a standard beneficiary indicated in the Schedule appended to Part XI, at least 45 per cent of the reference wage determined in accordance with these provisions.

Additionally, for social security systems providing benefits representing a portion of previous earnings, Article 65 of the Convention allows for the establishment of an upper limit on the amount of wages or earnings which may be considered when calculating the benefit. However, this ceiling should be set in such a way that a skilled manual male employee determined in accordance with the provisions of the Convention would still receive a benefit equal to at least 45 per cent of previous earnings.

A skilled manual male employee, determined according to Article 65 (6) (d) of the Convention, is a person whose earnings are equal to 125 per cent of the average earnings of all the persons protected. Where the national average wage in 2014 was MNT796,600<sup>20</sup> per month, the monthly earnings of a standard beneficiary for 2014 would amount to MNT995,750.

Section 19<sup>2</sup>(1) of the Law on Pensions and Benefits stipulates that a replacement rate of 100 per cent of former earnings of the last 12 months shall be paid to an insured woman (a woman worker with an employment contract or civil servant) in case of maternity. The replacement rate is 70 per cent for those voluntarily insured. According to the Regulation adopted by Order No. A/30 of the Minister for Population Development and Social Protection dated 18 February 2015, maternity cash benefits are given in two lump sums, once before and once after the delivery of the child. As such it appears that the beneficiary receives a benefit equivalent to what they would be entitled over a period of four months at a rate of 100 per cent (70 per cent for persons covered on a voluntary basis) of their previous earnings but received in two separate payments instead of continuously.

Additionally, according to Article 15.7 of the Law on Social Insurance, the Government shall define a ceiling on the earnings for the payment of contributions by employees and employers, and the calculation of pensions and benefits, based on the national average of insured/contributory wages and the national average wage declared by the National Statistical Office, taking into account of proposals of the National Council on Social Insurance. Under the Government Resolution No. 92 dated 10 June 1998 the above

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<sup>20</sup> NSO: *Mongolian Statistical Yearbook*, 2014, p. 59

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mentioned ceiling was set at 10 times monthly minimum wage (e.g monthly minimum wage for 2014 was MNT,192,000 so the ceiling in 2014 was MNT1,920,000). The ceiling is still in force and applied for calculating the benefits. It can be reminded that the monthly wage of the skilled manual male employee is set at MNT995,750.

On the basis of the above, it is observed that the monthly ceiling on the wages taken into account for the calculation of the benefit would not prevent the skilled manual male employee to receive the actual replacement rate established by the national legislation at 45 per cent of previous earnings, i.e. above the minimum replacement rate established by Convention No. 102 at 45 per cent.

It appears that the level and periodicity of the social insurance maternity cash benefit complies with the replacement rate required by Convention No. 102 since a standard beneficiary would receive a benefit equal to 100 per cent of their previous earnings.

### ***Qualifying period***

According to Article 51 of Convention No. 102 the qualifying period for maternity cash and medical care benefits must be considered necessary to preclude abuse.

Maternity cash benefits, under section 19<sup>1</sup> of the Law on Pensions and Benefits, are provided to women who have paid contributions in respect of maternity insurance for at least 12 months, of which 6 continuous months preceding the maternity leave.

As regards medical maternity benefits, these are provided in the absence of a qualifying period as seen under Part II (Medical Care).

The length of the qualifying period for entitlement to social insurance maternity benefit seems justifiable for preventing abuse of the scheme in light of previous observations brought forward by the CEACR (see Part IV (Unemployment benefits)). As such it may thus be concluded that Article 51 of Convention No. 102 is applied.

### ***Duration of the maternity cash benefit***

Article 52 of Convention No. 102 provides that the maternity benefit must be provided throughout the contingency. However, the periodical payment may be limited to 12 weeks unless a longer period is required or authorised by national laws or regulations.

Under section 19(1) and (2) of the Law on Pension and Benefits, the maternity cash benefit is paid over a period of 4 months (or 16 weeks) for persons mandatorily covered under the Social Insurance Scheme

There is no prescribed limitation for the duration of maternity medical care benefits under the legislation; these appear to be provided throughout the contingency.

The duration of maternity benefits stated above is in compliance with the requirements of this Article of the Convention, i.e. that the benefit be provided for a minimum period of 12 weeks for maternity cash benefits or throughout the contingency for medical maternity care.

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## H. Old-age benefit (Part V of Convention No. 102)

As mentioned in Part I of this report, there are currently two sets of legal provisions setting out the parameters of old-age pensions in Mongolia. The Law on Pensions and Benefits provided by the Social Insurance Fund makes provision for a defined benefit scheme. It was meant to be replaced by a notionally defined contribution pension scheme, as set out in the Law on Individual Pension Insurance Accounts, the inception of which has been postponed for another 20 years, according to the State Policy on Pension Reform. Given that the former is still fully operational, that the latter is not to be in a near future, and that its parameters have yet to be defined, the analysis of compatibility is carried out in respect of the former.

### **Contingency**

According to Article 26 of Convention No. 102, the contingency covered shall be survival beyond a prescribed age: where the prescribed age shall be not more than 65 years or such higher age as may be fixed by the competent authority with due regard to the working ability of elderly persons in the country concerned. National laws or regulations may provide that the benefit of a person otherwise entitled to an old age benefit may be suspended if such person is engaged in any prescribed gainful activity or that the benefit, if non-contributory, may be reduced where the earnings of the beneficiary or his other means or the two taken together exceed a prescribed amount.

According to section 4(1) of the Law on Pensions and Benefits provided by the Fund of Social Insurance, which applies to covered persons born before 1 January 1960, entitlement to old-age benefit arises at age 60 for men and age 55 for women, provided that insured persons have fulfilled the prescribed qualifying period, i.e. a total of 20 years of contributions. Paragraphs (2) and (3) of the same section of the Law lay down different age requirements for special circumstances: women who have raised 4 or more children (from birth or if, adopted, under three years of age and until age 6)) are entitled to an old-age pension from age 50 if they have contributed for 20 years and have requested it (Section 4(2)); men can request an old age benefit at age 55 if they have worked underground for 10 years out of the 20 years of contributions required (Section 4(3.1)); from age 55 for men who have worked in hot conditions for not less than 10 years out of the 20 years required and women as of age 50 if they have worked in hot conditions for 7 years and 6 months out of the 20 years required(section 4(3.2)).

It may be concluded that this Article of Convention No. 102 is applied, as the national legislation prescribes a pensionable age lower than the maximum pensionable age fixed by the Convention, i.e. 65 years of age.

### **Coverage**

Under section 4, paragraph 2, in conjunction with section 3, paragraph 2.1 of the Law on Social Insurance, the following persons are compulsorily covered under the social insurance system, which comprises old-age benefit: all persons working under a labour or civil contract (as specified in Articles 343 and 359 of the Civil law of Mongolia), including Mongolian citizens, foreigners, stateless persons contracted to work in all types of entities, organisations, non-governmental and religious organisations, and for individuals; and public servants, and Mongolian citizens working abroad under a labour contract.

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From the above it appears that the statutory personal coverage for old age benefit under the social insurance scheme in Mongolia goes beyond the requirements of Article 27, paragraph (a) of the Convention, i.e. that at least 50% of all employees be covered, in that all employees are protected.

### ***Level of the benefit***

Article 28 of the Convention states that the amount of the old age benefit must be calculated in conformity with the rules established in Article 65, 66 or 67 of Convention No. 102 should attain, for a Standard Beneficiary indicated in the Schedule appended to Part XI, at least 40 per cent of their previous earnings.

Section 5 of the Law on Pensions and Benefits provided by the Fund of Social Insurance stipulates that the old-age benefit shall correspond to 45% of the monthly average insurable wages or similar earnings of an insured person, and increased in a proportion of 1.5% or 0.125% of pensionable wages for each additional year or month of contribution after 20 years of contributions (section 5 (1) and (2)). The Law further stipulates that the pension of an insured person, who was in receipt of a disability pension prior to being entitled to old-age pension, shall be increased by 1% for each year of total invalidity (section 5(3)). Finally, the Law stipulates that the minimum full retirement old-age pension shall not be less than 75% of the minimum monthly wage fixed by the Government and that the minimum reduced pension shall not be less than 50% of the same wage (section 5(4)).

It may be concluded that the provisions of the Law on Pensions and Benefits provided by the Fund of Social Insurance comply with the requirements of Article 28, read in conjunction with Article 65 and the Schedule to Part XI of the Convention, as the replacement rate of the benefit, which would correspond to 60% of former earnings, after 30 years of contributions, is higher than the minimum replacement rate of 40% required by the Convention after completion of such contributory period.

### ***Qualifying period***

Article 29 of Convention No. 102 requires that an old-age benefit equal to 40 per cent of former earnings be paid to an insured person having completed a qualifying period of 30 years of contributions. The Convention also requires that where a benefit is conditional upon a minimum period of contributions, a reduced benefit must be guaranteed to insured persons having at least completed a qualifying period of 15 years of contributions.

As prescribed under section 4 of the Law on Pensions and Benefits provided by the Fund of Social Insurance, entitlement to old-age benefit, at a replacement rate of 45% of former earnings, is conditional upon the insured person having paid contributions for a minimum total period of 20 years.

Section 4(5) of the Law on Pensions and Benefits provided by the Fund of Social Insurance stipulates that men and women having attained respectively 60 and 55 years of age shall be entitled to a reduced old-age benefit in proportion to the total insurance period provided that they have paid contributions for at least 10 years (noting that, as mentioned above, after 20 years they would become entitled to a “full” pension, corresponding to 45% of their former earnings), in proportion to the “full” pension.



The qualifying period set out in the Law on Pensions and Benefits for entitlement to an old-age pension, i.e. 20 years of contributions, is in accordance with Article 29 (1) (a) which lays down that an old-age benefit at least at the level prescribed in the Convention, i.e. 40% of former earnings, be paid to an insured person having completed a qualifying period of 30 years of contributions.

As regards the reduced pension, since entitlement to an old age benefit is based on a contributory period of 10 years, it can be concluded that Article 29(2), which requires the payment of a reduced pension after 15 years of contribution, is met.

### ***Duration of the old age benefit***

Article 30 of Convention No. 102 specifies that the old age benefits shall be granted throughout the contingency.

Under section 6 of the Law on Pensions and Benefits provided by the Fund of Social Insurance, old-age pension shall be paid from the date when the insured person reaches retirement age, if he/she has made a claim in this respect prior to that date, or on the date such claim is received, until the end of the following calendar month after death of the insured person.

The old-age benefit under the Law on Pensions and Benefits is paid throughout the contingency as required by Article 30 of the Convention.

## **I. Invalidation benefits (Part IX of Convention No. 102)**

Invalidity benefits are provided according to the Law on Pensions and Benefits by the Fund of Social Insurance and the Law on Social Insurance for persons born before 1 January 1960, and according to the Law on Individual Pension Insurance Accounts for persons born after 1 January 1960.<sup>21</sup> In practice, however, the Law on Individual Pensions Insurance Accounts is not applied. Instead, relevant provisions and formula specified in the Law on Pensions and Benefits provided by the Social insurance fund are applied for calculating and granting a disability benefit to an insured person born on or after 1 January 1960.

### ***Contingency***

Article 54 of the Convention provides that the contingency covered shall include inability to engage in any gainful activity, which inability is likely to be permanent or persists after the exhaustion of sickness benefit.

According to section 7(1) of the Law on Pensions and Benefits, an insured person who has lost 50 per cent or more of his/her capacity for work, permanently or on a longterm basis, due to a non-occupational disease, complication after injection or non-work accident, shall be eligible to an invalidity benefit, provided he/she has paid contributions as prescribed.

Section 8 further stipulates that invalidity may be classified as total or partial and that the percentage of an insured person's loss of working capacity and the duration of incapacity shall be determined by the Medical Labour Accreditation Commission.

<sup>21</sup> Where the earnings of a Standard Beneficiary amount to MNT995,750 (i.e. 125 per cent of the average national wage), the minimum old age benefit according to Convention No. 102 should be MNT398,300 (or 40 per cent of the earnings of a Standard Beneficiary). Where the predicted benefit is only 37.7 per cent of the average national wage (MNT300,318), this is equal to 30.2 per cent of the earnings of a standard beneficiary.

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It may therefore be concluded that this Article is applied as the contingency that gives rise to invalidity benefit includes inability to engage in any gainful activity likely to be permanent.

## **Coverage**

### **Benefits paid according to the Law on Pensions and Benefits by the Fund of Social Insurance**

Under section 4, paragraph 2, in conjunction with section 3, paragraph 2, (1), of the Law on Social Insurance, the following persons are mandatorily covered: Mongolian citizens, foreigners, stateless persons contracted to work in all types of entities, organisations, non-governmental and religious organisations, and for individuals, and public servants, Mongolian citizens working abroad under a labour contract.

### **Benefits paid according to the Law on Individual Pension Insurance Accounts**

According to section 3 of the Law on Individual Account, citizens of Mongolia, foreigners and stateless persons residing in Mongolia and born on and after 1 January 1960 covered according to the Social Insurance Law shall have an individual account established for them.

The legal coverage is therefore in compliance with the requirements of Article 55, paragraph (a) of the Convention, which requires the coverage of at least 50 per cent of all employees, since all employees are covered.

## **Level of the benefit**

Article 56 of Convention No. 102 provides that the invalidity benefit must be a periodical payment calculated according to Articles 65, 66 or 67 and should be a periodical payment attaining, for a standard beneficiary indicated in the Schedule appended to Part XI, at least 40 per cent of the reference wage determined in accordance with these provisions.

Additionally, for social security systems providing benefits representing a portion of previous earnings, Article 65 of the Convention allows for the establishment of an upper limit on the amount of wages or earnings which may be considered when calculating the benefit. However, this ceiling should be set in such a way that a skilled manual male employee, determined in accordance with the provisions of the Convention, would still receive a benefit equal to at least 40 per cent of previous earnings.

A skilled manual male employee, determined according to Article 65, (6), (d) of the Convention, is a person whose earnings are equal to 125 per cent of the average earnings of all the persons protected. Where the national average wage in 2014 was MNT796,600<sup>22</sup> per month, the monthly earnings of a standard beneficiary for 2014 would amount to MNT995,750.

As discussed above, in Mongolia, the formula for calculating invalidity benefits is set out in two separate laws depending on the date of birth of insured persons.

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<sup>22</sup> NSO: *Mongolian Statistical Yearbook*, 2014, p. 27

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## Benefits paid according to the Law on Pensions and Benefits by the Fund of Social Insurance

According to the Convention, a standard beneficiary should receive an invalidity benefit at the minimum replacement rate of at least 40 per cent of previous earnings, after 15 years of contributions.

In Mongolia, for persons born before 1 January 1960, under the Law on Pensions and Benefits, invalidity pensions for persons suffering from **total invalidity** are calculated according to the rate of retirement pensions (old-age benefit) (section 9(1)). As such, an invalidity benefit at a replacement rate equivalent to 45 per cent of the monthly average insurable earnings is provided after 20 years of contributions or to a person who has contributed “for a period of three years out of five immediately preceding the date of commencement of invalidity” (section 7).<sup>23</sup> Accordingly, there are two possible ways of qualifying for entitlement to invalidity benefits, each valid in its own right. Either the insured person has contributed: 1) during 20 years, or 2) for three years in the five years preceding the occurrence leading to entitlement. In addition, the law states that the benefit can be increased by 1.5 per cent of pensionable wages for each additional contributory year (0.125 per cent for each additional month) after 20 years of contributions (section 5, (2)).

It is assumed that an insured person who does not satisfy the minimum contribution period of 20 years would be eligible to a reduced pension at a rate proportional to the pension provided after the total contribution period (section 7(2)).

Under the first qualifying condition, if a minimum period of employment or contribution of 20 years is required for entitlement to invalidity pension, this condition would not be in line with the Convention.

Even if it was assumed that the formula’s accrual rate would be applied in a linear manner, a person would only be entitled to a benefit equal to 33.75 per cent of former earnings after a contributory period of 15 years whereas Convention No. 102 requires 40 per cent.

Nevertheless, the legislation also establishes a second shorter qualifying period in order to give a full benefit to persons with shorter career spans. Under such circumstances, a beneficiary would be entitled to a benefit at a replacement rate of 45 per cent already after a contributory period of 3 years, if these 3 years were accumulated within the 5 years preceding the occurrence leading to the invalidity benefit. In this configuration, a beneficiary who contributed continuously during 15 years (three of which were during the last five) would be entitled to a benefit at 45 per cent of their previous earnings (exceeding the minimum of 40% set in Convention No. 102). However, individuals that have not recorded at least 3 contributory years in the 5 years preceding the invalidity are in a less favourable situation.

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<sup>23</sup> Section 9, (2) of this law further stipulates that in case of partial invalidity, i.e. having lost less than 50 per cent of working capacity, an insured person is entitled to an invalidity benefit calculated at the “rate of proportion to his wages” as prescribed under Section 5, (1) and (2) of the Law.

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## Benefits paid according to the Law on Individual Pension Insurance Accounts

The Law on Individual Pension provides at section 8.3.1 that, in case of **total disability (i.e. a degree of invalidity of at least 70 per cent)**, invalidity pensions shall correspond to 60 per cent of the insured person's monthly average wages received over the last three year or similar earnings. The benefit for persons born after 1 January 1960 would seem to be in line with the Convention, as it corresponds to 60 per cent of former earnings, which is beyond the 40 per cent required for a standard beneficiary. It is assumed that according to section 7.2 and 13.1, the qualifying conditions, including those regarding the calculation of a reduced benefit are those stipulated under the Law on Pensions and Benefits and therefore the same reasoning as above would apply, i.e. a person may be entitled to a benefit equal to 60 per cent of their former earnings already after having contributed three years, provided that the three years were accumulated in the last five years before the invalidity occurred. Where a protected person has not met this condition, they may still receive a reduced benefit equal to 45 per cent of former earnings under two assumptions: a) they have accumulated a contributory period of 15 years through the course of their career and b) the reduced benefit specified under the Law on Pensions and Benefits is calculated in a linear manner.

Additionally, according to Article 15.7 of the Law on Social Insurance, the Government shall define a ceiling on the earnings for the payment of contributions by employees and employers, and the calculation of pensions and benefits, based on the national average of insured/contributory wages and the national average wage declared by the National Statistical Office, taking into account of proposals of the National Council on Social Insurance. Under the Government Resolution No. 92 dated 10 June 1998 the above mentioned ceiling was set at 10 times monthly minimum wage (e.g monthly minimum wage for 2014 was MNT192,000 so the ceiling in 2014 was MNT1,920,000). This ceiling is still in force and applied for calculating the benefits. It can be reminded that the monthly wage of the skilled manual male employee is set at MNT995,750. If the insured chooses wages/earnings for the period before the 5th of April 2011, however, the flat rate ceiling (equal to MNT1,080,000) is applied when calculating old age, invalidity and survivor pensions (Government Resolution No. 153 dated 2 May 2012).

On the basis of the above, it is observed that the monthly ceiling on the wages taken into account for the calculation of the benefit would not prevent the skilled manual male employee to receive the actual replacement rate established by the national legislation at 60% of previous earnings, i.e. above the minimum replacement rate established by Convention No. 102 at 40 per cent.<sup>24</sup>

It should be noted, however, that in practice, relevant provisions and formula specified in the Law on Pensions and Benefits provided by the Social insurance fund are applied in calculating and granting a disability benefit to an insured person born on or after 1 January 1960. The conclusions provided above are therefore valid in this regard.

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<sup>24</sup> The law further stipulates that the minimum invalidity benefit shall not be below 20 per cent of the national average wage (Sections 9.1 and 9.3); however it can be increased where insured persons have contributed over 15 years by 0.5 per cent per additional year (Section 9.2). Nevertheless, the minimum invalidity pension for a contributory period equal to the one required in Convention No. 102, i.e. 15 years, would amount to 20 per cent of the national average wage.

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## **Reduced benefit**

### **Benefits paid according to the Law on Pensions and Benefits by the Fund of Social Insurance**

Convention No. 102 provides that a reduced benefit should be secured to a person protected who has completed, prior to the contingency, a qualifying period of five years of contributions or employment (Article 57(2)(a)).

Under section 7(2), an insured person who has not satisfied the contribution period is eligible for an invalidity reduced pension in proportion to the total contributions period, already after paying contributions for at least three years in total. The minimum reduced benefit is equal to 50 per cent of the minimum wage.

### **Benefits paid according to the Law on Individual Pension Insurance Accounts**

According to section 13.1 of the Law on Individual Pension Insurance Accounts, the rules pertaining to the reduced benefit are those found in Law on Pensions and Benefits by the Fund of Social Insurance and are therefore also in compliance with Convention No. 102.

Persons born before 1 January 1960 who are granted invalidity benefits for total invalidity according to the Law on Pensions and Benefits may receive a benefit at a replacement rate in line with Convention No. 102 assuming they have accumulated a contributory period of at least three years in the five years preceding the contingency. While this provides a benefit in line with the Convention after a much shorter period, in certain cases, i.e. a person with 15 years of contributions of which only 2 are in the last five, would not be entitled to a benefit at the level required by the Convention (which requires that a benefit should be provided after a contributory period of 15 years, whether these are accumulated continuously or in an interrupted manner throughout the working life.).

Based on the assumptions made above, invalidity pensions for total invalidity provided according to the Law on Individual Pensions, i.e. for persons born on or after 1 January 1960, are seemingly provided at a rate well above the requirements of the Convention. However further information is needed as to if and how sections 7.2 and 13.1 of the Law on Individual Pensions are to be applied in practice. Nevertheless, it is worth underlying that, since in practice persons born on or after 1 January 1960 receive invalidity benefits according to the Law on Pensions and Benefits, the aforementioned conclusions are valid here as well.

The national legislation provides a reduced benefit after a contributory period of three years in line with Convention No. 102 that prescribes that a reduced benefit should be granted at least where a protected person has a qualifying period of 5 years of contributions or employment.

## **Qualifying period**

Article 57 specifies that the invalidity benefit shall, in a contingency covered, be secured at least to a person protected who has completed, prior to the contingency, a qualifying period which may be 15 years of contribution or employment, or 10 years of residence; or to a person protected who has completed a qualifying period of three years of contribution and in respect of whom, while he was of working age, the prescribed yearly average number of contributions has been paid. After the qualifying period of 15 years of contributions, the protected persons should be entitled to a benefit equal to at least 40 per cent of their former earnings.

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## **Benefits paid according to the Law on Pensions and Benefits by the Fund of Social Insurance**

According to section 7(1) of the Law on Pensions and Benefits, an insured person born before 1 January 1960 shall become eligible for an invalidity benefit after 20 years of pension insurance contributions “or for a period of three years out of five immediately preceding the date of commencement of invalidity”.

As detailed above, meeting either one of these requirements will lead to entitlement to a full disability pension. The Law on Pensions and Benefits gives right, in conformity with the Convention, to a full benefit, equal to 45 per cent of previous earnings provided that the protected persons have completed a qualifying period of three years in the five years before the invalidity occurred. Persons who have contributed for at least three years but not in the five years preceding the invalidity may still qualify for a reduced benefit.

## **Benefits paid according to the Law on Individual Pension Insurance Accounts**

As regards persons born on or after this date, there is no qualifying period in the Law on Individual Pension, however section 7.2 and 13.1 appear to suggest that the qualifying conditions and rules governing the reduced benefit set in the Law on Pensions and Benefits apply. As such, it appears that persons born on or after this date are also subject to a qualifying period of 20 years, or three years in the five years preceding the contingency and may receive a reduced benefit as long as they have contributed three years total. In this same regard, though the qualifying period appears to comply with Convention No. 102, it is not possible with the information provided to calculate the value of the reduced benefit after 15 years.

The qualifying period under the Law on Pensions and Benefits complies in part with Convention No. 102 as it entitles protected persons to a full invalidity benefit provided they have contributed for three years in the five years before the occurrence of the invalidity. It is however to be confirmed whether a protected person would be entitled to an invalidity benefit equal to at least 40 per cent of his or her former earnings as required by the Convention when that person has contributed for 15 years (three of which were not in the last five). The same conclusions are valid under the Law on Individual Pensions subject to further clarification on the application of sections 7.2 and 13.1 of this law.

## ***Duration of the invalidity benefit***

Article 58 of Convention No. 102 specifies that the invalidity benefit “shall be granted throughout the contingency or until an old-age benefit becomes payable.”

## **Benefits paid according to Law on Pensions and Benefits by the Fund of Social Insurance**

According to section 10 of the Law on Pensions and Benefits, the invalidity pension is paid from the date the invalidity commences to the day the insured person is rehabilitated or following the month after the decease of the beneficiary. Although this law does not indicate that an invalidity pension ceases when the insured person receives old-age benefits, the Law on Social Insurance stipulates at its section 7 that there shall be no duplication of benefits or pensions and thus a person would not be entitled to receive an invalidity pension and an old age pension at the same time.

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## **Benefits paid according to Law on Individual Pension Insurance Accounts**

As the Law on Individual Pension is silent on this account, according to section 13.1, it would appear that the provision regarding the duration of the invalidity benefit found under the Law on Pensions and Benefits would apply. However, due to the nature of the scheme, clarification is needed on whether invalidity benefits are granted throughout the contingency or only until the individual account balance is exhausted.

Given that an invalidity benefit is granted until the death of the beneficiary under the Law on Pensions and Benefits (i.e. for persons born before 1 January 1960), it appears that, as far as this law is concerned, a benefit is provided throughout the contingency as required by Convention No.102. However, confirmation that such is also the case under the Individual Pension Account scheme once it becomes operational (i.e. for persons born on or after 1 January 1960) would be needed.

## **J. Survivors' benefits (Part X of Convention No. 102)**

Survivor's benefits are provided according to the Law on Pensions and Benefits provided by the Fund of Social Insurance and the Law on Social Insurance for persons born before 1 January 1960, according to the Law on Individual Pension Insurance Accounts for persons born after 1 January 1960 and the Law on Social Insurance as well as the Law on Pensions and Benefits provided by the Fund of Social Insurance for matters concerning contributions, benefit entitlement and payments, execution of control over performance and compliance not otherwise regulated under the Law on Individual Pension Insurance Accounts.

### ***Contingency***

Article 60 of Convention No. 102 provides that the contingency covered shall include the loss of support suffered by the widow or child (defined in the Convention as a child of school leaving age or under 15 years of age, Article 1(e)) as the result of the death of the breadwinner; in the case of a widow, the right to benefit may be made conditional on her being presumed to be incapable of self-support.

In addition, it provides that the benefit may be suspended if such person is engaged in any prescribed gainful activity or that the benefit, if contributory, may be reduced where the earnings of the beneficiary exceed a prescribed amount, and, if non-contributory, may be reduced where the earnings of the beneficiary or his other means or the two taken together exceed a prescribed amount.

## **Benefits paid according to Law on Pensions and Benefits by the Fund of Social Insurance**

Under section 12, (1) of the Law on Pensions and Benefits, dependent family members of a breadwinner, who have completed the qualifying conditions for entitlement to invalidity benefit are eligible for a survivor's benefit where the death of the breadwinner is not due to employment injury, in the manner as follows: natural and adopted children under 19 years of age (regardless of whether there is another person legally responsible for their maintenance); the breadwinners' grandchildren and his/her younger brothers and sisters under 19 years of age for whose maintenance the breadwinner was legally and solely responsible; the breadwinners' grandchildren and his/her younger brothers and sisters who were under care of the deceased, born incapacitated or incapacitated before they reached

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16 years of age; the breadwinner's father from 60 years of age and his/her mother from 55 years of age, or incapacitated parents and husband/wife, or his/her grandparents, elderly and younger brothers and sisters who have no other person legally responsible for their maintenance; parents and husband or wife (regardless of their age or working capacity) who are out of employment to take care of their children under the age of 8, grandchildren or younger sisters and brothers under the age of 8 who have no other legal guardian.

In addition, section 12(2) also provides eligibility to a survivor's benefit to: dependent family members of an insured person who dies while he/she was in receipt of an old-age or invalidity pension, or who fully lost his/her capacity for work in the months preceding his/her death; step-parents of the breadwinner who's maintenance they are in charge of; stepchildren for whom the breadwinner was responsible on the basis of a judicial decision. Section 13 further grants survivor's pensions to dependents suffering from total invalidity where he/she is not entitled to any other pension.

### **Benefits paid according to Law on Individual Pension Insurance Accounts**

It is understood that the beneficiaries of survivors benefits provided under the Law on Individual Pensions are the same as those listed under the Law on Pensions and Benefits according to section 13.1.

Under the Mongolian legislation, survivor's benefits are made conditional on the breadwinner's dependents being incapable of self-support (generally referred to as "incapacitated" or caring for young children and to children under the age 19). As the Convention requires as a minimum that children up to 15 years of age (or school leaving age) and spouses incapable of self-support be entitled to a survivor's benefit, it can be concluded that the national legislation is in compliance with the Convention.

## **Coverage**

### **Benefits paid according to Law on Pensions and Benefits by the Fund of Social Insurance**

Under section 4, paragraph 2, in conjunction with section 3, paragraph 2 (1), of the Law on Social Insurance, the following persons are mandatorily covered: Mongolian citizens, foreigners, stateless persons contracted to work in all types of entities, organisations, non-governmental and religious organisations, and for individuals, and public servants, Mongolian citizens working abroad under a labour contract. Furthermore, as detailed above, section 12(1) of the Law on Pensions and Benefits stipulates that wives/husbands and children, as well as other dependents family members of the breadwinner are entitled to survivor's pensions (read in conjunction with section 13.1 of the Law on Individual Pension).

### **Benefits paid according to Law on Individual Pension Insurance Accounts**

According to section 3 of the Law on Individual Pension, citizens of Mongolia, foreigners and stateless persons residing in Mongolia and born on and after January 1 1960 covered according to the Social Insurance Law shall have an individual account established for them.



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The personal coverage for survivor's benefits is therefore in compliance with the requirements of Article 61, paragraph (a) of the Convention, as the wives and children of all "breadwinner employees" are covered by law, beyond the requirements of this paragraph, i.e. at least 50 per cent of all employees.

### **Level of the benefit**

Article 62 of the Convention states that the amount of the survivors benefit must be calculated in conformity with the rules established in Article 65, 66 or 67 of Convention No. 102 and should be a periodical payment attaining, for a standard beneficiary indicated in the Schedule appended to Part XI, at least 40 per cent of the reference wage determined in accordance with these provisions.

Additionally, for social security systems providing benefits representing a portion of previous earnings, Article 65 of the Convention allows for the establishment of an upper limit on the amount of wages or earnings which may be considered when calculating the benefit. However, this ceiling should be set in such a way that a skilled manual male employee, determined in accordance with the provisions of the Convention, would still receive a benefit equal to at least 40 per cent of previous earnings.

A skilled manual male employee, determined according to Article 65 (6)(d) of the Convention, is a person whose earnings are equal to 125 per cent of the average earnings of all the persons protected. Where the national average wage in 2014 was MNT796,600<sup>25</sup> per month, the monthly earnings of a standard beneficiary for 2014 would amount to MNT995,750.

As with other long-term benefits discussed above, the method of calculation of a survivor's benefit is set out in two different laws depending on the date of birth of the insured person, more precisely: the Law on Pensions and Benefits for persons born before 1 January 1960 and the Law on Individual Pension Insurance for persons born on or after 1 January 1960. It should be underlined that persons born after this date are subject to the qualifying conditions for entitlement for a survivor's benefit as laid down in the Law on Pensions and Benefits (section 7.2 of the Law on Individual Pension).

### **Benefits paid according to the Law on Pensions and Benefits by the Fund of Social Insurance**

According to the Law on Pensions and Benefits, the survivors benefit is calculated in relation to the old-age benefit (section 14.1 read in conjunction with section 5) after the qualifying period stipulated for invalidity benefits, i.e. a contributory period of 20 years or three years within the five years preceding the contingency (section 12.1 read in conjunction with section 7.1). Old-age benefits are equal to 45 per cent of the monthly average insurable wage and can be increased by 1.5 per cent of each additional contributory year after 20 years (section 5(1)(2)). The level of the benefit varies according to the number of survivors as follows: 100 per cent of the old-age benefit for 3 dependents and more, 75 per cent for 2 dependents and 50 per cent for one dependent (sections 12 (1) and 14 (1), in conjunction with section 5 (1) and (2), and 7 (1)). It can be noted that the full old-age benefit is 45 per cent of previous earnings. Section 14(2) further stipulates that, where the breadwinner was in receipt of an invalidity pension at the time of his/her death, the survivor's benefit shall be increased by 1 per cent for each year of total invalidity.

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<sup>25</sup> NSO: *Mongolian Statistical Yearbook*, 2014, p. 59

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Assessment of the provisions relating to the calculation of the survivors' benefit has to be made in view of the requirements of the Convention, which sets a minimum replacement rate of 40 per cent of the former earnings of the deceased breadwinner for a standard beneficiary, i.e. a widow with two children, and which stipulates that such benefit must be guaranteed to the survivors of the deceased breadwinner after completion of a maximum contributory period of 15 years.

According to the national law, a standard beneficiary (according to the Convention a widow with two dependent children) would be entitled to a survivors benefit equal to 45 per cent after completing a qualifying period of either 20 years or after three years provided that these three years are accumulated within the five years preceding the contingency.

In order to assess compliance, it is necessary to determine the level of the benefit after a maximum qualifying period of 15 years as stipulated in Convention No. 102.

Under the first qualifying condition, if a minimum period of employment or contribution of 20 years in total is required for entitlement to survivor pension, this condition would not be in line with the Convention.

Even if it was assumed that the formula's accrual rate would be applied in a linear manner, a person would only be entitled to a benefit equal to 33.75 per cent of former earnings after a contributory period of 15 years whereas Convention No. 102 requires 40 per cent.

Nevertheless, the legislation also establishes a second, shorter, qualifying period in order to give a full benefit to survivors of breadwinners with shorter career spans. Under such circumstances, a widow would be entitled to a benefit at a replacement rate of 45 per cent already after a contributory period of 3 years, if these 3 years were accumulated within the 5 years preceding the occurrence leading to the survivor benefit. In this configuration, a beneficiary who contributed continuously during 15 years (three of which were during the last five) would be entitled to a benefit at 45 per cent of their previous earnings (exceeding the minimum of 40 per cent set in Convention No. 102). However, individuals that have not recorded at least 3 contributory years in the last 5 years before the death of the insured are in a less favourable situation.<sup>26</sup>

### **Benefits paid according to the Law on Individual Pension Insurance Accounts**

Under section 8.4 of the Law on Individual Pension, survivor's pensions correspond to 40 per cent of the insured person's monthly average of the last three year wages or similar earnings, when there is one dependent survivor. The benefit is increased by 10 per cent per additional dependent survivor, up to a maximum of 60 per cent. Therefore, the replacement rate of a survivor's benefit for a standard beneficiary, i.e. a deceased breadwinner with a dependent spouse and 2 children, would be equivalent to 60 per cent of their previous earnings.

Again, conclusions stated under the Part IX (invalidity benefit) apply to the level of the survivor's benefit under the Law on Individual Pension Insurance. According to sections 7.2 and 13.1, the qualifying conditions and rules regarding the reduced benefit would be

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<sup>26</sup> The Law on Pensions and Benefits also provides for a minimum survivors' benefit at section 14(3). The minimum benefit should equal 100 per cent of the minimum monthly wage where there are three dependents.

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applicable to survivor's benefits under the Law on Individual Pension Insurance. In this case, assuming the reduced benefit is calculated in a linear manner it could be deduced that, if a protected person is entitled to a benefit equal to 60 per cent after 20 years, the replacement rate of a survivor's benefit after 15 years would be 45 per cent of the insured person's former earnings. This would also be in compliance with Convention No. 102.

In addition, it could be assumed that survivors receive a benefit equal to 60 per cent of former earnings of the breadwinner, well above the minimum set in the Convention, provided that the breadwinner has contributed three years in the five years preceding his death. However, the Convention requires that a benefit at least equal to 45 per cent be given to the survivors of a breadwinner who has contributed 15 years in total regardless of when these were accumulated during their career.

In practice, however, it appears that the relevant provisions and formula specified in the Law on Pensions and Benefits provided by the Social insurance fund are applied in calculating and granting a survivor benefit also to survivors of the insured deceased born on or after 1 January 1960.

### **Maximum and minimum benefits**

Additionally, according to Article 15.7 of the Law on Social Insurance, the Government shall define a ceiling on the earnings for the payment of contributions by employees and employers, and the calculation of pensions and benefits, based on the national average of insured/contributory wages and the national average wage declared by the National Statistical Office, taking into account of proposals of the National Council on Social Insurance. Under Government Resolution No. 92 dated 10 June 1998 the above mentioned ceiling was set at 10 times monthly minimum wage (e.g monthly minimum wage for 2014 was MNT192,000 so the ceiling in 2014 was MNT1,920,000). The ceiling is still in force and applied for calculating the benefits. It can be reminded that the monthly wage of the skilled manual male employee is set at MNT995,750. If the insured chooses wages/earnings for the period before the 5th of April 2011, however, the flat rate ceiling (MNT1,080,000) is applied when calculating old age, invalidity and survivor pensions (the Government Resolution No. 153 dated 2 May 2012).

On the basis of the above, it is observed that the monthly ceiling on the wages taken into account for the calculation of the benefit would not prevent the skilled manual male employee to receive the actual replacement rate established by the national legislation at 60 per cent of previous earnings, i.e. above the minimum replacement rate established by Convention No. 102 at 40 per cent.<sup>27</sup>

### **Reduced benefit**

### **Benefits paid according to the Law on Pensions and Benefits by the Fund of Social Insurance**

Convention No. 102 provides that a reduced benefit should be secured to survivors of

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<sup>27</sup> The law further stipulates that the minimum invalidity benefit shall not be below 20 per cent of the national average wage (sections 9.1 and 9.3); however it can be increased where insured persons have contributed over 15 years by 0.5 per cent per additional year (section 9.2). Nevertheless the minimum invalidity pension for a contributory period equal to the one required in Convention No. 102, i.e. 15 years, would amount to 20 per cent of the national average wage.

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a protected person who has completed, prior to the contingency, a qualifying period of five years of contributions or employment (Article 57(2)(a)).

According to section 12.3, survivors are entitled to a reduced benefit in proportion to the breadwinner's total contribution period provided that the latter has paid contributions for at least five years in total and contributions were continuous in any of these five years. This is in compliance with Convention No. 102.

### **Benefits paid according to the Law on Individual Pension Insurance Accounts**

According to section 13.1 of the Law on Individual Pension Insurance Accounts, the rules pertaining to the reduced benefit are those found in Law on Pensions and Benefits by the Fund of Social Insurance and therefore in compliance with Convention No. 102.

In the case of the survivors of persons born before 1 January 1960, who are granted survivors' benefits according to the Law on Pensions and Benefits, these may receive a benefit at a replacement rate in line with Convention No. 102 assuming their breadwinner had accumulated a contributory period of at least three years in the five years preceding the death. This provides a benefit in line with the Convention after a much shorter period. However, survivors whose breadwinner accumulates 15 years of contributions but only totals 2 years in the last five, would not be entitled to a benefit at the level required by the Convention which requires that a benefit should be provided after a contributory period of 15 years, whether these are accumulated continuously or in an interrupted manner throughout the working life.

Survivors pensions provided according to the Law on Individual Pensions, i.e. for persons born on or after 1 January 1960, are seemingly provided at a rate well above the requirements of the Convention however further information is needed as to how sections 7.2 and 13.1 of the Law on Individual Pensions are applied in practice. Nevertheless, it is worth underlying, that since in practice survivors of the persons born on or after 1 January 1960 receives survivor's benefits according to the Law on Pensions and Benefits the aforementioned conclusions are valid here as well.

Finally, the national legislation provides a reduced benefit after a contributory period of five years as required by Convention No. 102.

### ***Qualifying period***

Convention No. 102 allows for a qualifying period of 15 years of contribution or employment for entitlement to survivors benefits according to Article 63. Moreover, a reduced benefit shall be secured at least after a qualifying period of 5 years of contribution or employment.

### **Benefits paid according to the Law on Pensions and Benefits by the Fund of Social Insurance**

According to section 7(1) of the Law on Pensions and Benefits (read in conjunction with section 12), the survivors of an insured person born before 1 January 1960 shall become eligible for a benefit after 20 years of pension insurance contributions "or for a period of three years out of five immediately preceding the date of commencement of invalidity" (here it is understood that the contingency is the death of the breadwinner). It is understood that in practice a survivors benefit is provided after meeting either of these qualifying period as described under section on Invalidity Benefits. Therefore, the beneficiaries of an insured person born before 1 January 1960 will receive a survivor's pension after a qualifying period of 15 years as required by Convention No. 102 (section 12, (3)) though not necessarily at the required level.

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## **Benefits paid according to the Law on Individual Pension Insurance Accounts**

As regards persons born on or after 1 January 1960, there is no qualifying period in the Law on Individual Pension, however section 7(2) stipulates that persons meeting the qualifying conditions set in the Law on Pensions and Benefits would be entitled to a survivor's benefit under the Law on Individual Pension. As such, seemingly they would also receive a reduced survivors benefit after a minimum contributory period of 5 years (section 12(3) Law on Pensions and Benefits), and thus would also be eligible to a benefit after 15 years of contributions as required by the Convention. This should nonetheless be confirmed.

According to the law, the qualifying period can be either 20 years or 3 years in the five years preceding the death of the breadwinner. A qualifying period of 15 years or less would be in compliance with Convention No. 102 provided the replacement rate of the benefit is equal at least to 40 per cent. In order to determine compliance with Convention No. 102, it is necessary to clarify the level of the benefit that survivors are entitled to if the breadwinner contributed for 15 years as required by Convention No. 102.

### ***Duration of benefits***

Article 64 of Convention No. 102 specifies that survivors' benefits should be provided throughout the contingency. As regards the loss of support suffered by children, the Convention considers the term child to mean child under school-leaving age or under 15 years of age (Article 1, (e) and Article 60). Survivors' benefits granted to spouses can be suspended where the spouse remarries or where they are engaged in any gainful activity (Articles 60 and 69).

## **Benefits paid according to the Law on Pensions and Benefits by the Fund of Social Insurance**

For persons born before 1 January 1960, according to section 15 of the Law on Pensions and Benefits, the survivor's benefit should be paid to dependent children under 19 years of age from the date of the breadwinner's death; to persons suffering from invalidity for the length of the loss of their capacity to work, for persons caring for children under the age of 8, and for persons having reached retirement age, until the end of the following calendar month of their death.

## **Benefits paid according to the Law on Individual Pension Insurance Accounts**

However, for persons born on or after 1 January 1960, there is no such provision in the Law on Individual Pension. Yet, according to section 13.1, all matters which are not provided for under this law in relation to pension and benefits entitlements and payments (among others) shall be regulated in accordance with the relevant provisions of the Law on Pensions and Benefits. Taking this into account, it is assumed that the same provisions regarding the payment of survivors benefit, detailed here above, applies in respect of both laws. This should be confirmed. Clarification is also needed as to whether survivors' benefits are granted throughout the contingency and not only until the individual account balance is exhausted.

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Persons born before 1 January 1960, receiving their survivor's pension according to the Law on Pensions and Benefits, are entitled to a pensions for the duration required under Convention No. 102.

Where persons born on or after 1 January 1960 are subject to the same provisions on the matter by cross reference in the Law on Individual Pension, it can be concluded that the Mongolian legislation is in conformity with Convention No. 102. However, confirmation is needed as to whether survivors benefits granted under the Law on individual pensions are provided throughout the contingency.

## **K. Equality of treatment of non-nationals (Part XII) and Common provisions (Part XIII)**

### ***Equality of treatment of non-nationals (Article 68)***

Article 68(1) of Convention No. 102 provides that non-national residents shall have the same rights as national residents with the exception that special rules concerning non-nationals and nationals born outside the territory of the Member may be prescribed in respect of benefits or portions of benefits which are payable wholly or mainly out of public funds (and in respect of transitional schemes). Article 68(2) further stipulates that in the case of contributory schemes which protect employees, the persons protected who are nationals of another Member who has accepted the obligations of the relevant Part of the Convention shall have the same rights as nationals of the Member concerned (subject to the existence of bilateral or multilateral agreements providing for reciprocity).

Section 4.1 and 4.2 of the Law on Social Insurance stipulates that all foreigners and stateless persons under labour or certain type of civil contracts shall be compulsorily covered (insured) under the Mongolian social insurance scheme, in the same manner as Mongolian citizens and Mongolian citizens working abroad. Furthermore, according to section 3.1 of the same law, the dependents of insured persons are also covered, in case of his/her death. This law provides pensions, benefits and payments, in the case of retirement, disability, maternity, sickness, unemployment, employment injury and survivors (sections 3.1, 2.8, and 2.9).

As noted previously in the analysis in respect of Part II of the Convention, medical care is provided through a universal medical care scheme and a health insurance scheme. The Law on Health provides a set of medical treatments and services, free of charge, to uninsured or insured Mongolian citizens (Article 24.6). In terms of the health insurance scheme, all the citizens of Mongolia and foreign nationals and stateless persons who are in contracted employment, and in foreign organizations on the Mongolian territory, and diplomatic missions, international organizations and projects (if not provided otherwise in the international agreements) shall be covered by the mandatory Health Insurance Scheme (Article 4.2 and 4.3 of the Law on Health Insurance). Moreover, the Law on Health insurance provides that foreign nationals and stateless persons other than those specified in Article 4.3 may join the mandatory health insurance if they wish (Article 4.4).

In the case of medical care and maternity medical care, the Convention requires that the wives and children of the classes of protected persons also be covered in this respect. The Law on Health provides medical care to all citizens whereas the Law on Health Insurance provides medical care coverage to employees, including foreign nationals and stateless employees and all citizens, but only allows for the voluntary coverage of dependent wives and children who are foreign nationals, which leaves a gap in respect of the requirements of the Convention.

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The Law on Social Welfare grant benefits to all nationals and non-nationals who met the qualifying conditions. However, the CMP child benefit is awarded only to Mongolian citizens.

Finally, as regards old-age, invalidity, and survivor's benefits for persons born on and after 1 January 1960, section 3 of the Law on Individual Pension states that citizens of Mongolia, foreigners and stateless persons permanently residing in Mongolia shall have an individual account established for them under this law.

In light of the above, it appears that non-national residents born before or after 1 January 1960 are entitled to sickness, unemployment, old age, employment injury, maternity, invalidity, and survivor's benefits in the same manner as national residents.

As regards medical care and treatment, it appears that benefits paid entirely out of public funds under the universal scheme, and which include primary and maternity medical care are provided only to Mongolian citizens. Medical benefits provided under the health insurance scheme cover foreign employees on a mandatory basis, but their dependents only on a voluntary basis. Similarly, benefits provided through the Child Money Programme under the Law on Human Development are only awarded in respect of children of Mongolian citizens.

Based on the understanding that under no condition can non-nationals be entitled to basic medical care including maternity care and to child benefits provided on a universal basis, and that medical care benefits provided under the health insurance scheme are only available to dependent family members of foreign nationals on a voluntary basis it is concluded that the requirements of Article 68(1) are not fully met.

It should be noted however that Article 68(1) of the Convention allows the entitlement of non-nationals to benefits financed by public funds or taxation to be subject to special rules, such as the completion of a certain period of residence (up to one year in respect of family/child benefits, according to Article 43 of the Convention). Due consideration may be given to this possibility with a view to ensuring full conformity with the Convention of Part II, Part VII and Part VIII of Convention No. 102.

### ***Suspension of benefits (Article 69)***

Article 69 of Convention No. 102 provides that suspension of a social security benefit is allowed:

- (a) as long as the beneficiary is absent from the territory;
- (b) as long as the person is maintained at public expense;
- (c) when the person receives another social security benefit;
- (d) in case of a fraudulent claim;
- (e) when the contingency is caused by a criminal offence;
- (f) when the contingency is caused by wilful misconduct;
- (g) if the person neglects to make use of medical or rehabilitation services placed at his/her disposal, or fails to comply with the rules for verifying occurrence or continuance of the contingency, or for the conduct of beneficiaries;
- (h) if the person fails to make use of the employment services placed at his/her disposal;
- (i) if the person has lost his/her employment as the direct result of a stoppage of work due to a trade dispute or has done so voluntarily without a just cause;
- (j) In the case of survivors' benefit, as long as the widow is living with a man as his wife.

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In the case of medical care, the Law on Health Insurance contains a provision which states that the cost of health care services of an insured person whose health is damaged due to crime or conflict shall get reimbursed by the guilty person (Article 12.1.1). Paragraphs (d), (e) and (f) of Article 69 of the Convention allow the suspension of a benefit where the person concerned has made a fraudulent claim, where the contingency has been caused by a criminal offence committed by the person concerned and where the contingency has been caused by the wilful misconduct of the person concerned, respectively. The causes for suspension of the medical care benefit under the Mongolian legislation are in compliance with Convention No. 102.

Section 9(1) of the Law on Unemployment Benefit Provided by the Fund of Social Insurance lists the following motives for the disqualification of unemployment benefits: (1) for refusing work offered (taking into consideration their educational level and professions) by the Labour Exchange (i.e. employment services) twice; (2) for failing to “assume temporary paid work, arranged by the Labour Exchange, Social Insurance Office and the employer” without good justification; (3) for failing to attend a vocational training course arranged and financed by the Social Insurance Office, or; (4) when a judicial decision sentencing the insured person to imprisonment has become effective.

Article 69 of the Convention lays down the only motives, for which suspension of a benefit may be allowed under the Convention. The suspension prescribed under section 9(1), subparagraph (3) of the Law, would seem to be in line with paragraph (h) of Article 69, which allows the suspension of unemployment benefits where the person concerned has failed to make use of the employment services placed at his/her disposal; subparagraph (4) of section 9 would also seem to be in conformity with Article 69, paragraph (b) which lays down the possibility of suspending the benefit payment when the person is maintained at public expenses. Section 9(1), subparagraph (1) of the Law, which provides for the suspension of the benefit where an insured person refuses two suited job offers given his/her education level and professional orientation would be in line with Article 20 of the Convention, in conjunction with Article 69 (h), as the contingency covered under this Part of the Convention is the inability to obtain suitable employment (or be placed into suitable employment, according to the interpretation of the Committee of Experts on the Application of Conventions and Recommendations). Section 9(1), subparagraphs (2) of the Law, however, which provides for the suspension of the benefit where the person fails without good justification to assume temporary paid work arranged by the employment services, could be too restrictive in view of the Convention. Further clarification as to the type of work provided and whether it can be any type of work or whether the suitable character of the work is taken into account by the employment services, and as to what is considered as a good justification would be needed to assess the conformity of this provision with the Convention.

As for cases of suspension of employment injury benefits: According to section 2 (3) of the Law on Benefits provided by the Fund of Social Insurance Against Employment Injury and Occupational Diseases, an insured person shall not be entitled to employment injury benefit in case of disability caused by an accident which took place while he was doing work not connected with his employment duties, or left his place of work during working hours, consumed alcohol or drugs or intentionally breached labour safety instructions or injured himself while committing a crime. This provision is in conformity with Article 69 of the Convention, and more particularly paragraph (e) of this Article, which allows for



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the suspension of the benefit where the contingency was caused by a criminal offence of the person concerned and paragraph (f), in case the contingency was caused by the wilful misconduct of the person concerned.

In addition to the specific causes for suspension of benefits detailed here above, section 7 of the Law on Social Insurance stipulates that “there shall be no duplication of a pension or benefit payable to an insured person from the same branch of social insurance” and that an insured person, if entitled to more than one benefit at the same time, “has the right to choose the pension or benefit only once”. This provision is in compliance with Article 69, letter (c) of the Convention which allows the suspension of a benefit to which a person would be otherwise entitled as long as the person is in receipt of another cash benefit (other than a family benefit).

As regards the CMP, it can be noted that the public administrative body in charge of social welfare matters shall make a decision to suspend paying the benefit when it has been proven that the benefit was claimed using false statement and documents or when more than one bank account have been opened for the same child in order to receive the family benefit (Government Resolution No. 70, section 4.2). This is in line with paragraph (d) of Article 69 of Convention No. 102.

The cases of suspension provided under Mongolian legislation comply with the requirements of Convention No. 102 subject to clarification concerning restrictive provisions regarding unemployment benefits.

### ***Right of complaint and appeal (article 70)***

Article 70(1) of Convention No. 102 prescribes that every claimant shall have a right of appeal in case of refusal of the benefit or complain as to its quality or quantity.

Article 70(2) of Convention No. 102 further stipulates that when a Government department responsible to a legislature is entrusted with the administration of medical care, the right of appeal may be replaced by a right to have a complaint concerning the refusal of medical care or the quality of the care received investigated by the appropriate authority.

Section 19(5) of the Law on Social Insurance lays down the right of employers and insured persons to refer to “a competent body or official of higher instance an appeal against the misconduct or decision of the Social Insurance Office and its officials” and to lodge such appeal with the competent court in case of disagreement with the decision taken. This would appear to relate to decisions taken regarding the health insurance scheme and sickness, unemployment, old age, employment injury, maternity, invalidity and survivors benefits (including pensions received by persons born on or after 1 January 1960 according to section 13 of the Law on Individual Pension). According to section 24, the responsibilities of the Social Insurance Office include: to arrange for the timely payment of pensions and benefits, to set up the Social Insurance Fund, to upgrade the national social insurance system, to implement social insurance legislation and to monitor the operations of offices at lower instances. It could be assumed, within its responsibilities listed above, that the Social Insurance Office can refuse benefits and has the responsibility of quality and quantity control. In addition, section 18 (a) of Government resolution No. 171 (1994) provides that an employer or an insured person shall have a right to appeal if he/she does not agree a decision of the Social Insurance Office or a social insurance official within 14 days after the date he/she received the decision. It can therefore be concluded that insured

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persons have a right to appeal such decisions in a manner compliant with Convention No. 102.

Section 21 of the Law on Social Insurance also establishes a “Dispute Settlement Council” (composed of non-staff members) of Social Insurance General Office operating under the social insurance central and local offices to review disputes arising between employers and insured persons and between these and the Social Insurance Offices and more specifically hears claims made by insured persons, in relation to benefits, and dealing specifically with social insurance questions. According to Government resolution No. 171 (1994), this special tribunal is composed of 5-7 members including professionals in insurance, finance, economy and law. The composition of the Council is approved by Director-General of Social Insurance General Office while members of councils at *aimag*, capital city and district levels are appointed by respective governors. The activities of the Dispute Settlement Council shall be monitored by the National Council, a tripartite body (composed of equal representation from the relevant Ministries of the Government, employers and insured persons (section 27, (1) of the Law)) in charge of supervising the implementation of social insurance legislation and administering the Social Insurance Fund. The National Council, under section 27(3.9), is also responsible for “handling suggestions, appeals and complaints of individuals regarding issues of social insurance and medical labour accreditation”. However, the law does not provide for the representation of insured persons, as required in paragraph 3 of Article 70 of the Convention.

In view of the above, insured persons have a right to appeal in case of refusal of the benefit or right to complain as to its quality and quantity that is mostly in line with Convention No. 102 except that insured persons are not represented in the Dispute Settlement Council mechanism.

### ***Financing and general responsibility of the Member (Article 71)***

Article 71(1) of Convention No. 102 states that the cost of the benefits provided and the cost of the administration of such benefits shall be borne collectively by way of insurance contributions or taxation or both in a manner which avoids hardship to persons of small means and takes into account the economic situation of the Member and of the classes of persons protected.

Article 71 (2) further stipulates that the total of the insurance contributions borne by the employees protected shall not exceed 50 per cent of the total of the financial resources allocated to the protection of employees.

Finally, Article 71 (3) states that the Member State shall accept general responsibility for the provision of the benefits and shall ensure, where appropriate, that the necessary actuarial studies and calculations assessing financial equilibrium are made periodically.

Chapter 2 of the Law on Social Insurance establishes the Fund of Social Insurance, composed of “independent cash funds” for each branch of social insurance, namely pension insurance fund (comprising old-age, invalidity and survivor’s benefits), benefits insurance fund (seemingly comprising sickness and maternity benefit), health insurance fund, insurance fund for employment injury and occupational diseases and unemployment insurance fund (section 9). The resources of the Social Insurance Fund consist of the employers’ contributions and insured persons’ contributions for the respective schemes, as well as interests on surplus, revenues from investments, transfers from the general State

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budget, and others (section 10). The employer's contributions under the respective schemes correspond to a certain percentage of the payroll and "similar earnings" (defined in section 32 of the Law), while the employees' contribution corresponds to a certain percentage of their salary and "similar earnings". According to sections 8.1 and 8.2 of the Law on Health Insurance provide that the Government shall define contribution rates based on the proposal of the National Health insurance council as follows:

- all contracted employees and civil servants (specified in section 4.2 of the Law on Social insurance) shall pay contributions of at least 4 per cent of their monthly wages (equally shared with their employers)
- children 0–18 years old (fully subsidized by the government) and students of universities, colleges and vocational training centres - at least 1.0 per cent of monthly minimum wage
- all other categories of population- at least 2 per cent of monthly minimum wage

With respect to other benefits, contribution rates are fixed in the same proportion for employers and employees, more precisely: pension insurance: 7 per cent; benefits insurance: 0.8 per cent; and unemployment insurance: 0.2 per cent (section 15(1) of the Law). The law further stipulates that only employers should be responsible for the payment of contributions for employment injury and occupational diseases, at a rate varying on the type of work involved and risks for employees' health and up to a maximum of 3 per cent "from employment wage fund". The different contribution rates applying to employers shall be approved by the Government based on a list put forward to it by the Social Insurance National Council (section 15(4) (5) and (6)). It is important to note that as far as contributions payable in the case of persons born on or after 1 January 1960, the same provisions found under the Law on Social Insurance and the Law on Pensions and Benefits, and listed here above, apply according to section 13 of the Law on Individual Pension.

Section 12(1) lays down the requirement that the annual budget of the revenues and expenditures of each of the "independent cash funds", established in relation to the respective branches of social insurance, be approved by Parliament. According to section 12(2), the "Government shall submit the Social Insurance budget draft along with the State budget draft to Parliament by the 1st of October of every year". In addition, section 12(4) of the law sets the obligation for the Ministry of Finance to transfer any sum thereby approved to the respective funds in the first 10 days of every month according to the monthly schedule.

Section 15(7) lays down the responsibility of the Government to determine the ceiling on earnings for purposes of contributions and calculation of benefits, on an annual basis, taking into account the average insured wage and national (statistical) average wage in Mongolia and recommendations of the Social Insurance National Council. Furthermore, section 33 of the Law stipulates that "control over the implementation of the social insurance legislation shall be executed by the Government, governors of various levels and other bodies or officials authorised by legislation according to their respective powers".

Finally, as mentioned previously medical benefits provided under the universal scheme, and the CMP benefit provided under the Law on Human Development Fund, are entirely financed by the state budget.

The provisions relating to the financing of the various social insurance schemes seem to comply with the requirements of Article 71, paragraphs 1 and 2, as the costs of the benefits provided under each scheme are shared equally between employers and employees with the exception of the contribution for employment injury insurance, which is borne solely by the employer. A complete assessment however requires further information as to rules applying to cost-sharing for access to medical benefits, as raised under Part II – Medical benefits – above.

With reference to the general responsibility of the State, it seems that the responsibility for the due provision of the benefits lies with the State, as required by the Convention, yet further information would be required as to whether the necessary measures are taken for such purpose, by ensuring that actuarial studies and calculations concerning the fiscal equilibrium of the fund are made periodically or at least prior to any change in the benefits, rate of insurance contributions or taxes allocated to cover the respective contingencies. Compliance with this provision will require however that benefits paid out of public funds continue to be provided regardless of whether current sources of funding are exhausted over time.

### ***Administration and general responsibility (Article 72)***

Article 72(1) of Convention No. 102 requires that the administration be entrusted to an institution regulated by the public authorities or to a Government department responsible to a legislature. Where not, representatives of the persons protected shall participate in the management, or be associated therewith in a consultative capacity, under prescribed conditions; national laws or regulations may likewise decide as to the participation of representatives of employers and of the public authorities. Article 72 (2) further provides that the Member State shall accept general responsibility for the proper administration of the institution mentioned above.

The Social Insurance General Office is, among others, the legal entity in charge of implementing social insurance legislation in Mongolia, of setting up the Social Insurance Fund and ensuring its performance (manage investments) and of managing the levying of contributions and payment of retirement, disability, sickness, unemployment, maternity, employment injury, and survivor's benefits to insured persons (section 2<sup>1</sup>, 1(2), 24 and 25 of the Law on Social Insurance). Under section 22(1) of this law, it shall operate under the authority of a Government member in charge of social insurance issues. In addition, its Chairman shall be appointed by the Government member responsible for social insurance issues in consultation with the Social Insurance National Council (section 22 (3) of the Law). According to section 21(3), regulations on the Social Insurance General Office shall be approved by the Government. The Social Insurance National Council is a tripartite consultative body, with equal representation from the relevant Ministries of the Government (Ministries of Finance, Justice and Social protection), trade unions representing the rights and legitimate interests of the majority of employees, and employers' representatives (section 27 of the Law). Its main functions are as follows: to elaborate recommendations on improvement of the social insurance legislation, system and operations, and on the increase of pension benefits; to supervise the implementation of social insurance legislation and revenues and expenditures of the Fund, to approve the social insurance central organisation's structure, develop the social insurance fund budget draft; to monitor the activities of the Medical Labour Accreditation Commission and Dispute Settlement Council, and to handle individuals appeals and complaints regarding issues of social insurance and medical labour accreditation. Section 27 (4) of the Law also states that regulations on the National Council are approved by the relevant Parliamentary Standing Committee.

Furthermore, the Central Administrative Organisation in charge of social insurance issues, responsible for drafting the annual social insurance fund budget, has the obligation

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under section 12, (2) to submit it to the Government, which then presents it to Parliament for approval.

Finally, the Law stipulates at section 33 that the Government shall exercise control over the implementation of the social insurance legislation.

As regards the Health Insurance System and Management, a new agency will be created under the MPDSP and a national council on Health Insurance will be set up under the Law on Health insurance. Section 3.1.3 of the law provides the definition of the "Health Insurance Organization" as the legal entity that is responsible for the revenue generation of the health insurance fund and purchasing health services on behalf of an insured person.

The Health Insurance Council is a tripartite body with similar composition and identical status as the National Social Insurance Council reporting to the Parliament (section 14). It is responsible for approving structure and operational rule of the health insurance organization, monitoring the usage and spending of the health insurance fund, approving cost-sharing rules regarding pharmaceuticals and health care services, approving budget schedules and other relevant regulations. This body is composed of representatives from employers, insured persons, and Government (Ministries of finance, social insurance and health) (section 14.3).

The State central administrative body in charge of finance matters (currently Ministry of Finance) shall be responsible for the general administration of the Human Development Fund (Article 8, Law on Human Development Fund). The General office of the Social Welfare Services, a government agency in charge of social welfare matters, is responsible for checking and validating the list of children that are entitled to receive a CMP benefit. The Department of Treasury transfers the funds to the Mongol Bank based on the list received from the General Office of the Social Welfare Services and the Mongol Bank in turn transfers the funds of the CMP to individual accounts at commercial banks (sections 2.12, 2.14, 2.17 of Government Resolution No. 70).

All the relevant provisions of the Mongolian legislation being considered, it may be concluded that the requirements laid down in Article 72 are fulfilled. Not only is the administration entrusted to an institution regulated by the public authorities, i.e. the Social Insurance General Office, but the participation of protected persons in the management/or in a consultative capacity also seems ensured by the establishment of the tripartite National Council. Paragraph 3 of Article 72 of the Convention is also fulfilled as the general responsibility of the State for the administration of the institutions and services is stipulated in the legislation.

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## Chapter III

### Prospects of ratification of Convention No. 102 by Mongolia: conclusions and recommendations

Based on the analysis carried out under Chapter II for each provision of Convention No. 102 against Mongolia's social security legislative framework, this part will discuss the prospects of ratification of Convention No. 102 by Mongolia by presenting the conclusions which can be extrapolated from the report and providing recommendations for a successful ratification process.

#### A. Concluding remarks

In the past twenty years, Mongolia has progressively undergone a transition towards a market-based economy. Mongolia has also established a comprehensive social security system, covering all the classical contingencies set out in Convention No. 102, through a mix of contributory (social insurance) and taxed-financed (social welfare) schemes. The combination of economic opening and emphasize on social policies has translated into economic growth and poverty reduction.

Workers formally employed in either the public or private sectors are able to affiliate to the social insurance scheme and are therefore generally adequately covered by the existing social security system. However, certain vulnerable groups have been identified as suffering exclusion from social security protection, including, the herders, the self-employed and informal workers.

Mongolia is still beset with persistent poverty and rising income inequality. Nevertheless there appears to be political consensus on the need to address such existing social protection concerns and ensure that wealth generated by the economic growth is distributed to the population.

Against a background of political willingness, resources and means and a comprehensive existing system, Mongolia is in an ideal position to address the gaps in the current social security system and develop effective policies as regards both the social insurance and social welfare schemes. In this regard, the Human Development Fund, created as a means to share the wealth generated mainly by the country's mineral resources including through a universal child money programme, can also play an important role in strengthening the existing social security system and reducing poverty.

ILO Convention No. 102 and Recommendation No. 202 provide an internationally agreed framework and standards that can be used in the drafting of a road map for the extension of social protection coverage and for the establishment of a comprehensive social security system. These two landmark ILO standards contain a number of principles that are required for systems to be effective and sustainable. They set standards that, amongst others, aim at guaranteeing the good governance of the system, its financial sustainability, rights of the beneficiaries and the respect of the rule of law, equality of treatment, non-discrimination and policy coherence. Alongside these principles and standards, the importance of administrative capacity for ensuring the establishment and maintenance of a comprehensive social security system must not be overlooked. Mongolia is characterised by a thinly-distributed rural population covering a large geographic territory and growing

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metropolitan enclaves. As a result, there is a need for an effective and efficient administration of the social security system. Convention No. 102 can provide Mongolia with the necessary guidelines and administrative capacity required for the effective implementation of the standards and principles found within these standards.

The ratification of Convention No. 102 requires the acceptance of at least three of the nine branches (or parts) of social security of the Convention, including at least one long-term benefit, namely old age (Part V), employment injury (Part IV), invalidity (Part IX) or survivors (Part X), or unemployment benefits (Part IV). A ratifying State should consider accepting other parts of the Convention at a later stage in accordance with its national circumstances.

## B. Recommendations

A legal assessment undertaken by the International Labour Office on the compatibility of the national legislation with the requirements of each Part (branch) of the Convention, leads to the following conclusions and recommendations. It is important to underline that this assessment is based on the existing social insurance and social welfare legislation. The social welfare scheme has been addressed partially in this report, focusing on the child money programme. Furthermore, it should be noted that the ratification of any ILO Convention entails for the State who has ratified the obligation to ensure its application not only in law but also in practice.

Firstly, it is recommended that Mongolia begin by ratifying the following Parts given that the definition of the contingency, the scope of personal coverage (to a wide extent), the amount of the benefit and the qualifying period as lay down in the applicable legislation appear to be in compliance with the requirements of Convention No. 102, subject to clarifications and/or parametric modifications as detailed below:

- 1. Part II (Medical care):** The national legislation widely meets the legal requirements established in the Convention in respect of medical care benefits. Full compliance would be achieved by extending coverage of the universal medical care scheme to foreign nationals and the mandatory (rather than voluntary) coverage of the health insurance scheme to non-national dependent family members of insured persons, in case of ill-health and maternity. In this regard it may be noted that the Convention allows entitlement of foreign nationals to medical care benefits provided under a tax-financed scheme, such as the universal health scheme, to be made conditional upon the completion of a prescribed period of residence, which is limited to one year in respect of maternity medical care benefits. In addition, further information is needed to assess whether the participation of insured persons in the costs of medical care can potentially lead to financial hardship.
- 2. Part III (Sickness Benefit):** The national legislation meets the legal requirements established in the Convention in respect of sickness benefit subject to removing the yearly limitation on the payment of benefits, and Mongolia availing itself of the temporary exception as to the duration of the benefit under Article 3 of the Convention.
- 3. Part IV (Unemployment benefit):** The national legislation would meet the legal requirements established in the Convention in respect of unemployment benefit subject to establishing at a maximum of 7 days the period within which unemployed persons must register with the Labour Exchange Office.

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4. **Part VI (Employment injury):** The national legislation meets the legal requirements established in the Convention in respect of employment injury benefit.
  5. **Part VII (Family Benefits):** The national legislation widely complies with the requirements of the Convention. Full compliance would however require that the coverage of Child Money Programme benefits be extended to non-national children residing in Mongolia.
  6. **Part VIII (Maternity benefit):** The national legislation widely meets the requirements of the Convention. Full compliance is subject to the extension of coverage of maternity medical care benefits to non-national women, as indicated above in respect of Part II – Medical care. In this regard it may be noted that the Convention would allow entitlement of foreign nationals to such benefits under the universal tax-funded health care scheme to be made conditional upon the completion of a period of residence, up to one year.

Secondly, ratification of the following Parts of Convention No. 102 would be possible following more substantial changes to the legislation.

7. **Part IX (Invalidity benefit)**

- **With respect to the old scheme governed by the Law on Pension and Benefits Provided by the Fund of Social Insurance:** *Clarification is needed on the replacement rate after 15 years of contribution:* the apparent benefit level after 15 years of contribution (33.75 per cent) is lower than the benefit level required by Convention No. 102 for that period (i.e. 40 per cent replacement rate after 15 years of contribution, Art. 56 and 57).
- With respect to the new scheme and governed under the Individual Pension Insurance Contribution Accounts Law: given that the benefits will eventually be entirely provided under the new scheme, ratification of this part is possible *subject to clarification that the invalidity benefit is provided at a replacement rate of at least 40 per cent of a standard beneficiary's previous earnings after a contributory period of 15 years and that such a benefit is granted throughout the contingency or until an old-age benefit becomes payable as required by Convention No. 102.*

8. **Part X (Survivor's benefit)**

- **With respect to the old scheme governed by the Law on Pension and Benefits Provided by the Fund of Social Insurance:** *Clarification is needed on the replacement rate after 15 years of contribution:* the apparent benefit level after 15 years of contribution (33.75 per cent) is lower than the benefit level required by Convention No. 102 for that period (i.e. 40 per cent replacement rate after 15 years of contribution, Art. 62 and 63).
- **With respect to the new scheme and governed under the Individual Pension Insurance Contribution Accounts Law:** As with invalidity benefits, survivor's benefits will also eventually be entirely provided under the new scheme. Ratification of this part is possible *subject to confirmation that the survivor's benefit is provided at a replacement rate of at least 40 per cent of a standard beneficiary's previous earnings after a contributory period of 15 years and*



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*that such a benefit is granted throughout the contingency as required by Convention No. 102.*

## 9. Part V (Old-age benefits)

Thirdly, it is not recommended at this stage to accept the obligations of the Convention in respect of **Part V (Old-age benefit)**. While the analysis conducted above shows that the provisions of the Law on Pensions and Benefits provided by the Fund of Social Insurance, which sets out the parameters of the old-age pension that is currently being provided, generally comply with the requirements of the Convention, it is noted that their application has a time-bound existence. The extension of the application of the Law on Pensions and Benefits for 20 years (as of June 2015) leads to conclude that the old-age entitlements that will be built, and on the basis of which pensions will be paid for the next 20 years, will be in conformity with the Convention. In respect of old-age benefit, the Convention, however, requires that compliance be assessed in a prospective manner, in respect of the first pensions to be paid from the time it enters into force, i.e. 31 years after ratification (where an old-age pension should be guaranteed after 30 years of contribution, according to the Convention, and where the Convention enters into force one year after being ratified).

The notionally defined contribution scheme that is foreseen to replace the current one, as laid down in the Law on Individual Pension Insurance Contribution Accounts and further explicated in the State Policy on Pension Reform (2015-2030) does not provide a sound basis for ratification of Part V at this stage as some of the key parameters of the future old-age pension scheme that will come in operation in 20 years are still undefined. Among the key concerns that arise in respect of meeting the standards of Convention No. 102 is the absence of a guaranteed minimum benefit at the minimum level required by the Convention, and a lack of certainty as to the level of benefits in the absence of a pension formula. The ILO therefore reserves its conclusions on the compatibility of the future pension scheme with the requirements of Part V of the Convention.

The **Common provisions found under Parts XII and XIII** of Convention No. 102 are also binding for ratifying states. The Mongolian legislation generally seems to be in line with these Parts; however some clarification and/or amendments would be required to ensure full compliance with their requirements, as follows:

- **Part XII (Equality of treatment of non-national residents):** Non-nationals are excluded from coverage – fully or partially – of benefits provided under three Parts of the Convention, namely Part II – Medical Care, Part VII – Family Benefits, and Part VIII – Maternity (medical care) Benefits. As mentioned above in respect of these three parts, gaps in the coverage of non-nationals should be addressed to ensure full conformity with this requirement of the Convention. In this regard, it should be noted that Article 68(1) of the Convention allows the entitlement of non-nationals to benefits financed by public funds or taxation to be subject to special rules, such as the completion of a certain period of residence (up to one year in respect of family/child benefits, according to Article 43 of the Convention).
- **Part XIII, Article 69, Suspension of Benefits:** Certain causes for suspension of certain benefits need to be clarified as they seem to fall outside the exceptions allowed under

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this Article, more particularly: in the case of **Unemployment benefits: (1) indicate whether the suspension of the benefit where an insured person fails without good justification to assume temporary paid work arranged by the employment services is limited to attainment of suitable employment (Article 20) and if the person fails to make use of the employment services placed at their disposal, there is no suspension when the failure to assume such work could be due to the non-suitability of the work in view of the professional qualifications of the unemployed person (Article 69, (h)).**

- **Part XIII, Article 71, Responsibility of the Government for the due provision of benefits:** further information would be required as to the legal requirement to undertake periodically *the necessary actuarial studies and calculations concerning the fiscal equilibrium of the social security system* and in any event, prior to any change in the benefits, rate of insurance contributions or taxes allocated to cover the respective contingencies. (Article 71,(3)).

With reference to the objective of achieving the progressive vertical and horizontal extension of social security, in line with Recommendation No. 202, and given that Mongolia has the political will and consensus needed to move forward with ratification, as well as a well-established and comprehensive social security system, the ILO would recommend the ratification of Convention No. 102. The Government is advised to adopt a gradual approach and begin by ratifying the parts for which the legislation fully complies with the Convention, as well as the parts that widely comply, to the extent that the necessary adjustments could be initiated within one year following ratification.

Thus, at the time of completing this report, **Mongolia is technically in a position to ratify Convention No.102 starting by accepting its obligations in respect of medical care (Part II), sickness benefit (Part III), employment injury benefit (Part VI), unemployment benefit (Part IV), family benefit (Part VII) and maternity benefit (Part VIII).** Indeed, the national legislation and practice fully or widely complies with the requirements of these Parts of the Convention, and is only a few steps away from full conformity. The ILO stands ready to advise further on the adjustments needed to ensure full conformity and to help the Government to do so following ratification.

The ILO is confident that the essential components of Mongolia's social security system, in law, are consistent with Convention No. 102 and that ratification would establish a solid and sustainable basis for the development and progressive extension of social security coverage in the medium and long term. It should also be emphasized that Convention No. 102 can serve as a road map for any reform process undertaken in Mongolia. In this respect, the ILO is available to provide the Government with technical assistance to align a reform process with the requirements of Convention No. 102 and Recommendation No. 202.



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  - . 1994c. *Law on Pensions, Benefits and Payments provided by the Fund of Social Insurance Against Employment Injury and Occupational Diseases* (as amended in 2015).
  - . 1994d. *Law on Unemployment Benefit Provided by the Fund of Social Insurance* (as amended in 2015).
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## Appendix I. List of ratifications of Convention No. 102

Country	Date of ratification	Status	Accepted parts
Albania	18 Jan 2006	In Force	Part II. Medical care Part III. Sickness benefit Part IV. Unemployment benefit Part V. Old age benefit Part VI. Employment injury benefit Part VIII. Maternity benefit Part IX. Invalidity benefit Part X. Survivors' benefit
Austria	04 Nov 1969	In Force	Part II. Medical care Part IV. Unemployment benefit Part V. Old age benefit Part VII. Family benefit Part VIII. Maternity benefit
Barbados	11 Jul 1972	In Force	Part III. Sickness benefit Part V. Old age benefit Part VI. Employment injury benefit Part IX. Invalidity benefit Part X. Survivors' benefit
Belgium	26 Nov 1959	In Force	Part II. Medical care Part III. Sickness benefit Part IV. Unemployment benefit Part V. Old age benefit Part VI. Employment injury benefit Part VII. Family benefit Part VIII. Maternity benefit Part IX. Invalidity benefit Part X. Survivors' benefit
Bolivia, Plurinational State of	31 Jan 1977	In Force	Part II. Medical care Part III. Sickness benefit Part V. Old age benefit Part VI. Employment injury benefit Part VII. Family benefit Part VIII. Maternity benefit Part IX. Invalidity benefit Part X. Survivors' benefit
Bosnia and Herzegovina	02 Jun 1993	In Force	Part II. Medical care Part III. Sickness benefit Part IV. Unemployment benefit Part V. Old age benefit Part VI. Employment injury benefit Part VIII. Maternity benefit Part X. Survivors' benefit

<b>Country</b>	<b>Date of ratification</b>	<b>Status</b>	<b>Accepted parts</b>
Brazil	15 Jun 2009	In Force	Part II. Medical care Part III. Sickness benefit Part IV. Unemployment benefit Part V. Old age benefit Part VI. Employment injury benefit Part VII. Family benefit Part VIII. Maternity benefit Part IX. Invalidity benefit Part X. Survivors' benefit
Bulgaria	14 Jul 2008	In Force	Part II. Medical care Part III. Sickness benefit Part V. Old age benefit Part VI. Employment injury benefit Part VII. Family benefit Part VIII. Maternity benefit Part X. Survivors' benefit
Chad	04 Jun 2015	Not in force (The Convention will enter into force for Chad on 04 Jun 2016)	Part V. Old age benefit Part VI. Employment injury benefit Part VII. Family benefit Part IX. Invalidity benefit Part X. Survivors' benefit
Costa Rica	16 Mar 1972	In Force	Part II Medical care Part V. Old age benefit Part VI. Employment injury benefit Part VII. Family benefit Part VIII. Maternity benefit Part IX. Invalidity benefit Part X. Survivors' benefit
Croatia	08 Oct 1991	In Force	Part II. Medical care Part III. Sickness benefit Part IV. Unemployment benefit Part V. Old age benefit Part VI. Employment injury benefit Part VIII. Maternity benefit Part X. Survivors' benefit
Cyprus	03 Sep 1991	In Force	Part III. Sickness benefit Part IV. Unemployment benefit Part V. Old age benefit Part VI. Employment injury benefit Part IX. Invalidity benefit Part X. Survivors' benefit
Czech Republic	01 Jan 1993	In Force	Part II. Medical care Part III. Sickness benefit Part V. Old age benefit Part VII. Family benefit Part VIII. Maternity benefit Part IX. Invalidity benefit Part X. Survivors' benefit
Democratic Republic of the Congo	03 Apr 1987	In Force	Part V. Old age benefit Part VII. Family benefit Part IX. Invalidity benefit Part X. Survivors' benefit

<b>Country</b>	<b>Date of ratification</b>	<b>Status</b>	<b>Accepted parts</b>
Denmark	15 Aug 1955	In Force	Part II. Medical care Part IV. Unemployment benefit Part V. Old age benefit Part VI. Employment injury benefit Part IX. Invalidity benefit
Ecuador	25 Oct 1974	In Force	Part III. Sickness benefit Part V. Old age benefit Part VI. Employment injury benefit Part IX. Invalidity benefit Part X. Survivors' benefit
France	14 Jun 1974	In Force	Part II. Medical care Part IV. Unemployment benefit Part V. Old age benefit Part VI. Employment injury benefit Part VII. Family benefit Part VIII. Maternity benefit Part IX. Invalidity benefit
Germany	21 Feb 1958	In Force	Part II. Medical care Part III. Sickness benefit Part IV. Unemployment benefit Part V. Old age benefit Part VI. Employment injury benefit Part VII. Family benefit Part VIII. Maternity benefit Part IX. Invalidity benefit Part X. Survivors' benefit
Greece	16 Jun 1955	In Force	Part II. Medical care Part III. Sickness benefit Part IV. Unemployment benefit Part VIII. Maternity benefit Part IX. Invalidity benefit Part X. Survivors' benefit
Honduras	01 Nov 2012	In Force	Part II. Medical care Part III. Sickness benefit Part V. Old age benefit Part VIII. Maternity benefit Part IX. Invalidity benefit Part X. Survivors' benefit
Iceland	20 Feb 1961	In Force	Part V. Old age benefit Part VII. Family benefit Part IX. Invalidity benefit
Ireland	17 Jun 1968	In Force	Part III. Sickness benefit Part IV. Unemployment benefit Part X. Survivors' benefit
Israel	16 Dec 1955	In Force	Part V. Old age benefit Part VI. Employment injury benefit Part X. Survivors' benefit
Italy	08 Jun 1956	In Force	Part V. Old age benefit Part VII. Family benefit Part VIII. Maternity benefit



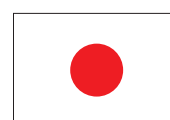
<b>Country</b>	<b>Date of ratification</b>	<b>Status</b>	<b>Accepted parts</b>
Japan	02 Feb 1976	In Force	Part III. Sickness benefit Part IV. Unemployment benefit Part V. Old age benefit Part VI. Employment injury benefit
Jordan	12 Feb 2014	In Force	Part V. Old age benefit Part VI. Employment injury benefit Part IX. Invalidity benefit Part X. Survivors' benefit
Libya	19 Jun 1975	In Force	Part II. Medical care Part III. Sickness benefit Part IV. Unemployment benefit Part V. Old age benefit Part VI. Employment injury benefit Part VII. Family benefit Part VIII. Maternity benefit Part IX. Invalidity benefit Part X. Survivors' benefit
Luxembourg	31 Aug 1964	In Force	Part II. Medical care Part III. Sickness benefit Part IV. Unemployment benefit Part V. Old age benefit Part VI. Employment injury benefit Part VII. Family benefit Part VIII. Maternity benefit Part IX. Invalidity benefit Part X. Survivors' benefit
Mauritania	15 Jul 1968	In Force	Part V. Old age benefit Part VI. Employment injury benefit Part VII. Family benefit Part IX. Invalidity benefit Part X. Survivors' benefit
Mexico	12 Oct 1961	In Force	Part II. Medical care Part III. Sickness benefit Part V. Old age benefit Part VI. Employment injury benefit Part VIII. Maternity benefit Part IX. Invalidity benefit Part X. Survivors' benefit
Montenegro	03 Jun 2006	In Force	Part II. Medical care Part III. Sickness benefit Part IV. Unemployment benefit Part V. Old age benefit Part VI. Employment injury benefit Part VIII. Maternity benefit Part X. Survivors' benefit

<b>Country</b>	<b>Date of ratification</b>	<b>Status</b>	<b>Accepted parts</b>
Netherlands	11 Oct 1962	In Force	Part II. Medical care Part III. Sickness benefit Part IV. Unemployment benefit Part V. Old age benefit Part VI. Employment injury benefit Part VII. Family benefit Part VIII. Maternity benefit Part IX. Invalidity benefit Part X. Survivors' benefit
Niger	09 Aug 1966	In Force	Part V. Old age benefit Part VI. Employment injury benefit Part VII. Family benefit Part VIII. Maternity benefit
Norway	30 Sep 1954	In Force	Part II. Medical care Part III. Sickness benefit Part IV. Unemployment benefit Part V. Old age benefit Part VI. Employment injury benefit Part VII. Family benefit
Peru	23 Aug 1961	In Force	Part II. Medical care Part III. Sickness benefit Part V. Old age benefit Part VIII. Maternity benefit Part IX. Invalidity benefit
Poland	03 Dec 2003	In Force	Part II. Medical care Part V. Old age benefit Part VII. Family benefit Part VIII. Maternity benefit Part X. Survivors' benefit
Portugal	17 Mar 1994	In Force	Part II. Medical care Part III. Sickness benefit Part IV. Unemployment benefit Part V. Old age benefit Part VI. Employment injury benefit Part VII. Family benefit Part VIII. Maternity benefit Part IX. Invalidity benefit Part X. Survivors' benefit
Romania	15 Oct 2009	In Force	Part II. Medical care Part III. Sickness benefit Part V. Old age benefit Part VII. Family benefit Part VIII. Maternity benefit
Saint Vincent and the Grenadines	25 Nov 2015	Not in force (The Convention will enter into force for Saint Vincent and the Grenadines on 25 Nov 2016)	Part II. Medical care Part III. Sickness benefit Part V. Old age benefit Part VI. Employment injury benefit Part VIII. Maternity benefit Part IX. Invalidity benefit Part X. Survivors' benefit

<b>Country</b>	<b>Date of ratification</b>	<b>Status</b>	<b>Accepted parts</b>
Senegal	22 Oct 1962	In Force	Part VI. Employment injury benefit Part VII. Family benefit Part VIII. Maternity benefit
Serbia	24 Nov 2000	In Force	Part II. Medical care Part III. Sickness benefit Part IV. Unemployment benefit Part V. Old age benefit Part VI. Employment injury benefit Part VIII. Maternity benefit Part X. Survivors' benefit
Slovakia	01 Jan 1993	In Force	Part II. Medical care Part III. Sickness benefit Part V. Old age benefit Part VII. Family benefit Part VIII. Maternity benefit Part IX. Invalidity benefit Part X. Survivors' benefit
Slovenia	29 May 1992	In Force	Part II. Medical care Part III. Sickness benefit Part IV. Unemployment benefit Part V. Old age benefit Part VI. Employment injury benefit Part VIII. Maternity benefit Part X. Survivors' benefit
Spain	29 Jun 1988	In Force	Part II. Medical care Part III. Sickness benefit Part IV. Unemployment benefit Part VI. Employment injury benefit
Sweden	12 Aug 1953	In Force	Part II. Medical care Part III. Sickness benefit Part IV. Unemployment benefit Part VI. Employment injury benefit Part VII. Family benefit Part VIII. Maternity benefit
Switzerland	18 Oct 1977	In Force	Part V. Old age benefit Part VI. Employment injury benefit Part VII. Family benefit Part IX. Invalidity benefit Part X. Survivors' benefit
The former Yugoslav Republic of Macedonia	17 Nov 1991	In Force	Part II. Medical care Part III. Sickness benefit Part IV. Unemployment benefit Part V. Old age benefit Part VI. Employment injury benefit Part VIII. Maternity benefit Part X. Survivors' benefit
Togo	07 Jun 2013	In Force	Part V. Old age benefit Part VII. Family benefit Part VIII. Maternity benefit Part X. Survivors' benefit

<b>Country</b>	<b>Date of ratification</b>	<b>Status</b>	<b>Accepted parts</b>
Turkey	29 Jan 1975	In Force	Part II. Medical care Part III. Sickness benefit Part V. Old age benefit Part VI. Employment injury benefit Part VIII. Maternity benefit Part IX. Invalidity benefit Part X. Survivors' benefit
United Kingdom	27 Apr 1954	In Force	Part II. Medical care Part III. Sickness benefit Part IV. Unemployment benefit Part V. Old age benefit Part VII. Family benefit Part X. Survivors' benefit
Uruguay	14 Oct 2010	In Force	Part II. Medical care Part IV. Unemployment benefit Part VII. Family benefit Part VIII. Maternity benefit
Venezuela, Bolivarian Republic of	05 Nov 1982	In Force	Part II. Medical care Part III. Sickness benefit Part V. Old age benefit Part VI. Employment injury benefit Part VIII. Maternity benefit Part IX. Invalidity benefit Part X. Survivors' benefit





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