

MONGOLIA

**HUMAN RIGHTS CONCERNS
REMAIN DESPITE EFFORTS TO
IMPLEMENT
RECOMMENDATIONS FROM
PREVIOUS REVIEW**

*Amnesty International
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Periodic Review, May 2015*

**AMNESTY
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INTRODUCTION

This document is based on the submission prepared for the Universal Periodic Review (UPR) of Mongolia in May 2015. In it, Amnesty International evaluates the implementation of recommendations made in the previous cycle of the UPR and the situation of human rights on the ground, and makes recommendations to the government of Mongolia on how to address some of the major human rights challenges with which it is faced.

Mongolia has taken a series of initiatives to improve the human rights framework in the country, such as submitting a draft new Criminal Code to the State Great Khural (parliament) during the previous administration in 2014, which included the abolition of the death penalty. With respect to human rights practice on the ground, the use of torture and other ill-treatment remains a concern, as does the failure to hold perpetrators to account. There is no independent mechanism to investigate allegations of torture and other ill-treatment committed by law enforcement officials. Residents living in the *ger* districts suffer from lack of access to basic services, including adequate housing, sanitation, water supply and social services. Some have been evicted from their homes without genuine consultation and access to appropriate legal protections. Discrimination against minorities and marginalized groups remains widespread and unpunished. There is no legislation to address discrimination across all categories and to guarantee the right to non discrimination. Mongolia fails to uphold the rights of refugees and asylum seekers and has violated the principle of *non-refoulement* principle on at least one occasion.

FOLLOW UP TO THE PREVIOUS REVIEW

Of the 129 recommendations made by member states during its first Universal Periodic Review (UPR) in 2010, Mongolia accepted 126 recommendations and rejected 3.¹

Amnesty International welcomes the government's adoption in May 2011 of the National Plan of Action to implement the UPR recommendations in 2011-2014.² In March 2012, Mongolia ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.³

However, Amnesty International regrets that despite the government's acceptance of recommendations to combat torture and other ill-treatment, and related commitments to ensure thorough and independent investigations into all allegations of police violence, these recommendations have not been implemented. In addition, due to the disestablishment of the Special Investigation Unit (SIU), an independent agency under the State General Prosecutor's Office, Mongolia currently lacks an independent mechanism to investigate allegations of torture and other ill-treatment. Amnesty International is concerned that this may further entrench impunity for human rights violations, including excessive use of force committed by law enforcement officials.

Amnesty International also regrets the rejection by Mongolia of the recommendations to ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.⁴

THE NATIONAL HUMAN RIGHTS FRAMEWORK

NATIONAL LEGISLATION

Mongolia has taken a series of initiatives to improve the human rights framework in the country such as the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without making any reservation. Mongolia also submitted a draft of the New Criminal Code to the State Great Khural (parliament) in July 2014. This draft removed all provisions for the death penalty and included a definition of torture in accordance with Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It also no longer protected acts based on mandatory order, like the previous Criminal Code did, which led to impunity for human rights violations. Further, it complied with Mongolia's obligation under the Rome Statute of the International Criminal Court and implements its obligations under that treaty to cooperate fully with the International Criminal Court and to investigate and prosecute genocide, crimes against humanity and war crimes before its national courts.⁵

THE DEATH PENALTY

In January 2010, the President of Mongolia announced a moratorium on executions and commuted the death sentences of all those who had appealed for clemency. No executions have been carried out since 2009.

In March 2012, Mongolia ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at abolishing the death penalty, but the ratification has yet to be implemented in national legislation. A new draft Criminal Code which includes abolition of the death penalty is pending before parliament.

The use of the death penalty remains classified as a state secret under the Law on State Secrets and the Law on the List of State Secrets. Families of those on death row, empty at present, are usually not notified in advance of the execution and the bodies of those executed are generally not returned to the family for burial. There are currently no initiatives to remove the classification of State Secrets.

THE HUMAN RIGHTS SITUATION ON THE GROUND

TORTURE AND OTHER ILL-TREATMENT

The use of torture and other ill-treatment, particularly to obtain confessions, remains a serious human rights concern. Police and prison guards suspected of torture and other ill-treatment of detainees at police stations and detention centers are not held to account. Though torture and other cruel, inhuman or degrading treatment or punishment is prohibited in the current Criminal Code, victims of such violations face a number of obstacles in obtaining justice, including the lack of an

independent mechanism to investigate allegations of torture and other ill-treatment, the fact that the definition of torture in the current Criminal Code is not in accordance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and there are reports of coercion and reprisals against witnesses.⁶

Currently there is no independent mechanism to investigate allegations of torture and other ill-treatment committed by the law enforcement officials. Despite accepting a recommendation to strengthen the Special Investigation Unit (SIU) in the State General Prosecutor's Office, the Unit was disbanded in January 2014.⁷ SIU was responsible for investigating complaints of coercion against prosecutors, judges, and police. As set out in parliament resolution No. 22 as well as revisions to the current Criminal Procedure Code, adopted in January 2014, the police are responsible for investigating alleged acts of torture and other ill-treatment. Consequently, such allegations are now often investigated by the local police who may themselves be, or be in the same agency as the alleged perpetrators.

In February 2014, three former detainees, who had been held in the pre-trial detention centre of Arkhangai province, lodged a complaint to the National Human Rights Commission of Mongolia claiming that they had been subjected to beatings and electric shocks to extract confessions while held there. One of them claimed that he had been deprived of food for six days to pressure him to plead guilty. Because the SIU had been disbanded, the police department of Arkhangai province was in charge of investigating their own colleagues and the allegations of torture and other ill-treatment was subsequently dismissed.⁸

HOUSING RIGHTS

Mongolia has become one of the world's fastest growing economies with an 11.7% annual GDP growth rate in 2013.⁹ The transition to a market economy, coinciding with a series of severe winters, has resulted in large-scale rural to urban migration. The population of Ulaanbaatar, the capital of Mongolia, has grown from some 600,000 in 1989 to more than 1 million in 2007 and is expected to reach 1.3 million in 2015. The population of the *ger* district (the traditional wool felt dwellings in areas of unplanned neighbourhoods which often lack public services) is now estimated to make up about 60% of the total population of Ulaanbaatar.¹⁰

Since 2007, many residents of 7th micro-district of Ulaanbaatar have been evicted from their homes without genuine consultation and access to appropriate legal protections. In some cases, the families were coerced or threatened by private construction companies and faced harassment such as the cutting of electricity and water supplies on a regular basis. Amnesty International met with residents who were promised alternative housing when they moved out of the micro-district in 2007; however, such housing has yet to be provided. The residents said that they were given false explanations by the companies regarding City Council Resolution No. 23, referring to "*Ger* district re-planning operational procedures" and that companies threatened to sell their land immediately or they would not be provided with compensation as promised in resolution No. 23.

The residents in the *ger* districts suffer from lack of access to basic services, including adequate housing, sanitation, water supply and social services.¹¹ Children living in urban *ger* district have limited access to adequate education and nutrition.¹²

DISCRIMINATION

Amnesty International regularly receives reports of discrimination against minorities and marginalized groups in Mongolia, including in areas such as education and access to justice. Discrimination leaves individuals at risk of further human rights violations and creates an environment where abuse and attacks against individuals go unreported and the perpetrators go unpunished. The climate of impunity is sustained by the absence of comprehensive legal protection and mechanisms to take action against those in power. Currently, there is no legislation to address discrimination across all categories and to guarantee the right to non-discrimination.¹³

Hostility and discrimination, particularly on the basis of gender identity or sexual orientation, continues to be matter of concern for Amnesty International. There are no guarantees of protection on the basis of sexual orientation or gender identity in domestic law. Although the reported number of attacks and harassment targeting lesbian, gay, bisexual, transgender and intersex (LGBTI) activists has decreased, the government has not taken steps to fully implement the recommendations, made in the previous UPR, to prohibit discrimination against LGBTI individuals.¹⁴ One activist told Amnesty International that those subjected to attacks, including rape, hesitate to report such attacks to the authorities due to fear of reprisals or further harassment by the police. One of the victims told Amnesty International that they were refused treatment at a hospital due to their sexual orientation or gender identity.

Acts of rape are in practice not recognised as such if the victim is a male. Therefore male victims of rape have difficulty seeking adequate treatment, justice, redress, and compensation. Alleged perpetrators of male rape are charged under Article 125 of the Criminal Code, which simply refers to “unnatural sex gratification”.

REFUGEE AND ASYLUM-SEEKERS

In May 2014, two asylum-seekers from the Inner-Mongolia Autonomous Region were deported back to the People's Republic of China even though at least one of them was in the process of having their claim for refugee status determined by Office of the United Nations High Commissioner for Refugees (UNHCR), in violation of the principle of *non-refoulement*. Current Mongolian law does not include this principle of customary international law. In the absence of an asylum system administered and managed by the government of Mongolia, UNHCR is in charge of documenting, registering and establishing refugee status eligibility for asylum seekers in Mongolia. However, the number of asylum-seekers who access UNHCR remains limited.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Mongolia to:

National legislation

- Ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

The death penalty

- Adopt legislation, including a new Criminal Code, in line with international human rights law and standards and with the aim of abolishing the death penalty in law;
- Amend the Law on State Secrets and the Law on the List of State Secrets to end the secrecy surrounding the death penalty and make publicly available all information on the death penalty.

Torture and other ill-treatment

- Amend the Criminal Code to include a definition of torture as a crime in accordance with UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Ensure that all complaints and reports of torture and other ill-treatment are investigated thoroughly by an independent agency, and that those suspected to be responsible are held to account. Such investigations should be conducted by personnel who are competent, impartial and independent of the alleged perpetrators and the agency they serve.

Housing rights

- Take effective measures to combat direct and indirect discrimination against people living in the *ger* district;
- Prohibit forced eviction and set out safeguards in legislation, including the new urban development law, with respect to evictions resulting from land acquisition and redevelopment. These laws should be based on the UN Basic Principles and Guidelines on Development-based Evictions and Displacement and comply with international human rights standards.

Discrimination

- Introduce new legislation to combat discrimination, including the prohibition of any advocacy of hatred that constitutes incitement to discrimination, hostility or violence;
- Ensure that reports of violence against individuals because of their real or perceived sexual orientation or gender identity are promptly and effectively investigated and the perpetrators brought to justice;
- Promote equality and non-discrimination in the enjoyment of all human rights by LGBTI people, including by introducing new national legislation;
- Ensure that the perpetrators of rape face penalties based on their act regardless of the gender of the victim.

Refugee and asylum seekers

- Revise the Law on Legal Status of Foreign Citizens to prohibit the return of asylum-seekers to countries where they would be at risk of serious human rights violations;
- Ensure that all individuals seeking asylum in Mongolia have access to Office of the United Nations High Commissioner for Refugees (UNHCR) and allow UNHCR to undertake the refugee determination process without interference.

ENDNOTES

¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Mongolia*, A/HRC/16/5, 4 January 2011, paragraphs 84 -86, (A/HRC/16/5).

Three rejected recommendations are the recommendations to become a party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the recommendation to “mandate the Constitutional Court to act upon violations of individual rights and freedoms guaranteed under the Constitution.

² The National Plan of Action (NPA) constitutes of 62 plans of actions of the government of Mongolia developed based on 126 recommendations made during the previous UPR session.

³ The National Plan of Action, recommendations 7 (Brazil), 8 (Spain), 9 (Sweden), 10 (Portugal), 15 (Switzerland) and 66 (Argentina) and 22 (The Netherlands).

⁴ The National Plan of Action, recommendations 121 (Argentina) and 122 (Norway).

⁵ Article 44.1 of the current Criminal Code provides that acts causing harm to the rights and interests protected by the Criminal Code do not constitute a crime if those acts were committed in the course of carrying out mandatory orders. This article risks leading to impunity for law enforcement officials, including for acts violating the right to life or acts of torture.

⁶ In 2013, National Human Rights Commission of Mongolia received 669 complaints, 289 of them (43.2%) were received from prisons and detention centers. 116 concern alleged acts of torture committed by police officers, investigators, and case registrars. 18% of complaints relate to the pre-trial detention process and ethical conduct of investigators.

The National Human Rights Commission of Mongolia “*13th Report on Human Rights and freedoms IN Mongolia*”, available at: <http://www.mn-nhrc.org/files/iltgel-2009.pdf>

⁷ A/HRC/16/5, recommendations 97 (Canada).

⁸ The National Human Rights Commission of Mongolia “*13th Report on Human Rights and freedoms in Mongolia*”.

⁹ The World Bank, *Global economic prospects 2014: shifting priorities, building for the future*. Available at: <http://www.worldbank.org/content/dam/Worldbank/GEP/GEP2014b/GEP2014b.pdf>

¹⁰ The World Bank, *Mongolia: Enhancing Policies and Practices for Area Development in Ulaanbaatar*, p.1. Available at: http://siteresources.worldbank.org/INTMONGOLIA/Resources/Full_report_in_Eng.pdf. A *ger* is the name of a traditional dwelling in Mongolia, it's a tent made of felt traditionally used by nomads in Central Asia.

¹¹ Cities Alliance Project Output, *Citywide Pro-Poor Ger Area Upgrading Strategy of Ulaanbaatar City*, pp.39-40. Available at: http://www.citiesalliance.org/sites/citiesalliance.org/files/CAFiles/Projects/GUSIP_Output_1.6_-_Citywide_Pro-poor_Ger-area_Upgrading_Strategy_December2010reduced.pdf. WHO, *Country cooperation strategy for Mongolia 2010-2015*, p.16. Available at: http://www.who.int/countryfocus/cooperation_strategy/ccs_mng_en.pdf. The World Bank, *Enhancing Policies and Practices for Ger Area Development in Ulaanbaatar*. Available at: http://siteresources.worldbank.org/INTMONGOLIA/Resources/Full_report_in_Eng.pdf

¹² UNICEF, *Situation analysis of children and women in Mongolia*, p.27. Available at: http://www.unicef.org/sitan/files/SitAn_Mongolia_2009.pdf

¹³ A/HRC/16/5, recommendations 84.49 (Ukraine) and 86.5 (Mexico).

¹⁴ A/HRC/16/5, recommendations 19 (Canada), 58 (Netherlands), 59 (Switzerland), 60 (Canada), 98 (Sweden), 101 (Sweden) and 128 (Spain).

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹

Mongolia: Open letter: Human Rights Agenda for the 2012-2015 State Great Khural (Index: ASA 30/004/2012).

Mongolia: Amnesty International welcomes moratorium on executions and commitment to abolishing the death penalty (Index: ASA 30/001/2012).

¹ All of these documents are available on Amnesty International's website:
<http://www.amnesty.org/en/region/mongolia>