



# MONGOLIA

## AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW

### 36<sup>TH</sup> SESSION OF THE UPR WORKING GROUP, MAY 2020

#### FOLLOW-UP TO THE PREVIOUS REVIEW

Of the 164 recommendations made by UN Member States during its second Universal Periodic Review (UPR) in 2015, Mongolia accepted 150 recommendations and rejected 14.<sup>1</sup>

Since the last review, a series of initiatives has been taken by Mongolia to improve the human rights situation in the country, such as the adoption of the new Criminal Code in December 2015. The new Criminal Code, which came into effect on 1 July 2017, abolishes the death penalty for all crimes.<sup>2</sup> However, Amnesty International regrets that President Khaltmaa Battulga sought to reinstate the death penalty for crimes related to sexual violence committed against children in 2018.<sup>3</sup>

The government accepted recommendations to combat torture and other ill-treatment. These recommendations include providing training related to the prevention of torture and other cruel, inhuman or degrading treatment for public officials, judges and lawyers,<sup>4</sup> creating effective investigation mechanisms, including adding a definition of torture in the Criminal Code,<sup>5</sup> strengthening measures aimed at preventing cases of torture and ill-treatment, and ensuring thorough and independent investigations into all allegations of police violence.<sup>6</sup> The new Criminal Code includes for the first time a definition of torture that broadly reflects that outlined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and imposes criminal responsibility on any accomplice involved in committing the crime of torture.<sup>7</sup> Regrettably, the government has not taken sufficient steps to create a complaints mechanism to provide for prompt and impartial investigations into allegations of torture and other ill-treatment, nor to provide access to such a mechanism as stipulated in Article 20 of the Optional Protocol to CAT (OPCAT), binding on Mongolia since February 2015.

Amnesty International regrets that the government rejected the recommendation to recognize the competence of

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<sup>1</sup> Report of the Working Group on the Universal Periodic Review, Mongolia, paragraph 108.1-108.164, 13 July 2015, A/HRC/30/6 and Report of the Working Group on the Universal Periodic Review, Mongolia, Addendum, pages 2-3, A/HRC/30/6/Add.1, 16 September 2015.

<sup>2</sup> A/HRC/30/6, paragraph 108.3, and A/HRC/30/6/Add.1, pages 2-3.

<sup>3</sup> President of Mongolia Khaltmaagiin Battulga, *President Battulga to present to parliament draft bill on reinstating capital punishment for child sexual abuse offenses*, 2 April 2018, [president.mn/en/2018/04/02/president-battulga-to-present-to-parliament-draft-bill-on-reinstating-capital-punishment-for-child-sexual-abuse-offenses/](http://president.mn/en/2018/04/02/president-battulga-to-present-to-parliament-draft-bill-on-reinstating-capital-punishment-for-child-sexual-abuse-offenses/)

<sup>4</sup> A/HRC/30/6, recommendations 108.26-27 (Morocco, Mexico), 108.35 (Pakistan), 108.71 (Mexico), 108.80 (Costa Rica).

<sup>5</sup> A/HRC/30/6, recommendation 108.74 (Hungary).

<sup>6</sup> A/HRC/30/6, recommendations 108.72-73 (Czech Republic, France), 108.75-79 (Austria, Timor-Leste, Switzerland, Sweden, Italy).

<sup>7</sup> United Nations Human Rights Office of the High Commissioner (OHCHR), *Committee against torture considers report of Mongolia*, 3 August 2016, [ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20332&LangID=E](http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20332&LangID=E).

the Committee against Torture to receive individual communications under Articles 21 and 22 of the CAT.<sup>8</sup>

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.<sup>9</sup>

## THE NATIONAL HUMAN RIGHTS FRAMEWORK

In 2019, the Mongolian Parliament adopted amendments to the Laws on Legal Status of Judges, Public Prosecutor's Office and Anti-Corruption. These amendments allow the National Security Council, formed by the President, the Prime Minister and the Speaker of the Parliament, to make recommendations to remove chief judges and the heads of the public prosecutor's office and the anti-corruption agency. The UN Special Rapporteur on the situation of human rights defenders expressed concern that such changes would “deeply undermine the separation of powers, would dangerously reduce the independence of the judiciary, [erode] the concept of checks and balances, and [limit] the capacity of the judiciary to combat corruption and impunity.”<sup>10</sup>

## PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

### TORTURE AND OTHER ILL-TREATMENT

Impunity and under-reporting of torture and other ill-treatment of individuals in detention continue and are exacerbated by the absence of an independent, dedicated investigation mechanism, as required by OPCAT.

The new Criminal Procedure Code, which came into effect in July 2017, explicitly prohibits torture and statements obtained through torture as evidence in judicial proceedings. However, it has not re-established the previously disbanded independent investigation unit under the State General Prosecutor's Office despite advocacy efforts by civil society in favour of this. The government has also failed to ensure that all victims of torture and other ill-treatment are able to obtain redress and access effective remedies.

Mongolia ratified OPCAT on 12 February 2015; however, it has yet to fulfil its obligations to establish a National Preventive Mechanism (NPM). The new draft law on the National Human Rights Commission of Mongolia gives the Commission a mandate to establish an NPM; however, the mechanism and the selection process of its members are stipulated in the law only in vague and general terms. As of September 2019, the law is still pending in parliament. The lack of an independent agency to investigate allegations of torture and an NPM with the ability to visit all places of detention without notice, contributes to the continuing use of torture and other ill-treatment, particularly to obtain confessions.

The Minister of Justice and Home Affairs of Mongolia made a statement on 21 March 2019, in which he publicly apologized on behalf of the government that torture had been used to extract a confession.<sup>11</sup> This followed the public release by the government of a video related to the case of B. Sodnomdarjaa and T. Chimgee, who were sentenced to 25 and 24 years' imprisonment, respectively, for the murder of S. Zorig, a former MP and one of the leaders of the Democratic Party.

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<sup>8</sup> A/HRC/30/6, recommendations 108.4-6 (Algeria, Poland, Denmark).

<sup>9</sup> A/HRC/30/6, recommendations 108.9-108.16 (Paraguay, Uruguay, Algeria, Philippines, Indonesia, Sierra Leone, Norway, Canada).

<sup>10</sup> Visit to Mongolia, 30 April – 13 May 2019 - End of mission statement by United Nations Special Rapporteur on the situation of human rights defenders Michel Forst.

<sup>11</sup> Б.АНХТУЯА, *Tortured to Confess: video of interrogation by Mongolian intelligence officers released*, NewsMN, [news.mn/en/787057/](https://news.mn/en/787057/).

Despite steps taken to educate law enforcement officials on the prevention of torture, training of other specialists, such as health professionals, psychologists, shelter service providers, welfare officers and military personnel, is lacking. In recent years, there have been several complaints made against the police, military personnel and intelligence officials related to torture and other ill-treatment. However, no information has been made public about the outcome of any investigations or legal proceedings in these cases.

## HOUSING RIGHTS

In 2017 the Ulaanbaatar City Government banned migration to the city from rural areas in order to reduce air and soil pollution as well as the heavy smog that lingers during winter time.<sup>12</sup> As a result, internal migrants, including children, have illegally settled in *ger* areas.<sup>13</sup> These areas combine both houses and traditional round felt dwellings and lack infrastructure, such as roads, access to water, sanitation and heating. The migrants living in the *ger* areas are not eligible to receive social services, because they are not able to register in primary administrative units (*khoroо*).

Despite the advanced stage of the redevelopment agenda in Mongolia, relevant laws and policies are lagging behind practice. The Urban Development Law was passed in 2008 and the Urban Redevelopment Law only in 2015.<sup>14</sup> These two Laws and other accompanying laws and procedures do not comply with international human rights laws and standards.

Amnesty International research published in 2016 found that the absence of clear and adequate government regulations, effective consultation, and monitoring, make individuals affected by redevelopment vulnerable to a range of human rights violations, in particular of their right to adequate housing. The current legal and regulatory framework is not in line with Mongolia's obligations to respect, protect and fulfill these rights and places a large number of residents at risk or in a situation of permanent uncertainty about their housing situation.<sup>15</sup>

Amnesty International has recommended that the government not only avoids or ceases any act that may threaten the right to adequate housing, but also that it protects that right from possible violations by third parties, such as landlords and private developers.<sup>16</sup> However, the government has not addressed these concerns. Residents continue to live with the risk of forced eviction without updated information on redevelopment plans, genuine consultation with those affected or adequate compensation to those evicted due to urban redevelopment.

In early April 2019, Mr Davaanyam and 11 people living in an old building designated for redevelopment by government agencies became homeless when the private developer forcibly evicted them. He and his nine family members are currently living in a rented apartment with limited access to public services.

The current laws and policies on redress lack clarity and specificity on options for those individuals negatively impacted by redevelopment to raise complaints and seek settlement of disputes. On 1 July 2017, a new Administrative Offence Act came into effect, allowing for increased administrative fines, including for publishing false information that could damage the reputation of individuals or business entities. The Administrative Offence Act has been used by private developers against residents in affected communities who have used social media to exchange and publicize information about the government's failure to ensure their right to genuine consultation.

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<sup>12</sup> The city Governor and Ulaanbaatar Mayor's decree A/17 on the "Measures to be taken in connection with the right to a healthy and safe environment" of the 9<sup>th</sup> of January 2016.

[www.ulaanbaatar.mn/Home/Docdetail?dataID=20665](http://www.ulaanbaatar.mn/Home/Docdetail?dataID=20665); Amendment to the Decree A/1042 of the 27<sup>th</sup> of December 2017 to extend the Ulaanbaatar migration ban until the 1<sup>st</sup> of January 2020. [www.ulaanbaatar.mn/Home/Docdetail?dataID=28132](http://www.ulaanbaatar.mn/Home/Docdetail?dataID=28132)

<sup>13</sup> Ger is traditional round felt dwelling used by nomadic herders in Mongolia.

<sup>14</sup> Urban Redevelopment Law, passed by the Mongolian Parliament On 26 June 2015; unofficial English language translation on file at Amnesty International.

<sup>15</sup> Amnesty International, *Falling Short- The right to adequate housing in Ulaanbaatar, Mongolia* (Index: ASA 30/4933/2016)

<sup>16</sup> Amnesty International, *Falling Short- The right to adequate housing in Ulaanbaatar, Mongolia* (Index: ASA 30/4933/2016)

Activists who defend the right to adequate housing work in a hostile environment where they risk being taken to court for defamation of the developer under Article 6.21 of the Administrative Offence Act. The activists continue to report physical attacks and harassment by law enforcement authorities and private corporations.<sup>17</sup> A housing rights activist who explained the redevelopment procedures to residents in her community and mobilized them to speak out against unlawful practices of the developers was repeatedly summoned for questioning by the police. She was accused of disrupting an operation authorized by the government. She was also allegedly fired from her job as a civil servant because of her housing rights campaign.

### **RESTRICTIONS OF OTHER ECONOMIC, SOCIAL, AND CULTURAL RIGHTS**

The influx of mining companies and transporting trucks in the Dalanjargalan subdivision of Dornogovi province cause heavy dust which has severely degraded pastures and threatened the health and safety of livestock and people. The authorities continue to fail to protect traditional herders from the operations of mining companies that negatively affected their livelihoods, traditional culture and access to land and clean water. Amnesty International has received reports of people being poisoned in 2017 because a mining company disposed of toxic waste in a household area. Local herders in Durvulijin, a subdivision of Zavkhan province, have also reported being intimidated by mining companies to not disclose details about the pollution to the public.

### **HUMAN RIGHTS DEFENDERS AT RISK OF ATTACKS, INTIMIDATIONS AND THREATS**

Human rights defenders (HRDs) in Mongolia are under attack on many levels and are often labelled by pro-government actors as “undesirables”, “trouble makers”, “foreign agents” or “opponents of the state”. The government has failed to provide HRDs with adequate protection from attacks and threats from private actors.

HRDs are faced with reduced access to the information, networks and tools that they need to bring about increased protection of human rights. Some journalists have reported that their equipment has been destroyed, and they have been forced to disclose confidential sources.

Amnesty International has received reports of discrimination, intimidation, harassment, police intimidation and stigmatization against human rights defenders. Housing rights activists, journalists, environmental activists and online opinion leaders face harassment such as phone calls from unknown callers asking them to stop their activism. Environmental activists and journalists have reported that they face threats and intimidation from the police.

The climate of impunity for harassment and attacks on HRDs is exacerbated by the lack of comprehensive legal protection of HRDs and mechanisms to hold the perpetrators of attacks against them to account. The government is currently considering a draft Law on the Legal Status of Human Rights Defenders.

Recent legal developments risk further undermining the rule of law and shrinking the space for civil society. For instance, the new amendments to the Non-Profit Organizations Law (NGO Law) include provisions that would tighten control on their registration and foreign funding. According to the government the amendments to the NGO law were needed to combat money laundering, restrict foreign funding and avoid foreign influence.<sup>18</sup>

## **RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW**

### **Amnesty International calls on the government of Mongolia to:**

*Follow-up to the previous preview*

- Ensure that the death penalty remains abolished for all crimes;

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<sup>17</sup> Amnesty International, *Amnesty International Report 17/18* (Index: POL 10/6700/2018)

<sup>18</sup> OHCHR, *Visit to Mongolia, 30 April – 13 May 2019- End of Mission Statement*, [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24603&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24603&LangID=E)

- 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;
- Take immediate and concrete steps to ensure the independence of the judiciary, and the autonomy of the prosecution service.

#### *Torture and other ill-treatment*

- Ensure that all complaints and reports of torture and other ill-treatment, including by law enforcement officials, are investigated promptly, effectively and impartially by an independent mechanism, with no institutional or hierarchical connections between the investigators and the alleged perpetrators, and that those responsible are held to account;
- Establish immediately an effective National Preventive Mechanism as required by OPCAT;
- Take immediate action to ensure that victims of torture and other ill-treatment have an enforceable right to redress, including fair and adequate compensation and rehabilitation in accordance with international human rights standards;
- Provide training for judges, prosecutors, lawyers, law enforcement personnel, health professionals, psychologists, shelter service providers, welfare officers, military personnel and other specialists on the provisions of CAT and the absolute prohibition of torture, as well as the Standard Minimum Rules for the Treatment of Prisoners, the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Basic Principles on the Treatment of Prisoners.

#### *Housing rights*

- Prohibit forced evictions, including those resulting from land acquisition and redevelopment, and strengthen safeguards in current legislation, including the Urban Development Law, to bring it in line with the UN Basic Principles and Guidelines on Development-based Evictions and Displacement;
- Protect housing rights defenders from politically motivated defamation charges under Article 6.21 of the Administrative Offence Act and ensure they are able to carry out their activities to defend housing rights without undue interference.

#### *Restrictions of other economic, social and cultural rights*

- Conduct trainings for public officials on international human rights law and standards related to housing and other economic, social and cultural rights.

#### *Human rights defenders*

- Adopt and implement legislation which recognizes and protects HRDs and ensure they can carry out their legitimate activities to promote and defend human rights;
- Effectively address threats, attacks, harassment and intimidation against HRDs, including by thoroughly, promptly and independently investigating human rights violations and abuses against them and bringing the perpetrators to justice in fair trials and providing effective remedies and adequate reparation to the victims;
- Ensure that the Administrative Offence Act is not misused to target or harass HRDs and refrain from bringing criminal charges or any other proceedings or administrative measures against them that stem solely from the peaceful exercise of their human rights;
- Ensure that the provisions on funding to civil society actors in the proposed amendments to the NGO law are in compliance with international human rights obligations and commitments and are not misused to hinder the work or endanger the safety of civil society actors.