



MONGOLIA

SUBMISSION TO THE UN SPECIAL RAPPOREUR ON ADEQUATE HOUSING AS A COMPONENT OF THE RIGHT TO AN ADEQUATE STANDARD OF LIVING, AND ON THE RIGHT TO NON-DISCRIMINATION IN THIS CONTEXT

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CONTENTS

1. BACKGROUND	4
2. KEY FINDINGS	5
3. RECOMMENDATIONS	7

1. BACKGROUND

Following the request for contributions from the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context regarding the designing and implementing effective human rights-based housing strategies, Amnesty International welcomes the opportunity to provide the following submission on right to adequate housing in Mongolia.

Rather than commenting on every issue in relation to housing rights in Mongolia, the present submission aims to inform the current process by providing Amnesty International's key findings and recommendations set out in the report "Falling Short: The Right to Adequate Housing in Ulaanbaatar, Mongolia"¹ focusing on the capital of Mongolia, which is undergoing large-scale redevelopment to provide better housing and access to services for residents and combat high pollution levels. Research was mainly carried out in Ulaanbaatar between September 2015 and August 2016. Though over a year has passed, the progress on implementation of our recommendations has been limited mainly due to change in government as well as slow progress caused by an economic downturn.

Mongolia's Constitution grants the State the right, "...to exchange or take [land] over with compensation on the grounds of special public need or to confiscate the land if it is used in a manner adverse to the health of the population, the interests of environmental protection or national security" (Article 6.4). Illegal confiscation is prohibited and the State must pay "due compensation and payment" in the case of any expropriation of land for special public need (Article 16).

In 2013, the government of Mongolia initiated a new approach to address the challenges of Ulaanbaatar's unexpected and unplanned population growth and alarming increases in pollution levels: the "Ulaanbaatar 2020 Master Plan and Amendments and Development Approaches for 2030" (Master Plan). A key component of this plan is the redevelopment of ger areas in 24 locations across eight districts in Ulaanbaatar, comprising 75 sub-projects and covering approximately 1,500 hectares (ha), or 16,109 sites. This represents 14-15% of Ulaanbaatar territory and approximately 9% of the city's population.² Another project on the redevelopment agenda is the redevelopment of inadequate, or in other words unsafe and/or structurally unsound, public housing.³

The redevelopment agenda is led by the Capital City Governor's Office, implemented by agencies under the Ulaanbaatar City Mayor's Office and overseen by the Ulaanbaatar City Council. The Capital City Government selects private developers to implement the redevelopment projects for ger areas and inadequate public housing. The private developers are responsible for financing the construction project, including purchasing land from individual residents. At the national level, the Ministry of Construction and Urban Development (MCUD) plays a monitoring role to ensure overall compliance of the redevelopment process with the law and procedures.

¹ Amnesty International, *Falling Short: The Right to Adequate Housing in Ulaanbaatar, Mongolia* (Index: ASA 30/4933/2016) available at: www.amnesty.org/en/documents/asa30/4933/2016/en/

² Democracy Paper, *M. Enkhbaatar: it is necessary to understand that ger area development is a huge scheme*, 21 August 2015, No. 136/2259; Daily News, *Bat-Uul, Mayor introduces ger re-planning project*, 24 March 2016, pp1&5, on file with Amnesty International.

³ Ger areas combine both houses and gers (traditional round felt dwellings) and lack infrastructure such as roads, access to water, sanitation and heating. Many arrivals to the ger areas are former herders who lost their livelihoods during extreme winter weather which left their livestock dead or who otherwise have sought better economic opportunities in the city for themselves and their family.

2. KEY FINDINGS

Amnesty International found that the absence of clear and adequate government regulation, effective consultation and monitoring makes individuals affected by redevelopment vulnerable to a range of human rights violations, in particular the right to adequate housing. The legal and regulatory framework is not in line with Mongolia's obligations under international human rights law and standards, and places a large number of residents at risk or in a situation of permanent uncertainty about their housing situation.

Despite the advanced stage of the redevelopment agenda in Mongolia, relevant laws and policies are lagging behind practice. Initiatives to improve living conditions in the capital city began around 2004 but the Urban Development Law⁴ was not passed until 2008 and the other main national law, the Urban Redevelopment Law⁵, was passed only in June 2015. In June 2016 the MCUD set up a working group to further develop policies to bring them into line with the 2015 Redevelopment Law, given the discrepancies and weaknesses, however more changes are required to bring the laws and procedures in line with international human rights law and standards.

Amnesty International has identified the following key failings:

- Laws and policies do not recognize the rights of those who do not have legal title for the land or housing they occupy to participate in consultation processes on redevelopment;
- Lack of safeguards to protect against the risk of forced eviction and homelessness;
- Lack of information or clarity from government agencies and private developers means that residents are often misinformed or unclear about whether resettlement is voluntary or involuntary;
- Lack of clarity on redevelopment procedures and rights of residents due to changes to the legal and policy environment, putting residents at risk of violations to their right to adequate housing;

Laws and policies on redress are unclear and lack specificity on options for those individuals negatively impacted by redevelopment to raise complaints and seek settlement of disputes.

A major defect in Mongolia's provisions regarding redevelopment is the exclusion of people who do not have formal property titles. Residents in redevelopment affected areas who do not have legal title to the land or housing they occupy are excluded from any consultations and opportunities for participation in the development process. Legal title can either be a land ownership or land possession certificate. Those without legal title are 'non-landowners and possessors'. This group includes tenants and extended family members who may live on the same land as the landowner or possessor but not necessarily in the same house or ger, and those renting an apartment which they do not own. Non-landowners and possessors have no rights under Mongolia's laws and policies to engage in consultations, or to receive compensation or redress.

The exclusion of non-landowners and possessors from the redevelopment process is not in compliance with Mongolia's obligations under international human rights law. All affected residents, and others working on behalf of affected communities or residents, must be able to fully participate in and be consulted at all stages of redevelopment projects. At a minimum, Article 22 of the Redevelopment Law, which lists the rights and responsibilities of landowners and possessors, should be amended to include non-landowners and possessors, so that all members of the community are able to receive information and are consulted on developments that affect their lives.

Due to the lack of safeguards against forced evictions, everyone affected by redevelopment is at risk of forced eviction and homelessness to a greater or lesser extent. For non-landowners and possessors, particularly tenants without any tenancy agreement, there are no procedural safeguards to ensure they are

⁴ Urban Development Law adopted by the Mongolian Parliament in May 2008 and amended in February, June and November 2015; unofficial English language translation on file at Amnesty International.

⁵ Urban Redevelopment Law, passed by the Mongolian Parliament On 26 June 2015; unofficial English language translation on file at Amnesty International.

given notice before an eviction or to ensure that no one is left homeless as a result of an eviction. Landowners and possessors who have negotiated a compensation package with a private developer are better protected under the law but are still at risk if the private developer in their area runs into financial problems and is unable to complete construction or pay the agreed compensation, or otherwise breaches the terms of their agreement.

The implementation of the redevelopment agenda in Ulaanbaatar is marred by lack of information on eviction, compensation and resettlement and does not meet international standards on genuine consultation. In the legal framework on redevelopment there are some mechanisms for consultation and community participation is acknowledged as a key principle. However, in practice, based on Amnesty International's interviews, relevant information is often not publicly available and/or not easily accessible.

The absence of genuine consultation has led to confusion among residents on whether they can reject redevelopment proposals and offers. Members of two residents temporary councils⁶ who spoke to Amnesty International understood that, because the redevelopment agenda is a government-initiated project, they had no choice but to negotiate an agreement with the private developer authorized to carry out a redevelopment sub-project in their area.

While it may seem that consultations delay the process or cost money, in the long term they can ensure that a project is implemented in a more cost-effective way, particularly when hidden social costs of evictions such as loss of access to work, food, schooling, and health care are factored in, while at the same time minimizing inequality, social conflict and segregation.⁷

To protect the right to adequate housing, the Mongolian government must ensure that it not only avoids or ceases any act that may threaten this right, but also protects people from any possible violations by third parties, such as landlords or private developers. Where such infringements do occur, the relevant public authorities should act to prevent any further rights violations and guarantee the affected persons access to legal remedies or redress.

⁶ Resident temporary councils are representative bodies established by landowners and possessors in an affected area to represent their interests.

⁷ Amnesty International, *Know your obligations: A guide to preventing forced evictions*(Index: ACT 35/009/2012) available at: www.amnesty.org/en/documents/document/?indexNumber=ACT35/009/2012&language=en

3. RECOMMENDATIONS

To protect effectively the right to adequate housing of a population, the Mongolian government must ensure that any possible violations of these rights, including by third parties, such as landlords or private developers are prevented. Where such infringements do occur, the relevant public authorities should act to prevent any further deprivations and to guarantee affected persons access to legal remedies or redress for any infringement of their rights. In order to begin to address the failings in the current legal and policy framework, Amnesty International urges the authorities undertake the recommendations in our report “Falling Short”, including the following.⁸

To the Capital City Government:

- Make a public statement clarifying the rights of people affected by urban redevelopment especially on the right of residents to refuse to enter into an agreement with the project implementer and its implications;
- Ensure that all persons, regardless of tenure status are protected from forced evictions and homelessness;
- Ensure that all affected persons, regardless of tenure status are provided all the necessary information on the redevelopment process and that such information is publicly available and easily accessible. This must include information on the avenues for participation and consultation, ways to access their rights to remedy, and rights to access legal aid;
- Ensure the rights of non-landowners, apartment owners and possessors and others working on behalf of affected residents are recognized and that avenues for their participation in the redevelopment process are established and publicized;
- Ensure that the process for consultation for redevelopment allows for genuine consultation by increasing the period of time available for consultation, the involvement of public officials in talking to and listening to residents, and that information is publicly available and easily accessible;
- Recognize that redevelopment affects people in different ways and include special measures to ensure participation of all those affected including women, minorities and other groups who may be at risk of being excluded from the process due to their status and identity;
- Explore all feasible possibilities to address the concerns of those refusing to move out of unsafe and/or structurally unsound buildings and where these have been exhausted and an eviction is the only alternative, ensure that the eviction and alternative housing provided meet the relevant criteria as per international human rights standards.

⁸ Full recommendations including to specific actors such as to the Ministry of Urban Construction and Development and parliament, please refer to Amnesty International, *Falling Short: The Right to Adequate Housing in Ulaanbaatar, Mongolia*.

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CONTACT US



info@amnesty.org



+44 (0)20 7413 5500

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The present submission aims to inform the current process by providing Amnesty International's key findings and recommendations on the right to adequate housing in the capital of Mongolia, Ulaanbaatar undergoing large-scale redevelopment to provide better housing and access to services for residents and to combat high pollution levels.