

Mongolia

Amnesty International submission to the UN Universal Periodic Review

Ninth session of the UPR Working Group, November-December 2010

B. Normative and institutional framework of the State

Human rights legislation

Mongolia has yet to ratify several international instruments and has failed to adequately incorporate its obligations under international human rights standards to which it is a party into national law. The UN Special Rapporteur on torture has noted that Mongolian law fails to define torture in accordance with article 1 of the Convention against Torture.¹ A draft Criminal Code is under consideration by the State Great Khural (parliament); however, it currently does not include a definition of torture that meets international standards. Under the current Criminal Code, the punishment for torture (Article 100.1) carries a lenient maximum penalty of only two years' imprisonment.

Article 44.1 of the 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.

The Committee on the Elimination of Racial Discrimination notes in their most recent concluding observations that there is no clear definition of racial discrimination in Mongolia's national legislation.² Prohibition of discrimination on the basis of sexual orientation or gender identity is also not specified in national legislation, including the Constitution of Mongolia.

Amnesty International is also disappointed that Mongolia, a strong supporter of the establishment of the International Criminal Court and one of the first 60 states parties to the Rome Statute, has not yet enacted legislation implementing its obligations under that treaty to cooperate fully with the International Criminal Court and investigate and prosecute genocide, crimes against humanity and war crimes before its national courts. Mongolia has also yet to ratify the Agreement on Privileges and Immunities of the International Criminal Court which is vital to ensuring full cooperation with the Court.

The death penalty

On 14 January 2010, the President of Mongolia announced a moratorium on executions. In this announcement he noted that he has commuted the death sentences of all death row inmates who have appealed for clemency since he became President in June 2009. The death sentences were commuted to 30 year prison sentences. According to information available to Amnesty International at least nine people were on death row in Mongolia in July 2009, and at least three inmates had their sentences commuted by October 2009. According to the President, no executions were carried out in Mongolia in 2009.

The death penalty is classified in Mongolia as a state secret under the Law on State Secrets and the Law on the List of State Secrets, and there are no official statistics on death sentences or executions. Families of those on death row are not notified in advance of the execution and the bodies of those executed are not returned to the family. The conditions on death row are reported to be poor.

Amnesty International welcomes the announcement of a moratorium on executions.

¹ UN Commission on Human Rights, Report by the Special Rapporteur on torture, Mission to Mongolia, E/CN.4/2006/6/Add.4, 20 December 2005, para 16.

² Concluding Observations of the Committee on the Elimination of Racial Discrimination, 19 October 2006 CERT/C/MNG/CO18, para 12

C. Promotion and protection of human rights on the ground

Prison Conditions

In July 2009, Amnesty International visited the Denjiin Myanga detention facility in Ulaanbaatar.³ The capacity of Denjiin Myanga is approximately 150 inmates; however, the facility had 242 inmates on the day Amnesty International visited and overcrowding was recognised as an on-going problem. In some cases overcrowding can lead detainees having to share a bed.

The authorities acknowledged to Amnesty International that there are shortcomings in the conditions in the detention facility, including poor ventilation and no access to drinking water in the cells where detainees are held. Instead, tea is provided 2-3 times a day while inmates are in their cells. In summer, inmates can spend time outdoors and tea is available in the outdoor area. The authorities at Denjiin Myanga told Amnesty International that a lack of budget prevents them from raising the standards of the facility in line with international standards.

The authorities at Denjiin Myanga also admitted that instances of ill-treatment still occur, although these are declining. The authorities at Gants Khudag, a prison under the General Executive Agency of Court Decision, similarly told Amnesty International that instances of ill-treatment still occur, but are on the decline. Deaths in prison are primarily attributable to suicide or to disease contracted while in prison. Tuberculosis morbidity rates were 30.5 times higher among prisoners compared to the general population for the five year period from 1999-2003.⁴

Torture and other ill-treatment

On 1 July 2008, thousands of people gathered in Sukhbaatar Square in Ulaanbaatar to protest against allegations of widespread fraud in parliamentary elections held on 29 June 2008. A State of Emergency was called from 2 July for four days. Police arrested over 700 people on the night of 1 and 2 July and over 100 more were arrested in the weeks following for suspected offences committed during the riot. Police used live ammunition and at least nine people were shot by the police, four people fatally and a fifth person died allegedly from smoke inhalation. Research conducted by Amnesty International in 2009 in relation to the riot found that complaints of torture and other ill-treatment were consistently ignored or dismissed without adequate investigation.⁵ The State General Prosecutor's Office has also failed to provide explanations or to respond to calls from the National Human Rights Commission of Mongolia to share information on the reasons cases were dismissed.

The Citizens Coalition of the 1 July riot, an NGO established to investigate human rights violations surrounding the riot, found that many people who were tortured or ill-treated in detention following the riot were either unaware of their right to make a complaint or too scared to do so. Amnesty International's research also revealed that people were not fully informed of their rights or were unaware that the State General Prosecutors' Office must investigate any allegations of torture and ill-treatment by officials.

Following the 1 July riot, at least 11 complaints of torture and other ill-treatment were submitted to the State General Prosecutor's Office. A further 10 complaints made to the National Human Rights Commission of Mongolia were handed directly over to the State General Prosecutor's Office. All complaints were reportedly dismissed for lack of evidence. Ts. Zandankhuu, who complained on 30 August 2008 to the National Human Rights Commission, to the Khan-Uul District Prosecutor's Office on 30 June and 20 July 2009, and to the Capital City Prosecutor's Office on 8 October 2009, was told that the authorities would not commit the kind of crimes he was alleging and that he was lying to them.

³ The maximum length of stay for inmates held at Denjiin Myanga is 30 days; average length of stay is 14 days. Individuals whose sentence is longer than 30 days are sent to detention facilities under the General Executive Agency of Court Decision.

⁴ Ministry of Health, "TB in Mongolia" 2004 (<http://moh.mn/moh%20db/HealthReports.nsf/homepage?OpenFrameSet>)

⁵ See Amnesty International, "Where Should I Go From Here?" The legacy of the 1 July 2008 riot in Mongolia" December 2009 (AI Index: ASA30/003/2009).

Amnesty International sent a letter to the State General Prosecutor on 20 January 2010 requesting further information on the investigation and prosecution of cases of torture and ill-treatment in Mongolia in 2009. In a response to this letter, in March 2010, the State General Prosecutor's Office stated that seven cases were handed over to the Special Investigation Unit and that five of them were found to have sufficient evidence to take to court. Two cases did not have sufficient evidence; however the letter does not give further explanation as to why those two cases were dropped. Of the five cases that were handed back to the State General Prosecutor's Office to be charged, three were dismissed on grounds under Article 208.1.3 of the Criminal Procedure Code (which allows for the termination of a criminal case if the victim of the crime reconciles with the suspect, accused or defendant of the case). The remaining two cases fell within the Amnesty Law of July 2009, which grants amnesty to individuals who committed minor crimes and misdemeanours before 24 June 2009 (i.e. before the 1 July riot). The letter did not clarify how many original complaints were made to the State General Prosecutor's Office.⁶

Amnesty International welcomes the submission of Mongolia's first and second periodic reports to the Committee against Torture.

Impunity surrounding the 1 July 2008 riot

On 4 July 2008, the Special Investigation Unit of the State General Prosecutor's Office began investigating the use of live ammunition by police during the 1 July riot that left four people dead and five others severely wounded. The Unit's main function is to investigate complaints against officials such as prosecutors, judges, inquiry officers, intelligence officers and law enforcement officials. The Unit opened a case to investigate ten police officers suspected of carrying out the shootings with live ammunition. The investigation found that the police officers did use live ammunition and that those who were issued with guns and who carried out the shootings did not receive any instructions on the use of firearms and lacked training regarding the consequences of using them. Four senior police officials – the acting Chief of Police, the Chief of the Metropolitan Police, and the heads of the Units for Patrol and Public Order – were then investigated for their role in authorizing the use of live ammunition.

In February 2010, the State General Prosecutors' Office dropped the charges against the ten police officers and four senior officials.⁷ This means that their cases will now never go to court nor will the findings of the investigation be made public.

A few days after the shootings, the families of each of those killed in the riot received compensation of one million *turgrik* (MNT) (equivalent to roughly US\$700) from the government to cover funeral expenses. The families received a further MNT100,000 (roughly US\$70) from either the President's Office or from the Governor's Office of the province for those who were not residents of Ulaanbaatar. The families were also offered compensation of MNT50,000,000 (roughly US\$34,400); however, this was not accepted by all the families. The offer of compensation to the families should not prejudice their right to take civil or other legal action against the government or specific officials. According to newspaper reports 396 police officers injured during the riot were granted MNT442,500,000 (US\$304,423) to cover medical expenses.

⁶ This information is in contrast to information which appears in the US State Department Human Rights Report on Mongolia for 2009 (<http://www.state.gov/g/drl/rls/hrrpt/2009/eap/136001.htm#>). In this report, the US State Department says that, 30 complaints of torture and ill-treatment were handed to the Special Investigation Unit in 2009 of which 27 were dismissed and three led to convictions.

⁷ Media reports claim that the acting Chief of Police, Ch. Amarbold, was charged with neglect of duties (Article 272.2 of the Criminal Code). The Heads of the Patrol Police, Metropolitan Police and Public Order, Sh. Batsukh, O. Zorigt, G. Ganbaatar, were each charged with abuse of power (Article 263.2 of the Criminal Code). The State General Prosecutor's Office dropped all charges under provisions in Articles 208 (Grounds for terminating a criminal case) and 209 (Procedure for terminating a criminal case) of the Criminal Procedure Code. Other reports suggest that the cases were dropped because the charges (Articles 272.2 and 263.2) fall within the Amnesty Law of July 2009.

Slums

Amnesty International welcomes efforts by the Office of the Capital City Governor to address concerns of those living in *ger* districts in Ulaanbaatar.⁸ The population of Ulaanbaatar had risen to approximately 1.03 million in 2007, an estimated 39 per cent of the total population; some 60 per cent are estimated to be living in the *ger* districts.⁹ The *ger* districts in Mongolia suffer from poor access to basic standards of living and services, including inadequate housing, infrastructure, sanitation and drainage. During heavy flooding in 2009, over 1,000 *gers* were washed away in the Bayanzurkh district, a *ger* area in Ulaanbaatar, leaving at least 126 families homeless. At least six people died, including five children.¹⁰

Schools in *ger* districts are poorly resourced and maintained and all schools reportedly do three to four daily shifts to accommodate the high number of students.¹¹ Air and soil pollution caused by coal-burning stoves for heating and inadequate services, such as waste management, contribute to serious health risks such as respiratory disease and hepatitis.

Discrimination against lesbian, gay, bisexual and transgender (LGBT) individuals

In December 2009, the LGBT Centre was officially recognized by the State General Registration Agency under the Legal Entities Registration Authority.¹² Amnesty International has received disturbing information from the LGBT Centre about attacks against LGBT individuals ranging from rape, physical and sexual attacks including by family members and law enforcement officials, arbitrary arrest, and physical and sexual assault while in detention. Discrimination against LGBT individuals has also been documented, including being fired from employment or forcibly evicted on the basis of their real or rumoured sexual orientation or gender identity. In many cases, the victims did not seek support from the police due to fear of reprisal.

Amnesty International has received reports of LGBT individuals being subject to surveillance such as being photographed, phone-tapping, arbitrary arrests, and threats by law enforcement officials, including the General Police Department. It has also received reports from other NGOs about similar types of surveillance of their organization, indicating that such individuals are at risk of harassment and persecution by law enforcement officials.

⁸ 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.

⁹ World Bank, "Mongolia: Enhancing Policies and Practices for Ger Area Development in Ulaanbaatar", March 2010, p 1.

(http://siteresources.worldbank.org/INTMONGOLIA/Resources/Full_report_in_Eng.pdf).

¹⁰ UB Post, "Floods Devastates City, Ger Districts: 24 Dead" 21 July 2009

(http://ubpost.mongolnews.mn/index.php?option=com_content&task=view&id=3293&Itemid=36)

¹¹ World Bank, "Mongolia: Enhancing Policies and Practices for Ger Area Development in Ulaanbaatar", March 2010, p77.

¹² Prior to this, several attempts to register as a non-governmental organization to promote and support the LGBT community had been rejected on the basis that a legal entity in Mongolia cannot have a foreign name, and because the "'Lesbian, gay, bisexual and transgender centre' has a meaning that conflicts with Mongolian customs and traditions and has the potential to set the wrong example for youth and adolescents." Letter from the Legal Entity Registration General sent to the B. Bayar (lawyer for the applicants) dated 23 June 2009 ref No. 7/694.

Appendix 1: Amnesty International recommendations for action by the State under review

Amnesty International calls on the government of Mongolia:

Human Rights Legislation

- To ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the 1951 Refugee Convention, and the International Convention for the Protection of All Persons from Enforced Disappearance;
- To amend national legislation to define torture as a crime in accordance with the definition in the UN Convention against Torture and to include a definition of racial discrimination in accordance with the definition in the Convention on the Elimination of all Forms of Racial Discrimination;
- To ensure that discrimination on the basis of sexual orientation and gender identity is explicitly prohibited in national legislation, including the Constitution of Mongolia;
- To abolish or review Article 44.1 of the Criminal Code so that there is no impunity for human rights violations;
- To enact legislation implementing its obligations under the Rome Statute of the International Criminal Court as a matter of priority and to ratify the Agreement on the Privileges and Immunities of the International Criminal Court.

The death penalty

- To amend the Law on State Secrets and the Law on the List of State Secrets to end secrecy surrounding the death penalty and to make publicly available all information on the death penalty;
- To amend existing legislation with the aim of abolishing the death penalty in law and practice.

Prison conditions

- To review arrangements and resources, including funding, for the treatment and custody of all prisoners and detainees, to ensure that they are treated humanely and in conformity with national law as well as the UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, the UN Standard Minimum Rules for the Treatment of Prisoners, and Article 10 of the International Covenant on Civil and Political Rights;
- To allow thorough, impartial and independent inspection of prisons and other detention facilities to assist in ensuring conditions meet international standards.

Torture and other ill-treatment

- To establish effective mechanisms for receiving complaints of torture or other ill-treatment, to provide timely and accessible information on the progress of cases, and to ensure that any person wishing to submit a complaint against law enforcement officials is not in any way obstructed from doing so. When a complaint is rejected as inadmissible, the complainant should be given clear and detailed reasons for the decision, in writing, and information on appeals mechanisms and alternative avenues of recourse;
- To ensure that the Special Investigation Unit of the State General Prosecutor's Office is provided adequate resources and funding to enable it to carry out prompt, independent, impartial and thorough investigations into allegations of offences involving human rights violations against officials;
- To take urgent steps to introduce video and audio monitoring and recording of all interrogations and in any other areas where torture or other ill-treatment are likely to occur. These recordings must be kept in a secure

facility for a reasonable period of time in order to ensure they are available for viewing by investigators if required.

Use of force by law enforcement officials

- To ensure that police are trained to refrain from using force, except in exceptional circumstances as set out in the UN Basic Principles on the Use of Force and Firearms and other international standards. All police officers should be made aware, through the chain of command, that excessive use of force or other violation of human rights will result in investigation and corresponding sanctions;
- To prosecute those suspected of human rights violations in trials that meet international fair trial standards;
- To ensure that victims of crimes committed by law enforcement officials have access to an effective remedy and to receive adequate reparation, including restitution, compensation, rehabilitation, and guarantees of non-repetition in accordance with international standards.

Slums

- To combat direct and indirect discrimination against people living in *ger* districts by providing legislative and practical provisions to ensure their equal access to clean water, sanitation, healthcare, adequate housing, and education;
- To ensure the active participation of people living in *ger* districts in any upgrading, planning and budgeting processes that affect their lives directly or indirectly. Any upgrading initiatives or housing programmes and policies should be consistent with international human rights standards.

Discrimination against lesbian, gay, bisexual and transgender (LGBT) individuals

- To ensure thorough and impartial investigation into all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity and to bring to justice those responsible in accordance with international standards of fair trial;
- To promote the rights to freedom of expression, association and assembly without discrimination of members of the LGBT community and the LGBT Centre.

Appendix 2: Amnesty International documents for further reference¹³

Press Release, "Mongolia: Moratorium on executions welcomed" 14 January 2010

Good news story, "Mongolia: Mongolia announces moratorium on executions" 14 January 2010,

Amnesty International Report, "'Where Should I Go From Here?' The Legacy of the 1 July 2008 Riot in Mongolia", December 2009 (ASA 30/003/2009)

Good news story, "Mongolia: Mongolian death row inmate receives pardon" 15 October 2009

Urgent Action Update, "Mongolia: Mongolian death row inmate pardoned" 14 October 2009 (ASA 30/004/2009)

Urgent Action, "Mongolia: Call for pardon for Mongolian on death row" 30 July 2009 (ASA 30/002/2009),

Press release, "Mongolia: Legacy of deadly July riots – impunity and injustice" 18 December 2009,

Web feature, "Mongolia: Impunity and injustice are legacy of deadly July riots in Mongolia" 18 December 2009

News story, "Are the Mongolian authorities getting away with murder?" 15 January 2009

Press release, "Mongolia: Call for restraint after violent protests", 2 July 2008

¹³ All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/mongolia>