

MONGOLIA

**SUBMISSION TO THE UN
HUMAN RIGHTS
COMMITTEE**

**FOR THE PRE-SESSIONAL MEETING OF
THE COUNTRY REPORT TASK FORCE,
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**AMNESTY
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INTRODUCTION

Amnesty International is submitting this briefing to the Human Rights Committee (the Committee) ahead of its examination of Mongolia's fifth periodic report on the implementation of the International Covenant on Civil and Political Rights (the Covenant). In particular, this briefing points to the failure of Mongolia to respect and protect human rights under Articles 2, 4, 6, 7, 9, 10, 14, 17 and 26 of the Covenant.

This briefing covers on-going human rights concerns in Mongolia as well as human rights violations which occurred in the context of the 1 July 2008 riot in which at least five people died.¹ The riot erupted as thousands of people gathered in Sukhbaatar Square, Ulaanbaatar, Mongolia to protest allegations of widespread fraud in parliamentary elections held on 29 June. Police arrested over 700 people on the night of 1 and 2 July and over 100 people were arrested in the weeks following for suspected offences committed during the riot.

UNNECESSARY AND EXCESSIVE USE OF FORCE AND KILLINGS BY POLICE OFFICERS DURING THE STATE OF EMERGENCY IN JULY 2008 (ARTICLES 4, 6 AND 7)

A State of Emergency was declared in Ulaanbaatar at midnight on 2 July 2008 and lasted for four days. No measures were taken to inform the crowds who were at Sukhbaatar Square protesting allegations of widespread fraud during the 29 June parliamentary elections that the State of Emergency had been declared. Police had been present at the protest throughout the day but the majority of instances of unnecessary and excessive use of force by police are reported to have occurred after the government declared the State of Emergency.

At least 9 people were shot with live ammunition during the riot, four of them fatally. A fifth person died allegedly from smoke inhalation from a fire that destroyed the headquarters of the ruling Mongolian People's Revolutionary Party (MPRP). According to local NGOs including the Citizen's Alliance and Coalition of the 1 July Riot, a Mongolian NGO established in the wake of the 1 July riot to investigate allegations of human rights violations, and Law and Human Rights, which interviewed people who attended the riots, the number of people shot with live ammunition is eleven or even higher.

According to the National Police Agency, 358 police officers and soldiers² sustained injuries during the riot, 63 were hospitalized and 532 police officers were attacked in the course of carrying out their duties while 5 demonstrators were injured.³ The information from the police does not clarify if the number of demonstrators injured is referring to the five individuals who were killed during the riot. Either way, Amnesty International believes the number of demonstrators injured to be much higher, based on testimony that police fired rubber bullets into the crowd and that police beat people with truncheons and kicked them at the time of arrest. All of the people Amnesty International spoke with said that at the time they were injured they were bystanders or leaving the area and were unarmed. No one Amnesty International talked to who was injured by gunshots or rubber bullets during the riot recalled hearing any warnings from police before the shootings occurred.

According to "H", who was shot with a rubber bullet:

"As people were making to leave about 4 or 5 police officers would grab some people

and start beating them with their truncheons and kicking them. Then everyone would come back. Some police had helmets, some didn't; all of them had weapons. There were police in uniform and some not in uniform who would go in among the demonstrators and drag people over to the police. It was obvious who they were because they ordered the police to take people away. When I was shot, there were lots of people also shot and wounded from rubber bullets."⁴

On 4 July 2008 the Special Investigation Unit (SIU) of the State General Prosecutors Office (Prosecutors Office) began investigating the use of live ammunition by police. The SIU's main function is to investigate complaints against officials such as prosecutors, judges, inquiry officers, intelligence officers and law enforcement officials. The SIU 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. 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.

The Prosecutors' Office in February 2010 dropped the charges against the ten police officers and four senior officials.⁵ This means that their cases will never go to court nor will the findings of the investigation be made public. The decision not to prosecute raises concerns under Article 2(3) of the Covenant.

Amnesty International continues to call on the Mongolian authorities to:

- Initiate a review of regulations, policy and training to ensure that the practices of the police, including the use of force, in policing demonstrations during both normal times and states of emergency, are consistent with international human rights law and standards, including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the use of Force and Firearms.
- Deliver a clear message to law enforcement officials as well as the general public, and instruct senior law enforcement officials to do the same, that unnecessary and excessive use of force, and torture and other ill-treatment are absolutely prohibited in all circumstances and will be subject to criminal and disciplinary investigation and prosecution.
- Prosecute those suspected of human rights-related offences in trials that meet international fair trial standards.

RIGHT TO AN EFFECTIVE REMEDY AND REPARATIONS (ARTICLES 2 AND 6)

A few days after the shootings, the family members of each of those killed in the riot received compensation of one million turgrik (MNT) (equivalent to roughly US\$700) from the Mongolian government for 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 MNT50,000,000.00 (roughly US\$34,400.00) but this was not accepted by all families. The offer of compensation to the families should not prejudice the right of the families to take civil or any other legal action against the government or specific officials. Nor

can compensation replace investigation and prosecution of suspected perpetrators in accordance with the Covenant and other international treaties and standards. According to newspaper reports 396 police officers injured during the riot were granted MNT442,500,000.00 (US\$304,423.00) to cover medical expenses.⁶

Amnesty International continues to call on the Mongolian authorities to:

- Ensure that victims of crimes committed by law enforcement officials have access to an effective remedy and receive adequate reparation, including restitution, compensation, rehabilitation, and guarantees of non-repetition in accordance with international standards.

DEATH PENALTY (ARTICLE 6)

On 14 January 2010, the President of Mongolia announced a moratorium on executions, which Amnesty International has welcomed. President Elbegdorj noted in his announcement that he has commuted the death sentences of all death row inmates who have appealed for clemency since he became President in June 2009. Death sentences are commuted to 30 year prison sentences. According to the President's speech, however, available statistics show that no single convict has ever survived a 30 year prison term in a Mongolian prison. This means that offenders either died in prison or are still serving their sentence.⁷

The death penalty in Mongolia is classified as a State Secret under the Law on State Secrets and the Law on the List of State Secrets. 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.

Amnesty International continues to call on the Mongolian authorities to:

- Amend existing legislation, including the Criminal Code, with the aim of abolishing the death penalty in law.
- Ratify the Second Optional Protocol to the Covenant.
- Amend the Law on State Secrets and the Law on the List of State Secrets to end secrecy surrounding the death penalty and make publicly available all information on the death penalty.

PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (ARTICLES 2, 7 AND 14)

The definition for torture in national legislation does not accord with the definition under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Amendments to the Criminal Code are being considered by the State Great Khural (Parliament) but the draft version also does not currently include a definition of torture that meets international standards. Under Mongolia's Criminal Code the punishment for torture, (Article 100.1) carries a lenient maximum penalty of only up to two years imprisonment.

Article 44.1 of the Criminal Code of Mongolia provides that acts causing harm to the rights and interests protected by the criminal code do not constitute crimes if those acts were committed in the course of carrying out mandatory orders. This article gives impunity to law enforcement officials, including in instances of violating the right to life or torture, in breach of international standards in general, and Article 7 in particular, which do not allow “superior orders as a defence to such crimes.⁸

Research conducted by Amnesty International examined instances of torture and other ill-treatment of those detained following the 1 July 2008 riot. Following the riot, detention centres were heavily overcrowded due to the large number of arrests made in a short space of time and the lack of facilities to deal with such an unprecedented situation (for further concerns in relation to overcrowding of detention centres see also the section on the treatment of detainees below). Amnesty International heard allegations of torture and other ill-treatment at detention centres including lack of access to food, water and toilets for 48 to 72 hours and allegations of violence during interrogations. Food and water was only provided to detainees only after delegates from the National Human Rights Commission of Mongolia, Members of Parliament, a journalist and officials from the State General Prosecutor’s Office and lawyers began visiting the detention facilities to inspect conditions.

According to Ts. Zandankhuu, who was held in Denjiin Myanga, a detention facility under the National Police Agency,

“The cell had capacity for about 20-30 people but there was about 100 of us in that room...we had no water or food for 72 hours. We weren’t allowed to go to the toilet. Finally people began drinking their own urine. Eventually it started raining so they drank some raindrops [that leaked into the cell]”.

“During my interrogation nothing was done in accordance with the law, there were no lawyers. I was interrogated outside and forced on my knees; others around me were forced to squat with their hands behind their head. I was interrogated for about an hour. They beat me and told me lies. I asked for a lawyer but they asked, “Why do you need a lawyer?” Eventually the investigator got tired so he wrote down that I threw 2 rocks and told me that if there was no evidence that this was true I would get off so I should sign it. I signed it, but it was all lies”.⁹

The “confession” signed under these circumstances was then used as evidence in court during Ts. Zandankhuu’s trial. He submitted complaints of torture and other ill-treatment to the National Human Rights Commission of Mongolia on 30 August 2008, to the Khan-Uul District Prosecutor’s Office on 30 June and 20 July 2009 and the Capital City Prosecutor’s Office on 8 October 2009. He was told by authorities that he was lying to them about the allegations and his complaint has been dismissed for lack of evidence.

At least 11 other complaints were submitted to the Prosecutor’s Office following the 1 July riot and all were dismissed, reportedly for lack of evidence. According to information from the National Human Rights Commission of Mongolia, they requested the Prosecutors Office to provide information on why these cases were dismissed but the request was ignored.¹⁰

Amnesty International sent a letter to the State General Prosecutor’s Office on 20 January

2010 requesting further information on the investigation and prosecution of torture in Mongolia. In a reply dated 15 March 2010, the Prosecutors' Office stated that 7 cases were handed over to the Special Investigation Unit in 2009 and that 5 of those were then found to have sufficient evidence to take to court, while two others did not. Of the 5 cases that were handed back to the State General Prosecutor's Office for prosecution, 3 were dismissed under provisions in the Criminal Procedure Code (Article 208.1.3, Grounds for terminating a criminal case – victim of the crime has reconciled with the suspect, accused or defendant of the case). The remaining 2 cases fell within the Amnesty Law of July 2009 which granted amnesty to individuals who committed minor crimes and misdemeanours before 24 June 2009. The letter did not clarify how many original complaints were made to the State General Prosecutor's Office.

Amnesty International continues to call on the Mongolian authorities to:

- Amend the Criminal Code to define torture as a crime in accordance with its definition in the UN Convention against Torture, including abolishing or revising Article 44.1 so that there is no impunity for human rights violations.
- Take urgent steps to introduce video and audio monitoring and recording of all interrogations and covering 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.
- Ensure that any complaints or reports of human rights violations are investigated promptly, independently, impartially and thoroughly, and that those suspected of related offences are prosecuted. Investigations should be conducted by personnel who are competent, impartial and independent of the alleged perpetrators and the agency they serve.
- Establish effective mechanisms to receive complaints, provide timely and accessible information on progress of cases, and ensure that any person wishing to submit a complaint against law enforcement officials is not in any way obstructed from doing so. Where 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.
- Ensure that any statement which is established to have been made as a result of torture or other ill-treatment is not invoked as evidence in any proceedings, except against a person accused of torture or other ill-treatment, as evidence that the statement was made.

RIGHT TO LIBERTY AND SECURITY (ARTICLE 9)

Amnesty International is concerned that the rights of those arrested following the 1 July 2008 riot have been violated. According to the National Police Agency, 731 people were arrested on the evening of 1 July 2008. Police 'confiscated' mobile phones and money, which were not returned, from those arrested. People were reportedly stacked into police vans to be taken to police stations and detention facilities around town. In the weeks following the

riot, the police arrested approximately 100 more people for suspected offences committed during the riot, mostly theft, robbery and 'creating mass disorder'. The majority of those arrested were not informed upon arrest or subsequently of the reasons for their arrest or notified of their rights.

According to a representative from the Citizen's Coalition of the 1 July Riot:

"Police were rounding up anyone that night. Then, if your family had good connections [the police] called your family and told them to come and get you released or if you were clever enough to talk your way out of it you were also released. The rest were taken to Denjiin Myanga [detention facility] where many of them were heavily beaten".¹¹

About half of those arrested on the night of 1 and 2 July were held overnight and released either unconditionally or on bail the following morning. Approximately 400 were transferred from the police stations after 24 hours or so and taken to Denjiin Myanga detention facility, which is under the National Police Agency. Others were taken directly to Denjiin Myanga after being arrested at Sukhbaatar Square. At Denjiin Myanga people were held between 72 hours and 14 days. Those formally charged were then transferred to Gants Khudag detention centre, which is under the General Executive Agency of Court Decision.

On 3 July 2008, the police arrested Davaasuren Batzaya, aged 23, for inciting public disorder and for looting. He was taken to Chingeltei Detention Centre. Batzaya was not provided with access to a lawyer, and despite being deaf, was not given access to an interpreter. According to his family, he was beaten by police and other detainees. On 6 July he was transferred to Gants Khudag detention centre before being released on bail on 10 July.

Families of those arrested were not notified of where relatives were being held as is required under the Criminal Procedure Law. Families of those who did not return home on 2 July had to visit each of the police stations and detention centres in town to learn if their relative was being detained there. A police officer or guard would stand in front of the police station or detention centre and call out the names of those who were detained in that particular place. If the family member's name was not called, the family would travel to the next detention centre or police station to try there.

Amnesty International continues to call on the Mongolian authorities to:

- Ensure that all detainees have prompt access to lawyers and the opportunity to challenge the legality of their detention expeditiously and effectively by an independent court; the judiciary should supervise all cases where people are detained.

CONDITIONS OF DETENTION (ARTICLES 7 AND 10)

In July 2009, Amnesty International visited Denjiin Myanga detention facility in Ulaanbaatar. Denjiin Myanga is under the National Police Agency, unlike other detention centres which are under the General Executive Agency of Court Decision.¹² While the capacity of Denjiin Myanga is approximately 150 inmates the facility had 242 inmates on the day Amnesty International visited and overcrowding was recognised by the authorities at Denjiin Myanga as

an on-going problem. In some cases overcrowding has forced detainees to share one bed.

During Amnesty International's visit to Denjiin Myanga authorities noted that ventilation was a problem in winter and access to drinking water was not available in 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 lack of budget prevents them from raising the standards of the facility in line with international standards.

Authorities at Denjiin Myanga admitted to Amnesty International that instances of ill-treatment still occur but claimed that they were declining. Authorities of Gants Khudag, a prison under the General Executive Agency of Court Decision, similarly told Amnesty International that instances of ill-treatment still occurred but were on the decline.

Amnesty International continues to call on the Mongolian authorities 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 laws as well as Articles 7 and 10 of the Covenant and other international standards, including the UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, and the UN Standard Minimum Rules for the Treatment of Prisoners.
- Allow full access for frequent, thorough, impartial and independent inspection of prisons and all other detention facilities to ensure conditions meet international standards.

DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE (ARTICLES 2, 7, 9, 17 AND 26)

In December 2009, the LGBT Centre was officially recognized by the State General Registration Agency under the Legal Entities Registration Authority. Prior to this several attempts to register as a non-governmental organization to promote the rights of and support LGBT people 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.”¹³

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 including being dismissed from employment or forcibly evicted on the basis of real or rumoured sexual orientation or gender identity have also been documented. 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.

Amnesty International continues to call on the Mongolian authorities to:

- Ensure prompt, thorough and impartial investigation into all allegations of attacks, harassment and threats against individuals targeted because of their sexual orientation or gender identity and bring to justice those responsible in accordance with international standards of fair trial.
- Ensure that LGBT individuals in Mongolia enjoy their human rights, including under the Covenant, without discrimination.

ENDNOTES

¹ See Amnesty International, “*'Where Should I Go From Here?' The legacy of the 1 July 2008 riot in Mongolia*” December 2009 <http://www.amnesty.org/en/library/info/ASA30/003/2009/en>.

² In contrast, a letter sent to Amnesty International Mongolia from Police Colonel A. Dulaanjargal, Deputy Head of the Administration Department, General Police Department of Mongolia, dated 12 September 2008 stated that 471 police officers were injured in the 1 July riot. According to media reports from Mongolia 396 police officers received compensation for medical expenses to cover injuries sustained in the 1 July riot.

³ Letter to Amnesty International from Police Colonel Ts. Arvinbuudai, Head of Administration Department, National Police Agency, dated 17 September 2009 (Ref. No: 3/3733).

⁴ Amnesty International's interview with “H”, 28 July 2009. To protect the identities of certain people, their names have been withheld.

⁵ Media reports claim that the acting Chief of Police, Ch. Amarbold, was charged with neglect of duties (Article 272.2 of the Criminal Code) and that 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 Prosecutor's Office dropped the charges under provisions in Articles 208 (Ground for terminating criminal case) and 209 (Procedure for terminating criminal case) of the Criminal Procedure Code. Other reports suggest that the cases were dropped because the charges fall within the Amnesty Law of July 2009. A letter to Amnesty International dated 26 April 2010 from the Special Investigation Unit noted that the decision to disclose further information on the case was up to the Prosecutor's Office according to Article 189.1 (Impermissibility of disclosure of inquiry and investigations data – the data of any inquiry, investigation may be disclosed to the public only with the permission of a procurator and only to the extent to which he deems it possible) and that Amnesty International's request for more information had been forwarded to that office.

⁶ Ardyn erkh, “The people's right”, 9 February 2010, #27 (1329).

⁷ President Tsakhia Elbegdorj, “*The Path of Democratic Mongolia Must be Clean and Bloodless*” Speech delivered by President Elbegdorj at the State Great Khural on 14 January 2010 (<http://www.president.mn/eng/newsCenter/viewNews.php?newsId=122>).

⁸ See for instance Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), UN Doc. HR\GEN\1\Rev.1 at 30, para. 3.

⁹ Amnesty International's interview with Ts. Zandankhuu, 27 July 2009.

¹⁰ National Human Rights Commission of Mongolia (NHRM), “*Public Disorder That Broke Out in Ulaanbaatar, Capital City, and Human Rights*”, 2008, p 37.

¹¹ Amnesty International's interview with the Citizen's Coalition of the 1 July Riot, 20 July 2009.

¹² Maximum length of stay for inmates 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.

¹³ Letter from the Legal Entity Registration General sent to B. Bayar (lawyer for the applicants), dated 23 June 2009 (ref. No: 7/694).

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