

**MONGOLIA:
BRIEFING TO
THE
COMMITTEE
AGAINST
TORTURE**

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INTRODUCTION

Amnesty International is submitting this briefing to the Committee Against Torture (the Committee) ahead of its examination of Mongolia's initial report¹ on the implementation of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) in November 2010. In particular this briefing points to the failure of Mongolia to meet its obligations under Articles 1, 2, 4, 5-9, 11, 12, 13, 14 and 16 of the Convention.

As you will be aware, the UN Special Rapporteur on torture and other, cruel, inhuman or degrading treatment or punishment made a visit to Mongolia in 2005, following which he provided detailed recommendations to the Mongolian government.² In February 2010, the Special Rapporteur noted that the Mongolian government had not yet initiated steps to implement key recommendations from the 2005 report including bringing the definition of torture in line with the Convention and ensuring that statements obtained by torture and confessions made in the absence of a lawyer are made inadmissible in any proceedings.³

This briefing covers on-going concerns in Mongolia as well as violations of the Convention which occurred in the context of the 1 July 2008 riot in which at least five people died.⁴

TORTURE IN MONGOLIAN LAW (ARTICLES 1 AND 4)

Amnesty International shares the view of the UN Special Rapporteur that, although there are some elements of the definition of torture in Mongolia's law, they are insufficient to fully cover the Convention's definition of torture.

IMPUNITY (ARTICLES 2, 4, 12 AND 16)

Impunity for torture and other ill-treatment appears to be widespread in Mongolia with complaints made against law enforcement officials rarely being taken to court and few convictions.

In Mongolia, the Special Investigation Unit is an independent investigation agency under the State General Prosecutor's Office whose main function is to investigate complaints against officials such as prosecutors, judges and inquiry officers, intelligence officers and law enforcement officials. According to information Amnesty International received from the State General Prosecutor's Office, of 7 cases handed over to the Special Investigation Unit in 2009, no cases led to prosecution. One case was dropped by the Prosecutor's Office in accordance with the provision under Article 208.1.3 (Grounds for terminating a criminal case) of the Criminal Procedure Code and a further two cases were eligible under the 2009 Amnesty Law which grants amnesty to individuals who committed minor crimes and misdemeanours before 24 June 2009 (i.e. before the 1 July riot). Amnesty International believes that many cases, such as these mentioned above, have not been adequately investigated.

According to Mongolia's Criminal Code Article 41.1 (Inflicting harm on the offender in the course of arrest), "inflicting harm" in the course of making an arrest does not constitute a crime. Further, article 44.1 (Fulfilling orders and decrees) of the Criminal Code 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 or decrees. In such cases only the person giving the illegal order or decree will be held accountable. Where such acts were committed through fulfilling an illegal order or decree knowingly, under article 44.2 they do constitute crimes. Article 41.1 therefore potentially provides impunity to law enforcement officials, including in instances of torture, in breach of Article 2(3) of the Convention.

UNIVERSAL JURISDICTION (ARTICLES 5-9)

Mongolia ratified the Rome Statute of the International Criminal Court in April 2002. Despite this positive step, the government has so far failed to enact legislation incorporating the relevant provisions of the Rome Statute into national legislation.⁵

Chapter 30 of the Criminal Code covers crimes against "security of mankind and peace",⁶ which includes the crime of genocide but not other crimes under international law. The definition of genocide in the Criminal Code (Article 302) is not consistent with the definition in the Genocide Convention and the Rome Statute. Particularly relevant to the UN Convention against Torture is the prohibited act of "[c]ausing serious bodily or mental harm to members of the group," which is not adequately reflected and could be interpreted as applying only to acts causing physical and not mental harm.⁷

Mongolian law provides limited scope for universal jurisdiction over crimes under international law. The Criminal Code provides Mongolian courts with powers to exercise universal jurisdiction over crimes committed outside Mongolia, but only in two limited situations and subject to inappropriate restrictions. These powers apply only to stateless persons permanently residing in Mongolia and to crimes committed by foreigners only if an international agreement "to which Mongolia is a party provides so."⁸

RIGHTS TO REMEDY AND DUTY TO INVESTIGATE COMPLAINTS (ARTICLES 12, 13 AND 14)

Complaints of torture and other ill-treatment can be made to the State General Prosecutor's Office, including regional offices, the National Human Rights Commission of Mongolia (NHRCM), or to the courts.

According to the State General Prosecutor's Office Special Investigation Unit, they receive around 700 complaints annually of which an estimated 125-150 are cases of abuse of power by law enforcement officials.⁹ To carry out this work, the Special Investigation Unit has only 24 staff nation-wide, mostly young professionals, funding coming from government and donors.

Although there are some provisions for compensation in Mongolia's law, they do not specify torture as a basis for compensation, which may leave scope for withholding compensation in cases of torture. For example, Articles 388 (the right to compensation of damages) and 389 (grounds for compensation of damages) of the Criminal Procedure Code provides for compensation for "property damages and mental consequences caused due to unlawful actions" by an inquiry officer, investigator, procurator or a judge. This fails to specify torture or to include the range of persons who commit or attempt to commit such actions. Nor does it define the range of reparations that could be included as compensation.

INVESTIGATION AND REMEDY OVER POLICE ACTION DURING THE 1 JULY 2008 RIOT

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 2008.¹⁰ A State of Emergency was declared for the capital city of Ulaanbaatar at midnight on 2 July and lasted for four days. No measures were taken to inform the crowds who were still at Sukhbaatar Square that the State of Emergency had been declared. Police used live ammunition and at least nine people were shot by the police, four people fatally. A fifth person died allegedly from smoke inhalation. According to the National Police Agency 731 people were arrested on the evening of 1 July 2009 and

approximately 100 more were arrested in the next few days for suspected offences committed during the riot.

Research conducted by Amnesty International in the context of the 1 July 2008 riot found that complaints of torture and other ill-treatment in the aftermath of the riot were consistently ignored or dismissed without adequate investigation.¹¹

Following the 1 July riot, at least 11 complaints of torture and ill-treatment were submitted to the State General Prosecutor's Office. A further 10 complaints made to the NHRCM were handed directly over to the Prosecutor's Office. All complaints were reportedly dismissed for lack of evidence. The State General Prosecutor's Office has failed to provide explanations or to respond to calls from the NHRCM to share information on the reasons the cases were dismissed.

FAILURE TO INVESTIGATE ALLEGATIONS OF TORTURE – TS. ZANDANKHUU

Ts. Zandankhuu was arrested around 1:00am on 2 July 2008 and taken to Denjiin Myanga detention centre. He told Amnesty International:

“I was arrested at around 1:00am just as I was heading home. I was beaten with a club. [The police] hit me on my face with their clubs. They even used an electric-shock gun on me. I was beaten until I fainted. I was taken away in a car. None of my family were notified of what happened to me.

During my interrogation nothing was done in accordance with the law, there were no lawyers. I was interrogated outside and forced on my knees; other detainees 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.”

Ts. Zandankhuu faced charges of robbery (Article 147.3 of the Criminal Code), ‘intentional damage or destruction of property’ (Article 153.2), ‘creating mass disorder’ (Article 179.1), and ‘resisting a state official or a public order public inspector’ (Article 230.3). He was sentenced to five years imprisonment but later had his sentence reduced to 6 months after appealing.

He complained to the State General Prosecutor's Office about his treatment in prison on 30 June and 20 July 2009, and to the Ulaanbaatar Prosecutor's Office on 8 October 2009. His case was dismissed without any explanation being given to the complainant. According to Ts. Zandankhuu:

“I made a complaint to the prosecution but it was ignored. I later learnt that the prosecution can't ignore such a complaint, they have to investigate. But they never did. Instead the Prosecutor's Office just told me that they would not commit the kind of crimes I was complaining about and that I was making up stories. I wasn't the only one who complained.”¹²

POLICE CONDUCT, ALLEGATIONS OF TORTURE AND OTHER ILL-TREATMENT BY LAW ENFORCEMENT OFFICIALS (ARTICLES 1 AND 16)

UNNECESSARY AND EXCESSIVE USE OF FORCE, TORTURE AND OTHER ILL-TREATMENT OF DETAINEES DURING THE 1 JULY 2008 RIOT

Amnesty International received testimony alleging unnecessary and excessive use of force by police during the 1 July 2008 riot. At least 9 people were shot with live ammunition, including at least two children aged 16 and 17. Four people died from these gunshot wounds.

During the riot, police were equipped with handcuffs, shields, helmets, truncheons, tear gas, and guns with rubber bullets and blanks as well as live ammunition to suppress the riots. The NHRCM also reported that police used "sprays with asphixiates" and "electric truncheons".¹³ Witnesses told Amnesty International that police threw stones and shot rubber bullets into the crowds. People present at the riot claimed that they were beaten by police with truncheons and kicked and hit before being taken to police detention facilities.

A representative from Law and Human Rights, an NGO in Mongolia which took up the cases of 143 people who were arrested and charged with offences committed during the riot told Amnesty International police had told detainees they were granted powers to kill people under the provisions of the State of Emergency:

"We found that testimonies were given to police under torture. Police told people that the President had granted them the right to shoot them if they didn't cooperate. [The police] would round up people and take them away in a van to show the others they were serious".¹⁴

According to the National Police Agency, 358 police officers and soldiers 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.¹⁵ 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 interviewed who were injured by gunshots or rubber bullets during the riot did not recall hearing any warnings from police before the shootings occurred.

POLICE CONDUCT DURING THE 1 JULY RIOT – STORY OF ‘H’

‘H’ (name withheld at persons request) attended the 1 July riot and was shot with a rubber bullet. According to ‘H’:

“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 with rubber bullets.

There was tear gas in the air and people were throwing stones and the police were throwing stones back. Because of the tear gas all the people were turning away and leaving. As I was running away I turned around to see what was going on and I was shot in the eye. I fainted when I was shot and when I woke up 2 people were helping me and took me to hospital.”¹⁶

CONDITIONS OF DETENTION (ARTICLES 11 AND 16)

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.¹⁷ While the capacity of Denjiin Myanga is approximately 150 inmates, the facility had 242 inmates on the day Amnesty International visited and overcrowding was recognized by the authorities there as an on-going problem. In some cases overcrowding has forced detainees to share beds.

During Amnesty International’s visit to Denjiin Myanga, the authorities told its delegation that ventilation was a problem in winter and there was no direct access to drinking water 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 also told Amnesty International that instances of ill-treatment still occur but claimed that they were declining. NGOs based in Mongolia told Amnesty International that the most common type of ill-treatment is shin-kicking by guards. Amnesty International has also been informed that in some prisons windows are often too small and prisoners may be beaten for standing on radiators to look outside the window. Authorities at Gants Khudag, a prison under the General Executive Agency of Court Decision similarly told Amnesty International that there too instances of ill-treatment still occurred but were on the decline.

In his speech on capital punishment announcing a moratorium on executions, President Ts. Elbegdorj noted that “According to available official statistics, not a single convict has ever survived [a 30 year prison sentence]” in a Mongolian prison.¹⁸ Those receiving 30 year sentences have either died in prison or are still serving their sentence. He also attributed deaths in custody primarily to suicide or diseases contracted while in prison.

DEATH PENALTY (ARTICLES 1 AND 16)

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 the President, no executions were carried out in 2009.

All information on 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, therefore there are no available, statistics on death sentences or executions. Executions are carried out by shooting and people under the age of 18 at the time of committing a crime, men over 60 and women are exempt from the death penalty. 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 said to be poor.

The National Human Rights Action Plan for Mongolia states the government's intention to reduce the number of crimes which carry the death sentence and to "eventually abolish the death penalty".¹⁹ A draft of the Assorted Criminal Code of Mongolia (draft Criminal Code) does exclude the death penalty for crimes of terrorism, genocide, rape, banditry and sabotage, which are subject to the death penalty under the current Criminal Code. However, this draft retains the death penalty for premeditated murder and assassination of a state or public figure. The draft code has not yet been submitted to parliament.

OPTIONAL PROTOCOL TO THE CONVENTION

Mongolia has not ratified the Optional Protocol to the Convention against Torture. The Ministry of Justice has told Amnesty International that they support ratification of OPCAT and they are working on how to set up a National Preventative Mechanism that meets OPCAT. In the meantime, there is no formal, independent, monitoring process of places of detention in Mongolia. The Chief Commissioner of the NHRCM made an unprecedented visit to a death row in March 2009 which concluded that conditions there had improved somewhat.²⁰ However, one off visits to prisons by the NHRCM or NGOs and individuals fall far short of the requirements under the Optional Protocol and do not constitute an adequate safeguard against torture and other ill-treatment.

ENDNOTES

¹ UN Committee against Torture, Initial reports of States parties due in 2003: Mongolia [23 September 2009], UN Doc. CAT/C/MNG/1, 22 February 2010.

² Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mission to Mongolia, UN Doc. E/CN.4/2006/6/Add.4, 20 December 2005. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/Go5167/32/PDF/Go516732.pdf?OpenElement>.

³ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 26 February 2010, UN Doc. A/HRC/13/39/Add.6, Addendum, p. 106. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/Go5167/32/PDF/Go516732.pdf?OpenElement>.

⁴ 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>.

⁵ See: Amnesty International, “Mongolia: Comments and Recommendations on the Draft Criminal Code of Mongolia”, 2009, ASA 30/001/2009. <http://www.amnesty.org/en/library/info/ASA30/001/2009/en>.

⁶ Crimes mentioned in this chapter are: “stirring up an armed conflict”; “propaganda of war”; “conduct of war by prohibited means”; “creation, acquisition and distribution of weapons of mass-destruction”; “attacks against persons enjoying international protection”; “genocide”; “use of mercenaries”; “causing ecological imbalance”.

⁷ Amnesty International, “Mongolia: Comments and Recommendations on the Draft Criminal Code of Mongolia”, 2009, p. 8, ASA 30/001/2009. <http://www.amnesty.org/en/library/info/ASA30/001/2009/en>.

⁸ These provisions are supplemented by two constitutional provisions, which may reinforce the legislation or be independent sources of universal jurisdiction. Firstly, Article 10(3) of the Constitution provides, “The international treaties to which Mongolia is a Party, become effective as domestic legislation upon the entry into force of the laws on their ratification or accession.” Secondly, Article 10(1) states, “Mongolia adheres to the universally recognized norms and principles of international law...” indicating that it may be possible for Mongolia to exercise universal jurisdiction based on customary international law or general principles of law.

⁹ Amnesty International interview with the Special Investigation Unit, 23 July 2009.

¹⁰ Amnesty International does not take a position on whether any particular election is free or fair.

¹¹ See Amnesty International, “*Where should I go from here?*” The legacy of the 1 July 2008 riot in Mongolia, December 2009 (ASA 30/003/2009). <http://www.amnesty.org/en/library/info/ASA30/003/2009/en>.

¹² Amnesty International’s interview with Ts. Zandankhuu, 27 July 2009.

¹³ National Human Rights Commission of Mongolia, “Public Disorder That Broke Out in Ulaanbaatar, Capital City, and Human Rights”, 2008, pp 15-16.

¹⁴ Amnesty International’s interview with Law and Human Rights, 21 July 2009.

¹⁵ Letter to Amnesty International from Police Colonel Ts. Arvinbuudai, Head of Administration Department, National Police Agency, dated 17 September 2009 (Ref. No: 3/3733).

¹⁶ Amnesty International’s interview with ‘H’.

¹⁷ 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 for Court Decision.

¹⁸ The Office of the President of Mongolia, "The Path of Democratic Mongolia Must be Clean and Bloodless" speech by President Ts. Elbegdorj on capital punishment at the Great State Khural, 14 January 2010.
<http://www.president.mn/eng/newsCenter/viewNews.php?newsId=122>.

¹⁹ The Secretariat of the State Great Khural, "National Human Rights Action Programme of Mongolia," 2004, p 88.

²⁰ Amnesty International interview with the National Human Rights Commission of Mongolia, 20 July 2009.

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