



FALLING SHORT

THE RIGHT TO ADEQUATE HOUSING IN ULAANBAATAR, MONGOLIA

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CONTENTS

Executive Summary	7
Key Findings and Recommendations.....	8
Methodology	12
1. Right to Adequate Housing: Domestic and International Human Rights Standards	15
1.1 Constitution	15
1.2 International Human Rights Law and Standards	15
2. Redevelopment in Ulaanbaatar	21
2.1 Population Growth and Pollution in Ulaanbaatar	21
2.2 The Redevelopment Agenda	23
2.3 Financing Redevelopment	25
3. Shortcomings	27
3.1 No Rights for Non-land Owners and Possessors	27
3.2 Risk of Homelessness	29
3.3 Voluntary or Involuntary Resettlement	31
3.4 Lack of Clarity on Redevelopment Procedures and Rights of Residents	34
3.5 Right to Remedy	35
4. Conclusion and Key Recommendations	39
4.1 Key Findings	39
4.2 Recommendations	40
Appendix: Mongolia's Legal and Policy Framework for Redevelopment	43
1. National laws	43
Urban Development Law and Urban Redevelopment Law	43

4 FALLING SHORT
THE RIGHT TO ADEQUATE HOUSING IN ULAANBAATAR, MONGOLIA

Monitoring Development	46
2. The Redevelopment Process	47
Operational Procedures for Ger Area Redevelopment.....	48
Operational Procedures for Demolishing and Rebuilding Inadequate Public Housing not Complying with Operational Requirements.....	51
3. Key Authorities	53

GLOSSARY

ADB	Asian Development Bank
<i>Aimag</i>	Administrative division of Mongolia equivalent to province
Development Law	The Urban Development Law
GAIA	Ger Area Infrastructure Agency (formerly known as Ger Area Development Agency)
GAHP	Ger Area Housing Project
Ger	Traditional round felt dwelling used by nomadic herders in Mongolia
Ger area	Dwelling area with gers and houses without full social and engineering infrastructure
GPA	The City General Planning Agency
Ger Area Operational Procedures	Operational Procedures for Ger Area Redevelopment
ICESCR	International Covenant on Economic, Social and Cultural Rights
Inadequate Housing Operational Procedures	Operational Procedures for Demolishing and Rebuilding Inadequate Public Housing not Complying with Operational Requirements
Inadequate public housing	Residential public housing buildings assessed to be unsafe and/or structurally unsound and whose use is prohibited
JICA	Japan International Cooperation Agency
<i>Khashaa</i>	Fenced plots of land
<i>Khoroo</i>	Administrative subdivision under <i>aimag</i> (province)in Ulaanbaatar
Master Plan	Ulaanbaatar 2020 Master Plan and Amendments and Development Approaches for 2030, providing an overarching strategy for Ulaanbaatar including plans for developing residential, commercial and green spaces
NHRCM	National Human Rights Commission of Mongolia
Land owner	Those who are in legitimate control of the land with the right to dispose of that land
Land possessor	Those who legitimate control of the land in accordance with the purpose of its use and terms and conditions specified in respective contracts
Project implementer / private developer	Private company selected to implement a redevelopment project
Redevelopment Law	The Urban Redevelopment Law

Soum	Administrative subdivision under <i>aimag</i> (province) outside Ulaanbaatar
Tenant	A person who occupies land or property rented from a landlord
UN-Habitat	The United Nations Human Settlements Programme

MAP OF MONGOLIA



EXECUTIVE SUMMARY

“In my khashaa there were 14 people. The company offered 2 studio flats if we freed the land. My son, his wife and their three children took our ger and has been staying in different places. After moving around three times, now they are staying in a place that is 10kms from UB. ... My Son and his family did not get any compensation”

Resident from 14th khoroo of Bayanzurkh district, 20 March 2016

Ulaanbaatar, Mongolia's capital, is undergoing large-scale redevelopment to provide better housing and access to services for residents and to combat high pollution levels. The redevelopment agenda focuses on both Ulaanbaatar's ger areas, where 60% of Ulaanbaatar's 1.3 million residents live, and on public housing buildings which are unsafe and/or structurally unsound.

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. Over the past decade, hundreds of thousands of herder families have left the steppes to settle in the outskirts of Ulaanbaatar where they typically find a piece of unoccupied land, put up a fence and erect their ger.¹

Redevelopment often requires some amount of relocation of people. Governments are entitled

¹ See Mayar Benoit, *The Rights of Mongolia's Internal Migrants Under International Law: Climatic, Domestic and Commercial Responsibilities*, *Journal of East Asia and International Law*, 1 July 2014, Available at: ssrn.com/abstract=2495992; Nathan Vanderklippe, *Dying Steppe*, *The Globe and Mail*, 29 April 2016, available at <http://www.theglobeandmail.com/news/world/the-globe-in-mongolia-why-a-herding-culture-is-dyingout/article29791679/>

to expropriate land for public purposes, if done in conformity with the provisions of international human rights law, including public participation, due process, and adequate compensation. In other words, respect for international human rights law does not prohibit development or modernization projects that entail displacement, but imposes conditions and procedural limits on it. Evictions that do not meet these procedural protections are defined in international law as “forced evictions”.

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.

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.

KEY FINDINGS AND RECOMMENDATIONS

Many residents of Ulaanbaatar interviewed by Amnesty International said that the redevelopment agenda in Mongolia receives widespread support. However, 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

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.

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 Law³ was not passed until 2008 and the other main national law, the Urban Redevelopment Law⁴, was passed only in June 2015. In October 2015 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.

This briefing presents the conclusions of Amnesty International's research carried out in Ulaanbaatar between September 2015 and August 2016. It examines the process in place for ger area redevelopment and redevelopment of inadequate public housing buildings, the two areas of the redevelopment agenda that directly affect the most number of Ulaanbaatar residents. It reviews the current redevelopment legal and policy framework and assesses its ability to protect the rights of those affected by the redevelopment process.

The Mongolian authorities must ensure that all procedures and regulations being amended or drafted by the MCUD working group are in line with both international human rights law and standards, and other domestic legislation on redevelopment. Any and all discrepancies between procedures and regulations must be addressed in a manner that provides the greatest protection to residents affected by redevelopment and so that there is no ambiguity concerning the process or the rights of individuals and communities affected by redevelopment. These changes must be clearly communicated to the public.

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;

³ 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.

⁴ Urban Redevelopment Law, passed by the Mongolian Parliament On 26 June 2015; unofficial English language translation on file at Amnesty International.

- 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 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 councils⁵ who spoke to Amnesty International understood that, because the redevelopment agenda is a

⁵ Resident temporary councils are representative bodies established by landowners and possessors in an affected area to represent their interests.

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.⁶

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.

RESIDENTS MADE HOMELESS IN SUKHBAATAR DISTRICT

Redevelopment plans gone wrong can have a devastating impact on the residents, as illustrated by the case of Building #3. an old, dilapidated building located in the 10th *khoroо* (administrative unit) of Sukhbaatar district of central Ulaanbaatar.

In early 2015 a private developer approached residents of building #3 with the offer of a new apartment in a new building that they proposed to construct. It was an attractive offer for residents living in a building without running water or toilets. Between April and July 2015, at least 28 households from Building #3 agreed a resettlement and compensation package with the private developer. The private developer gave those residents who moved out a lump sum of money to cover rent costs elsewhere for one year while the new building was constructed. However, not all households in Building #3 took the offer because they did not trust the private developer. Other private developers had made similar promises that had not been implemented in the past.

To show their willingness to move and to encourage others to move, the company asked residents who had agreed to move out to remove the windows and front doors of their apartments. After several households did this, the building was further vandalized for pipes and materials and rubbish was dumped in the building. Radiators and central heating pipes were removed. The city government authorities did take steps to notify residents that the company seeking to negotiate with residents was not the same company which had been given authorization to carry out the construction, including a letter to residents dated 22 April 2015. However, when Amnesty International interviewed residents between March and May 2016, not all of them had been aware of the letter or that the company was not authorized to negotiate with them at the time of signing.

After a year had passed no progress had been made on the construction and the rent money ran out. Without rent money, families had to choose between staying with relatives, paying rent for alternative accommodation at their own expense or moving back into Building #3. For some households, moving back into Building #3 was not an option because, in addition to no heating, their apartment has no door or windows and is therefore

⁶ 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

uninhabitable.

Of those who did not negotiate with the private developer, five households, including a man with disabilities and a family with young children spent the winter of 2015/16 in Building #3 without central heating. Outside temperatures in Ulaanbaatar during the winter can reach -30°C. Other households moved out and stayed with relatives or rented elsewhere at their own expense because the conditions in the building were intolerable. However, in April 2016 five households moved back because the cost of paying rent elsewhere was too high.

The government initially refused to take any responsibility, claiming that it does not guarantee the process or mediate disputes unless the residents sign a tripartite agreement – a contract between the apartment owner, the private developer and the Capital City Governor outlining the terms of the resettlement and compensation agreed.

Amnesty International issued an urgent appeal on this case in March 2016 and met with the Chair of the City Council to call for immediate action to find alternative, adequate accommodation for the residents of Building #3. On 24 June, the Governor passed a Decree for 10 households of Building #3 to be re-housed – the number of households living in the building. However, on 29 June local elections were held in which the Governor and the ruling party were defeated putting this process into question and leaving families in limbo.⁷

METHODOLOGY

Amnesty International carried out research in Ulaanbaatar between September 2015 and August 2016. During that time Amnesty International met with the National Human Rights Commission of Mongolia (NHRCM) and NGOs including women's groups, disability rights groups, environmental organizations, development NGOs and NGOs focusing on internal displacement from mining activities. Amnesty International met with lawyers and academic experts on Mongolia's land laws and urban development issues; representative from a citizens' representative organization in Chingeltei district; representatives from two residents' temporary councils in Bayanzurkh district; 28 individuals or families in communities affected by the redevelopment agenda in Sukhbaatar, Bayanzurkh, and Songinokhairkhan districts; and three construction companies working on redevelopment sub-projects in Ulaanbaatar. Throughout this briefing, the names of individual residents have been omitted to protect them from any negative repercussions in on-going negotiations with private developers.

Between 14 and 22 March 2016, Amnesty International met with relevant government authorities and agencies at both the national and local level. National level meetings were held with the MCUD, the Court Decision Enforcement Agency, and the Parliamentary Standing Committee on Complaints. At the local level, meetings were held with the Ger Area Development Agency (GADA), the Deputy-Mayor for Urban Development and Investment, the City General Planning Agency (GPA), and the Governor of Sukhbaatar district. Amnesty International wrote to the MCUD and GADA to request further information and received a reply from the MCUD but not from GADA. Amnesty International sent a summary of the finding of our research to the MCUD and the Capital City Governor's office in August 2016 and received a reply, some of which has been reflected in this briefing, from the MCUD and

⁷ The residents of Building #3 told Amnesty International on 20 October 2016 that 10 families who were living in the building were provided with alternative housing in 17 October 2016.

the GPA. Amnesty International also met with the Asian Development Bank (ADB), Japan International Cooperation Agency (JICA), and the United Nations Human Settlements Programme (UN-Habitat), which have all provided advice and technical assistance on housing and urban redevelopment to city and state level government departments and agencies.

14 FALLING SHORT
THE RIGHT TO ADEQUATE HOUSING IN ULAANBAATAR, MONGOLIA

1. RIGHT TO ADEQUATE HOUSING: DOMESTIC AND INTERNATIONAL HUMAN RIGHTS STANDARDS

1.1 CONSTITUTION

Mongolia's Constitution recognizes, in Article 16, several human rights including the rights to life, health, safe environment, fair acquisition, possession, ownership and inheritance of movable and immovable property, employment, and education, but has no specific language on the right to adequate housing.

The right to own land is enshrined in the Constitution under Article 5.2, which states, “[t]he State recognizes all forms of both public and private property and shall protect the rights of the owner by law”. The 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). Article 16 states that “[i]llegal confiscation and requisitioning of the private property of citizens shall be prohibited. If the State and its bodies appropriate private property on the basis of exclusive public need, they shall do so with due compensation and payment”.

The right to remedy is enshrined in the Constitution under Article 16.12, which guarantees the “right to submit a petition or a complaint to State bodies and officials” and that “State bodies and officials shall be obliged to respond to petitions or complaints of citizens in conformity with the law”. Article 16.14 provides the “right to appeal to the court to protect his/her right if he/she considers that the rights of freedoms as spelled out by the Mongolian law or an international treaty have been violated” as well as the right to compensation among others.

Further, all domestic laws relevant to the ongoing redevelopment project, except the Land Law, include a clause that states that, “if any international treaty ratified by Mongolia provides otherwise than the law, the provision of the international treaty shall take precedence”. In addition, Article 10.1 and 10.3 of the Mongolian Constitution guarantee respectively, “adher[ance] to universally recognized norms and principles of international law” and that “international treaties to which Mongolia is a Party shall become as effective as domestic legislation upon the entry into force of the laws on their ratification or accession”.

1.2 INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS

The Government of Mongolia is obligated under international human rights treaties, which it has ratified, to respect, protect and fulfil the right to adequate housing.⁸ The human rights

⁸ Article 11(1) of the International Covenant on Economic, Social and Cultural Rights ratified by

treaties include the International Covenant on Economic, Social and Cultural Rights (ICESCR), which guarantees among others, the right to health, education, water, sanitation and housing. The right to adequate housing is guaranteed under Article 11(1) of the ICESCR. The obligation to respect, protect and fulfil extends to all levels of government from national to local, as well as to state agencies.

The UN Committee on Economic, Social and Cultural Rights (CESCR), a body of experts that provides authoritative guidance on the implementation of the ICESCR, has clarified the obligations of state parties vis-a-vis the right to adequate housing.⁹ The CESCR states that the government should respect the right to adequate housing including by refraining from forced evictions, protecting people from interference with their rights by third parties such as landlords and private developers, and adopting appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realize the right to adequate housing. Governments must prioritize the realization of minimum essential levels of housing for everyone while prioritizing the most disadvantaged groups in all programmes when allocating resources. The CESCR also calls upon states parties to guarantee the right of people to participate in and be consulted over decisions that will affect them, and to provide an effective remedy if any of these rights are violated.¹⁰

The CESCR, in General Comment 7, has emphasized that where evictions are considered to be justified they should be carried out in strict compliance with principles of international law and due process requirements.¹¹ According to international human rights standards, relocation sites must fulfil the criteria for adequacy of housing under international human rights law. The CESCR has identified the following aspects which are crucial to determine whether any particular form of housing can be considered to constitute adequate housing under Article 11(1) of the ICESCR: legal security of tenure; availability of services, materials, facilities and infrastructure; location; habitability; affordability; accessibility; and cultural adequacy.¹²

In 2007, the UN Special Rapporteur on adequate housing, an independent expert mandated to report, advise and provide technical assistance to governments on the right to adequate housing, developed the Basic Principles and Guidelines on Development-based Evictions and Displacement. The guidelines reflect existing standards and jurisprudence on the issue of

Mongolia on 18 November 1974; Article 27(3) of the Convention on the Rights of the Child ratified by Mongolia on 5 July 1990; Article 5(e)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination ratified by Mongolia on 6 August 1969; and Article 17 of the International Covenant on Civil and Political Rights ratified by Mongolia on 18 November 1974.

⁹ UN Committee on Economic, Social and Cultural Rights, The right to adequate housing, General Comments 4 and 7.

¹⁰ UN Committee on Economic, Social and Cultural Rights, General Comment 4, paragraph 9 and General Comment 7, paragraph 13.

¹¹ UN Committee on Economic, Social and Cultural Rights, General Comment 7, paragraph 14.

¹² UN Committee on Economic, Social and Cultural Rights, General Comment 4, paragraph 8.

evictions.¹³ They describe in detail the steps that should be taken before, during and after evictions, in order to ensure compliance with international human rights law. According to the guidelines, evictions must be:

- Authorized by law;
- Carried out in accordance with international human rights law;
- Undertaken solely for the purpose of promoting the general welfare;
- Reasonable and proportional;
- Regulated so as to ensure full and fair compensation and rehabilitation;
- Carried out in accordance with the present guidelines.¹⁴

Under international human rights law, evictions may only be carried out as a last resort, once all feasible alternatives to eviction have been explored and when appropriate procedural protections are in place. Such safeguards include:

- An opportunity for genuine consultation with those affected;
- Adequate and reasonable notice for affected people prior to the eviction;
- Information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
- Government officials or their representatives to be present during the evictions;
- Anyone carrying out the eviction to be properly identified;
- Evictions not to take place in particularly bad weather or at night unless the affected people consent;
- Provision of legal remedies;
- Provision, where possible, of legal aid to people who are in need of it to seek redress from the courts.

Governments must also ensure that no one is rendered homeless or vulnerable to the violation

¹³ UN Basic Principles and Guidelines on Development-based Evictions and Displacement, Annex 1 to UN.Doc, A/HRC/4/18, 2007; available at www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf

¹⁴ UN Basic Principles and Guidelines on Development-based Evictions and Displacement, Annex 1 to UN.Doc, A/HRC/4/18, 2007; available at www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf

of other human rights as a consequence of eviction. Adequate alternative housing and compensation for all losses must be made available to those affected prior to eviction.¹⁵ Not every eviction that is carried out by force constitutes a forced eviction – if all the legal safeguards and protections required under international law are complied with, and if the use of force is proportionate and reasonable, then the eviction would not violate the prohibition on forced evictions.

Article 17 of the International Covenant on Civil and Political Rights (ICCPR), to which Mongolia is a State Party, provides protection against arbitrary and unlawful interference with privacy, family and home. The Human Rights Committee established to oversee implementation of the Covenant by state parties has held that forced evictions contravene Article 17 of the ICCPR.¹⁶ According to international human rights law and standards, the protection against forced evictions applies to everyone regardless of whether they have a legally recognized right to live in the home or land where they currently reside. As a result, squatters and those without regular title must also be protected from forced eviction.

Despite clear international legal obligations, Mongolian residents affected by redevelopment remain at risk of forced evictions. The national legal and policy framework does not provide the same level of protection as international human rights law and standards. For instance, it does not include all affected community members and does not protect people without security of tenure in housing or on private land from risk of forced eviction and homelessness.

The CESCR has emphasized that security of tenure is one of the crucial elements of the right to adequate housing. Tenure takes various forms including rental (public and private) accommodation, cooperative housing, lease, owner occupation, emergency housing and informal settlements. According to the CESCR, “[N]otwithstanding the type of tenure all persons should possess a degree of security of tenure with guarantees to legal protection against forced eviction, harassment and other threats.”¹⁷

In respect of the prohibition on forced evictions, the CESCR has stated that, “[s]tates parties shall ensure prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force”.¹⁸ Under the UN Basic Principles on Development-based Evictions and Displacement, “[i]n the event that agreement

¹⁵ UN Committee on Economic, Social and Cultural Rights, The right to adequate housing, General Comment 7, paragraphs 15 and 16.

¹⁶ See Concluding Observations of the Human Rights Committee: Kenya, UN Human Rights Committee, CCPR/CO/83/KEN 29 April 2005, paragraph 22 available at tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fCO%2f83%2fKEN&Lang=en

¹⁷ UN Committee on Economic, Social and Cultural Rights, The right to adequate housing, General Comment 4, paragraph 8(a).

¹⁸ UN Committee on Economic, Social and Cultural Rights, General Comment 7, paragraph 13.

cannot be reached on a proposed alternative among concerned parties, an independent body having constitutional authority, such as a court of law, tribunal or ombudsperson should mediate, arbitrate or adjudicate as appropriate”.¹⁹

The CESCR has identified genuine consultation with affected people as a fundamental safeguard against forced evictions. Genuine consultation includes the provision of full, accurate and timely information to those affected, in order to facilitate their meaningful participation in any consultation process. The information must be in a form and language that is accessible to all affected people. Genuine consultation also includes the opportunity for affected individuals and families to reflect upon, discuss, raise concerns and submit comments to the authorities about the eviction and any related plans, including on compensation and resettlement, and to receive responses from the authorities. Affected people should be able to participate collectively, through their elected representatives, and in smaller groups and individually.

The UN Basic Principles and Guidelines on Development-based Evictions and Displacement stipulate:

*“Urban or rural planning and development processes should involve all those likely to be affected and should include the following elements: (a) appropriate notice to all potentially affected persons that eviction is being considered and that there will be public hearings on the proposed plans and alternatives; (b) effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups; (c) a reasonable time period for public review of, comment on, and/or objection to the proposed plan; (d) opportunities and efforts to facilitate the provision of legal, technical and other advice to affected persons about their rights and options; and (e) holding of public hearing(s) that provide(s) affected persons and their advocates with opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities”.*²⁰

In July 2010 Mongolia accepted the provisions of the Optional Protocol to the ICESCR. This Protocol recognizes the competence of the CESCR to receive and consider communications from Mongolia about violations to the ICESCR. The CESCR will not accept any communication or take any action until all available domestic remedies have been exhausted. To date, no communications have been received by the Committee from Mongolia.

In response to Mongolia’s fourth periodic report to the CESCR, the Committee raised concerns about “the negative impact the ‘Ger Area Redevelopment Regulation’ has on persons whose land is subject to redevelopment, such as forced evictions, especially on those who do not have a legal title to their land and do not receive any adequate compensation or

¹⁹ UN Basic Principles and Guidelines on Development-based Evictions and Displacement, Annex 1 to UN.Doc. A/HRC/4/18, 2007; paragraph 59; available at www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf

²⁰ UN Basic Principles and Guidelines on Development-based Evictions and Displacement, Principle 37.

are not provided with alternative accommodation in areas with basic social services”.²¹

The Committee made several recommendations to the Mongolian Government, including to “amend the ‘Ger Area Redevelopment Regulation’ as necessary with a view to ensuring that it does not adversely impact the ger population’s right to adequate housing including security of tenure and protection from forced evictions, without adequate compensation or provision of alternative accommodation in areas with access to basic social services” and to “develop a legal framework concerning forced evictions that is compliant with international standards”.²²

²¹ UN Committee on Economic, Social and Cultural Rights, *Concluding Observations on the fourth periodic report of Mongolia*, 19 June 2015, page 7, available at tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=MNG&Lang=EN

²² UN Committee on Economic, Social and Cultural Rights, *Concluding Observations on the fourth periodic report of Mongolia*, 19 June 2015, page 7, available at tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=MNG&Lang=EN

2. REDEVELOPMENT IN ULAANBAATAR

The redevelopment agenda for Ulaanbaatar has been prompted by rapid unplanned population growth and the environmental consequences of that growth. The agenda, as outlined in the “Ulaanbaatar 2020 Master Plan and Amendments and Development Approaches for 2030”, (Master Plan), focuses on redeveloping built-up areas, building and improving infrastructure, re-housing people living in ger areas, and the demolition of unsafe and/or structurally unsound buildings. The aim of redevelopment is to “ensure a healthy, safe and comfortable living environment for the citizens” of Mongolia.²³

High economic growth rates led by the exploitation of mineral wealth provided the impetus for the redevelopment agenda in Ulaanbaatar. However, the drop in commodity prices combined with political and economic mismanagement has seen the economic growth rate fall from 17.3% in 2011 to 2.3% in 2015. According to the Asian Development Bank (ADB) the growth rate for 2016 is expected to be less than 1%.²⁴ This has negatively impacted the pace of redevelopment and jeopardized the ability of some private developers to carry out or complete construction work approved under the redevelopment agenda.

2.1 POPULATION GROWTH AND POLLUTION IN ULAANBAATAR

Of a total population of approximately 3 million in Mongolia, 1.3 million live in Ulaanbaatar. According to the 2010 Population and Housing Census, Ulaanbaatar’s population grew 5.4% annually between 2000 and 2010 with many of the new residents moving into ger areas.²⁵ The largest increase in the population is from internal migration as people from the countryside, including former nomadic herders and their families move to the city looking for economic opportunities and better access to services. The city’s population is projected to increase to 1.6 million by 2020 and 2.1 million by 2030.²⁶

Approximately 60% of Ulaanbaatar residents live in ger areas, key target areas for redevelopment. Residents of these areas do not necessarily live in gers, which are Mongolian traditional round felt dwellings.²⁷ A ger area combines both houses made of brick or

²³ Urban Redevelopment Law, Article 1.

²⁴ ADB, Mongolia country page, available at www.adb.org/countries/mongolia/economy

²⁵ National Statistics Office, *Main findings of the 2010 Population and Housing Census*, available at www.slideshare.net/Ochiro/mongolia-2010-population-census-main-findings

²⁶ Mongolian Statistical Information Service website, available at www.1212.mn

²⁷ Although gers remain a popular dwelling in Mongolia they do not meet modern standards for adequate housing. While the redevelopment agenda appears to have received widespread support, some news articles, NGOs and residents noted that some households would prefer to have infrastructure developed to allow them to stay in their gers rather than move into an apartment. See Peter Geoghegan, *Life in*

makeshift construction materials and gers. These areas are characterized by lack of paved roads and limited infrastructure including access to water, sanitation, and heating.²⁸ Houses in the ger areas are more likely to be connected to water and sewage than gers.²⁹ Ger areas also lack social infrastructure such as schools and hospitals. Poverty and unemployment rates are higher in ger areas than in other areas of the city.

Ger areas comprise fenced plots of land known as *khashaas*. On a typical *khashaa* will be a house and one or more gers, which may accommodate extended family members such as a son or daughter, their spouse and children. In such cases, one *khashaa*, will house multiple families. Some people use the space on their *khashaa* to set up workshops for business purposes, or rent the space for tenants to set up a ger.

The large and unplanned growth of the city, and particularly of ger areas, has created significant environmental challenges, particularly from air and soil pollution. A 2011 World Bank study on air pollution found that Ulaanbaatar was among the cities with the worst air quality in the world and that ger households were the main cause, and the main casualties, of air pollution.³⁰ Air pollution levels in Ulaanbaatar are particularly high during the winter months when temperatures can reach -30°C. Due to the lack of access to heating, ger area residents, particularly those living in gers, are forced to burn wood, coal and, in some poorer families, old tires and plastics, in order to stay warm.³¹ Other key sources of air pollution include power plants, heat-only boilers and car exhaust.³²

Ulaanbaatar's tent city is hard – but Mongolians won't give up their gers, The Guardian, 3 September 2014, available at www.theguardian.com/cities/2014/sep-03/mongolia-ulanbaatar-ger-yurt-tent-city

²⁸ Article 4.1.2 of the Urban Redevelopment Law defines ger areas as a “dwelling area with gers and houses without full social and engineering infrastructure”.

²⁹ Mongolian National Statistics Office, United Nations Population Fund (UNFPA) and The United Nations Children's Fund works for children's rights, survival, development and protection (UNICEF) “*Mongolia: Social Indicator Sample Survey (SISS) 2013 Key Findings*,” June 2014, available at microdata.worldbank.org/index.php/catalog/2535/download/36784. The percentage of households with electricity in Ulaanbaatar is 98.4%.

³⁰ World Bank, *Air Quality Analysis of Ulaanbaatar: improving air quality to reduce health risks*, Discussion Paper V1 66082, December 2011, available at: www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/01/16/000386194_20120116025654/Rendered/PDF/660820v10revis00Mongolia0Report0Web.pdf

³¹ HlerGudjonsson, *Displaced Mongolian herders destined for life of deprivation in urban slums*, International Federation of the Red Cross, 6 April 2016, available at: www.ifrc.org/en/news-and-media/news-stories/asia-pacific/mongolia/displaced-mongolian-herders-destined-for-a-life-of-deprivation-in-urban-slums-72090

³² World Bank, *Air Quality Analysis of Ulaanbaatar: improving air quality to reduce health risks*, Discussion Paper V1 66082, December 2011, available at: www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/01/16/000386194_20120116025654/Rendered/PDF/660820v10revis00Mongolia0Report0Web.pdf

The main causes of soil pollution in Ulaanbaatar include the increasing number of vehicles, industrial waste, and pit latrines used by ger area residents.³³ Residents living in gers or houses in ger areas which are not linked to sewerage pipes rely on pit latrines and access to public toilets. According to the 2010 Population and Housing Census, less than half, 42.4%, of houses/buildings nationwide had indoor toilet facilities.³⁴ In ger areas the majority of residents use pit latrines either on their *khashaa* or communal latrines located nearby. This can lead to a number of health risks including hepatitis A, dysentery, salmonella infections and diarrhoea.³⁵

2.2 THE REDEVELOPMENT AGENDA

Until recently ger areas in Ulaanbaatar were viewed by the government as temporary accommodation and were neglected in terms of planning and development, including access to essential services such as water, sanitation and heating. Starting in the year 2000, the policy toward ger areas began to shift to recognize them as areas of both permanent and temporary residence.³⁶ This shift reflected the increasing impact the ger areas were having on the environment and the health of Ulaanbaatar residents.

In 2008, the Mongolian parliament (State Great Khural) passed an Urban Development Law to regulate city and town planning. According to this law, cities and towns must develop a general development plan. The current general development plan for Ulaanbaatar is the “Ulaanbaatar 2020 Master Plan and Amendments and Development Approaches for 2030” (Master Plan) which was approved by the Ulaanbaatar City Council and the Parliament in 2013.³⁷

The three main types of redevelopment projects for residential housing are: ger area redevelopment; redevelopment of inadequate public housing not complying with operational requirements; and community-initiated redevelopment.³⁸ Each of these is managed by a

³³ B. Dulguun, *Poor outhouse management increases risk of infectious disease outbreak*, UB Post, 8 April 2016, available at: ubpost.mongolnews.mn/?p=19169

³⁴ Mongolian National Statistics Office, *Main findings of the 2010 Population and Housing Census*, available at: en.ubseg.gov.mn/content/49

³⁵ B. Dulguun, *Poor outhouse management increases risk of infectious disease outbreak*, UB Post, 8 April 2016, available at: ubpost.mongolnews.mn/?p=19169. A World Bank 2013 survey showed 50.6% of children under five in Ulaanbaatar had sought advice or treatment for diarrhoea in the last two weeks from a health facility or provider. Available at: microdata.worldbank.org/index.php/catalog/2535

³⁶ Amnesty International interview with UN-Habitat, 16 March 2016.

³⁷ GADA (current GAIA), *Operational report of the Capital City Ger Area Development Agency 2014*, p77; unofficial English language translation on file with Amnesty International. The GADA Operational Report is a biannual report produced by GAIA updating progress on ger area redevelopment subprojects. Ger area redevelopment plans were approved by the City Council resolutions 7/29 and 12/43 in 2013 and resolution 14/02 in 2014.

³⁸ Under the Redevelopment Law a fourth area of redevelopment is to bring existing built-up areas into line with the Master Plan and other development and redevelopment strategies and plans.

different agency under the Ulaanbaatar City Mayor's Office.

Implementation of the ger area redevelopment project is overseen by the Ger Area Infrastructure Agency (GAIA), which was established on 22 December 2012 and prior to 2016 was known as the Ger Area Development Agency (GADA). GAIA serves as the Secretariat to the Project Steering Committee, which was set up under the Ulaanbaatar City Mayor's Office with responsibility for overseeing and monitoring the ger area redevelopment project. The ger area redevelopment project covers 24 locations in eight districts³⁹ comprising 75 subprojects and covering approximately 1,500ha or 16,109 sites.⁴⁰ This represents 14-15% of Ulaanbaatar territory and affects 9% of the city's population.⁴¹ In March 2016, GAIA officials told Amnesty International that 54 sub-projects have been completed and 25 are under construction.⁴² However, in a letter dated 7 September 2016, the City General Planning Agency noted that as of September 2016, of the 75 sub-projects, the plans for 44 had been approved; six had not been approved. Also, private developers in ten sub-project areas had had their authorization cancelled, and that private developers had not been selected for 15 sub-project areas.⁴³

The City General Planning Agency (GPA) oversees the redevelopment of buildings that have been classified as inadequate public housing not complying with operational requirements (inadequate public housing), which means apartment buildings that have been assessed to be unsafe and/or structurally unsound. Under Article 15.1 of the 1999 Housing Law, it is prohibited to use any inadequate public housing.⁴⁴ The GPA is currently implementing 85 projects to redevelop inadequate public housing buildings.⁴⁵

³⁹ There are nine districts in Ulaanbaatar, six central districts and three rural districts. The ger area redevelopment project has sub-projects in all six central districts and two of the rural districts.

⁴⁰ List of issues in relation to the fourth periodic review of Mongolia Addendum: Replies of Mongolia to the list of issues, 12 May 2015, p14, available at: tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fMNG%2fQ%2e4%2fAdd.1&Lang=en

⁴¹ 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.

⁴² Amnesty International interview with GAIA, 15 March 2016.

⁴³ City General Planning Agency letter to Amnesty International, 7 September 2016, Ref 09\2588; unofficial English language translation on file with Amnesty International.

⁴⁴ Housing Law, passed by the Mongolian Parliament on 22 April 1999 and amended on 2 February, 15 May 2003 and 18 June 2003; 27 January 2005; 29 June 2006; 9 February 2011, and 23 January and 4 December 2015; on file with Amnesty International.

⁴⁵ Amnesty International interview with GPA, 21 March 2016. There may be other projects to re-house residents living in structurally unsound buildings but which are not being overseen by the GPA. For example, if there is no tripartite agreement – a contract signed between the landowner or possessor, the private developer and the Governor outlining the terms of the resettlement and compensation package

The community-initiated redevelopment project is overseen by the Ger Area Housing Project (GAHP). These are redevelopment plans in ger areas which are initiated by communities to develop their own area. There are eight GAHP plans but none have been implemented as of the July 2016. The GAHP also has other tasks related to ensuring community participation in areas affected by the ger area redevelopment project.

This document focuses on the first two areas of redevelopment: ger area redevelopment and the redevelopment of inadequate public housing, overseen by GAIA and the GPA respectively. These two projects represent the bulk of the redevelopment agenda that affects residents' right to adequate housing.

2.3 FINANCING REDEVELOPMENT

Financing for redevelopment projects comes from state budget, capital city budget, issuances of government bonds, and from private developers. The government's main budget allocation for ger area redevelopment is for laying the infrastructure for water, heating, sanitation and road works, to connect the new buildings to basic services.

Private developers, referred to as project implementers, selected by the government to implement a redevelopment project for ger areas or inadequate public housing are responsible for financing the construction project.⁴⁶ This includes funds to cover temporary resettlement and compensation. Typically, the private developer is responsible for constructing apartment buildings and aims to recover the costs by building more apartments than are needed to re-house affected residents and selling the extra apartments.

The economic downturn has negatively impacted both the government's and private developers' ability to fund the redevelopment agenda. This applies to both the ger area redevelopment and redevelopment of inadequate public housing. For example, in 2015, 5.9 billion Mongolian Tughrig (2.8 million USD) from the issuance of government bonds, called Chinggis Bonds, was approved for financing infrastructure construction and engineering preparatory works for a ger area redevelopment sub-project in the 7th *khoroos* (administrative unit) of Chingeltei district but not made available due to the economic downturn.⁴⁷

Some project implementers have also run into financial difficulty which means that their projects have stalled or have not been able to get started. For example, ger area landowners and possessors in the 9th and 10th *khoroos* of Chingeltei district signed agreements with the private developer selected to carry out redevelopment in their area in 2013 but the project stalled because, according to the residents, the private developer has run into financing

agreed - then the government does not guarantee the process or mediate in the case of disputes.

⁴⁶ Urban Redevelopment Law, Article 23.1.3.

⁴⁷ Parliamentary Standing Committee on Complaints, *Report of the Working Group on Improvement of Ger Area Conditions and Progress of Redevelopment Planning Projects in Accordance with Complaints Received by Residents to the Parliamentary Standing Committee on Complaints*, 2015; unofficial English language translation on file with Amnesty International.

problems.⁴⁸ On 30 June 2016 the then-Capital City Governor and Ulaanbaatar City Mayor issued a Decree cancelling authorization of the private developer for not having carried out any work for up to six months and for committing “repeated serious operational violations”.⁴⁹

International development organizations also play a role in Ulaanbaatar’s redevelopment agenda through capacity building, technical assistance, and/or direct engagement in redevelopment projects. Key players providing technical and other support are the Japan International Cooperation Agency (JICA), UN-Habitat, and the ADB.⁵⁰ JICA has provided extensive technical assistance since 2007 including providing technical advice for developing the Master Plan.

⁴⁸ Amnesty International interview with Chingeltei Sarwol Resident’s Committee to Support the Ger Area House Project, which represent residents in the 9th and 10th *khoroos* of Chingeltei, 7 December 2015.

⁴⁹ Decrees A/568 and A/572 issued by the Capital City Governor and Ulaanbaatar City Mayor, 30 June 2016; unofficial English language translation on file with Amnesty International.

⁵⁰ This is not an extensive list. Other international development agencies such as The World Bank and German Agency for Technical Cooperation have initiated or supported projects to reduce pollution in ger areas or been involved in other housing improvement projects in ger areas in Ulaanbaatar. The ADB told Amnesty International that they are working with the capital city government to develop the infrastructure to build sub-centres outside the city centre to reduce congestion and increase the supply of affordable housing. The resettlement of residents affected by the ADB-led infrastructure development falls under the ADB’s own standards and guidelines for resettlement. This means that, unlike other areas that fall under the capital city government’s redevelopment agenda, all residents including non-landowners and possessors are involved in the consultation and eligible for compensation. Bilateral and multilateral donors have a responsibility to ensure that they do not support projects and programmes that lead to, or contribute to, violations to the right to adequate housing, including forced evictions.

3. SHORTCOMINGS

Redevelopment often requires some amount of relocation of people. However, any eviction must be carried out in line with Mongolia's obligations under international human rights law and standards. The possibility of removing people - landowners and possessors and non-landowners and possessors alike- from their land and housing for redevelopment without adequate protection from forced eviction does not meet international human rights standards. Protection includes the inclusion of all parties in genuine consultation and safeguards to ensure that there are no forced evictions and that nobody is left homeless as a result of evictions. Particularly worrying is the lack of clarity in current legislation and procedures about the process for project implementers to acquire the land if landowners and possessors refuse to sign a tripartite agreement.

GAIA officials informed Amnesty International that there have been no cases of evictions with reference to the redevelopment process. However, this was difficult to verify as the Court Decision Enforcement Agency (CDEA), which is responsible for implementing court decisions including carrying out evictions, told Amnesty International that they do not keep records of evictions they carry out.⁵¹

According to the Land Law, eviction from residential land may only take place between 15 May and 15 September.⁵² However, the limitation on when evictions can be carried out is undermined by a provision in the Law on Court Decision Enforcement Agency that states evictions can take place at any time of the year, with possible exceptions being granted during winter.⁵³ Despite the government's claim that no evictions have taken place, two Amnesty International staff members witnessed an eviction carried out in a redevelopment affected area in early March 2016 when temperatures in Ulaanbaatar are averaging below 0°C.

3.1 NO RIGHTS FOR NON-LAND OWNERS AND POSSESSORS

A key component to ensure that forced evictions do not take place is genuine consultation with all affected residents. However, under the existing Mongolian laws and policies only the landowner or possessor, specifically the person whose name is on the title deed, has any rights, including the right to be consulted and to receive compensation.⁵⁴

⁵¹ Amnesty International interview with Court Decision Enforcement Agency, 14 March 2016.

⁵² Land Law, article 42.4.

⁵³ Article 68.6 of the Law on Court Decision Enforcement Agency, passed by the Parliament on 10 January 2001 and amended on 12 April, 13 June and 4 July 2002; 2 January and 30 May 2003; 7 July 2005; 2 and 3 August 2007; 3 December 2009; 10 June and 2 December 2010; 17 August 2012; 5 July 2013; 16 January and 5 December 2014; 5 February 2015; 3 December 2015, and 4 February 2016.

⁵⁴ Articles 3.1.2, 3.1.3 and 3.1.4 of the Land Law provide definitions of land ownership, possession and use. Owning land means "to be in legitimate control of the land with the right to dispose of the land";

Landownership or possession of a *khashaa* can be in the name of more than one person but it is common that the title will be in the name of the head of the household, or the person who had time to get the paperwork done.⁵⁵

Residents who do not hold titles to the land or real estate they occupy, including family members and extended family households, are reliant on the landowner or possessor to protect their interests. If the landowner or possessor is unwilling or unable to negotiate a compensation package that provides for the extended family members then the family must make alternative arrangements. According to GAIA, in cases where there is an extended family living on a *khashaa* it is up to the landowner or possessor to negotiate compensation as best they can.⁵⁶ People who are renting also have no voice in the redevelopment process.

Currently there are no special measures to ensure equal participation of all and consultation with those affected by the redevelopment in specific and different ways including women, the elderly, youth and people with disabilities.⁵⁷ For example, while the Development Law includes a clause to ensure that new infrastructure must include conditions for easy access for people with disabilities, there is no provision requiring consultation on the planning and design of the new infrastructure with people with disabilities who may not be title holders but would nevertheless be affected by the redevelopment. If the landowner or possessor fails to raise issues or negotiate to obtain needed provisions for any disabled person living in their *khashaa* or home, then there is no other way for that disabled person to engage in the process.⁵⁸

The Redevelopment Law also does not explicitly recognize that different groups may be affected differently by redevelopment and make provisions to ensure that their rights are equally protected. This should cover the full spectrum of affected persons, including

possession is to “be in legitimate control of the land in accordance with the purpose of its use and terms and conditions specified in respective contracts”; and to use land is “to undertake a legitimate and concrete activity to make use of some of the land’s characteristics in accordance with contracts made with the owners or possessors of the land.

⁵⁵ Amnesty International interview with Steps Without Borders, 14 March 2016.

⁵⁶ Amnesty International interview with GAIA, 15 March 2016.

⁵⁷ The General Administrative Law was adopted by the Mongolian Parliament on 19 June 2015 and came into effect on 1 July 2016. Although this law has some provisions to ensure citizens’ involvement, including organizing hearings to inform and get citizens’ opinion in the administrative decision-making process and planning, but it has yet to be fully implemented.

⁵⁸ Amnesty International interview with Songino Independent Living Centre, 2 November 2015, and interview with the Business Incubation Centre for Persons with Disabilities, 4 November 2015. Although it is not fully explored in this paper, special measures might be required to ensure equal participation. For example, the World Bank has reported that households headed by women are significantly more likely to be in financial stress than households headed by men. World Bank, *Mongolia - Gender disparities in labor markets and policy suggestions*, 2013, available at: documents.worldbank.org/curated/en/2013/01/17694501/mongolia-gender-disparities-labor-markets-policy-suggestions

marginalized groups. When necessary this should be done through the adoption of special measures or procedures.

3.2 RISK OF HOMELESSNESS

Under the existing laws and procedures there are no processes to protect individuals, especially renters, and non-landowners and possessors, from forced eviction or safeguards to ensure that they are not left homeless as a result of redevelopment. This applies to both ger area redevelopment and redevelopment of inadequate public housing.

Landowners and possessors can also be at risk of homelessness if the project implementer fails to fulfil its obligations under the bilateral and tripartite agreements to provide temporary accommodation or new housing. This is particularly pertinent for cases where the landowner has handed over their land or apartment to the private developers and is receiving rent money to pay for temporary accommodation until the new building is ready. The economic downturn, among other reasons, has meant that some project implementers have not been able to proceed with construction. Several families told Amnesty International they feared that they would be made homeless because construction was delayed for financial reasons which could mean that companies would be unable to continue to pay rent money for temporary accommodation.

RESIDENTS MADE HOMELESS IN SUKHBAATAR DISTRICT

Redevelopment plans have gone badly wrong for residents of Building #3, an old, dilapidated building located in the 10th *khoro* of Sukhbaatar district. Their building became uninhabitable after heating pipes, windows and door were removed and rubbish dumped inside the building. Five households, including a man with disabilities and a family with young children spent the winter of 2015/16 in the building without central heating. Winter temperatures in Ulaanbaatar can reach -30°C.

In early 2015, residents of Building #3, a two-storey, 51-apartment building with no toilets or running water, were approached by a private developer who proposed tearing down the existing building and construction of a new apartment block. It was an attractive offer and between April and July 2015 at least 28 households from Building #3 negotiated a resettlement and compensation package with the private developer and moved out of the building. These residents were given a lump sum of money to cover rent costs for one year while the new apartment block was being constructed. Some households, however, were sceptical and did not negotiate for a new apartment with the company. This was not the first time a company had approached residents with promises to provide new accommodation that had not materialized.

To show their willingness to move and to encourage others to move, the company asked residents to remove the windows and front door of their apartments. After several households did this, the building was further vandalized for pipes and materials and rubbish was dumped in the building. Radiators and central heating pipes were removed even though a number of households who had not agreed to move were still living in the building, as well as some households who were renting. Some residents told Amnesty International that the heating pipes were removed by representatives from the company but Amnesty International has not been able to independently verify this.

The city government authorities did take steps to notify residents that the company seeking to negotiate with residents was not the same company which had been given authorization to carry out the construction, including in a letter to residents dated 22 April 2015. However, when Amnesty International interviewed

residents between March and May 2016, not all of them had been aware of the letter or that the company was not authorized to negotiate with them at the time of signing.

After a year had passed construction had stalled and the rent money ran out. Without rent money families had to choose between staying with relatives, paying rent for alternative accommodation at their own expense, or moving back into Building #3. For some households, moving back to Building #3 was not an option because, in addition to no heating, their apartment has no front door or windows and is therefore uninhabitable.

Among those who did not sign a deal with the private developer is a disabled man confined to a wheelchair. He spent the winter in building #3 and told Amnesty International he would rather stay in his own flat than be a burden to his relatives. Four other households were in the same situation, stuck in Building #3 during the winter of 2015/16 with nowhere else to go. At least nine households that did not sign with the private developer moved out during the winter at their own expense because the conditions in Building #3 were intolerable. But as the weather warmed beginning in April 2016, five households moved back because the cost of paying rent for alternative housing was too high.

Residents who stayed during the winter relied on stoves and electric heaters to keep warm. But they have since received electricity bills they cannot afford to pay, leaving the building residents at further risk of having their electricity cut.

Residents have made numerous and frequent appeals to different local government authorities calling for the central heating to be reconnected and repairs made to the building. Residents also submitted a claim to the Administrative Courts to have the private developer's authorization to carry out the construction revoked.⁵⁹ The private developer has appealed the case to the Supreme Court at the time of writing. The government initially refused to take any responsibility, claiming that they do not guarantee the process or mediate in disputes unless the residents have signed a tripartite agreement – a contract between the apartment owner, the private developer and the Capital City Governor outlining the terms of the resettlement and compensation agreed.

Amnesty International raised the issue via an urgent appeal (Urgent Action: 77/16 Index: ASA 30/3743/2016) in March 2016 and an update in September calling on the Capital City Governor to provide emergency, alternative and adequate accommodation to be provided for all households from Building #3 who need it and met with the Chair of the City Council on 13 June 2016 to reiterate these calls.⁶⁰

On 24 June the Capital City Governor signed Decree A532 which agrees to provide alternative accommodation

⁵⁹ This court case is against the private developer which was granted to carry out the redevelopment of inadequate buildings, including Building #3 in the 10th *khoroо* of Sukhbaatar district. The residents in this case claim that the private developer used fraudulent documents to obtain the authorization to carry out the redevelopment. This court case is not against the private developer which negotiated bilateral agreements with residents and which did not have authorization to carry out the redevelopment in that area.

⁶⁰ See further, Amnesty International, *Mongolia: 200 people face imminent risk of homelessness* (Index: ASA 30/3743/2016) on 31 March 2016 and further Information (Index: ASA 30/4793/2016) on 8 September 2016.

for 10 households - the number of households living in Building #3 at the time of writing, to resolve the matter of the project implementer and initiate the selection process for a new one, and to seal the building.⁶¹ However, on 29 June local elections were held in which the Governor and the ruling party were defeated, putting this process into question. As of writing, no households from Building #3 have been provided emergency, alternative and adequate accommodation.

While Amnesty International welcomes the commitment to provide temporary accommodation to 10 households, the remaining affected households who are either staying with relatives or having to pay rent for alternative accommodation at their own expense also require emergency, alternative and adequate housing.

The government must ensure that any violation of the right to adequate housing by “third parties” such as landlords or private developers are prevented. Where such infringements occur, the relevant authorities, in this case the Capital City Governor’s Office, should act to prevent any further deprivations and guarantee affected persons access to legal remedies or redress for any infringement of their rights. The authorities must provide emergency, alternative and adequate housing to all those who cannot provide for themselves and ensure that no one is left homeless or at risk of human rights violations as a result of an eviction.

3.3 VOLUNTARY OR INVOLUNTARY RESETTLEMENT

There is lack of clarity among some residents, NGOs and public officials alike as to whether landowners can refuse to sign an agreement with the project implementer and remain on their land even where the project has obtained support of 80% of other landowners in the area.

Both residents and NGOs told Amnesty International that any landowner or possessor who failed to sign a tripartite agreement after the 80% threshold was reached would face eviction with little compensation (previously the ger area guidelines put the threshold at 75%). Some residents thought there was a risk of receiving no compensation if they refused to sign an agreement with the project implementer. As evidence, residents and NGOs pointed out that although Article 4.17 of the Ger Area Operational Procedures state that signing a bilateral and tripartite agreement is voluntary, the Procedures also state that any landowner or possessor who refuses to sign a tripartite agreement shall be compensated the value of their land/real estate and evicted.⁶² (see appendix section 2 for more details)

The NGO Forum, which represents a number of NGOs in Mongolia, stated in their submission to the UN Committee on Economic, Social and Cultural Rights ahead of the Committee’s review of Mongolia in June 2015:

“According to the regulation, the [redevelopment] project is to start if an agreement is reached with 75% of land and immovable property owners or possessors who reside on the lands planned for redevelopment, thus making it unnecessary to strike a deal with the remaining 25% of the stakeholders. The latter may be forced to relinquish their lands in return for a compensation even [if] the owner does not

⁶¹ Decree A532 issued by the Capital City Governor and Ulaanbaatar City Mayor, 24 June 2016; unofficial English language translation on file with Amnesty International.

⁶² Ger Area Operational Procedures, Article 4.16.

accept [sic]".⁶³

In July 2015, Ts. Davaasuren MP spoke to the media about the 80% quota saying:

*"In recent years, people's lands have been intruded upon and taken away...If activities to attack citizen's property become widespread then we should amend the law immediately. People who invested all their money into building their own houses have to free their land because of the decision made by 80% of people".*⁶⁴

The understanding that refusal to sign an agreement may nonetheless result in eviction has been reinforced by comments made by public officials calling for more robust regulation to make it easier to evict people in redevelopment affected areas. Speaking to the media in 2013, the then-Capital City Governor (cited in the interview as Mayor) called for regulations to allow the capital city government to appropriate land for redevelopment noting that:

*"if a decision is not made at the policy level shortly, the city authorities, in accordance with Article 62.2 of the Constitution, would have to develop its own regulations for compulsorily acquiring land. It is to make landowners understand that freeing their land is the appropriate thing to do considering public and their own needs by introducing regulations to acquire land".*⁶⁵

In the same interview the Capital City Governor stated that:

"Looking at international experience, if 70% of residents are supporting the project and then for the remaining ones you provide the value of the land and acquire their land. In other words, it means to acquire the land with force after paying a fixed land price. ... In that case it's not a violation of human rights. The reason is that people who are resisting to free their land are violating other people's right to live in better conditions.

It's also happening in the case of inadequate buildings, where the rights of people who would like to exchange an old flat for a new flat and would like to live comfortably, are being violated. It says that one person's rights are restricted by other people's rights. ... Currently there are incidents where the work is stuck because some of the households

⁶³ NGO Forum, "Report submitted to the 55th session of the Committee on Economic, Social and Cultural Rights on Implementation of Economic, Social and Cultural Rights in Mongolia", page 8, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fCSS%2fMNG%2f20525&Lang=en

⁶⁴ Zuunymedee News, *There is almost a fight over land*, 9 July 2015, No. 140; on file with Amnesty International.

⁶⁵ T. Batsaikhan, *E. Bat-Uul: We have the authority to acquire land for development*, on file with Amnesty International. Article 62.2 of the Constitution states that: "The authority of higher instance shall not take decision on matters coming under the jurisdiction of local self-governing bodies. If law and decisions of respective superior State organs do not specifically deal with definite local matters, local self-governing bodies can decide upon them independently in conformity with the Constitution."

*are like this. The only thing for us to do is to wait until they negotiate”.*⁶⁶

Such statements by officials have caused confusion and anxiety among residents, NGOs and others as to whether people who don't sign a tripartite agreement will be evicted or not, and whether, in practice, resettlement is really voluntary or involuntary.

When it comes to the negotiations, the government prefers to take a hands-off approach emphasizing that resettlement is voluntary and that landowners and possessors and project implementers must agree a resettlement and compensation package bilaterally. However, this can leave landowners and possessors who lack information about the redevelopment project and their rights at risk of being exploited by the project implementer looking to profit as much as possible in the negotiations. GAIA officials told Amnesty International that it is common that some people may get more compensation than others and that it depends on how good a negotiator you are.⁶⁷ The view that residents who 'lose out' only have themselves to blame distorts the reality of the information, resource and knowledge imbalance that exists between the landowners and possessors and the private developer with whom they are negotiating.

As the then-Chair of the Ulaanbaatar City Council, D. Battulga, stated when he spoke to the media about the ger area redevelopment in March 2016:

*“One principle in the redevelopment planning is that the city isn't involved in this work. In other words, the landowner and project implementer are the two parties involved. They should negotiate themselves. To talk about exchanging their land for flats or for cash is the principle of the market economy. Before 2012 we breached the rights of people that were protected under the Constitution. At that time we said that...acquiring the land is compulsory. Now we say that a family should know how to evaluate their land and property. ...We did not do anything to attack people's property”.*⁶⁸

One resident told Amnesty International that her family saw no choice but to sign a bilateral agreement and that they were told by the project implementer that if they did not negotiate and sign an agreement, the company would utilize the provisions in the law to have them evicted. The project implementer also told them that they may receive no compensation if they continued to resist.⁶⁹ From conversations with other residents and NGOs, Amnesty International found that the perception that residents have no option but to negotiate and sign a bilateral and tripartite agreement with the project implementer is not uncommon.

⁶⁶ Daily News, *Bat-Uul: Mayor introduced ger re-planning project*, 24 March 2016, print edition, p1&5, on file with Amnesty International.

⁶⁷ Amnesty International interview with GAIA, 15 March 2016.

⁶⁸ E. Enkhbold, *D. Battulga: if anyone is against the public needs there is a question of going to hold the party accountable*, Daily News, 28 March 2016, pp2&11, on file with Amnesty International.

⁶⁹ Amnesty International interview with affected resident, 20 March 2015.

3.4 LACK OF CLARITY ON REDEVELOPMENT PROCEDURES AND RIGHTS OF RESIDENTS

With a number of laws and policies on redevelopment being recently written and amended, residents are confused about their rights and how the redevelopment process should work in practice. After receiving complaints on redevelopment from affected residents, the Parliamentary Standing Committee on Complaints - a parliamentary body made up of MPs to receive and respond to complaints received from the public - set up a working group to look into the nature of the complaints being made about the redevelopment process.

The working group found that:

“...most of the complaints from citizens are connected with a lack and insufficiency of information on ger area redevelopment, relevant laws and knowledge of their own rights and ways to protect these rights. It is necessary for the city authorities responsible for implementation of ger area redevelopment to organize more effective work on providing information and knowledge to citizens, conduct regular advertisement and correct information to the public and provide more active participation for them”.⁷⁰

Based on the findings of the working group, the Standing Committee issued Resolution No.12 on 17 June 2015. The resolution outlined seven steps which the Mongolian government should take including improving the legal framework for the ger area redevelopment project, paying particular attention to evaluation of land and immovable property, and informing residents of their rights and responsibilities under the redevelopment projects.⁷¹

The 2014 GAIA operational report, a biannual report on the implementation of ger area redevelopment, cites that they received a total of 204 communications in the form of comments, complaints and requests about redevelopment.⁷² Of the 204 communications 75 were complaints and were mostly in relation to the activities of the project implementer including complaints that the project implementer was only valuing land and not other real estate on the property; that the valuations of the project implementer were too low; that the size or number of apartments being offered as compensation was insufficient; and that the project implementer was engaging in bullying tactics and fraudulent claims to trick landowners and possessors.⁷³ For the year 2016, as of March, GAIA had received 47

⁷⁰ Parliamentary Standing Committee on Complaints, *Report of the Working Group on Improvement of Ger Area Conditions and Progress of Redevelopment Planning Projects in Accordance with Complaints Received by Residents to the Parliamentary Standing Committee on Complaints*, 2015, unofficial English language translation on file with Amnesty International.

⁷¹ Resolution of the Parliamentary Standing Committee on Complaints, No. 12, 17 June 2015; unofficial English language translation on file with Amnesty International.

⁷² GAIA, *Operational report of the Capital City Ger Area Development Agency*, 2014, p75; unofficial English language translation on file at Amnesty International.

⁷³ GAIA, *Operational Report of the Capital City Ger Area Development Agency*, 2014, p75; unofficial English language translation on file at Amnesty International.

comments, complaints and requests.⁷⁴

Amnesty International also found through interviews with affected residents that there was sometimes a lack of information about and/or understanding of the process and people's rights. Despite the list of rights provided in the legal and policy framework, including the right to demand and see relevant information and to submit proposals, comments and complaints, not all residents who spoke to Amnesty International were well informed. Two companies told Amnesty International that information they provide to GAIA including their resettlement plans and monthly activity reports are not made public. They also said that when seeking selection as project implementer they generally only share with residents some drawings of what they propose to build for comment. One company told Amnesty International that after the company has been selected and started construction the company will hold public meetings if it is demanded by residents but otherwise do not have any systems in place for providing or sharing information with affected residents.⁷⁵

Even where there are procedures in place, they are not always followed in practice. Although landowners and possessors have the right to see plans and other relevant documentation, the representative from the 9th and 10th *khoroos* of Chingeltei told Amnesty International that the citizens' representative body had not received the plans and were told that they would only get to see them once they were finalized.⁷⁶ Two project implementers operating in the 9th and 10th *khoroos* of Chingeltei district had their authorization to carry out the project cancelled by the outgoing Capital City Governor on 30 June 2016 for not carrying out the work within six months and for "repeated serious operational violations".⁷⁷

3.5 RIGHT TO REMEDY

Residents who are dissatisfied with either the ger area redevelopment or redevelopment of inadequate public housing can complain to the authorities, to the Parliamentary Standing Committee on Complaints, or seek redress via the Administrative or Civil Courts.

Under the terms of the model formats for tripartite agreements for ger area redevelopment and inadequate public housing, disputes should be resolved through mutual agreement.⁷⁸ The model format for inadequate housing further adds that if a dispute cannot be resolved

⁷⁴ Amnesty International interview with GAIA, 15 May 2016.

⁷⁵ Amnesty International interview with construction companies on 4 and 10 August 2016.

⁷⁶ Amnesty International interview with Chingeltei Sarwol Resident's Committee to Support the Ger Area House Project, which represent residents in the 9th and 10th *khoroos* of Chingeltei, 7 December 2015.

⁷⁷ Decrees A/568 and A/572 issued by the Capital City Governor and Ulaanbaatar City Mayor, 30 June 2016; unofficial English language translation on file at Amnesty International.

⁷⁸ A Model Format of a Tripartite Agreement to be Concluded Among Parties Involved in the Projects for Re-Planning and Constructing of Inadequate Public Housing not Complying with the Operational Requirements, Article 8.5 and a Model Format of a Tripartite Agreement to be Concluded among Parties Involved in the Projects for Re-Planning and Constructing of Ger Area Land, Article 7.1; unofficial English language translation extract on file with Amnesty International.

through negotiation then it should be decided by the courts.⁷⁹ As a signatory to the tripartite agreements, GAIA or the GPA (which sign the tripartite agreements on behalf of the Capital City Governor) can play a mediating role to help resolve any disputes between the landowner or possessor and the project implementer. However, residents of the 14th *khoroо* of Bayanzurkh told Amnesty International that GAIA did not play any helpful role in trying to resolve disputes and that its typical response to any disputes is to tell both parties to continue negotiating to sort out their differences.⁸⁰

Complaints made to the authorities are not always properly addressed. When the heating was removed from Building #3 in the 10th *khoroо* of Sukhbaatar and living conditions became unbearable, several residents made numerous and frequent complaints to city government officials, but the authorities took no action. In October 2015, residents received a response from the Centre for Receiving Complaints about the living conditions in Building #3. The response concluded that it was impossible to reconnect the heating and advised the residents to take steps to hold the company to account and claim compensation.⁸¹ When Amnesty International met with the GPA in March 2016, they claimed that the government was under no obligation to provide alternative housing to the residents of Building #3 even though the building had become uninhabitable.⁸²

To seek redress through the courts, residents, individually or collectively can apply to the Administrative or Civil courts.⁸³ In administrative cases, the court is obliged to conduct its own investigation of the allegations. Individuals or groups can also take a company to civil court for disputes related to their agreement with the project implementer. Civil court is different to administrative courts in that each party must provide evidence to the court to support their claims. Both civil and administrative courts can be pursued to the Supreme Court level.

⁷⁹ A Model Format of a Tripartite Agreement to be Concluded Among Parties Involved in the Projects for Re-Planning and Constructing of Inadequate Public Housing not Complying with the Operational Requirements, Articles 8.6; unofficial English language translation extract on file with Amnesty International.

⁸⁰ Amnesty International phone conversation with 14th *khoroо* of Bayanzurkh resident's committee member on 25 May 2016. In their 2014 Operational Report, GAIA acknowledged that progress in concluding tripartite agreements was slow due to a lack of knowledge and information among landowners and possessors about the need to conclude a tripartite agreement, a lack of interest from project implementers to conclude the agreements, and GAIA's own limited authority to enforce signing of the tripartite agreement. *GADA (current GAIA) Operational Report, 2014*, p63; unofficial English language translation on file with Amnesty International.

⁸¹ Response to Building #3 residents from the Centre for Receiving Complaints, complaint received 16 September and closed on 2 October 2015. Copy provided by residents of Building #3. Unofficial English language translation extract on file with Amnesty International.

⁸² Amnesty International interview with GPA, 21 March 2016.

⁸³ Administrative cases are between an individual or a group and a state authority or public servant and can be used to challenge a resolution, act, decree or policy of the government.

Residents from one affected area told Amnesty International that they were reluctant to pursue legal remedies for breaches to their bilateral and tripartite agreements.⁸⁴ They told Amnesty International that the company in question was already facing financial difficulties and the residents were concerned that a legal challenge could result in them not receiving anything at all and could jeopardize the progress of the sub-project. Residents of Building #3 and neighbouring buildings submitted a case to the Administrative Court in April 2013 to have the project implementing company's authorization to carry out the redevelopment work revoked. After more than three years that case has been appealed by the company to the Supreme Court. Using the courts has not proved to be either a timely or effective means for remedying the very urgent situation facing the residents of Building #3. On the contrary, the GPA has told Amnesty International that the government is waiting for the outcome of the court case before taking any steps for the residents of Building #3, which has prolonged their suffering and left them in indefinite limbo.

⁸⁴ Amnesty International interviews with members of a temporary resident's council, Ulaanbaatar, between November 2015 and June 2016; unnamed at request of residents who wanted to avoid further trouble with the company.

4. CONCLUSION AND KEY RECOMMENDATIONS

4.1 KEY FINDINGS

Despite the advanced stage of the redevelopment agenda in Ulaanbaatar, Mongolia's capital, the laws and regulations are lagging behind actual practice. The implementation of the redevelopment agenda is marred by a lack of information on eviction, compensation and resettlement and does not meet international standards on genuine consultation. Local authorities leave affected residents to engage directly with private developers to negotiate compensation. This has led to confusion and uncertainty about the process and about the rights of those affected.

The current arrangement does not provide for sufficient regulation and monitoring of these processes nor effective protection of people's right to adequate housing. At the time of writing new operational procedures for ger area redevelopment had been drafted and were waiting for approval. While the new procedures are better aligned to the existing laws, they continue to contain ambiguities about how the process should work in practice and replicate shortcomings that currently exist in the laws. For the new procedures to be effective, they would need to include strong and clear safeguards to protect against forced eviction and homelessness, strong and clear information on the rights of all affected residents, including right to genuine consultation, access to information and rights to remedy.

In the absence of clear, cohesive and adequate government laws and regulations, enforcement, and monitoring, Amnesty International is concerned that residents in areas affected by redevelopment face risks to their right to adequate housing, and 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.

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 following recommendations.

4.2 RECOMMENDATIONS

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.

To the Ministry of Urban Construction and Development:

- Legislate and enforce a clear prohibition on forced evictions and strengthen safeguards to protect against the risk of homelessness including by requiring adequate notification of eviction for all tenants, regardless of a tenancy agreement;

- Ensure that all policies and procedures being amended or drafted by the working group are in line with international human rights law and standards as well as the other domestic legislation on redevelopment and that all discrepancies are addressed in a manner that provides the greatest protection to residents affected by redevelopment and so that there is no ambiguity concerning the process or the rights of individuals and communities affected by redevelopment;
- Establish monitoring by an independent body. The independent body must have the full authority to initiate assessments into whether human rights are being violated and to receive complaints on such violations from the public. The independent body should be given the authority to hold project implementers and the government accountable for any human rights violations in relation to the redevelopment process.

To the Parliament:

- Amend the Urban Redevelopment Law and any other relevant legislation and procedures to guarantee the rights of everyone affected by redevelopment including the right to genuine consultation;
- Amend Article 22 of the Redevelopment Law to include the rights of non-landowners and possessors so that all members of the community and others are able to receive information and be consulted;
- Amend Article 68.6 of the Law on Court Decision Enforcement Agency to bring it in line with Article 42.4 of the Land Law so that evictions can only take place between 15 May and 15 September;

To the Court Decision Enforcement Agency:

- Develop and adopt guidelines for evictions based on the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, and in compliance with international human rights law and standards, including providing adequate notification of any eviction and obliging attending officials to wear identification. Cease carrying out evictions during winter;
- Develop and maintain accurate data on the number of evictions carried out and how many of those are connected to the redevelopment agenda.

APPENDIX: MONGOLIA'S LEGAL AND POLICY FRAMEWORK FOR REDEVELOPMENT

Mongolia's redevelopment process is governed by a thicket of national laws, as well as policies and procedures developed at the city level that often overlap and sometimes contradict each other.

1. NATIONAL LAWS

The main national laws related to urban redevelopment are the Urban Development Law (2008), and the Urban Redevelopment Law (2015).⁸⁵

URBAN DEVELOPMENT LAW AND URBAN REDEVELOPMENT LAW

The Urban Development Law (Development Law) was first passed in May 2008 and was successively amended in February, June and November 2015. The purpose of the Development Law is to coordinate relations between the "state, entities, and citizens" with relation to urban development projects and plans, and to ensure that development is financially sustainable and appropriate for the area and implemented in accordance with relevant policies and plans (Article 1.1).

The Urban Redevelopment Law (Redevelopment Law) passed in June 2015 deals with redeveloping built-up areas, inadequate public housing and ger areas, and re-planning of public land in order to "ensure a healthy, safe and comfortable living environment" (Article 1). This new law has required changes to other laws and policies to ensure coherence. The Land Law, for instance, which has already been amended 15 times since it came into effect in 2003, was amended four times in 2015. The Development Law, which passed in 2008, was amended three times in 2015. Similarly, city-level procedures passed in 2013 prior to the Redevelopment Law are being updated by the Ministry of Construction and Urban Development (MCUD) at the time of writing.

MCUD has also been updating various policies to bring them into line with the Redevelopment Law. The MCUD approved the Operational Procedures for Demolishing and Rebuilding Inadequate Public Housing Not Complying with Operational Requirements (Inadequate Housing Operational Procedures) on 5 July 2016. These procedures outline the steps to develop and implement redevelopment of public housing buildings which are assessed to be unsafe and/or structurally unsound, in accordance with the Redevelopment

⁸⁵ Other laws including the Land Law, the Housing Law, Civil Code, Civil Procedure Code, Law on Legal Status of Cities and Towns, Law on Allocation of Land to Mongolian Citizens, the Construction Law, and the General Law on Administration are also indirectly relevant to urban development but are beyond the scope of this report.

Law. These procedures replace the Operational Procedures for Inadequate Public Housing which were developed at the city-level and approved by the Ulaanbaatar City Council Presidium in June 2014. The MCUD has also developed new procedures for ger area redevelopment which, when approved, will replace the city-level developed Operational Procedures for Ger Area Redevelopment.

Both the Development and Redevelopment Laws identify key principles which should underscore their implementation. The Development Law's principles include ensuring balance between human safety, ecology, economic and social development, and ensuring equal rights of each party participating in the development process.⁸⁶ The Redevelopment Law's principles are community participation and commitment to public interest.⁸⁷ However both laws typically use the word "citizen" rather than "individual" thus excluding non-Mongolian residents from the protections they provide.

The Development Law outlines a wide range of documentation required at both the national and local level for implementing development projects, including regional development plans, general development plans of towns and villages, a baseline assessment of urban planning, redevelopment project plans of towns and villages, and sub-project general plans (Articles 11.1 and 12.5). The Redevelopment Law, states that redevelopment projects must comply with development documentation required under the Development Law (Articles 3.2 and 14.2).

For urban redevelopment activities, the Redevelopment Law divides the process into four phases with enumerated steps in each phase - the preparation phase, the planning and development phase, the implementation phase and the completion phase. Chapter three on activities and implementation also includes requirements for selecting a project implementer (Article 19) and for selecting a redevelopment site (Article 20).

Both laws outline rights and responsibilities of parties involved in development and redevelopment. The Development Law includes a broad list of rights and responsibilities that applies to all "entities, organizations and citizens" in implementing urban development activities, including the responsibility to follow all laws, norms and regulations and to prevent environmental pollution and meet hygiene and safety requirements (Article 22).

The Redevelopment Law lists separate rights and responsibilities for landowners and possessors and for the project implementer. The rights of non-landowners and possessors are not specified in the Development Law and non-landowners and possessors have no rights or responsibilities under the Redevelopment Law. In both laws it is not always clear what is a right and what is a responsibility.

REDEVELOPMENT LAW: ARTICLE 22

The rights and responsibilities of citizens participating in the project:

⁸⁶ Urban Development Law, Article 4.1.

⁸⁷ Urban Redevelopment Law, Article 5.

- To submit a project proposal;
- To have their land and real estate appraised;
- To see and demand to see the project implementation plans and other relevant documentation;
- To conclude agreements and conduct negotiations with respect to project implementation;
- To initiate and request involvement from the land and real estate owners and possessors who are not in support of the project;
- To get acquainted with and receive information about the process of the project and demand compliance with their contractual obligations;
- To be provided with temporary land, accommodation and settlement during the project implementation period;
- Not to have any errors in the land and real estate ownership documents;
- To provide complete, true and accurate information and documents required for project implementation;
- To participate in project implementation through a citizens' representative organization;
- To send feedback and complaints to the Monitoring Committee in relation to the project implementation activities.

REDEVELOPMENT LAW: ARTICLE 23

The rights and responsibilities of the project implementer:

- To have the land and real estate appraised by an authorized third party in cooperation with the land and real estate owners and possessors;
- To inform the owners and possessors about the sale and purchase price of the land and real estate on the selected development site;
- To be responsible for finding the sources of financing of the project and expenditure in respect of the project implementation;
- To submit a proposal to make changes in the planning based on the request received from land and real estate owners and possessors of the selected development site;
- To develop and organize the approval and implementation of the projects and plans, to negotiate and conclude agreements with the Governor of the *aimag*, capital city, *soum* or district and the land and real estate owners and possessors, and to evaluate the project performance together with the parties;

- To report to the parties about the project implementation and have the report reviewed by the Monitoring Committee;
- To provide the parties with true and accurate information and surveys in relation to the projects and plans as well as the required information;
- To comply with the environmental, health, safety and other relevant legislation, norms and rules, procedures and standard requirements in their project implementation;
- To comply with the requirements of Article 15 of the Law on Construction⁸⁸ and Article 24 of the Urban Development Law⁸⁹ during project implementation.

Importantly, the Development Law includes no information about the possibility of evictions in the process of implementing development plans, however the Redevelopment Law, notes that if a project implementer cannot agree a deal with a landowner or possessor then they can submit a claim to the courts “to free up the land in exchange for compensation” in accordance with the law (Article 14.7.3c).

MONITORING DEVELOPMENT

Both the Development and the Redevelopment Laws provide for some degree of monitoring of development and redevelopment projects.⁹⁰ However, under the laws, different government bodies have multiple and overlapping mandates which makes it confusing to understand how the process should work. There are also gaps in the implementation of the monitoring process which puts residents’ rights at risk. For example, the Redevelopment Law calls on the project implementer to appraise the value of land and real estate of a resident’s property, and to have this done by a third party and in cooperation with the landowner or possessor. However, the three companies which spoke to Amnesty International said that they do not get third parties to value land and real estate except in rare circumstances where the company and landowner or possessor cannot reach an agreement on a value.

Under Article 26.4.2 of the same law, a body called the “Monitoring Committee” also has the authority to organize appraisals in order to establish the amount of compensation. However, it is unclear how this would work in practice because the Monitoring Committee for a project is not set up in the phase where compensation amounts are agreed. According to the law, the Monitoring Committee is only set up in the third phase, the project implementation phase, which is well past the point when the project implementer and landowner or possessor have negotiated the compensation package.

The Monitoring Committee also has other responsibilities to monitor projects. However, the

⁸⁸ Article 15 of the Construction Law lists the rights and responsibilities of investors and clients in construction.

⁸⁹ Article 24 of the Urban Development Law lists activities prohibited under urban construction.

⁹⁰ See Articles 7.1.1 and 7.1.9, Article 8.1.3 and 8.1.4 and Article 9.1.5 of The Urban Development Law and Articles 8.14., 10.1.3, 14.7.4.c, 23.1.5 and 23.1.6 of the Urban Redevelopment Law.

MCUD told Amnesty International that no such body as a Monitoring Committee has been set up yet but they will be in the future when the new procedures for ger area redevelopment and other relevant procedures are approved and that the Land Relations Department and Urban Construction Department within the Ministry ensured compliance with the law.⁹¹ Under the Inadequate Housing Operational Procedures, which were passed in July 2016, a Monitoring Committee must be established in accordance with the Redevelopment Law.⁹² The Redevelopment Law also says that a special inspection body will conduct independent monitoring of project implementation. According to the MCUD, for redevelopment projects in Ulaanbaatar, this function should be carried out by the City Professional Inspection Agency.⁹³

The Redevelopment Law allows for the establishment of a citizens' representative organization as one way to encourage community participation. Its establishment is one of the steps in the project preparation phase (Article 14.7.1.e) and according to Article 22, it "shall be established on a voluntary basis". The law defines such an organization as a non-profit organization represented by members of landowners and possessors in the affected area (Article 4.1.3).

Under the Redevelopment Law, the city council monitors implementation of projects, programs and plans and reviews the activity report prepared by the Capital City Governor (Article 10.1.3). Project implementers are also obliged to evaluate the project performance together with the Capital City Governor and the land and real estate owners and possessors, and to report to those parties about the project implementation and have the report reviewed by the Monitoring Committee (Articles 23.1.5 and 23.1.6). Article 14.7.4.c calls for the preparation of a project implementation report including financial accounts and an evaluation of the implementation of the agreement, which must be reviewed by the Monitoring Committee. However, two companies told Amnesty International that the reports they prepare on project implementation go to GAIA, and are not publicly available.⁹⁴

2. THE REDEVELOPMENT PROCESS

In addition to the laws, there are also procedures, which outline the steps to be taken to develop and implement redevelopment plans. The procedures should give further details to complement and align with the Redevelopment Law. To implement ger area redevelopment GAIA follows operational procedures that were adopted at the city level before the Redevelopment Law was passed in June 2015. The GPA was using city-level operational procedures for implementing redevelopment of inadequate public housing. However new procedures for redevelopment of inadequate public housing drafted by an MCUD working group was approved by the Minister of Construction and Development in July 2016.⁹⁵ These

⁹¹ Amnesty International interview with MCUD, 14 March 2016; MCUD letter to Amnesty International dated 7 September 2016, Ref 01/2343.

⁹² Inadequate Housing Procedures, Article 5.7.

⁹³ MCUD letter to Amnesty International dated 7 September 2016, Ref 01/2343

⁹⁴ Amnesty International interviews with construction companies on 4 and 10 August, 2016.

⁹⁵ Amnesty International telephone conversation with MCUD, 24 June 2016. Under Article 8.1.5 and Article 8.1.6 of the Urban Redevelopment Law the MCUD has the authority to organise the approval of

new procedures replace the city-level operational procedures for inadequate public housing.

OPERATIONAL PROCEDURES FOR GER AREA REDEVELOPMENT

The Operational Procedures for Ger Area Redevelopment (Ger Area Operational Procedures) outline the steps to develop and implement redevelopment of residential housing in ger areas (Article 1.3.1). The procedures currently in use were approved by the Ulaanbaatar City Council Presidium in 2013. The MCUD working group has developed new procedures for ger area redevelopment to bring the procedures in line with the Redevelopment Law. These new procedures are waiting approval at the time of writing. Once approved by the Minister of Construction and Urban Development and registered, the new procedures on ger area redevelopment will replace the existing operational procedures.

Under the Redevelopment Law, the first phase of the redevelopment process for a project is site selection. Although Article 4 of the Ger Area Operational Procedures lists requirements for site selection, the site selection process has been replaced by “Model Format for Selecting a Site for Implementing Urban Redevelopment Projects” which were approved by the Minister of Construction and Development on 11 May 2016.⁹⁶ This is one example of the changing legal and policy environment for redevelopment which is contributing to the sense of confusion among affected residents.

There is a two stage process to select a private developer, referred to as the project implementer. The first step is to hold a vote among landowners and possessors to choose which company they prefer as the project implementer. Under Article 3.14 of the Ger Area Operational Procedures, the Ger Area Housing Project (GAHP) is responsible for presenting the proposals put forward by prospective companies, collecting the votes, and reporting the results to the Project Steering Committee.⁹⁷ However, the Procedures do not specify any quorum of voters or minimum number of votes required for a company to be considered the winner of the vote. Nor do the Procedures specify any minimum or maximum number of shortlisted companies that can participate in the presentation and voting.

The second step, according to the Ger Area Operational Procedures, is for the company which received the highest support in the vote to negotiate and sign bilateral agreements with the landowners and possessors. The company has 30-60 days, depending on the size of the affected area, to get this done.⁹⁸ GAIA can decide one time to extend the period for signing bilateral agreements by 30 days (Article 5.6). Bilateral agreements must be signed between each landowner or possessor in an affected area and the project implementer. Once these are signed, the landowner or possessor and the project implementer sign a tripartite agreement

and compliance with the rules, procedures, guidance, norms, and normative and implement standards in relation to urban redevelopment matters and to approve a model procedure for selecting the area for urban redevelopment projects.

⁹⁶ Amnesty International telephone conversation with MCUD, 24 June 2016.

⁹⁷ The GAHP has tasks related to ensuring community participation in ger area redevelopment areas in addition to its role of implementing resident-initiated redevelopment projects.

⁹⁸ Ger Area Operational Procedures, Article 3.16.

with the Capital City Governor.⁹⁹

A company vying for the redevelopment contract must get no less than 80% of landowners and possessors to sign a bilateral agreement with them outlining the terms of a resettlement and compensation package, according to Article 14.7.1.d of the Redevelopment Law. However, Article 4.5.3 of the Ger Area Operational Procedures requires no less than 75% support to be obtained. Despite this contradiction, officials at GAIA told Amnesty International that, since the Redevelopment Law was passed, the level of support required – in the form of signed bilateral agreements – is 80%.¹⁰⁰ GAIA officials also told Amnesty International that the 30-60 day period is to get the initial 80% support but there is no time limit for getting the final 20% of residents to sign bilateral agreements.¹⁰¹ This is in line with Article 3.15 of the Ger Area Operational Procedures which states that the project implementer “shall sign a bilateral agreement with each land and real estate owner and possessor”.

BILATERAL AGREEMENTS

Based on the Ger Area Operational Procedures and the model agreement template, the bilateral agreement should include the following:

- General information about both parties – this includes full name and registration number;
- General information about the land and real estate – this includes size of the property, address, any immovable property, landownership/possession certificate number, real estate ownership certificate number;
- Compensation package – for example, if exchanging land for a new apartment: the location of the new apartment, which floor, the size and number of bedrooms, the value of the apartment, and when the apartment will be available, or payment terms in case of a sale and purchase transaction;
- Arrangement for any temporary accommodation while waiting for the new apartment to be constructed;
- Ways of resolving the temporary accommodation in case of exchange for an apartment;

⁹⁹ The tripartite agreement outlines the terms of the agreement negotiated between the landowner or possessors and the private developer. On 5 July 2016 the Minister of Construction and Development approved the following model tripartite agreement procedures via Decree 125 – A Model Format of a Tripartite Agreement to be Concluded among Parties Involved in the Projects for Re-Organizing the Ger Area Land; A Model Format of a Tripartite Agreement to be Concluded among Parties Involved in the Projects for Re-Planning and Constructing of Ger Area Land; A Model Format of a Tripartite Agreement to be Concluded Among Parties Involved in the Projects for Re-Planning and Constructing of Inadequate Public Housing not Complying with the Operational Requirements. This means that, depending of the redevelopment project, the tripartite agreement will be different.

¹⁰⁰ Amnesty International interview with GAIA, 15 March 2016.

¹⁰¹ Amnesty International interview with GAIA, 15 March 2016.

- Ways to address risks that may arise in the course of project implementation;
- Ways of resolving disputes;
- Any other conditions agreed by both parties;
- Signature and seal of both parties.¹⁰²

After the bilateral agreements are signed, the Capital City Governor will review the project plan and approve it. According to Redevelopment Law Article 14.7.2.d, at this stage, the three parties - the project implementer, the Capital City Governor and the landowners and possessors – can sign a tripartite agreement.

Article 4.17 of the Ger Area Operational Procedures states that signing bilateral and tripartite agreements is voluntary. However, Article 4.16 states that any landowner or possessor who refuses to sign a tripartite contract shall be compensated the appraised value of the land/real estate and be required to vacate the land. So the choice is either to sign a tripartite agreement or to be evicted. This clause in the Ger Area Operational Procedures contradicts the Redevelopment Law Article 14.7.3.c which states that a project implementer seeking to acquire land from real estate owner or possessor who has refused to sign a tripartite agreement needs to submit a claim to the courts to seek an eviction.

GAIA officials told Amnesty International that if the remaining 20% of landowners or possessors cannot arrive at an agreement with the project implementer then the government would have to establish the amount of compensation to be provided. GAIA officials also told Amnesty International that there has been no case so far under the current redevelopment agenda in which the government has intervened to acquire land under the provisions in the Ger Area Operational Procedures.¹⁰³

Under the Ger Area Operational Procedures Article 3.19, before signing the tripartite agreements, the project implementer needs to produce a comprehensive resettlement plan and submit it to the Project Steering Committee. Two companies told Amnesty International that these resettlement plans are not made publicly available.¹⁰⁴

Upon signing the tripartite agreements, the project implementation phase can begin. This is the point where landowners and possessors vacate their land and when evictions would take place against those who refused to sign a tripartite agreement (Redevelopment Law Article 14.7.3.b and 14.7.3.c and Ger Area Operational Procedures Article 4.16). According to the Redevelopment Law, a project implementer must submit a claim to the courts for an eviction. Evictions are carried out by the Court Decision Enforcement Agency. However, GAIA and the three private developers who spoke to Amnesty International said that in practice the project

¹⁰² Ger Area Operational Procedures, Article 3.17 and additional details included in a model bilateral agreement provided by GAIA; unofficial English language translation on file with Amnesty International.

¹⁰³ Amnesty International interview with GAIA, 15 March 2016.

¹⁰⁴ Amnesty International interviews with construction companies on 4 and 10 August, 2016.

implementer continues to negotiate until an agreement is reached.

Under the Ger Area Operational Procedures, if a project implementer fails to commence construction work within six months, or repeatedly breaches rules and standards or breaches its obligations under the tripartite agreement, the Project Steering Committee can recommend that the project implementer's right to develop the area be terminated (Article 4.25). The outgoing Capital City Governor and Ulaanbaatar City Mayor issued six Decrees on 30 June 2016 cancelling authorization for six project implementers in redevelopment areas in Songinokhairkhan, Chingeltei, and Sukhbaatar districts.¹⁰⁵

The Ger Area Operational Procedures do not give any information on the project completion phase. However, under the Redevelopment Law, a report must be prepared to show the accounts, financial calculations and an evaluation of the project, which is then reviewed by the Monitoring Committee (Redevelopment Law Article 14.7.4.c). According to the Ger Area Operational Procedures Article 5.5, GAIA also assesses project implementation and is required to produce a biannual report on the findings.

OPERATIONAL PROCEDURES FOR DEMOLISHING AND REBUILDING INADEQUATE PUBLIC HOUSING NOT COMPLYING WITH OPERATIONAL REQUIREMENTS

Another part of the redevelopment agenda involves the demolition of inadequate public housing not complying with operational requirements, which are public housing buildings, typically apartment blocks, which have been assessed to be unsafe and/or structurally unsound. Privatization of apartments began in 1997 and allowed many Ulaanbaatar residents living in apartment buildings/condominiums to obtain ownership of their apartment.¹⁰⁶ However, many of these buildings are poorly built, dilapidated and in urgent need of repair. Some buildings lack basic infrastructure including toilets and running water.

The Operational Procedures for Demolishing and Rebuilding Inadequate Public Housing not Complying with Operational Requirements (Inadequate Housing Operational Procedures) outline the steps for developing and implementing redevelopment of inadequate public housing. They were approved on 5 July 2016 by the Minister of Construction and Urban Development. These procedures replace the Operational Procedures for Inadequate Public Housing not Complying with Operational Requirements which were passed on 9 June 2014 by the Ulaanbaatar City Council Presidium and regulate the redevelopment of inadequate public housing. Under these procedures any redevelopment sub-project proposal to construct a new public housing building must provide apartment owners with apartments of equal or larger size. This process is overseen by the City General Planning Agency (GPA). This section looks at the new procedures but, at the time of writing, it is too early to assess their

¹⁰⁵ Decrees A/566, A/568, A/569, A/570, A/571, and A/572 passed by the Capital City Governor and Ulaanbaatar City Mayor, 30 June 2016; unofficial English language translations on file with Amnesty International.

¹⁰⁶ Chinzorig Batbileg, Advisor to the Director General, *Land privatisation in Mongolia: international seminar on land administration trends and issues in Asia and Pacific Region*, Administration of Land Affairs, Geodesy and Cartography, 19-20 August 2008.

implementation in practice.

According to the GPA, before a public housing building is eligible for redevelopment it must be assessed and found to be unsafe and/or structurally unsound. The inspection authority will inform the apartment owners and the Capital City Governor of their decision on whether the building has been found to be unsafe and/or structurally unsound. Based on assessments and reports of several government entities, the Capital City Governor makes the decision on the redevelopment of the building.¹⁰⁷

The Redevelopment Law Article 16.2 states that the Capital City Governor (or *soum* or *aimag* governor) shall make a decision for prohibition on the use of a building based on the report prepared by the competent inspection organization on construction and urban development. Article 3.2 of the Inadequate Housing Procedures also states that the Governor shall make a decision to “suspend special licenses for running businesses or services from inadequate housing until the new building is built.”

Apartment owners should then submit a request to the Capital City Governor within 14 days for their building to be covered in the re-planning (Redevelopment Law 16.3, Inadequate Housing Procedures Article 3.4). Article 3.5 of the Inadequate Housing Procedures states that the request must be supported by no less than 80% of apartment owners.

The project implementation activities, including selection of a project implementer are conducted in line with the Redevelopment Law (Articles 1.4 and 4.2). For the selection of a project implementer Article 19.6 of the Redevelopment calls for the establishment of an Evaluation Committee to organize and conduct the selection process. The Inadequate Housing Operational Procedures expand on this and call for a representative of the apartment owners to be a member of the Evaluation Committee and specifies that the Committee must make a decision within 30 days (Articles 4.4 and 4.5).

After the Evaluation Committee has made its decision, the company will be granted the right to negotiate and sign bilateral agreements with the apartment owners (Article 4.8). Unlike the Ger Area Operational Procedures, the signing of bilateral agreements for inadequate housing comes after the company has been authorized as the project implementer.

BILATERAL AGREEMENTS

According to the Inadequate Housing Operational Procedures, the bilateral agreement should include the following:

- General information about the real estate owner;
- General information about the land and real estate;

¹⁰⁷ Chapter Two of the Inadequate Housing Procedures also outlines the steps for identifying housing not complying with operational requirements.

- In cases of a sale and purchase agreement, the timeline for the payment;
- Information about the new apartment being offered including which floor, the number of rooms, size of the apartment and the schedule for when the new apartment will be ready to hand over;
- The agreement concerning moving costs and how it will be resolved;
- The agreement on temporary resettlement;
- Ways to resolve any risks that may arise in the course of project implementation;
- Signature of both parties, seals and dates;
- Any other information.¹⁰⁸

The Inadequate Housing Operational Procedures makes no mention of evictions. According to Article 5.6, the project implementer “shall try to negotiate with the real estate owner at any stage of the process and take measures to reach a consensus with the real estate owner who does not sign a tripartite agreement.” The Procedures make no mention of what happens if the project implementer and apartment owner fail to reach an agreement but, as previously noted, Article 14.7.3c of the Redevelopment Law says that the project implementer can submit a claim to the courts if an agreement cannot be reached.

The Inadequate Housing Operational Procedures also note that “in order to protect the life, property, health and safety of house owners the competent authority shall take measures to suspend activities and limit water, heating, [and] electricity.” This article does not provide information on the process that should be followed before suspending or limiting water, heating and electricity. Any process must include safeguards about when such measures can be taken and must ensure that these measures are not used to deny people minimum essential services or to arbitrarily cut off services which are an element of their right to adequate housing.

3. KEY AUTHORITIES

Both central government and city level authorities have responsibility for overseeing the redevelopment agenda. The state level focuses on compliance with the law while the city level authorities, particularly the Governor, are responsible for ensuring the smooth implementation of the redevelopment process and for managing any problems or complaints.

The Governor of the capital city¹⁰⁹ and *aimags* has responsibilities under both the Development and the Redevelopment Law. Under the Development Law Article 9, the Capital

¹⁰⁸ Inadequate Housing Procedures, Article 4.11.

¹⁰⁹ Under the Law on the Legal Status of the Capital City, the posts of Capital City Governor and Ulaanbaatar City Mayor must be filled by the same individual but the Capital City Governor’s Office and Ulaanbaatar City Mayor’s Office must be kept separate.

City Governor's responsibilities are to:

- Organize activities, including allocation of land and implementation of development projects based on the sub-project general plans and development projects;
- Appoint a General Architect for the capital city for a term of four years;
- Establish a Department of Urban Development and Construction which must be headed by the General Architect;
- Oversee the development of the General Development Plan for the capital city and make amendments and revisions;
- Monitor processes related to urban development, land usage and protection;
- Deliver an annual report on urban development activities to the Ministry of Construction and Urban Development.

Under the Redevelopment Law Article 11, the Capital City Governor's responsibilities are to:

- Initiate projects based on the General Development Plan, Land Development Plan and the sub-project general plans and implement those activities;
- Resolve financing sources for projects and programs being implemented with local state funding;
- Select a project implementer;
- Conclude a tripartite agreement for project implementation and ensure implementation of the agreement;
- Ensure community participation by promoting and publicizing projects, programs and plans to the public, and receive feedback and complaints;
- Implement regeneration activities in accordance with governmental orders;
- Conclude a tripartite agreement with a citizen who is the land and/or real estate owner and a legal entity.

Under Article 24.3, the Capital City Governor also has the authority to organize measures for the continuation and completion of a project in cases where the project implementer is declared insolvent by the courts.

The Ulaanbaatar City Council's role is primarily to monitor and ensure that the Capital City Governor is fulfilling his/her responsibilities for implementing the redevelopment agenda. Under Article 8 of the Development Law, the Ulaanbaatar City Council (and *aimag* city councils) approves the required development and redevelopment documentation, allocates funding to resolve the budget for urban development projects and plans, monitors

implementation of the development and redevelopment documentation and plans, together with the Capital City Governor; and makes decisions on the development of new districts or micro-districts, ger areas and old parts of the city.

Under Article 10 of the Redevelopment Law, the Ulaanbaatar City Council makes the final decision to approve, or not, the work being taken forward by the Capital City Governor including deciding on the location, size and intended use of the land for a redevelopment area, approving funding from the city budget, and monitoring implementation. When the council is in recess, the Ulaanbaatar City Council Presidium has the authority to fulfil these roles.

At the national level, the MCUD is responsible for state-level policy and overseeing compliance with the legislation. The Ministry approves any procedures developed at the local level for selecting areas for redevelopment and implementing projects and has the authority to cancel authorization for a redevelopment project if they rule that the tender process was not carried out in accordance with the regulations.¹¹⁰ The Ministry also arranges guidance and support for urban redevelopment and implements and monitors priority projects, program and plans at the state level.

¹¹⁰ Amnesty International interview with Ministry of Construction and Urban Development, 14 March 2016.

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FALLING SHORT

THE RIGHT TO ADEQUATE HOUSING AT RISK IN ULAANBAATAR, MONGOLIA

Ulaanbaatar, Mongolia's capital, is undergoing large-scale redevelopment to provide better housing and access to services for residents and to combat high pollution levels. The redevelopment agenda focuses on both Ulaanbaatar's ger areas, where 60% of Ulaanbaatar's 1.3 million residents live, and on public housing buildings which are unsafe and/or structurally unsound.

Despite the advanced stage of the redevelopment agenda in Mongolia, relevant laws and policies are lagging behind practice. This briefing examines the process in place for ger area redevelopment and redevelopment of inadequate public housing buildings, the two areas of the redevelopment agenda that directly affect the most number of Ulaanbaatar residents. It reviews the current redevelopment legal and policy framework and assesses its ability to protect the rights of those affected by the redevelopment process.

Amnesty International's research found significant shortcomings in the laws, policies and practices of redevelopment. This 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.