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# POISONED OASIS

THE POLITICAL PERSECUTION OF CHIMED  
SAIKHANBILEG AND THE FUTURE OF  
DEMOCRACY IN MONGOLIA



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# EXECUTIVE SUMMARY

Mongolia is at a crossroads. Long hailed as an “oasis of democracy” in a difficult region of the world, there are worries that this may be changing. Threats to the judicial independence of Mongolia’s courts and the instrumentalization of the country’s anti-corruption body and public prosecutor to serve political ends have set off alarm bells both inside Mongolia and throughout the international community.

Since Mongolia emerged as a democracy in 1992, the country has undergone breathtaking change and development, largely spearheaded by a mining boom which has brought with it surging economic growth and the promise of long-term prosperity. The massive Oyu Tolgoi copper and gold mine discovered at the beginning of this century is at the center of this extraordinary change.

The Oyu Tolgoi mine – majority owned by an entity controlled by Australian miner Rio Tinto, with a minority stake held by the Mongolian government – has also become a highly charged political issue. In 2009, an investment agreement was signed for Oyu Tolgoi under the government of Prime Minister Sanjaagiin Bayar (2007-2009), and the investment which followed played a large role in Mongolia becoming the world’s fastest growing economy in 2011. However, issues soon emerged, with disputes between Rio Tinto and the government becoming so severe that by 2013 the underground expansion of the mine – an essential element given that some 80 percent of the mineral wealth lies underground – was suspended. Mongolia’s economy suffered greatly as a result, and by 2014 the Great Hural had passed a

resolution calling for a solution to the Oyu Tolgoi impasse.

The importance of Oyu Tolgoi to the Mongolian economy cannot be overstated. From 2010-2019, Rio Tinto alone has invested USD 10.3 billion and paid USD 2.6 billion in taxes.

In November 2014, Chimed Saikhanbileg took office as Prime Minister of Mongolia (2014-2016), inheriting a severe economic crisis and a mandate from the Great Hural to resuscitate the economy and find a solution to the Oyu Tolgoi issue. Governing under a grand coalition which included the opposition MPP, Saikhanbileg’s government signed an agreement and financing package for the Oyu Tolgoi underground expansion.

Shortly before the end of Saikhanbileg’s term and in consultation with his cabinet, a sale of Russia’s legacy 49% stake in the Erdenet copper mine was sold to a private Mongolian corporation. On the urging of the Russian side, the deal was struck during difficult circumstances and on an expedited timeline. When the Great Hural was out of session and in the run up to the June 2016 elections, Saikhanbileg gained the unanimous approval of his cabinet and made every effort to consult parliament. The MPP government which took power in 2016 has since declared the sale illegal and forcefully nationalized all of Erdenet, despite a Supreme Court decision determining that such a move was illegal. A prominent Mongolian news outlet called the Erdenet saga a “classic example of political interference in business.”

In 2017, Khaltmaagiin Battulga, a former Sambo martial arts champion and a wealthy businessman-turned-populist politician won

the Presidential election with just 50.6 percent of the vote. *Bloomberg Businessweek* described Battulga as a populist figure who is “cozying up to Putin.” Despite hailing from the Democratic Party (DP), he was worked closely with, and relies on the support of the Mongolian People’s Party (MPP) and its leader, Prime Minister Ukhnaagiin Khurelsukh.

Worryingly, under Battulga, Mongolia’s status as an “oasis of democracy” has been called into question. The international community condemned a 2019 law pushed through by Battulga which has empowered the President to dismiss members of the judiciary, prosecutors, and the head of the country’s top anti-corruption body – powers which Battulga immediately put to use. Still more worrying, since taking office, the President has arrested numerous political opponents on trumped up charges, many of whom have been convicted on politicized charges while some remain under investigation years later despite failing to find any wrongdoing.

It is under these circumstances that Saikhanbileg – as well as former Prime Minister Bayar (2007-2009) and other members of the two governments which signed the 2009 investment agreement and 2015 expansion agreement – were arrested under dubious circumstances in Spring 2018. Numerous irregularities took place in the proceedings and during their imprisonment, including the dismissal of a judge who refused to extend the 30-day detention of the accused. Both Saikhanbileg and Bayar developed serious health conditions warranting urgent medical attention while they were incarcerated. In addition to former Prime Ministers Bayar and Saikhanbileg, numerous officials as well as journalists and members of civil society have come under attack since President Battulga took office.

In late 2019, an Interpol red notice was issued at the request of Mongolian authorities for the arrest of Saikhanbileg, however, the international police organization cancelled the notice in October 2020 after determining that Mongolia’s request was not compliant with Interpol’s rules against abuses of the non-political nature of the organization.

In June 2018 both Saikhanbileg and Bayar were released. The next year, Saikhanbileg gained the approval of the relevant court to travel to the United States to seek urgent medical attention.

President Battulga, some ministers, as well as certain politicians and media outlets in Mongolia have relentlessly pushed the narrative that both the 2009 and 2015 agreements relating to Oyu Tolgoi (passed under Prime Ministers Bayar and Saikhanbileg, respectively) were pursued unlawfully and without the approval of the Great Hural. These claims are made despite publicly available evidence and parliamentary resolutions to the contrary, in an effort to justify the investigations. The result has been politically motivated convictions on dubious charges have resulted for many former officials, while others are still awaiting their verdicts.

Claims have also been made that Saikhanbileg left the country illegally, despite the existence of a signed approval authorizing his travel overseas to seek medical care.

While Battulga and his allies have pursued political persecutions, the President’s own allegations of egregious misconduct and corruption from his years in business and as Minister of Industry and Agriculture (2012-2014) have mysteriously disappeared from public discourse, and the investigations have been quietly shut down. As Minister, Battulga presided over the construction of a mega industrial park and a railroad connection, financed by the sale of hundreds of millions of dollars

of “Chinggis Bonds.” Mongolian media has long alleged that some USD 280 million has “disappeared,” and the anti-corruption body launched an inquiry which snared several of Battulga’s associates. Nevertheless, the President “has never responded in a substantive way to these allegations,” possibly because of the immunity from persecution he enjoys as President.

The plight faced by former Prime Ministers Saikhanbileg, Bayar, former President Elbegdorj, and the dozens of judges and prosecutors who have been unjustly dismissed by a president who has dangerously consolidated power, threatened Mongolia’s democratic system, and broken the independence of the judiciary are the focus of this whitepaper.

This whitepaper also recounts the history of the Oyu Tolgoi mine and the agreements struck in 2009 and 2015 – demonstrating that they were carried out lawfully and with the approval and consultation of the Great Hural.

Claims by the current government that the Oyu Tolgoi agreements were negotiated illegally are being used for dual purposes – for President Battulga to persecute his political opponents, and to cajole Rio Tinto into signing a “better” agreement which the current government can take credit for while tarnishing Mongolia’s international business reputation in the process. Battulga is also overturning Mongolia’s longstanding “third neighbor” policy and as a result is bringing more Russian and Chinese influence and further alienating other foreign investors.

For the sake of Mongolia’s democracy and the human rights of those affected, it is imperative that the stories of those who have been politically persecuted, and the judges and prosecutors who have been unceremoniously removed from their positions by an increasingly authoritarian President be brought to light as part of an urgent effort to put Mongolia back on a democratic path.





# I. MONGOLIAN POLITICAL CONTEXT

Since the emergence of democracy and the adoption of a new constitution in 1992, Mongolia functions as a parliamentary republic with a strong presidency. The legislative branch consists of a unicameral 76-member body known as the State Great Hural (“**Great Hural**”) whose members are elected to four-year terms.<sup>1</sup> The President, who is elected to four-year terms through direct elections, serves as the head of state, while the Prime Minister, typically the leader of the majority party or coalition in the Great Hural, serves as the head of government.<sup>2</sup> The Chairman of the Great Hural – whose role is similar to that of speaker in other parliamentary systems – is selected by the Great Hural through an open ballot process.<sup>3</sup>

## A. MAJOR PARTIES AND HISTORICAL CONTEXT

The two major parties in Mongolia are the Democratic Party (“**DP**”) and the Mongolian People’s Party (“**MPP**”),<sup>4</sup> the latter an incarnation of the Mongolian People’s Revolutionary Party (“**MPRP**”) which was in power throughout the Socialist period of the Mongolian People’s Republic from 1924-1992.<sup>6</sup>

The third party which currently enjoys representation in the Great Hural is the Mongolian People’s Revolutionary Party (“**MPRP**”),<sup>7</sup> founded in 2010 by a former president after he broke with the MPP,<sup>8</sup> and in the 2020 parliamentary elections a fourth party, HUN took one seat. In total, there are 32 political parties registered with the Supreme Court of Mongolia,<sup>9</sup> but only the DP, MPP, MPRP, and HUN currently enjoy representation in the Great

Hural.<sup>10</sup> In the seven parliamentary elections which have been organized since 1992, no ruling party had won a majority in successive elections<sup>11</sup> until this year’s 2020 parliamentary elections.

Since 1992, Mongolia has emerged as a democracy “against the odds.”<sup>12</sup> In 2016, the US Secretary of State at the time, John Kerry, called Mongolia “an oasis of democracy:”

You’ve got China on one side of you, and Russia on the other side of you, and there are always a lot of pressures, and here you are in this oasis of democracy fighting for your own identity.”<sup>13</sup>

Verena Fritz of the World Bank observed that Mongolia defies many assumptions about the conditions necessary for successful democratization: Mongolia remains relatively undeveloped; its democratization took place during economic crisis; its location is far from any “consolidated” democracy; it has “no pre-history of democratization;” and industrialization took place at a late stage.<sup>14</sup> Noting that the countries most comparable to Mongolia on these metrics, such as the Central Asian nations Kazakhstan, Tajikistan, Turkmenistan, and Uzbekistan suffer from either instability or harsh authoritarianism, Fritz classifies Mongolia as a “deviant democracy”<sup>15</sup> – one which has defied common assumptions and structural explanations to emerge as a democratic society.

Freedom House’s 2019 report on Mongolia classified the country as “free,”<sup>16</sup> – the highest classification – and the Organization for Security Co-operation in Europe (“**OSCE**”)

reported that the latest parliamentary election in 2016<sup>17</sup> and presidential election in 2017<sup>18</sup> were both generally free and fair.

## B. FACTIONALISM

One consequence of Mongolia's recent and uncharacteristic democratization has been a political system in which the party and individuals in power change with great frequency, and the policies of the DP and MPP are often divorced from their purported ideologies. Julian Dierkes, an expert in Mongolian politics at the University of British Columbia writes that "Mongolia's dominant political parties have not developed ideological profiles, and are largely built around patronage,"<sup>19</sup> while the economist Jargalsaikhan D. wrote in 2014 that "[p]antom political parties are wandering around in Mongolia."<sup>20</sup>

Furthermore, both the DP and the MPP suffer from extreme internal divisions, with

numerous factions within the parties emerging as separate power centers.<sup>21</sup> The DP suffers from the most extreme divisions,<sup>22</sup> a consequence of the party's history as a coalition of disparate parties which unified under the banner of the Democratic Party in 2000.<sup>23</sup>

Recently, the MPP has also succumbed to infighting. In 2017, the MPP Prime Minister lost a vote of no confidence despite his own party enjoying an overwhelming majority in the Great Hural.<sup>24</sup> The man who replaced him saw 26 of the 65 MPP members in the 76-member Great Hural vote against his appointment,<sup>25</sup> and then faced his own vote of no confidence a year later<sup>26</sup> despite the MPP's continued large majority in the Great Hural.<sup>27</sup> Months after, in February 2019, the Chairman of the Great Hural – also from the MPP – was expelled from his position on the back of corruption allegations, in a move spearheaded by the MPP Prime Minister.<sup>28</sup>

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### ENDNOTES

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- 2 *Id.*
- 3 Chairman, THE GREAT STATE HURAL (PARLIAMENT) OF MONGOLIA, <http://www.parliament.mn/n/ahko> (last visited Apr. 6, 2020).
- 4 CENTRAL INTELLIGENCE AGENCY, WORLD FACTBOOK: MONGOLIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/mg.html> (last visited Apr. 6, 2020).
- 5 The Mongolian People's Revolutionary Party (MPRP) voted to revert to its original name from the 1920s, the Mongolian People's Party (MPP) in 2010. "MPP" is hereinafter used to refer to this party both before and after the 2010 name change for clarity.
- 6 See Owen Lattimore et al., *Mongolia*, ENCYCLOPÆDIA BRITANNICA (Aug. 22, 2019), <https://www.britannica.com/place/Mongolia>.
- 7 While the MPRP shares the same name as the MPP's previous name, the post-2010 MPRP is a separate party founded in 2010 by Nambaryn Enkhbayar.
- 8 *Nambaryn Enkhbayar*, ENCYCLOPÆDIA BRITANNICA (Aug. 22, 2019), <https://www.britannica.com/biography/Nambaryn-Enkhbayar>.
- 9 JARGALSAIKHAN DAMBADARJAA ET AL., THE INTERNAL DEMOCRACY INDEX OF MONGOLIAN POLITICAL PARTIES 9 (2019) (Ariunaa Jargalsaikhan & Ariunzaya Munkhbat eds., 2019), <http://defacto.mn/wp-content/uploads/2019/09/The-Internal-Democracy-Index-of-Mongolian-Political-Parties-2019.pdf>.

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- 11 See *Mongolia profile – Timeline*, BBC (Feb. 26, 2018), <https://www.bbc.com/news/world-asia-pacific-15466133>.
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- 13 Yeganeh Torbati, *Kerry hails Mongolia as ‘oasis of democracy’ in tough neighborhood*, REUTERS (Jun. 4, 2016), <https://www.reuters.com/article/us-usa-mongolia-idUSKCN0YR02T>.
- 14 FRITZ, *supra* note 12, at 766.
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- 16 FREEDOM HOUSE, FREEDOM IN THE WORLD 2019: MONGOLIA (2019), <https://freedomhouse.org/country/mongolia/freedom-world/2019>.
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- 19 Julian Dierkes, *Mongolia: An unexpected bastion of democracy thanks to its youth*, THE CONVERSATION (Jul. 18, 2017), <https://theconversation.com/mongolia-an-unexpected-bastion-of-democracy-thanks-to-its-youth-80765>
- 20 Jargalsaikhan Dambadarjaa, *De Facto: Phantom political parties*, COVER MONGOLIA (Jul. 6, 2014), available at <http://cover-mongolia.blogspot.com/2014/07/106-licenses-to-be-re-tendered-gom-to.html>.
- 21 See David Sneath, *What’s Next for Mongolia’s Troubled Oasis of Democracy?*, THE GLOBE POST (Feb. 13, 2019), <https://theglobepost.com/2019/02/13/mongolia-democracy/>.
- 22 Sergey Radchenko & Mendee Jargalsaikhan, *Mongolia in the 2016–17 Electoral Cycle*, 57 ASIAN SURVEY 1032, 1035 (2017), <http://orca-mwe.cf.ac.uk/105838/10/1032.full.pdf>.
- 23 The Democratic Party was formed in 2000 by the Mongolian National Progressive Party (MNPP) and the Mongolian Social Democratic Party (MSDP) as well as a number of smaller parties.  
*Id.*, at 1035-36; Owen Lattimore et al., *Mongolia: Toward a New Society*, ENCYCLOPÆDIA BRITANNICA (Aug. 22, 2019), <https://www.britannica.com/place/Mongolia/Toward-a-new-society>.
- 24 In September 2017, Prime Minister Jargaltulga Erdenebat, the protégé of powerful MPP powerbroker Miyegombyn Enkhbold, was ousted in a vote of no confidence following Enkhbold’s devastating loss in the 2017 Presidential elections to DP candidate Khaltmaagiin Battulga. Erdenebat was ousted despite his own party controlling 65 of the 76 seats in the Great Hural.  
See Terrence Edwards, *Mongolian parliament ousts prime minister in latest reshuffle*, REUTERS (Sep. 7, 2017), <https://www.reuters.com/article/us-mongolia-politics/mongolian-parliament-votes-to-oust-prime-minister-idUSKCN1BI270>.
- 25 Julian Dierkes & Mendee Jargalsaikhan, *A New Cabinet for Mongolia*, THE DIPLOMAT (Oct. 13, 2017), <https://thediplomat.com/2017/10/a-new-cabinet-for-mongolia/>.
- 26 In November 2018, Prime Minister Khurelsukh narrowly survived a vote of no-confidence instigated by Great Hural Chairman Miyegombyn Enkhbold, with 27 MPP members voting for his removal.  
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- 27 *Id.*
- 28 In February 2019, Chairman M. Enkhbold was expelled from his position as Chairman on the back of corruption allegations, spearheaded by Prime Minister Khurelsukh.  
Aubrey Menarndt & Boldsai Khan Sambuu, *Mongolia speaker expelled amid ongoing battle against corruption*, AL JAZEERA (JAN. 31, 2019), <https://www.aljazeera.com/news/2019/01/mongolia-speaker-ousted-ongoing-battle-corruption-190131063427925.html>.



## II. OYU TOLGOI

### A. DISCOVERY OF OYU TOLGOI

*The discovery of the Oyu Tolgoi copper-gold deposit...was a remarkable event in the history of modern Mongolia...this discovery marks a significant milestone in the history of [the] Mongolian mining industry and the copper industry worldwide.*<sup>29</sup>

In the 1990s, Mongolia was seeking to attract foreign investment in its mining sector, and its economy was in a state of “economic shock.”<sup>30</sup> In 1995, Magma Copper Company (MCC), at the time the largest copper smelter in the United States,<sup>31</sup> formed a joint venture with the state-owned Erdenet Mining Corporation (EMC) and created a copper-focused mineral exploration project, Erdenet-Magma.<sup>32</sup> In 1996, Australian miner BHP acquired MCC,<sup>33</sup> taking control of MCC’s joint venture with Erdenet.

By 1997, BHP’s inherited joint project with EMC was dissolved.<sup>34</sup> Nevertheless, BHP opened an office in Ulaanbaatar, and carried out exploratory drilling at Oyu Tolgoi.<sup>35</sup> By 1999, however, BHP underwent a major restructuring, and the company closed its office in Mongolia. In 2000, BHP sold 100% of its exploration licenses to Canadian miner Ivanhoe Mines for USD 5 million.<sup>36</sup> Ivanhoe Mines carried out more extensive exploratory drilling at Oyu Tolgoi, and by July 2001, a massive deposit of high-grade gold, copper and molybdenum was discovered.<sup>37</sup>

By 2003, Oyu Tolgoi became one of the world’s largest exploration projects,<sup>38</sup> and in

2006 Ivanhoe Mines formed a partnership with Rio Tinto to help finance operations at Oyu Tolgoi which saw Rio Tinto invest USD 303 million and giving the Australian miner a 9.95% stake in Ivanhoe Mines.<sup>39</sup> In 2007, Rio extended a USD 350 million credit facility to Ivanhoe Mines,<sup>40</sup> and agreed that following the conclusion of a long-term investment agreement with the Mongolian government, it would invest a further USD 388 million for a further 9.95% with an option to eventually increase this investment to USD 2.3 billion for a 46.65% stake.<sup>41</sup>

This would only be the start of Oyu Tolgoi’s importance for the Mongolian economy. From 2010-2019, Rio Tinto would invest USD 10.3 billion in Mongolia and pay USD 2.6 billion in taxes over the same period.<sup>42</sup>

### B. 2009 INVESTMENT AGREEMENT

In October 2009, Ivanhoe Mines and Rio Tinto signed a long-term investment agreement with the Government of Mongolia.<sup>43</sup> As part of the agreement, the Government of Mongolia would take a 34% stake in Oyu Tolgoi through the state-owned entity Erdenes Mongol, with the foreign investors holding a 66% stake.<sup>44</sup>

The agreement came during a time of severe economic difficulty in Mongolia and around the world,<sup>45</sup> and followed years of negotiations and roadblocks, dating from 2004 when Ivanhoe Mines first began talks with the Government of Mongolia for a formal investment agreement.<sup>46</sup>

In July 2006, the government passed a new Minerals Law, which brought major

changes to the mining regulatory environment in Mongolia.<sup>47</sup> One scholar noted that the new Minerals Law “effectively redrew the boundary around the state’s involvement in the sector to some extent, giving legal legitimacy to the expression of national interest in the mining economy.”<sup>48</sup> Importantly, the new legislation changed the process by which an investment agreement is to be negotiated.

The 2006 Minerals Law permitted the signing of investment agreements for investments over USD 50 million. Article 29.2 of the 2006 Minerals Law states that any investment agreement “shall be concluded between the investor and the Cabinet members in charge of finance, geology, mining and environment upon authorization of the Government of Mongolia.”<sup>49</sup> Furthermore, any investment agreement surpassing USD 100 million would require the approval of the Great Hural before its implementation.<sup>50</sup>

Ivanhoe Mines reacted positively to these changes at the time, observing that the ratification by the Great Hural would give an investment agreement “broader, expanded authority and greater degree of long-term security than previous agreements, because they will have the authority of law.”<sup>51</sup>

In 2006, in addition to the new Minerals Law, Mongolia imposed a “windfall tax” on copper and gold which reached 68 per cent when prices on copper rose above USD 2,600 per ton and when the gold price went above USD 500 per ounce.<sup>52</sup> The tax came as a surprise to Rio Tinto and Ivanhoe Mines, with Ivanhoe’s board writing in a letter to the Mongolian government that the industry and foreign investors were not consulted prior to the implementation of the tax.<sup>53</sup>

The June 2008 Great Hural elections resulted in violence, contested election results, the burning down of the MPRP’s headquarters, and a state of emergency.<sup>54</sup> In August 2008,

after two months of stalemate over the election results,<sup>55</sup> MPP Prime Minister Sanjaagiin Bayar formed a coalition with the DP as junior partner, appointing Norovyn Altankhuyag of the DP as his chief deputy.<sup>56</sup> This coalition government led by Bayar ushered through the 2009 Oyu Tolgoi investment agreement.<sup>57</sup>

The investment agreement signed in October 2009 was implemented after gaining approval in the Great Hural. On 4 December 2008, the Great Hural passed Resolution 40, which authorized the development of investment agreements for both Oyu Tolgoi and the nearby coal deposit of Tavan Tolgoi.<sup>58</sup> On 8 May 2009, the Standing Committee on the Economy submitted its conclusions and recommendations to the government,<sup>59</sup> and on 16 July 2009, the Great Hural adopted Resolution 57 which set certain conditions for the authorization of the investment agreement, namely that the minimum stake held by the government must be 34 percent, and there must be an option in the future for the state to take a 50 percent stake.<sup>60</sup>

The investment agreement, which was signed by the Ministers of Finance, Mineral Resource and Energy, and of Nature Environment and Tourism, states that “Resolution Number 57 of the State Great Khural dated 16 July 2009 has resolved to authorise the Government to enter into this Agreement.”<sup>61</sup> The October 2009 agreement took effect in March 2010.<sup>62</sup>

Ivanhoe Mines and Rio Tinto refused to proceed with the agreement unless the controversial windfall profits tax on gold and copper was repealed. On August 25, 2009, the Great Hural held a special session and voted to repeal the windfall profits tax in addition to passing three other amendments.<sup>63</sup> The special session of the Great Hural gave the legislative body another opportunity to weigh in on key issues relating to the pending Oyu Tolgoi investment agreement. The Chairman of the

Great Hural at the time, Damdiny Demberel of the MPP voiced his strong support for the investment agreement and the repeal of the windfall tax, stating:

These Draft Laws are directed at improving the legal environment related not only to the Oyu Tolgoi deposit but to other mineral deposits as well...Establishing the Oyu Tolgoi Investment Agreement will speed up the development of Mongolia, win time and create possibility [sic] for exploiting the next major deposits.<sup>64</sup>

Shortly after the signing of the 2009 agreement, Prime Minister Sanjaagiin Bayar (2007-2009) resigned in late October for health reasons,<sup>65</sup> and was replaced by Sukhbaataryn Batbold of the MPP.<sup>66</sup> Investor confidence ran especially high when in 2011 the validity of the 2009 investment agreement was affirmed<sup>67</sup> through the Amended and Restated Shareholders' Agreement ("**ARSHA**") which was signed on 8 June 2011.<sup>68</sup>

Mongolia's economy quickly reached new heights, and headlines such as "*Could Mongolia Be the Next Dubai?*"<sup>69</sup> appeared in the international press. In 2011, the year in which investment in Oyu Tolgoi reached its peak, the economy grew by 17.5 percent,<sup>70</sup> making it the world's fastest-growing economy.<sup>71</sup> The boom in investment also led to an unprecedented gentrification of the capital, Ulaanbaatar.<sup>72</sup>

### **C. 2012 PARLIAMENTARY ELECTIONS AND RIO TINTO TAKEOVER OF IVANHOE**

Elections in the summer of 2012 brought in a DP-led coalition government headed by Prime Minister Novoryn Altankhuyag (August 2012 – November 2014), together with the "Justice

Coalition," made up of the MPRP and the Mongolian National Democratic Party ("**MND-P**").<sup>73</sup> The MPRP is led by Nambaryn Enkhbayar, known as "a larger than life father figure behind radical resource nationalism, such as demands for revision of the Oyu Tolgoi Investment Agreement."<sup>74</sup>

In January 2012, Rio Tinto completed a "creeping takeover" of Ivanhoe Mines, taking a 51% stake in the Canadian miner.<sup>75</sup> The takeover followed arbitration proceedings instigated and won by Rio in response to attempts by Ivanhoe to prevent the Australian miner from taking a controlling stake.<sup>76</sup> In August 2012, Ivanhoe Mines changed its name to Turquoise Hill – the English meaning of "Oyu Tolgoi" – reflecting the central importance of Oyu Tolgoi to the company.<sup>77</sup>

In October 2012, Altankhuyag's DP-led coalition government demanded a renegotiation of the 2009 Oyu Tolgoi investment agreement.<sup>78</sup> The new government pushed for a shorter timeline to take a 50 percent stake in Oyu Tolgoi, and argued that cost overruns demanded a reconsideration of the "implementation" of the investment agreement.<sup>79</sup> Turquoise Hill issued a press release stating their refusal to renegotiate the agreement.<sup>80</sup>

In November 2012, the Great Hural passed a new budget for 2013 which called for a renegotiation of the royalties paid the government at nearly four times the rate agreed in the 2009 investment agreement<sup>81</sup> – a proposed \$300 million increase in taxes and royalties.<sup>82</sup> Observers noted that the move was driven by a large budget deficit owing to the global downturn which took a toll on mining, as well as the controversial Strategic Foreign Investment Law which was passed in May 2012 and contributed to a 44 percent decline in foreign direct investment.<sup>83</sup>

In Summer 2013, Rio Tinto announced that the underground expansion of Oyu Tolgoi

would be suspended.<sup>84</sup> This was a very significant decision, as an estimated 80 percent of Oyu Tolgoi's gold and copper is underground.<sup>85</sup> Rio made the decision owing to issues over securing a funding agreement – which the government said would require parliamentary approval<sup>86</sup> – as well as over lingering issues regarding the 2009 agreement, taxation levels, and a dispute over cost overruns.<sup>87</sup> Rio announced shortly after the suspension that 1,700 jobs would be cut.<sup>88</sup>

In November 2014, Prime Minister Altankhuyag was ousted in a vote of no confidence.<sup>89</sup> Altankhuyag's ouster was principally due to corruption allegations<sup>90</sup> and a controversial reduction in the number of ministries in government.<sup>91</sup> Another reason for the change in leadership can be attributed to the dramatic decline in foreign direct investment (FDI) since the suspension of the Oyu Tolgoi underground expansion the year before.<sup>92</sup> Mongolia suffered a 59 percent decline in FDI in the first three quarters of 2014 compared to the previous year.<sup>93</sup> By year's end, the decline in FDI reached 74 percent.<sup>94</sup> Mongolia "relied on foreign currency payments from China to fund its budget" during the period in which the Oyu Tolgoi underground expansion was suspended,<sup>95</sup> illustrating the extent to which the impasse had affected the country's economic well-being.

#### **D. NEW STATE POLICY ON MINERALS (2014-2025)**

On 16 January 2014, the Great Hural adopted a new State Policy on Minerals, setting an agenda for the mining sector through 2025.<sup>96</sup> The new legislation prioritized establishing a stable investment environment, improving the quality of mineral exploration, mining and processing, encouraging the use of environmentally friendly and modern technology,

and strengthening the competitiveness of the Mongolian mining sector on the international market.<sup>97</sup> Notably, the new state policy on minerals prioritizes "private sector-led development."<sup>98</sup> and specifically cites as a priority the privatization of mining stakes held by state-owned enterprises (SOEs).<sup>99</sup>

The law firm Allens Linklaters wrote in an analysis of the new policy:

The Minerals Policy also plans the gradual privatisation of State-owned companies in the mining sector and focuses on the State improving its administrative services to achieve more transparency and efficiency, and providing more support to the private sector.<sup>100</sup>

The new policy also stated as a goal the marketization of SOEs in the mining sector. This includes Erdenes Mongol, the SOE which holds the government's 34 percent stake in Oyu Tolgoi in addition to other mining interests throughout the country.<sup>101</sup> The conversion of SOEs into "joint stock companies" is also stated as an objective.<sup>102</sup>

As a result of the 2014 policy, Erdenes Mongol was put "under the limelight of reform."<sup>103</sup> The goal – following the direction of the Great Hural's resolution – was to restructure Erdenes Mongol "so that it can operate with 'a commercial mandate,' to put its daily operation beyond the immediate influence and control of its government shareholders."<sup>104</sup>

#### **E. PRIME MINISTER SAIKHANBILEG TAKES OFFICE AND THE 2015 "DUBAI AGREEMENT"**

Chimed Saikhanbileg took office as Prime Minister on November 21, 2014, inheriting a very challenging economic situation of slumping global commodity prices and a dramatic



decline in FDI.<sup>105</sup> Saikhanbileg governed under a five-party “grand coalition” which included the MPP.<sup>106</sup>

Some observers predicted “business as usual”<sup>107</sup> under Saikhanbileg, pursuing similar policies to Altankhuyag.<sup>108</sup> However, the new Prime Minister took a dramatically different tact, stating that the Mongolian government “lost credibility” with foreign investors,<sup>109</sup> and quickly adopted a more business-friendly approach to work towards repairing the economy and solving the Oyu Tolgoi impasse.

While Altankhuyag was still in office, the Great Hural passed a resolution laying out a series of measures to be taken in an effort to bring the struggling economy back to growth. Resolution Number 34 “Certain measures to boost the economy” passed on May 8, 2014 set forth a series of measures to boost the economy.<sup>110</sup> One of the specific aims stated in the resolution is to “[a]ccelerate the Oyu Tolgoi project underground development and ensure that the Government provides policy support to implement the project.”<sup>111</sup>

At the end of January 2015, the government conducted a “text message referendum” regarding Oyu Tolgoi.<sup>112</sup> Over a four-day period, the referendum asked citizens if they would prefer the development of Oyu Tolgoi and other mining projects, or if they supported “strengthening economic discipline” through austerity measures.<sup>113</sup> Of 302,008 votes, 56.1 percent of respondents opted for the former.<sup>114</sup> While the referendum was non-binding, its aim was to help “broker a consensus” in the very divided and factionalized Great Hural.<sup>115</sup>

On February 18, 2015, the Great Hural passed Resolution Number 41, “Adopting a program of measures to overcome economic hardship.”<sup>116</sup> The resolution approved a “program of measures to overcome economic hardship,”<sup>117</sup> and specifically authorizes the government under Saikhanbileg to “negotiate

with the Oyu Tolgoi project investor and finalize the underground mine investment issue and push ahead with its development.”<sup>118</sup>

On May 18, 2015, Prime Minister Saikhanbileg accomplished what the Great Hural had requested on two occasions over the past year: a solution to the Oyu Tolgoi impasse. The “Oyu Tolgoi Underground Mine and Financing Plan” resolved key issues between the government and Rio Tinto and put forth a plan to raise the USD 5.4 billion<sup>119</sup> required to carry out the underground expansion of Oyu Tolgoi.<sup>120</sup> Three days before the agreement with Rio Tinto was signed, Saikhanbileg’s cabinet passed a resolution authorizing the underground expansion agreement, specifying that Erdenes Mongol CEO B.Byambasaikhan will sign the agreement.<sup>121</sup>

After the agreement was signed, Saikhanbileg visited the Great Hural and spoke extensively about the agreement while answering questions from members. He stated at the time that, “from now on, the OT project transforms from a controversial political matter into a business project. From now on, the matter will be settled by the members of the board and not by politicians.”<sup>122</sup>

Among the concessions the Mongolian government gained in the 2015 agreement was a reduction of the “Management Services Payment” which Oyu Tolgoi paid to Rio Tinto from 6 to 3 percent.<sup>123</sup> Despite proving very lucrative,<sup>124</sup> Rio also agreed to the cancellation of a recurring 2 percent “net smelter of production” payment, inherited from the original BHP concession granted in the 1990s.<sup>125</sup> A tax dispute between Rio Tinto and the government was also resolved, resulting in a USD 30 million payment to the government,<sup>126</sup> and Rio agreed to backpay 10 months of royalties as part of the agreement. In total, the 2015 agreement resulted in a net USD 148 million benefit for the Mongolian state<sup>127</sup> – a fact not

lost on the Australian press, which noted that the 2015 deal came “at a cost” to Rio Tinto.<sup>128</sup>

The Natural Resource Governance Institute, a think tank, noted that the timing on both sides led to a deal: the economic situation increased the urgency for the government, while skyrocketing copper prices in the months before the agreement was struck may have provided an incentive for Rio to make concessions.<sup>129</sup> The think tank concluded that the success of the 2015 Oyu Tolgoi deal serves as a key lesson for countries in a similar situation, commenting that,

When circumstances such as price are in the government’s favor, it is important for officials to act quickly to achieve the best possible deal while recognizing the limits of negotiating leverage. Waiting or overestimating the government’s bargaining position runs the risk that volatile factors such as commodity prices may change in an unfavorable direction.<sup>130</sup>

Indeed, the suspension of the Oyu Tolgoi underground expansion in 2013 set in motion serious negative consequences which coincided with a sharp downturn in global commodity prices. In 2015, however, the conditions were right for a deal. The government – acting on a mandate from the Great Hural to find a solution to the Oyu Tolgoi impasse – acted swiftly to secure a deal that Mongolia’s economy needed.

The 2015 agreement sent the strongest message yet to restore investor confidence in Mongolia. One academic noted recently that,

The resolution of the dispute between the government and Rio Tinto over Oyu Tolgoi in 2015 – known as the Dubai Agreement – was a crucial part of the government’s effort to restore investor

confidence in Mongolia’s mining sector. *The Dubai Agreement was widely seen by the government and investors as a success, providing a basis of unity amongst private and public stakeholders about the second phase of mine development for Oyu Tolgoi.*<sup>131</sup>

In her confirmation hearing in the United States Senate, the US Ambassador to Mongolia Jennifer Galt (2015-2017) similarly praised the 2015 Oyu Tolgoi agreement, commenting that,

Mongolia’s recent progress on a major copper and gold mine with a Western company [Rio Tinto] signaled to the international community its renewed seriousness of purpose in attracting foreign direct investment, which has declined 85 percent since 2012.<sup>132</sup>

## **F. INTERNATIONAL PROJECT FINANCING**

On December 15, 2015, a project financing agreement worth USD 4.4 billion was signed. The financing came from official foreign government sources – Export Development Canada, the European Bank for Reconstruction and Development, the International Finance Corporation, the Export-Import Bank of the United States,<sup>133</sup> and the Export Finance and Insurance Corporation of Australia<sup>134</sup> – as well as from 15 commercial financial institutions.<sup>135</sup>

## **G. FAILED VOTE OF NO CONFIDENCE**

On January 29, 2016, a vote of no confidence against the Prime Minister was held in the Great Hural, on the grounds that the 2015 Oyu

Tolgoi agreement was not in Mongolia's benefit and alleging abuse of power on the part of Prime Minister Saikhanbileg.<sup>136</sup> However, the vote was unsuccessful, with a majority voting in favor of the Prime Minister.<sup>137</sup> The January 2016 vote provided another opportunity for the Great Hural to weigh in on the 2015 Oyu Tolgoi agreement and the Prime Minister's policies.

## H. OYU TOLGOI SINCE 2016

In April 2019, a group of Mongolian lawmakers demanded yet another renegotiation of the 2009 and 2015 investment agreements.<sup>138</sup> Turquoise Hill strongly rejected these demands.<sup>139</sup> However, pressure continued to grow. A working committee in the Great Hural also wrapped up a two-year inquiry into the Oyu Tolgoi agreements claiming that the 2015 underground expansion agreement did not have the approval of the Great Hural at the time.<sup>140</sup>

Furthermore, an NGO committed to challenging the Oyu Tolgoi investment agreements requested an administrative court to review the legality of some processes connected to the 2015 underground expansion agreement, and the court ruled in its favor in November 2019.<sup>141</sup> However, the court did not rule that the agreement was invalid, nor did it rule that it was beyond the purview of the Prime Minister to make such an agreement. Rather, the Administrative Court was solely considering

“whether the administrative decision-making process violated the administrative law,” a former lawyer with Erdenes-Mongol wrote shortly after the decision.<sup>142</sup> In particular, the court took the view that Saikhanbileg did not properly consult his cabinet, which he in fact did on May 15, 2015, three days before the agreement was signed.<sup>143</sup> One reason why the court overlooked this may be that the defense of the 2015 agreement fell to the MPP-led government and the Chairman of the Cabinet Secretariat L. Oyun-Erdene, both committed opponents to the agreement. The result was that Oyun-Erdene did not attend the proceedings himself, instead sending a low-level official who failed to mount a strong defense.<sup>144</sup>

Despite claims by the working committee and the conclusion of the administrative court in November, the Great Hural passed a resolution in December which recognized the validity of the investment agreements and called on the government to find ways to improve them,<sup>145</sup> including “looking at the government's equity share in Oyu Tolgoi, a re-definition of the reserve report and updated feasibility report, and a renewal of environmental and water assessments.”<sup>146</sup> Rio Tinto issued a press release noting that the “passing of this Resolution *effectively re-confirms the validity of all the investment agreements* between the Government of Mongolia, Rio Tinto and Turquoise Hill Resources.”<sup>147</sup>

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# III. ERDENET MINE

## A. BACKGROUND

Erdenet Mine is the world's fourth largest copper mine and has been active since 1978.<sup>148</sup> Built in cooperation with the Soviet Union, the mine is owned and operated by the Erdenet Mining Corporation ("**EMC**").<sup>149</sup> Initially, the Soviet Union owned a controlling 51 percent stake, and the Mongolian government held the remaining 49 percent.<sup>150</sup> In 1991, the structure of EMC was amended and the Mongolian state took a controlling 51 percent stake, leaving 49 percent to the Government of the Russian Federation.<sup>151</sup>

## B. RUSSIA SELLS ITS STAKE

In October 2015, at the urging of the Russian government,<sup>152</sup> the ownership of Russia's 49 percent stake was transferred from the Russian state to Rostec, a state-owned enterprise.<sup>153</sup> This required an amendment of the international agreement between Mongolia and Russia regarding Erdenet, and the changes were approved by the Great Hural.<sup>154</sup>

On June 1, 2016 – as the Great Hural was out of session and the country was preparing for important parliamentary elections to be held at the end of the month – Rostec sent a letter to the Government of Mongolia indicating its intention to sell its stake to the Mongolian Copper Corporation ("**MCC**") and requested that the Mongolian government waive its right of first refusal.<sup>155</sup> MCC is an entity controlled by TDB Capital, part of one of the country's largest banks, the Trade and Development Bank of Mongolia ("**TDB**").<sup>156</sup>

Minutes from a cabinet meeting held on June 13, 2016 discussing the sale of Russia's 49 percent stake of Erdenet were declassified by MPP Prime Minister J. Erdenebat in October 2016.<sup>157</sup> The minutes revealed that the Russian side was unwilling to sell to any party but MCC and its backer TDB Capital<sup>158</sup> – a position which was reaffirmed in a June 17, 2016 letter from Rostec which directly stated that no other entity – including the Mongolian Government – would have been considered as a buyer for Russia's 49 percent stake.<sup>159</sup> Furthermore, Government Resolution 330, adopted by Saikhanbileg and his cabinet on June 13, 2016, stated that should the terms of the sale outlined in Rostec's June 1, 2016 letter be altered in any way, the Government of Mongolia would revoke the waiver of its preferential right to purchase.<sup>160</sup>

While the timing of Russia's decision to sell its stake was unfortunate, Saikhanbileg and his cabinet took steps to inform the Great Hural and allow for it to weigh in on the issue after the June 2016 elections. The resolution adopted by Saikhanbileg's cabinet on June 13, 2016 assigned Minister of Industry D Erdenebat to report the sale of the Russian stake to the Great Hural,<sup>161</sup> and minutes of the meeting emphasized that the Great Hural would be notified at the earliest opportunity.<sup>162</sup> Furthermore, Saikhanbileg attempted to reconvene the Standing Committee of the Great Hural to weigh in on the decision to approve the sale of Russia's Erdenet stake, but this request was rebuffed by the Speaker of the Great Hural due to a lack of quorum by members<sup>163</sup> and the Prime Minister does not

enjoy the power to convene an extraordinary session of the Great Hural.<sup>164</sup>

Saikhanbileg and his cabinet took the unanimous position that the return of Erdenet to full Mongolian ownership – even if 49 percent was partially owned by a private Mongolian entity – would be beneficial to the country.<sup>165</sup> In addition, even had the Russian side indicated its willingness to sell its 49 percent stake to the Government of Mongolia rather than to MCC, the state was not in a position to make a USD 400 million acquisition in the timeframe allotted by the Russian side. The Minister of Industry at the time, D. Erdenebat, stated last year that,

The government did not have USD 400 million at that time. Everyone knows that there were economic hardships. Second, the Mongolian government was unable to raise this large amount of money within the 12 working days proposed by Russia. The letter clearly stated the closing date.<sup>166</sup>

Erdenebat also emphasized “that the decision of the Mongolian government to bring 49 percent of Erdenet, which was owned by a Russian company, to Mongolia was correct.”<sup>167</sup>

### C. ERDENET SINCE 2016

The MPP won a large majority of seats in the Great Hural in the June 2016 elections,<sup>168</sup> and campaigned vociferously against the sale of Russia’s 49 percent stake in Erdenet to MCC.<sup>169</sup> Upon taking office, the MPP took steps to challenge the sale. These controversial moves would be challenged in Mongolian courts, the decisions of which would ultimately be disregarded by the government.<sup>170</sup> One Mongolian outlet called the political fight over Erdenet that followed a “classic example

of political interference in business.”<sup>171</sup> Nevertheless, the year after Russia sold its 49 percent stake to MCC, Erdenet’s profitability increased exponentially, which some credited to the change in management.<sup>172</sup>

On February 23, 2017, the new MPP-controlled Great Hural passed Resolution 23,<sup>173</sup> which declared Government Resolution 330 invalid and the waiving of the Mongolian state’s right of first refusal by Saikhanbileg’s government illegal.<sup>174</sup> The resolution also called for the new government to “urgently” transfer “to state ownership” the 49 percent stake sold by Rostec to MCC,<sup>175</sup> specifying that this be carried out through negotiations with MCC.<sup>176</sup> Curiously – given that courts were yet to rule on the question – the final article of Resolution 23 instructed the government “to take measures to punish the executives of the Bank of Mongolia, the Government, Trade and Development Bank and Ulaanbaatar City Bank *who have repeatedly violated the law.*”<sup>177</sup>

On March 31, 2017, Erdenet Mining Corporation – which was still majority owned and controlled by the government – held an extraordinary meeting of shareholders and passed a resolution authorizing the appropriation of MCC’s 49 percent stake to the government.<sup>178</sup> The shares would be transferred from MCC to the state on April 3, 2017.<sup>179</sup> On July 5, 2017, the Sukhbaatar District Court of First Instance for Civil Cases ruled that the transferring of Erdenet shares from MCC to the Mongolian Government was illegal.<sup>180</sup> On December 8, 2017, the Supreme Court of Mongolia Chamber for Civil Cases upheld this ruling, stating that “MCC LLC’s right to own the 49 percent shares of EMC LLC...shall remain valid.”<sup>181</sup>

Nevertheless, on January 4, 2018 and despite the Supreme Court’s ruling the month prior, the government held an extraordinary meeting in which it affirmed the 100 percent

nationalization of Erdenet mine.<sup>182</sup> In February 2018, the Constitutional Court of Mongolia ruled in favor of the government, deciding that MCC had no right to hold its 49 percent stake.<sup>183</sup> However, on September 19, 2018, the Chamber for Administrative Cases of the Supreme Court ruled in favor of MCC and against the government while also determining that the issue was not a constitutional question.<sup>184</sup> This decision ended the dispute in favor of MCC.<sup>185</sup>

In February 2019, the government released more previously classified cabinet meeting minutes from June 2016 which the government believed demonstrated misconduct on the part of Saikhanbileg's administration.<sup>186</sup> L. Oyun-Erdene, the Chairman of the Cabinet Secretariat and a key spokesperson about the Erdenet affair also alleged – without compelling evidence – that over 70 percent of the assets used by MCC to purchase its stake in Erdenet from Russia came from the Mongolian state.<sup>187</sup> Oyun-Erdene also claimed – contrary to the statement of the relevant minister at the time<sup>188</sup> – that the Mongolian state had sufficient funds at its disposal to purchase Russia's stake directly,<sup>189</sup> without acknowledging that Rostec and the Russian government refused to sell its stake to the Mongolian state.<sup>190</sup> Oyun-Erdene also failed to recognize that Rostec selected MCC as a buyer, not the Mongolian government.<sup>191</sup>

The government has refused to comply with the rulings of the Supreme Court.<sup>192</sup> Perhaps recognizing the precariousness of its expropriation of MCC's stake, in March 2019 the government declared a state of emergency

over Erdenet,<sup>193</sup> during which there would be “no interference with the plant's operations.”<sup>194</sup> Since the Supreme Court ruled against them, politicians in the ruling MPP have turned to smearing the Head of the Administrative Chamber of the Supreme Court,<sup>195</sup> while also launching investigations into alleged financial misconduct and “money laundering.”<sup>196</sup>

On March 5, 2019, three representatives of MCC and the Trade and Development Bank were detained as part of an inquiry into financial misconduct and illegal activity relating to MCC's purchase of its 49 percent stake in Erdenet.<sup>197</sup> Just two days later, a court in Ulaanbaatar ruled that their detention was unnecessary and freed them.<sup>198</sup> Oyun-Erdene denounced the court's decision and made the questionable claim that “[d]espite the likelihood of them [the suspects] having committed the crime of money laundering being 99.99 percent, they have been freed.”<sup>199</sup> Oyun-Erdene then made the curious allegation that the Prosecutor's Office investigating the case “continuously disrupted the investigation and defended the suspects,”<sup>200</sup> while calling on the Great Hural to “fight” these cases and to “unite.”<sup>201</sup> After the passage of the Anti-Corruption Law,<sup>202</sup> MCC and TDB representatives would be imprisoned for one month.<sup>203</sup>

At present, Erdenet Mining Corporation remains under the full control of the state.<sup>204</sup> Oyun-Erdene has suggested that it is not possible to negotiate with MCC until the investigation into alleged financial wrongdoing has been completed.<sup>205</sup>

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## IV. POLITICALLY MOTIVATED PROSECUTIONS

### A. ARREST OF OFFICIALS CONNECTED WITH OYU TOLGOI AND ERDENET DECISIONS

In early April 2018, former Finance Minister Bayartsogt (2008-2012), former CEO of Erdenes Mongol Byambasaikhan, and the former Director of the General Department of Taxation Ariunsan were arrested.<sup>206</sup> The three were arrested in connection with the 2009 Oyu Tolgoi investment agreement and the 2015 Oyu Tolgoi underground expansion agreement on allegations of abuse of power.<sup>207</sup> The next year, in June 2019, former Prime Minister M. Enkhsaikhan, who served in Saikhanbileg's cabinet from 2014-2016, was also arrested over allegations of abuse of power and corruption, but was released one day later after it emerged that he was arrested without a warrant, in violation of the constitution and the criminal code.<sup>208</sup>

Shortly thereafter, one day after his return to Mongolia, former Prime Minister Saikhanbileg was summoned for questioning by the anti-corruption agency, the Independent Authority Against Corruption (“IAAC”), and that evening was informed he would be placed under arrest.<sup>209</sup> Former Prime Minister Bayar was arrested on the same day, in connection with the 2009 Oyu Tolgoi agreement.<sup>210</sup> Saikhanbileg asked to be shown the arrest warrant and was informed that it was not yet issued. On April 10, 2018 an “Investigator’s Order” was issued ordering his detention without a warrant.<sup>211</sup> The order stated that he was under investigation for granting the rights to officials from Erdenes Mongol to sign the 2015 underground expansion agreement, and

that it was necessary to detain him without an arrest warrant. The order stated that he was under investigation for “abusing his position, giving an advantage to others, and causing considerable damages to the government while serving as Prime Minister of Mongolia,” and insisted that arrest was necessary without a court warrant.<sup>212</sup>

On April 11, 2018 the Prosecutor’s Office of Ulaanbaatar issued an indictment against Saikhanbileg for the offences of abuse of Authority and Position and Establishment and Admission of an Organized Crime Group pursuant to Paragraph 2 of Article 22.1 and Paragraphs 1 and 2 of Article 20.3 of the Criminal Code of Mongolia for his actions with respect to the signing of the 2015 Oyu Tolgoi agreement.<sup>213</sup> On 12 April a Judge issued a decision that it was proper to detain Saikhanbileg and ordered his detention for 30 days.<sup>214</sup>

After the order to detain Saikhanbileg for 30 days expired, the prosecution requested that Saikhanbileg be detained for a further 30 days “given the complexity of the crime”<sup>215</sup> and because there was “plausible information available that he would recommit a crime”<sup>216</sup> – a curious justification considering that the accusations against Saikhanbileg related to his time in high office which came to an end in 2016.

As the June 2020 elections approached, Mongolian prosecutors took the unprecedented and illegal step of jailing and holding trials against candidates running in the upcoming Great Hural election – a measure only permitted if the charges involve corrupt personal financial dealings. Those jailed

who were running for office included Bayar, the former Prime Minister, S.Bayartsogt, the former Minister of Finance, former head of Erdenes Mongol B.Byambasaikhan, and D.Ganbold, all in connection with the Oyu Tolgoi project.<sup>217</sup> The judge demanded that an unreasonably high bail – beyond that proscribed by law – be posted for the candidates to be released, even as the judge ordered the three candidates remain behind bars until their delayed trial scheduled at the time for July 6, 2020<sup>218</sup> – after election day.

In July 2020, S. Bayartsogt, former Minister of Finance was sentenced to 10 years in prison in connection with the Oyu Tolgoi project, B.Byambasaikhan and D.Ganbold to 4 years in prison, and B.Ariunsan and B. Badral to 1.6 years in prison in connection with the 2015 Dubai Agreement.<sup>219</sup> Each of the sentences brought with them bans on running for public office for between two and four years.<sup>220</sup>

## **B. JUDICIAL IRREGULARITIES AND POLITICAL INTERFERENCE**

On May 8, 2018 the presiding judge of Saikhanbileg’s case rejected the prosecution’s request to prolong the detention beyond the allotted 30 days, stating that the law does not permit the authorities to extend the detention of an individual simply because the case is complicated,<sup>221</sup> and noted that according to the constitution, preventative detention should only be used as a “last resort.” The judge continued,<sup>222</sup>

What was the absolute necessity to extend the duration of the preventative measure of detention? There were no arguments provided [by the prosecutors] in that regard. The motion was filed to extend the duration of detention for 1

month. The law states, “up to 1 month”. However, the justification to extend it for the maximum period of 1 month is absent... *They [the prosecutors] proposed to extend it for 1 month without citing any specific justifications. Since there are no specific justifications, the prosecutor’s motion is negated.*<sup>223</sup>

Following the judge’s decision, both Bayar and Saikhanbileg were expected to be released from detention. Saikhanbileg’s family and attorneys waited outside the jail building for his imminent release. However, late that night, the guards informed Saikhanbileg that he would be detained for another 30 days, despite the decision by the judge presiding over the case and reports in Mongolian media at the time that both former prime ministers would be released.<sup>224</sup>

According to Bayar, who published a book about his experience, President Battulga called a meeting with the Chief Judge from the District Court - his longtime friend - and allegedly then placed a call to the General Prosecutor instructing him to draft a notice to the Chief Judge stating his disagreement with the decision by District Judge Batjargal to release Saikhanbileg and Bayar.<sup>225</sup>

Saikhanbileg’s attorneys attempted to contact District Judge Batjargal but discovered that his phone had been deactivated and he could not be located.<sup>226</sup> On May 7, 2018, the attorneys travelled to the Chief Judge’s home informing him that the continued detention of their client was unlawful. In response, the Chief Judge personally drafted an official order to the prison unit ordering his continued detention at four o’clock that morning.<sup>227</sup>

Bayar wrote that the Chief Judge for the district court could not be contacted and had allegedly travelled to a “government building.” He continued,



When I asked, “why did he come from the government building?” The attorney said, “he probably went there because he was called to...My and Saikhanbileg’s attorneys were running around trying to hear some news, and then someone from the court allegedly spilled the beans saying, “the President’s office called our chief judge.”

...

If it is true that the judge who issued the order had been called to the President’s office, I guess it is clear. It seems what I was suspecting is being realized. Things that were happening behind the curtain are now coming to the surface, it seems.<sup>228</sup>

While in detention, both former prime ministers developed health conditions requiring hospitalization. Three days before his scheduled release date, Saikhanbileg was admitted to a hospital to undergo surgery. On June 8, 2018, both Bayar and Saikhanbileg were released.<sup>229</sup>

On June 18, 2018, former Finance Minister Bayartsogt and former head of Erdenes Mongol Byambasaikhan were also released.<sup>230</sup> Ariunsan, the former head of the tax authority, was released on May 2, 2018, ahead of the other accused.<sup>231</sup> Ariunsan is reportedly very close to Altankhuyag, the former Prime Minister and chief advisor to President Battulga at the time.<sup>232</sup>

After his release from the hospital, Saikhanbileg attempted to find out what had transpired from May 8-10. A well-placed individual informed Saikhanbileg that after the District Judge ordered Saikhanbileg’s release,

the District Judge was contacted by the Chief Judge and pressured to resign. According to this account, the District Judge refused to resign and was therefore fearful of the ramifications of his decision. The District Judge was dismissed in the autumn of 2018<sup>233</sup> – a worrying pattern of Presidential interference in the judiciary which has only worsened in the years that have followed. On August 26, 2019, Saikhanbileg travelled to the USA to undergo an urgent cancer screening, having received approval from the District Court to travel abroad for health reasons.<sup>234</sup>

On May 21, 2019, prosecutors filed new charges against Saikhanbileg for abuse of power in the sale of Russia’s 49 percent stake in Erdenet mine.<sup>235</sup> The charges came after the controversial “Anti-Corruption Law” passed the month prior,<sup>236</sup> as well as after the Supreme Court ruled against the government’s forced nationalization of MCC’s 49 percent stake in Erdenet.<sup>237</sup>

Many Mongolian media outlets politicians have since attacked Saikhanbileg, with false claims that he attempted to flee justice by travelling to the United States,<sup>238</sup> false claims that he is in the process of obtaining foreign citizenship,<sup>239</sup> and claims by politicians that he personally agreed to the Oyu Tolgoi agreement and sale of Russia’s Erdenet stake without any input from his party or cabinet – despite the plethora of publicly-available documentation and legislation proving otherwise.<sup>240</sup>

In late 2019, an Interpol red notice was issued at the request of Mongolian authorities for the arrest of Saikhanbileg, however, the international police organization cancelled the notice in October 2020 after determining that Mongolia’s request was not compliant with Interpol’s rules against abuses of the non-political nature of the organization.

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# V. THE BATTULGA PRESIDENCY

## A. PRESIDENTIAL ELECTIONS

In June 2017, Presidential elections were held in Mongolia. The election was characterized by “mudslinging”<sup>241</sup> and the widespread perception by voters that the two candidates - Khaltmaa Battulga (DP) and Miyeegombyn Enkhbold (MPP) were unsuited for the job.<sup>242</sup> To voice their displeasure, of the 60 percent of Mongolians who turned out to vote, 100,000 of them – eight percent of voters<sup>243</sup> – submitted blank ballots to voice their “displeasure with the candidates the two large parties had nominated.”<sup>244</sup> Had the number of blank ballots reached ten percent, it would have invalidated the election.<sup>245</sup>

Battulga, a former Soviet martial art Sambo champion and a wealthy businessman-turned-politician<sup>246</sup> emerged victorious with just 50.6 percent of the vote.<sup>247</sup> His campaign rhetoric – the main slogan being “Mongolia Will Win” – was one of a fiercely populist candidate portraying himself “as an outsider” who was “cozying up to [Russian President Vladimir] Putin.”<sup>248</sup>

The 2017 presidential election was “widely regarded as a referendum on China’s role in the economy”<sup>249</sup> – Mongolia’s largest source of foreign direct investment, and the recipient of some 90 percent of the its exports.<sup>250</sup> Battulga campaigned with fierce nationalism, and put a heavy emphasis on anti-China rhetoric while also calling into question the ethnicity of his opponent. Battulga called his opponent an *erlitz* – a person of mixed Mongolian and Chinese ethnicity and promoted “the notion that only he could claim Mongol origin.”<sup>251</sup> Battulga’s anti-China rhetoric was not simply

a feature of his campaign, however. As a minister, the President at the time, T. Elbegdorj publicly criticized Battulga for “blatantly sinophobic statements.”<sup>252</sup>

## B. CONSOLIDATION OF POWER AND THE ANTI-CORRUPTION LAW

Upon taking power, Battulga was quick to consolidate power. Despite hailing from a different party, he has enjoyed close cooperation with the Prime Minister, Ukhnaagiin Khürelsükh (MPP), who took office shortly after Battulga, in October 2017.<sup>253</sup> Battulga also relies on the support of MPP members in the Great Hural.<sup>254</sup>

After Battulga’s victory in the election, Mongolia expert Julian Dierkes warned that Battulga’s populist rhetoric on the campaign trail raised concerns about the independence of the judiciary under his watch, writing that,

if Pres. Battulga finds himself accused of or attacked on corruption, he might lash out against those attacks by a) questioning the legitimacy of any court decisions, and b) using his control over parts of the judiciary to discredit or worse opponents. That would be a terrible direction to take...<sup>255</sup>

Unfortunately, Dierkes’ worries appear to be coming to fruition. Mongolia under President Battulga has begun to show concerning signs that its status as an “oasis of democracy”<sup>256</sup> in a difficult neighborhood is under threat. The *Washington Post* wrote last

year that “Mongolia’s recent developments are consistent with what political scientists call ‘democratic backsliding,’”<sup>257</sup> and *Foreign Policy* wrote that “Mongolia’s President is slicing away its hard-won democracy.”<sup>258</sup>

On March 25, 2019, Battulga brought “urgent” legislation to the National Security Council<sup>259</sup> – consisting of the President, the Prime Minister, and the Speaker of the Great Hural.<sup>260</sup> The Laws on the Legal Status of Judges, the Public Prosecutor’s Office and Anti-Corruption (“**The Anti-Corruption Law**”) was introduced to the National Security Council and passed by the Great Hural in a span of just two days, including an emergency amendment to the schedule of the Great Hural in order to hold the vote on the new legislation.<sup>261</sup> The speed with which this took place was highly unusual.<sup>262</sup>

All members of Battulga’s own DP in the Great Hural walked out of the vote in protest, declaring the law unconstitutional.<sup>263</sup> In total, 36 members of the 76-seat Great Hural either abstained or were not present for the vote.<sup>264</sup>

The Anti-Corruption Law effectively allows the President – through the National Security Council – to dismiss judges and prosecutors at will.<sup>265</sup> In addition, the law also removed the term protections for the Prosecutor-General and the Commissioner of the IAAC.<sup>266</sup> This has allowed the President to fill the judiciary with those willing to carry out his wishes, while resulting in a notable uptick in political prosecutions.

Journalists and other civil society activists have also come under attack during Battulga’s Presidency. The amended Law of Violations included a clause on “defamation,”<sup>267</sup> in which a journalist, media outlet, or individual could be fined between 2 and 20 million tugriks<sup>268</sup> (USD 718 and 7,181).<sup>269</sup> In order to avoid a fine, the accused must reveal confidential sources to prove that claims made

were accurate and were not instances of defamation.<sup>270</sup> By the end of 2018, there were 370 complaints of defamation, 182 of which were against journalists. Thirty percent of such defamation claims came from “high-ranking political officials.”<sup>271</sup>

In July 2019, Ts. Uyanga, a prominent activist with other 80 thousand followers on Twitter,<sup>272</sup> was fined 2 million tugriks and a request was submitted to block her Twitter account for “insulting” President Battulga.<sup>273</sup> The decision provoked widespread public anger.<sup>274</sup> Similarly, the investigative news outlet Zarig – which was awarded the “Transparency Award” in 2019 by Transparency International for its anti-corruption reporting<sup>275</sup> – has also come under investigation and faces fines for its investigative reporting on charges of “slander.”<sup>276</sup> As part of the investigation, journalists from Zarig have been forced to reveal their sources to the authorities.<sup>277</sup> A police officer was also accused of physical harassment of N.Unurtsetseg, a female Zarig journalist.<sup>278</sup> The investigations against Zarig have gained widespread attention inside Mongolia, with former President Elbegdorj heavily criticizing the investigation and writing, “[i]f Mongolia loses its status as an island of freedom, we will lose Mongolia.”<sup>279</sup>

### C. ENKHSAIKHAN’S POLITICALLY MOTIVATED SENTENCING

The crackdown on freedom of speech and investigative journalism has not only ensnared journalists and members of civil society; it has also served as yet another method to prosecute political opponents. Former Prime Minister Enkhsaikhan, who had already faced charges alongside other members of Saikhanbileg’s cabinet, would be charged again and then sentenced. In February 2020, Enkhsaikhan was charged on the

dubious grounds of “terrorism” and endangering national security.<sup>280</sup>

The former Prime Minister was detained on April 23, 2020 until his trial due to his use of social media, on the grounds that he was attempting to influence the court.<sup>281</sup> The court’s decision sparked a strong public backlash, with the hashtag “#freeenkhsaikhan” trending in Mongolia on Twitter.<sup>282</sup> Speaking of Enkhsaikhan’s detention, former Minister of Justice Kh. Temuujin remarked, “Arrest and imprisonment for exercising their fundamental right to self-defense, speech, and publication, and the threat of the judiciary, mean the resurgence of unconstitutional courts and the rule of law, and the imprisonment of the Constitution of Mongolia.”<sup>283</sup> D.Khayankhyarvaa, an outspoken MPP member of the Great Hural was more direct, declaring, “We are fast moving towards dictatorship.”<sup>284</sup>

On April 23, 2020, Enkhsaikhan was detained, and faced trial on May 5, 2020.<sup>285</sup> Enkhsaikhan was sentenced to four years and six months of prison. Of the constantly changing and expanding charges, Enkhsaikhan’s sentencing rested on his alleged purchase of a vehicle at 50 million MNT (USD 17,850) higher than its actual cost, an evaluation which was not carried out until six years after the purchase of the vehicle.<sup>286</sup> The economist and prominent media commentator Jargalsaikhan D. wrote in his weekly *The DeFacto Gazette* that the cases “seem to indicate that the court was attempting to find any wrongdoing on the part of Mr. Enkhsaikhan.”<sup>287</sup> Jargalsaikhan’s analysis of the case is worth quoting at length:

I think this case will be studied for a long time and the decision came at a time when not many people were expecting it following a change in the composition of judicial leadership by the President.

As in a multitude of cases many Mongolians and civic society believe that the judicial system was not independent of politics in this instance... *In the eyes of the civic society, this is a disturbing precedent as it seems that if the justice system is seeking a conviction, they will find any excuse to deliver one.* It is a clear indication that the judicial system is not independent and without an independent judicial system, democracy and free market cannot thrive.<sup>288</sup>

#### **D. PRESIDENTIAL INTERFERENCE AND REMOVAL OF JUDGES**

Months before the passage of the Anti-Corruption Law, Battulga had publicly requested that the Prosecutor-General investigate his predecessor and main political rival<sup>289</sup> Elbegdorj regarding the giant coal mine Tavan Tolgoi.<sup>290</sup> The Prosecutor-General, in response to Battulga’s calls to investigate former President Elbegdorj, emphasized the importance of the independence of the prosecutor<sup>291</sup> and ultimately declined to open an investigation.<sup>292</sup> In response, Battulga accused the prosecutor of being controlled by a secretive oligopoly<sup>293</sup> known as “MANAN.”<sup>294</sup> In March 2020, the IAAC requested that Interpol issue a blue notice seeking information about Elbegdorj’s whereabouts,<sup>295</sup> and government officials have continued to publicly attack him.<sup>296</sup> In April 2020, Elbegdorj returned to Mongolia,<sup>297</sup> and in October the IAAC’s investigators determined that Elbegdorj “caused damage” and referred his case to the prosecutor’s office to bring it to court.<sup>298</sup> The referral to prosecutors comes as the country gears up for presidential elections in 2021, where Elbegdorj has stated his intention to challenge Battulga for the presidency.<sup>299</sup>

One day after the passage of the Law on Anti-Corruption, the Prosecutor-General – along with the Chief Justice of the Supreme Court – were dismissed from their positions.<sup>300</sup> Both the head and deputy head of the IAAC were also dismissed less than a month after the law’s passage,<sup>301</sup> and in June 2019, 17 judges – some of whom sat on the Supreme Court – were dismissed.<sup>302</sup> The sacking of judges came just one month after a UN Special Rapporteur urged Mongolia to maintain the independence of its judiciary and the autonomy of the prosecutor’s office.<sup>303</sup>

The unusual turnover of judges under President Battulga has continued unabated. Kh. Batsuren, the Chief Justice who was appointed in May 2019<sup>304</sup> after the previous Justice was summarily dismissed from his position, resigned just one year into his six-year term, on May 20, 2020.<sup>305</sup> In September 2020, B. Enkhbayar, an MPP member of parliament, criticized Battulga publicly over the still unexplained dismissals of thirteen judges, suggesting that the only reason may have been because the President did not like them.<sup>306</sup>

Unsurprisingly, given the severe erosion under President Battulga, the 2019 Global Competitiveness Report rated Mongolia 120<sup>th</sup> of 141 countries in judicial independence, a steep decline from the year prior.<sup>307</sup> O. Munkhsaikhan, a professor of law at the National University of Mongolia said in October 2020 that the President has unconstitutionally centralized power in himself, threatening the integrity of the country’s institutions:

[T]he President nominates the head of the IAAC, which is responsible for investigating corruption, and appoints the Attorney General, who oversees the legality of the investigation process. In addition, the President is very influential in appointing and holding accountable judges and chief justices who resolve disputes. In this situation, there is a real risk

that the institution of the President will unduly influence certain cases and disputes, as the public suspects. Such centralization of power runs the risk of being called a tunnel of justice and violates the constitution.<sup>308</sup>

## **E. INTERNATIONAL AND DOMESTIC CONDEMNATION**

President Battulga had been attempting to remove the head of the IAAC since April of the previous year, blaming the IAAC’s director for Mongolia’s poor performance on Transparency International’s Corruption Perception Index (CPI).<sup>309</sup> Ironically for Battulga, his 2019 Law on Anti-Corruption Law triggered a strong rebuke from Transparency,<sup>310</sup> and Mongolia’s score declined in 2019,<sup>311</sup> ranking it 106<sup>th</sup> of 180 countries assessed.<sup>312</sup>

Immediately after its passage, the Anti-Corruption Law triggered alarm in Mongolia and internationally. Michael Forst, the UN Special Rapporteur on the situation of human rights defenders said in reference to the law that,

This profound change to the legal framework would deeply undermine the separation of powers, would dangerously reduce the independence of the judiciary, erodes the concept of checks and balances, and limits the capacity of the judiciary to combat corruption and impunity. As reported by defenders, this reform instills fear and sends a clear deterrent message towards people speaking out against corruption or discrimination or calling for justice, while contributing to shrinking the space for defenders.<sup>313</sup>

The *UB Post* wrote of the Anti-Corruption Law and its aftermath that “Mongolia started



digging the grave of its democracy and judiciary,” and the law received harsh criticism from the legal community in Mongolia.<sup>314</sup> Some in the country compared it to a soft coup “slowly chip[ping] away the constitution and judicial system to create an authoritarian regime.”<sup>315</sup> The Organization for Economic Cooperation and Development (OECD) wrote that the law and the dismissal of officials constituted “alarming developments, which reinforce the concerns raised in the report with regard to the independence of these institutions.”<sup>316</sup> Both Transparency International<sup>317</sup> and Amnesty International<sup>318</sup> also condemned the law and its effects.

In the year since the Anti-Corruption law was passed, former DP politicians have come under particular attack by the prosecutor and judiciary. In April 2020, the Democratic Party issued a press release condemning the politically motivated prosecutions in the run-up to the June 2020 parliamentary elections. The statement noted,

in the run-up to the parliamentary elections, the ruling MPP deliberately opened a case against former Democratic Party appointees in order to distract the public and tarnish the image of the Democratic Party...Instead of competing fairly in politics, the ruling MPP, which is greedy for positions and power, uses law enforcement agencies and their officials as a tool of repression in its illegal actions that violate human rights, freedoms, legitimate interests, and inviolability.<sup>319</sup>

## F. CORRUPTION INVESTIGATIONS

In addition to Battulga’s pursuit of investigations of his political opponents, The Law on Anti-Corruption was passed at a time when more than two dozen members of the Great Hural were under investigation by the Prosecutor-General for egregious corruption.<sup>320</sup> In

2009, the Mongolian government expanded the Small and Medium Enterprises Development Fund (“**SME Fund**”), offering low-interest loans of 3 percent – compared to bank rates which are typically between 15 and 30 percent.<sup>321</sup> The SME Fund reportedly issued total loans of nearly 700 billion tugrik – several hundred million USD – with the intention of helping struggling small and medium enterprises in the country.<sup>322</sup>

Investigative journalists in Mongolia uncovered lists of loan recipients and found that many sitting members of the Great Hural had received these preferential loans and doled them out to family members and their cronies, or simply placed these loans into high interest accounts for their own benefit.<sup>323</sup> The Prosecutor-General who was dismissed by Battulga the day after the Law on Anti-Corruption took effect<sup>324</sup> was the official in charge of these investigations.<sup>325</sup> In January 2019, prior to the Prosecutor-General’s sacking, he had called for the stripping of immunity of implicated MPs,<sup>326</sup> while questions have been raised regarding the involvement of both the Prime Minister<sup>327</sup> and the family of President Battulga himself.<sup>328</sup>

The SME Scandal may have provided Battulga the necessary support he needed in the Great Hural to push through the Anti-Corruption Law at such rapid speed - *Foreign Policy* wrote of Prime Minister that Khurelsukh,

Despite belonging to the opposite party, he [Khurelsukh] is all too keen to back Battulga, believing that the president’s power over judges will save him and his party members from prosecution over the Small and Medium Enterprise scandal.<sup>329</sup>

Indeed, M. Batsuuri, the Head of the Administrative Chamber of the Supreme Court who

came under attack by MPP politicians after ruling against the government in the Erdenet saga, noted last year that “[i]t is also interesting to note that the members who are making statements [about me] are not speaking out at all on issues related to SME loans.”<sup>330</sup>

Despite President Battulga’s claims that the Anti-Corruption Law is about rooting out corruption at all levels, Transparency International found that only 24 percent of corruption cases in Mongolia were prosecuted last year, while 76 percent of cases were dropped by prosecutors.<sup>331</sup>

Prior to taking office, President Battulga himself was the subject of a corruption inquiry which took place during former President Elbjegdorj’s term and found himself dogged by corruption allegations from various business deals.<sup>332</sup> Battulga served as Minister of Industry and Agriculture from 2012-2014, where he presided over the construction of a mega industrial park and a railroad to connect it to the mines.<sup>333</sup> Mongolian media has long

alleged that some USD 280 million has “disappeared,” and the IAAC launched a corruption inquiry into Battulga and arrested several of his associates.<sup>334</sup> In 2016, a travel ban was imposed on Battulga as the investigation was ongoing.<sup>335</sup>

Battulga “has never responded in a substantive way to these allegations,”<sup>336</sup> and some observers have noted that Battulga’s election to the Presidency - and the immunity that it confers - may have “saved him from prosecution.”<sup>337</sup> Multiple media outlets in Mongolia have noted that since Battulga ascended to the Presidency, the case was “suddenly dropped,”<sup>338</sup> In the end, two Korean citizens who were involved in the scandal were fined 40 million tugriks (USD14,366<sup>339</sup>) each, while Battulga and two other officials, A.Gansukh and D.Tsogtbaatar, were acquitted.<sup>340</sup> Gansukh currently serves under President Battulga as the Secretary of the National Security Council.<sup>341</sup>

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## VI. CONCLUSION

Much has changed since former U.S. Secretary of State John Kerry lauded Mongolia being a democracy in a difficult neighborhood. The 2019 Anti-Corruption Law and the subsequent instrumentalization of the judiciary and the prosecutor has brought unwanted negative attention to Mongolia and raised fears of democratic backsliding in the country. Amid these tectonic domestic changes, former politicians, judges, and other officials have come under politically motivated attack, while the checks and balances that previously were in place to prevent such a gross abuse of power from taking place are being peeled away.

Former Prime Ministers Chimed Saikhanbileg and Sanjaagiin Bayar have faced prosecution due to their decisions to sign the 2009 and 2015 Oyu Tolgoi investment agreements – both of which gained the approval of the Great Hural and were carried out according to law. Cabinet ministers from both 2009 and 2015 have also faced baseless investigations in connection with decisions taken regarding Oyu Tolgoi. These investigations center around inherently political questions, such as the extent to which foreign investment and ownership should be welcomed in Mongolia, and the role of the state in the mining sector. Such questions belong in campaign manifestos and should be debated in the chamber of the Great Hural; they do not belong on the desk of prosecutors nor in a court of law, and especially not in a court and prosecutorial system which have been tainted by Presidential interference.

Similarly, the 2016 sale of Russia's 49 percent stake in the Erdenet mine has seen

widespread disinformation and political posturing in response. In June 2016, the Russian government – through Rostec – formally informed the Mongolian side of its intention to sell its stake to a private Mongolian corporation. Per international agreements, the Mongolian government enjoyed a right of first refusal, but did not enjoy the right to demand from its Russian counterpart that its stake be sold to the Mongolian government. Instead, Prime Minister Saikhanbileg faced a political choice: permit Russia to sell its 49 percent stake in Erdenet to a private Mongolian company, or exercise the government's right of first refusal and prevent this sale from taking place, thus maintaining the status quo in which a foreign government retained its stake in one of Mongolia's prized mining assets. Prime Minister Saikhanbileg – after extensive consultation with his cabinet – chose the former option. Furthermore, after a request to reconvene both the Great Hural and its Standing Committee were rejected by the Speaker due to a lack of quorum of MPs, every effort was made to inform the Great Hural of the decision which was taken and allow it to weigh in.

It was within the power of the newly elected Great Hural in 2016 to change course regarding the 49 percent stake of Erdenet sold to MCC, if carried out in a lawful manner. However, similar to Oyu Tolgoi, the use of prosecutors and the courts to jail former officials for the inherently political decision to allow Russia to sell its stake in Erdenet to a private Mongolian corporation is contrary to democratic principles and a dangerous overreach of power.

Furthermore, while the current government has pursued politically motivated investigations into their political rivals, egregious misconduct and investigations connected to it are being quietly pushed under the rug. The corruption investigation against President Battulga in which a staggering USD 280 million allegedly “disappeared,” and the “SME scandal” which has embroiled many sitting members of the Great Hural have taken a

backseat to investigations into former officials, prosecutors, and even Supreme Court judges which serve a political purpose.

For the sake of those who have faced political persecution and for the country’s democratic future, it is essential that Mongolia – and the world – take notice and work towards bringing Mongolia back on a more sustainable democratic path secured by the rule of law.