



# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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## Committee against Torture Fifty-eighth session

### Summary record of the 1445th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 3 August 2016, at 3 p.m.

*Chair:* Mr. Modvig

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*The meeting was called to order at 3 p.m.*

**Consideration of reports submitted by States parties under article 19 of the Convention** (*continued*)

*Second periodic report of Mongolia* (continued) (CAT/C/MNG/2; CAT/C/MNG/Q/2 and Add.1 and 2)

1. *At the invitation of the Chair, the delegation of Mongolia took places at the Committee table.*
2. **Mr. Erdenebat** (Mongolia) said that, pursuant to the provisions of the Code of Criminal Procedure, a person who had been arrested was protected by various safeguards from the moment of his or her arrest. The arrested person's lawyer was informed of the arrest immediately and members of his or her family were informed within 48 hours. If an arrested person was unable to afford the services of a lawyer, one would be provided free of charge. Although law enforcement officials were required to obtain a warrant before an arrest could be made, it was possible, in certain exceptional circumstances, for an arrest to be made without the necessary warrant. In such cases, however, officials were required to obtain the warrant retrospectively, within 24 hours after the arrest, and, if the judge tasked with issuing the warrant deemed the arrest to have been unlawful, the arrested person was immediately released. In 2014, 4,708 arrest warrants had been issued; in 2015, 4,787; and in the first half of 2016, 2,711. In 2014, 1,385 arrest warrants had been issued retrospectively; in 2015, 1,421; and in the first half of 2016, 924.
3. Currently, 1,210 persons were in detention. Upon arrest by a police officer, a person was escorted to a detention centre. Detention centres, which were managed independently of the police, were responsible for conducting any required examinations, including medical examinations in the presence of a qualified physician. The Office of the Prosecutor General was informed of any injuries discovered in the course of a medical examination. The staff of detention centres received regular training on the documentation and investigation of torture. Upon arrest by a police officer, a person was informed of his or her rights, including the right to file a complaint via an independent body.
4. Convicted persons who had been sentenced to the death penalty, but whose sentences had subsequently been commuted, were held in a separate detention centre. The previous system, under which there had been four detention regimes, had been simplified, leaving a system of only two detention regimes, as a consequence of which the isolation regime had been abolished. Prisoners were held in single-person cells only if they so chose.
5. The procedures governing the prosecution of minors had recently been revised. Minors who had been convicted of an offence received a sanction appropriate for their age and physical maturity and those sanctioned to a period of deprivation of liberty received a sentence that was half the length of the sentence that an adult would receive for the same offence. Minors were detained separately from adults in special educational centres. The construction of the educational centre in Bayanzurkh district would be completed in March 2017. Currently, only six minors were serving prison sentences. Over the previous eight years, the number of minors serving prison sentences had never been greater than 40. Each year, approximately 500 minors became the subjects of criminal investigations, but they were not always detained during the investigation. Selected judges were trained to specialize in cases involving minors, since it was not economically viable to establish an entirely separate legal system, including separate courts, for the small number of such cases.
6. The Criminal Code had recently been amended to make it possible for either a man or a woman to be considered the victim of rape and to strengthen the provisions for domestic violence, sexual exploitation and sexual harassment. Whereas administrative sanctions had been imposed on the perpetrators of some forms of domestic violence, all

forms of domestic violence were now covered by the Criminal Code. Since November 2011, the police had run special rehabilitation programmes for the perpetrators of domestic violence, and some 2,000 individuals had participated. Shelters for victims of domestic violence had been established in Ulaanbaatar, the capital city, and in some rural areas. Of the 14 shelters that were currently operational, 4 were supported financially by the police and 10 by civil society organizations. The University of Law Enforcement organized modules on domestic violence.

7. A law on trafficking in persons had been adopted in 2012 and provided for appropriate sanctions for convicted perpetrators. In 2014, there had been 15 cases of trafficking in persons, which had resulted in 16 convictions. The prevention of trafficking in persons was covered in training programmes for law enforcement officials and even in school curricula. In 2014, a nine-year national programme on the prevention of trafficking in persons and child labour had been renewed on its completion. The Government had signed memorandums of understanding with the People's Republic of China in 2010 and Macao, China, in 2011 to combat trafficking in persons. Training courses on the prevention of trafficking in persons, human rights and torture were run for law enforcement officials.

8. On 1 September 2016, a new set of regulations governing the conduct of all law enforcement officials, including their use of equipment such as firearms, handcuffs and truncheons, would come into force. Newly constructed police stations and detention centres would have interrogation rooms equipped with audio and video recording devices, and it would be forbidden for recordings to be edited or destroyed. Every police station would have between two and six such rooms. Currently, 1 newly constructed detention centre and 14 police stations had rooms that were appropriately equipped.

9. To combat the forced labour of children, the definition of forced labour contained in article 13 of the Criminal Code had been expanded. The corporal punishment of children was considered a criminal offence under the new Criminal Code, and the employment of children under 15 years of age had been prohibited. The list of jobs that children were not allowed to hold had been revised in early 2016. Efforts were being made to phase in a ban on using child jockeys for horse racing, which was an age-old Mongolian tradition. A number of recent enactments had strengthened the protection of children's rights, and NGOs working with and for children had received support from the Government.

10. According to the Mongolian Constitution, the role of the Prosecutor General's Office was to supervise the registration of cases, investigation and the enforcement of penalties and to participate in court proceedings on behalf of the State. It was also responsible for ensuring respect for human rights in places of detention, a role it would continue to play even after the planned entry into force in September 2016 of an amendment to the new Act on the Office of the Prosecutor General. In 2015 alone, the Office had made hundreds of special visits to places of detention charging more than 200 prison officers and restoring the rights of numerous detainees.

11. As a result of the dissolution of the Investigative Unit of the Prosecutor General's Office, crimes allegedly committed by members of the police force were investigated by a special unit of the police themselves. In response to the international community's pressing recommendations to address that situation, the Code of Criminal Procedure had been amended to ensure that crimes allegedly committed by members of the General Intelligence Agency, police forces or the Independent Authority against Corruption (IAAC) were no longer investigated by personnel from the same law enforcement agency as the alleged perpetrators. If, for instance, a police officer was accused of torture, the investigation would be carried out by personnel from the Intelligence Agency or the IAAC. The amendments to the Code of Criminal Procedure would also ensure that the investigation of cases of alleged torture was not simply dropped, as had happened on a number of occasions after the closure of the Investigative Unit in 2014.

12. The National Human Rights Commission was an independent institution in full compliance with the Paris Principles. The three members of the Commission, which was assisted by a technical secretariat, were appointed in transparent fashion by the Mongolian parliament, and it had an advisory board whose members included representatives of civil society. The Commission's budget was determined by parliament. The budget, like those of all publicly funded institutions, had been cut as a result of the economic and financial crisis in the country. A bill that included provisions for raising the number of commissioners from three to five and broadening the Commission's mandate — to include advising parliament on human rights issues — was currently before parliament.

13. Although the Commission was not currently conducting any investigations, it could ask law enforcement agencies to investigate the allegations contained in the complaints it received. If complaints alleging torture were substantiated, it could bring a court case on behalf of the alleged victim. The Commission organized activities to prevent torture in cooperation with the police, anti-corruption officers and officials from the General Authority for Implementing Court Decisions.

14. In recent years, the country's prisons had cooperated actively with civil society organizations. Caritas Czech Republic, for instance, had supported the promotion of human rights in Mongolian prisons, and other civil society organizations had helped rehabilitate released convicts. Since 2010, more than 1,500 prisoners a year had participated in a rehabilitation programme developed by the General Authority for Implementing Court Decisions. Released prisoners were given the support they needed, including financial assistance for business ventures, to reintegrate into the community.

15. The authorities did not believe that the absence of formal complaints of discrimination on grounds of sexual orientation necessarily meant that there was no such discrimination in Mongolia. Indeed, in some cases public officials, in their official capacity, had expressed prejudice against lesbian, gay, bisexual and transgender (LGBT) persons, thereby violating their rights. To put an end to such violations, discrimination on grounds of sexual orientation and gender identity had been made a criminal offence, punishable under the law.

16. New legislation had clarified earlier provisions, which had been considered ambiguous, regarding evidence obtained by means of torture. Court rulings made on the basis of evidence obtained as a result of torture could be overturned on appeal to a court of appeal. Any evidence obtained by such means was inadmissible in court.

17. Under the Code of Criminal Procedure, victims of torture were entitled to compensation, which was to be provided by the State. Compensation was made for both bodily injury and emotional distress. The law also required the release of a public statement about the wrongful conviction of victims of torture. The Code had been amended to ensure that no statement which was established to have been made as a result of torture should be invoked as evidence in any proceedings, in accordance with the recommendation of the Committee in its concluding observations (CAT/C/MNG/CO/1, para. 18). The amendments to the Code had also introduced more rigorous standards of proof in criminal proceedings. Statements obtained during interrogation without other evidence to support them did not constitute sufficient proof.

18. **The Chair** (Country Rapporteur) said he wished to commend the State party on a number of important amendments to the national legislation, including the Criminal Code and Code of Criminal Procedure. Noting the recent change of government in Mongolia, he had heard that the new Government intended to repeal some earlier enactments. Did the delegation have any information on government support for changes to the law or any pending changes?

19. Several questions that he had raised at the previous meeting remained unanswered. He would like to know whether, under the relevant provisions of the law concerning torture, superiors were criminally responsible for crimes of torture committed by their subordinates if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes. He asked whether the term “torture” covered wrongful acts based on discrimination. The delegation should inform the Committee whether any statute of limitations applied to the crime of torture. He had also asked whether the State party considered that an administrative fine was a fitting punishment for the crime of torture.

20. The delegation should provide assurances that every person placed in detention had the right to the assistance of counsel immediately following arrest, including people who could not afford a lawyer. Information was needed on the right of persons deprived of liberty to a medical examination and to inform members of their family of their whereabouts. It would be helpful to know whether the 47 State lawyers referred to at the previous meeting were sufficient to provide legal assistance to everyone who could not afford it. He wished to know whether the current legislation included guidelines for law enforcement officials on the basic rights of persons in detention and the obligation to inform them of their rights.

21. He was grateful for the extensive information on trafficking in persons provided by the delegation. More information was needed, however, about the investigation of crimes involving violence against women and sexual violence, and the number of complaints received, prosecutions initiated and punishments imposed for such crimes.

22. He would welcome further details about the visits to prisons carried out in 2015 by the Office of the Prosecutor General, in particular concerning the 640 violations found. Had any recommendations on the need for enhanced monitoring of prisons been put forward as a result of the visits? What had been the specific impact of the findings?

23. He emphasized the need for an independent body to investigate complaints of torture by the police and would be interested to hear more about the funding available for processing cases involving allegations of abuse on the part of members of the law enforcement agencies. He remained concerned about the lack of adequate checks and balances with respect to the police and the lack of accountability. The delegation had mentioned that the provisions concerning evidence obtained as a result of torture had been amended in accordance with the Committee’s recommendations and article 15 of the Convention. He would welcome specific examples of cases involving such evidence that had been dismissed by the courts.

24. It would be helpful to have an account of the way in which the Independent Authority against Corruption operated and of the root causes of corruption in the country. He wondered whether the police were adequately paid and whether their pay corresponded to an average wage. The delegation should indicate whether the principle of non-refoulement applied to cases in which there were substantial grounds for believing that the person facing deportation would be in danger of being subjected to torture.

25. **Ms. Racu** (Country Rapporteur) said that she would be interested to hear more about the training on the prevention of torture provided to judges, lawyers and medical personnel. While she commended the amendments to the Code of Criminal Procedure aimed at reducing the period of pretrial detention, she remained concerned that there continued to be a number of cases in which persons in pretrial detention were kept in custody well beyond the prescribed period and that the time spent in such detention was not considered when sentences were passed. She was also concerned about prison overcrowding and would appreciate an update of the steps taken to reduce it and to improve conditions of detention, including medical care.

26. Further information on available alternatives to detention and specific examples of non-custodial penalties would be welcome. It would be useful to learn about the 44 prisoners who were on death row, as such prisoners were particularly vulnerable to abuse. Had any complaints been received from those prisoners and, if so, what had been the nature of the complaints? She would like to hear more about the efforts made by the State party to provide for the social rehabilitation of prisoners, including recreational, educational and vocational programmes. Further information on any programmes to reduce violence in prisons, including institutions for women and young offenders, would be useful. Details on the new special education centre for young offenders in the Bayanzurkh district of Ulaanbaatar would be welcome. She asked what concrete measures were being taken to abolish all forms of corporal punishment in all settings.

27. Additional information on measures to protect LGBT persons, who were especially vulnerable to police abuse, would be helpful. What steps were being taken to stop discrimination on the basis of sexual orientation by law enforcement officials and to ensure that all attacks on LGBT persons were investigated and the offenders brought to justice?

28. She wished to hear more about the access of NGOs to places of detention and psychiatric institutions. She would be grateful if the delegation could provide the Committee with data on the number of visits made by local and international NGOs to such places in recent years.

29. **Ms. Belmir** said that she would appreciate an update on the status of the Unit for the investigation of crimes committed by special persons mentioned in the replies to the list of issues (CAT/C/MNG/Q/2/Add.2, para. 13 (a)), as there had been reports that it had been dismantled. She invited the delegation to comment on the investigation into the events of 2008 which had resulted in the declaration of a state of emergency. No convictions had been obtained, and she had received information that persons other than those who had been prosecuted had been behind the events. She would also be grateful if the delegation would respond to allegations that law enforcement officials had been involved in trafficking in minors and had gone unpunished.

30. **Mr. Hani** said that it was not clear whether non-refoulement was covered under the agreements on extradition listed in the annex to the report of the State party. He invited the delegation to comment on reports that there continued to be persons who were deprived of liberty in the absence of warrants for their arrest. He would welcome further information on the steps being taken to provide members of security forces with training on different aspects of the Convention. Further details of the video and audio monitoring and recording devices used for interrogations, which were an important preventive measure, would be appreciated. It was not clear how many such devices had been installed. He had still not received an answer to his question as to how the National Human Rights Commission would undertake the task of responding to complaints received from persons in places of detention while at the same time playing a preventive role.

31. **Ms. Gaer** said that, according to the report issued by the National Human Rights Commission of Mongolia, the bill adopted by parliament on 5 July 2013 would enable the Commission to oversee the activities of police forces and their personnel with regard to the implementation of human rights. Seeking clarification of what the word “oversee” meant in that context, she asked whether the Commission could now investigate action taken by the police; whether it could order the police to be investigated; whether it had the authority to review the promotions of police officers or call for police officers to be retired; and whether its representatives could be on the scene to observe police operations.

32. **The Chair** said that, while he appreciated the statistics that had been provided on pretrial detainees, he would like to have those statistics in writing. He was particularly

interested to know how many suspects were detained; how many detentions were supported by a court order; and the amount of time that suspects spent in detention.

*The meeting was suspended at 5.10 p.m. and resumed at 5.25 p.m.*

33. **Mr. Erdenebat** (Mongolia) said that the new Code of Criminal Procedure had been adopted by parliament and that, although there was no question of its being changed, it was not certain whether it would be possible to implement it within the proposed time frame.

34. As the Committee had stated, the definition of torture in Mongolian law did not include any reference to torture based on discrimination. Any act of torture resulting in any kind of harm was considered to be an offence. The legal system emphasized the investigation and prosecution of torture and employed a broad definition of that crime.

35. Both the new and old Codes of Criminal Procedure guaranteed the right of all persons to receive legal assistance, regardless of their means. State lawyers represented insolvent suspects and the figure cited by the Committee referred only to such cases and not to the total number of persons who had received legal assistance. Suspects who had been detained also had the right to know which crime they were suspected of committing. Under the new Code of Criminal Procedure, investigators were required to inform suspects of their rights. Persons who were arrested were taken to the General Authority for Implementing Court Decisions, which organized medical examinations and operated independently of the police. Any signs of injury or torture detected by the physician during the examination were reported to his or her superiors. Also, any decision to make an arrest was carried out under the supervision of the prosecutor.

36. The Committee was concerned that many people were arrested without a court order. However, the figure in question referred only to those arrests that had to be carried out without delay. In such cases, prosecutors still had to be informed of the arrest and a court order had to be obtained in order for the detention to be maintained. Therefore, arrests without delay could not be seen as arbitrary.

37. When legislation was adopted, the required budgetary resources were always allocated to ensure that it could be implemented. The Government was seeking to increase the number of State lawyers working at legal aid centres.

38. Although Mongolia had not received any extradition requests that might entail a risk of torture in the destination country, article 42 of the Code of Criminal Procedure stated that requests to extradite persons who were at risk of being tortured should be denied.

39. In order to enhance understanding of domestic violence, training had been given to police officers and social workers, and the former had been issued with a special evaluation report to complete when responding to a complaint of domestic violence. Victims of domestic violence and their children could be housed in shelters for between 1 and 30 days and special call centres had been set up to respond to the complaints of such victims.

40. Under the new legislation, police officers and intelligence officers, inter alia, were able to investigate complaints of torture and abuse of authority without any conflict of interest. Crimes committed by police officers could be investigated by officers belonging to other agencies and complaints could be made to the Independent Authority against Corruption, the General Intelligence Agency and the Prosecutor General's Office, which would designate an investigating authority. Also, the Prosecutor General's Office had a mandate to investigate crimes allegedly committed by the police in detention centres and could investigate whether torture had taken place and whether regulations were being enforced.

41. Certain violations had been recorded which should not be considered as acts of torture. For example, it was considered to be a violation when deliveries of supplies to

prisons were delayed. Prison officials were sanctioned for such violations and the Committee should not conclude that all such sanctions related to acts of torture.

42. In response to a question asked by Ms. Racu, he said that 21 civil society organizations had been working with the prison authorities in various capacities. In the course of their work, the organizations could access prisons and make contact with prisoners.

43. With regard to the question asked by Ms. Belmir, the delegation apologized for the conflicting statistical data, which resulted from the conflicting definitions of torture used in the criminal justice system. Complaints received by the National Human Rights Commission and other bodies of cases that could be categorized as torture had been statistically classified as such. However, differences existed between figures because government statistics were based on actual convictions for the crime of torture. In many other cases, police officers had been convicted of inflicting physical injuries. Under the new Criminal Code, the definition of torture was consistent with that of the Convention. Therefore, better statistical information would be available in the future.

44. As to the question asked by Ms. Gaer, the Act in question stated that the National Human Rights Commission could request testimony from suspects and alleged perpetrators. Furthermore, the Act, contained regulations that allowed contact to be made with victims independently of any other personnel. Although the Commission did not currently conduct investigations, other organizations were able to do so. With regard to the establishment of liability, recommendations were made and demands issued for appropriate measures to be taken.

45. Concerning the question asked by Mr. Hani, complaints of violations of human rights could be made to the police, the Prosecutor General's Office, parliament and international organizations.

*The meeting rose at 6 p.m.*