



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

Distr.: General
21 January 2013

Original: English

Committee against Torture

List of issues prior to the submission of the second periodic report of Mongolia,* adopted by the Committee at its forty-ninth session (29 October–23 November 2012)

Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations

Articles 1 and 4

1. With reference to the Committee's previous concluding observations¹ (para. 7), please indicate whether the State party has adopted in its national penal legislation a definition of torture that covers all the elements contained in article 1 of the Convention. Also, please specify whether torture is a separate offence in national legislation punishable by penalties commensurate with its gravity, in line with article 4 of the Convention.

Article 2²

2. In the light of the Committee's previous concluding observations (paras. 8 and 10), please indicate whether the State party has taken effective measures to ensure that all detainees are afforded all fundamental legal safeguards from the very moment of their detention, in keeping with international standards, including the right to be informed of the reasons for their arrest; to have access to an independent medical examination, preferably

* The present list of issues was adopted according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

¹ Paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee, published under symbol CAT/C/MNG/CO/1.

² The issues raised under article 2 could imply also different articles of the Convention, including but not limited to article 16. As stated in paragraph 3 of general comment No. 2 (2007) on the implementation of article 2 by States parties: "The obligation to prevent torture in article 2 is wide ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter 'ill-treatment') under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. ... In practice, the definitional threshold between ill-treatment and torture is often not clear." See further chapter V of the same general comment.

by a doctor of their own choice; to notify a relative; to have prompt access to a lawyer and, when necessary, to legal aid; to be brought promptly before a judge; and to have the lawfulness of their detention reviewed by a court. Please provide information on access to legal aid services and on the allocation of budgetary and human resources to legal aid centres, in particular in rural areas.³

3. With reference to the Committee's previous concluding observations (paras. 9 and 10), please provide updated information on specific measures taken to end impunity and ensure that torture and ill-treatment by public officials, including the excessive and unnecessary use of force by police, are investigated and prosecuted and that those found guilty are punished with penalties appropriate to the gravity of the offence. Please provide information on whether the State party has introduced legislation in line with article 2, paragraph 3, of the Convention, which clearly stipulates that a superior order may not be invoked as a justification for torture. Also, please provide information on the resolution on the adoption of the general plan of measures to implement recommendations of the United Nations Human Rights Council in 2011-2014 (resolution 159) adopted on 18 May 2011. Please indicate whether amendments have been made to articles 100 and 251, and in particular to article 44.1, of the Criminal Code.⁴

4. In the light of the Committee's previous concluding observations (para. 12), please provide updated information on the National Human Rights Commission, especially:

(a) Measures taken to strengthen the independence and capacity of the Commission, including human, financial and material resources, in order to enable it to properly discharge its obligations under the Convention;

(b) Measures taken to ensure that the appointment process of its governing body is transparent and involves comprehensive and open consultations that include civil society, in keeping with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles);

(c) Whether the Commission has the mandate and capacity to systematically visit all places of detention, including on an unannounced basis, and is able to address allegations of torture and ensure measures of redress and rehabilitation in appropriate cases;

(d) Whether the members of the Commission receive training on the absolute prohibition of torture alongside law enforcement personnel and staff of the criminal justice system;

(e) Whether members of the Commission are involved in conducting awareness-raising campaigns on human rights issues for the general public.

5. With reference to the statement by the President at the sixty-seventh session of the General Assembly on 27 September 2012 indicating that the State party is "seeking to permanently abolish the death penalty in Mongolia by legislative action very soon", please provide updated information on the status of accession by the State party to the Second Optional Protocol to the International Covenant on Civil and Political Rights and on the de jure abolition of the death penalty⁵ following the passing, by the Great Khural, of the bill to ratify the Second Optional Protocol, which should have entered into force on 13 June 2012.

6. In the light of the Committee's previous concluding observations (para. 19), please provide information about the 44 prisoners who were on death row at the time of the consideration of the State party's initial report, including on their conditions of detention,

³ CCPR/C/MNG/CO/5, para. 22.

⁴ Ibid., para. 13.

⁵ See A/HRC/16/5.

and on whether their sentences have been commuted. Please indicate if information about prisoners on death row remains subject to the Law on State Secrets and the Law on the List of State Secrets and if steps have been taken to declassify it, and whether family members can receive information about death row prisoners.⁶ Also, please indicate whether death sentences continue to be passed despite the moratorium, and the number of persons currently on death row.

7. Please provide updated information concerning the arrest and detention of N. Enkhbayar, the former President of Mongolia, on 13 April 2012 and whether he was afforded all the fundamental legal safeguards, including his right to physical integrity, from the moment of his detention.

8. With reference to the Committee's previous concluding observations (para. 24), please provide updated information regarding the harmonization of legislation and improvement of the legal framework for juvenile justice in line with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules). Also, please provide updated information on any measures taken to establish specialized juvenile courts, to separate children from adults in all circumstances and to resort to pretrial detention only in cases prescribed by law.

9. In the light of the Committee's previous concluding observations (para. 8), please provide updated information on the percentage of cases of pretrial detention without court orders.

10. With reference to the Committee's previous concluding observations (para. 20), please provide updated information on measures taken by the State party to combat violence against women, including rape, domestic violence and sexual harassment, and whether national legislation has been amended to criminalize marital rape⁷ and sexual harassment. Please indicate whether victims of domestic violence, including spousal abuse, have access to redress, legal aid and protection, including protection orders, access to safe shelters, medical examination and rehabilitation assistance in all parts of the country. Please inform the Committee whether public officials have been trained in order to become fully familiar with applicable relevant legal provisions and sensitized to all forms of violence against women, and to adequately respond to such cases. Please provide information on complaints, investigations and prosecution of perpetrators of violence against women and whether those convicted are brought to justice.

11. In the light of the Committee's previous concluding observations (para. 21), please indicate whether steps have been taken by the State party to enact comprehensive anti-trafficking legislation. Also, please provide updated information on measures taken to address the prevention of trafficking and the protection of victims and witnesses during all stages of the judicial process,⁸ to establish shelters for victims and to enable reintegration into society.⁹ Please indicate whether independent mechanisms with sufficient human and financial resources have been established to monitor the implementation of such measures. Please inform the Committee whether trafficking in persons is prosecuted under article 113 of the Criminal Code and whether victims have access to legal aid. In addition, please provide information on any training for law enforcement officials, investigators and prosecutors on combating trafficking in human beings, including on the legislation on the prevention of trafficking.

⁶ A/HRC/16/5, para. 86.10.

⁷ CCPR/C/MNG/CO/5, para. 18.

⁸ *Ibid.*, para. 21.

⁹ A/HRC/16/5, para. 84.83.

12. With reference to the Committee's previous concluding observations (para. 26), please provide information on measures taken by the State party to strengthen the legal provisions in relation to the rights of persons with disabilities, including persons with mental illnesses and psychological problems. Please provide information on the establishment of any monitoring and oversight mechanisms for places of hospitalization. In addition, please indicate the steps taken by the State party to strengthen alternative methods of treatment and care. Please indicate whether measures have been taken to increase the number of psychologically/psychiatrically skilled professionals during the period under consideration.

Article 3

13. In the light of the Committee's previous concluding observations (para. 13), please indicate whether the State party has taken legislative, judicial and administrative measures to comply with its obligations under article 3 of the Convention, including any amendments to legislation that deals with the expulsion, deportation or extradition of foreign citizens and whether appeals to courts against expulsion, deportation or extradition have a suspensive effect. Please provide statistical data on the number of persons who were expelled, deported or extradited since the consideration of the State party's initial report and to which countries. Please provide information on any training in international refugee and human rights law provided to law enforcement and immigration officials that emphasizes the principle of non-refoulement, and on whether the State party assesses the merits of each individual case when determining its non-refoulement obligations.

Articles 5, 7 and 8

14. Please provide information on whether the State party has rejected, for any reason, requests for extradition by another State of an individual suspected of having committed an offence of torture, and has started prosecution proceedings as a result. Please provide information on any new cases that have reached trial and with what result.

Article 10

15. With reference to the Committee's previous concluding observations (paras. 12 and 14) please indicate whether the State party has introduced mandatory training for judges, prosecutors, court officials, lawyers, law enforcement and prison personnel¹⁰ on all the provisions of the Convention, especially the absolute prohibition of torture, and whether the clients of lawyers who refer to international treaties continue to receive longer prison terms.¹¹ Also, please inform the Committee whether public officials and medical personnel dealing with detainees and all professionals involved in the documentation and investigation of torture receive training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol), and whether the impact and effectiveness of this training are assessed. Please indicate whether international assistance has been sought with regard to the training.¹²

16. In the light of the Committee's previous concluding observations (para. 15), please provide information on whether law enforcement and court officials receive proper training on how to exercise their duties, including on the use of force and the use of equipment that is appropriate to the type of demonstration they are dealing with. Please indicate whether law enforcement and court officials receive clear instructions regarding the use of force, and the liabilities they incur if it is excessive and unnecessary. Please indicate whether

¹⁰ CCPR/C/MNG/CO/5, para. 15.

¹¹ Ibid., para. 4.

¹² A/HRC/16/5, para. 84.115.

police have specifically received training on the Code of Conduct for Law Enforcement Officials and on the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Article 11

17. With reference to the Committee's previous concluding observations (para. 16), please provide information on whether the special isolation regime has been abolished and on specific measures taken to ensure that all prisoners are treated humanely and in accordance with applicable international standards. Please also provide information on specific measures taken by the State party to improve the conditions of detention in all detention facilities, including measures to reduce and ultimately eliminate overcrowding,¹³ and ensure that representatives of authorized independent bodies are allowed to carry out regular and unannounced visits. Information on the outcome of the most recent visits to detention facilities would be useful. Please provide information on the status of ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the establishment of a national preventive mechanism. Please describe the measures taken to ensure that prison guards and other officials abide by the law, adhere strictly to rules and regulations and act in conformity to the provisions of the Convention. Also, please describe specific measures taken to separate convicted prisoners and pretrial detainees.

Articles 12, 13 and 14

18. In the light of the Committee's previous concluding observations (paras. 9 and 11), please indicate whether the State party has established independent and effective mechanisms to receive complaints and conduct prompt, impartial and effective investigations into allegations of torture and ill-treatment by law enforcement officials. Please provide information on the results of recent investigations of allegations and on the disciplinary and criminal proceedings, convictions and sanctions applied. Do independent mechanisms against impunity exist to ensure that those found guilty of committing acts of torture and ill-treatment are promptly brought to justice? Have measures been taken to protect complainants, lawyers and witnesses from intimidation and reprisals? Please provide an update regarding the status of the 50 complaints of torture and ill-treatment by public officials reported to have been received by the Special Investigations Unit between January and September 2011.

19. With reference to the Committee's previous concluding observations (paras. 10 and 11), please provide updated information regarding any investigation carried out into allegations of torture by Ts. Zandankhu, who was arrested on 2 July 2008 and taken to the Denjiin Myanga detention centre. Also, please provide updated information on any subsequent measures taken by the State party in the context of events that took place on 1 July 2008, given that apart from four senior police officials, charges against all other police officers prosecuted for human rights violations during the events were dropped for lack of evidence and that no one has been convicted to date. Please indicate whether more persons have received compensation in the context of these events.¹⁴

20. In the light of the Committee's previous concluding observations (para. 17), please provide information on any legislation enacted during the period under consideration to provide victims of torture and ill-treatment with redress and an enforceable right to obtain justice and fair and adequate compensation and reparation.

¹³ CCPR/C/MNG/CO/5, para. 16.

¹⁴ Ibid., para. 12.

21. With reference to the Committee's previous concluding observations (para. 20), please provide statistical data, disaggregated by age and ethnicity of the victims, on the number of complaints, investigations, prosecutions, convictions of perpetrators and sentences handed down in cases of violence against women, including domestic violence and spousal abuse. Also, please provide information on any redress, including compensation and rehabilitation, awarded by courts during the period under consideration.

22. In the light of the Committee's previous concluding observations (para. 21), please provide information:

(a) On any investigations of suspected cases of trafficking, disaggregated by age, gender and ethnicity of the victims;

(b) On the prosecution, conviction and sentencing of those responsible and whether adequate compensation and full rehabilitation has been provided to victims, disaggregated by age, gender and ethnicity.

Article 15

23. With reference to the Committee's previous concluding observations (para. 18), please indicate the specific measures taken by the State party to ensure that statements and confessions obtained under torture are not used as evidence in judicial proceedings. Please provide information on the number of cases during the period under consideration in which statements and confessions made under torture were rejected by courts and the number of cases in which such evidence has been used against the persons accused of torture. Please indicate if video and audio monitoring and recording has been introduced in all places of interrogation.¹⁵

Article 16

24. In the light of the Committee's previous concluding observations (para. 22), please provide updated information on efforts by the State party to combat all forms of forced labour and to criminalize employers who exploit child labour and bring them to justice, and on the number of such cases during the period under consideration. Please indicate measures taken to ensure that children do not work in hazardous labour conditions,¹⁶ including artisanal (informal) mines, and any awareness-raising campaigns about the negative effects of child labour and relevant international standards, such as International Labour Organization Conventions No. 29 (1930) concerning Forced or Compulsory Labour, No. 105 (1957) concerning the Abolition of Forced Labour, No. 138 (1973) concerning Minimum Age for Admission to Employment and No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.¹⁷ Also, please provide specific information on measures taken regarding the situation of street children.

25. With reference to the Committee's previous concluding observations (para. 23), please provide information on specific measures taken by the State party to explicitly prohibit corporal punishment of children in all settings,¹⁸ including schools, children's institutions and in the home, as accepted within the framework of the universal periodic review. Also, please inform the Committee of any awareness-raising campaigns about the

¹⁵ Ibid., para. 14.

¹⁶ A/HRC/16/5, para. 84.15.

¹⁷ List of International Labour Organization Core Conventions, available from www.ilo.org/asia/decentwork/dwcp/WCMS_143046/lang--en/index.htm.

¹⁸ CCPR/C/MNG/CO/5, para. 19.

harmful effects of corporal punishment and any professional training activities on alternative non-violent forms of discipline.

26. In the light of the Committee's previous concluding observations (para. 25), please provide updated information on the steps taken by the State party to establish a comprehensive legal framework to prevent the torture and ill-treatment and ensure the protection of vulnerable groups,¹⁹ including persons with HIV/AIDS, certain foreigners, and lesbian, gay, bisexual and transgender (LGBT) persons, in line with general comment No. 2 of the Committee and the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (launched on 26 March 2007). Also, please provide information on any measures taken to ensure that LGBT persons have access to justice²⁰ and to establish policing, enforcement and complaints mechanisms to ensure prompt, thorough and impartial investigations into allegations of all acts of violence and abuse against such persons and bring the perpetrators to justice. Please indicate if the State party has introduced provisions in domestic law declaring illegal and prohibiting organizations that promote and incite racial²¹, ethnic and other forms of discrimination.

Other issues

27. Please provide updated information on the measures taken by the State party to respond to any threats of terrorism, and please describe how these anti-terrorism measures comply with human rights safeguards in law and practice and how it has ensured that those measures do not violate the State party's obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005).²² Please describe the relevant training given to law enforcement and court officials; the number of persons convicted under such legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist measures; whether there are complaints of non-observance of international standards; and the outcome of these complaints.

General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention

28. Please provide detailed information on the relevant new developments in the legal and institutional framework within which human rights are promoted and protected at the national level that have occurred since the consideration of the initial report, including any relevant jurisprudential decisions.

29. Please provide detailed relevant information on the new political, administrative or other measures taken to promote and protect human rights at the national level since the consideration of the initial report, including on any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

30. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the initial report in 2010, including the necessary statistical data, as well as on any events that have occurred in the State party and are relevant under the Convention.

¹⁹ Ibid., para. 7.

²⁰ Ibid., para. 9.

²¹ CERD/C/MNG/CO/18, para. 16.

²² Reports of Mongolia to the Counter-Terrorism Committee: S/2001/1135, S/2002/1152, S/2005/455.