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Summary record of the 3380th meeting

Held at the Palais Wilson, Geneva, on Thursday, 6 July 2017, at 3 p.m.

Chair: Mr. Iwasawa

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant
(*continued*)

Sixth periodic report of Mongolia

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Sixth periodic report of Mongolia (CCPR/C/MNG/6; CCPR/C/MNG/Q/6 and Add.1)

1. *At the invitation of the Chair, the delegation of Mongolia took places at the Committee table.*
2. **Mr. Enkhbayar** (Mongolia) said that his delegation attached great importance to ensuring that the Committee's recommendations were implemented; its support and cooperation were sincerely appreciated. Since the submission of the State party's report, significant achievements had been made with regard to human rights.
3. As an essential part of its efforts to reform the criminal justice system, the Government had amended a package of laws, including the Criminal Code and the Code of Criminal Procedure. Alternative types of charges had been established, policy on imprisonment had been rendered more flexible and, significantly, the death penalty had been abolished. Bail and other forms of preventive measures had been instituted as alternatives to detention during the criminal investigation process. Under a new regulatory framework, sufficient evidence-based grounds were required in order for detention measures to be applied and preventive detention had been reduced from 72 to 48 hours.
4. Offences previously regulated by more than 230 separate laws fell under two recent enactments: the Law on Regulatory Offences and the Law on Regulatory Offence Procedure. The new legal framework defined the mandate and responsibilities of public institutions and authorities and served to uphold the principle of equality before the law.
5. A law on domestic violence had been enacted in 2017. It criminalized acts of domestic violence and provided for the protection of victims and their families. Since its enactment, a number of victim-protection training activities had been conducted for law enforcement and other authorities.
6. The National Programme on Gender Equality had been approved in 2017 and specific measures against gender- and sexual orientation-based discrimination had been stipulated in the revised Criminal Code.
7. The Government pursued a policy of compliance with its obligations under the international human rights instruments to which Mongolia was a party. In 2017, it had enacted a law which provided for the performance of extensive research to ensure that compliance requirements were met.
8. The Government of Mongolia was fully committed to strengthening its system of justice in order to guarantee the enjoyment of human rights and fundamental freedoms.
9. **Mr. Politi** said that he would appreciate clarification of the statement in paragraph 56 of the replies to the list of issues (CCPR/C/MNG/Q/6/Add.1), to the effect that no incidents had been recorded regarding the application of provisions of the International Covenant on Civil and Political Rights in the domestic legal system.
10. The Committee would welcome further details on the human rights training programme for lawyers and law enforcement, as no indication had been given as to whether such training extended to judges and prosecutors. It would be interesting to know whether specific human rights training was required for the appointment of young judges and prosecutors or for the advancement of judges to important posts. Information on any other human rights training or awareness-raising programmes would also be helpful.
11. Regarding the Optional Protocol to the Covenant, he enquired about awareness-raising initiatives and existing or planned legislation to ensure the prompt and effective implementation of the Committee's Views. If such legislation did exist, a summary of the applicable procedures would be appreciated.
12. With regard to the draft law on the National Human Rights Commission, which was to be laid before Parliament in 2018, he requested details as to whether it provided for adequate funding and the transparent appointment of the Commission's members. Would

sufficient funding for the Commission be guaranteed not only for the period immediately following the reforms introduced by the draft law, but also in the years which followed?

13. **Ms. Waterval** asked whether the only prohibited grounds of discrimination were nationality, occupation, religious beliefs, opinion, education, sexual orientation and medical condition, as indicated in the replies to the list of issues. Furthermore, the meaning of the term “medical condition” needed clarification. The Committee had received information to the effect that citizens had been subjected to discrimination based on age, gender, disability, beliefs, appearance and social origin. Could the delegation comment on that matter?

14. In percentage terms, how many judges, ministers and members of parliament in Mongolia were women? It would be interesting to hear additional details on the quotas for women on electoral lists for parliamentary elections. She asked whether the implementation of the Law on Gender Equality had been evaluated and, if so, with what results. The Committee had been informed that the Government’s efforts to promote gender equality were insufficient; the delegation’s comments on the matter would be welcome.

15. In accordance with paragraph 6 of the list of issues, the delegation should indicate whether article 19 (2) of the Constitution and the Law on States of Emergency had been amended to ensure that derogations from non-derogable provisions of the Covenant during states of emergency had been explicitly prohibited.

16. On the issue of domestic violence, she asked whether restraining orders were used as a mechanism of protection. It would also be helpful to learn how many State-run shelters there were in the country, whether they were adequately resourced and, if not, what remedial measures were being taken. The Committee would also appreciate information on efforts to ensure the effective investigation, prosecution and punishment of perpetrators of domestic violence and on reparation to victims. It would be interesting to learn whether spousal rape was criminalized and whether all the relevant stakeholders had been apprised of the revised Law on Domestic Violence. The delegation should indicate what was the Government’s policy on penalties for violence against children and on the corporal punishment of children.

17. **Ms. Brands Kehris** said that the Committee recognized the progress made in relation to the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. However, the non-recognition of same-sex couples continued to pose legal and practical problems. She asked what was being done to rectify that situation and to raise awareness of the rights of LGBTI individuals among public and elected officials and among the general public.

18. The Committee remained concerned that the definition of torture in the revised Criminal Code did not meet international standards. It would be useful to know whether the definition complied fully with that contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, especially with regard to acts of torture based on discrimination of any kind and acts committed for the purpose of intimidation or coercion, including of a third person, and whether the provisions on torture applied to all persons involved in committing such crimes or solely justice officials. She asked whether the penalties for torture and ill-treatment had been revised to reflect the gravity of those offences and, if not, what measures were being taken to do so. She enquired whether, and, if so, how, the capacity of the National Human Rights Commission to operate independently as the national preventive mechanism had been strengthened.

19. Mongolian law provided for the payment of compensation to natural persons who had been taken to court or had suffered physical or moral injury. She would like to receive some examples of when such compensation had been paid, including the amount paid on each occasion, and to know whether the victims of the 2013 court case in Dornod aimag had received compensation. As the State appeared to have no specific legislation covering reparations for victims of torture, she asked whether the Government was preparing any such legislation and how it would ensure that it was implemented effectively.

20. Although Mongolia had reported a very low number of torture cases in recent years, the Committee remained concerned at allegations that torture was being used to extract confessions and that impunity was common. Following the dissolution of the Special

Investigation Unit under the General Prosecutor's Office, its functions had been transferred to the Investigative Division of the General Police Department. Concerns had been expressed regarding potential conflicts of interest in the Division, the ineffectiveness of its investigations and its reluctance to open investigations. She asked what was being done to address the Division's lack of independence and to ensure that it functioned effectively. It would also be useful to receive information on the current status of the 45 complaints the Division had received between 2014 and 2016 and the reasons for their dismissal and on whether any other cases were currently being reviewed by the courts. She asked what training on torture was provided to law enforcement officers, how many officers had received training and whether the training made use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

21. **Ms. Kran** said that she commended Mongolia for the visible progress made since its previous periodic report. She asked about the outcomes of procedures conducted against police officers accused of committing human rights violations during the state of emergency declared in July 2008 and about measures taken to address other cases of violations. As Mongolia had previously provided information only on compensation paid to victims who were members of the police or military, she asked whether compensation was also paid to other victims. It would also be interesting to receive information on the outcome of the cases brought against four police officers in November 2010, including on whether the victims had received compensation, and of the cases investigated by the Special Investigation Unit concerning the use of live ammunition by police in 2006.

22. Mongolia's abolition of the death penalty was commendable. Noting that 34 prisoners previously sentenced to death had had their sentences commuted to 30 years' imprisonment, she asked whether there had been any other such commutations. She wondered whether the decision to place those 34 prisoners in solitary confinement had been taken in accordance with the rules applicable to all prisoners or solely by virtue of the prisoners' sentence, how long they were to remain in such confinement and whether the provisions of the Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) on solitary confinement were being upheld.

23. **Ms. Cleveland**, noting allegations that foreign health service providers in Mongolia were refusing to treat persons with HIV/AIDS for fear of transmission and that pregnant women with HIV/AIDS were being forced to give birth at the National Centre for Communicable Diseases, asked whether those allegations were true. What measures were being taken to educate the population about HIV/AIDS and overcome the stigma associated therewith?

24. The delegation should explain whether an exit ban could be issued in respect of a defendant in a court case at the request of the complainant and whether such bans could not be overturned until the underlying dispute had been resolved. She would welcome information on the legal framework for such action and examples of when such bans had been imposed.

25. **Mr. Shany** said that he would welcome clarification on whether the quota for female representation in public life had been reduced from 30 per cent to 20 per cent and, if so, why. He would also appreciate information on the accessibility of public buildings, in particular hospitals in Ulaanbaatar, to persons with disabilities and on the efforts being made to address concerns regarding the education and employment of persons with disabilities.

The meeting was suspended at 4 p.m. and resumed at 4.30 p.m.

26. **Mr. Enkhbayar** (Mongolia) said that the revised Criminal Code and Code of Criminal Procedure were fully aligned with the relevant international instruments. Under the codes, the legislature was obliged to ensure that new laws were compliant with the country's international obligations. Furthermore, judges actively invoked international instruments during legal proceedings and extensive training was provided to all law enforcement officers and members of the judiciary on the revised codes; thus far, 4,200 individuals had received such training.

27. Funding for the National Human Rights Commission had not decreased. Although a decision had been taken in 2016 to downsize all public institutions owing to economic pressures, the staff level and budget of the Commission had been maintained. Furthermore, the Government placed importance on incorporating the Optional Protocol to the International Covenant on Civil and Political Rights into domestic law. A working group had been established to that end and a law on human rights was expected to be enacted in 2018.

28. The definition of torture in the revised Code of Criminal Procedure was fully in line with that contained in the Convention against Torture. In particular, it referred explicitly to torture based on discrimination on the grounds of sexual orientation or gender. The Criminal Code also expressly prohibited discrimination on the grounds of sexual orientation.

29. The 2012 Election Law set the quota for female representation in public life at 20 per cent. The figure of 30 per cent was the quota proposed by women's associations. The parliament had considered including that quota in a bill, but it had concluded that Mongolia did not have sufficient resources to meet the quota. Women currently represented around 17 per cent of parliament members, which represented an increase over 2016.

30. The Constitution prohibited all acts of torture committed during a state of emergency, regardless of motivation. Those provisions had been translated into the relevant laws and internal police regulations.

31. With regard to domestic violence against women and children, the revised Law on Domestic Violence provided for sanctions for all persons convicted of such acts, without exception. Domestic violence was always treated as a serious crime. Training had been provided at local level regarding the rights of victims and the subject had been included on the curriculum of the Bar Association. Mongolia had eight shelters for victims of domestic violence, four of which had been established by the Government, and there were plans to build more. Training on the revised law had been provided to law enforcement officers across the country. In addition, special provisions had been included in the revised Code of Criminal Procedure, classifying the rape of a family member, pregnant woman or elderly person or rape committed by a police officer as particularly serious offences.

32. Replying to a question about whether the treatment of torture in the new Criminal Code was in line with international treaties to which Mongolia was a party, he said that the definition of torture in the Code was fully in line with article 1 (1) of the Convention against Torture. Public officials convicted of torture or other ill-treatment were subject to a substantial fine or to a prison term whose length depended on the specific circumstances of the crime. Victims of crimes by public officials were entitled to compensation. Since 2012 there had been eight convictions, one case had been dismissed and three had been returned for review because of sentencing errors.

33. The dissolution of the Special Investigation Unit under the General Prosecutor's Office had not had any adverse consequences. The main function of the Office was to exercise effective oversight of criminal proceedings, not perform investigations. To ensure that the Investigative Division of the General Police Department did not investigate cases involving allegations of torture by the police, which could lead to conflicts of interest, the Criminal Code stipulated that the General Prosecutor's Office should decide which entity investigated such cases. With the abolition of the death penalty under the new Criminal Code, the maximum prison term was 25 years. As a result, three prisoners had been released from solitary confinement.

34. Mongolia had 28 detention centres, of which more than one third were new. Replying to the question that had been asked about exit bans in respect of defendants in court cases, he said that such bans were no longer issued. They had previously applied only to defendants who refused to pay the damages that the court had ordered them to pay.

35. **Ms. Narantuya** (Mongolia) said that under the new Criminal Code discrimination against LGBTI persons was a crime. No complaints by members of the LGBTI community or their family members of discrimination based on sexual orientation had been registered. In Mongolia LGBTI persons tended to keep a low profile and, when filing complaints, did

not necessarily identify themselves as belonging to the LGBTI community, so it was hard to know how many of them had filed cases about other types of mistreatment.

36. Telephone hotlines were in place for reporting human rights violations. There were dedicated hotlines for domestic violence and mistreatment of minors.

37. The Constitution of Mongolia stated that marriage could be entered into by two consenting adults. There were no restrictions on the types of partnerships individuals could enter into before marriage.

38. Replying to questions about HIV-infected persons, she said that HIV-infected pregnant women gave birth in hospitals. Paediatricians were trained to treat HIV-infected children. The nationwide rate of HIV infection had remained at 0.1 per cent since 2003. Discrimination against HIV-positive persons was considered a crime.

39. Regarding compensation for casualties of the events of 2008, she said that after a riot in a particular district, family members of victims had received monetary compensation. The family members of two of the deceased persons had complained about the amount of the compensation. The compensation had been allocated by a working group according to 13 special orders issued by the Ministry of Justice and Internal Affairs.

40. **Mr. Politi** said that he would appreciate a reply to his earlier question about the implementation of the provisions of the Covenant by Mongolian courts. Assuming that the planned training of judges and prosecutors had actually taken place, had it resulted in increased implementation?

41. Noting that Mongolia had ratified the first Optional Protocol to the Covenant in 1991, and that there was only one pending communication under the Optional Protocol before the Committee, he asked whether measures had been taken, or were planned, to raise public awareness of the Optional Protocol.

42. **Ms. Pazartzis** said that the State party's report and its replies to the list of issues had not given her a clear picture of the legal situation regarding states of emergency. She understood that the Constitution contained explicit text on the subject and that relevant legislation had recently been amended. The Committee, in its concluding observations on the fifth periodic report of Mongolia (CCPR/C/MNG/CO/5), had requested that the State party amend the Constitution and the Law on States of Emergency to ensure that national law prohibited derogation from the provisions of the Covenant which were considered non-derogable. Did the revised Criminal Code include amendments to the Law on States of Emergency?

43. **Ms. Waterval** asked whether the delegation could reply to her earlier question about the corporal punishment of children.

44. Medical conditions had been mentioned among prohibited grounds for discrimination. She would like to know what types of medical conditions were meant.

45. **Ms. Brands Kehris** asked what measures had been taken or were planned to ensure effective protection against physical and verbal violence based on sexual orientation and gender identity, including measures to ensure effective investigation and prosecution of cases of such violence, and how the State party ensured effective access to justice and remedies for LGBTI victims of such crimes. She asked whether law enforcement officials were trained to handle and prevent hate speech, hate crimes and crimes committed against persons because of their gender identity.

46. She gathered that there were no plans to add sexual orientation and gender identity to the prohibited grounds of discrimination. She would like the delegation to comment on why that was the case. Did the State party intend to develop comprehensive anti-discrimination legislation that would cover sexual orientation and gender identity? If not, it should ensure that prohibitions against such discrimination were introduced in relevant sectors, such as health care.

47. Citing the delegation's reply about the lack of restrictions concerning premarital partnerships, she asked whether same-sex partnerships were legally recognized.

48. If, as the delegation had asserted, the content of article 1 of the Convention against Torture was fully reflected in the new Criminal Code, she would appreciate confirmation that the text of the Code in that regard had been amended since its review in 2016 by the Committee against Torture, which had pointed to areas where it was deficient. Was the definition of torture broad enough to meet the criteria of article 7 of the Covenant?

49. She was not sure that she had understood the delegation's reply about penalties for acts of torture and related crimes. Had the penalties, which as at December 2016 had ranged from a fine to a maximum of 5 years' imprisonment, been amended to reflect the gravity of such crimes?

50. Did compensation for victims apply specifically to torture victims or to crime victims in general? If the latter, could the delegation provide figures on compensation awarded to victims of torture?

51. She would appreciate a reply to her earlier question about providing education and training to law enforcement officials regarding the new Criminal Code and the prevention of torture. Did any such training make use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)?

52. **Ms. Kran** said that she would appreciate more information on the outcomes of the cases involving police officers suspected of having used live ammunition during the events of July 2008, including information on any penalties imposed on them. In addition, it would be helpful to learn whether the placement in solitary confinement of the prisoners whose death sentences had been commuted represented a temporary measure or whether it would continue indefinitely.

53. **Mr. Enkhbayar** (Mongolia) said that the corporal punishment of children was prohibited by law. In 2015, one child had died as a result of corporal punishment; in 2016, no children had died, but there had been 40 recorded cases of injury to a child; and as at May 2017, one child had died, and there had been 24 recorded cases of injury to a child. Since the introduction of new legislation on domestic violence, persons suspected of having administered corporal punishment to a child could be charged with a criminal offence.

54. With regard to the state of emergency of July 2008, a number of senior police officers had been disciplined for their actions, and criminal charges had been brought against others.

55. The penalties for discrimination in the draft of the new Criminal Code had remained unchanged in the final version. Persons found guilty of hate crimes could be sentenced to between 12 and 20 years' imprisonment or even life imprisonment.

56. The Law on States of Emergency stipulated that, during a state of emergency, the obligations of Mongolia under the international instruments to which it was a party would be honoured and that human rights and freedoms, including the right to life and the right to freedom from torture and inhuman or degrading treatment, would be guaranteed.

57. With regard to the rights of LGBTI persons, it should be noted that the Code of Criminal Procedure granted the right to freedom from discrimination to all persons, regardless of, inter alia, their sex, age, social status and origin, religious beliefs, sexual orientation and disability status. Moreover, all economic entities were equal before the law. There were no legal provisions that limited the rights of same-sex couples.

58. **Ms. Narantuya** (Mongolia) said that records were not kept on the application of the provisions of international instruments in national court proceedings. However, efforts were made to ensure full compliance with the obligations of Mongolia under the international instruments to which it was a party. The Mongolian Bar Association was responsible for training judges and prosecutors. With the technical assistance of the United Nations, the Government was working with the Bar Association to develop a new curriculum. The National Human Rights Commission conducted activities to raise public awareness of the Covenant and other international instruments. In implementation of a recommendation made during the universal periodic review process, a plan had been developed to address

negative attitudes towards LGBTI persons, and the activities for which it provided would be conducted in August 2017 in coordination with LGBTI organizations and NGOs.

59. **Mr. Enkhbayar** (Mongolia) said that, according to the Constitution, marriage was a union entered into at will by a man and a woman. Mongolian legislation did not contain any provisions prohibiting same-sex relationships, but it did not provide for the official recognition of such relationships. However, the Code of Criminal Procedure contained a provision prohibiting discrimination on grounds of sexual orientation. It should be noted that attitudes towards LGBTI persons had been transformed in recent years.

60. **Ms. Kran** said that it would be helpful if the delegation could indicate the average length of pretrial detention in Mongolia, whether time spent in pretrial detention was deducted from the total length of a prison sentence, what percentage of cases were dealt with through non-custodial alternatives to detention and how many persons were held in pretrial detention for longer than 12 months. In addition, she would be grateful for more information on the complaints received by the National Human Rights Commission regarding lengthy periods of detention at pretrial detention centre No. 461; it would be useful in particular to learn how many complaints had been received, whether and how they had been resolved, whether they had resulted in the imposition of penalties and, if so, what form those penalties had taken, and whether the victims had received compensation.

61. Moreover, she wished to know what proportion of persons suspected of offences were detained and how data on the number and length of pretrial detention placements were collected. With regard to the moment of arrest, it was unclear what rights the detained person was automatically informed of, whether the police had been issued with guidelines on their duty to inform detained persons of their rights and what proportion of detained persons were represented by legal counsel. In the light of a specific concern expressed in the concluding observations of the Committee against Torture on the second periodic report of Mongolia (CAT/C/MNG/CO/2), she would like to know what steps had been taken to improve the accessibility of legal aid to insolvent accused persons.

62. Following reports of overcrowding at the Denjiin Myanga detention facility, she would be grateful if the delegation could provide an update on the current situation at that facility and indicate whether its current budget and staffing levels were adequate, what the daily meal budget was per detainee, what those meals consisted of, whether their nutritional value had been professionally assessed, whether detainees had access to water and showers, and what the current status was of the new building planned for the facility.

63. It was unclear whether the detention facilities of Ulaanbaatar and those of Chingeltei, Bayanzürkh, Bayangol, Sükhbaatar, Khan Uul and Songino Khairkhan districts were included among the 17 prison facilities that had been renovated to comply with the Security Standards for Prison Facilities. In addition, the Committee would appreciate an update on the measures taken in response to the findings of the inspections conducted at those facilities. She wished to know whether detention facilities were adequately heated, what steps had been taken to address any remaining cases of tuberculosis and whether the Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) were reflected in State policy.

64. The delegation was invited to indicate what measures had been taken to combat judicial corruption, whether a plan had been developed to increase judges' wages and what specific steps had been taken to investigate allegations of corruption within the judiciary and to guarantee the transparency and independence of judicial institutions. The Committee was concerned that the recent reorganization of the court system might threaten access to justice and would be grateful in that connection if the delegation could explain what measures had been taken to improve the allocation of financial and human resources to legal aid centres and what efforts had been made to guarantee access to legal aid in rural areas.

65. In the light of allegations that the authorities continued to prevent LGBTI persons from exercising their right to peaceful assembly, including the specific allegation that the Equality Walk scheduled for August 2016 had been denied access to Chinggis Square, she wished to know how the State party planned to ensure that it fulfilled its obligation to protect the right to peaceful assembly without discrimination and what measures had been

taken to ensure the full enjoyment of freedom of expression and assembly by LGBTI communities.

The meeting rose at 6 p.m.