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ON CIVIL AND
POLITICAL RIGHTS**



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on Wednesday, 19 March 1980, at 3 p.m.

Chairman: Sir Vincent EVANS

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Mongolia (continued) (CCPR/C/1/Add.38)

1. Mr. JANČA said that the fact that the Mongolian report was somewhat concise made it difficult to understand the real situation in Mongolia with regard to the protection of human rights. It would be important, for instance, to know how international treaties ratified by Mongolia were implemented in the internal legislation of the country: whether treaties automatically received the force of law or whether it was necessary to adopt new legal rules to make them part of the municipal law of Mongolia. He would like to know whether internal legal rules concerning international obligations had the same force as or higher force than other laws in Mongolia. In that connexion, the situation with regard to the Covenant rights in the Mongolian legal system was particularly important. Although the report was not specific on the subject, it seemed that the obligations which Mongolia had undertaken by ratifying the Covenant were implemented through different internal legal instruments, such as the Criminal Code, the Civil Code and others. There also it would be useful to have more information, in particular with regard to some of the articles of the Covenant which were not specifically mentioned in the report.

2. The report did not deal, for instance, with article 4 of the Covenant. He would like to know whether it was possible under Mongolian law to proclaim a public emergency, whether, in such an exceptional situation, there could be any derogation from some of the civil and political rights guaranteed under Mongolian legislation and, if so, from which ones.

3. With regard to article 6 of the Covenant, the report listed various crimes for which the death penalty could be imposed under Mongolian criminal legislation but some of them, in particular the misappropriation of State or public property, did not appear to be of such danger to society as to justify the imposition of the most severe punishment available. It would be of value to know how many instances there had been of the imposition of the death penalty for such crimes in recent years. According to article 18 of the Criminal Code of Mongolia, women could not be sentenced to death, in which case it would seem that Mongolian legislation provided broader protection for women than was required under the Covenant; that did not appear to be quite consistent with the principle of non-discrimination on the basis of sex.

4. With regard to article 7 of the Covenant, it would seem, to judge from the text of article 16 of the Mongolian Criminal Code cited in the report, that Mongolian legislation did not altogether meet the requirements of the Covenant. He hoped that the representative of Mongolia could provide the Committee with further information on guarantees provided against cruel, inhuman or degrading treatment of persons not convicted.

5. He did not fully understand the information provided in the report on article 10. It seemed that not only convicted persons but also persons under preliminary investigation could be placed in corrective labour institutions and

subjected to corrective labour measures, although they had not yet been sentenced. If that was so, such a measure would be in contradiction with article 14, paragraph 2, of the Covenant and with another statement cited in the report, in connexion with article 14, that under Mongolian legislation the accused was not considered guilty until he had been convicted. The report did not provide enough information in connexion with the implementation of the provisions of article 14 of the Covenant. It would be valuable to know more about the organization of the judiciary in Mongolia and the conditions required of a Mongolian citizen in order to become a judge, the procedures for nomination or election of judges and the guarantees by means of which the independence and impartiality of the judiciary was protected. Similarly, it would be valuable to have more information with regard to article 15 of the Covenant.

6. Finally, in connexion with article 27 of the Covenant, he would like to know which minorities lived in Mongolia, their size, whether they had schools teaching in their own languages, how many such schools there were and whether there were also schools of higher education with instruction in minority languages, and whether there were daily newspapers published in minority languages. Did article 83 of the Constitution, which guaranteed representatives of all nationalities living in Mongolia the opportunity to conduct business in their native language, mean that they could communicate orally or in writing with the State authorities in their own mother tongue?

7. Mr. BOUZIRI said that the fact that the report submitted by Mongolia was sometimes vague, even silent, on certain aspects of Covenant rights made it difficult to understand the true situation of the relation between the Covenant and the domestic legislation in the country and left some doubt about the nature and reality of the implementation of the provisions of the Covenant in Mongolia. He noted, with regard to article 2 of the Covenant, that article 76 of the Mongolian Constitution guaranteed the equality of rights of all citizens but made no mention of foreigners, whose rights must also receive equal protection under the Covenant. Furthermore, article 76 of the Constitution stated that sex, race and nationality, religion or social origin and position could not be grounds for discrimination, but it made no reference to political opinion. He wondered whether the omission of such a reference meant that citizens did not enjoy equal rights in the expression of political opinions when their opinions differed from those of the régime. The report also referred to the acquisition or loss of citizenship; he asked what were the grounds which justified the loss of Mongolian citizenship.

8. He wondered why the report made no reference to articles 4 and 5 of the Covenant. With regard to article 6, the grounds cited for the imposition of the death sentence in Mongolia were qualified by the words "provided that this is specially stated in the Criminal Code". He asked what was the meaning of those last words, and of the terms "sabotage" and "the most serious circumstances" in the same sentence. It seemed that the death penalty was rather an extreme penalty to apply to some of the crimes listed in the report. Furthermore, it was to be hoped that since the Mongolian authorities had seen fit not to apply the death penalty to women, men too would benefit from such a humanitarian exclusion and not be discriminated against.

9. Article 12 of the Covenant guaranteed the right of persons to leave any country, including their own. He asked whether Mongolian citizens could leave their country, as tourists for instance, and, if so, how the currency problem was handled in view of the fact that Mongolia had a non-convertible currency. If no provision was made for the currency difficulties, the right of tourism, for instance, was illusory.

10. It was regrettable that the report provided no information with regard to paragraphs 3, 5, 6 and 7 of article 14 of the Covenant. The rights guaranteed in article 15, paragraph 1, did not seem fully covered by Mongolian legislation and it was not clear what the expression "socially dangerous act" was intended to mean or how it was defined under the law. With regard to article 16, the report implied that all citizens had "civil legal capacity" but made no reference to foreigners and the rights of non-citizens in Mongolia. Article 18 of the Covenant guaranteed the right to freedom of thought, conscience and religion. He asked whether the omission in the Mongolian report of any reference to freedom of thought and conscience was deliberate and should be interpreted as implying that those rights were limited in Mongolia. Furthermore, noting that the Mongolian Constitution guaranteed freedom of anti-religious propaganda, he asked whether the corresponding freedom of religious propaganda was also protected. Article 87 of the Constitution mentioned that certain rights were guaranteed in order to strengthen the socialist State system of the Mongolian People's Republic; did that imply that the opposition views were not protected? Very little information was provided with regard to article 19 of the Covenant; it would in particular be valuable to know whether dissidents were allowed to hold opinions without interference, as required under the Covenant.

11. Article 82 of the Mongolian Constitution established a certain category of citizens as the vanguard of all State and other mass organizations; that seemed to establish a kind of political discrimination against other categories of citizens, possibly holding other views, which was incompatible with articles 22 and 24 of the Covenant.

12. Mr. LALLAH noted that the Mongolian report was brief and had perhaps been prepared without regard to the guidelines provided by the Committee and did not therefore entirely fulfil the needs of the Committee. In that connexion, he noted that article 2 of the Covenant required States Parties to adopt legislative or other measures as might be necessary to give effect to the rights recognized in the Covenant. The reports submitted in accordance with article 40 of the Covenant should therefore cover not only legal but also other measures, the progress made in the enjoyment of the rights recognized in the Covenant and the factors and difficulties, if any, affecting the implementation of the Covenant.

13. The report submitted by the Mongolian People's Republic gave a broad view of the legal framework but did not provide sufficient detail on the actual situation of the people, i.e. the nature of the country, its population and the level of development of institutions and infrastructure, all of which was important in evaluating the report. It was of particular concern to him to understand the real division of power between executive and judiciary, which articles 63 to 75 of the Mongolian Constitution failed to make clear. The judiciary should, for instance, deal with such matters as judgement on the constitutionality of laws and the

legality of acts, matters which under the Mongolian Constitution appeared to be dealt with by the Presidium of the Great National Hural, which was defined as the "highest organ of State power", i.e. the supreme executive body. One important aspect of the impartiality of the judiciary was the tenure of office of judges, in connexion with which there seemed to be some conflict in the Mongolian Constitution between the reference in article 64 to "permanent" judges and the reference in article 68 to two-year terms for judges and assessors. It would be valuable to know more about how courts operated in Mongolia: for instance, whether there were many lawyers, whether they were accessible and necessary in all criminal and civil cases. Furthermore, what was the relation between the powers of the police and of magistrates? Were they separate?

14. In connexion with article 89 of the Constitution, which defined the fundamental duties of the citizen, it would be valuable to know whether those duties were simply goals to be attained or measures which were legally enforceable. If, for instance, a citizen failed to devote all his efforts and knowledge to the building of socialism, did the law lay down the consequences of such failure? Article 94 of the Constitution was not entirely clear. Presumably the abolition of the Constitution was an extreme form of amendment and would be governed by the provisions of article 93 calling for a two-thirds majority decision of the Great National Hural. As the various functions of the State gradually ceased to exist under communism, the Committee might be interested to know who would then submit the reports called for under article 40 of the Covenant. Finally, he asked for more information to be provided with regard to the position of women in Mongolian society: whether there were any legal, social, ethical or traditional factors that governed their role in society or any new thought to change that role fundamentally and, if so, what the State was doing to effect such changes. Were there any women holding positions in the various organs of State and in the professions and social services?

15. Mr. OPSAHL asked how the Mongolian Constitution had been prepared, which body had adopted it and whether it had replaced an earlier constitution. The preamble to the Constitution described the historical background; two notable features were the references to the Great October Socialist Revolution and to the "fraternal socialist aid of the Soviet Union" and the reference to the "transition from feudalism to socialism, bypassing the capitalist stage of development in accordance with the teachings of Lenin". Mongolia thus presented a rare case in world history and he would welcome more details on the transition from feudalism to socialism and the practical implications, with particular reference to the subject of civil and political rights, and on the interaction between outside and domestic elements. He asked whether the transition had been violent and whether any part had been played by armed assistance from the outside. The preamble to the Constitution referred to a "stubborn struggle against imperialist aggression and internal reaction"; he asked what forms the aggression and reaction had taken and how they had been overcome. He would also like to know whether there had been a period during which the civil and political rights of the former ruling classes had had to be suspended, and, if so, whether those rights had subsequently been restored.

16. A more detailed reply was needed from Mongolia in relation to article 2, paragraph 3, of the Covenant. The fact that Mongolian law on criminal and civil procedure guaranteed the right of any person to defence in court proceedings was beside the point; the question was how an individual could appeal against the public authorities if he believed that his rights had been violated.

17. In connexion with article 8 of the Covenant, Mongolia referred to international legal documents prohibiting slavery, but since that article included a third paragraph prohibiting forced labour, it was necessary to know what laws and practices existed in that respect.

18. In its comments on article 9, Mongolia referred to arrest and detention with a view to criminal proceedings, but that article 2 referred to all types of deprivation of liberty. In many countries, difficult problems arose in connexion with the deprivation of liberty for reasons of physical and mental health, for example; he asked what Mongolian laws there were in that respect and what guarantees existed, in the light of article 9, paragraph 4, to prevent arbitrary detention.

19. Mr. KOULISHEV said that, in considering the rights set forth in the Covenant, the Committee must take into account the specific social, economic, political and cultural conditions of each country and the particular difficulties individual countries might experience in implementing the provisions of the Covenant. The introductory statement by the representative of Mongolia had provided useful information on the general conditions in the country and had illustrated the progress made by the people of Mongolia in the course of the century, particularly in the field of human rights. He had been impressed by their great achievements in the realm of civil and political rights and in other closely related fields.

20. Additional information should be provided in connexion with article 2 of the Covenant on the judicial and administrative means of recourse available to citizens in cases where they believed that their rights had been violated. Article 85 of the Constitution provided for the possibility of submitting complaints to the authorities; he asked whether there was any detailed legislation on the subject. He also asked for more details on the role of the public prosecutor. In his introductory statement, the representative of Mongolia had referred to a system of popular and State control but there was no mention of it in the Constitution.

21. The exemptions from the death sentence mentioned in the report in connexion with article 6 of the Covenant were unusual and it would be useful to know what reasons or traditions had led Mongolia to adopt those provisions.

22. In connexion with article 8 of the Covenant, he asked whether slavery had existed in the Mongolian region before the revolution and whether there were specific provisions in Mongolian legislation prohibiting slavery.

23. The Mongolian report did not comment on article 11 of the Covenant. Inability to fulfil a contractual obligation was a rare crime under modern conditions; he asked whether Mongolia considered it to be a crime and whether there were any specific provisions on the subject in its legislation.

24. Mr. TOMUSCHAT said that it was difficult to understand the conditions of life in a country as far away as Mongolia. Despite their expertise in legal matters, the members of the Committee obviously lacked knowledge of the conditions of life in that country and that made it difficult for them to appraise Mongolia's performance in the matter of human rights. For example, the Covenant proceeded from the assumption that courts always existed in the places where they were needed, but in a thinly populated area that was not always the case. Thus the Committee was dependent on the provision of comprehensive information by the State Party, and in that respect the report could provide fuller information.

25. Chapter Seven of the Mongolian Constitution was concerned with "the fundamental rights and liberties of citizens and how they were ensured" but little was said in articles 76 to 88 about the mechanisms to ensure that those rights were implemented and the recourses available if they were infringed. If the provisions of the Covenant had not been incorporated into domestic law, the full observance of the rights set forth in it depended largely on the mechanisms established for the protection of constitutional rights; there again more information was needed.

26. The question of the status of aliens was very important; article 76 of the Constitution provided that "citizens of the Mongolian People's Republic enjoyed equal rights, but made no mention of aliens and that was incompatible with the Covenant. The general principle underlying the Covenant was that everyone, irrespective of nationality, should enjoy the specific protection it provided. There were only a few minor articles of the Covenant where that principle did not apply; article 13 applied only to aliens and article 25 only to citizens. Privileges for nationals could be legitimate to a certain extent in connexion with articles 19, 21 and 22, but all the other guarantees of the Covenant applied to both nationals and aliens. He therefore asked for information about the legal regime for aliens in Mongolia.

27. He would appreciate full written information on all the provisions of article 14 of the Covenant, particularly the rights set forth in paragraph 3 of that article. In connexion with article 18, he asked what was the main religion of the citizens of Mongolia and whether there was any law about freedom of religion or specific provisions about the education of children in the light of article 18, paragraph 4. In relation to article 27, he would welcome further information about the nationalities living in the territory of Mongolia and any laws which existed on nationalities or minority groups. The Committee also needed more information on the statutory laws in force to implement the basic principles of the Constitution and the Covenant, since those principles were difficult to enforce without specific statutory regulations which would determine the scope and limitations of each provision of the Covenant.

28. Mr. GRAEFRATH said that Mongolia and the Mongolian people had their own specific historical background and their living conditions were very much determined by geography; there had been a transition, not only from feudalism to a socialist society, but also from nomadic life to a settled existence, and he admired the achievements of the Mongolian people since the Revolution.

29. He felt that the report should provide more details about the implementation of human rights in Mongolia, since it was the Committee's experience that the Covenant was not directly applicable but was implemented by corresponding provisions in national legislation which could be invoked in court. He would also like more information about the influence of Mongolian life and culture on the implementation of specific rights. He asked what infrastructure existed to ensure that remedies were available against violations of human rights. It was clear from the Mongolian Constitution and from the report that women had the same rights as men in all areas of life; the Committee was aware how difficult it was to ensure such equality even in highly industrialized countries and he would like information on how that goal had been achieved. The same question applied to other aspects such as the right to assembly, freedom of association and freedom of information; he asked how Mongolia had managed to eliminate illiteracy and give everybody a real possibility to participate in public life. It was not so much a question of the laws which existed, but of how they were implemented and enforced and how it was ensured that the rights laid down in them were enjoyed by all the people.

30. The report summarized the legal situation in Mongolia, but some aspects were only touched upon and could be further elaborated, for example the administration of justice, the function of the public prosecutor and the legal defence available. There was no mention of articles 11, 13 and 26 of the Covenant; he hoped that some information would be provided on how those articles were reflected in Mongolian law.

31. Mr. SADI said that the Committee had found no State Party whose legislation was in complete harmony with the Covenant, and the report of Mongolia showed that Mongolian legislation too had some gaps. He asked what would be done to remove the gaps in Mongolian legislation, particularly in areas on which there was consensus in the Committee.

32. According to the report, sentence of death was imposed for, inter alia, theft of the personal property of citizens in the most serious circumstances and robbery with violence. It was doubtful whether such offences constituted "most serious crimes" within the meaning of article 6, paragraph 2, of the Covenant. The report further stated that Mongolian legislation prohibited the subjection of anyone to torture. It was not enough, however, simply to state that torture was illegal. Information should be provided on the measures for enforcing the provision. Similarly, it was not sufficient merely to indicate that Mongolia was a party to international legal documents prohibiting slavery. The question was what precise action was taken by Mongolia to incorporate the provisions of the Slavery Convention of 25 September 1928 in its legal system.

33. The comments in the report concerning article 12 of the Covenant did not indicate whether a citizen was reasonably free to leave and return to Mongolia. With regard to article 18, precise information should be given on legislative provisions to safeguard freedom of speech, freedom of the press, freedom of assembly and meetings, and freedom to hold demonstrations and processions.

34. Mr. MOVCHAN said that, inasmuch as the Third Committee of the General Assembly wished to see more comments on reports of States parties, he was more inclined to formulate comments on Mongolia's report than to add to the already long list of questions. The high-level delegation sent by Mongolia to present the report and engage in a frank debate on civil and political rights was an indication of its will to adhere to the principles of the Covenant. Many large countries, including some which were said to be respecting human rights, had not ratified the Covenant; indeed, only 62 States were parties to it. The fact that a small country like Mongolia was among that number was in itself commendable.

35. The representative of Mongolia had given the Committee much additional information, although the report itself already provided substantial information on a series of subjects. Before the popular revolution of 1921, the average life expectancy in Mongolia had been only 25 years. The present average life expectancy of 67 years was higher than that of many other countries, an achievement largely due to the Mongolian People's Revolutionary Party. Article 2 of the Constitution of Mongolia stated that the Mongolian People's Republic was a socialist State in the form of a People's Democracy. At the time of the drafting of the Covenant, there had been some dispute concerning the word "democracy", in view of the different meanings given to the concept of democracy. There was, however, a general democratic law, and both the introductory statement and the report by Mongolia showed clearly that democracy did exist in that country. The reference in the introductory statement to social and economic rights was pertinent, because the General Assembly had repeatedly emphasized that such rights were essential to the enjoyment of civil and political rights. The International Covenant on Economic, Social and Cultural Rights required gradual progress in achieving general observance of the rights recognized therein. Although it was sometimes claimed that the International Covenant on Civil and Political Rights required immediate implementation of its provisions, it was clear that implementation could be gradual, given the reference in article 40 to the progress made in the enjoyment of civil and political rights and the factors and difficulties affecting the implementation of the Covenant.

36. The brevity of the report had been remarked upon. Content, however, was more important than length, and it was hoped that the replies to the many questions, together with the introductory statement and the report, would give a complete picture of the implementation of the Covenant. The questions were similar to those asked of countries with different social systems and at different stages of development. The Mongolian People's Republic had been established as a result of the revolution of 1921, and the Constitution circulated to the Committee had been adopted in 1960. In other words, 40 years after the revolution, the Constitution was already guaranteeing many of the rights embodied in the Covenant adopted by the General Assembly only in 1966. At the time of the drafting of the Covenant, various national constitutions had been consulted, including Mongolia's.

37. He was impressed by the fact that a country where the concept of citizenship had been non-existent before 1921 had by 1960 had specific provisions to guarantee the rights of the citizen and civil and political freedoms. The preamble to the Constitution stated that in the course of the transition from feudalism to socialism, bypassing the capitalist stage of development in accordance with the teachings of Lenin, radical revolutionary, socio-economic reforms had been made in the Mongolian People's Republic. The Constitution and the report of Mongolia showed that significant progress had been made in the implementation of the Covenant, although there were still some difficulties to be overcome.

38. He would welcome more information on the State structures in Mongolia and the question of national minorities. More information should also be given on the State representative bodies - the Hural of People's Deputies. Finally, further details should be given concerning the judicial system, particularly the role of the Procurator, whose functions were in many respects unique to Mongolia.

39. The CHAIRMAN, remarking on the number of questions put to the representative of Mongolia, assured him that that was not unusual. The Committee looked forward to hearing the replies on the morning of Friday, 21 March 1980.

40. Mr. BAYART (Mongolia) said that his delegation had listened attentively to the questions and comments, which related not only to the implementation of the Covenant but also to the living conditions of the Mongolian people and their progress in the political and socio-economic sectors over the past 60 years. His delegation understood that the questions and comments reflected the Committee's desire to have more information on the measures adopted by Mongolia to implement the Covenant and did not imply doubts about its strict implementation. His delegation remained ready to co-operate with the Committee and would try to reply to its questions as fully as possible.

The meeting rose at 5.40 p.m.