



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

Distr.: General  
18 June 2019

Original: English  
English, French and Spanish only

## Committee against Torture

### List of issues prior to submission of the third periodic report of Mongolia\*

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

##### Issues identified for follow-up in the previous concluding observations

1. In its previous concluding observations (CAT/C/MNG/CO/2, para. 41),<sup>1</sup> the Committee requested the State party to provide information on follow-up to the Committee’s recommendations on issues of particular concern, namely on the measures taken to guarantee that all detained persons are afforded in practice all the fundamental legal safeguards from the outset of their deprivation of liberty, in accordance with international standards (para. 12 (a)–(d)), and on impunity for acts of torture, in particular the creation of independent and effective mechanisms to receive complaints and prosecute those found guilty of committing acts of torture and ill-treatment (para. 16 (a)–(d)). The Committee expresses its appreciation for the State party’s follow-up response on those matters and the substantive information provided on 27 May 2018 (CAT/C/MNG/CO/2/Add.1). In view of that information, the Committee considers that the recommendations in paragraphs 12 (a)–(d) and 16 (a)–(d) mentioned above have been partially implemented (see paragraphs 3 and 5 of the present document).

##### Articles 1 and 4

2. With reference to the Committee’s previous concluding observations (paras. 9 and 10), please provide information on:

- (a) Whether torture is a separate offence in the new Criminal Code;
- (b) Whether the new Criminal Code includes a definition of torture that includes acts of torture based on discrimination of any kind and cites intimidation or coercion as a purpose for committing acts of torture, including against a third person, as contained in article 1 of the Convention;
- (c) Whether acts of torture are offences under criminal law punishable by penalties commensurate to the gravity of the crime, as required in article 4 (2) of the Convention, and whether the maximum penalty of five years is still applied;<sup>2</sup>

\* Adopted by the Committee at its sixty-sixth session (23 April–17 May 2019).

<sup>1</sup> Unless otherwise indicated, paragraph numbers in parentheses refer to the previous concluding observations adopted by the Committee.

<sup>2</sup> CCPR/C/MNG/CO/6, para. 21.



(d) Steps taken to ensure that there is no statute of limitations for the crime of torture.

### Article 2<sup>3</sup>

3. With reference to the Committee's previous concluding observations (paras. 11 and 12), please provide updated information on:

(a) Specific measures taken by the State party to guarantee that all detained persons are afforded in law and practice all the fundamental legal safeguards from the outset of their deprivation of liberty, including being informed about their rights and the charges against them, both orally and in writing; having access to a lawyer, even when the suspect is arrested before being presented with a court order,<sup>4</sup> or legal aid if the person is insolvent, including during investigation interviews; being brought promptly before a judge and having the lawfulness of their detention reviewed by a court; having the right to submit a complaint to court; notifying a member of their family or any other person of their choice of their detention immediately after apprehension; having access to request and receive a medical examination by an independent medical doctor free of charge; and having their detention duly recorded in a register;

(b) Any amendments made to the Offence Procedure Code to reduce from eight hours the amount of time after apprehension within which persons deprived of their liberty may inform members of their family or any other person of their choice of their detention, and from six hours after apprehension in the case of informing the family or counsel of minors;<sup>5</sup>

(c) Specific measures taken to ensure that investigators and prosecutors do not make the right of detained persons to receive visits by family members conditional on the detained persons confessing to crimes that they have allegedly committed;

(d) Steps taken to ensure that prisoners are assigned to prison establishments that are at a reasonable distance from their families in order to facilitate visits.

4. With reference to the Committee's previous concluding observations (paras. 13 and 14), please provide information on:

(a) Any amendments to legislation during the period under review to reduce the duration of pretrial detention;

(b) Whether the period of pretrial detention commences at the moment that persons are first deprived of their liberty, and any amendments to legislation to ensure that time spent in pretrial detention is included in the time of incarceration given in the sentence;

(c) Whether the period of pretrial detention commences at the moment that persons are first deprived of their liberty; and whether persons detained in police stations are held under adequate material conditions and provided with food, potable water and hygiene and sanitation facilities;

(d) Specific steps taken to ensure that no one is held in pretrial detention or initial detention by police for longer than is prescribed by law;<sup>6</sup>

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<sup>3</sup> The issues raised under article 2 could also touch on issues raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2, the obligation to prevent torture in article 2 is wide-ranging. The obligation to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16 (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 also chapter V of the same general comment.

<sup>4</sup> CAT/C/MNG/CO/2/Add.1, para. 10.

<sup>5</sup> CAT/C/MNG/CO/2/Add.1, paras. 4 and 14.

<sup>6</sup> CAT/OP/MNG/1, para. 51 (a).

(e) Whether pretrial detention is clearly regulated and subject to judicial supervision at all times in order to guarantee fundamental legal and procedural safeguards;

(f) Whether visiting arrangements for pretrial detainees are subject to prosecutorial discretion;<sup>7</sup>

(g) Whether pretrial detention has been replaced by non-custodial measures during the period under review and at what rate;

(h) Whether redress and compensation are provided to victims of unjustified prolonged pretrial detention;

(i) The current number of pretrial detainees in the State party, including those detained without a court order, as well as the number of persons detained under administrative procedures.

5. With reference to the Committee's previous concluding observations (paras. 15 and 16), please provide information on:

(a) Any concrete improvements in combating impunity for acts of torture and ill-treatment since the dissolution of the Special Investigation Unit (which was attached to the General Prosecutor's Office) that was tasked with investigating and prosecuting acts of torture and ill-treatment by public officials, including the police; and any specific advances in combating impunity for acts of torture and ill-treatment achieved by the Independent Authority against Corruption and the Investigative Division of the General Police Department during the period under review, including with regard to reluctance to open criminal cases and the lack of information about their outcome;

(b) Any steps taken to reinstate an independent investigation unit within the General Prosecutor's Office;<sup>8</sup>

(c) Whether appeals have been lodged in relation to the three cases concerning complaints of torture investigated by the Investigation Office of the General Police Department mentioned in the Committee's previous concluding observations, with respect to which it was stated, respectively, that no grounds for initiating a criminal case existed,<sup>9</sup> that there was a proposal not to initiate a criminal case,<sup>10</sup> and that there was a refusal to initiate a criminal case;<sup>11</sup>

(d) Measures taken to ensure that there is no institutional or hierarchical connection between the investigators and the alleged perpetrators, in particular with regard to investigations carried out by the General Police Department and the shift of the jurisdiction for investigating acts of torture committed by police officers to investigation units of the local police, and any consideration given to setting up an independent mechanism in this connection;

(e) Whether the Independent Authority against Corruption has been given the jurisdiction to investigate crimes enumerated in article 251 of the Criminal Code;

(f) Whether, under article 45.2 (4) of the Code of Criminal Procedure, investigators, competent officials, procurators or judges who have ill-treated a detained person are punished only by being relieved from their duties;<sup>12</sup>

(g) Whether police officers who, in violation of article 22.4 of the Law on Police Service, inflict torture or other inhuman or degrading treatment or punishment, including with a view to obtaining information or explanation with respect to a crime or offence, or who attempt to justify such actions, are punished only with a reduction of posts, reduction in police rank and suspension from the police service for one year under article 84.4 of this

<sup>7</sup> CAT/OP/MNG/1, para. 67.

<sup>8</sup> CAT/OP/MNG/1, para. 29.

<sup>9</sup> CAT/C/MNG/CO/2/Add.1, para. 31.

<sup>10</sup> CAT/C/MNG/CO/2/Add.1, para. 32.

<sup>11</sup> CAT/C/MNG/CO/2/Add.1, para. 33.

<sup>12</sup> CAT/C/MNG/CO/2/Add.1, para. 23.

Law,<sup>13</sup> and do not incur individual criminal responsibility with penalties commensurate to their crimes;

(h) Whether the State party has introduced legislation that clearly stipulates that a superior order may not be invoked as a justification for torture;

(i) Whether steps have been taken to ensure that police, investigators and prison staff are made aware that those responsible for the infliction of any acts of torture, including psychological torture in the form of threats, and complicity or participation in acts of torture, will be punished, with penalties that reflect the grave nature of such acts;<sup>14</sup>

(j) Whether the 168 rooms of police departments throughout the country, including the 82 rooms at central and local police offices, will be checked with a view to licensing them as rooms specifically dedicated for interrogation under article 25.1 (2) of the Code of Criminal Procedure, as is currently the case with the 25 rooms mentioned in the State party's follow-up reply;<sup>15</sup> the number of rooms specifically dedicated for interrogation that have been certified as such in the country, and the number of rooms that have been equipped with closed-circuit television and video and audio recording equipment; and whether the tapes are made available to defendants and their counsels, at no cost to the defendant, and may be used as evidence in court.

6. With reference to the Committee's previous concluding observations (paras. 17 and 18), please provide updated information on any additional action taken in relation to the events that took place on 1 July 2008, including whether impartial and effective investigations have been launched into the allegations of torture and ill-treatment and whether any of those who committed acts of torture and ill-treatment have been prosecuted and convicted.

7. With reference to the same paragraphs of the Committee's previous concluding observations (paras. 17 and 18), please provide information on:

(a) Whether the shifting of authority for the investigation of acts of torture has resulted in a decline in the number of complaints lodged by persons deprived of their liberty;

(b) Whether independent and effective mechanisms to receive complaints and conduct investigations into allegations of torture and ill-treatment have been put in place;

(c) Specific measures taken to protect complainants, lawyers and witnesses from intimidation and physical, disciplinary or administrative reprisals when they lodge complaints.<sup>16</sup>

8. With reference to the Committee's previous concluding observations (paras. 33 and 34), please provide information on:

(a) Whether the National Human Rights Commission of Mongolia has been designated in law as the national preventive mechanism under the Optional Protocol to the Convention;

(b) Whether the National Human Rights Commission of Mongolia has been provided with the appropriate structure and sufficient financial and human resources to enable it to carry out its mandates independently and effectively, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles);

(c) The current status of the State party's compliance with its obligation under the Optional Protocol to establish its national preventive mechanism through the enactment of a law that grants the national preventive mechanism functional and operational independence, with due consideration to the Paris Principles, and that fully reflects the requirements set out in the Optional Protocol and in the guidelines on national preventive

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<sup>13</sup> CAT/C/MNG/CO/2/Add.1, para. 24.

<sup>14</sup> CAT/OP/MNG/1, para. 38 (b).

<sup>15</sup> CAT/C/MNG/CO/2/Add.1, para. 25.

<sup>16</sup> CAT/OP/MNG/1, para. 32.

mechanisms of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>17</sup>

9. With reference to the Committee's previous concluding observations (paras. 23 and 24), please provide updated information on:

(a) Any specific steps taken to establish an effective, specialized and well-functioning system of juvenile justice in compliance with international standards;

(b) Any measures taken to set up a training programme for judges and prosecutors to specialize in juvenile justice;

(c) Whether juveniles are held in detention only as a last resort, in strict compliance with the law, for the shortest amount of time possible and separately from adults, and whether their conditions of detention are subject to regular independent reviews;

(d) Whether the building of the Special Training and Education Centre for juvenile offenders in the Bayanzürkh District was completed in 2017 as planned.

### Article 3

10. With reference to the Committee's previous concluding observations (paras. 35 and 36), please provide updated information on:

(a) Whether the State party has taken legislative, judicial and administrative measures to comply with its obligations regarding non-refoulement under article 3 of the Convention;

(b) Whether individuals facing expulsion, return or extradition are informed that they have the right to seek asylum and to appeal to courts against deportation orders, and whether such appeals have a suspensive effect; and the number of asylum applications received during the period under review, the number of successful applications and the number of asylum seekers whose applications were accepted because they had been tortured or might be tortured if returned to their country of origin;

(c) Specific steps taken to ensure that no person is expelled, returned or extradited to a country where he or she would be in danger of torture; the number of persons who were expelled, returned or extradited during the period under review, disaggregated by sex, age and country of origin, and the grounds on which they were sent back, including a list of the countries to which they were returned; and any appeal mechanisms that exist, any appeals that have been made and the outcome of those appeals;

(d) Any training in international refugee and human rights law and on the provisions of the Convention provided to law enforcement and immigration officials that emphasizes the principle of non-refoulement; and whether the State party assesses the merits of each individual case when determining its non-refoulement obligations;

(e) Any instances in which the State party has offered diplomatic assurances or guarantees; the minimum content of any such assurances or guarantees, whether given or received; measures taken in such cases with regard to subsequent monitoring; and whether any bilateral or multilateral extradition agreements concluded by the State party respect the principle of non-refoulement;

(f) Any consideration given by the State party to acceding to the Convention relating to the Status of Refugees and its Protocol, and establishing procedures for the determination of refugee status.

### Articles 5–9

11. Please provide information on the legislative or other measures taken to implement article 5 of the Convention during the period under review. Please indicate whether acts of torture are considered universal crimes under national law, wherever they occur and whatever the nationality of the perpetrator or the victim.

<sup>17</sup> CAT/OP/MNG/1, para. 21.

12. Please inform the Committee of any extradition agreements concluded with other States during the period under review and specify whether the offences referred to in article 4 of the Convention are included as extraditable offences in such agreements.

13. Please clarify what mutual judicial assistance treaties or agreements the State party has entered into during the reporting period with other entities, such as countries, international tribunals or international institutions, and whether such treaties or agreements have led, in practice, to the transfer of any evidence in connection with prosecutions concerning torture or ill-treatment. Please provide examples.

#### **Article 10**

14. With reference to the Committee's previous concluding observations (paras. 37 and 38), please provide updated information on:

(a) Whether police, other law enforcement officials, judges, prosecutors and lawyers have received sufficient training on the provisions of the Convention, including the absolute prohibition of torture,<sup>18</sup> on violence against women and on human trafficking;

(b) Whether training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) is an essential part of the training for all medical professionals and other public officials involved in work with persons deprived of their liberty;

(c) Whether the State party has developed a specific methodology to assess the effectiveness of such training programmes in reducing the number of cases of torture and ill-treatment; if so, please provide information on the methodology.

#### **Article 11**

15. Please describe the procedures in place for ensuring compliance with article 11 of the Convention, provide information on any interrogation rules, instructions, methods and practices and any arrangements for custody that may have been introduced, reviewed or revised during the period under review, and indicate the frequency with which they are reviewed.

16. With reference to the Committee's previous concluding observations (paras. 19 and 20), please provide information on:

(a) Specific steps taken by the State party to reduce and ultimately eliminate overcrowding and improve the material and sanitary conditions of detention in all places of deprivation of liberty, and in particular at the Denjiin Myanga police detention centre;

(b) Whether adequate resources have been allocated during the period under review to improve living conditions and health care in places of detention, and whether responsibility for health-care and medical services in places of detention has been moved to the Ministry of Health;<sup>19</sup>

(c) The four new detention centres whose construction was due to be completed in 2016, with their exact names and locations;

(d) Specific measures taken to strengthen the independent and regular monitoring of all places of deprivation of liberty, including institutions for persons with psychosocial disabilities and social care homes;

(e) Whether the National Human Rights Commission of Mongolia, including in its capacity as national preventive mechanism, has carried out regular visits to all places of deprivation of liberty, including institutions for persons with psychosocial disabilities and social care homes;

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<sup>18</sup> CAT/OP/MNG/1, para. 38 (a).

<sup>19</sup> CAT/OP/MNG/1, para. 24.

(f) Whether additional independent and impartial mechanisms have been set up during the period under review, and whether they have the mandate to receive complaints from inmates about their conditions of detention and treatment and to provide follow-up to such complaints;

(g) Any consideration given to the use of non-custodial measures and alternatives to detention.

17. With reference to the Committee's previous concluding observations (paras. 21 and 22), and while welcoming the abolition of the death penalty in the State party, please provide updated information on the proposal by the President to the Ministry of Justice to reinstate the death penalty in response to two violent rape and murder cases. Please indicate whether all persons formerly on death row have been afforded all the protections provided by the Convention, including fundamental legal safeguards, and are benefiting from the same regime as all other prisoners, and whether their conditions of detention meet their basic needs, in accordance with international standards. Please indicate whether persons who were formerly on death row and whose sentences have been commuted to 30 years of imprisonment are required to serve 10 years of that sentence in solitary confinement.<sup>20</sup> Please provide information about the two persons who were sentenced to the death penalty in 2015.

### **Articles 12–13**

18. Please provide updated statistical data on complaints of acts of torture, ill-treatment and excessive use of force recorded by the State party's authorities during the reporting period. Please include information on investigations, disciplinary and criminal proceedings and convictions, and on the criminal or disciplinary sanctions applied.

### **Article 14**

19. With reference to the Committee's previous concluding observations (paras. 39 and 40), please provide updated information on whether new legislation has been adopted to provide victims of torture and ill-treatment with redress, including adequate reparation and compensation. Please provide information on redress and compensation measures ordered by the courts, including means of rehabilitation, for victims of torture and ill-treatment and their families during the period under review. That should include the number of requests for compensation that have been made, the number granted, the amounts ordered and actually provided in each case, and information on cases in which victims of torture and ill-treatment have received medical or psychosocial rehabilitation. Please also provide information on any ongoing reparation programmes provided to victims of torture and ill-treatment, including treatment of trauma and other forms of rehabilitation, and on the material, human and budgetary resources allocated for the effective functioning of such programmes.

### **Article 15**

20. Please indicate the specific measures taken by the State party to ensure that statements and confessions obtained as a result of torture and ill-treatment 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 as a result of torture were rejected by courts and the number of cases in which such statements and confessions have been used as evidence against persons accused of torture and ill-treatment. Please provide information on any specific steps taken by the State party to replace the confession-based approach to investigation and prosecution by an evidence-based approach.<sup>21</sup>

<sup>20</sup> CCPR/C/MNG/CO/6, para. 19.

<sup>21</sup> CAT/OP/MNG/1, para. 38 (c).

**Article 16**

21. With reference to the Committee's previous concluding observations (paras. 27 and 28), please provide updated information on:

- (a) Any amendments to the Criminal Code to criminalize marital rape;
- (b) Steps taken to establish an effective and independent complaints mechanism for victims of domestic violence and ensure that all allegations of domestic violence, including sexual violence and marital rape and violence against children, are registered by the police and promptly investigated;
- (c) Specific measures taken to protect victims of domestic violence, including restraining orders, and any new shelters built in the State party during the period under review;
- (d) Whether training has been provided to police and other law enforcement officials, social workers, judges, prosecutors and medical professionals on the vulnerabilities of victims of domestic and sexual violence; as well as on the legislation criminalizing such violence;
- (e) Statistics on the number of complaints, investigations, prosecutions, convictions and sentences handed down relating to domestic and sexual violence, disaggregated by age and ethnicity of the victims and their relationship to the perpetrators.

22. With reference to the Committee's previous concluding observations (paras. 31 and 32), please provide information on:

- (a) Specific measures taken during the period under review to prevent and eradicate human trafficking, including for forced labour and sexual exploitation;
- (b) Any specialized training provided during the period under review to law enforcement, immigration and prosecutorial personnel and other public officials, and efforts to ensure that perpetrators of human trafficking are prosecuted under the appropriate articles of the Criminal Code;
- (c) Specific measures adopted during the period under review to protect and provide redress to victims of trafficking, especially minors, including access to adequate shelters and assistance in reporting incidents of human trafficking to the police;
- (d) The number of investigations, prosecutions and sentences handed down to perpetrators of human trafficking, and the provision of redress to the victims.

23. With reference to the Committee's previous concluding observations (paras. 25 and 26), please provide information on:

- (a) Specific steps taken to effectively enforce the prohibition of corporal punishment of children in all settings, and to investigate, prosecute and sanction all reported cases of corporal punishment;
- (b) Whether any campaigns have been conducted for professionals and the general public in order to raise awareness about the harmful effects of corporal punishment and promote positive, non-violent disciplinary methods in education and in bringing up and caring for children.

24. With reference to the Committee's previous concluding observations (paras. 29 and 30), please provide updated information on measures taken to prevent discrimination and violence against lesbian, gay, bisexual, transgender and intersex persons. Please provide information on steps taken to establish a comprehensive legal framework to prevent violence, such as physical attacks and other ill-treatment, and to ensure the protection of vulnerable groups, including persons with HIV/AIDS and lesbian, gay, bisexual, transgender and intersex persons. Please provide information concerning any policing, enforcement and complaints mechanism that has been established to ensure that reports of violence are registered and investigated by the police. Please provide information on the measures taken to ensure that the perpetrators of violent acts against vulnerable populations on the basis of their sexual orientation or gender identity are brought to justice. Please

indicate whether there is a provision in the new Criminal Code about lesbian, gay, bisexual, transgender and intersex persons.

### **Other issues**

25. With reference to the Committee's previous concluding observations (para. 42), please provide information on any consideration given by the State party to making the declarations envisaged under articles 21 and 22 of the Convention, to recognize the competence of the Committee to receive and consider communications.

26. Please provide updated information on the measures taken by the State party to respond to threats of terrorism. Please describe whether those measures have affected human rights safeguards in law and in practice and, if so, how they have affected them. Please also describe how the State party has ensured that those measures are compatible with all its obligations under international law, especially the Convention. Furthermore, please indicate what training is given to law enforcement officers in this area; the number of persons who have been convicted under legislation adopted to combat terrorism; the legal remedies and safeguards available in law and in practice to persons subjected to anti-terrorism measures; and whether there have been complaints of the non-observance of international standards in applying measures to combat terrorism and, if so, what the outcome was.

### **General information on the other measures and developments relating to the implementation of the Convention in the State party**

27. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken to implement the provisions of the Convention or the Committee's recommendations, including institutional developments, plans or programmes. Please indicate the resources allocated and statistical data. Please also provide any other information that the State party considers relevant.

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