



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Concluding observations on the sixth periodic report of Mongolia\*

1. The Committee considered the sixth periodic report of Mongolia (CCPR/C/MNG/6) at its 3380th and 3381st meetings (CCPR/C/SR.3380 and CCPR/C/SR.3381), held on 6 and 7 July 2017. At its 3404th meeting, held on 24 July 2017, it adopted the current concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the sixth periodic report of Mongolia and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high-level delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee takes note of the State party's written replies (CCPR/C/MNG/Q/6/Add.1) to the list of issues (CCPR/C/MNG/Q/6), which were supplemented by the oral responses provided by the delegation.

#### B. Positive aspects

3. The Committee welcomes the following legislative measures taken by the State party:

(a) The entry into force of the revised Criminal Code and Criminal Procedure Code, on 1 July 2017;

(b) The entry into force of the revised law on domestic violence, on 1 February 2017;

(c) The adoption of the revised law on the rights of the child and the law on child protection, in February 2016.

4. The Committee welcomes the ratification of, or accession to, the following international instruments by the State party:

(a) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, on 13 March 2012;

(b) The International Convention for the Protection of All Persons from Enforced Disappearance, on 12 February 2015;

(c) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 12 February 2015;

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\* Adopted by the Committee at its 120th session (3-28 July 2017).



(d) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 28 September 2015.

## C. Principal matters of concern and recommendations

### Implementation of the Covenant and of the Views under the Optional Protocol

5. The Committee is concerned about the lack of application of the provisions of the Covenant by domestic courts. Noting that only one communication under the First Optional Protocol has been submitted to the Committee, it is also concerned about the lack of sufficient awareness of the Covenant and the First Optional Protocol among lawyers, judges, prosecutors and the public at large. The Committee also regrets the lack of information on the implementation of the Committee's Views (art. 2).

6. **The State party should strengthen its efforts to promote the effective application of the provisions of the Covenant before domestic courts, including through institutionalized training of lawyers, prosecutors and judges on international human rights treaties, and awareness-raising among the public at large. It should also establish mechanisms to facilitate the implementation of the Committee's Views, so as to guarantee the right to an effective remedy, as established in article 2 (3) of the Covenant.**

### National human rights institution

7. While noting a draft law that would extend the mandate of the National Human Rights Commission, including its designation as the national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee remains concerned about lack of adequate funding and human resources to enable the Commission's effective functioning (art. 2).

8. **The State party should ensure independent, transparent and effective functioning of the National Human Rights Commission, both in law and in practice, and provide it with adequate financial and human resources to enable fulfilment of all its functions.**

### Equality and non-discrimination

9. While noting the adoption of the strategy and action plan on the implementation of the Law on the Promotion of Gender Equality, the Committee remains concerned about low representation of women in the public and private sectors, especially in senior managerial positions. The Committee welcomes the inclusion of a provision prohibiting any act of discrimination based on nationality, occupation, religious belief, opinion, education, sexual orientation, gender identity or health conditions, in the new Criminal Code. It is nevertheless concerned about the absence of other prohibited grounds of discrimination stipulated in the Covenant. Moreover, it remains concerned about the lack of comprehensive anti-discrimination legislation and the insufficiency of measures taken to address discriminatory practices (arts. 2, 3 and 26).

10. **The State party should strengthen its efforts to increase representation of women in the public and private sectors, especially in senior managerial positions. It should also ensure that all the prohibited grounds of discrimination stipulated in article 26 of the Covenant are adequately reflected in its legislation. Furthermore, the State party should adopt comprehensive anti-discrimination legislation that addresses discrimination in both the public and private spheres, including direct and indirect discrimination, and that provides effective remedies in judicial and administrative proceedings.**

### Discrimination on the grounds of sexual orientation and gender identity

11. The Committee is concerned about reports of violence, harassment and attacks against lesbian, gay, bisexual, transgender and intersex persons, about the failure of the

State party to investigate, prosecute and punish such attacks, thus contributing to a culture of impunity and about the prevalence of prejudices and discrimination based on sexual orientation and gender identity. The Committee is also concerned about notable obstacles to the exercise of freedom of assembly by persons belonging to the lesbian, gay, bisexual, transgender and intersex community, which further exacerbates their vulnerable status in Mongolian society. The Committee also regrets the absence of legal recognition and protection of same-sex couples (arts. 2, 6, 7, 19, 21, 22 and 26).

**12. The State party should intensify its efforts to combat stereotypes and prejudices against lesbian, gay, bisexual, transgender and intersex persons, and ensure that acts of discrimination and violence directed against them are investigated, that perpetrators are prosecuted, and if convicted, punished with appropriate penalties, and that victims are provided with full reparation. The State party should also promote and guarantee freedom of expression, association and peaceful assembly for lesbian, gay, bisexual, transgender and intersex persons, and should abstain from any unjustified interference with the exercise of these rights and ensure that any restrictions imposed comply with the strict requirements of articles 19, 21 and 22 of the Covenant and are not applied in a discriminatory manner. The State party should consider legal recognition and protection of same-sex couples.**

#### **Persons with disabilities**

13. The Committee is concerned about reports of discrimination against persons with disabilities in employment and education, including barriers in access to schools, inadequate textbooks, lack of specialized teachers for children with disabilities and limited access to public buildings and transportation (arts. 2, 24 and 26).

**14. The State party should intensify its efforts to protect persons with disabilities from discrimination of any kind and ensure their full access to education, employment, public transportation and premises.**

#### **States of emergency**

15. The Committee reiterates its previous recommendations (CCPR/C/MNG/CO/5) and expresses its concern that, both in law and in practice, only a limited number of the provisions referred to in article 4 of the Covenant are considered non-derogable during a state of emergency (art. 4).

**16. The State party should consider amending article 19 (2) of the Constitution and the state of emergency law so as to ensure that national law prohibits derogation from the provisions of the Covenant that are considered non-derogable.**

#### **Violence against women and children, including domestic violence**

17. While welcoming the introduction of criminal punishment for domestic violence, through the revised law on domestic violence, the Committee is concerned about reports of violence against women and children, including domestic violence, which remain widespread in the State party. It is also concerned that despite the legal prohibition of corporal punishment of children in all settings, corporal punishment continues to be used widely in the home and schools (arts. 2, 3, 6, 7, 24 and 26).

**18. The State party should increase its efforts to prevent and eradicate domestic violence against women, including through implementation of the revised law on domestic violence and by ensuring that all allegations of domestic violence are reported and are promptly, thoroughly and effectively investigated. It should also ensure that the perpetrators are prosecuted and, if convicted, punished with commensurate sanctions and that the victims have access to effective remedies, full reparation and means of protection. The State party should provide training for State officials, in particular law enforcement officials, judges and prosecutors, to ensure that they are able to respond promptly and effectively to cases of domestic violence. It should ensure effective implementation of prohibition of corporal punishment of children in all settings, including through public education and awareness-raising programmes.**

**Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment**

19. The Committee welcomes the abolition of the death penalty in the new Criminal Procedure Code and the information that the death sentence of 34 prisoners has been commuted to 30 years of imprisonment. It is, however, concerned that 10 years of that sentence are to be served in solitary confinement (arts. 2, 6 and 7).

20. **The State party should ensure that solitary confinement measures are used only in the most exceptional circumstances and for strictly limited periods of time, in accordance with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).**

21. The Committee remains concerned that the definition of torture in the new Criminal Code does not cover acts of torture committed by private persons and therefore is not fully compliant with the provisions of the Covenant and the Committee's general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment. It is also concerned that the maximum penalty of only five years' imprisonment for acts of torture is not commensurate with the gravity of the crime. The Committee is further concerned about reports that torture is still used to extract confessions and that impunity for allegations of torture persists. It remains concerned about the lack of independence of the Investigative Division of the General Police Department and the Independent Authority Against Corruption to investigate allegations of torture (arts. 2 and 7).

22. **The State party should amend its legislation to include a definition of torture that fully complies with international standards, and penalties commensurate with the gravity of the crime. The State party should ensure that all reported allegations and complaints about acts of torture and ill-treatment are promptly and thoroughly investigated, that alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims have access to redress, including full reparation. It should also provide law enforcement officials with adequate training on detection and investigation of torture, integrating the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). The State party should ensure independent functioning of all its mechanisms for investigating allegations of torture.**

**Liberty and security of person and treatment of persons deprived of their liberty**

23. While noting the State party's efforts to introduce alternatives to detention, the Committee is concerned about reports of widespread use of pretrial detention, including for lengthy periods, in some cases exceeding 30 months. It is also concerned about allegations that persons deprived of their liberty are not being properly informed of their rights upon arrest and are not being provided with immediate access to a lawyer and a doctor or with the opportunity to contact their family, and that the time spent in pretrial detention does not count against the period of the sentence. It is further concerned about the lack of investigation into complaints relating to violations of the rights of detainees during arrest and detention (arts. 7, 9 and 10).

24. **The State party should:**

- (a) **Periodically review the length of pretrial detention with a view to determining whether it is necessary and whether it guarantees the right to a trial within a reasonable time;**
- (b) **Increase its efforts to promote and implement alternatives to detention;**
- (c) **Ensure that persons deprived of their liberty are informed of their rights upon arrest and that they enjoy all the fundamental safeguards, including timely access to a lawyer and a doctor and the ability and means to immediately inform their family, or any other person designated as a contact person, about their imprisonment, about their transfer to another institution and about any serious illness or injury;**

(d) **Ensure that the time spent in pretrial detention is taken into account in the determination of the sentence;**

(e) **Properly investigate complaints about violations of rights during arrest and detention, including excessive periods of pretrial detention;**

(f) **Systematically collect data on the number of pretrial detainees, and the number and nature of complaints of lengthy pretrial detention periods or related violations and their outcome, in order to bring its practices into compliance with international human rights standards.**

25. While welcoming the State party's efforts to improve conditions of detention and to tackle overcrowding in prisons, including through the use of non-custodial measures, the Committee remains concerned about reports of poor conditions and overcrowding in some places of detention (arts. 7, 9 and 10).

26. **The State party should continue its efforts to ensure that conditions in places of detention are in line with international human rights standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), to address overcrowding and to ensure effective implementation of regulations relating to alternatives to the deprivation of liberty.**

#### **Trafficking in persons and child labour**

27. While appreciating the increased prosecution of perpetrators of trafficking in persons, the Committee is concerned about lack of identification of victims and reports of arrest and detention of victims for acts committed as a direct result of being trafficked. The Committee is also concerned about insufficient funding by the State party of services and shelters for victims. It is further concerned that children continue to be engaged in dangerous and hazardous work, such as in agriculture, mining and horse-riding (arts. 8 and 24).

28. **The State party should strengthen existing victim identification mechanisms, refrain from charging victims of trafficking for acts committed as a direct result of being trafficked and provide victims with adequate medical care, social and legal assistance, and reparation, including rehabilitation, and ensure the availability of sufficient shelters for victims. It should take measures to eliminate child labour, including measures to prohibit the employment of children as jockeys.**

#### **Forced labour**

29. While welcoming the criminalization of forced labour in the new Criminal Code, the Committee is concerned about allegations of migrants from China and the Democratic People's Republic of Korea working in conditions tantamount to forced labour, in mining, construction and other sectors. It is also concerned about reports of a limited number of inspectors, limited funding and low public awareness to tackle the issue effectively (art. 8).

30. **The State party should increase its efforts to enforce prohibition of forced labour and provide protection for migrant workers, including through increasing the number of labour inspectors and strengthening their capacity, training government officials and allocating sufficient funds to efforts to combat forced labour.**

#### **Right to a fair trial and independence of the judiciary**

31. The Committee welcomes the State party's amendments to the Law on Establishing Courts with a view to ensuring that access to justice is guaranteed in all districts of the country, and appreciates the steps taken by the State party to provide the judiciary with both adequate remuneration and tenure security, and to investigate allegations of corruption within the judiciary. However, it remains concerned about reports that corruption continues to exist within the judiciary, undermining the independence of judges and the confidence of the public in the justice system (art. 14).

32. **The State party should continue to take steps to protect the full independence and impartiality of the judiciary, guarantee that it is free to operate without**

**interference and ensure transparent and impartial processes for appointments to the judiciary. It should continue its efforts to fight corruption and ensure that disciplinary procedures and sanctions applicable to judges and prosecutors are duly established by law.**

33. The Committee remains concerned at the absence of a comprehensive juvenile criminal justice system in the State party, including specialized courts for juveniles. It is also concerned about allegations that children deprived of their liberty are not always separated from adults (arts. 14 and 24).

**34. The State party should intensify its efforts to develop a comprehensive and effective juvenile justice system that takes into account the age, specific needs and vulnerability of children who come into conflict with the law. Furthermore, it should ensure that appropriate legal assistance is made available to minors, that detention and incarceration are only used as the last resort and for the shortest period of time and that detained children are separated from adult detainees.**

#### **Right to privacy and family life**

35. The Committee is concerned about reports of the impact of urban redevelopment in Ulaanbaatar on the right to privacy and family life of residents facing the risk of forced eviction (art. 17).

**36. The State party should put in place adequate legal safeguards against forced evictions and guarantee alternative housing for persons affected.**

#### **Freedom of expression, peaceful assembly and association**

37. The Committee is concerned about broad legal restrictions on the media, including Internet media, and limitations on access to information due to the broad interpretation of confidentiality provisions by authorities. While noting that the general defamation provision has been removed from the Criminal Code, the Committee is still concerned about remaining provisions on defamation in the criminal law and reports about the increasing use of civil law defamation clauses, which has a chilling effect that may unduly restrict the exercise of freedom of expression. It is also concerned about reports of attacks and harassment against journalists and media workers (arts. 19, 21, 22 and 26).

**38. In the light of the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression, the State party should ensure that any restriction on media activities is in strict compliance with the provisions of article 19 (3) of the Covenant. It should consider fully decriminalizing defamation and ensure that defamation is not subject to deprivation of liberty and that defamation laws, both criminal and civil, do not serve to stifle freedom of expression. It should also protect journalists and media workers against any form of harassment and threats, promptly investigate all such attacks and bring those responsible to justice to receive commensurate punishment.**

#### **Right to participate in public life**

39. The Committee is concerned about disproportionate restrictions imposed by the 2015 electoral law on: (a) the right to stand for elections — including disqualification of candidates for overdue debts or taxes, not having completed compulsory military service or having a criminal record, regardless of the crime committed, and the requirement that civil servants planning to stand for elections must resign from their posts by 31 January of the election year; (b) the right to vote of any person serving any prison sentence; and (c) the freedom to campaign, due to the power of the National Audit Office to not approve specific campaigning acts (arts. 19, 21, 22 and 25).

**40. The State party should remove restrictions on the right to participate in public life, including the right to stand for elections, on the right to vote and on the freedom to campaign, and bring its electoral legislation and practice into compliance with the Covenant, including article 25.**

**Dissemination and follow-up**

41. The State party should widely disseminate the Covenant, its two Optional Protocols, its sixth periodic report, the written replies to the Committee's list of issues and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the report, the list of issues and the written replies and the present concluding observations are translated into the official language of the State party.

42. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on the implementation of the recommendations made by the Committee in paragraphs 12 (discrimination on the grounds of sexual orientation and gender identity), 18 (violence against women and children, including domestic violence) and 22 (right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment) above.

43. The Committee requests the State party to submit its next periodic report by 28 July 2022 and to include in that report information on the implementation of the recommendations made in the present concluding observations. The Committee also requests the State party, in preparing the report, to broadly consult civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. Alternatively, the Committee invites the State party to agree, by 28 July 2018, to use its simplified reporting procedure, whereby the Committee transmits a list of issues to the State party prior to the submission of its report. The State party's response to the list of issues will constitute the next periodic report to be submitted under article 40 of the Covenant.

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