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

Concluding observations of the Human Rights Committee

Mongolia

1. The Committee considered the fifth periodic report submitted by Mongolia (CCPR/C/MNG/5 and Corr.1) at its 2784th and 2785th meetings (CCPR/C/SR.2784 and 2785), held on 21 and 22 March 2011, and adopted at its 2797th meeting (CCPR/C/SR.2797), held on 30 March 2011, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's fifth periodic report, which gives detailed information on measures adopted by the State party to further the implementation of the Covenant. Furthermore, it expresses its appreciation for the constructive dialogue with the delegation, the written replies to the list of issues (CCPR/C/MNG/Q/5/Add.1) provided in advance by the State part, the answers provided to the Committee during the consideration of the report, and the additional information provided after the consideration of the report.

B. Positive aspects

3. The Committee welcomes the following positive developments since the examination of the fourth report:

(a) The adoption of the Law on the National Human Rights Commission in 2007 and the fact that it is considered in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) by the Subcommittee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights;

(b) The implementation of the National Human Rights Action Plan in 2005.

(c) The following policy measures that the Government of Mongolia has taken: the National Programme on Combating Domestic Violence (2005-2015); the National Programme on the Protection of Women and Children from Human Trafficking Especially for the Purpose of Sexual Exploitation (2005-2014); the National Programme on Fulfilling Gender Equality (2003-2015); and the National Programme on Supporting People with Disabilities (2006-2015).

C. Principal subjects of concern and recommendations

4. While welcoming article 10 of the Constitution, which enables the direct invocation of the Covenant before domestic courts, the Committee remains concerned about the lack of application of the provisions of the Covenant by domestic courts. It is also concerned about information according to which an accused person received a longer sentence in a criminal case when references were made to international human rights treaties (arts. 2, 7, 14 of the Covenant).

The State party should take measures to promote the effective application of the provisions of the Covenant before domestic courts, including through the organization of compulsory training programmes and follow-up programmes for judges and lawyers on international human rights treaties. The State party should ensure that references to Covenant provisions during legal proceedings should not be met with a response that threatens the right to a fair trial.

5. While welcoming the adoption of the Law on the National Human Rights Commission in 2007 and the fact that it is considered in compliance with the Paris Principles by the Subcommittee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, the Committee is concerned about information alleging the lack of transparency of the Human Rights Commission's appointments procedure, and questioning its vigilance in monitoring, promoting and protecting human rights during the 2008 state of emergency (art. 2 of the Covenant).

The State party should strengthen its efforts to ensure that the National Human Rights Commission enjoys independence by providing it with adequate funding and human resources, and revising the appointment process of its members.

6. The Committee notes with concern that the death penalty has yet to be abolished *de jure* in the State party despite the welcome moratorium on the execution of death sentences in force since January 2010 (art. 6).

The State party should take the necessary measures to abolish the death penalty *de jure* at the earliest possible moment, and consider acceding to the Second Optional Protocol to the Covenant.

7. The Committee is concerned that there are substantial lacunas in the Mongolian legislation on discrimination in so far as the prohibited grounds of discrimination under article 14 of the Constitution are not comprehensive and that there is no effective mechanism to ensure that victims of discrimination have access to a remedy (arts. 2 and 26 of the Covenant).

The State party should take appropriate measures to ensure that its definition of discrimination prohibits all forms of discrimination as set out in the Covenant (race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status) and put in place effective mechanisms to provide access to justice and remedies in cases of violation of those rights.

8. While noting the adoption of the Law on Gender Equality and the implementation of the National Programme on Fulfilling Gender Equality, the Committee remains concerned about the low level of representation of women in Parliament and in decision-making positions in both the public and private sectors. The Committee also regrets the limited impact of the measures taken to address traditional discriminatory practices and persisting stereotypes about the roles and responsibilities of women and men, including in legislation, policies and programmes (arts. 3, 25, 26 of the Covenant).

The State party should take measures to increase the participation of women in decision-making positions in the public and private sectors through the implementation of new practical initiatives including, if necessary, appropriate temporary special measures. It should also intensify its efforts to eradicate traditional stereotypes regarding the roles and responsibilities of women and men within the public and private spheres, including through comprehensive awareness-raising campaigns.

9. The Committee notes with regret, as acknowledged by the State party, the widespread discriminatory attitudes towards lesbian, gay, bisexual and transgender (LGBT) persons (arts. 20, 24 and 26 of the Covenant).

The State party should take urgent measures to address the widespread discriminatory attitudes, social prejudice and stigmatization of LGBT persons in the State party. It should ensure that LGBT persons have access to justice, and that all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity are thoroughly investigated.

10. The Committee notes with concern the limited access of persons with disabilities to education, health and social services because of widespread discrimination and the lack of adequate structures (arts. 20, 24 and 26 of the Covenant).

The State party should strengthen the measures taken to adopt and implement a plan of action to address the situation of persons with disabilities, and facilitate their access to education, health and social services.

11. The Committee remains concerned that both in law and 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 (arts. 4, 5 and 6 of the Covenant).

The State party should amend article 19, paragraph 2, of the Constitution and the Law on State of Emergency to ensure that national law prohibits derogation from the provisions of the Covenant which are considered non-derogable, and take all the necessary measures to enable its immediate implementation and effect.

12. The Committee is concerned that although the cases of four senior police officials in connection with deaths, torture and cruel, inhumane or degrading treatment having occurred during the state of emergency of July 2008 were reopened, these cases have not yet been brought to a conclusion. The Committee is also concerned that the charges against all other police officers prosecuted for human rights violations during this emergency were dropped due to a lack of evidence and that no one has been convicted to date (arts. 2, 6, 9 and 14 of the Covenant).

The State party should take the necessary measures to thoroughly investigate all allegations of human rights violations committed during the state of emergency of July 2008, including in the cases where compensation has been paid to the families. It should also ensure that those involved are prosecuted and, if convicted, punished with appropriate sanctions, and ensure that the victims are adequately compensated.

13. The Committee is concerned about articles 100 and 251 of the Criminal Code, which limit the investigation of acts of torture or cruel, inhuman or degrading treatment to the “inquirer” or “investigator”, and do not refer to the *eruugiin tuluulugh* or “criminal delegate” of the police force, who commissions intelligence acts for the purpose of discovering evidence in support of the investigation process. The Committee is also concerned about article 44.1 of the Criminal Code, which exempts from investigation anyone “who acted under orders”. Finally, the Committee regrets the lack of financial and human resources in the Investigation Unit under the General Prosecutor’s Office, and the lack of an independent body to investigate allegations of mistreatment and torture by police officers (art. 7 of the Covenant).

The State party should without delay adopt a definition of torture that fully complies with international standards and includes punishment proportionate to the gravity of the crime, and the applicability of the prohibition of torture and inhuman or degrading treatment to anyone who commits it, including when acting under orders. The State party should ensure that the Investigation Unit has the necessary authority, independence and resources to adequately investigate all offences committed by the police.

14. While welcoming the efforts of the State party to install television cameras in police detention facilities of local and municipal police authorities to record interrogations, the Committee is concerned about the limited proportion of cases actually recorded. It is also concerned about the lack of information on the storage of monitoring information and on the regulation of its use during future investigations, including by the victims (art. 7 of the Covenant).

The State party should introduce a legal obligation to record interrogations systematically, and provide the necessary financial, material and human resources to that end. Regulations should also be adopted and implemented by the State party to control the storage of monitoring information and its use in later investigations.

15. While welcoming the training programmes on the prevention and investigation of torture and cruel, inhuman or degrading treatment that have been developed by the National Legal Institute for judges, prosecutors and attorneys, the Committee remains concerned about the absence of systematized training for police and prison personnel (arts. 7 and 14 of the Covenant).

The State party should ensure the implementation of a systematic and compulsory training course for all law-enforcement, prison and judicial personnel on the prevention and investigation of torture and cruel, inhuman or degrading treatment or punishment.

16. The Committee is concerned at the continuing overcrowding of prisons and at the failure to regularly and independently monitor places of detention (art. 10 of the Covenant).

The State party should establish an independent mechanism to monitor the places of detention and take measures to eliminate the problems of overcrowding in all its prisons and to guarantee the full respect for the Standard Minimum Rules for the Treatment of Prisoners.

17. While welcoming the reform project of the judiciary, which was initiated in 2009, the Committee is concerned about allegations of corruption and a lack of transparency and independence of the judiciary. The Committee is also concerned that certain benefits afforded to the judiciary may contribute to these concerns, such as social benefits, loans, diplomatic immunities and educational expenses, granted for having demonstrated “effectiveness” in their work (art. 14 of the Covenant).

The State party should adopt the reform project of the judiciary after having reviewed its full compliance with the Covenant and making sure that the structures and mechanisms introduced guarantee the transparency and independence of its institutions. The State party should make sure that the project is drafted, adopted and implemented through a process that integrates the consultation of specialized sectors, including civil society actors. The State party should also take all the necessary measures to guarantee the thorough investigation of all allegations of corruption of the judiciary.

18. The Committee notes with regret the high level of domestic violence against women in the State party and the low number of cases dealt with by the judicial system. The Committee is also concerned that marital rape is not criminalized under the Criminal Code (arts. 7, 29 and 14).

The State party should extend and intensify its strategies of information and prevention of domestic violence against women through information campaigns and the promotion of judicial prosecution of the cases. Specific measures should be taken to facilitate the access of the victims of domestic violence to justice and their protection throughout the legal processes, and to guarantee a specialized professional attention to these cases by the police, the lawyers and the judiciary. The State party should also adopt, without delay, the necessary legislation to criminalize marital rape.

19. While taking note of the prohibition of corporal punishment under the Education Law, the Committee is concerned about the continual practice of corporal punishment in all settings (art. 7 of the Covenant).

The State party should take practical steps to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.

20. While welcoming the measures taken by the State party to further reduce maternal mortality, the Committee remains concerned about the high levels of maternal mortality, especially in the rural areas, and the lack of health services for high-risk pregnancy cases (arts. 6 and 24 of the Covenant).

The State party should urgently take all necessary measures to reduce maternal mortality, including by implementing the project of the nationwide network of national ambulance services and opening new medical clinics in rural areas. It should also include within its priorities improving access to health services for cases of high-risk pregnancies throughout the country.

21. While welcoming the progress made through the adoption of legislation against human trafficking, the Committee is concerned about its enforcement and the difficulties victims and witnesses experience in receiving access to legal advice, effective protection and shelters, and adequate compensation and rehabilitation. The Committee is also concerned about the gaps in the criminal prosecution of human trafficking, including in cases that allegedly involve law-enforcement officials in the trafficking and forced prostitution of minors. The Committee regrets that a high proportion of cases of trafficking are dismissed by the courts, and that article 124 of the Criminal Code (on inducement to engage in prostitution and organization of prostitution) is applied to the majority of prosecuted cases instead of article 113 (on the sale and purchase of human beings), resulting in the application of lighter sanctions (art. 8 of the Covenant).

The State party should take all the necessary measures to guarantee that all cases of human trafficking are investigated, prosecuted and, if resulting in convictions, adequately sanctioned. The State party should also implement mechanisms to protect

witnesses and victims during all stages of the judicial process. State resources should be allocated for the establishment and running of shelters for victims of trafficking.

22. While welcoming the progress made in the provision of legal aid services through legal aid centres, the Committee remains concerned about the information provided alleging the lack of independence of the lawyers in the exercise of their profession, and the limited availability of legal aid services due to the lack of financial and human resources (art. 14 of the Covenant).

The State party should take all the necessary measures to guarantee the independence of lawyers and of the Law Association. It should also ensure that the necessary budgetary allocation and human resources are provided to the legal centres, including in the rural areas, paying special attention to strengthening the access to legal aid services.

23. The Committee is concerned about the absence of an alternative civil service that would enable conscientious objectors to military service to exercise their rights in accordance with the provisions of the Covenant. The Committee is also concerned about the exemption fee that can be paid in lieu of doing military service, and the discrimination that may result therefrom (arts. 18 and 26 of the Covenant).

The State party should put in place an alternative to military service, which is accessible to all conscientious objectors and neither punitive nor discriminatory in nature, cost and/or duration.

24. While welcoming the information provided by the State party as to the increase of the number and diversity of religions registered in Mongolia, the Committee remains concerned about allegations that certain religious groups face difficulties during the registration process, exacerbated by burdensome administrative procedures that can take many years to be finalized and that often result in registration for a limited period only (art. 18 of the Covenant).

The State party should develop a thorough analysis of the administrative and practical difficulties faced by religious groups to register and therefore conduct their activities, and adopt the modifications that are necessary in terms of the formulation and application of the Law on Relations between the State and Religious Institutions (1993) and its regulations to bring them in compliance with the Covenant.

25. The Committee is concerned about information received on frequent threats and attacks on journalists and/or their family members, and about the delays that have elapsed since the commencement of the discussion on the draft law on freedom of information in 2001. The Committee also regrets the application of the legislation on defamation in the case of journalists prosecuted after having criticized public servants, or lawyers who contested judges' decisions (art. 19 of the Covenant).

The State party should guarantee the full compliance of the draft law on freedom of information with the Covenant and enact it. It should consider decriminalizing defamation and ensure that measures are taken to protect journalists from threats and attacks. It should also ensure that all allegations of such threats and attacks are immediately and thoroughly investigated, and that the perpetrators are prosecuted.

26. While welcoming the possibility for children of stateless persons to apply for citizenship in their late teenage years, and the six-month legal deadline in which the authorities are supposed to attend any request to acquire Mongolian nationality, the Committee is concerned about allegations according to which, in practice, the process takes between 9 and 13 years. The Committee is also concerned about persons who have become stateless as a result of the legal obligation for individuals to renounce their nationality upon application for another nationality, including ethnic Kazakhs who renounced their

Mongolian nationality, but subsequently failed to acquire the Kazakh nationality they applied for and became stateless (arts. 24 and 26 of the Covenant).

The State party should conduct a thorough analysis of its legal framework to identify the provisions that lead to statelessness, and implement immediate reforms to guarantee the right of all persons to receive a nationality, including for stateless children who were born on the territory of Mongolia to stateless parents. The State party should ensure respect for the six-month legal deadline for the finalization of this procedure.

27. While taking note of the measures taken to promote the access to education of the Kazakh people, the Committee remains concerned about the difficulties faced by this population with regard to access to education in their language (arts. 2 and 27 of the Covenant).

The State party should further promote the access of the Kazakh people to education in their own language.

28. The State party should widely disseminate the text of the fifth periodic report, the written responses it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations among the general public and the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country. Hard copies of those documents should be distributed to universities, public libraries, the Parliamentary library and all other relevant places. The Committee also suggests that the report and the concluding observations be translated into the official language of the State party.

29. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 5, 12 and 17 above.

30. The Committee requests the State party to provide, in its sixth periodic report due for submission by 1 April 2015, specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole. The Committee also requests the State party, when preparing its sixth periodic report, to consult civil society and non-governmental organizations operating in the country.
