

MONGOLIA

CCPR A/35/40 (1980)

88. The Committee considered the initial report (CCPR/C/1/Add.38) submitted by the Government of Mongolia at its 197th, 198th and 202nd meetings held on 19 and 21 March 1980 (CCPR/C/SR.197, 198 and 202).

89. The report was introduced by the representative of Mongolia who stated that civil and political rights recognized in the Covenant were enshrined in the Mongolian Constitution and in other laws; that the provisions of the Covenant were reflected in a number of legislative acts which were adopted following the ratification by his country of the Covenant; and that efforts were constantly being made to improve the legal basis of the central and local bodies, in particular, to strengthen the political, economic and legal guarantees of human rights and of the socialist democracy. He gave a detailed account of the achievements in his country following the 1921 revolution, particularly with regard to the rights of women and detained and accused persons.

90. Members of the Committee expressed appreciation for the valuable supplementary information provided by the representative of Mongolia in his introduction to the report. Some members, however, expressed the wish to have further information on the actual situation of human rights in Mongolia.

91. General questions were asked as to whether treaties ratified by Mongolia automatically received the force of the law or whether it was necessary to incorporate them in the domestic law of Mongolia; whether the Covenant had been published in the Official Gazette and in the press or other information media; and whether copies of it were available in libraries or elsewhere in languages which the inhabitants of Mongolia could understand and study.

92. With reference to article 2 of the Covenant, members of the Committee asked whether the omission of reference to political opinion from the nondiscrimination clause in the relevant article of the Mongolian Constitution meant that citizens did not enjoy equal rights in the expression of political opinions; why, in guaranteeing the equality of rights to all citizens, the Constitution made no mention of foreigners whose rights must also receive equal protection under the Covenant; what was the legal status of the Covenant within Mongolia's legal and administrative systems; what were the legislative or other measures adopted to give effect to the rights recognized in the Covenant; whether the Covenant could be invoked before the judicial and administrative bodies for alleged violations of its provisions; and what recourse was available to the individual whose rights had been infringed and whether he had access to a court or to the local Khural. In this connection, more information was requested on the possibility of submitting complaints to the authorities provided for in the Constitution, on the right to appeal as a means of judicial remedy; on the role of the Procurator; and on the systems of popular and State control referred to in the introduction of the representative of Mongolia.

93. Commenting on article 6 of the Covenant, members thought that some of the expressions used in the report in this respect were vague and called for explanation and that the death penalty was rather an extreme penalty to apply to some of the fairly wide range of crimes listed in the report. A request was made for information on how frequently that penalty had been imposed in recent years and for what crimes and whether any reconsideration had been given to its abolition. Noting that the death penalty did not apply to women, some members expressed the hope that men too would benefit from such a humanitarian exclusion and not be discriminated against.

94. With reference to articles 7 and 10 of the Covenant, questions were asked on what safeguards were provided against ill-treatment or harassment by the police or other authorities, whether there was any procedure for investigating complaints against such treatment, whether persons independent of the prison staff could visit prisons, inspect them and hear any complaints made by inmates, who was responsible for the supervision of penal establishments and to what extent the treatment of prisoners in Mongolia was designed to contribute to their reformation and social rehabilitation. An explanation was requested of the statement in the report to the effect that not only convicted persons but also persons under preliminary investigation could be placed in corrective labour institutions, a measure which, if practised, would be in contradiction with article 14, paragraph 2, of the Covenant.

95. In connection with article 8 of the Covenant, reference was made to the statement in the report that Mongolia was party to international legal instruments prohibiting slavery and it was asked whether there were specific provisions in Mongolian legislation prohibiting slavery and forced labour and what practices, if any, did exist in that respect.

96. Regarding article 9 of the Covenant, it was noted that the report referred to arrest and detention in respect to criminal proceedings but that article 9 referred to all types of deprivation of liberty including the deprivation of liberty for reasons of physical and mental health and it was asked what laws there were in that respect and what guarantees existed to prevent arbitrary detention. Questions were also asked on whether, under Mongolian law, anyone who was arrested should be informed, at the time of arrest, of the reasons for his arrest and should be promptly informed of any charges against him; what was the extent of the Procurator's authority and in what cases a person might be detained for more than 24 hours; whether anyone who was deprived of his liberty by arrest or detention could apply to a court to have the lawfulness of his detention determined and his release ordered if the detention was not lawful; and whether anyone who was the victim of unlawful arrest or detention had a right to compensation and, if so, what form such compensation took and what limits were placed on it.

97. Information was requested on the law and practice governing the rights provided for in articles 12 and 13 of the Covenant concerning, *inter alia*, the right of everyone to leave any country, including his own and the right of aliens lawfully residing in the territory of a State party not to be arbitrarily expelled therefrom.

98. More information was requested on the implementation of article 14 of the Covenant in Mongolia, particularly on the guarantees by means of which the independence and impartiality of the judiciary was protected as well as on the guarantees to which everyone was entitled in the determination of any criminal charge against him. It was noted that there seemed to be some conflict

in the Mongolian Constitution between the reference to “permanent” judges and the reference to two-year terms for judges and assessors. Questions were asked on how courts operated in Mongolia, what conditions were there for the nomination or election of judges, whether lawyers were accessible and whether their presence was required in all criminal and civil cases and whether the powers of the police and of magistrates were separate. Noting that hearings *in camera* might be ordered to protect “State secrets,” one member asked for an explanation of this term, what it covered and who decided whether any particular matter amounted to or involved a State secret.

99. In connection with article 18 of the Covenant, it was asked what provisions guaranteed the freedom of thought and what recourse citizens had if they felt that their right to that freedom had been violated; whether the freedom of religion and of religious propaganda was protected; and whether there were specific provisions ensuring education of children in the light of article 18, paragraph 4.

100. With regard to the rights provided for in articles 19 and 21 of the Covenant, it was noted that the provision in the Mongolian Constitution, according to which the law guaranteed the freedom of speech, press and assembly to citizens of the Republic “in conformity with the interests of the working people and in order to strengthen the socialist State system of the Republic,” could be interpreted and applied very restrictively in order to justify the imposition of serious limits to the exercise of those freedoms, particularly in the political fields. Questions were asked on what restrictions could be imposed in Mongolia on the exercise of those freedoms; to what extent a Mongolian citizen was free to canvass his opinions or ideas and to criticize the régime and whether the Government exercised strict control over the dissemination of information through the mass media.

101. Commenting on a statement in the report, concerning article 20 of the Covenant, that the propagation of ideas of “chauvinism,” and “nationalism” is prohibited by law, one member pointed out that in view of the vague character of these two terms, such prohibition might give rise to abuse and asked whether these two concepts were specifically defined and who had the authority in Mongolia to decide whether or not any particular remark or act amounted to propagation of ideas of “chauvinism” and “nationalism.”

102. In connection with articles 23 and 24 of the Covenant, the humane action of the Mongolian Government in granting an amnesty to delinquent minors, on the occasion of the year of the child, was noted with satisfaction. It was also noted that in Mongolia, women received special benefits during their pregnancy and until the child was six months old and it was asked whether Mongolian legislation enabled such assistance to be prolonged until the children were old enough to attend school; whether there were day nurseries where working mothers could leave their children; and whether in general the legal provisions in force ensured adequate protection for the family and children, without distinction between legitimate children and those born out of wedlock.

103. With reference to article 25 in conjunction with article 22 of the Covenant, it was asked what the procedure was for joining the Mongolian People’s Revolutionary Party, how many members it had, what the Party’s role was in relation to other State bodies, to what extent it controlled the decisions taken by other bodies and whether its members enjoyed any privileged position contrary to the provisions of article 2, paragraph 1, of the Covenant; and what economic and political role

did trade unions play in Mongolia and whether they proposed laws or participated in any other way in the law-making process. In this connection information was requested on the role of the Procurator of the Republic in the conduct of public affairs in Mongolia. The question was also asked how Mongolia had managed to eliminate illiteracy and give everybody a real possibility to participate in public life.

104. As regards article 27 of the Covenant, information was requested on the minorities living in Mongolia and the extent to which they enjoyed the rights provided for in that article.

105. Commenting on the questions raised by the members of the Committee, the representative of the State party pointed out that normally international treaties to which the Mongolian People's Republic was party were implemented not directly, but through legislation; that, in some instances, individual provisions of international agreements and treaties were directly reflected in the Mongolian Constitution; and that the Covenant had been translated into the Mongolian language and printed in the Official Bulletin of the Government and that copies of the translation were available in libraries.

106. Replying to the questions raised under article 2 of the Covenant, he stated that there were no laws in his country which restricted the equality of citizens in economic, political, social or cultural life; that the general civil rights of foreigners permanently residing in Mongolia were no different from the rights afforded to Mongolian citizens and were not subject to any kind of discrimination; and that they were not entitled to participate in elections for State bodies or to be judges but that they were exempt from military service. He pointed out that citizens could refer to provisions of the Covenant in their complaints or statements to State bodies or courts; that the means for the protection of civil and political rights found full expression in all Mongolian Laws; that any citizen who considered that his rights had been infringed was fully entitled to submit a complaint to the judicial, prosecuting and other State bodies and to public organizations; that an official was obliged to provide a specific answer within one week or one month, depending on the complexity of the case, to any person who submitted a complaint or statement regarding a decision which that official had taken; and that the Procurator supervised compliance with and implementation of the laws in the field of the legal protection of citizens and thus to receive complaints against the officials who failed to reply in time to the complainants. In this connection he stated that the criminal- and civil-procedural codes of Mongolia provided for the right of each individual involved in a court hearing to appeal against the court's decision to a higher court.

107. As regards article 6 of the Covenant, the representative explained the meaning of some of the expressions used in this context in the report which were considered by some members to be rather vague and stated that, under Mongolian law, the death penalty was an exceptional measure imposed for a number of particularly heinous crimes; that the imposition of this penalty was not obligatory for the courts; that in all cases provision was made for alternative punishment; that over the last 10 years, with the exception of certain cases of premeditated murder with aggravating circumstances and of large-scale misappropriation of socialist property, there had been no cases of the imposition of the death penalty; and that the number of times the death penalty was imposed amounted to an average of three a year. He pointed out that the exemption of women from the death penalty was made because women as mothers required particularly humane treatment and also because the exemption was a significant step towards its complete abolition and thus entailed no discrimination

on the grounds of sex. A draft law to repeal the death penalty for theft and robbery had recently been submitted for consideration by the Presidium of the Great National Khural.

108. Replying to questions raised under articles 7 and 10 of the Covenant, the representative stated that torture was prohibited by law; that no cases had been recorded of the submission of complaints by citizens of cruel treatment or the use of torture against them by individuals carrying out inquiries, preliminary investigations or court hearings; that the prosecuting bodies were responsible for ensuring legality in places of detention; that the administration of such places had to transmit to the Public Prosecutor within 24 hours any complaints addressed to him by a prisoner; that the Public Prosecutor, who had to visit these places regularly, was empowered, if he found any violation of the laws in the treatment of accused persons, to initiate criminal proceedings against the individuals responsible or take steps to subject them to disciplinary action; and that a supervisory commission consisting of representatives of public organizations was attached to the Executive Board of the local organ of power whose members had the right to visit places of detention without any restriction and to talk to the prisoners.

109. Responding to questions regarding article 8 of the Covenant, the representative reiterated the statement in the report concerning the ratification by his country of the Supplementary Convention of the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery and stressed that slavery as such never existed in the history of Mongolia.

110. Commenting on article 9 of the Covenant, he stated that, according to the Criminal Code, arrests carried out by investigators without prior authorization by a court or by the Public Prosecutor were punishable by the deprivation of liberty for up to two years ; that knowingly unjustified arrest carried out for mercenary or other personal motives was punishable by the deprivation of liberty for a period of between three and seven years; that an official was obliged to inform an arrested person immediately of the reason for his arrest; and that the law prohibited the prosecution or arrest of an individual on the grounds of political belief which did not involve any socially dangerous activity. In the event of unjustified or illegal arrest, any material damage had to be fully compensated. Compensation for moral damage was ensured by means of a public proclamation through the information media to the effect that the person who had been arrested was innocent.

111. Responding to requests for more information on the implementation of articles 12 and 13 of the Covenant, the representative stated that within his country there were no restrictions on freedom of movement or choice of residence but that because of the rapid development of urbanization, there was a system establishing certain guidelines for the rational distribution of the population in large towns; and that Mongolian citizens had the full right to travel abroad. The legal status of foreigners residing permanently within the territory of the Mongolian People's Republic was regulated by a decree of the Council of Ministers, while that of persons living temporarily within the territory was regulated on the basis of the relevant treaties.

112. As regards article 14 of the Covenant, the representative pointed out that there were three categories of courts in Mongolia: the peoples' courts, whose judges were elected by universal, direct and equal suffrage by secret ballot for a term of three years; the Aimak and city courts, whose judges were elected by the Aimak and city Khurals of people's deputies; and the Supreme Court, whose judges were elected by the Great National Khural for a term of four years; and that any citizen who

reached the age of 23 years and had completed higher legal education could become a judge. There was also a system of military courts as well as a special "Commission on Labour Disputes." Court hearings or trials were held in camera only after the court had first established that the relevant case involved State secrets; that the accused was provided with an interpreter if he did not speak the Mongolian language; that he had the right to be informed of the nature and cause of the charge against him, to acquaint himself with all the documents of the case and to request the attendance of witnesses on his behalf; and that no one could be considered guilty of committing a crime and subject to criminal punishment other than by a court verdict.

113. Commenting on article 18 of the Covenant, he stated that believers and non-believers were equal under the Mongolian law; that the law placed no prohibition on religious propaganda; and that religion was separate from the State.

114. With regard to articles 19 and 21 of the Covenant, the representative stressed that Mongolian legislation did not provide for any limitations on one's right to hold or express any opinion or to seek, receive and disseminate any kind of information; but that the law did not allow the abuse of that freedom, the undermining of the reputation of other persons or the dissemination of ideas and concepts which were directed against State security, public order, or the health or morals of the population. Under Mongolian law there was no limitation or prohibition on the holding of peaceful meetings provided that they did not conflict with the interests of State security or with the maintenance of public order.

115. Replying to a question concerning article 20 of the Covenant, he stated that propaganda advocating nationalism and chauvinism was prohibited because such ideas were considered reactionary, since they incited hatred between peoples and races and attempted to justify nationalistic exclusiveness and domination.

116. As regards the rights of children under article 24 of the Covenant, he pointed out that the authorities had been generally successful in establishing a system of free education, child-care centres and nurseries. Children's rights were broadly protected by various laws.

117. In reply to questions raised under article 25 of the Covenant, the representative stated that, being the only party in Mongolia, the Mongolian People's Revolutionary Party was the motive power of society and the State; that any citizen could join it on condition that he accepted its programme and charter; that the current membership was almost 70,000; that Party members enjoyed no special privileges; that decisions taken by the Party did not have the force of law; and that its power lay in its authority, prestige and influence. The Procurator of the Republic was responsible for supervision of the strict execution of laws by Ministries, by State, regional and local bodies and enterprises and by individuals. The Great National Khural, by Constitutional amendment, had recently extended the right to initiate legislation to the Procurator of the Republic and also to the Central Council of Mongolian Trade Unions and the Central Committee of the Revolutionary Union of Mongolian Youth.

118. As regards article 27 of the Covenant, he stated that the Mongolian people were of a single ethnic origin; that there was a national minority of Kazakhs living in an administrative unit in one of the 18 Aimaks and constituted 0.2 per cent of the population; that, in their Aimak, they had

newspapers in their own language and had their own radio station; that they maintained their traditions and way of life without any restriction and had equal rights in all spheres of public and political life; but that in all primary and secondary schools, teaching was in the national language.

CCPR A/41/40 (1986)

226. The Committee considered the second periodic report of Mongolia (CCPR/C/37/Add.2) at its 657th to 660th meetings, held from 31 March to 1 April 1986 (CCPR/C/SR.657-SR.660).

227. The report was introduced by the representative of the State party who drew attention to several important political and economic developments that had taken place in his country since the submission of Mongolia's initial report in 1980, as well as to certain practical measures taken to incorporate the provisions of the Covenant into domestic legislation and to strengthen the State's legal framework.

228. He noted in particular that Mongolia's gross national product had almost doubled since 1980 and that improvements had occurred in the fields of education and health. Legislation relating to human rights included the Act on the Conclusion and Implementation of International Treaties and the Public Education Act. The latter contained provisions establishing equal access to education for all citizens without discrimination on the basis of sex, race or religion and established the right to education in one's mother tongue. Changes had also been made in the administration of justice and in regulations covering industrial relations and the system of pensions.

Constitutional and legal framework within which the Covenant is implemented

229. With reference to that issue, members of the Committee wished to receive information on the Covenant's legal status vis-à-vis the Constitution and domestic law, on efforts being made to disseminate information about the Covenant, and on practical difficulties that might have arisen in the course of implementation of the Covenant. Members also requested clarification concerning the respective powers of the Presidium of the Great People's Khural and the Supreme Court in interpreting the provisions of the Covenant, in particular, whether the arrangements were consistent with the requirements of the Covenant with respect to the establishment of independent and impartial tribunals, and regarding the substance and workings of the People's Control Act. Members also wished to know whether the death penalty for theft had been abolished; whether the State party's report had been translated into the Mongolian language and given wide distribution; whether the Committee's current consideration of Mongolia's report had been publicized; whether certain functions had already been transferred by the State to the Association of Communist Workers, in conformity with article 94 of the Constitution; and whether any customary norms existed that had a bearing on the enjoyment of human rights.

230. In his reply, the representative of Mongolia stated that all the rights and freedoms covered by the Covenant had already been recognized and guaranteed under the Constitution and the laws of Mongolia prior to ratification of the Covenant. However, the Covenant was recognized as an international instrument. Any eventual conflicts with domestic law were subject to resolution in accordance with the procedure established in article 24 of the Act on the Conclusion and Implementation of International Treaties. The Great People's Khural received reports from the Supreme Court each year and dealt with matters relating to the judicial branch, but its opinions and decisions were of a general character and did not address in detail the matters that had been treated by the judiciary. The Supreme Court, as well as the lower courts, acted with full autonomy and

independence in administering the laws. The right to interpret the Constitution was vested in the Presidium of the Great People's Khural.

231. As to the dissemination of information concerning the Covenant and the Committee's activities, the representative explained that a wide variety of methods was used to provide the population with basic legal knowledge, including, in particular, the public educational system as well as the mass media and the practice of holding weekly half-hour meetings at work places. Mongolia's second periodic report had been originally written in Mongolian, for example, and the people had been informed in the newspapers, periodicals and other media, about the entire process of the preparation of the report. The public would also be apprised of the outcome of the Committee's consideration of the report after his delegation returned home. Regarding the question concerning the People's Control Act, he explained that each state or public body had an organ of control whose size varied according to the size of the institution and whose members were elected by their colleagues at general meetings.

232. Responding to other questions, the representative of the State party explained that the possibility of abolishing the death penalty for the two categories of crime to which that punishment was applicable was still under consideration. Since the submission of Mongolia's initial report, the death sentence had been carried out only in cases involving aggravated homicide - on average one or two cases a year. Customary law did not exist in Mongolia but respect and protection of cultural values, personal relations and children were ensured through a legal institution. As to when State functions could be transferred to the people, as envisaged under the theory of the State's disappearance embodied in the Constitution, the representative stated that such a transfer might be realized after various further stages of society's evolution had been traversed.

Non-discrimination, equality of the sexes and equality before the law

233. With regard to that issue, members of the Committee wished to receive information as to whether men and women were able to retire at the same age; whether discrimination on the grounds of political opinion was prohibited; whether persons convicted of particularly dangerous State crimes were in fact political prisoners who were isolated from other prisoners to mark them for harsher treatment; and whether there was a specific legal prohibition against incitement to racial hatred. With reference to the status of aliens, it was asked whether the fact that aliens could not become members of the Mongolian People's Revolutionary Party adversely affected their civil rights and whether the ethnic Chinese living in Mongolia had been granted citizenship after independence; whether aliens who married a citizen of Mongolia could acquire Mongolian citizenship if they wished to do so; and whether aliens had the same rights in relation to the Covenant as citizens. Regarding the equality of the sexes, one member wished to know about some of the main difficulties that had had to be surmounted in order to reach the high standard of equality that prevailed in Mongolia. Another member wished to have further information as to why the number of women studying in educational institutions had apparently decreased since the submission of Mongolia's initial report and why the percentage of women among the members of the Mongolian People's Revolutionary Party had remained more or less the same.

234. Responding to the questions raised by members of the Committee, the representative of the State party noted that the age of retirement was governed by the Parliament Act of 1958 and the

Agricultural Workers' Retirement Act. Men generally retired at the age of 60 and women at 55, but under certain circumstances the retirement age was lowered to 50 and 45 respectively. The Constitution did not explicitly ban discrimination on the grounds of opinion, but there were many constitutional provisions prohibiting discrimination of any kind and none condoning discrimination on the basis of an individual's opinions. Similarly, although not explicitly employing the term "racial discrimination," the Penal Code and other laws made such acts a criminal offence. The principle of equality was the paramount factor in considering the issue of discrimination, and racial inequality did not exist in Mongolia. As for the isolation of some prisoners, the reasons for separating some prisoners from others were penal reasons relating to the dangerousness of their crimes and such persons were not held in special penal settlements but in the prisons. There were no political prisoners in Mongolia.

235. On the questions relating to aliens, the representative stated that the ethnic Chinese who had been citizens before the Revolution had been allowed to keep their citizenship, those who wished to acquire citizenship after the Revolution had done so, and those who wished to remain aliens could do so. Ethnic Chinese who were aliens had their own schools, where courses were taught in Chinese, and maintained their own national traditions and cultural centres. There was no difference between the rights of Mongolian citizens and of aliens except that the rights set out in article 25 of the Covenant were reserved for citizens, and that aliens could not serve in the armed forces, discharge certain judicial functions or become members of the Revolutionary People's Party of Mongolia. There were many laws that safeguarded equality of rights between aliens or stateless persons and citizens of the Republic, including the 1971 and 1972 Land Tenure Acts, the Act on the Use of Woodlands and Water Resources and the Public Health Act. Equal rights were also safeguarded in relation to education, access to professional institutions and establishments of higher education and the application of the Civil and Penal Codes and of legal procedure. While article 5 of the Nationality Act provided that marriage between a Mongolian citizen and a citizen of another State or a stateless person did not affect the latter's citizenship, article 6 of the same Act provided that citizenship could be extended to aliens or stateless persons without regard to race, national origin or religious opinion.

236. With reference to the role and status of women, the representative explained that the process of emancipation of women and the assurance of their equal rights with men had acquired a great deal of work. Women had to be made aware that they were citizens with full rights and full participants in the social and political life of the country. Organizations of Mongolian women set up by the Party and other social organizations had done much to educate women and give them that awareness. At first women had not been much involved, but little by little the concept of their equality had taken hold and women were now active members of society with full rights. On the legal side, women's equality had been provided for under the first Constitution after the Revolution and subsequent legislation had further expanded and safeguarded such rights. As to why there had been no increase in recent years in the percentage of women Party members, the representative stated that there could be various reasons, including the possibility that fewer women had sought to join the Party during the period.

Right to life and prohibition of torture

237. With reference to that issue, members of the Committee wished to receive information on the

likely nature of the criminal charges that could be brought against an official who had unlawfully deprived a person of his life; the frequency of imposition of the death penalty within the past seven years; the authorities to whom applications for review of sentence or for clemency might be made; the extent to which infant mortality had been reduced; whether evidence obtained under torture was admissible in court; the extent to which the functions of the Procurator's Office provided protection against violations of the right to life; and the penal policy concerning the sentencing and treatment of the criminally insane. Members also wished to know how the list of offences subject to the death penalty could be regarded as compatible with article 6, paragraph 2, of the Covenant. In that connection, one member suggested that consideration should be given by the Mongolian Government to eliminating from that list offences such as the misappropriation or theft of property, which in his view did not justify the imposition of the death penalty.

238. In his reply, the representative of the State party said that all officials, including those responsible for maintaining public order and members of the people's militia, were liable to severe punishment if they attacked someone and would be brought up on criminal charges and prosecuted if they took someone's life. The death penalty was rarely imposed except for particularly heinous murders and it had been resorted to less frequently in the past seven years than in the preceding 10-year period. In revising the Penal Code, the Government had taken into account the provisions of the Covenant, as well as the comments made by members of the Committee during the discussion of Mongolia's initial report. The Government was convinced that the manner in which the death penalty was applied in Mongolia was in no way contrary to the provisions of the Covenant.

239. Responding to other questions, the representative explained that a person convicted of a crime could apply to a higher court to have his sentence reviewed or to a court of appeal or higher organ of State power and administration, including the Great People's Khural; that infant mortality had been reduced ninefold since the Revolution; that testimony obtained by means of torture was illegal and could not be used as evidence in a court of law; and that those who committed socially dangerous acts but were not mentally responsible were given compulsory psychiatric treatment, while those who became mentally irresponsible after the commission of a crime were obliged to serve out their sentences after they had been given effective psychiatric treatment. On the role of the Procurator's Office in protecting life, he explained that the Office's special powers extended to supervision of compliance with the law by all ministries, state enterprises, local Khurals, co-operative and social organizations, places of detention, officials and citizens, and that it also monitored the work of investigative bodies, the implementation of court decisions, the activities of corrective labour organs and the prosecution of criminal offences.

Security of the person

240. With reference to that issue, members of the Committee wished to receive clarification of the respective role of the courts and of the Procurator regarding arrest or authority to arrest and the determination of the lawfulness of detention, as well as concerning the compatibility with the Covenant of the system of measures of restraint described in the report. They also wished to know how long a person could be held prior to trial once the Procurator had determined that his detention was lawful and, in that connection, whether it was true that a person could be detained for up to nine months even in the absence of factors such as the possibility that further crimes might be committed or that the detainee might abscond or interfere with witnesses. They asked whether the law allowed

deprivation of liberty in non-criminal cases, such as those involving mental health, contagious disease, drug abuse, minors or proceedings for expulsion, and, if so, whether the safeguards required by article 9 of the Covenant existed. They also asked whether any summary remedy such as habeas corpus or amparo was available to persons who had been deprived of their liberty.

241. In his reply, the representative stated that, under the Constitution, persons could be arrested only on the basis of a court decision or with the sanction of the Procurator. The latter was required by law to order the immediate release of anyone determined to have been illegally deprived of his freedom. An individual could also be released from detention by order of a court or the Procurator in cases where his alleged offence was punishable by less than one year's imprisonment. Detention in custody as a measure of restraint was strictly controlled and its proper application was guaranteed by the Code of Criminal Procedure. Examples of circumstances under which detention could be ordered included situations involving serious offences or the possibility of the commission of further crimes - such provisions were therefore not incompatible with the Covenant. A criminal suspect could be detained without charge for a maximum of two weeks after which he must be either accused or released. The maximum length of pre-trial detention after a person had been charged was nine months. Detainees had the right to resort to any legal means, including recourse to the courts, the Procurator or higher authorities, to seek a review of the lawfulness of their detention, and such appeals were made frequently. Detention in cases other than those involving criminal activities fell within the responsibility of other authorities, such as the health authorities in the case of persons considered to be a danger to themselves or to society who refused treatment.

Treatment of persons deprived of their liberty

242. With reference to that issue, members of the Committee wished to receive information on how the political education of prisoners was organized and controlled; the rights of convicted persons to receive visits and whether they were free to write to their lawyers; the differences in the legal régime for convicted and for accused persons; whether minors were separated from adult detainees and convicts; whether the law provided for different treatment for convicted aliens compared with convicts who were citizens and what the reasons were for keeping them separated; whether the group of stateless or alien convicts included any ethnic Chinese; whether solitary confinement or the restriction of food could be used as measures of punishment in Mongolia's prison system; and whether prisoners had the opportunity to practice their religion. Members also wished to have more details about the early release programme provided for by the Act of 1983 and about the results achieved in reintegrating convicts, especially minors, into Mongolian society. More information was also requested concerning the methods and principles used in the selection and training of the personnel of penal and correctional institutions and about the number of prisons, inmates and cases of complaints against prison officials for mistreatment of prisoners.

243. Replying to the questions raised by members regarding prison conditions, the representative of the State party explained that the general purpose of political education was to inculcate a responsible attitude to work and strict observance of the law, while raising the prisoner's cultural level and encouraging them to take constructive initiatives. Political education was arranged by the administration of each corrective labour facility, with the involvement of representatives from the public and from economic and other organizations. Its basic forms included corrective labour, explanations of Mongolian law, group instruction and propaganda, mass cultural activities, and

sports activities - the precise method depending on the nature of the offender's crime, his age, and his educational and professional background. Detainees were entitled to receive either short or long visits, lasting up to 4 hours or 72 hours respectively, from relatives or others, with long visits being restricted to close family members. They were also entitled to legal assistance and to see lawyers, in private, at the request of either the offender or the lawyer. On the other hand, those in preventive detention pending preliminary investigation could only exercise their right to receive visits at the discretion of the Procurator's Office. The régime for convicted persons was different from that applying to those detained pending investigation or those simply under suspicion, and was generally stricter. There was no special legislation governing the treatment in prison of stateless or alien offenders, including ethnic Chinese, but for practical reasons, such as the presence of language barriers which prevented normal communication with other prisoners - and for their own benefit - it was considered necessary to segregate them. Solitary confinement was only applied when a prisoner had committed acts of extreme gravity or resisted prison discipline, and only upon issuance of a court order. Dietary regulations for prison inmates were based on the average daily caloric requirements established by the Ministry of Health, and the diet of offenders being held incommunicado was no different from that of other prisoners. Such offenders also retained their right to receive visits, send letters, lodge complaints and submit petitions through their lawyers, and could be released from solitary confinement if they gave evidence of good behaviour. While prisons had no separate facilities for religious observances, any prisoner who wished to pray, for example, was free to do so. Certain prisoners could be released early by court order under a work-release programme made possible by an amendment to the Penal Code adopted by the Great People's Khural in 1983. Such persons were obliged to work at designated jobs for a period of from two to five years, but could live with their families and earn normal wages.

244. Regarding the treatment of minors, he stated that minors under 16 were not subject to criminal prosecution, while those between 16 and 18 who were under investigation were rarely placed in detention, as they were normally released in the custody of their parents, schools or work collectives. All law enforcement agencies gave priority to the speedy adjudications of cases involving minors. The result of efforts to reform and rehabilitate juvenile offenders varied, depending on the circumstances. The chances for success were obviously much higher when dealing with young people who had committed minor offences than with adults. However, the reintegration of adult offenders was also given high priority in Mongolia; in particular, efforts were made to ensure that the ex-convict was reinstated in his old job or was helped to find a new one. The law provided strict sanctions against employers who refused to hire former convicts and everything possible was done by the competent bodies at the local level to combat their social rejection.

245. Turning to other questions, the representative explained that the prison supervisory commissions comprised members of the local Khurals as well as representatives of trade unions, workers' collectives and other bodies. Their functions, set out in the Corrective Labour Code and other legislation, consisted mainly of monitoring - but not regulating - the work of the authorities responsible for the execution of sentences, imprisonment, internal and external exile and corrective labour. The training of officials and officers employed in prisons was the responsibility of the Ministry of Public Security, which spared no effort to ensure that such personnel were familiar with the laws, rules and regulations applicable to the situation of prisoners. Seminars, refresher courses and round-table conferences were held frequently within the penitentiaries themselves or in specific areas of prison work. To be appointed to work as prison officers, applicants had to have legal

training and were obliged to take oaths of duty. They were evaluated frequently and were subject to disciplinary action or dismissal for misconduct. The representative was not in a position to supply precise figures on the current prison population in Mongolia but thought that, compared to other countries, it was relatively small, particularly in view of the frequent general amnesties and early releases for good behaviour.

Right to a fair trial and equality before the law

246. With reference to that issue, members of the Committee wished to receive information concerning the procedural measures adopted to ensure the provision of justice to Mongolia's partly nomadic population; the stage at which the accused could have access to a defence lawyer; the status of the College of Lawyers and the number of lawyers and judges in Mongolia; and the role of State arbitration and its relationship to the work of the courts. They also asked whether the holding of court hearings in the collectives or in camera was compatible with the provisions of article 14 of the Covenant, whether recourse to the courts was also available in cases of alleged violations of civil rights, such as the right to a pension or social security, and whether recourse could be had against a law on grounds of unconstitutionality. In connection with the structure and operation of the judicial system, members sought further clarification as to the Supreme Court's precise relationship to the Great People's Khural and its Presidium, the composition of the various courts, the system of legal aid, and the independence of judges and the procedure for their removal from office. One member wondered whether Mongolia's legal system provided for procedural safeguards such as habeas corpus or the granting of injunctions and whether there was any machinery designed to ensure the supremacy of the Constitution.

247. In his reply, the representative of the State party said that each region had to have a certain number of people's courts, depending on the size of the territory and the situation and size of the population, so as to ensure that judicial activities and services could be carried out under optimal conditions. Access to a defence lawyer was available as soon as the preliminary investigation had been completed and the defendant had been informed of the charges. Defendants had a right to defence counsel of their own choice when appearing in court, whether or not a preliminary investigation had been conducted. Minors and persons incapable of undertaking their own defence were provided with a defence lawyer through the Procurator's Office. The College of Mongolian Lawyers was a voluntary social organization composed of a network of several hundred lawyers established for the purpose of ensuring the protection of the legitimate rights of citizens and organizations. It also acted in arbitration proceedings and provided assistance to persons and organizations by strengthening the rule of law and expanding the legal knowledge of the citizenry. Under a payments system established by the Ministry of Justice in co-ordination with the Ministry of Finance, members of the College of Lawyers received guaranteed salaries as well as a percentage of their earnings from legal fees.

248. Regarding the role of State arbitration, the representative explained that the legal functions of bodies concerned with State arbitration were governed by the provisions adopted by the Council of Ministers in 1978 and were discharged under strict supervision and control. Such bodies functioned rather like administrative tribunals in settling various types of economic disputes between organizations. Any economic dispute could be submitted to arbitration and the procedure could be used to modify or annul commercial contracts or to impose fines.

249. The role of social organizations and work collectives in the administration of justice was explicitly envisaged under both the Penal Code and the Code of Criminal Procedure. The conditions and rules for such participation were established by the Great People's Khural and such participation neither impaired the court's impartiality nor violated the principle of equal justice. Under article 19 of the Code of Criminal Procedure the courts were authorized to hold hearings in camera only in certain circumstances, such as when dealing with cases involving State secrets, sexual offences or offences involving minors under 16. A person who had a grievance regarding his pension rights could bring the matter before the local Khural. If the case could not be settled at that level, but had merit, it could be taken before the courts. Where an apparent violation of the Constitution had occurred, a court could either resolve the matter, if it fell within its area of competence, or report it to be the bodies responsible for monitoring the Constitution's implementation. Ultimately, possible constitutional violations could be referred to the Supreme Court, to its plenary, or to the Presidium of the Great People's Khural.

250. Turning to questions raised by members with respect to the structure of Mongolia's judicial system, the representative observed that the structure of the Mongolian State differed in some ways from that of some Western or developing countries. For example, State power was not divided into individual legislative, executive and judicial branches but was exercised through the local Khurals and the Great People's Khural, whose Presidium held the supreme authority in between the latter's sessions. While the Supreme Court was the highest State organ under the Constitution for the administration of justice, it was clearly subordinate to the Great People's Khural and accountable to its Presidium. However, its accountability was related to the overall administration of justice rather than to judgements in individual cases. Any citizen over 23 years of age who was eligible to vote and had a clean record was eligible to serve as a judge. City judges were elected by the local Khurals for three-year terms while the members of people's courts were elected by the people in each region in direct, general and secret elections. There was a unified system of military tribunals which, with certain exceptions, had responsibility for trying all crimes committed by military personnel. The independence of the judiciary, which involved a basic democratic principle, was assured under article 71 of the Constitution as well as articles 9 and 294 of the Code of Criminal Procedure, which provided that the exercise of judicial power could not be subjected to any influence outside the law itself. The fact that the terms of office of judges were limited did not in any way undermine their independence but probably discouraged abuse of power. An individual who suffered harm through the actions of any organ of authority or official was entitled to compensation from the same organ or official, in accordance with article 54 of the Civil Code.

Freedom of movement and rights of aliens

251. With reference to that issue, members of the Committee wished to receive information concerning regulations governing the issuance of passports and departure from the country; the legal basis of the decision-making powers of local administrative authorities with respect to freedom of movement and of residence and its compatibility with the provisions of article 12, paragraph 1, of the Covenant; the right of aliens to freedom of movement and of residence; and the possibility of recourse by aliens against expulsion orders. With reference to reports of large-scale expulsions of ethnic Chinese from Mongolia since 1983, members asked for clarification concerning the practical aspects of that problem; they wished to know whether legal proceedings had been initiated in accordance with article 13 of the Covenant, how many individuals had been able to contest the

expulsion orders, and whether those availing themselves of recourse had been allowed to remain in Mongolia. They also asked whether ethnic Chinese could become Mongolian citizens. Referring to the statement in paragraph 146 of the report that “norms of criminal law have retroactive force if that is specifically indicated in the law,” one member requested a clarification in view of the apparent incompatibility of that provision with article 15 of the Covenant.

252. In responding to the questions raised by members of the Committee, the representative of the State party noted that entry into and departure from Mongolia were governed by regulations that had been issued by the Council of Ministers. Under those regulations, passports and visas were issued for such purposes as visits to relatives, friends or sick persons, and for reasons of health, travel and tourism. Legal residents of the country, whether citizens or aliens, could move freely within Mongolia and decide freely where to reside, except that local administrative authorities could impose some restrictions on movement - for reasons of public health or when a census was being conducted, for example - or some administrative restrictions with respect to the choice of residence for reasons such as the rapidity of urban growth. In neither case did such restrictions conflict with the principle of freedom of movement and of residence or involve discrimination against aliens. Aliens facing expulsion orders could seek redress under various procedures, depending on the reasons for the order and the issuing authority. Regarding the issue of retroactivity of norms of criminal law, he noted that the statement in paragraph 146 of the report was an obvious translation error, since such retroactivity did not exist in Mongolian law either in theory or in practice.

253. Replying to questions relating to the alleged expulsions of ethnic Chinese from Mongolia, the representative explained that some 4,000 ethnic Chinese citizens of Mongolia had chosen to resettle in the People’s Republic of China and had been permitted to emigrate on the basis of a mutual agreement between the two countries. There had been no expulsions and those ethnic Chinese who wished to remain in Mongolia had been able to do so. There were approximately 2,000 ethnic Chinese currently living in Mongolia. Such persons could obtain Mongolian citizenship freely and several hundred of them had done so.

Privacy, family, correspondence, honour and reputation

254. With reference to that issue, members of the Committee wished to receive information concerning the scope of the punishment for “insult” and asked how that offence differed from slander or libel and whether slander against the State was a punishable offence.

255. In his reply, the representative explained that “insult,” under Mongolian penal law, was a deliberate act, spoken or written, to impugn a person’s honour was punishable by up to six months’ corrective labour. If the act involved the deliberate dissemination of printed falsehoods, it was punishable by a term of up to one year of corrective labour or fine of up to 300 tughrik. Slander was also a punishable offence in Mongolia.

Freedom of religion, expression and assembly

256. With reference to that issue, members of the Committee wished to know whether there were any religious groups in Mongolia other than Buddhists and what controls were maintained by the State over the press at either the national or the local level. Regarding the right of assembly,

members asked who had authority to restrict that right, whether the convening of a meeting required prior authorization from the authorities, whether informal meetings could be held without prior notification, and whether meetings could be held for purposes unconnected with public or political life. Noting that there was only one Buddhist monastery in Mongolia and one Buddhist school with only 16 students, one member wondered whether the establishment of other monasteries would be lawful. The same member also wished to know whether religious literature could be circulated or imported on the same basis as anti-religious propaganda. Another member asked whether any action was envisaged to satisfy the provision contained in article 22, paragraph 3, of the Covenant.

257. In his response, the representative of the State party said that 95 per cent of the population of Mongolia were Buddhists - although only a small proportion of them were believers - and that the remaining 5 per cent were Muslims belonging to the Kazakh ethnic group. While the Mongolian Constitution provided for the separation of Church and State and of religion and education, citizens enjoyed full religious freedom and could, if they wished, establish private schools where religion could be taught. Constitutional guarantees extended also to religious organizations, which could train clergy, publish religious literature and attend religious symposia. Religious books, including imported books that did not violate customs regulations, could be distributed without any restriction on grounds of religion. The establishment of a new Buddhist temple, in addition to the existing operating temple, was a matter to be considered by believers themselves. There were many more than 16 students attending the religious school attached to the temple, including many foreign students. As to freedom of expression, article 87 of the Constitution provided for the broad enjoyment by citizens of freedom of speech and freedom of the press and mass information. Some 37 newspapers and 39 magazines as well as some 600 books were published in Mongolia annually. The press was monitored only by the editors themselves and there were no State controls.

258. With regard to the setting-up of trade unions, the representative stated that Mongolia was in full compliance with the relevant provisions of the Covenant and that there were more than 30 associations in the country, ranging from unions to friendship associations. Concerning freedom of assembly, he explained that Mongolians had full freedom to hold meetings without requesting permission from the local authorities; informal meetings could be held without prior notification and any person could call a meeting. Meetings could be held on public or political issues as well as on other issues, such as unsatisfactory working conditions. Mongolians were prohibited only from holding meetings that were detrimental to national security or public safety, public order, the protection of public health or morals, or the rights and freedoms of others. In practice, no such restrictions had had to be imposed. If they proved necessary, however, the competent authorities would decide on them.

General observations

259. Members of the Committee expressed their appreciation for the State party representative's helpful and co-operative manner in the very constructive dialogue with the Committee. They noted with particular satisfaction that Mongolia's high-level delegation had been in a position to respond to questions immediately and comprehensively, and expressed the hope that the representative would report in detail to the Mongolian authorities on the discussions that had taken place.

260. In concluding the consideration of the second periodic report of Mongolia the Chairman also

thanked the representative for his active co-operation, observing that the open exchange of views had generated many ideas that would help Mongolia to take a fresh look at its law and practice.

CCPR A/47/40 (1992)

562. The Committee considered the third periodic report of Mongolia (CCPR/C/64/Add.2) at its 1155th to 1157th meetings, held on 16 and 17 July 1992 (see CCPR/C/SR.1155-1157). (For the composition of the delegation, see annex VIII.)

563. The report was introduced by the representative of the State party, who pointed out that since the presentation of the second periodic report Mongolia had undergone significant changes reflecting a transformed international situation. At its session in January, Mongolia's highest representative body, the Great Khural, had adopted a new constitution. This new Constitution had the support of the public at large and signalled a commitment to democratization. The Government had conducted an evaluation of the internal and external situation in order to devise appropriate measures for the development of the country and the establishment of a political order based upon the principles of humanism and social justice. Many steps had already been taken towards the improvement of the standard of living for workers and the establishment of a market economy well integrated into the world economy. Since the presentation of its second periodic report, Mongolia had become a party to the Optional Protocol and adherence to the Convention against Torture and The Hague Convention on Civil Procedure was at present under active consideration in Parliament.

Constitutional and legal framework within which the Covenant is implemented; non-discrimination and equality of the sexes; and state of emergency

564. With reference to those issues, members of the Committee wished to know if there had been any change in the status of the Covenant within the Mongolian legal system brought about by the new Constitution; to what extent the provisions of the Covenant had been taken into account in the process of adopting the Constitution and amending legislation; what the relationship was between the Supreme Legislative and Executive Organs of Mongolia and what their respective roles were in so far as the implementation of the Covenant was concerned; whether the role of the Procurator's Office had changed under the new Constitution and laws; and what cases, if any, there had been during the period under review where the provisions of the Covenant were directly invoked before the courts or referred to in court decisions. Additionally, members of the Committee wished to have information on measures taken to compensate victims of past violations of human rights; the activities of the Commission on the Rehabilitation of Persons Subjected to Unlawful Repression; and the nature of compensation being offered to citizens who had suffered damage through a wrongful conviction, wrongful prosecution or wrongful detention in custody. Members of the Committee also wished to know in which respects the rights of aliens, who did not benefit from the special agreements mentioned in paragraph 9 of the report, were restricted as compared with those of citizens.

565. In addition, members of the Committee wished to know what the position of the Covenant was in regard to domestic law and whether the provisions of the Covenant prevailed in cases of conflict between the two; how the provisions of the Covenant had been publicized and disseminated; how the general public had been made aware of its rights under the Optional Protocol and what mechanism was foreseen for following up communications presented under this instrument; how recent economic and political changes had affected the equality of the sexes and what measures had

been taken thus far to eliminate discrimination in this regard; and what measures had been taken to ensure freedom from discrimination on the basis of political opinion. Members of the Committee also wished to have further clarification concerning the grounds for declaring a state of emergency, and about the rights that could subsequently be suspended and those that could not be derogated from.

566. In reply, the representative of the State party noted that the provisions of the Covenant had been taken into account during the drafting of the new Constitution as well as the many new laws and regulations now coming into force. Considerable effort was being made to ensure that new legislation was drafted in conformity with the provisions of the Covenant and other international human rights instruments. With regard to the position of the Covenant in Mongolian Law, the new Constitution accorded supremacy to international law over domestic law. Under article 10 of the Constitution, the provisions of international treaties were effectively incorporated into domestic law upon entry into force of the instrument concerned. Legislation to implement this specific provision of the Constitution was being drafted at present. The Covenant had been publicized by the media and the provisions of the Optional Protocol had been published in private newspapers.

567. Victims of past violations of human rights were given redress under a law adopted in 1990. An estimated 30,000 people had been unlawfully repressed during the 1930s and the question of compensation for the victims and their families was the subject of legislation currently under consideration in Parliament. Previously, no compensation had been extended largely owing to the economic situation in the country. The office of the Public Procurator still existed under the new legal system, although his responsibilities had already changed considerably. The draft of a new law regulating the competence of the Procurator was at present under consideration in Parliament.

568. The representative pointed out that discrimination against women was prohibited by article 14 of the Constitution and that equal rights for women in Mongolia were ensured. A number of women had been recently elected to the Great Khural, serving as an indication that political rights were being exercised. Women accounted for 43 per cent of the economically active population. Attempts to deprive women of equal rights were specifically regulated by article 142 of the Penal Code. Additionally, women claiming to be victims of discrimination were able to file complaints in court. With regard to safeguarding the rights of aliens in Mongolia, bilateral treaties had been concluded by the Government with a number of countries, under the terms of which legal assistance was extended to their nationals in matters concerning civil, penal and family law. The agreements facilitated the exchange of information and provided guarantees for the protection of witnesses and the rights of the defence.

569. Martial law could be imposed in cases of external threat of war and a state of emergency could be declared by the Minister of Justice in cases such as a natural disaster. A draft law on states of emergency was currently being prepared by the Government with a view to establishing procedures and responsibilities for the eventual suspension of certain constitutional provisions in such circumstances. At the present time, there was no law providing for the derogation of the rights of citizens.

Right to life, treatment of prisoners and other detainees, and liberty and security of the person

570. With regard to those issues, members of the Committee wished to know what was meant by the statement in paragraph 14 of the report that the death penalty had been established as “an alternative to imprisonment for varying terms, not as the primary but as a secondary option;” how often and for what crimes had the death penalty been imposed and carried out since the consideration of Mongolia’s second periodic report; and whether any consideration had been given to the abolition of the death penalty and accession to the Second Optional Protocol to the Covenant. They requested further information on action taken to make the Corrective-Labour Code more humane and to bring the penitentiary system in line with the commitments entered into by Mongolia under international conventions and agreements on human rights and concerning the legal value of testimony extracted through violence or insulting treatment. Members of the Committee also wished to know the rules and regulations governing the use of firearms by police and security forces; whether there had been any violations of these rules and regulations and, if so, what measures had been taken to prevent their recurrence; and what plans were being made to introduce new legal provisions that would strengthen and guarantee the right to liberty and security of the person.

571. In addition, members of the Committee wished to know whether any legislation had been adopted recently prohibiting torture; whether there were any educational programmes aimed at the elimination of torture; what measures had been taken to ensure the application of article 9 of the Covenant; whether improperly extracted evidence was admissible in court; whether the 10-day deadline for filing an appeal to the Supreme Court following a pronouncement of a death sentence was considered adequate time in which to prepare such appeals; whether habeas corpus existed in the Mongolian legal system; what was meant by the statement in paragraph 46 of the report that visa applications may be declined for reasons of “the health and dignity of society;” and what was the content of political education used to reform and rehabilitate persons convicted under the Criminal Code.

572. In reply, the representative of the State party drew attention to decrees issued in 1986 and in 1991 strictly regulating the use of firearms by the police and other security forces. Since the publication of the 1991 decree no police violation of the regulations in force had been recorded. Persons arrested were informed immediately of the reasons for their arrest and members of their families were informed within 24 hours. Recourse procedures for persons convicted of an offence were guaranteed under the new Constitution but the amendments to the Penal Code required for implementing that right in practice had not yet been completed. Habeas corpus would be the subject of future legislation in Mongolia. There were at present 3,328 detainees in the Mongolian prison system, which was under the general supervision of the Office of the Procurator.

573. Under article 16 of the Constitution and article 21 of the Penal Code, the death penalty might be imposed only for the most serious crimes and was not applicable to persons under the age of 18, women, or men over the age of 60. In actual practice, the death penalty was generally commuted to imprisonment. For the period 1991-1992, only 20 men sentenced to death had been executed. During the same period, 274 homicides had been committed. Although the Government had decided to maintain the death penalty for the present time, a study of possible adherence to the Second Optional Protocol was currently being carried out in the Ministry of the Interior.

574. Mongolia had recently decided to adhere to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and a study was to be undertaken in Parliament

concerning the Convention. Mechanisms prohibiting torture had been established under the Penal Code and compensation for victims of torture had been provided for by law. Anyone found guilty of obtaining evidence by means of violence or insults, or the threat of violence, was subject to imprisonment for up to 8 to 10 years.

Right to a fair trial

575. In regard to that issue, members of the Committee wished to have further information on any shortcomings in Mongolian legislation with respect to article 14 of the Covenant and on any steps that had been taken to overcome them; how the independence and impartiality of the judiciary was guaranteed; and on the rights of the defence and the availability of free legal assistance to criminal defendants. Members of the Committee also wished to have more information on the judicial structure under review and know on which models Mongolia was basing the reform of its judiciary.

576. In reply, the representative of the State party stated that the independence and impartiality of the judiciary was guaranteed under articles 47 and 48 of the Constitution, which strictly prohibited interference by all other organs of the State. The legal system under the new Constitution contained many changes from the previous system. A Supreme Court had been established and the military courts of the previous system no longer existed. Provision would be made for different types of courts and, as far as possible, trials would be conducted in public. However, in actual practice, not all means were available to ensure the right to a fair trial and there were many gaps in existing law in that area. Much remained to be done to amend the relevant laws in order to harmonize them with the principles set out in the new Constitution. Additionally, the lack of adequately trained staff in the Mongolian legal service made it difficult to proceed with the reform of the judiciary. An effort was being made to identify an appropriate model for reform and seminars were being conducted to this end with specialists from other countries.

Freedom of movement and expulsion of aliens; right to privacy, freedom of religion and expression, freedom of assembly and association; the right to participate in the conduct of public affairs; and rights of persons belonging to minorities

577. With respect to those issues, members of the Committee requested clarification of the current standing of the bill governing departure from the country by Mongolian citizens and entry into the country by foreigners; the compatibility of the grounds for refusing an exit visa, mentioned in paragraph 46 of the report, with article 12 of the Covenant and the possibilities of appeal against such decisions; and of the procedures leading to an expulsion order and the remedies available to the individuals concerned. Members of the Committee wished to have further information on the constitutional provisions relating to the right of privacy and on the process of review of the Civil Code aimed at strengthening that right; on the status of the bill on the right to freedom of religion currently in preparation; on any restrictions to the freedom of assembly and association of religious communities, the use of places of worship, the publication of religious material or to the liberty of parents to ensure the religious education of their children; on the status of the preparation of the new press law; on the criteria used in prohibiting public meetings and on the recourse available against such decisions; on the procedure for registering new political parties; and on new legislation allowing trade-union pluralism and its effects. Members of the Committee also wished to know what factors and difficulties, if any, existed with respect to the implementation and enjoyment of the

rights under article 27 of the Covenant; what the size was of the different minority groups in Mongolia; and how the rights of such groups under article 27 of the Covenant were guaranteed.

578. In addition, members of the Committee wished to know whether there was any procedure for appeal against an expulsion order; what the provisions were of the law currently in force regulating the right to leave and return; whether visa applications were still rejected on the basis of protecting State secrets or in the citizen's own best interests; whether restrictions existed on the movement of foreign journalists; what authority was competent to expel aliens and whether its decisions were subject to appeal; whether citizens of Mongolia were free to travel and live wherever they wished in the country; what the regulations were governing the issuance and possessions of passports; how the new law governing the freedom of religion differed from the previous law; whether any measures had been taken to restore religious property that had been confiscated; and whether television and radio broadcasting was still a State monopoly. They also wished to know whether voting was compulsory; whether political parties in opposition played any role in the Government; what constituted a lawful criticism of the State; whether there were procedures to appeal a refusal to license new publications; what role local authorities played in authorizing or prohibiting a meeting; what was meant by the statement in the report that a meeting or demonstration could be postponed if its aim was contrary to the "unity of the Mongolian people;" whether there were any procedures to appeal denial of permission to hold meetings; and how the rights of the Chinese minority in the country were being protected.

579. In reply, the representative of the State party said that laws regulating entry and departure were in the process of being significantly amended and that the system referred to in paragraph 46 of the report was no longer applied. The Act on the Rights and Duties of Aliens in Mongolia provided for the expulsion of aliens who harmed individuals or who carried out activities harmful to society as a whole. Although national security was still a basis for expulsion, there had been no instances of its occurrence since 1986. All restrictions on the movement of aliens had been removed but journalists were still required to apply for permission to visit certain areas. However, such permission was invariably granted and in practice, therefore, they enjoyed complete freedom of movement. Previous restrictions upon the freedom of Mongolians to move where they wished within the country had now been entirely removed.

580. Freedom of worship was guaranteed by the Constitution and a bill on that right was currently before Parliament. For the time being, a clearly outdated act remained in force. Following adoption of that act in 1934, a great deal of repression had occurred, involving the destruction of virtually all of the country's Buddhist monasteries and what amounted to pogroms against the monks. Today, however, there was no persecution at all on religious grounds. There had been no restrictions of any kind since 1990 on the freedom of assembly and association of religious communities and a number of religious schools had been established and were functioning smoothly. With regard to the right to privacy, the Civil Code was currently under review and new provisions would be included to prohibit interference in private and family life.

581. There were currently 14 political parties in Mongolia covering a broad spectrum of viewpoints. The present Government was composed of four of those parties in coalition and it was expected that another multiparty Government would be formed at the next session of the Great Khural. Parties were registered with a special body of the Supreme Court and there was at present no right to appeal

in cases of refusal. Legislation on trade unions rights had been enacted in April 1991, laying down procedures for the establishment of trade unions and setting out guarantees concerning the rights of workers. There were at present nine different trade unions active in Mongolia.

582. Freedom of opinion was guaranteed under article 16 of the Constitution and new legislation was being prepared on that subject. There were no restrictions on access to foreign publications but the lack of hard currency made it difficult to acquire and import them. A bill currently before Parliament would become Mongolia's first press law once it was adopted. When the new Penal Code had been enacted in 1986, all articles restricting criticism had been eliminated and criticism had ceased to be a punishable offence.

583. A decree issued in 1990 regulating procedures on the holding of meetings and demonstrations was currently under review. Although the decree stipulated that the Executive Committee of the Khural of People's Deputies must be given advance notice of any such proposed events, it had been decided that the final decision concerning permission would be taken by the mayor of the locality concerned. There was at present no provision for remedy in the case of negative decisions, but the possibility of appealing to local courts was envisaged.

584. The new Constitution prohibits discrimination against national minorities, who represented some 22 per cent of the country's population. There were a number of cultural and linguistic institutes which were concerned with preserving the heritage of these minorities. Additionally, in areas where there were significant concentrations of Kazakhs, Mongolia's largest national minority, the Kazakh language was commonly used in schools and in the print and broadcast media.

Concluding observations by individual members

585. Members of the Committee expressed their appreciation of the useful dialogue with the representatives of the State party and observed with satisfaction that the delegation was of a high level. That was taken as an indication of the importance attached by Mongolia to meeting its obligations under the Covenant. Since the submission of its second periodic report, Mongolia had made a serious effort to comply with its obligations under the Covenant and significant progress in many areas had been made.

586. Members of the Committee noted that the reform of Mongolia's legal system and political institutions was still under way. The fact that many of those rights enshrined in the Constitution had been incorporated from the Covenant was noted with satisfaction. Concern was expressed over the fact that there still remained numerous areas where new legislation was needed to replace outdated laws and to give force to the rights recognized in the Constitution. In particular, the provisions of the Covenant needed to be more closely reflected in the new penal and criminal codes. Additionally, members expressed the view that the position occupied by the Covenant in Mongolian domestic law was generally unclear and that the Covenant should be invocable by individuals in a court of law.

587. A number of members expressed their concern over the broad wording in article 19 of the Constitution concerning the grounds for declaring a state of emergency and pointed out that the provisions of article 4 of the Covenant should be more closely followed in that regard. In particular, certain provisions of the Covenant, enumerated in article 4, paragraph 2, of the Covenant, were not subject to derogation at any time.

588. Members noted that, although freedom of expression, association and assembly was guaranteed under the Constitution, there were numerous limitations that restricted the enjoyment of those rights in actual practice. For example, some regulations governing the registration of political parties and obtaining permission for holding a public meeting did not appear to be consistent with the Covenant and recourse procedures for appealing against negative administrative decisions were inadequate or non-existent.

589. Members of the Committee welcomed the abolition of the military courts but expressed concern over certain lacunae that still needed to be addressed in legislation such as the right to a fair trial and the independence of the judiciary. It was emphasized, in that regard, that habeas corpus should be included as a part of the new system.

590. Members expressed their concern over the large number of crimes for which the death penalty could be invoked and that so many executions had in fact been carried out. In addition, it was noted that the 10-day limitation on appeals to the Supreme Court regarding the imposition of a death sentence did not allow sufficient time in which to prepare a case properly.

591. Concern was also expressed that in matters such as the criteria for the granting of exit visas, where the necessary legislative changes had not yet been made, outdated legislation was still in force. Although members noted that actual practice in Mongolia often took precedence over older existing legislation, it was pointed out that the rights recognized in the Covenant should be enshrined in the new law in the form of guarantees and that adequate recourse mechanisms should be provided.

592. The recent accession of Mongolia to the Optional Protocol was noted with satisfaction. Members underlined the importance of ensuring that the text of the Optional Protocol, as well as that of the Covenant, was widely publicized so that the general public and officials concerned were made adequately aware of the rights recognized in those instruments. It was also recommended that a mechanism be established to follow up with regard to communications submitted to the Committee under the Optional Protocol.

593. The representative of the State party assured the Committee that the views and concerns expressed by members would be taken into account during the formulation of new laws and legislation.

594. In concluding the consideration of the third periodic report of Mongolia, the Chairman thanked the delegation for its cooperation. He also hoped that the concerns of the Committee would be conveyed to the Mongolian Government and that the Committee would be ready to assist it for further promotion of human rights in the country.

Comments of the Committee

595. As indicated in paragraph 45 above, the Committee, at its 1123rd meeting, held on 24 March 1992, decided that henceforth, at the conclusion of the consideration of a State party's report, it would adopt comments reflecting the views of the Committee as a whole.

596. In accordance with that decision, at its 1173rd meeting, held on 29 July 1992, the Committee adopted the following comments.

Introduction

597. The Committee expresses its satisfaction at the timely submission of the third periodic report of Mongolia, which followed the Committee's guidelines and contained valuable information on the situation in Mongolia at the present time. The Committee appreciates, in particular, the high-level representation sent to discuss the report, which served as an indication of the importance attached by the Government of Mongolia to its obligations under the Covenant.

598. Although its dialogue with the delegation was a useful one, the Committee regrets that insufficient information was provided, both in the report and in the answers supplied by the delegation, concerning key elements in the relevant legislation currently being considered in Parliament. Numerous draft laws and decrees were cited during the course of the consideration of the report but the lack of information as to their content impaired the Committee's ability to assess their potential impact.

1. Positive aspects

599. The Committee notes with satisfaction the significant progress made, since the consideration of Mongolia's second periodic report, towards establishing and developing a legal order and democratic institutions which would promote the protection of human rights. The new Constitution has been drafted in the spirit of the Covenant and an extensive reform of the civil, criminal and penal codes is foreseen. Similarly, the Committee is encouraged by the indications of the delegation that many of the restrictive practices of the past are no longer in force. The Committee notes with particular satisfaction the recent accession of Mongolia to the Optional Protocol. Taken together, these notable developments indicate that the Government of Mongolia takes very seriously its obligations under the Covenant and is moving toward establishing a firmer legal basis for the realization of the rights contained therein.

2. Factors and difficulties impeding the application of the Covenant

600. The Committee notes that widespread economic dislocations of resources accompanying the transitions currently under way in the country have hindered the full application of the Covenant and the establishment of a new system of well-functioning democratic institutions and procedures. For example, the lack of adequately trained staff in the Mongolian legal service has adversely affected efforts to reform the judiciary.

3. Principal subjects of concern

601. The Committee expresses its concern over the unclear position of the Covenant in Mongolian law. Measures undertaken so far to give effect to the Covenant have not gone far enough in providing judicial guarantees for each right recognized in the Covenant or towards ensuring that the Covenant can be invoked by individuals in a court of law. Similarly, the Committee is concerned about the continuing applicability of old laws and procedures which have not yet been revoked or

replaced by new legislation providing guarantees and, in particular, establishing recourse procedures. With regard to a number of fundamental rights recognized in the Covenant, some requirements and limitations currently in force in Mongolian law are so broad and numerous as to restrict severely the effective exercise of such rights in actual practice. This is true, for example, in regard to the criteria for declaring a state of emergency; the criteria for refusing an application for an exit visa or passport; the requirement of prior permission for the holding of public meetings and the criteria for refusing such meetings; and the requirement that political parties be registered and the criteria for refusing registration. Additionally, the absence of adequate mechanisms to appeal against administrative decisions creates an uncertainty as to whether such fundamental rights as freedom of association, freedom of assembly and freedom of movement are fully enjoyed in actual practice. The Committee also expresses its concern over the exercise and application of the death penalty in Mongolia. Grounds for invoking the death penalty are currently too broad to be in conformity with article 6 of the Covenant and the number of executions for capital punishments is alarmingly high.

4. Suggestions and recommendations

602. The Committee recommends that the State party should ensure that the provisions of the Covenant be fully incorporated into domestic law and be able to be invoked in a court of law. The review currently in progress of present and proposed legislation, policies and administrative procedures should be based on the Covenant and other international human rights instruments in order to ensure that forthcoming changes will accord with the obligations of the State party under these instruments. In regard to the declaration of a state of emergency, the State party should ensure that applicable legislation is in conformity with the Covenant, particularly in regard to paragraph 2 of article 4. The Committee also emphasizes that the texts of the Covenant and the Optional Protocol should be widely publicized in order that the general public, the judiciary and the relevant agencies of the Government are made aware of the rights enshrined in the provisions of these instruments. Adequate training in human rights norms should be provided for attorneys and members of the judiciary as well as for police, prison and other security officials. In undertaking the implementation of these recommendations, the Committee suggests that the State party further avail itself of the Advisory Services and Technical Assistance Programme of the Centre for Human Rights.

CCPR A/55/40 (2000)

315. The Committee considered the fourth periodic report of Mongolia (CCPR/C/103/Add.7) at

its 1825th and 1826th meetings (CCPR/C/SR.1825 and 1826), held on 22 and 23 March 2000, and adopted the following comments at its 1835th meeting, held on 29 March 2000.

1. Introduction

316. The Committee expresses its satisfaction at the submission of the fourth periodic report of Mongolia, which contains valuable information on key legal developments in Mongolia, and welcomes the opportunity to examine the report in a frank discussion with the delegation. However, the Committee deeply regrets the paucity of information presented, both in the report and in many of the answers given orally by the delegation, on the enjoyment in practice of the rights provided for in the Covenant. The lack of such information severely impairs the Committee's ability to carry out its responsibilities to assess the situation in regard to the implementation of the Covenant.

317. The Committee recognizes the substantial progress made towards the establishment of democratic institutions and the enactment of legislation which seeks to ensure many Covenant rights.

2. Positive aspects

318. The State party is commended for taking account in the report of the Committee's concluding observations following its examination of the third periodic report.

319. The Committee notes with satisfaction that the State party has welcomed international assistance in institution-building and capacity-building, particularly in relation to the protection of human rights.

320. The Committee welcomes the Law on the Freedom of the Press. It also welcomes the improvements with respect to freedom of association made possible by the 1997 Law on Non-governmental Organizations and the emergence of a free Bar Association.

3. Principal subjects of concern and recommendations

321. The status of the Covenant in domestic law is not clear, in view of the fact that the Constitution (art. 10, para. 3) stands in conjunction with laws of lower status; the Committee notes that no example was adduced of reliance on any article of the Covenant in any court proceedings to date.

322. It should be made clear by law that Covenant rights shall have superior status and shall prevail over domestic law in case of any conflict.

323. Many areas of concern remain in relation to discrimination against women and the inability of women fully to enjoy Covenant rights (arts. 3 and 26). In particular, attention has been drawn to:

(a) A general deterioration in the status of women in society, especially in the political sphere, despite their high level of competence;

(b) The acute problem of maternal mortality, due in part to unsafe abortions, and the unavailability of family planning advice and facilities;

(c) Discrimination against women in private sector employment, with effective impunity of employers in the face of court judgements;

(d) Failure to prosecute persons engaged in organizing prostitution or to adopt effective measures to combat trafficking in women;

(e) The growing incidence of domestic violence and the failure to prosecute perpetrators under the relevant article of the Code of Criminal Procedure;

(f) The necessity to prove violence in order to obtain a conviction for rape;

(g) The failure to make marital rape an offence.

324. The next report should provide in much greater detail statistics concerning the position of women by way of their participation in public life, private employment and in other relevant respects. It should also include details on the National Programme on Improving the Status of Mongolian Women and on other actions taken to combat all the above violations of human rights by administrative, medical, educational and legal measures. Prosecution for violations, where they constitute offences, should be sought and civil remedies properly enforced.

325. The Committee regrets that it has been largely precluded, through lack of information in the report and in the delegation's responses to oral questions, from examining compliance of the State party's judicial procedures with the rights guaranteed under article 14 of the Covenant.

326. The next report should provide information, in detail, on:

(a) Any threats to the independence and impartiality of the judiciary, including those that may result from low remuneration;

(b) Practical means of guaranteeing all aspects of due process spelt out in article 14, paragraph 3, of the Covenant and article 16, paragraph 14 of the Constitution;

(c) The right to review of a conviction in every case, including trials at first instance by the Supreme Court under article 50, paragraph 1 (1), of the Constitution (art. 14, para. 5).

327. The Committee is deeply concerned that the General Department for Implementation of Judicial Decisions, within the Ministry of Justice, has not been able to ensure that victims of human rights violations obtain in practice the benefit of remedies that have been granted by the courts (art. 2, para. 3).

328. The Committee reminds the State party of its obligation under article 2, paragraph 3, to ensure that all victims have effective remedy for violations of Covenant rights; the State party should ensure that the General Department for Implementation of Judicial Decisions provides such remedies.

329. The Committee is deeply concerned about all aspects of detention before trial; neither the report nor the delegation's answers give adequate details about:

- (a) Grounds for detention without bail;
- (b) Conditions of detainees' confinement by the police;
- (c) Remedies for violations of a detainee's rights by the police;
- (d) Means of ensuring that a detainee is promptly brought before a judge or judicial officer;
- (e) Statistics on the length of detention within the 26-month maximum;
- (f) The extent to which, in practice, the Procurator-General exercises supervision over the necessity for, length and conditions of detention (art. 9).

330. The State party should urgently implement its proposal to set up an adequate mechanism to oversee all such matters, to provide individual remedies to detainees whose Covenant rights are violated and generally to review the operation of the Detention Law (1999), in accordance with article 9, paragraphs 3 and 4, of the Covenant.

331. The State party should give details in its next report on the grounds for which persons may be detained by administrative action and the remedies available to such persons.

332. The Committee is seriously concerned by information it has received that a number of prisoners died of starvation during the reporting period. In this regard, it welcomes the recent changes in law and practice by which food is provided to all prisoners. However, the Committee retains its concern at the lack of other humane conditions of detention, such as timely medical care, sanitation and adequate space for prisoners (art. 10).

333. Steps should be taken to improve prison conditions to ensure that imprisonment does not damage prisoners' health and to introduce alternative forms of punishment other than imprisonment; the next periodic report should indicate by what means prisoners may make complaints about their treatment and the effectiveness of the only existing remedy, namely recourse to the courts.

334. The Committee notes the limitation of the categories of persons on whom, and crimes for which the death sentence may be passed and welcomes the commutation of many death sentences by the Supreme Court or the President to life imprisonment (art. 6).

335. The State party is urged to reconsider whether it is necessary to maintain the death penalty.

336. The Constitution or the Law on Emergency Situations, or both, should be amended to protect fully all non-derogable rights enumerated in article 4 of the Covenant.

337. The Committee is concerned about the problems confronting the populations of remote

regions of the territory described by the delegation (art. 26).

338. Efforts should continue to ensure that persons throughout rural areas of the country have access to education and to medical treatment and other public facilities that are available to those who live in urban areas.

339. The Committee regrets the absence of specific information on freedom of religion and belief and notes that, in its decision of 12 January 1994, the Constitutional Court considered that certain aspects of the Law on the Relationship between the State and the Church were unconstitutional.

340. In its next report, the State party should provide specific information on the effect of the decision of the Constitutional Court, on the consequences resulting from the dominant character of Buddhism, and generally on the legal regime and practices with regard to freedom of religion and belief as well as on full compliance with article 18 of the Covenant.

341. The Committee notes that the State party recognizes only the Khazakhs as an ethnic, religious or linguistic minority whose members are entitled to the rights specified in article 27, despite the existence of numerous other such minorities in Mongolia.

342. The State party should ensure respect for the rights of all persons belonging to ethnic, religious or linguistic minorities in accordance with article 27 of the Covenant.

4. Dissemination of information about the Covenant (art. 2)

343. The texts of the Covenant and of the Optional Protocol should be made more widely available to the public, together with an explanation that the former may be relied on in the courts in order to obtain remedies and that the latter provides recourse to the Human Rights Committee.

344. The State party should emphasize the importance of human rights education and should seek to impart such education and information to the population who live outside urban areas and to the illiterate by appropriate means such as radio and other media.

345. The attention of the State party is drawn to the Committee's revised Guidelines for the preparation of reports. The fifth periodic report should be prepared in accordance with those guidelines and submitted by 31 March 2003. It should pay particular attention to indicating the measures taken to give effect to these concluding observations. The Committee requests that these concluding observations and the next periodic report be widely disseminated in Mongolia.