

FREEDOM FROM TORTURE AND OTHER ILL-TREATMENT

- 1. Preparation of the submission:** The Open Society Forum initiated an expert group meeting on the issue of torture including Mongolian Human Rights NGO Forum (HRF) members, Mongolian Bar Association and national human rights institution. The forum resulted in a policy paper. The following policy paper on torture and other ill-treatment was reviewed by a sub-group discussion with 100 lawyers from the Mongolian Lawyers' Annual Forum and was distributed to all 400 forum participants. In addition, it was distributed as a main research paper to the participants in a consultation on "Torture Victims' Rights Issues" organized by the Human Rights Subcommittee of the Parliament of Mongolia in cooperation with other institutions. The HRF discussed the submission twice and recommendations were made to key staff of the Ministry of Justice and Home Affairs (MoJHA) and its agencies based on findings. Finally, the HRF, in cooperation with MoJHA and Ministry of Foreign Affairs has organized a National Consultation Meeting where the submission was presented for comments and feedback.
- 2. Recommendations given during the II UPR cycle and implementation thereof:** During the II UPR cycle, Mongolia received twenty recommendations in relation to freedom from torture and other ill-treatment. Mongolia have not implemented the recommendation about recognizing the competence of the Committee Against Torture to receive individual communications in accordance with the Convention against Torture (CAT). Implementation of other recommendations are respectively summarized below:
- 3. Defining "Torture" in accordance with the definition in the CAT:** In Article 21.12 of the 2015 Criminal Code, "torture" is defined in compliance with Article 1 of the CAT. However, the sentence is not fully compliant with the "grave" social danger of such a crime. Moreover, the "torture" act is included as an "aggravating circumstance" for four other crimes so that uncertainty may arise during the sentencing of torture as crime. Further, Criminal Procedure Law of Mongolia prohibits "ill-treatment", but ill-treatment is still not considered as criminal offence.
- 4. Compensation:** Chapter 45 of Mongolian Criminal Procedure Law generally state legal requirements for compensation in cases of mental anguish caused by the torture and provides that mental damage is a valid claim under Civil Law.¹ The right to compensation is guaranteed but no legislation regulates how to determine and assess mental anguish and the Criminal Code does not specify that it includes mental anguish caused by "torture". Therefore, in practice courts often decide to compensate only for material damages.
- 5. Independent investigation unit:** The torture investigation unit was established in 2002 under the administration of the General Prosecutor's Office of Mongolia. The unit was shut down in January 2014. In its 18th Annual Report on Situation of Human Rights and Freedoms in Mongolia, the National Human Rights Commission (NHRC) concluded based on statistics that

the investigation and detection of torture has been unsatisfactory since the dissolution of the unit.ⁱⁱ According to the Judicial Research, Information and Training Institute of the Judicial General Council, no torture case was discussed by courts in 2017 and 2018.ⁱⁱⁱ On the contrary, Ts.Nyamdorj, Minister of Justice and Home Affairs, has admitted to public media that cases of torture occurred in Mongolia in this time.^{iv}

- 6. Prevention of torture:** Although Mongolia ratified the Optional Protocol to the Convention against Torture on 11 December 2014, it has not followed through on its obligation to establish national preventive mechanism (NPM). Due to this, torture and ill-treatment are concealed in prisons and places of detention resulting in violations of the right to freedom from torture and ill-treatment. Relevant state authorities have made a policy decision to establish NPM within the structure of NHRC and a Working Group for Revising Law on National Human Rights Commission was established under the MoJHA. A separate chapter about NPM was included in a draft of the revised law, however, adoption of the revised law is still uncertain.
- 7. Inadmissibility of evidence obtained by torture:** Criminal Procedure Law includes the principle that statements of the accused or defendant made as a result of torture is not sufficient in itself to establish guilt.^v This is a significant step forward for the country, but such a law still lacks strict regulation on the inadmissibility of evidence obtained by torture.
- 8. Fight against impunity:** Mongolia committed itself to the implementation of recommendation from United Kingdom^{vi} on abolishing or revising article 44.1 of the Criminal Code of 2002 so there is less impunity for human rights violations. However, Article 4.6.2 of the new Criminal Code is still contrary to the aforementioned commitment.
- 9. Capacity building for officials:** Trainings on legislating, protecting, detecting and prosecuting against torture have been organized for lawyers and law enforcement officers in the country. However, trainings for professionals in other fields, including medical professionals, psychologists, officers of social care and welfare organizations, and officers of armed forces units, are inadequate. It must be taken into account that soldiers have repeatedly been murdered or suffered from lost organs in recent years while serving in the armed forces.^{vii}
- 10. Undercover investigation:** It is inappropriate that undercover investigation is conducted based on the permission of prosecutor. Since undercover investigation jeopardizes the right to safety, permission should be issued by courts. Moreover, “undercover investigation” should be strictly prohibited in detention centers. Otherwise, we are unable to expect any advancement in the prevention and fight against torture and ill-treatment. The torture case that was publicly disclosed by Minister Ts.Nyamdorj in 2019 is a footage of an intelligence operation conducted in a detention center.
- 11. Condemning over-use of detention:** Mongolia is still using detention as the most common measure of restraint and still has no alternative to detention. Recently, a number of attempts were made to incite the public to support mandatory detention for those who accused of

corruption and abuse of power offences, to blame prosecutors for not requesting detention, and to influence judges through news media.

12. Recommendations

1. Make a declaration regarding Article 22 of the Convention against Torture to recognize the competence of the Committee against Torture to receive individual communications.
2. Establish an independent investigation unit as soon as possible in compliance with all UN common standards.^{viii} Such unit should be specialized, skilled and compact investigating only torture and ill-treatment cases, rather than all special offender crimes.
3. Include detailed regulations in the revised NHRC Law to ensure that NPM complies with all requirements of OPCAT. The participation of civil society organizations in NPM should be mandatory and NPM is independent and has adequate power to perform its functions. Decisions and recommendations of NMP must be effectively implemented in practice.
4. Redefine “torture” by merging relevant provisions of articles 10, 11 and 21 of the current Criminal Code and to add “Cruel, inhuman or degrading treatment or punishment” as a punishable offence in the Criminal Code.
5. Amend Criminal Procedure Law so that evidence obtained by torture is inadmissible in court and amend the Criminal Code to ensure that fulfilling illegal orders and decrees is punishable; ensure that “covert operations” are prohibited in detention centers and ensure that court issued permission to conduct secret investigation is not merely set by procedure but regulated by law.
6. Establish a national compensation system as soon as possible and approve some method for determining and assessing non-material damages. Reinforce assessing organization’s human resource capacity by including specialized experts with the function of assessing non-material damage and mental anguish or a special unit with such function.
7. Develop a training program for capacity building in compliance with the Istanbul Protocol; make special effort to train professionals from diverse fields in addition to lawyers and law enforcement officers, and to ensure that the quality of such trainings is evaluated by independent organization.

ⁱ State Great Khural, Criminal Procedure Law, 2017, Article 45.4

ⁱⁱ National Human Rights Commission of Mongolia, 18th Annual Report on Situation of Human Rights and Freedoms in Mongolia, 2019, www.nhrm.gov.mn, pages 77-85

ⁱⁱⁱ National Human Rights Commission of Mongolia, 18th Annual Report on Situation of Human Rights and Freedoms in Mongolia, 2019, www.nhrm.gov.mn, page 82

^{iv} Ts.Nyamdorj: Torture was committed in connection to murder of S.Zorig. I am offering apology to families of B.Sodnomdarjaa and T.Chimgee, <https://ikon.mn/n/1j0x> (2019.05.16)

^v State Great Khural, Criminal Procedure Law, 2017, section 8.3 of Article 16.3

^{vi} Report of the UN Human Rights Council’s Working Group, I UPR cycle, United Kingdom, Recommendation 84.19

^{vii}Deceased soldier had phoned his home multiple times begging for his mother to come and save him. Dead soldier phoned home and asked mother to “pick him up” <http://zarig.mn/bn2/>, Nyambaatar Kh.: What kind of policy is needed to ensure that the soldiers won’t suffer any mistreatment of any kind whether it be deadly or not during these peaceful time? <http://vip76.mn/content/59343>, Was kicked through his diaphragm. <https://news.mn/r/226784/>

^{viii} “Policy to hold for preventing and combatting torture and ill-treatment”, joint policy document of Human Rights NGO Forum and Mongolian Bar Association, 2019