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لجنة حقوق الإنسان

الدورة الثانية والستون

البند ١١ (أ) من جدول الأعمال المؤقت

الحقوق المدنية والسياسية، بما في ذلك مسألة التعذيب والاحتجاز

تقرير السيد منفرد نواك، المقرر الخاص المعني بمسألة التعذيب وغيره من

ضروب المعاملة أو العقوبة القاسية أو اللاإنسانية أو المهينة

البعثة إلى منغوليا*

* يُعمَّم موجز تقرير هذه البعثة بجميع اللغات الرسمية. أمّا التقرير نفسه فيرد في مرفق هذا الموجز ويعمَّم باللغة التي قُدِّم بها، شأنه في ذلك شأن التذييل.

موجز

قام المقرر الخاص المعني بمسألة التعذيب بزيارة إلى منغوليا في الفترة من ٦ إلى ٩ حزيران/يونيه ٢٠٠٥ في إطار ولايته. ويعرب المقرر الخاص عن تقديره للحكومة لتعاونها معه طوال البعثة. غير أنه رغم الطلبات المتكررة التي تقدم بها لم يُسمح له بالوصول إلى المعلومات المتعلقة بعقوبة الإعدام، والاتصال بالسجناء في جناح المحكوم عليهم بالإعدام، الأمر الذي يشكل انتهاكاً خطيراً لاختصاصات الزيارة. ويتضمن التقرير دراسة للجوانب القانونية والوقائية ذات الصلة بالوضع في مجال التعذيب أو سوء المعاملة في منغوليا. ويخلص المقرر الخاص إلى أن التعذيب مستمر، وبشكل خاص في مراكز الشرطة وفي مرافق الاحتجاز قبل المحاكمة. وبالإضافة إلى ذلك، وصل في حالتين حديثتين جداً تعذيب المحتجزين حتى الموت.

وخلص المقرر الخاص إلى استمرار الإفلات من العقاب على أفعال التعذيب وسوء المعاملة، وذلك بسبب عدم تضمّن القانون الجنائي لتعريف للتعذيب يتفق مع اتفاقية مناهضة التعذيب وغيره من ضروب المعاملة أو العقوبة القاسية أو اللاإنسانية أو المهينة؛ وبسبب غياب آليات فعالة لتلقي ادعاءات سوء المعاملة والتحقيق فيها؛ والانعدام الأساسي للوعي، ولا سيما من جانب المدّعين العامين والمحامين ورجال القضاء، بالمعايير الدولية ذات الصلة بمنع التعذيب. وبالتالي، لا يوجد أمام الضحايا أي سبيل فعال للوصول إلى العدالة والحصول على التعويض وردّ الاعتبار في حالة التعذيب وغيره من ضروب سوء المعاملة.

ووجد المقرر الخاص أن الأوضاع في مهاجع السجون، التي هي من النوع المفتوح، في مرفق النظام العادي، السجن رقم ٤٢١ (أمغالان) ومرفق النظام الصارم، السجن رقم ٤١٣ (زوونكارا)، تتفق عموماً مع المعايير الدولية. وأعرب عن قلقه إزاء الاكتظاظ الشديد في مرفق احتجاز الشرطة الرئيسي بأولانباتار، وهو مركز الاحتجاز القسري. كما أعرب عن قلقه إزاء اكتظاظ الزنازن وعدم فصل السجناء المدانين عن السجناء الذين ينتظرون المحاكمة في مركز الاحتجاز رقم ٤٦١ (غانتس هوداغ) وفي مركز زونغود.

والمقرر الخاص قلق بشكل خاص إزاء وضع السجناء الخاضعين لنظام الحبس الانفرادي بالسجن رقم ٤٠٥ (سجن تاشيرين آم للأمن المشدّد، المعروف أيضاً بتنغار نام أو تاخير سويوت). ويرى المقرر الخاص أن نظام العزلة الخاص، الذي يقضي فيه السجناء عقوبات سجن لمدة ٣٠ عاماً في عزلة شبه تامة، إنما هو مخالف للمادة ١٠ من العهد الدولي الخاص بالحقوق المدنية والسياسية، وهو بمثابة معاملة قاسية ولا إنسانية إن لم يكن بمثابة تعذيب مخالف للاتفاقية.

ويساور المقرر الخاص بالغ القلق أيضاً إزاء جميع الظروف المحيطة بعقوبة الإعدام في منغوليا، ولا سيما السرية التامة. والمقرر الخاص، على الرغم من طلباته المتكررة إلى أعلى سلطات الحكومة، وكذلك إلى المدعين العامين والقضاء، لم يحصل على أية معلومات رسمية. وأعرب عن القلق من أن أسر الأشخاص المدانين لا يتم إخطارها حتى بالتاريخ المحدد للإعدام أو مكان تنفيذه، ولا تتلقى رفاتهم للدفن، وهذا أمر يعتبر بمثابة معاملة لا إنسانية للأسرة، خلافاً لما نصت عليه المادة ٧ من العهد. وبالإضافة إلى ذلك فإن السجناء الذين ينتظرون الإعدام

بسجنّي غانتس هوداغ وزونمود محتجزون في عزلة تامة ومكبّلو اليدين ومصفدون ومحرومون من الغذاء الكافي. وهذه الظروف تشكل عقاباً إضافياً لا يمكن سوى اعتباره تعذيباً وفق ما هو معرّف في المادة ١ من الاتفاقية.

وعليه، يوصي المقرر الخاص بقيام الحكومة باتخاذ عدد من التدابير قصد الامتثال لالتزامها بمنع وقمع أعمال التعذيب وغيره من ضروب سوء المعاملة.

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, MANFRED
NOWAK ON HIS MISSION TO MONGOLIA (6-9 JUNE 2005)**

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Introduction

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, undertook a visit to Mongolia from 6 to 9 June 2005. The initiative for a visit by the Special Rapporteur was originally proposed by the National Human Rights Commission of Mongolia, which requested his participation in the 2005 public inquiry on torture. Subsequently, the Government, which had already issued a standing invitation to the special procedures of the Commission on Human Rights in April 2004, extended an invitation to the Special Rapporteur in March 2005. During the course of the visit, he examined the legal framework and governmental activities relating to the prohibition of torture and other forms of ill-treatment. He also examined the response of the Government to allegations of violations, particularly in relation to inquiry, impunity and prevention. The Special Rapporteur has based his findings on the situation of torture and ill-treatment in Mongolia on written information and interviews of a wide array of sources, including Government officials, non-governmental organizations (NGOs), lawyers, victims themselves and witnesses, as well as on-site inspections of detention facilities. What follows is the report of his findings, conclusions and recommendations.

2. The main purposes of the visit, according to the Special Rapporteur, were to assess the prevailing situation of torture and other cruel, inhuman or degrading treatment or punishment; to promote preventive mechanisms to eradicate torture and ill-treatment; and to begin a process of long-term cooperation with the Government.

3. The Special Rapporteur noted that at the time of his visit the country had recently emerged from presidential elections in May 2005, and acknowledged that it was continuing along its difficult path of transition from a highly centralized form of government towards a parliamentary democracy; it was also attempting to consolidate the economic and political reforms begun over a decade earlier.

4. During the course of his visit the Special Rapporteur met with President N. Bagabandi; Mr. A. Battur, Vice-Minister for Foreign Affairs; Mr. O. Ochirjav, Deputy Director of the Law and Treaty Department, Ministry for Foreign Affairs; Mr. T. Sukhbaatar, Deputy Minister of Justice and Home Affairs; Ms. O. Altangerel, Head of the International Cooperation Department, Ministry of Justice and Home Affairs; and Mr. J. Khunan, Ministry of Justice and Home Affairs. The Special Rapporteur also met with Mr. M. Altankhuyag, Head of the Prosecution Department of the General Prosecutor's Office; Mr. B. Tserenbaltav, Deputy Prosecutor; Mr. T. Sukhebaatar, Prosecutor; Mr. D. Batsaikhan, Deputy Chief Justice of the Supreme Court; Mr. B. Galdaa, Head of the Investigation Office of the General Prosecutor's Office; Mr. J. Choijantsan, Head of the Court Decision Enforcement Agency; and Mr. M. Enkh-Amgalan, Head of the Central Investigation Office of the National Police Department.

5. He met with the commissioners and staff of the National Human Rights Commission of Mongolia (NHRCM)—a national human rights institution established in accordance with the Paris Principles—including Mr. S. Tserendorj, Chief Commissioner, and commissioners G. Dalaijamts and J. Dashdorj; Ms. B. Khishigsaikhan, Director; Ms. P. Oyunchimeg, Senior Officer, Complaints and Investigation; Ms. G. Zoljargal, Public Relations Officer; and Ms. L. Gerel, Communication Officer. NHRCM designated 2005 as the year of the national

public inquiry on torture. Beginning in January 2005, it is to culminate in a report with recommendations in December. The inquiry is expected to include a comprehensive array of activities to be carried out across the country, in Orkhan, Darkhan-Uul, Tuv, Dornod and Huvsgul aimags (provinces), as well as in Ulaanbaatar. Among other things, the activities will include: a comparative analysis of relevant laws with international standards; consultative meetings with the judiciary, lawyers, and civil society; an analysis of complaints received by the Investigation Department of the General Prosecutor's Office, the Inspection Board of the National Police as well as prosecution offices; an investigation of conditions of detention in pre-trial and prison facilities; public awareness campaigns; and an analysis of impunity. Public hearings on the findings will be held and will be disseminated through the mass media. The Special Rapporteur warmly welcomes the public inquiry, one of the first such initiatives ever carried out by a national human rights institution. He praises the commitment of the commissioners and staff, and expresses strong support for their efforts to eradicate torture and their excellent assistance during his visit.

6. The Special Rapporteur met with members of Parliament Ms. O. Sanjaasuren and Mr. L. Gundalai; representatives of numerous NGOs, including Amnesty International Mongolia, the Centre for Human Rights and Development, the Liberty Centre, the Mongolian Women Lawyer's Association, the National Centre Against Violence and Prisoner Fellowship Mongolia; as well as lawyers.

7. The Special Rapporteur met with members of the diplomatic community, including Ambassadors N. Chapuis (France), R. Austen (United Kingdom of Great Britain and Northern Ireland) and P. Slutz (United States of America). He met representatives of the United Nations Country Team in Mongolia, including UNDP, UNICEF and UNHCR.

8. From 7 to 9 June 2005, the Special Rapporteur visited the following facilities and interviewed detainees and staff there: Prison No. 421 (Amgalan), ordinary regime; the Centre for Forced Detention, Ulaanbaatar; Detention Centre No. 461 (Gants Hudag), pre-trial detention centre; Prison No. 413 (Zuunkharaa), strict regime; Prison No. 429 (Tashireen Am, also known as Tangaar Nam or Takhir Soyot Tuberculosis Hospital); Prison No. 405 (Tashireen Am maximum security prison, also known as Tangaar Nam or Takhir Soyot), ordinary, strict and special regimes; and Zuunmod Detention Centre, pre-trial detention centre.

9. The Special Rapporteur expresses his appreciation to the Government for inviting him to visit the country. During his visit he received full cooperation, particularly from the Deputy Minister of Justice and Home Affairs and the Deputy Minister for Foreign Affairs. He was however, unable to meet the President-elect, the Minister for Foreign Affairs or the Minister of Justice and Home Affairs. The lack of support from certain parts of the Government led to a serious violation of the terms of reference for the visit. Although it had been agreed that the Special Rapporteur would be permitted access to all relevant information, to visit any place of detention and to speak to any detainees, he was consistently and despite repeated requests denied all information related to the death penalty and access to prisoners on death row. His conclusions on the conditions on death row therefore have to be based on well-substantiated allegations of witnesses, family members and NGOs.

10. He also expresses his appreciation for the assistance of the United Nations Resident Coordinator, Ms. P. Mehta; Ms. E. McArthur of the Ludwig Boltzmann Institute of Human

Rights; and staff of the Office of the High Commissioner for Human Rights (OHCHR), particularly Mr. E. Berry and Mr. S. Syed.

I. LEGAL FRAMEWORK

International level

11. Mongolia is a party to the major United Nations human rights treaties prohibiting torture and ill-treatment: the International Covenant on Civil and Political Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention on the Rights of the Child. It has recognized the competence of the Human Rights Committee to consider complaints by individuals of violations of the Covenant by ratifying the Optional Protocol; however it has not done the same with the Committee against Torture, not having made the declaration under article 22 of the Covenant. Mongolia is also a party to the Geneva Conventions of 12 August 1949 and the Rome Statute of the International Criminal Court. Mongolia is not party to the Second Optional Protocol to the Covenant.

National level

Constitutional protection of human rights

12. According to the 1992 Constitution, “Mongolia adheres to the universally recognized norms and principles of international law...” (art. 10.1), fulfilling “in good faith its obligations under international treaties to which it is Party” (art. 10.2). Chapter 2 of the Constitution, entitled “Human Rights and Freedoms”, contains a list of key basic rights in article 16, including, among other things, the right to life, the right to submit a petition or a complaint, the right to personal liberty and safety, and the right to a fair trial. The Constitution also contains provisions for certain rights of aliens and asylum-seekers.

13. The 1992 Constitution provides, “No one shall be subjected to torture, inhuman, cruel or degrading treatment” (art. 16.13).

Prohibition of torture and other cruel, inhuman or degrading treatment or punishment in criminal and disciplinary law

14. Article 100.1 of the Criminal Code (CC), revised in 2002, defines the offence of torture as “systematic battery or other actions having the nature of torture” which do not result in either severe or less severe bodily injuries (i.e. articles 96 and 98, respectively). The Code also criminalizes the forcing of testimony by an interrogator or investigator by threat, violence, torture, humiliation, deception or other illegal methods (art. 251.1).

15. The 2002 Criminal Procedure Code (CPC) provides in article 10.4 that it shall be prohibited to torture, to treat inhumanely or in a cruel way and to insult someone’s reputation. Furthermore, CPC prohibits coercing a suspect to give testimony, or to subject him or her to inhuman or cruel treatment, or to insult his or her dignity (art. 81.2). The 1999 Law on the Execution of Decisions on Arrest and Detention of Suspects and Accused provides in article 3 that torture or other methods causing physical suffering or mental distress shall be prohibited in relation to a suspect or accused. Article 29 of the 1993 Police Law provides that a police officer

is bound to strictly follow the law and respect the rights, freedoms and dignity of individuals, and to treat them humanely.

16. Despite the fact that reference is made to “torture” in various legislative and regulatory instruments, Mongolian law does not define the term in accordance with article 1 of the Convention, failing to include the essential elements that the act (or omission) causes severe pain or suffering (physical or mental); is intentionally inflicted for a specific purpose; and by or at the instigation of or with the consent or acquiescence of a public official acting in an official capacity. Moreover, the main provision in the Criminal Code referring to torture, article 100.1, carries a relatively lenient penalty of up to two years' imprisonment.

17. Various other provisions of the Criminal Code criminalize acts which may fall within the scope of the Convention, and which carry the following penalties: intentional infliction of a severe bodily injury carried out by humiliating or torturing the victim (art. 96.2.8), seven to 10 years' imprisonment; less severe bodily injury by torturing the victim (art. 98.2), three to five years' imprisonment; forcing of testimony by an interrogator or investigator by threat, violence, torture, humiliation, deception or other illegal methods (art. 251.1), up to five years' imprisonment, or five to 10 years in circumstances where there is severe or less severe bodily injury; negligent homicide (art. 94), up to four years' imprisonment; bringing to suicide through brutal treatment or systematic humiliation (art. 95), two to five years' imprisonment; infliction of severe bodily injury by negligence (art. 97), up to two years' imprisonment; intentional infliction of a minor bodily injury (art. 99), three to six months' imprisonment; failure to provide assistance to a patient (art. 106), three to six months' imprisonment; failure to provide assistance to a person who is in a condition endangering his/her life or health (art. 107), three to five years' imprisonment; exceeding of authority by a State official with the use of violence or threat such that it has caused extensive harm (art. 264.2), up to 5 year's imprisonment; and neglect of duty by a State official causing grave harm (art. 272), three years' imprisonment.

18. As to administrative sanctions for torture and ill-treatment by police and prison officials, there is a police disciplinary board empowered to order administrative sanctions which can include a reduction in pay, loss of rank or termination of employment. The Court Decision Enforcement Agency can discipline prison officials in a similar manner.

Safeguards against torture and ill-treatment during arrest and detention

19. The law relating to arrest and detention is found primarily in the Constitution, CPC, the Law on the Execution of Decisions on Arrest and Detention of Suspects and Accused, and the Police Law.

Arrest, preliminary detention and interrogation

20. Constitutional safeguards for persons during arrest and detention are provided in article 16, and include the notification of family and counsel, within a period of time established by law, of the reasons for arrest (art. 16.13) and the right to a defence and to receive legal assistance (art. 16.14).

21. CPC elaborates on the rights of suspects upon arrest. According to articles 35.2, a suspect has, among other things, the following rights: to know the crime of which he or she is suspected

of committing to be presented with an arrest warrant; to remain silent; not to incriminate oneself; and to have a lawyer and have private meetings with him or her.¹

22. In Mongolia persons may be deprived of their liberty in different facilities and by various agencies: under the jurisdiction of the Ministry of Justice and Home Affairs, particularly the General Department of Police, the General Authority for Border Protection and the General Authority for Implementing Court Decisions; the Central Intelligence Agency under the Prime Minister's Office; and in institutions under the Ministries of Defence and Health. In general, detention centres are classified as police lock-ups (up to 72 hours) or pre-trial detention facilities (up to 30 months); prisons are long-term facilities (i.e. for sentences over six months), consisting of ordinary, strict and special regimes; and confinement centres are typically for serving sentences of one to six months in relation to administrative offences (e.g. drunkenness). Authorities responsible for detention (i.e. the General Authority for Implementing Court Decisions) and interrogation (i.e. the General Department of Police) are under the jurisdiction of the same Ministry and supervise the same facilities particularly detention centres, which often accommodate a police lock-up, a pre-trial facility and a prison (some even include special regimes, such as death row), such as Detention Centre No. 461 (Gants Hudag).

23. CPC specifies rules relating to the time limits for preliminary detention: according to article 59.5 and 59.6, a suspect can be detained up to 72 hours before a court decides to charge or release him or her (i.e. police can detain someone for 24 hours before seeking a warrant and within 48 hours a judge has to decide to order detention on remand or release). Without a court decision, after 72 hours a person must be released. A person's family or lawyer must be informed of the arrest and detention within 24 hours, according to article 61.

24. Provisions in other legislation also provide for detention, such as: article 6.4 of the Law on the Execution of Decision on Arrest and Detention of Suspects and Accused (a suspect may be detained for up to 14 days in disciplinary cells of military divisions and corps stationed in locations distant from administrative centres and settlements); article 24.3 of the Police Law (the police may take into custody a person suspected of committing a crime or an administrative offence for a period of up to six hours with the purpose of verifying identification and address, as well as for establishing grounds for arrest); article 13 of the 1992 Administrative Law (a soum district governor, authorized police officer, border authority representative, or the deputy or assistant may take an offender into custody according to administrative procedures, if necessary, to terminate an act in progress, or for the purpose of filing the offence. The period for "custody according to administrative procedures" shall not exceed six hours); article 1 of the 1994 Law on Provisional Custody of an Unsupervised Child (a police officer may take into custody for a period of up to 48 hours a child under the age of 16, whose place of residence and parents or guardians are not identified and there is a potential threat to his or her life or health due to lack of supervision); article 12.1.5 of the 1999 Law on the Intelligence Service (custody of a suspect under the jurisdiction of the Central Intelligence Office without a specified time period); and article 33 of the 1993 State Border Law (a police officer may take into custody a person who has violated the State border or border-zone regime for a period of up to three hours with the purpose of filing the violation). Thus, different officers from a number of State agencies are authorized to take a person into custody for periods of three to 72 hours or, according to the Law on the Intelligence Service, for an indefinite period of time.

25. CPC provides for a lawyer to be present during interrogations (art. 41.3.1) and for the right to an interpreter (art. 35.2.5). Article 79.4 states that if the rules for obtaining and documenting evidence are not complied with or are violated, the evidence shall lose its probatory value and may not serve as a ground for a court decision.

Pre-trial detention

26. For an accused person, article 36.3 of CPC provides similar safeguards to those for a suspect.² Measures of restraint include a promise not to leave the place of residence, personal surety, bail, and detention (art. 62).

27. Article 68 provides that pre-trial detention may be ordered for suspects, accused persons and defendants with respect to grave and extremely grave crimes, or for recidivists or extremely dangerous criminals suspected of committing a crime, to prevent them from evading an inquiry, an investigation or a trial, from hindering the establishment of the real circumstances of the case, or from re-engaging in criminal activity. Persons involved in less grave crimes may also be detained if they have violated previous measures of restraint, or if they are at risk of absconding.

28. CPC specifies in article 69.1 to 69.4 that the term of pre-trial confinement ranges from 14 days up to 30 months. Suspects under 18 can be detained for up to 18 months (art. 366.4).

29. The Special Rapporteur notes that not only is the maximum period of pre-trial detention provided for excessive, but in practice pre-trial detention is generally the rule, and there is no clear distinction between pre-trial detention and imprisonment following conviction (i.e. persons are “sentenced to pre-trial detention”); in addition, pre-trial detainees may be held with convicted persons. The Special Rapporteur considers that this recourse to pre-trial detention is contrary to the principle of the presumption of innocence and to the rule of the use of deprivation of liberty as an exceptional measure laid down by international law (Covenant art. 9, para. 3). The Committee on the Rights of the Child has expressed deep concern about the practice in Mongolia of keeping children in pre-trial detention for a prolonged period; that juvenile first offenders are sentenced to imprisonment for petty crimes; and in relation to the difficulties faced by children to be released on probation (CRC/C/15/Add.263, paras. 66-68).

Imprisonment after conviction

30. Article 52 CC specifies that convicted persons shall serve their terms of imprisonment in correctional facilities of: general or ordinary regime (minimum security), for males convicted of less serious crimes, or females; strict regime (medium and high security), for males convicted of serious crimes and who have previously been imprisoned, and females convicted of grave crimes or recognized as recidivists; or special regime (high security), for males convicted of serious crimes or recognized as recidivists. Article 53 provides for the possibility of persons originally sentenced to death to have their sentences commuted to 30 years’ imprisonment upon presidential pardon, and these persons serve their terms in solitary confinement in Prison No. 405.

Visits to places of detention

31. The only provision for the monitoring of places of detention is provided in article 45 of the Law on the Execution of Decisions on Arrest and Detention of Suspects, and Accused. It states that prosecutors shall supervise the compliance of detention centres operations, conditions and procedures. There is no provision for systematic independent monitoring. Although NHRCM has unrestricted access, visits to prisons by NGOs are restricted and permission is seldom granted.

Investigation of acts of torture and other cruel, inhuman or degrading treatment or punishment

Complaints and investigations

32. Articles 20, 35.2, 36.3 and 106 of CPC provide suspects and accused with the right to lodge a complaint regarding the actions and decisions of officials to an inquiry officer, an investigator, a procurator, the court, or the administration of the detention facility. The newly established Investigation Office of the Procurator's Office is charged with investigating crimes committed by police officers, inquiry officers, investigators, procurators and judges (article 27.2 CPC and article 10 of the 2002 Law on the Prosecutor's Office).

33. According to article 70 CC, the statute of limitations is one year from the commission of a minor crime, five years for a less serious crime, 20 years for a serious crime and 30 years for a grave crime.

34. Complaints can also be lodged with NHRCM in accordance with article 9 of the 2000 National Human Rights Commission Act. The Act empowers the Commission to undertake investigations, including summoning persons, obtaining documentation, unrestricted access to places of detention and appointing experts. The Act also empowers the Commission to submit claims to courts and participate in judicial proceedings. According to article 12 of the Act, complaints to NHRCM must be lodged within one year from the date of the violation or on which the complainant came to know of the violation.

Compensation

35. The Constitution provides for the right to be compensated for damage illegally caused by others (art. 16.4). Articles 35.2 and 36.3 CPC provide for the right to be compensated for damages due to unlawful activities of officials, and chapter 44 (arts. 388 to 397) further elaborates on this right. However, among the grounds for compensation indicated in article 389, such as damages resulting from unlawful sentencing, arrest and detention, there is no reference to torture or ill-treatment.

II. THE SITUATION OF TORTURE AND ILL-TREATMENT

36. Over the years the Special Rapporteur has received few allegations of torture and ill-treatment in Mongolia. However, as he has stated on previous occasions, the number of allegations received is not necessarily indicative of the prevailing situation with regard to torture in a country; on the contrary, it may be a function of the level of awareness of individuals,

lawyers and civil society of what constitutes torture and ill-treatment, as well as the international mechanisms available to respond to allegations. In Mongolia, the view of the Special Rapporteur is that the public perception of the prohibition of torture and ill-treatment is generally narrow, and that there is an implicit cultural acceptance of a degree of violence against alleged criminal suspects and convicts. This situation, combined with a criminal justice system which relies heavily on obtaining confessions for instituting prosecutions, makes the risk of torture and ill-treatment very real.

37. Indeed, based on interviews with detainees and allegations brought to his attention during the course of the visit, some of which are included in the appendix, as well as his meetings with senior government officials, the NHRCM and defence lawyers, information received from NGOs and independent forensic medical evidence, the Special Rapporteur concludes that torture and ill-treatment by law enforcement officials persists, particularly in police stations, pre-trial detention facilities, and in the strict and special prison regimes, particularly on death row.

38. The methods of torture described in the vast majority of cases that the Special Rapporteur came across involved beatings with fists and truncheons to extract confessions. Indeed, the Special Rapporteur was informed that just prior to the visit, Munkhbayar Baatar (whose case is included in the appendix) was severely beaten in custody and subsequently died as a result of his injuries. Other methods cited included: “flying to space” (where a person is made to stand on a stool, which is kicked away from underneath), needles pushed under fingernails, electroshock (i.e. wires attached to a ceiling light bulb socket and connected to a puddle of water), burning with cigarettes, prolonged periods of being handcuffed and shackled (in one case three years), coercing confessions by putting suspects in cells with convicted prisoners who are encouraged by guards to be abusive, and detaining suspects in distant facilities which, given the geography of the country, is intended to isolate detainees from lawyers and families. Respect for basic safeguards for detainees (see para. 20, above), such as notification of lawyers and families, were routinely disregarded.

Lack of investigations and impunity

39. According to the Special Rapporteur, impunity is the principal cause of torture and ill-treatment, and the unwillingness or inability to tackle it effectively will perpetuate the culture of impunity in Mongolia. The absence in the Criminal Code of a definition of torture in line with the Convention and the lack of effective mechanisms to receive and investigate complaints provide shelter to perpetrators. And even without such a definition, a clear indicator of impunity is the absence of any effective investigations by the procuracy, nor have any law enforcement officials been convicted to date for torture related offences.

40. The Special Rapporteur observed, in speaking with victims, law enforcement officials, prosecutors, lawyers and members of the judiciary, a basic lack of awareness and understanding of the international standards relating to the prohibition of torture, which by itself serves to limit inquiries into allegations of torture. Indeed, other than the public inquiry on torture initiated by NHRCM, nothing has been done by the Government to publicize or raise awareness of the Convention among the public, law enforcement and legal professionals or the judiciary. Though a two-day human rights training component has recently been introduced in the police academy curricula, it is reported that three quarters of the existing corps have no human rights training.

41. While a legal framework for victims to make complaints and have them addressed currently exists, this system does not work in practice. Despite the establishment of the Investigation Office of the Prosecutor's Office, the unit does not presently have the capacity to carry out its work effectively. On 6 June 2005, the Special Rapporteur met with the Head of the Investigation Office, Mr. B. Galdaa, who acknowledged the operational shortcomings. Among other things, these included insufficient office space and basic equipment, and the fact that 80 per cent of their 24-member staff is recent university graduates without relevant investigative experience. Moreover, the Investigation Office cannot carry out ex officio investigations; it can only act in respect of those cases passed on to it by prosecutors. The Special Rapporteur also observed that victims often do not complain out of credible fear of reprisals, and because of a perceived lack of confidence that their complaints will be effectively addressed.

42. The sum consequence of the above is no effective and adequate justice for victims of torture and ill-treatment, nor recourse for securing compensation and rehabilitation.

III. CONDITIONS OF DETENTION

43. Of the facilities visited, the Special Rapporteur found Prison No. 421 (Amgalan), ordinary regime, and Prison No. 413 (Zuunkharaa), strict regime, to be generally in line with international standards. They were open, dormitory-type prisons, relatively well maintained, and the Special Rapporteur did not receive any significant complaints or allegations of ill-treatment from the detainees he interviewed.

44. At the Centre for Forced Detention, the main police detention facility in Ulaanbaatar, on the day of the visit, in a facility with a capacity of 97 bunks there were 217 persons sentenced to seven to 30 days in detention, and 48 persons being held in custody for 72 hours; more than half the detainees were forced to sleep on the floor. One meeting room of 8 x 6 m was even used as sleeping quarters for over 100 detainees, according to the chief of the centre, Mr. B. Ochirbat. Bedding material was provided in the evening, the rooms were cold and the heat was not turned on. Of eight cells with a capacity of 8-10 persons, one was designated for women. The facility was relatively clean, though the toilets and showers appeared to be in poor condition. While there were no allegations of ill-treatment, the main complaints were overcrowding, particularly in relation to sleeping, and the monotonous daily routine of having nothing to do except remain quietly in the courtyard from 7 a.m. until 11 p.m.

45. At Detention Centre No. 461 (Gants Hudag) and Zuunmod Detention Centre, the Special Rapporteur also expressed concern about overcrowded cells, but more particularly at the mixing of convicted prisoners and pre-trial detainees, contrary to article 10.2(a) of the Covenant.

46. The Special Rapporteur's most serious concerns, however, were in relation to the situation of prisoners subjected to the special isolation regime at Prison No. 405, and on death row at detention centres such as Gants Hudag and Zuunmod.

Special isolation regime for long-term prisoners

47. The Special Rapporteur visited Prison No. 405 on 8 June 2005. It is the only cell-based facility for convicted prisoners in the country. On the day of the visit, it held 64 prisoners, 55 of whom were serving sentences of two to five years' imprisonment, and nine who were serving 30-year sentences in solitary confinement, sentences had been commuted from death sentences. The prisoners in solitary confinement were held on the second floor in nine adjacent cells. Each cell was approximately 3 x 3 m and consisted of a latrine-cum shower, one bed and a small side table fixed to the floor, a radiator and a 30 cm x 2 m window opening at the ceiling. The entrance to each cell consisted of a barred door as well as an iron-plated door. The prisoners said that they were permitted to go outside a maximum of twice per week, for one hour at a time. However, it was usually much shorter during cold weather. They were permitted visitors twice a year for only a few hours each time. They were handcuffed when they were taken outside, and handcuffed and shackled during visits. Essentially these persons, who are serving 30-year sentences, are confined 24 hours a day to their cells with no possibility of any leisure, educational or vocational activities. A television set was fixed outside each cell and was turned on from 6 p.m. to 11 p.m. daily, and prisoners could receive reading material. The Special Rapporteur interviewed each of the nine prisoners in solitary confinement and the information they offered was consistent. There were no urgent medical complaints, although one has become confined to a wheelchair since his arrival because of lack of appropriate treatment for his legs. There were no recent allegations of ill-treatment by the guards, though serious allegations of previous beatings were recounted to the Special Rapporteur. At the time of the visit, the detainees, with nothing to do, were visibly depressed, expressed despair and suicidal thoughts, and some said that they would have preferred the death penalty to their isolation.

48. In the view of the Special Rapporteur, the whole philosophy of the special isolation regime is contrary to article 10 paragraph 3, of the Covenant, which is aimed at the reformation and social rehabilitation of prisoners. Given their long sentences, there is no consideration given to their future release, nor for their rehabilitation or re-socialization. Taken together with the fact that the virtual total isolation of the detainees does not seem to be motivated by reasons of security, the purpose of the isolation appears to be to impose additional punishment, leading to severe pain or suffering. Therefore, the Special Rapporteur concludes that the whole regime amounts to cruel and inhuman treatment, if not torture, as defined by article 1 of the Covenant.

49. In respect of prisoners in the special isolation regime, the Special Rapporteur requested information on measures taken to ensure respect of article 10 of the Covenant, as well as international standards such as the Standard Minimum Rules for the Treatment of Prisoners.

By letter dated 22 September 2005, the Government replied that by August 2005 there were 69 detainees in Prison No. 405, nine of whom were sentenced to 30 years and the remainder to sentences ranging between three to five years' imprisonment. The nine detainees stay in 9 m² separate rooms with natural lighting, in accordance with the Prison Rules, Order No. 215, Ministry of Justice and Home Affairs, of 20 September 2002. Detainees are provided with medical services such as dental prostheses, eye care, cardiograms, various examinations, as well as activities to support the detainees spiritually, with the help of NGOs. For example, long-term detainees are given a monthly US\$ 20 allowance, with the support of the NGO, Prison Fellowship of Mongolia, which also organizes English and French language courses. The activities of prisons are carried out in accordance with the Prison Rules, and detainees'

complaints are referred to the relevant organizations and addressed. Detainees are not handcuffed in their rooms, but are when meeting their families or taken outside for air, in accordance with the Prison Rules.

Prisoners on death row

50. The Special Rapporteur is deeply concerned about all the circumstances surrounding the death penalty in Mongolia, most particularly that it is considered a State secret. It is alleged that the number of executions, presently estimated at approximately 20-30 persons per year, is on the increase. The Special Rapporteur was not provided with official statistics in this regard, nor was such statistics publicly available. Despite repeated requests to the highest authorities of the Government, including the President, to prosecutors and the judiciary, the Special Rapporteur was not provided with any official information, names or statistics concerning persons who have been sentenced to death, pardoned or executed, nor with any information regarding the times and places of execution. While one family member is permitted to visit a prisoner on death row once he is sentenced, not even the families are notified of the exact date or place of execution and they do not receive the bodies of executed persons for burial. In *Lyashkevich v. Belarus*, the Human Rights Committee considered that “[c]omplete secrecy surrounding the date of execution, and the place of burial and the refusal to hand over the body for burial have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress...[and] amounts to inhuman treatment [of family members]” in violation of article 7 of the Covenant (CCPR/C/77/D/887/1999, para. 9.2). According to the Special Rapporteur, this assessment is equally applicable to the situation observed in Mongolia.

51. The Special Rapporteur received serious and credible allegations that persons on death row are detained in isolation and are kept handcuffed and shackled throughout their detention, and denied adequate food. Moreover, he obtained very precise and detailed information about individuals on death row in Gants Hudag and in Zuunmod pre-trial detention facilities, particularly Mr. Bayarjav and Mr. Sedev Bataa, held at Gants Hudag and Zuunmod, respectively (whose cases are included in the appendix). Despite authorization received from the Government for unimpeded access to all places of detention, Mr. Sugarjav and Mr. Ochirbat, the respective heads of Gants Hudag and Zuunmod, in clear breach of the Special Rapporteur’s terms of reference, deliberately obstructed him in investigating the allegations of torture and ill-treatment of the detainees; they refused to provide him access to the custody registers and access to these persons when he visited the institutions on 8 and 9 June 2005.

52. After the visit, the Special Rapporteur requested the Government to provide him with the identities of all persons sentenced to death within the last three years; those whose appeals had failed and were awaiting execution; those who had been pardoned; the precise locations of all of those prisoners; and, for those who had been executed, the date of execution and the place of burial. The Special Rapporteur further requested information on the conditions of detention of death row prisoners. Moreover, he requested an explanation for the refusal by the heads of the Gants Hudag and Zuunmod pre-trial detention facilities to cooperate. At the time of writing, no information had been provided by the Government.

53. In view of the lack of cooperation from the Government, the Special Rapporteur bases his conclusions on well-substantiated information provided by family members and NGOs. The fact that death row prisoners are detained in complete isolation, are continuously kept handcuffed and

shackled throughout their detention, and are denied adequate food constitute additional punishments which can only be qualified as torture as defined in article 1 of the Convention.

54. Moreover, the severity of the situation is illustrated by the case of Mr. Sedev Bataa (see appendix), who subsequently died in circumstances that led the Special Rapporteur to conclude that he had been tortured to death.

IV. CONCLUSIONS AND RECOMMENDATIONS

55. The Special Rapporteur notes that in recent years the Government has taken measures to amend its Criminal Code and Criminal Procedure Code to bring its legislation into line with international human rights standards. However, despite these provisions, he concludes that torture and ill-treatment of alleged criminal suspects persists in Mongolia that perpetrators enjoy impunity, and that in practice there is no effective and adequate means for victims of torture and ill-treatment to obtain justice, compensation and rehabilitation. Accordingly, the Special Rapporteur recommends to the Government of Mongolia that:

(a) The highest authorities, particularly those responsible for law enforcement activities, declare unambiguously that the culture of impunity must end and that torture and ill-treatment by public officials will not be tolerated and will be subject to prosecution;

(b) The crime of torture be defined in accordance with article 1 of the Convention, with penalties commensurate with the gravity of torture;

(c) Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention, which should not exceed 48 hours. After this period, they should be transferred to a pre-trial facility under a different authority, where no further unsupervised contact with the interrogators or investigators should be permitted;

(d) Custody registers be scrupulously maintained, recording of the time and place of arrest, the identity of the police officers, the actual place of detention, the state of health of the person upon arrival at the detention centre, the time family or a lawyer was contacted and visited the detainee, and information about the compulsory medical examinations undertaken upon being brought to a detention centre and upon transfer;

(e) Confessions made by persons in custody without the presence of a lawyer and which are not confirmed before a judge should not be admissible as evidence against the persons who made the confession. Serious consideration should be given to video and audio taping of all persons present during proceedings in interrogation rooms;

(f) Judges and prosecutors routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination;

(g) All allegations of torture and ill-treatment be promptly and thoroughly investigated by an independent authority with no connection to that investigating or

prosecuting the case against the alleged victim. In the opinion of Special Rapporteur, the NHRCM could be entrusted with this task;

(h) Any public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in torture or ignoring evidence, be immediately suspended from duty pending trial, and prosecuted;

(i) Victims of torture and ill-treatment receive substantial compensation and adequate medical treatment and rehabilitation;

(j) The declaration be made with respect to article 22 of the Convention recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention;

(k) The Criminal Procedure Code be amended to ensure that it shall not be the general rule that persons awaiting trial are detained in custody, particularly for non-violent, minor or less serious offences, and that the use of non-custodial measures, such as bail and recognizance, are increased. The maximum period of pre-trial detention shall be reduced, especially for persons under 18. Pre-trial detention shall be authorized by a judge only as a measure of last resort and for the shortest appropriate period of time;

(l) The current special isolation regime for long-term prisoners be ended and that it ensured that ensuring that all persons deprived of their liberty are detained strictly in accordance with the Standard Minimum Rules for the Treatment of Prisoners, with the aim of rehabilitation and resocialization, as envisaged by article 10 of the Covenant;

(m) Death row prisoners be detained strictly in accordance with the Standard Minimum Rules for the Treatment of Prisoners, and in particular they should not be handcuffed and shackled in detention;

(n) A moratorium on the death penalty be imposed, with a view to its abolition, and that the Government ratify the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty;

(o) It ratifies the Optional Protocol to the Convention and that a truly independent monitoring mechanism be established, to visit all places where persons are deprived of their liberty throughout the country. In the view of the Special Rapporteur, such a mechanism could be situated within NHRCM;

(p) Law enforcement recruits undergo extensive and thorough training following a curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of police equipment, and that serving officers receive continuing education; and

(q) Systematic training programmes and awareness-raising campaigns be carried out on the principles of the Convention for the public at large, law enforcement officials, legal professionals and the judiciary.

56. The Special Rapporteur recommends that the Government request relevant international organizations, including OHCHR, to provide assistance in the follow-up to the above recommendations.

Notes

¹ Article 38.1 provides that the defence counsel has the right to participate in legal proceedings from the moment a person is deemed to be a suspect, and article 39 provides the right to choose one's own lawyer.

² The rights to know the charge against him or her, right against self-incrimination, to remain silent, to an interpreter, to have a lawyer present, etc.

Appendix

INDIVIDUAL CASES

By letters dated 20 July and 2 August 2005, the Special Rapporteur notified the Government of allegations by the following persons, whom he interviewed during the mission. The Government responded to some by letter dated 22 September 2005:

1. **Enkhbat Damiran**, aged 44 (subject of a previously transmitted communication for which no response has been received; see E/CN.4/2004/56/Add.1, para. 1021). On about 15 May 2003, Enkhbat Damiran, who was seeking asylum in France at the time, was beaten by officers of the General Intelligence Agency (GIA) of Mongolia outside a restaurant in Paris, smuggled across the French border in a Mongolian embassy vehicle to Brussels, and then to the Mongolian embassy in Berlin. He was held at the embassy for one night and was tortured by Mongolian agents before he was drugged and boarded in a wheelchair onto a Mongolian MIAT flight to Ulaanbaatar on 18 May. His entry into Ulaanbaatar was not registered by the border police and he was taken to a secret location outside the capital. He was tortured, unsuccessfully, to confess to the murder of the well-known politician Zorig Sanjasuuren, a former Minister of Infrastructure and a recognized champion of the democracy movement. On 24 May he was registered as a GIA informant and his entry into Mongolia was subsequently registered by the police as 25 May. During his torture, Enkhbat Damiran was, among other things, forced to sit on a stool for hours, beaten on the liver with a pistol, and was subjected to mock executions. In June 2003, **Lodoisambuu Sanjaasuren**, a 58-year-old lawyer, was retained by Enkhbat Damiran. In the course of his representation, Lodoisambuu Sanjaasuren videotaped a 36-minute interview of Enkhbat Damiran describing the details of his abduction and torture by the GIA. On 27 September, Channel 25, a Mongolian television station, broadcast the video. This led to criminal charges against Lodoisambuu Sanjaasuren, a former intelligence agent, and Enkhbat Damiran under article 87(1) of the Criminal Code for revealing State secrets. In November 2004, Lodoisambuu Sanjaasuren was sentenced to 18 months' imprisonment and served his sentence in Prison No. 421 (Amgalan), an ordinary regime facility. The Special Rapporteur visited him in the medical ward on 7 June 2005, where he was under doctors' care for a serious heart condition. He alleged that he did not receive specialist medical care and the necessary medication for his condition. On 8 June 2005, the Special Rapporteur visited Enkhbat Damiran, who is currently detained in Prison No. 413 (Zuunkharaa), a strict regime facility, and is serving a three-year sentence for having revealed State secrets. The murder charges had been dropped as they obviously had been fabricated. At the time of the visit, Enkhbat Damiran was examined by an independent doctor. It was apparent that he was in very poor health, had difficulty breathing and was suffering from cirrhosis and bleeding in his urine, among other things, and that he was in need of immediate medical treatment, including appropriate medication. Although he has been sent to the Zaisan Prison Hospital, he receives only cursory treatment there and is repeatedly sent back to Prison No. 413 despite his deteriorating health. The Special Rapporteur requests information on the measures taken to investigate the allegations of torture and ill-treatment of Enkhbat Damiran. He is aware that both men have appealed to the President for pardons, and the Special Rapporteur appealed on their behalf personally to the President on humanitarian grounds—especially because of their poor health—that they be released from custody. In addition, the Special Rapporteur is convinced that the convictions for having revealed State secrets are in violation of international human rights law. It was Mr. Sanjasuuren's right and duty

as defence counsel to make well-substantiated allegations of torture by the GIA public, and it is the right of a torture victim to publicly disclose facts about his torture.

2. By letter dated 22 September 2005, the Government informed the Special Rapporteur that Enkhbat Damiran had received medical treatment during the period of his imprisonment: at the Central Hospital of Prisons, where he continues to be treated, he received treatment eight times in the past. In addition, he has received treatment at specialized clinics such as the oncology clinic and in Hospitals I, II and III. His complaints were dealt with according to the relevant rules and procedures. However, in the view of the Special Rapporteur, Mr. Damiran was sentenced in blatant violation of international human rights law and should be released immediately. At the same time, criminal investigations should be initiated in respect of the alleged perpetrators of torture.

3. The Government reported that Lodoisambuu Sanjasuuren was sentenced on 8 November 2004 to 18 months' imprisonment in Prison No. 421 by the Chingeltei District Court. After he had served more than half of the sentence he received a conditional early release on 9 August 2005 from the Bayanzurkh District Court. During his eight-month imprisonment he stayed at the Central Prison Hospital for 72 days, received treatment for 72 days at the prisoners' polyclinic, and spent time in the prison hospital. He received cardiology treatment at Polyclinic III. The Special Rapporteur welcomes the early release of Mr. Sanjasuuren, and appeals to the Government to provide him with measures for his full rehabilitation as a practising lawyer. In addition his efforts to prove his innocence and to investigate the kidnapping and torture of Enkhbat Damiran should be fully supported by the Government. It is of the utmost importance that the whole truth about this highly delicate case is revealed to the public and the European countries concerned. It is also necessary that the perpetrators of all human rights violations in this case be brought to justice.

4. **Munkhbayar Baatar**, aged 35. On 17 May 2005, at around 11 a.m., he was arrested on suspicion of murder. His detention was approved by the Bayanzurkh District Court and agreed to by the prosecutor, and he was taken to Detention Centre No. 461 (Gants Hudag pre-trial detention facility). Medical records at the time of his arrival at Gants Hudag do not indicate anything untoward. On 20 May, at 11.50 a.m., he was taken by Inspector Burkhuu to Bayanzurkh Police Station. Around 3 p.m. on that day, Mr. Burkhuu telephoned Munkhbayar Baatar's sister and instructed her to come for him. When she and her father arrived, they found him in the investigator's room badly beaten, bruised, covered in blood, vomiting, almost unconscious and incoherent. He was taken to the court hospital immediately after photos were taken which provide documentary evidence of his torture. Scans revealed that he had sustained serious brain injuries, and he was admitted to the trauma hospital at around 5 p.m., where he remained in the department of spinal and head injuries. He died in the hospital on 29 May. The Special Rapporteur examined documentation, including photographs of Munkhbayar Baatar's injuries. On 7 June, he visited Gants Hudag, where the head of the facility, Mr. J. Sugarjav, and his staff refused to cooperate with him. The Special Rapporteur eventually examined the facility's register, and later interviewed Munkhbayar Baatar's family on 9 June. The Special Rapporteur concludes, on the basis of convincing evidence available to him, that Mr. Baatar had been tortured to death only a few days before the Special Rapporteur began his visit to Mongolia, and he requests information on the measures taken to investigate Munkhbayar Baatar's death and to bring the perpetrators to justice.

5. By letter dated 22 September 2005, the Government informed the Special Rapporteur that correctional officers at Prison No. 461 have been detained and a criminal investigation was under way.

6. **Batjargal Bayarbat**, aged 41. He is currently detained in solitary confinement at Prison No. 405, serving a 30-year sentence for a multiple murder conviction in 2001. Following his arrest and during his three-year detention in Gants Hudag (i.e. prior to his transfer to Prison No. 405 in 2004), he was allegedly tortured to force him to make a confession. He remained handcuffed and shackled for three years, burned with cigarettes, beaten with batons and by other prisoners. He was unable to eat and lost almost 56 kg. At the time of the visit of the Special Rapporteur on 8 June 2005, he was examined by an independent doctor and the scars and marks around his wrists and ankles, as well as scars all over his body, were evident and consistent with his account of torture and ill-treatment. It was apparent that he had lost a significant amount of weight. The Special Rapporteur requests information on the measures taken to inquire into the allegations of torture and ill-treatment. In addition, since the conviction seems to have been based on a confession obtained under torture in violation of article 15 of the Convention against Torture, Mr. Bayarbat is entitled to a new trial and/or release.

7. The Government reported that Batjargal Bayarbat had received medical treatment at the Central Prison Hospital once. Since he was imprisoned he had not lost any weight; he currently weighed 59 kg and his health was normal. The complaints he made to the Supreme Court and the General Prosecutor's Office were registered and transmitted to the appropriate organizations. The Special Rapporteur maintains his opinion that the evidence leading to his conviction was based on torture and that Mr. Bayarbat is entitled to a new trial, or release, and compensation.

8. **Mr. Ganbaatar**, Prison No. 405, ordinary regime. Upon his arrival in January 2003 he was subject to beatings, including being hit on the head with a truncheon for being late for roll-call, and often at the hands of guards. On one occasion he was taken to a cell, handcuffed to a wall with his arms above his head, beaten and left in that condition overnight. On the day the Special Rapporteur visited, 8 June 2005, Mr. Ganbaatar said that his last beating had been on 27 May, when he was to sit down with his hands cuffed behind his knees and beaten with truncheons. An independent doctor examined him, and the bruising on his face and body was still visible at the time of the visit and consistent with the account of the beatings. Mr. Ganbaatar indicated that complaints were ignored. Among the prisoners it was generally acknowledged that beatings by prison guards, normally with truncheons, were routine and occurred usually when prisoners defied the guards, violated prison regulations, or for trivial reasons, such as looking out the window while working. There were occasions, for example, when prisoners, who cooked food for guards, would be beaten because the guards did not like their meals. Prisoners often did not request medical treatment because the doctors would inform the guards and further beatings would follow. The Special Rapporteur requested information on the measures taken to inquire into and address the allegations of ill-treatment, but he has not yet received a reply.

9. **Sedev Bataa**, aged 37. On 9 June 2005, the Special Rapporteur was denied access to him by Mr. Ochirbat, Head of Zuunmod Pre-trial Detention Centre, in violation of the terms of reference for the visit to Mongolia agreed upon by the Government and despite credible information that he had been tortured, including by being kept handcuffed and shackled 24 hours a day on death row (see the urgent appeal dated 20 July 2005). The Special Rapporteur was later informed that Mr. Bataa died on 22 July 2005 in Prison No. 405, following his transfer from

Zuunmod Pre-trial Detention Centre. He was informed that according to the entry in the transfer register, Sedev Bataa was moved on 5 June 2005 (one day prior Special Rapporteur's arrival in Mongolia) to Prison No. 405, but the Director of Prison No. 405 stated that Sedev Bataa did not arrive until 5 July 2005, and his whereabouts during the intervening month are unknown. On his arrival, Sedev Bataa was bloated, unable to speak, and in very poor health. His family was not informed of his poor health, and he did not receive treatment nor was he seen by a doctor. Although the post-mortem listed the cause of death as tuberculosis, his body did not present the normal indications for this disease such as appearing gaunt or emaciated. Rather, the body showed, among other things, welts and bruising around the wrists and ankles, consistent with his accounts of being continuously handcuffed and shackled in his cell. When he was last seen by family members in May 2005, Sedev Bataa did not complain of tuberculosis and did not request any treatment in that regard. Following his death, the police warned Sedev Bataa's family that if they registered a complaint, his body would not be returned for burial as the investigation would be protracted. The family reluctantly complied and the body was cremated on 29 July. His personal effects, including a diary, have not been returned. In view of the alleged death in custody due to torture and ill-treatment of Sedev Bataa, by letter dated 2 August 2005, the Special Rapporteur urged the Government to cooperate fully with the United Nations Country Team in Mongolia to investigate the allegations (e.g. by ensuring access to all places of detention, access to relevant persons and documentation), and provide a response within 15 days. The Special Rapporteur expressed his strongest concerns about this case. First, he was denied access to Mr. Baata when he visited Zuunmod Detention Centre and later he received convincing evidence that Mr. Baata had been tortured to death.

10. The Government reported that the case was under investigation by the Prosecutor's Office and once it had been completed information would be transmitted to the Special Rapporteur.

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