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FOREWORD

The “Status Report on Human Rights and Freedoms in Mongolia” submitted annually to the State Great Khural from the National Human Rights Commission has been received by academicians, practitioners and the broad public as the main official source on human rights in our country.

Findings, conclusions and recommendations from these annual status reports are closely studied also by UN agencies, diplomatic missions and by the international human rights community. Moreover, the status reports had become an important educational and research tool for public and civil society organizations, universities and research institutions over the years.

The present fifth annual report is prepared encompassing two thematic chapters on torture and human rights and on the freedom for assembly, right to organization and collective bargaining.

Torture, cruel and inhumane treatment is a controversial and sensitive human rights issue and relates directly to the operations of law enforcement agencies.

From its establishment the NHRCM has conducted research, inspections, monitoring activities and educational campaigns on torture, and made every effort to raise awareness and bring to the attention on this issue to relevant parties.

In order to establish the prevailing situation pertaining to torture practices in the country a year long public inquiry on torture and human rights has been conducted in the year 2005. The scope of this public inquiry included evidence collection and information gathering from individuals, complaints handling work, field inspections and monitoring, public hearings and thematic meetings.

Documents and information collected during the public inquiry had served as a foundation in preparing the first chapter of the present annual report.

The second chapter of the annual report examines the implementation status on the freedom of assembly, right to organization and collective bargaining.

We gratefully note the contribution from ILO/Japan Multilateral Project in the preliminary work on monitoring and research used in the preparation of the second chapter.

NATIONAL HUMAN RIGHTS COMMISSION

CHAPTER ONE: TORTURE & HUMAN RIGHTS

The Constitution of Mongolia declares that "no one shall be subjected to torture, inhumane, cruel or degrading treatment; compelling to testify against one's will, forced confessions shall be prohibited" (art. 16.13;16.14). This provision in the Constitution should be strictly adhered in any criminal proceedings. The Criminal Procedure Law (2002) states that "no one shall be subjected to torture, inhumane, cruel or degrading treatment; during an arrest the suspect should be informed on the grounds for arrest and reminded on the right to remain silent" (art. 10.4; 10.5). The Criminal Law (2002) provides that "compulsion of testimony through use of or threat to use force, torture, humiliation, deceit or other illegal means by an inquiry officer or investigator shall be punishable" (art. 251).

In November 2, 2000 Mongolia has ratified the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment and Punishment (Convention Against Torture) adopted by the UN General Assembly.

It became apparent that legal prohibition of torture, cruel, inhumane or degrading treatment alone does not provide full enjoyment of personal security rights. Although such human rights violations are prohibited and punishable by law, evidence on systemic torture, cruel, inhumane and degrading treatment in the police system, especially at the pre-trial investigation stages comes from variety of sources including complaints from ordinary citizens, media reports and publicized cases.

In order to monitor the implementation of legislations prohibiting torture, cruel, inhumane and other degrading treatment the NHRCM has conducted a yearlong public inquiry on the subject in the year 2005. Within the objectives of the public inquiry the relevance of national legislation, procedures and regulations as preventive mechanisms against torture, cruel and inhumane treatment was scrutinized, factors affecting illegal actions established, and follow-up recommendations developed. The scope of the inquiry included dialogues with the judiciary, defense attorneys, prosecutors, police officers, citizens and NGO activists, complaints handling and collection of testimonies from citizens, case studies on alleged torture files, monitoring visits to apprehension and pre-trial detention facilities, interviews with detainees and other activities. Documents and evidence gathered during the public inquiry had served as a foundation to establish the implementation status of the torture prohibition legislation.

1.1 International Treaties & National Legislation Prohibiting Torture

The Constitution declares that "Mongolia shall fulfill in good faith its obligations under international treaties to which it is a Party; the international treaties to which Mongolia is a Party, shall become effective as domestic legislation upon the entry into force of the laws on their ratification or accession" (art. 10). Moreover, most national legislation has a provision on the supremacy of provisions of international treaties in cases of contradiction. Although Mongolia ratified CAT in the year 2000, the provisions of the UN Convention are not entirely encompassed in the national criminal legislation adopted two years after the ratification; concepts and recommendations underlying the Convention are not fully implemented in the practice of criminal proceedings.

1.1 According to the provisions of the Convention, each State Party shall ensure that all acts of torture, including an attempt to commit torture and to an act by any person, which constitutes complicity or participation in torture, are offences under its criminal law. The Criminal Law (2002) does not have a provision for torture as a criminal offence.

Article 251 of the Criminal Law provides that "compulsion of testimony through use of or threat to use of force, torture, humiliation, deceit or other illegal means by an inquiry officer or investigator shall be punishable with imposing restrictions on right to hold office or pursue professional activities, or by imprisonment for a term of up to five years without such restrictions. If the act inflicts severe or serious bodily injury, or causes substantial damages, then it shall be punishable with imposing restriction on right to hold office or pursue professional activities for a term of up to five years, or by imprisonment for a term of five to ten years without such restrictions". This article in the CL is usually presented as a provision prohibiting torture and penalizing the act as an offence.

1.2 CAT defines torture as an act to inflict severe pain or suffering through both physical and mental suffering. However, the crime composition in Article 251 of the CL establishes infliction of only physical pain as an act of torture, leaving mental pain or suffering not having any implications to constitute torture. Hence, there is a need to review this article to include infliction of both physical and mental suffering as essential elements constituting torture.

Criminal prosecution for the offence of torture in Article 251 of the Criminal Law is only restricted to the acts (omissions) of an inquiry officer and investigator, which again contradicts with the provisions of CAT. The subject of prosecution under the Convention is a "public official or other person acting in an official capacity". In other words, the subject for prosecution under this criminal offence should be any public office holder or a person acting in an official capacity, and not merely only two categories of officials as prescribed in the CL. Hence illegal actions carried by a prosecutor, police or judicial decision execution officer, intelligence service official could not be technically classified as torture.

Moreover the provision of the Convention to consider all acts of torture, including "an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture as offences under its criminal law" is missing altogether in the national legislation. In practice, acts of torture are not administered directly by a criminal investigation official but rather, with his consent, instigation or acquiescence, by other persons, inmates or recidivists. The concept of complicity and participation should be properly included in the legislation.

1.3 As preventive measures to safeguard from torture, the Convention prescribes systematic review of interrogation rules, instructions, methods and practices "as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment" (art.11), and that "competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed" (art.12). However, the CL does not provide for any such safeguards essentially establishing a practice whereby complaints and petitions pertaining to torture or ill-treatment are handled within the general complaints handling system lacking any independent, impartial or fair investigation processes, and the entire response mechanism limited to the production of referrals and references letters by organizations and their officials.

1.4 Article 14 of the Convention provides for establishing proper redress systems for torture victims, who should have "an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible".

Chapter 44 of the CPL (2002) has been a novelty in the development of the criminal legislation by providing for compensations for victims of illegal actions during criminal proceedings by an inquiry officer, investigator, prosecutor or judge. Unfortunately, the

chapter lacks any provisions in regard to redressing torture victims for health or mental damages. The chapter sets grounds for compensating damages as only having effect to cases of wrongful judgment, illegal arrest or detention, restriction to pursue professional activities, placement in medical facilities or medical committal. Moreover, the sum of compensation would only include material damages such as forgone salaries, pensions, confiscated or appropriated property, unfair fines, litigation costs and legal service fees. Compensations for death, physical, health or mental damages caused by torture, degrading or ill-treatment are missing altogether in the chapter. CAT further provides that in case of death of the victim as a result of torture, dependants should be entitled to compensation. Despite Chapter 44 refers to compensation for mental or non-material damages to be decided through civil proceedings, in particular with reference to Article 391 of the Civil Proceedings Law, the issue of compensation of non-material damages itself is not regulated at all in the Civil Law.

From above flaws in the legislation, it has become apparent that an effective redress system for victims of torture, cruel and ill-treatment is not present in the country. For absence of proper compensation and rehabilitation systems, most complaints relating to alleged torture cases remain unsettled and grievances not resolved.

- Resident of Tuv Aimag "G" in relation to the case of livestock theft had confessed in the misappropriation of 26 horses. He was forced to incriminate against himself in the theft of other similar theft from unresolved criminal cases, during the course of which he lost more than 15 kg and weighed 44 kg with unrecoverable tuberculosis transmitted in prison cells, and died short after the court judgment. During incarceration he had complained on his health needs but was rejected proper treatment with limited access provided only to detention facility medical centre, and where, worst of all, they failed to diagnose his tuberculoses. After his death, his mother together with a team of lawyers had claimed MNT 30 million for damages in the courts for torture, illegal and unprofessional actions of law enforcement agencies and for not providing timely access to medical facilities. The plaintiff had sustained substantial litigation costs, gone through three court instances, and at the end was rendered a ruling that nothing was illegal to detain "G" during the pre-trial proceedings and had her claim dismissed. In other words, the courts decided that prolonged detention, leading to health detriment and subsequent death, could be justified by investigation requirements (Case File A/237, Tuv Aimag Court, 2003).
- Citizen "O" illegally detained for two months at Gants Khudag detention centre was tortured, battered and constantly intimidated. He filed for damages at the court, but received compensation only for some material damages. His claims for mental damages were ruled out by the court decision.
- Citizen "Sh" was detained for more 300 days as a crime suspect in relation to a murder case. Due to lack of evidence, the case was eventually dismissed. During detention, his eyesight had gradually worsened, and after his release, he had undergone belated surgical intervention to remove both eyes in prevention for further brain damages. The NHRCM had filed for damages at Bayanzurkh District Court as his legal representative. However, from undue influence from Sukhebaatar District Prosecutor's Office the victim had withdrawn his claims. The district office might had threatened to reopen the criminal case, if "Sh" proceeded with his compensation claims. The proposal to resubmit claims by the NHRCM was not approved by the victim.

These cases serve as firm evidence on the absence of an appropriate legal framework for a redress system for victims of torture, cruel, degrading treatment and punishment to claim compensations for material, medical, health and mental damages, and deficiencies in the adjudication practice to solve such claims. Although arrest, detention and investigation under specific lawful grounds of a crime suspect or accused is a duty of the public official,

protection of his health, well-being and dignity equally falls under that duty performed in the name of the government. If the government fails to fulfill it's duty then it should fairly compensate for damages. For these purposes, legislative amendments and establishment of judicial practices are needed to effectively redress these types of complaints.

1.5 The legislator had not paid due attention in the CPL (2002) to Article 15 of CAT, which provides that "each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made". Although the CLP prohibits the "inquiry officer, investigator, prosecutor or judge in compelling the suspect, accused or defendant to make testimony against themselves or to use pressure or force in order to retrieve confessions (art. 16.3), and "collecting evidence in a manner endangering citizen's life and health or degrading his dignity, and to use such illegal means as inhumane or cruel treatment, threat, coercion or deception" (art. 92.4), however the law does not provide for specific guidance on the approach, evaluation and verification of already illegally collected evidence. In practice statement obtained through illegal means are evaluated and tested as any other evidence in the proceedings, which is contrary to the provisions of CAT and safeguards in the CPL.

Legislative amendments to exclude statements obtained through illegal means as evidence in court proceedings would also ensure that self-incrimination statements for first time offenders and minors are not taken without the presence of advocates and legal representatives.

1.6 The restriction in the subject of prosecution only to the inquiry officer or investigator in cases of compelling testimonies with use of torture or other illegal means (art. 251, CL) has obvious deficiencies. Law enforcement officers, especially police, intelligence service and court decision implementation officers who had violated personal security rights, inflicted bodily injuries or other harm during procedural actions, are not prosecuted as occupational crime offenders, but the case would rather fall under an ordinary dispute between two individuals.

Chapter 28 of CL has specific reference to occupational offences and Articles 263 and 264 defines crimes for abuse of authority and excess of powers by public servants. However, for purposes of this chapter the CL defines the public servant as **executive position holders** of political, special and administrative state offices. The subject for prosecution under this chapter is only the management of public offices, hence law enforcement officers entrusted to oppress human rights and freedoms could not be prosecuted technically for occupational offences.

Another worrying element in the crime definition is that damages sustained during the course of occupational offences should be substantial and in considerable amount.

Special provisions in this chapter should be included for public servants entrusted with oppression powers, and prosecution for abuse of authority and excess of powers, especially leading to violation of personal security rights by these public servants, should be clearly stated and special investigation procedures for these types of crimes established. Loopholes in the legislation maintains depraved practices where cases relating to abuse of authority, torture and ill-treatment by law enforcement officers are dismissed on the grounds of insufficient evidence, mutual settlement between the offender and the complainant, or that the offender had compensated damages. In the year 2005 more than 256 police officers were investigated in relation to alleged crimes, and half of the cases were dismissed on the above grounds. The

percentage of these dismissed cases is well above average when compared to other types of cases and disputes.

1.7 According to CAT "each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment" (art. 10). At present, concepts and provisions of the Convention as well as training materials on torture prevention are missing in the training programmes and curricula of law schools. As a State Party to the Convention the government has an obligation to streamline national legislation with international norms and standards, raise public awareness on CAT, conduct specialized training for public servants, and take specific preventive measures. However, policy developments in this regard have not been initiated since the ratification of the Convention in the year 2000.

1.2 Practices of Torture & Other Cruel, Inhumane Treatment & Punishment

During the course of the public inquiry, the NHRCM had organized meetings with around 600 law enforcement officers, conducted surveys among 1,400 detainees, held interviews with 100 individuals and received more than 50 complaints related to the subject. The legal profession had varying perceptions on torture. For instances, judges would testify that in many instances the accused would withdraw his testimony during the trial hearings as it was "made under coercion and duress from the investigator". Defense lawyers would admit that case of "battering, cruel treatment, forced confessions and intimidations are common practice in criminal proceedings". By contrast, the prosecutor's office would maintain, "such offences are rare" since everything is under their supervision.

However, among the 1,338 respondents of the detainee survey 39.9 % admitted self-incrimination under duress and threat, 32.0 % under coercion and force. The situation was especially worse in Gants Khudag and Tuv Aimag detention facilities, where 44.6 % of respondents incriminated themselves under duress and threat, and 36.7 % under coercion and force.

In the past three years, the Investigation Department of the General Prosecutor's Office had received 2,100 complaints and petitions on alleged crimes by law enforcement officers. From these complaints, 4.2 % or 89 files were in relation to cases of self-incrimination under coercion, duress, threat and other illegal means. Statistical analysis of data revealed that such complaints had increased annually by 4.2 % and 5.6 % respectively. During this period, (2003-2005) investigation proceedings were conducted on 11 cases of alleged forced confessions, three cases were dismissed, and submissions to file under Article 251 were made to the prosecutor on six cases. Even with poor remedial procedures discouraging torture victims to file complaints, these statistics prove that such violations of human rights are persistent in the system.

The UN Special Rapporteur on the question of torture, Professor Manfred Novak, had visited Mongolia in 2005 at the invitation of the Government of Mongolia. In his mission report, the Special Rapporteur concluded, "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. The criminal justice system which relies heavily on obtaining confessions for instituting prosecutions makes the risk of torture and ill-treatment very real".

2.1 The following human rights violations pertaining to practices of torture, cruel and inhumane treatment draws particular attention.

2.1.1 The content of complaints and interviews processed during the public inquiry reveals that practices of coercion, duress, cruel and inhumane treatment by law enforcement officials are widespread in the criminal justice system.

During a monitoring inspection at the Darkhan-Uul Pre-trial Detention Centre, 10 detainees out of 87 had lodged complaints on forced confessions. Most of the complainants reported on beatings, restrictions on food, water, basic necessities and sleep imposed due to "failure on their part to confess" in the commission of alleged crime.

- Torture practices in relation to alleged suspects of homicide and especially dangerous crimes had became widely publicized. In January 1999 a case on murder of the security guard of "Food Land" market with theft of the jewelry store had unfolded. Five suspects were detained for extended periods during the criminal proceedings, one suspect had died under torture, some to remain alive had confessed under compulsion until the Bayanzurkh District Court released them under its Rehabilitating Ruling #350 on June 23, 2004.

  Torture victim "O" in this case was detained for 1,115 days, victim "O" for 315 days, victim "H" for 201 days and victim "B" for 1,252 days. In their joint complaint to the NHRCM they report on the illegal detention at Gants Khudag, where they were "periodically shifted to more than 7 different cells, inmates at each cell would demand to "confess in the crime and reveal treasures from the theft", beaten by boots and 5 cm thick timber allover their bodies, stripped naked on the floor when they couldn't physically move after the beating, splashed with water and tortured with electroshock, burned with toothbrush and plastic bags, denied food and sleep for extended periods, and contracted tuberculosis at the end". The investigator would check-in to the cell from time to time, and would shift the victims to other cells with the words "he is not ready yet", if they once again pledge innocent (Complaint #127, NHRCM, 2005).

  At present, scars from burnt toothbrush and plastic bags remain on the bodies of the victims. Ms. "C", the late victim "D"'s mother, in her complaint reported that she was denied visits to her son, and abused by the investigator with words "there is no place for you here, mother of murderer". One day she was told through someone else that the investigator asked to take her son back as he was sick. "He lost weight awfully, looked skeletal and undernourished; his testicals bruised and inflamed, his head was badly injured and he lost hearing; he was crying in my arms still under tremendous shock". He died three days after being transferred to the tuberculosis hospital (Complaint #58, NHRCM, 2004).

2.1.2 Complaints on forced confessions under coercion and duress from inmates are also common. After reviewing the inspection report at Gants Khudag in 2002 by the General Prosecutor's Office the Legal Standing Committee of the State Great Khural concluded that "extracting confessions through beating and abuse of inmates has become a repulsive work method of some inquiry officers and investigators", and directed relevant authorities to remedy the situation. Unfortunately, the "work method" is becoming even more widespread as it became evident during the public inquiry.

Serious crimes relating to deaths and health problems in detention facilities caused by coercion of law enforcement officers and inmates are persistent in recent years.

- Alleged homicide suspect “V” detained at Gants Khudag pre-trial detention facility was placed in the same cell with homicide convict “U”, and beaten to death by inmate “B” who was intoxicated with liquor brought in by the guard. At the end, the case was decided as if caused by a dispute between the inmates.
- In June 2005, Bayanzurkh District Police detained homicide suspect “M” for three days without informing his relatives. On the third day, he was returned to his family, beaten with bruises allover his body, and incoherent. He died shortly after being delivered to the traumalogical hospital. Although some facility guards are investigated for this crime, the circumstances of his death would suggest that he was tortured in order to extract testimony.
- Torture victim “B” detained in Gants Khudag for 36 days on false charges of alleged theft reported in his complaint that in the first 14 days he was detained as a suspect. As he pledged not guilty for the theft, he was then detained further but now as an accused and in a different cell. In that cell, two youngsters demanded him to confess for the alleged crime, and started beating the 54-year-old victim. “They would get me standing on the cement floor bare footed for hours, beat with truncheons to my head, kidney and liver, beat with batons, pipes and shoes on my arms and foot, and were quite determined to extract a confession”.
- Many complaints were received in regard to the placement of the alleged suspect or accused in cells with recidivists and suspects of especially dangerous crimes. The inmates would abuse the victim to confess in the crime, and instruct on how make a confession, answer questions posed by the investigator and provide with written testimonies.

2.1.3 After detaining a suspect or accused some inquiry officers and investigators restrict their basic rights in order to inflict duress causing serious health and mental pressure by denying them access to family visits, disallowing to change clothes or receive basic necessities and even banning individual meetings with their defense attorneys all for sake to extract confessions.

Chingiltei District Police investigators had not allowed alleged crime suspect “O” to change clothes for the entire duration of his detention of seven months, and during this period, he received only one family visit arranged with the strong intervention from the General Prosecutor’s Office.

2.1.4 An appalling practice of torture is that of the criminal operative who for the sake of so-called “special operations” would instruct on cell placements of detainees, instigate abuse and mistreatment by inmates and orchestrate other coercive methods. Some detention facility guards agree that these practices cause serious relationship problems between the criminal operative, investigator and security guards. Complaints from detainees also confirm the persistent nature of these special operations.

- In his complaint to the NHRCM, Tuv Aimag Delgerkhaan soum resident “D” reported that his son was detained on April 26, 2005 as an alleged crime suspect in cell number eight where after three days another detainee “E” was placed from another cell. The new inmate had coerced “B” routinely for nine days after which he was released due to serious health failures with bruises all over his body and apparent breathing problems. Doctors who examined victim “B” concluded fatal liver failure and impossibility for any medical intervention. “B” died at home shortly. Following on the complaint the NHRCM had conducted a joint inspection with the Aimag Prosecutor’s Office. Detainee “E” acknowledged on his beating of the late victim “B” but argued that he was compelled to

do so by criminal operative "M". From the statement of "E" the criminal operative summoned him up and instructed that he would be placed from cell 18 to 8 "where a homicide suspect is not confessing" for the commissioned crime. "M" maintained that "E" was a previous crime suspect and he should know how to "assist "B" to be cooperative". When "E" refused to have anything to do with that "M" threatened to reallocate him to his hometown detention centre where residents still remember and disgust for his previous crime. The facility journal had notes on "E" replacement from cell 18 to 8 after an individual meeting with criminal operative "M". The same was confirmed by facility guards. After proceedings the complaint was referred to the Investigation Department of the General Prosecutor's Office. However a criminal file against "M" was never opened (Complaint 75, NHRCM, 2005).

- Citizen "B" was accused of misappropriating MNT 10 million from his office and was detained at Gants Khudag where after three days in cell 41 at the third floor he was replaced to cell 18 at the first floor of the detention facility. From the day of his replacement, a young inmate had abused him and demanded to confess", where he had concealed the stolen monies, otherwise his wife and 18 year old daughter would also be detained". Detainee "B" was not allowed to use the toilet for three days, constantly beaten up on his head, and had been dragged from his hair to prevent from sleeping. The young inmate was aware of specific details of the case that only the inquiry officer ought to know only. His persistent demands to "B" to make self incriminating confessions would suggest that he was acting with guidance from the inquiry officer. Similar complaints were received during inspections of other selected detention facilities. At other instances inmates serving imprisonment sentences at other penitentiary facilities are sometimes brought in to the pre-trial detention centre to accomplice in the extraction of testimonies.

Absence of accountability systems and preventive mechanisms maintains impunity of criminal operatives who have access to every detention facility in the country. An alarming trend in criminal investigation practices is the use of prisoners from high security penitentiary facilities in clearing crimes. Human rights are seriously in breach due to lack of independent monitoring mechanisms on operative work at apprehension, detention and imprisonment facilities. It is of extreme necessity to review the intelligence service and operative work legislation in order to set clear accountability and investigation systems to prevent impunity and abuse of authority.

2.1.5 Several complaints were received during the public inquiry on attempts to superimpose unrelated false criminal charges on already established facts of the suspect. Documentation analysis reveals that these attempts are common in cases of theft, robbery and manslaughter.

- Complainant "O" was detained at Darkhan-Uul Aimag Police apprehension facility in May 2005 where he had genuinely confessed in theft of three horses. However, the reason for detention was the inquiry officer's demand to include in his statement theft of other livestock including three cattle and twenty-six more horses. Because "O" had refused to admit in non-committed theft, he was beaten up by baton to his arms and legs, and smacked to his ear, which resulted in serious trauma verified during medical examination (Darkhan-Uul Public Hearing Report, 2005).

The Output Delivery Agreements made with every public servant according to the Law on Management and Financing of State Budget Organizations might have a negative impact on the public servant's overall performance and work attitude, especially at law enforcement agencies where corrupt practices of superimposing criminal charges from undisclosed crimes

to suspects who have confessed in their wrongdoing is increasing. Review of performance appraisal systems in the police department for inquiry officers, investigators and criminal operatives had led to this conclusion.

Below are some indicators from the 2005 Output Delivery Agreement of a Bayanzurkh District Police investigator.

- **Proceedings on Criminal Files**

Clearance of criminal files would comprise 45 % of the base salary, including

a) clearance of 4 criminal files would allow for 20 % of the base salary; each non-cleared file would result in withholding of 5 % from base salary; in contrast bonuses would be provided for every additional output/resolved case;
b) adherence to time limits in resolving cases would comprise 5 % of base salary;
c) accurate proceedings would result in 5 % of the base salary

- **Disclosure of crimes**

Disclosure of latent crimes would comprise 20 % of base salary, and re-opening of unidentified crimes following the below scheme

- 1 especially dangerous crime, or
- 2 grave crimes, or
- 3 severe crimes, or
- 20 criminal acts

Disclosure of latent crimes in progress or during criminal investigation following the below scheme

- 1 especially dangerous crime, or
- 2 grave crimes, or
- 3 severe crimes, or
- 20 criminal acts

The Output Delivery Agreement of the investigator clearly illustrates that payment of salaries and bonuses are a direct function of crime disclosure and proceedings on criminal cases. For instance, four resolved cases per month would secure 45 % of the base salary, whereas the investigator should disclose latent or re-open earlier unidentified cases in order to receive 40 % of the base salary. Hence, the inquiry officer or investigator is encouraged to resolve cases or disclose crime as much as humanely possible to receive his monthly income.

However, it should be clear that sheer enthusiasm of law enforcement officer alone would not secure disclosure of crimes, preparation of indictment, submissions to courts, apprehension of fugitives and other administrative actions. Obviously most crucial factors in crime prevention and combat are proper management and administration, sufficient financing, technologies, equipment and other components. Without consideration of these factors performance appraisal systems linking salaries to processing of criminal files affects in the quality of work, and subsequent violations of human rights and breach of law and order.

2.1.6 Reallocation of suspects or accused to different detention centers is another form of torture, cruel and inhumane treatment. The CPL (art. 180) prescribes that inquiry and investigation proceedings should be conducted with the jurisdiction where the crime originated. Apprehension and detention of alleged crime suspects are criminal procedures that should be conducted directly at the jurisdiction of the court where the warrant was issued. However, widespread practices of detaining alleged suspects at geographically distant areas, 100 km away from the crime scene and court jurisdiction, also constitutes torture by means of violating basic rights and inflicting duress. The NHRCM received numerous complaints on

this issue, and had filed petitions, recommendations and demand letters to relevant authorities, which eventually did not take remedial measures. Proceedings of the public inquiry concluded that reallocation of detainees are most common at the metropolitan and Tuv, Uvs, Darkhan-Uul and Bayan-Ulgii Aimag jurisdictions. During monitoring visits at Gants Khudag 58 suspects and accused where transferred from Aimag detention centers, 102 suspects and accused to Aimag detention centers in 2004, and 19 suspects and accused from Aimag detention centers, 59 suspects and accused to Aimag detention centers in the first half of 2005. Ten of the transferred suspects in the year 2004 were in relation to alleged homicide.

In the year 2005, Darkhan-Uul Aimag jurisdiction had 15 cases of reallocation, Tuv Aimag 11 cases and Uvs Aimag 7 cases.

- Uvs Aimag resident "B" allegedly accused of theft was reallocated from Uvs to Tuv Aimag jurisdiction where he was shifted to 5 different cells, and later on detained at Bayan-Ulgii Aimag detention centre (NHRCM Archives, 2004).

In general, transfer of alleged suspects of publicized and controversial cases to other jurisdictions has become common practice in criminal justice. Such reallocations not only inflict mental duress but eventually lead to violations of other basic human rights. Transfers to distant geographic areas would preclude the detainee to receive family visits, refrain access to legal services, impede on filing complaints to the supervising prosecutor. Under these circumstances, the detainee is most likely to become a victim of torture, discrimination and abuse. Family visits and regular meetings with an advocate also serves as a safeguard to prevent torture by means of constant access to the outside world and timely opportunities to file complaints and exchange communications. At the same time most detainees are unemployed and from low-income families, hence costs of reallocation is an additional burden, at most cases not affordable, for travel of family members and of the advocate.

2.1.7 Threat and actual apprehension or detention of female suspects with dependent minors is another form of torture, cruel and ill-treatment. Complaints from female suspects alleged in theft and deception crimes subjected to such ill-treatment are most common.

- Police officers of Selenge Aimag Khotol khoroo had detained a female suspect from Ulaanbaatar in relation to an alleged theft case. Residents of Khotol khoroo had complained during the public hearing that the detained female suspect had left behind her three 02-13 aged dependants without any supervision. After consultations with the Selenge Aimag Police Department, the female suspect was released from detention.
- Several female detainees of the Gants Khudag pre-trial detention centre complained to the Deputy Minister for Justice, who had led a joint inspection group from law enforcement agencies and human rights organizations at the detention centre in November 2005, on the case of a female suspect who is not aware of the whereabouts and well-being of her minor child. Apprehension of female suspects with minor and breast-feeding dependants would definitely classify as cruel treatment, and prolonged detention is another form of torture. Although disclosure of crime and punishment for an offence is the core objective of criminal justice, however protection of well-being, health and upbringing of the child should be another core function of the government. Criminal justice practices which endanger basic rights, safety and security of the child could not be justified by any means.

2.1.8 Reform and prevention measures for apprehension and detention of persons in relation to alleged crimes always entail a serious risk for breaching human rights. Alignment of national legislation with international norms and standards in relation to preventive measures, application of these procedures with due diligence, professionalism and by securing personal

inviolable rights is of essence for the development of the criminal justice system. The following two aspects in the reform and prevention measures are important in the combat against torture.

2.1.8.1 Grounds for Arrest & Detention

Human rights practitioners and academicians agree that grounds for arrest in the CPL (2002) are too broad and could be applied to any person and any alleged crime. From a human rights perspective compatibility of grounds and procedures for arresting, apprehending and detaining a suspect or accused in the CPL with Constitutional provisions for personal inviolable rights, safeguards to circumvent illegal arrests of the innocent, and separation of inmates by categories are important indicators.

Chapter 8 of the CPL entirely regulates procedures for arresting an alleged suspect. Three legal grounds are mentioned for administering arrest sanctions, which are (a) attempt to flee from justice; (b) suspect of alleged grave crime; and (c) alleged in especially dangerous crime (art. 58). Although flee from justice and suspects of alleged especially dangerous crimes could be acknowledged as legal grounds for preventive measures, arrest in relation to grave crimes could not be justified as such. The CL classifies 352 acts as crime with 65 acts referred to as petty crime, 185 acts as serious, 68 acts as severe and 34 acts as especially dangerous. In other words according the criminal legislation arrest as a preventive measure could be legally applied to 102 acts. Article 58.1 of the CPL is of imperative nature and has the only preventive sanction as for arrest. Criminal acts constituting grave crimes, and subsequent arrest of the alleged victim, would include tax evasion, violations of use and protection of natural resources, breach of traffic regulations and misuse of transport and other mostly negligent behavior, filing the case to courts, which would be decided during the initial investigation stage. Hence, straight application of the preventive measure in accordance with the law to alleged suspects would inevitably entail serious breaches of human rights. The NHRCM had previously raised this issue on several occasions with the legislator (Human Rights & Freedoms Status Report 2002, pp. 14-15, Human Rights & Freedoms Status Report 2003, pp. 49-50).

The inquiry officer and investigator would usually threat to use this preventive measure against alleged suspects to extract testimonies. Moreover illegal administration of the preventive measure outside court supervision and warrant is another source for coercing confessions. During the monitoring visit to Gants Khudag (0461 Detention Centre of the Court Decision Implementation Agency) within the scope of the public inquiry 978 persons were detained within the first six months of the year 2005. From the total number of detainees 93.9 % or 919 persons were arrested under pressing circumstances upon the investigation, which means immediate arrest with subsequent request for a warrant within 24 hours (art. 59.5, CPL), and only 6.1 % or 59 persons arrested with a proper warrant. This is another illustration how law enforcement officers cruelly breach legal safeguards.

2.1.8.2 Time Limits for Pre-trial Detention

Provisions found in the international human rights treaties as well as conclusions of the UN Special Rapporteur on the subject of torture condemn prolonged pre-trial detention, and consider such practices as evidence of evolving torture, cruel and inhumane treatment. The Special Rapporteur, Professor Manfred Novak, in his 2005 mission report to Mongolia denounces extended time limits for detention and routine practices of arrest which are in breach of the International Covenant on Civil and Political Rights.

The CPL provides time limits for detention as 24 months, for especially dangerous crimes 30 months (art. 69), and maximum time limitis of 18 months for minors (art. 366).

The NHRCM had constantly raised in its recommendations, observations and demand letters that prolonged detention in difficult conditions of persons as alleged suspects causes serious detriment to their well-being, health and mental state, and essentially constitutes a severe form of torture and cruel treatment. Elevated time limits for detention encourage practices diminishing personal dignity, and of compelling testimonies. In practice, the upper limits of 24-30 month period are further extended with "justification of necessities" for the detention.

During an inspection visit at Gants Khudag in November 2005, four detainees were held 10 to 30 days in excess of the upper 24-month time limits as prescribed in the CPL (art. 69.3). The justification for extended detention served a letter from the prosecutor's office verifying that the period at the hearings and further investigation may not be included in the general time limits. However, after the initiation of the trial the "suspect" should become an "accused", and the account of time for his detention should be made in that capacity. Bending the law to freeze the account of time in detention illustrates how far illegal actions could be undertaken. Worse still, effective procedural actions are not administered even within the time limits for detention. As reported in some complaints, non-single interrogation session was undertaken from the suspect during the 24 months.

The proceedings of the public inquiry at Gants Khudag and selected detention facilities of seven Aimags had revealed that from 1,338 persons at those facilities 17.1 % were detained for a period of 6 to 12 months, 109 persons, or 8.1 %, for a period of 1 to 2 years, and 17 persons, or 1.2 %, for a period above two years.

Obviously, detention under harsh conditions leads to weight loss, starvation, health detriment, contraction of diseases, especially tuberculoses, and in some cases death. The appalling fact is that the present practice of extended detention does not create any discomfort or initiatives for change within the criminal justice system. During the monitoring visit to Gants Khudag in July 2005, 43 detainees were undernourished (some lost weight up to 15 kg), and eight detainees contracted tuberculoses.

- Last year Detainee "B", 30 years of age, was released from Gants Khudag after two years of incarceration and on the verge of starvation. He was hospitalized at Bayanzurkh District welfare hospital Enerel. However, the doctors belatedly discovered final stages of tuberculoses, which resulted in the subsequent death of "B".

2.1.9 The NHRCM perceives that detainees being extendedly handcuffed and shackled are another form of torture and ill-treatment. Some inquiry officers and investigators would even make threatening statements to "turn into green one's arm and knees".

The Law on Arrest or Detention of the Suspected and Accused provides that detention facility staff could use special equipment and gadgets against detainees in case of armed assault of the detainee to security and maintenance staff of the detention facility, group violence to disturb internal security, hostage taking of people, construction or transport of the facility, during public disorder or substantial threat to harm oneself. The law lists a variety of special equipment and gadgets at the disposal of the detention facility staff, but in practice, the only available instruments of oppression at hand are usually a baton and handcuff. The troubling observation is that facility staff would tend to use excessively those available gadgets without any justified reason. For instance, disobedience to strip clothes or other commands would lead to beating up using the baton, especially at body parts restricted by internal regulations, handcuffing for a prolonged period and such. To this end, improvement of prosecutorial and administrative supervision of the application of special equipment and gadgets, log keeping of

such usage and formal assessment procedures on their eventual use should be incorporated in the internal regulations of detention facilities.

2.2 Police stations in rural areas are staffed with a section investigator, public order police servant and a police officer. They would be solely in charge of combating crime, maintaining public order, preventive measures and inquiry services. The public inquiry revealed that operations of these police stations would constantly breach human rights in the community. This has been especially evident during the public hearings at Uvs Aimag. The Aimag Prosecutor's Office received 12 complaints on the illegal activities of police stations.

- The Aimag Prosecutor's Office received a petition from more than 60 residents of Naranbulag soum in relation to section police officer "E". The petition claimed that "E" had beaten allegedly intoxicated persons while handcuffing them to poles and bare footing them during the winter cold; frozen the feet of an alleged wrongdoer at the windows of the Governor's Office, and compelled to forced labour and beaten up for 5 days an alleged drunkard until he lost conscious. After the prosecutor's office dismissed his case due to lack of substantial evidence the behavior of the police officer became even more violent until his subsequent court punishment.
- Section police officer "B" of Umnugobi soum, Uvs Aimag had broken the jaw and damaged the teeth of resident "T" by fiercely beating him at offices after allegations brought to "T" of exposing intoxicated behavior at public places.
- Section police officer "B" of Erdenemandal soum, Arkhangai Aimag has handcuffed "G" to central heating pipes of the Soum Administration office for alleged theft, beaten him to his head up to death. Similar cases of police behavior at rural areas could be mentioned further. These unprofessional attitudes towards its residents are serious violations of human rights and the rule of law. Persistence of such misdemeanors are caused among other things by impunity.

Human rights protection frameworks are clearly lacking at the soum level – the state administrative building blocks in rural areas. Physical absence of judicial and prosecutorial supervision in soums directly leads to impunity among public servants and police officers. Rural area residents do not possess effective access to justice, remedy and compensation systems.

2.3 The Law on Remedial Committal for Abusers of Alcoholic Beverages, aimed at protecting citizens' well-being and health, and for crime prevention, has been enforced for a considerable period. In the year of its establishment, the NHRCM made a monitoring inspection to several sobering centers resulting in series of recommendations on improving conditions and operations of those centers, and demand letters to shut down several poorly maintained facilities. In fact, a whole chapter in the Human Rights & Freedoms 2002 Annual Status Report was devoted to this issue. However, human rights violations persist in those sobering centers. Abuse, coercion and humiliation of persons during convey to the centre, unnecessary use of force upon sobering, infliction of bodily injuries and other illegal actions are widespread in both the cities and rural areas.

The Investigation Department of the General Prosecutor's Office annually receives substantial amount of complaints on cruel treatment and sustained bodily injury during sobering actions, however most of the complaints are rejected for processing or dismissed. Review of the complaints register at investigation sections of the central metropolitan and six district prosecutor offices, during the proceedings of the public inquiry, revealed that from 11 cases in relation to sobering centre operations or their staff in the year 2005, 6 cases were dismissed

from further prosecution on the grounds of insufficient evidence or conciliation of parties, and indictments were issued on 5 cases and submitted for judicial review.

- Police officer "G" handcuffed citizen "B" during his retrieval to the sobering centre, placed his legs between arms "to calm him down", and beaten him up. From injuries sustained on his skull and kidneys, "B" died shortly afterwards (Criminal File, BZD Prosecutor's Office, 2005).
- KhUD Police Sobering Centre officer "B" constantly pushed citizen "T"'s head to the heating radiator during the course of his sobering, from which "T" sustained minor injuries. ChGD Police Sobering Centre officer "Ch" had seriously injured "G" by twisting his arms for his refusal to strip down clothes. BZD Police Sobering Centre officer "B" impaired both ears of his client for the refusal to sign papers (Public Inquiry Field Reports, NHRCM, 2005).

Numerous complaints in this regard were also received from rural areas. For instance, Orkhon Aimag Police Sobering Centre officer "D" upon client "E"'s request for water got somehow furious and broken his nose, fingers and inflamed his eyes from severe beating. The prosecutor dismissed the case on the grounds that the parties had conciliated after payment by "D" of settlement fee of MNT 100,000.

The law prescribes remedial committal and sobering services for persons intoxicated to the apparent extent to endanger with domestic violence, cause public disturbance, lost orientation or unconscious, and most probable to be involved in crime (art. 5). In practice, the police sobering operations would enroll its patrons in an indiscreet manner, put forward peculiar demands, which evolves disputes, uses unnecessary force and humiliating treatment. The sobering centers are not equipped with appropriate testing tools and gadgets to verify if the client indeed had a drink, let alone establish the level of intoxication. The test work is relied on the "smell & sniff" skills of sobering officers. Complaints from Dornod and Uvs Aimags report that at nights the sobering centre officers would usually "patrol" the doors of pubs for immediate resurrection of the intoxicated stepping out of the house. Usually the sobering centre shuts up when the prescribed number of clients had filled the rooms for the night.

At one incident, sobering centre officers intruded private housing and put forward demands to the owner, violated his rights and inflicted bodily injuries. The system and operations of sobering centre operations should be closely attended at the policy level.

2.4 The treatment of prisoners on death row, execution of capital punishment, family visits and other procedural aspects require immediate attention for fundamental research and comparative studies with international norms and standards. Most aspects related to capital punishment remain classified as state secret, which brings about further rumors, uncertainty and anguish. The Special Rapporteur was also "deeply concerned about all circumstances surrounding the death penalty in Mongolia, most particularly that it is considered a State secret". Despite repeated requests to the highest authorities, the Special Rapporteur was not provided with any official information, names or statistics. The law prescribes one family member to visit a prisoner on death row, once he is sentenced, and remains handcuffed during the visit. Family members are not informed on the date and place of execution, and the remains are not returned to the family for burial, "which leaves the family in uncertainty and mental distress" (Special Rapporteur Mission Report to Mongolia, E/CN.4/2006/6/Add.4). The legal framework on capital punishment requires attentive review and alignment with international norms.

1.3 Conditions at Confinement Facilities & Torture

A main indicator illustrating the respect for human rights at the national level is the conditions at confinement facilities for persons who remain innocent until his guilt is established by a fair trial. The universal principle on presumption of innocence requires careful respect for personal security and inviolable rights of individuals placed at state internment. For these reasons, the subject is under constant scrutiny of human rights organizations and of the international community. In 1988, the UN General Assembly adopted Principles on Safeguarding Prisoners and Detainees, and, in 1990, the Standard Minimum Rules for the Treatment of Prisoners, which had established international principles and standards in the area of concern.

In 1999, Mongolia adopted the Law on Execution of Decisions for Arrest and Detention of Suspects and Accused which had set national standards on detention facilities, and which removed the management of these centers from the General Police Department to the Court Decision Implementation Agency.

The law provides that detention facilities shall be established only by the decision of competent authorities, and that a detention cell shall have "iron doors, door controller, view aperture, outside locks, iron-fenced windows, ventilation casement, wooden floors or wooden patch, with 55-60 percent humidity and temperature in winter time not less than 18 degrees" (art. 13).

Conditions at detention facilities had been under constant criticism over the past ten years, yet capital investments to improve the situation have not been made to date. Detention facilities had long become locations of serious human rights violation accommodating torture, cruel and inhumane treatment, places for self-incrimination, to diminish personal dignity and inflict mental duress and depression.

In 2004, the NHRCM had conducted an inspection of all detention facilities in the country jointly with the Ministry of Justice and Home Affairs. Follow-up actions on the recommendations of the joint inspection was monitored during the proceedings of the public inquiry at Gants Khudag Central Detention Centre and Tuv, Dornod, Selenge, Uvs, Khuvsgul, Orkhon and Darkhan-Uul Aimag pre-trial detention facilities. From results of both inspections, it became apparent that none single detention facility meet national standards. Cells at the facilities are built without external windows, mostly with cemented walls, iron doors, without access to natural light, total absence of ventilation and sanitation systems. An inspection carried at some facilities by the State Professional Inspection Board concluded that air pollution and humidity in cells are many times higher than the average approved level. Most cells are without heating systems and with extremely low temperatures during the winter cold.

- Air pollution tests in some cells at Gants Khudag revealed that germ concentration per 1 cubic meter was 1.5-2 times higher than the approved level, and 3-10 times higher at Dornogobi Aimag detention cells (Joint Inspection Report, 2004).

Contrary to international standards, conditions at pre-trial detention centers are inferior to those at penitentiary facilities.

- From 22 pre-trial detention facilities, eight are built beneath earth surface, 3 partially beneath earth surface and 11 from earth surface. From the total 431 cells at these facilities, 41 have external windows but none of them has ventilation casements. Although Gants

Khudag and five other rural detention facilities report on the installation of ventilation systems, none of them works on a permanent basis (Joint Inspection Report, 2004).

Inspection reports from other professional agencies conclude that constant lack of natural air and light, high humidity and air pollution at the detention cells leads to various respiratory illness, especially tuberculosis, eyesight impairment, muscles weariness, general fatigue and other detriment to health. Another concern at the pre-trial detention facilities is the issue of cell capacity.

- In July 2005, Gants Khudag accommodated 1,009 detainees from its normal capacity of 650-670 persons. Some cells had 10-12 persons meaning each detainee had 0.8 m^2 of space, in breach of the minimum standard for 2.5 m^2. Overcrowding at Aimag detention cells are even worse and poor ventilation and sanitation systems further deteriorates the conditions. A rapid decision to either build more cells or selectively use the apprehension measures should be made (Public Inquiry Field Reports, NHRCM, 2005).

Most cells at pre-trial detention facilities do not have clear water supply, and the administration does not have the capacity to provide paid services, such as food and basic hygiene necessities. The food ration of the detainees is limited to meals based on intestines and millet, and the management would be usually proud on healthiest ration for detainees provided in their given circumstances. Indeed, these are the cheapest food stock available in the market.

Another alarming fact is that most pre-trial detention centers, especially Gants Khudag, had long become hubs of contracting tuberculosis, which poses real threat to the health of detainees.

- Gants Khudag 2004 medical data on tuberculosis registered 142 suspects from which 32 had contracted during detention and with two fatalities, 2005 medical data registered 72 suspects from which 25 were already ill prior to detention, and 8 who contracted the disease during detention (Medial Statistics Report, Gants Khudag, 2005).

1.4 Prevention of Torture, Cruel & Inhumane Treatment & Punishment

Safeguarding constitutional rights of detainees during criminal proceedings, especially in regard to receiving legal assistance, individual meetings with defense lawyers and family visits, without discrimination and prejudice from any public official is one of the main factors to prevent torture, cruel and inhumane treatment. Professional examination and accreditation of lawyers had been successfully conducted in recent years, and the quantity and availability of defense lawyers had substantially increased. At present there are 800 accredited legal practitioners with almost 500 of them practicing in Ulaanbaatar. However, some Aimags are still in shortage of the legal profession.

4.1 Substantial participation of the defense lawyer throughout criminal proceedings would ensure prevention of torture, ill-treatment and other illegal actions. The detainee survey conducted during the public hearings at eight selected Aimags enrolled 1,388 respondents from which 31.1 % reported that they had never received legal assistance, and 22.3 % reported that they never had individual meetings with their lawyer. In Darkhan-Uul Aimag 61.2 % of respondents never received any legal assistance. The following reasons for not receiving legal assistance were indicated by the respondents.

- could not afford legal assistance

- do not know how to receive legal assistance
- poor services, high fees
- candidates are imposed
- no possibilities for private meetings, and
- meetings are conducted in the presence of the investigator

4.2 Provision of legal services to the disadvantaged groups remains a very sensitive issue. The establishment of free legal aid centers with the assistance of donor organizations at some locations has made some progress in this direction. Nonetheless most of the individuals suspected in alleged criminal acts are indigent or from low-income families. Although legal assistance fees for the indigent are supported by the government through the Mongolian Advocates Association, public criticism exists on the reluctance of lawyers to provide the services for those in need due to low incentives and bureaucracy surrounding the government legal assistance programme. The results of the detainee survey revealed that most of the respondents who had not received legal assistance are indigent. Though the government legal assistance programme had been implemented for some years already, initiatives to review, monitor and assess its impact have not been undertaken. A solution to this problem may be the establishment of specialized bureaus or partnerships at the local bar associations that would practice solely for the indigent and be directly linked with the government legal assistance programme.

4.3 At meetings and interviews with lawyers, held during the proceedings of the public inquiry, most of them reported on difficulties to access the formal complaints and investigation system when it comes to undue process. The adversary would harass the lawyer to withdraw the petition, persuade the detainee to look for other lawyers, send fictional misbehavior reports to the disciplinary committee and impede other obstructions.

The NHRCM especially condemns the campaign evolving in recent years against lawyers. honestly representing legal rights of their clients, to discourage their pursuit for justice. Recent illegal actions of the General Intelligence Agency should be noted in particular. The GIA operatives had smuggled “E” across the French border and illegally transported him by air to Mongolia, detained him for 7 days at a secret location, tortured him to extract testimonies, and delivered him to police authorities through a northern border town of Altanbulag. Lawyer “S” representing legal interest of “E” had made public the illegal actions of the GIA for which he was eventually prosecuted for treason. According to the petition from “E” and his lawyer, the NHRCM had made an official enquiry to the GIA. However, the agency refused to provide with an explanatory note on its actions as they pertain to “classified operative work”. The Investigation Department of the General Prosecutor’s Office also refused to look at the issue upon the NHRCM request as the case was “beyond their jurisdiction”. The NHRCM had submitted requests to the Special Supervision Sub-Committee of the State Great Khural on two occasions, but did not receive any response to date.

The lawyer representing legal interests of Chinese workers in relation to the “Tan Lung” case had lodged a complaint to the NHRCM that GIA operatives had misused their authority to batter, coerce and intimidate his clients.

The Law on the GIA and CPL provides that complaints in relation to the operations of intelligence officers would be reviewed by the GIA, which essentially precludes fair and impartial investigation of complaints. In this regard, legislative amendments are required to include investigation of allegations of illegal intelligence activities within the jurisdiction of the Investigation Department of the General Prosecutor’s Office.

4.4 According to the law, the suspect or accused has the right to meet with his lawyer in private. In practice, this is usually not he case. For instance, the Gants Khudag facility, accommodating almost a thousand detainees at a time, provides for only one room of 2.3 m^2 of space for meetings with legal representatives. With many other detainees in the same room, struggling to find common understanding with their legal representatives, it is difficult for one to be open and confer to his lawyer. In rural areas, the lawyer would sometimes only have the chance to discreetly meet with his client in the corridors. Private meetings with clients are essential for lawyers to protect their client's rights.

4.5 An important factor in the prevention of torture, cruel and inhumane treatment is the right of the detainee to meet with family members or relatives. The importance of family member meetings among other things is that they could witness the treatment the detainee receives at detention.

The Law on Execution of Decisions for Arrest and Detention of Suspects and Accused provides that the detainee has the right for visits by family members upon the written approval from the competent official who ordered his detention or from that official's superior. In 2005, the Minister for Justice and Home Affairs issued an Executive Decree #15 ordering to organize visits and meetings for detainees twice a week during 10.00 to 17.00 hours. The executive decree has two different types of encounters provided for the detainee. Visits for a detainee are for not more than 30 minutes with a maximum of four persons at a time and change of clothes, passing of food and other necessities are prohibited. However, the Law on Execution of Decisions for Arrest and Detention of Suspects and Accused provides that the detention center guard shall be present during the meeting of detainee with defense council, relatives and other persons. The meeting shall be immediately ceased if an attempt is made to transmit prohibited food or other items, or information that may obstruct the establishment of objective truth in the crime or may lead to commissioning of crime (art. 19.4). Clearly, the law does not have any reference to two types of encounters for the detainee, and change of clothes and passing of non-prohibited items should be allowed. The wording of the executive decree is in contradiction with the terms in the legislation, which is not the best example for respect of law.

In practice, the provision in the executive decree empowers the inquiry officer to approve either a visit or meeting to the detainee, depending on the "progress" of the investigation.

Regulations that are even more stringent are imposed at some Aimags. For instance, the Khuvsgul Aimag detention centre administration organizes only one day in the week for visits, Darkhan-Uul Aimag detention centre administration established hours for visits between 10.00 and 16.00, and Uvs Aimag detention centre administration allows Thursday visits for convicts and Friday visits for detainees.

During the proceedings of the public inquiry 1,338 respondents of the detainee survey reported that 63.6 % received visits and 36.4 % had not. Among Gants Khudag respondents, 44.2 % were not receiving visits.

Provision of only two days in a week for visits in the ministerial order is also not appropriate, especially in regard to Gants Khudag. With almost thousand detainees at a time, the twice a week limitation imposes severe inconveniences, anguish and despair among visitors; the meetings are conducted in a crowded room and without any privacy. The law and regulations on detainee visits should be reviewed and streamlined to better provide with opportunities for detainees to meet with lawyers and family members.

4.6 Another important aspect in the prevention of torture is to place effective procedures to control the movement of the detainee during interviews and other investigation procedures. In particular, medical examinations prior and after investigation procedures outside the compound of the detention centre should be a prerequisite.

4.7 The operations of the medical personnel at the detention centers are another important factor in the prevention of torture. However not all detention centers staff a medical practitioner. The medical personnel should be enrolled in training and re-training to improve professionalism, provide with skills to detect, document and alert on instances of torture in a timely manner. As reported by detainees and detention centre guards requests of detainees to receive specialized medical assistance are not met by the administration. This was explained by shortage in the budget to provide qualified examination and services. It should be the duty of the executive to provide sufficient means to the administration of detention centers to staff medical practitioners, upgrade their professional training and skills, and allocate more attention to the medical needs of the detainees.

4.8 Access to effective complaints mechanisms for detainees on the conditions of detention and investigation procedures is another important factor for the prevention of torture and other illegal actions by law enforcement officials. The Law on Execution of Decisions for Arrest and Detention of Suspects and Accused endorses the right of detainees to lodge complaints, and that submissions to other competent authorities would be sent through the detention administration, which is obliged to pass on the submission within three working days (art. 22). During the proceedings of the public inquiry, detainees were complaining on the difficulties to have access to any remedial system including on complaints. The detainee survey revealed that from 2,388 respondents 71.3 % had never filed any complaints. On the reasons for not lodging complaints the respondents reported on the fear to file, intimidations and reprisals, ineffective procedures, lack of means and unawareness on the procedures. At some detention facilities, in Khuvsgul Aimag for example, the administration does not conduct the complaints registration work on a regular basis.

According to the Law on Execution of Decisions for Arrest and Detention of Suspects and Accused the detention center administration shall be prohibited to review petitions, complaints or requests to other state authorities, competent to supervise the operations of the judiciary, prosecutor's office and detention center administration, and shall convey it to the relevant authority in a sealed envelope not later than the next day from receipt of the petition, complaint or request (art. 22.2). However, there is no procedure to make this provision of the law enforceable. It is of immense importance to empower the prosecutor's office in their supervisory role on the operations of detention facilities, and on the criminal investigation work of inquiry officers and investigators, and in particular for speedy processing and professional investigation of complaints on alleged torture and other illegal actions.

1.5 Conclusion

The findings from the proceedings of the public inquiry concludes that torture and cruel, inhumane and other degrading treatment of the suspect, accused and witness persist in the operations of criminal justice inquiry and investigation, detention and remedial committal agencies by police, intelligence service and detention facility staff. In particular, long-established practices in criminal proceedings to apprehend individuals to compel confessions in commissioning of crime, and the conditions of state confinement facilities itself amount to gross torture practices.

5.1 Compelling of self-incriminating statements by the alleged suspect and accused prevails in the criminal investigation practice of law enforcement officers. Policy development in regard to financing and strengthening professional capacities for evidence collection and verification should be undertaken. Authoritarian leadership in disclosure of crime, without properly equipped and trained prevention, inquiry and investigatory services, prompts torture and other illegal activities.

5.2 The Criminal and Criminal Procedure Laws are not compatible with international treaties prohibiting torture, and do not serve as safeguards in the prevention of torture and ill-treatment. Inferior investigation processes, lack of proper accountability mechanisms, abuse of authority, excess of powers and impunity persist in the operations of law enforcement officers entrusted with oppression powers, which eventually leads to gross violations of human rights, infliction of physical damages and mental duress of individuals.

5.3 Establishment of legal, regulatory, budgetary and enforcement frameworks for prompt and fair rehabilitation mechanisms for victims of torture and cruel, inhuman and other degrading treatment is palpable. In particular, full compensations for health and mental damages are of essence in the rehabilitation policies.

5.4 The conditions at pre-trial detention and apprehension facilities remain to be a worrying issue. Although Law on Execution of Decisions for Arrest and Detention of Suspects and Accused, which establishes national norms and standards for conditions of detention, is enforced from the year 1999, policy support, budgetary allocation and administrative enforcement of the provisions of the law did not take effect to date. Harsh and difficult conditions at those detention centers leads to severe violations of human rights, inflicts physical and mental detriment to detainees, and with registered fatalities during the course of detention. Authorization for confinement in those conditions for up to two and half years demonstrates cruelty and inhumanness of the legislative process. Moreover, maladministration in the accounting of time limits for detention and abuse of authority is a further step to diminish personal dignity.

5.5 Access to justice, in particular to remedial and investigation processes for alleged perpetrators of crime, is largely insufficient; prompt, impartial and fair investigation of illegal actions of public officials is inadequate, and petitions and submissions in this regard do not result in any effective response.

1.6 Recommendations

6.1 Streamline the provisions of the national legislation, especially the criminal legislation with the provisions of the Convention against Torture, adopted by Mongolia; improve accountability and prosecution frameworks for public officials alleged in torture, cruel and inhuman treatment; inclusion of topic on torture prohibition and eradication in the curricula of legal education institutions and law schools.

6.2 Improvement of the enabling legislation for rehabilitating the victims of torture, inhumane and ill-treatment; establishment of procedures and processes for full compensation of physical and mental damages for those victims.

6.3 Establish maximum time limits for detention to be not more than 18 months, and not more than 6 months for minors; refrain from applying confinement measures for individuals, other than alleged suspects of especially dangerous crimes, provided they posses with a verified place of residence, reside with other family members, own property, are employed and with a

proven record of not fleeing from justice before. Enforcement of the provision for immediate release of an individual after the lapse of time limits for detention.

6.4 Review the job performance, work appraisal, remuneration and carrier development policies of law enforcement agencies, especially as a preventive mechanism to eradicate torture, inhumane and ill-treatment.

6.5 Establish prompt and fair investigation procedures of alleged torture and ill-treatment complaints; consider these types of criminal acts as occupational offences and make relevant amendments to the legislation.

6.6 Maintain and raise effectiveness of timely, disciplined and transparent prosecutorial supervision of inquiry, investigation, imprisonment and remedial committal functions, and strengthen capacities of the Investigation Department of the General Prosecutor's Office.

6.7 Prevent torture and ill-treatment at places of detention and imprisonment; establish prompt and impartial complaints mechanisms; review procedures and regulations on visits with lawyers and family members, authorize the courts to endorse visits, increase the number of days for visits and remove any other regulatory restrictions, including the contradictory clause on two types of visits.

6.8 Ensure lawyer participation from the beginning of the investigation process; strengthen prosecutorial supervision on the implementation of lawyer's requests; review and implement effective mechanisms to improve legal assistance to the indigent.

6.9 Establish independent monitoring mechanisms on the operative, inquiry and investigation functions of the General Intelligence Service; develop and enforce human rights protection safeguards in the operations of the intelligence service.

6.10 Ensure all detention and apprehension centers are staffed with medical practitioners, provided with necessary medical equipment; prevent infliction of physical injuries and fatalities at those centers.

6.11 Establish independent monitoring mechanism at apprehension, detention, remedial committal and imprisonment facilities as prescribed in the National Human Rights Action Plan.

6.12 Phased renewal of detention and apprehension facilities; allocation of financial resources to meet the national standards on confinement, especially at Gants Khudag Pre-trial Detention Centre.

6.13 Enforce the provision of the NHRAP (art. 2.1.12) on the establishment of procedures for including human rights institutions in the investigation of deaths at confinement facilities for transparency of the process.

CHAPTER TWO: STATUS OF THE RIGHT TO FREEDOM OF ASSOCIATION, THE RIGHT TO ORGANIZE AND COLLECTIVE BARGAINING

In 2005, the NHRCM carried out a study on the realization of the right to freedom of association and the right to organize in joint collaboration with the Confederation of Mongolian Trade Unions (CMTU) and the Mongolian Employers' Association (MEA). The study involved samplings and selected business entities conducting their operations in all provinces except Uvs province, and in all 9 districts in the capital city.

Administrative unit of the capital city and provincial centers, privately-owned enterprises, budget agencies of the local administrative unit, business entities, rural mining companies and their employees participated in the survey, which totaled 1,085 people.
In this study, 315 business entities were their operations in the territory of 42 local

administrative unit of 20 provinces, and 9 districts of the capital city.

Most of the people involved in the study are employees of state and privately-owned enterprises. The study fully included representatives of employees from budget agencies, privately-owned enterprises, and business entities of the central and rural areas.

In respect to place of residence and location, 65.5% of people involved in the study were citizens living in the provincial centers, 13.6% - citizens of the centers of the local administrative unit, and 0.7% - citizens of rural areas, and the rest were participants representing districts in the capital of Ulaanbaatar, which comprised 20.1% of people.

2.1 International Treaties & National Legislation on the Right to Freedom of Association & the Right to Organize

1.1 In the labor sector, employees' and employers' right to freedom of association and the

right to organize and collective bargaining are guaranteed by the international laws.

Article 20 of the Universal Declaration of Human Rights (UDHR), Article 22 of the International Covenant on Civil and Political Rights (ICCPR) stipulates and Article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) has specific references to the freedom of association and the right to organize.

In protecting fundamental human rights of the labor sector, conventions adopted by the International Labor Organization (ILO) play significant role. The following ILO Conventions guarantee the right to freedom of association, the right to organize and collective bargaining:

- ILO Convention on the Right to Freedom of Association and the Right to Organize No.87 (1948);
- ILO Convention on the Right to Organize and Collective Bargaining No.98 (1949);
- ILO Convention on Protection and Facilities to be Afforded to Employees' Representatives in the Undertaking No. 135 (1971);
- ILO Convention on Labor Relations (Public Service) No. 151 (1978);
- Convention on Collective Bargaining No.154 (1981)

The following recommendations were adopted in connection to the Convention provisions:

- Collective Agreements Recommendation No.91 (1951);
- Protection and Facilities to be Afforded to Employees' Representatives in the Undertaking Recommendation No.143 (1971);
- Labor Relations (Public Service) Recommendation No.159 (1978);
- Collective Bargaining Recommendation No.163 (1981)

1.2 The Constitution of Mongolia (1992), Law on the Rights of Trade Unions (1991), the Law of Mongolia on Non-Governmental Organizations (1997), the Labor Law (1999), the Civil Code (2002), the Law on the National Registration of Legal Entities (2003) and other relevant laws and legislations provide for a legal framework of the right of employees and employers to form organizations. The Constitution of Mongolia guarantees the right to freedom of association and the right to organize on the basis of civil society or personal interests and opinions. Article 5 of the Law of Mongolia on Non-Governmental Organizations stipulates that "Citizens of Mongolia and legal persons (except State bodies) may freely establish, individually or collectively, non-governmental organizations on the basis of their interests and opinions without the permission of any State body. Illegal restriction of the rights of citizens to establish non-governmental organizations is prohibited. No person shall be forced to join a non-governmental organization". Article 3 of the Law on the Rights of Trade Unions provides that citizens in the exercise of their right to labor and for the protection of their legitimate interests can join trade unions on a voluntary basis and without prior authorization. No one shall be forced to join or leave trade unions. In the Mongolian laws and legislations the participants of the labor relations are guaranteed the exercise of their right to freedom of association and the right to organize by establishing trade unions and non-governmental organizations. Very often, in order to protect their interests, employers establish non-governmental organizations and the employees form trade unions. In the exercise of employees' and employers' right to freedom of association the following issues are of particular interest:

- Public servants' right to freedom of association;
- State officials' right to freedom of association in the managerial position;
- Issue of legal entities that do not possess the right to form or join associations;
- Provisions on Mongolian legislation with respect to the by employers and employees of a foreign nationality.

1.3 The guarantees of ILO Convention 87 are also applicable to employees of a foreign nationality and employers carrying out their activities on the territory of a given country. Article 5.6 of the Law of Mongolia on Non-Governmental Organizations prescribes that "Foreign citizens and stateless persons legitimately residing in Mongolia may establish and join non-governmental organizations in accordance with the procedure specified in this law if other laws and international treaties of Mongolia do not provide otherwise". Also, Article 6.1 of the Charter of the Mongolian Employers' Federation authorizes the right of employers of foreign capital investment business entities and the financial donors to join. There are no specific provisions in the Law on the Rights of Trade Unions and the Charter of the Mongolian Employers' Federation that allow foreign citizens to join trade unions. However, according to the general provisions of the Law of Mongolia on Non-Governmental Organizations, there is a possibility for foreign citizens working in Mongolia to join trade unions and protect their legitimate interests in the labor sector.

1.4 One of the fundamental rights of organizations guaranteed in ILO Convention 87 is the protection from any interference in the conduct of their affairs. The States parties to this Convention have an obligation to guarantee this right within its national legislations, and establish effective mechanisms and a system of accountability to promote this right. The provisions of the Law on the Rights of Trade Unions on the dissolution of trade unions through administrative measures, the suspension or suppression of their activities, the prohibition on officials holding management or supervisory position to simultaneously hold trade union electoral representative position, and the self-financing of their activities protect trade unions from interference on the part of employers. The independence from state authorities' provision of the Law on Non-Governmental Organizations in Article 9.2 is closely connected with the above right. There is a provision in the Labor Law, which imposes punitive measures against any legal personality that infringes upon this right. The present law in Article 141.1.10 states that if a third-party citizen or officer has illegally participated in the negotiation of collective agreements and bargaining, or the organizing of a strike or temporary denial of access to the workplace, or has interfered with the freedom of choice of participants in a collective labor dispute, a judge shall impose a fine on such citizen or officer, and on a business entity. However, the type of interference can vary in form from the ones included in this provision. For example, in practice, the interference of employers in the financial affairs of the trade union is a frequent occurrence. The accountability system for the legal entities that infringe on the right of non-interference into the affairs of the organizations is inadequate in Mongolian laws and legislations.

1.5 To ensure the employees' right to freedom of association against acts of discrimination it is important to include additional provisions that guarantee the rights of trade union elected representatives of employees in national laws and legislations. Although the Law on the Rights of Trade Unions (art. 6) and Labor Law (art. 12.8) provides such additional guarantees for elected representatives the imposition of liability for legal entities that infringe upon this right is indeterminate.

2.2 Status of the Right to Freedom of Association & to Join Trade Unions

2.1 Article 3 of the Mongolian Law on the Rights of Trade Unions clearly states principles concerning the right to freedom of association and the right to join trade unions.

- Citizens are free trade unions, voluntarily without any discrimination, to realize their right to labour and to protect their related legal interests;
- Demanding workers to forcefully join or quit trade unions is prohibited.
- Restricting citizens from joining trade unions based on discrimination is prohibited.

In 1990 the number of trade union members was 624,800. In 2004, the number had decreased by 440,632 to 184,118 trade union members. The main reasons for this are as follows:

- As was mentioned before, our previous government was part of a socialist system. Even though it was said it is voluntary to join trade unions, every worker was forced to be a member, and they were registered and issued membership cards.
- In 1990 when Mongolia moved to a market economy state monopolies were rapidly privatized and many people become unemployed, resulting in the exclusion from their trade unions. Moreover, the majority of the private sector and industry employers did not want trade unions and did not support their activities. Consequently, employees were not able to maintain their trade union membership anymore, and the unions eventually broke up.

- Employees of newly established economic organizations do not understand the importance of joining trade unions and do not take initiative in establishing their rights.

These factors have a direct impact on the lack of activities aimed at raising public awareness and publicizing the roles and responsibilities of trade unions, which acts as a link for mutual cooperation between employers and employees.

Among the participants of the survey, involving 1,085 respondents, 19.3 % or two in every ten of the participants in the survey indicated that they want to be member of the trade union, which is not small percentage. 12.3 % indicated that they are not interested in becoming members of a trade union. Many workers have not joined trade unions due to "employers, directors, managers and administration." Others haven't joined because "they don't care about it."

The CMTU has renewed its registration data on its member unions in order to classify its member by their sector, type of economic activity, and to reconfirm its official membership for those who accepted general rule of the CMTU and paid its membership tax (Work Report on CMTU 2000-2004, page 1).

2.2 The total members of the Confederation of Mongolian Trade Unions is 184,118 in 2004, while the total number of employees at the national level stands at 950,500, according to the National Statistical Office. From this, it can be seen that 766,382 employees are not member of trade union. In other words, there are five non-member employees in per member of the CMTU.

The numbers above are classified by region, province and capital city. For instance: In the Western region (Bayan-Ulgii, Gobi-Altai, Zavkhan, Uvs and Hovd) provinces, there are 21,148 trade union members out of 163,000 employees, which is 13% of the total.

Under the current market economy, it is essential for to be offered protection in industrial relations through joining trade unions on a voluntary basis, as it is the main guarantee for them to protect their labour and other rights.

There are almost no trade unions in the majority of state administrative organizations at central and local levels. There are absolutely no trade union organizations at the state central administrative bodies such as ministries and state agencies. Employees of these organizations considered it unnecessary to associate with trade unions and refused their membership status voluntarily, and stopped paying their membership fees. Trade unions at those organizations gradually disappeared while civil servants in public administration and workers of public services are relying on the protection prescribed in the Law on Public service and administration.

However, there are a few trade unions running their activities at some public service organizations. There are some sub-committees and groups of trade union working in schools, hospitals, kinder gardens and cultural and art institutions at the provincial, administrative unit, district level, and in the capital city as well.

There are many trade unions organizations and elected personals that work very hard at protecting the rights and interests of their employees and members. They actively and effectively cooperate with employers while exercising their full rights within the legal framework. Accordingly it can be seen that the right to organize and freedom of associations of the employees of said are fully ensured.

- The trade unions sub-committee at the Central Clinic of Arkhangai province protested against the clinic's administration for not giving the staff their salary for 5-6 months, and posed the claim to the court representing the whole staff. As a consequence of their protest, the staff got their salary with a penalty for late payment equal to 3.8 million Tugrigs.

The committee at the thermo-power station of Baganuur district has negotiated with the administration of the station regarding the dismissal of 40 employees. As a result of the negotiation and agreement, only 9 workers were released, and remained 30 remained at their jobs.

2.4 Trainings, and other effective organizational interventions to raising employers' awareness does not cause any trouble or objection to workers to exercise their rights to associate, and for promoting movement that creates supportive environments for trade unions were taken by the Confederation of the Mongolian Trade Unions, associations and committees of trade unions at the province, and capital city and administrative unit. Here are some examples of such activities:

- The trade unions committee in Arkhangai province developed and implemented the special program on "Trade unions & private entities" in 2003, aimed at creating a favorable environment for workers associating as trade union members, protecting their interests and establishing occupational safety and health standards in workplaces and promoting workers to organize as a primary committee of trade union on a voluntary basis, etc.
- The trade union committee in Ikh-Uul administrative unit of Zavkhan province is an exemplary association in this province, and it has 120 members in total. Thanks to initiatives of the director of the Association, 15 herdsmen's families have joined as a member of trade union. These herdsmen have agreed to pay their membership fees by raw materials of their livestock. The director himself sells these raw materials and accumulates the profits in an account. This association also organizes an active vacation for its members every year, and this year, they sent their members of the public administration sector to Jankhai resort in Huvsgul province, and members of kinder gardens and schools to local resorts. These kinds of activities are helpful in raising the reputation of trade unions and for encouraging members' efforts.

2.5 Some public administration organizations did not give a proper response to trade unions' requests and claims. Even they tried to stop their activities instead of supporting or cooperating with them. Here is an example:

- The association of trade unions in Dund-Gobi province raised an issue regarding 30 drivers who lost their job. The drivers were previously self-employed. To solve their problems, the trade union addressed the Citizens' Representatives' Council on the 8th of April 2005. However, they have not heard anything from the CRH for 3 months.
- Organizations such as the Agricultural agency of Umnugobi province, "Holly water" Co Ltd. of Zavkhan province keep the fees of Trade union members in a common account, which makes the Trade union face difficulties every time they spend or make a transfer.

A survey shows if there have been any cases when employers, owners, or any other bodies attempted to adjoin a trade union or influence its independent activities. 188 activists of primary level trade unions were asked this question. 23 respondents or 11.7 percent of total number answered that there have been such case. Most of the 1,085 respondents did not

experience any pressures from the side of their administration or owner in conducting union activities. However, there are 44 people among respondents answered that there were obstacles. Those 44 gave the following reasons:

- Our organization's administration does not listen to our workers' suggestions, does not accept them, criticizes us for "wrong" propaganda among workers, threaten to fire us, or accuse us of not having complied with the internal rules and procedures of the organization.
- They make collective bargaining and concluding a collective agreement difficult.
- Vacations are prohibited and social welfare and rebates have been denied.

"Makh Impex" holding company, engaged in the import and export of meat, normally works with more than 2500 workers but has as little as 200 members in the trade union. The director of the company, Mr. Purev-Ochir, has worked against the head of the Confederation of Mongolian Trade Unions Mr. Kh. Sodnomtseren, since he was appointed director. He has also stopped the deduction of membership fees from workers' salary. Mr. Purev-Ochir does not even accept proposals made by trade union. He said that he does not like Trade Unions and that he would not co-operate with any trade union. If, for any reason would work with a trade union, he said he would "charge 10 dollars per square meter from the trade union's office as an office leasing payment." Also, he disconnected the phone of the trade unions office, requiring a connection at the expense of the trade union. He also required membership fees to be collected in cash, and as a result members of Trade Union stopped paying their membership fees after 2-3 months. Because of this, the Head of Trade Union had no salary and could not continue his work.

During our meeting, 5 workers of the company informed us that during slaughtering hours, many workers get injured. Also, more than 100 workers have been infected with brucellosis. An average 5-6 cases of infection are discovered each year, the rights of workers are often breached, the director of the company ignores workers' requests related to their rights, and the head of the Trade Union has no job and no salary. Some of workers of the company said…"Our Company really needs a trade union, ammonium hydrate leaks often, and workers get poisoned…. The company does not give compensation for overtime work…. Does not make records of social insurance and health insurance premiums for overtime work or additional working days… because of a delay in the transfer of premiums collected from workers to the insurance company, workers become unable to be treated in hospitals and suffer health damage" (from research of the Central team).

As for "Erel Cement" company, administration has prohibited and is still prohibiting workers from forming trade unions, to join trade union or to participate in activities of trade unions. They put pressure on activists and organizers of trade union and those who try to realize the right of workers to association. The administration forces workers to get permission from the owners. "Without permission the trade Union has no existence" (From the survey in Darkhan-Uul province)

2.6 Results from the research show that trade Unions are facing large difficulties and defects during this transitional period. A decline in the number of primary level trade unions has occurred for the following reasons:

- Workers of newly created private entities and joint ventures with foreign investment do not associate, and show low initiative in relation to fulfilling their right to associate. At the same time, they are ignorant to the benefits of being unitized. In legal terms, the rights of workers in such private joint ventures are not well regulated and guaranteed. For instance, here are the results of a questionnaire carried out by the Research and Training

Center of CMTU from 2002 to 2004 in the capital city and 8 provinces 600 workers polled in 2002, and more than 500 workers in 2004. To the question on what kind of obstacles and difficulties exist in creating of the right for workers to associate and enjoy trade unions, the following answers were given: (a) there are no legal regulations and guarantees - 23% in 2002 and 30.2% in 2004; (b) there are satisfactory legal provisions on labor rights 54% in 2002 30.2% in 2004; and (c) employers treat workers and trade union activities unfavorably – 12% in 2004 (Labor Rights & Trade Unions, D. Tsedee, 2005, p.29).

- Employers do not let workers enjoy their right to associate and join trade unions. As it was mentioned, privately owned Canadian "Boro Gold" Co. Ltd violates the rights of about 500 workers. The current research and survey team leaders, along with some other workers, were not allowed to enter the gold mine and worker living quarters. They were informed that some workers who initiated a trade union were fired, and other workers were prohibited from creating a trade union.
- "Altan Dornod-Mongolia" Co.Ltd has more than 750 workers, and 300 of those are Mongolian citizens. The company does not allow its workers to join trade unions. For example, during the group discussion, some pointed out that "When we want to associate under the trade union and establish a trade union committee to protect our rights the administration did not let us gather and discuss this issue; we were prohibited from meeting with other workers (from the survey of the Central team).
- The administration of companies such as "Magnai Trade", and "Uguuj Chikher Boov", which operate in the capital city, do not give any opportunities to their employees to implement their right to associate with Trade unions. Furthermore, they do not accept missions from inspecting organizations and from the Confederation of Mongolian Trade Unions (from research of the Central team).
- **To protect our rights, we need to form our own trade unions. If we speak about establishing one, we will be fired. We work for 12 hours every day, but our salary is only 30,000 tugrigs. (From a group discussion with workers of the "Erdeniin khugjil" Co.Ltd, in Nalaikh district, 100% Chinese investment enterprise).**
- In a survey of the Science and Training Center, the Association of Trade union stated:" according to a survey done among workers of companies and enterprises without Trade unions, 58.0% expressed an interest in establishing a Trade union, which is good indicator for understanding that a Trade union is necessary" (Respect to the Working People, 2003, p.10).

2.7 The surveys also provide on dismissals, imposition of administrative penalties by employers upon employees for the establishment and participation in Trade Union.

- The administration of Bayankhongor province Tax Department threatened to dismiss the director and members of the trade union due to a disagreement on the proposals and demands of the trade union. In 2003, the administration of the Weather and Environmental Monitoring center dismissed the director and 6 members of the Trade union over a union dispute.
- The administration of Secondary school #1's Food Service workers and the Occupational training and industrial center of Arkhangai province dismissed the Heads of their Trade unions. However, they were reappointed after a court of law overturned their decision.
- The administration of "Tulga-Altai" company never implemented their trade union's requests and dismissed the Trade union's elected representatives without the permission of its staff.
- According to survey on judicial civil proceedings, done in 6 district of the capital city Ulaanbaatar, about 300 proceedings related to worker right and labour dispute were

decided in the last 2, 5 years. These proceedings were not related to the violation of the right of associating and electing Trade union officials, but they all were related to the violation of the right to work.

- The owner of a community transportation service called "Autobus 3" dismissed 51 workers without any justification in 2004. However, the trade unions workers of Transportation, communication and oil challenged this decision in the courts, and these workers were reappointed (from the research of the Central team).

2.8 In Article 6**.**5 of the Law of Mongolia on Rights of Trade Unions, it is mention that "The administration of the industry or organization are not permitted to do joint work with Trade union elected representative. However, in some enterprises and organizations, administrative staff such as vice directors, managers, and people in charge of human resources are working as Heads of Trade union committees or as a elected representatives of Trade unions, which means that they will work mainly in the interest of their organization, and not in the interests of their employees.

2.9 In Article 6**.**4 of the Law of Mongolia on Rights of Trade Unions, it is mentioned that "The issues of providing the Trade union's elected person with conditions and opportunities necessary to implement the Trade unions activities must be included in a joint contract."

From 1,085 respondents of the survey 593 or 54.7 % reported that trade union' elected person are provided with conditions and opportunities, 432 or 39.8 % that they are not provided, and 60 or 5.5 % didn't know.

2.10 An essential part of the rights of a trade union is the right to organize workers to strike; to organize demonstration to protect and implement workers' rights. Issues included in Article 119 of the Labour Law of Mongolia specify the right to strike. Article 120 states that the decision to strike must be approved during the meeting of the organization which protects the legal rights and interests of workers."

The Mongolian Trade Union Association and some specialized or regional associations organize meetings for implementing these rights. In the beginning of this year, the Mongolian Trade Union Association took steps to call a strike and demonstrate at the national level in order to successfully implement the request and demands of socio-economic and work related rights and to implement the joint Agreement. The aim is to deliver powerful message to Government and Governors of provinces and administrative units.

To the question in the survey on "was any strike, demonstration or petition submission organized?" 38 of 170 organization representatives answered "Yes" (22.4%).

2.3 Status of the Right of Employer's to Associate & the Right to Organize

The right of employers (owners and directors of industries, entities and organizations) to associate and establish an organization on voluntary basis to protect their right, to determine jointly the objectives and directions of action is acknowledged by the Convention 87, 98 of ILO, by Constitution of Mongolia, by the Law on Non-Governmental organization.

In Article 5 of Convention 87 of ILO on Freedom of Association and Protection of the Right to Organize, it is stated that "Workers' and employers' organizations shall have the right to establish and join federations and confederations."

In the beginning of the transition period to a market economy, owners of private entities (with a willingness to protect their interests) associated and established the Association of Mongolian private industry owners on a voluntary basis (during the third conference in 1997 it was renamed to the Mongolian Employers Federation).

The Federation has adopted its Rules based on this statement of the Law and the international treaty by the general convention of MONEF members. These rules state that "MONEF is a national level, membership, non for profit, non-governmental organization established by initiative of employers and business owners of the private sector."

According to its Rules, activities of the Federation are based on the following main principle: "Based on the principle of democracy, transparency and the Constitution of Mongolia, and the Law on Non-governmental organization, it represent members and protects their legitimate rights and interests. MONEF shall not engage in any political activities in the interest of a political party or group"

Furthermore, the content and ideas of ILO convention 87 and 98 have found their full reflection in MONEF's goal to increase the role of the private businesses in achieving social progress, developing nation's intellectual capacity and maintaining appropriate labor relations by means of a creating favorable business environment, pressuring government policies, and promoting bilateral and multilateral cooperation between members and developing members, especially their business skills.

This current regulation is equally applicable to all 7900 member organizations of MONEF that are organized in 22 branches in the capital city and 21 provinces. MONEF has a territorial structure. Its branches in each province and further down in more local levels decide independently whether to join MONEF or not. Branches have their own membership. Provincial associations of employers and owners have all joined MONEF as members.

This Federation has taken due measures to improve and diversify its services for its members. This includes training, awareness building, advertisement, provision for information, counseling and business consulting, running labour market network, and so on. Due to this, the Federation was able to increase the number of its members from about 4 900 in 2000 to 7 900 by 2005. This is an increase in 3000 (81.6%).

2.4 Implementation of the Right to Freedom of Association & the Right to Organize in Privately Owned Enterprises of the Informal Sector

An informal economy does exist in Mongolia, much like the majority of poor countries and transitional economies. Due to the collapse and economic failure during our transitional period, it was almost impossible to generate jobs in a formal economy. Considered official and more reliable, here are numbers from the National Statistical office of 2002-2003: there has been a total 862,500 people working. Of those, 126,000 or 14.6 percent were in the informal sector. Of those, 89,300 were in Ulaanbaatar, 36,700 in the rural countryside. 11,500 people engaged in double or multiple activities in the informal sector.

There are no trade unions, non-governmental organizations, professional associations or government agencies that aim at protecting the labour and social rights of people working in the informal sectors. Only recently have some NGOs and trade unions turned their activities to the informal sector. For example, recently a private taxi owners union, a private business owners association, an advice center for small businesses, Unions for protecting rights of property renters, an Informal miners "Jargalan" union, and an "Equal rights" association of

workers of foreign investment ventures have been established. These types of associations serve the interests of their members. However, many of these associations don't have regular activities, do not function due to a lack of financial support, and their activities are conducted among a very limited range of recipients who are financial dependent on the aid or donations from foreign project and programs. With the support of larger, formal trade unions such as the Trade Union of Transportation workers, there has been establishment of some trade unions in the informal sector too: shuttle bus owner's trade unions, taxi owner's trade union, and so on. However, they have not been able to collect membership fees and make internal organizational steps.

Research conducted shows that among 1,085 people of the informal sector 66.3 percent of respondents clearly indicated their understanding of the importance of having a trade union to protect their rights. However, these people had different opinions on scale and types of work of such trade unions. For example, people renting sales space in larger open markets in Ulaanbaatar indicated the necessity of an active and aggressive trade union, while people renting space for running meal canteens in Erdene *administrative unit* of Tuv province stated that such aggressive activities may not be necessary. This may be due to little difficulties in running businesses in rural areas, but more likely is due to lack of access to information on the objectives of trade union and on one's labour and social rights.

Because of the lack of representative organizations, people of the informal sector are not involved in collective bargaining mechanisms at primary and national levels. But many trade unions voluntarily take the responsibility to represent these people while bargaining with local and central government and employers' organizations. This is a positive sign. For example, article 16 of the National Social Consensus agreement of 2002-2003, set forth that "in 2003, a unified labour market database shall be created. Rural cooperatives and trade unions will contribute to creating a database of informal employment."

It is possible for informal workers not only establish their own trade unions, but also to join existing trade unions in their sector, or to nominate a trade union and its activists to represent their rights and interests in collective bargaining and establishing collective agreements at all levels.

2.5 Status of the Right to Collective Bargaining

The new Labour Code was first adopted in 1999. This law already provided for joint negotiations and collective bargain in many labour related issues such as basic wages, wage benefits, additional benefits, awards and premiums, pensions and additional pensions, work and vacation hours, compensation for idle time, labour tariffs, in-service training for workers, social welfare measures and protections and so on. Also, this Code provides that employers and workers may bargain and agree upon other issues that are not directly specified in the law. For example, on conditions better than the minimum provided for in the law.

The current Labour Code also has extensive provision and regulation on collective bargaining and collective agreements. In accordance with the current labour regulations, the practice of collective bargaining differs depending on its level (primary, provincial, and national), period, type, participants, and the issues. As defined in the Labour Code of Mongolia, "collective bargaining" means consent among an employer, the representatives of the employer's employees, and a relevant administrative organ, either at the national or regional level or within an administrative territorial unit, economic sector or occupation, aimed at protecting labour rights and related legitimate interests of employers and employees.

5.1 **Based on ILO convention No.98 and articles of its relevant laws, private enterprises and trade unions may establish collective labour agreements in which they allow parties to monitor the progress and performance of the agreement.**

In December 2004, 34,218 legal bodies and enterprises were registered, out of which 25,356 enterprises and companies are in operation. And 1,978 trade unions were established among the active operating companies and enterprises (MCTU Research Materials, 2005).

93.4% (1,847) of enterprises have trade unions and 7.3 percent of the total enterprises have entered into collective labour agreement between the administrative units of the enterprises and the trade unions nationwide.

This assessment covers 315 enterprises, and 202 out of these have established trade unions. Additionally, 157 enterprises and employers have signed collective labour agreement with trade unions. Although some companies such as Altan Dornod Mongol and Mongol Gazar have reached collective agreement with some representatives of their employees, even though they have not established trade unions in their companies.

The signing of a collective agreement is one of manly important responsibilities for all enterprises. In this way they participate in labour relations. It is stipulated in the Labour Code that collective bargaining and collective labour agreement must be reached before enterprises and companies establish business plans.

However, some employers refuse or keep avoiding suggestions of trade unions or other representative of workers to sign a collective agreement. For example: 22.3 percent or 45 enterprises and companies have established trade unions but they have not yet established any collective agreement. As the study about reasons of not establishing of collective agreement shows, 33 enterprises and companies refuse or avoid establishing a collective agreement. The reason is that if an employer establishes a collective agreement, his/her administrative units has more responsibilities, and must allocate and use up a certain amount of money for solving workers' social problems (NHRCM & CMTU Joint Survey, 2005).

- 4 out of 5 companies have not established a collective agreement according to the survey made in Dundgobi province.
- The health department in this province refuses to establish a collective agreement explaining that the government budget was not enough to adjust wages and promises for the workers (from research in Bayankhongor province)

There are big advantages for establishing collective labour agreements between workers and employers. It is more efficient for providing suitable conditions to workers in regard to the protection of the right of work, and 2 parties way be able to negotiate issues that are not set forth in law.
The types of labour relations that can be regulated by collective bargaining and collective labour agreement are provided for in the Labour Code (article 18). In accordance with the law, there is much entrepreneurship and companies are negotiating and adjusting some labour related issues by establishing collective labour agreement between employer and workers. For example in Arkhangai *province*, "Ilch" Co.Ltd is allowed to give heating discounts in workers' apartments by 50-100 percent if the household income is below the minimum living standard. For the social insurance division of this *province,* MNT 70-100 thousand are given to employees who seek and take medical treatment in the hospital. Also, cash benefits that are equal 3-6 months of wages are given to employees in advance who are reacting pension age.

In accordance with a collective agreement, "Auto Zam-Arkhangai" Co.Ltd, "AZZA-Arkhangai" Co.Ltd and the Post office, of the province are given cash support to their workers that are single-parents, a large family with many children, or have a disabled person in the family. The Department of Electricity and Petroleum give 30 percent of salary to insured workers as eliminating of difference of the social insurance maternity benefit those who are giving delivery of baby.

However, some employers do not follow concluded labour agreements. Some refused to include some important issues in the collective agreements and some do not implement them well.

In accordance with the Labour law and Social Welfare, and the Labour Minister's order on Regulation of Registering and Monitoring & Evaluation for the Collective Labour Agreement by state administrative organization (No-108 dated of 20 March, 2001), the employers must register their collective labour agreements at the Administration division of their residential area within 10 day after being signed by both parties. If they do not register it within this period, this agreement shall be considered unofficial.

The registration, monitoring and evaluation of collective agreements as specified in the above Minister's Order are not efficient. Many companies and organizations do not register their collective agreements, as the research and surveys indicate.

5.2 According to Article 6 of Labour Code, six types of collective negotiations and agreements can be concluded as national level agreement, regional agreement, sectored agreements, provincial and capital city agreements, district agreements and agreements based on wages, prices and tariffs.

Due the transitional period of the market economy in 1990, Mongolian government has established a tripartite agreement on Labour and Social Consensus with trade unions and Employers Associations. Starting in 2000, 3 organizations were established and organized this agreement in 2000-2001, 2002-2003, and 2005-2006. But in 2004 State Tripartite Agreement on Labour and Social Consensus were not established.

Such agreements are very efficient in further developing the socio-economic state, labour relations, perspectives of the labour market and its diversification. Under this tripartite agreement, the Government of Mongolia, the Mongolian Trade Union, and the Mongolian Employers Federation are working together on solving issues related problems facing to living standards and the Socio-economic situation and its perspectives.

This table shows performance indicators and evaluation of Tripartite Agreements on Labour and Social Consensus in years of 1992-2003

	Tripartite Agreements on Labour and Social Consensus										
	1992	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**200-2001**	**addition**	**2002 - 2003**
Number of issues	27	29	34	18	34	47	31	27	46	38	53
Completed 100%	21	25	19	17	27	36	20	20	36	32	37

Completed 50%	1	1	17	1	3	11	4	-	4	4	15
Uncompleted	5	3	3	-	4	-	7	7	6	2	1
Percentage of the completion	77.7	86.2	86.2	94.4	88.0	76.5	64.5	74.0	78.2	84.2	93.5

It should be noted that the Tripartite Agreements on Labour and Social Consensus played very efficient roles in protecting its workers, people seeking work and its related laws.

The national level bargaining negotiation (2005-2006) of the Tripartite Agreement on the Labour and Social Consensus between Government of Mongolian, Trade Unions Federation and Mongolian Employers Federations was established on May 31st, 2005. The parties shall be a monitor of the activities under this agreement and inform the public twice per year.

Each province and UB, Mongolia, bilateral and tripartite Agreement on Labour and Social Consensus were established and operated their activities. In the following 10 economic and industrial sectors, sectored agreements on Labour and Social Consensus have been established. These include:

1. education, culture and science
2. construction
3. food and agriculture
4. electro power, geology and mining
5. transportation and telecommunication
6. railway
7. auto industry
8. health
9. weaving and sowing industry
10. public and service sector

These sectored agreements on Labour and Social Consensus were a great contribution in protecting the right to work and the social economic interest for worker who belongs to the above mentioned sectors.

In accordance with Labour law, regional agreement maybe established. However, it has not yet been implemented, although, in the weaving, sowing, and electro-power sectors, a professional tariff agreement has been established.

2.6 Recommendations

6.1 Prepare draft amendments to the Law on Trade Unions that would regulate the following: provision of a clear legal status of a trade union members, his/her social protection, liabilities for violation of provisions of the Law, clarification of legal status, authorities and obligations of a trade union in the Law matching with provisions of the Labour Code, and better monitoring and enforcement mechanisms in the Law.

6.2 Study the possibility to have paid positions for chairmen of primary level trade unions, and appoint or regularly replenish these positions with experienced and skilled people with relevant knowledge. For this, it is necessary to set up a mechanism of educating and selecting candidates for these positions in the trade union structure.

6.3 Implement provision 2.2.4.2 of the National Human Rights Action Programme for "an improved mechanism for establishing or joining a trade union and protecting workers' rights and interests through the union, and the State shall support trade unions.

6.4 Investigate the possibility of developing a legal draft based on the need to have a separate legal act on employers which would define its authority and status.

6.5 By means of awareness building and advertisement measures, assist workers of small and medium enterprises to enjoy their right to organize and collective bargaining in order to protect their labour rights; provide a possibility for workers of the informal sector to participate in negotiations and the establishment of national social consensus agreements.

6.6 Conduct a special program on awareness building for promoting ILO conventions 87 and 98 and other fundamental conventions, Law on Trade Unions and the Labour Code as well as other labour-related laws and regulations among trade union activists.

APPENDIX

UNITED
NATIONS
E
Economic and Social
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CIVIL AND POLITICAL RIGHTS, INCLUDING: THE QUESTIONS OF TORTURE AND DETENTION

Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak

MISSION TO MONGOLIA *

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* The summary of this mission report is being circulated in all official languages. The report itself is contained in the annex to the summary and is being circulated in the language of submission, as is the append ix.

Summary

The Special Rapporteur on the question of torture undertook a visit to Mongolia from 6 to 9 June 2005 within the framework of his mandate. He expresses his appreciation to the Government for the cooperation extended to him during the mission. However, despite repeated requests he was denied all information related to the death penalty and access to prisoners on death row, which constituted a serious violation of the terms of reference for the visit. The report contains a study of the legal and factual aspects regarding the situation of torture or illtreatment in Mongolia. The Special Rapporteur concludes that torture persists, particularly in police stations and pre-trial detention facilities. Moreover, in two very recent cases, detainees were even tortured to death.

The Special Rapporteur found that impunity for torture and ill- treatment continues unimpeded because of the absence in the Criminal Code of a definition of torture in line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the lack of effective mechanisms to receive and investigate allegations of ill-treatment; and a basic lack of awareness, primarily on behalf of prosecutors, lawyers and the judiciary, of the international standards relating to the prohibition of torture. Consequently, victims have no effective recourse to justice, compensation and rehabilitation for torture and other forms of illtreatment.

The Special Rapporteur found the conditions at the open-style dormitory prisons of the ordinary regime facility, Prison No. 421 (Amgalan), and the strict regime facility, Prison No. 413

(Zuunkharaa), to be generally in line with international standards. He expressed concern at the serious overcrowding at the main police custody facility in laanbaatar, the Centre for Forced Detention. He also expressed concern at the overcrowded cells and the mixing of convicted and pre-trial prisoners at Detention Centres No. 461 (Gants Hudag) and Zuunmod.

The Special Rapporteur's is especia lly concerned about the situation of prisoners subjected to the special isolation regime at Prison No. 405 (Tashireen Am maximum security prison, also known as Tangaar Nam or Takhir Soyot). In the view of the Special Rapporteur the special isolation regime, where prisoners serve 30-year terms in virtually by total isolation, is contrary to article 10 of the International Covenant on Civil and Political Rights, and amounts to cruel and inhuman treatment, if not torture, contrary to the Convention.
The Special Rapporteur is also deeply concerned about all the circumstances surrounding the death penalty in Mongolia, especially the total secrecy. Despite repeated requests to the highest authorities of the Government, as well as prosecutors and the judiciary, the Special Rapporteur was not provided with any official information. Concern was expressed that not even the families of the condemned persons are notified of the exact date or place of execution and do not receive their mortal remains for burial, which amounts to inhuman treatment of the family,
contrary to article 7 of the Covenant. Moreover, prisoners on death row at the Gants Hudag and Zuunmod detention centres are held in complete isolation, handcuffed and shackled, and denied adequate food. These conditions constitute additional punishments which can only be qualified as torture as defined in article 1 of the Convention.

Accordingly, the Special Rapporteur recommends a number of measures to be dopted by the Government in order to comply with its commitment to prevent and suppress acts of torture and other forms of ill- treatment.

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)

Introduction

1. The Special Rapporteur on torture and other cruel, inhuman or degrading reatment 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 commissione rs 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 pretrial 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 Unite 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. runkenness).
Authorities responsible for detention (i.e. the General Authority for Implementing ourt Decisions) and interrogation (i.e. the General Department of Police) are under the urisdiction 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 dama ge 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 illtreatment 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 illtreatment 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 illtreatment 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 illtreatment, 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 no t 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 ref ormation and social rehabilitation of prisoners. Given their long sentences, there is no consideration given to their future release, nor for their rehabilitatio n 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 tha t 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 bur ial 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 informa tion 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 reha bilitation;
(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 nonviolent, 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 Cov enant;
(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.

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. Sanjusuuren'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 cons istent 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 rollcall, 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, suc h 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 the ir 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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