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Visit to Mongolia

Report of the Working Group on Arbitrary Detention*

Summary

The Working Group on Arbitrary Detention visited Mongolia from 3 to 14 October 2022 at the invitation of the Government. The Working Group identified positive developments, including the 2020 revision of the Law on the National Human Rights Commission of Mongolia and the corresponding advancement of the mandate of the Commission; the designation of the national preventive mechanism; the adoption of the Law of Mongolia on the Legal Status of Human Rights Defenders; the adoption of several amnesty laws, including the 2021 Amnesty Law; the absence of systemic detention in the context of migration in the country; and the approach of voluntary admission to State-run care institutions for persons in need of assisted living. Challenges were identified, however, in the criminal justice system, including shortcomings in the implementation of the revised Criminal Procedure Code and the detention of persons in police custody. The Working Group also expressed concern regarding procedural guarantees and fair trial rights, certain behavioural regimes in prisons and a lack of transparency in the early conditional release mechanism. Some legislative provisions were found to be not fully aligned with the requirements of international law in the area of the prohibition of the arbitrary deprivation of liberty. The Working Group further observed that there are no specialized courts for youth and expressed concern that children detained in general pretrial detention facilities are not provided with educational activities. Finally, the lack of community-based services for persons with psychosocial disabilities have resulted in such persons remaining indefinitely at the National Centre for Mental Health. Among other recommendations, the Working Group encourages Mongolia to adopt specific practices that offer greater protections against arbitrary detention.

* The summary of the present report is being circulated in all official languages. The report itself, which is annexed to the summary, is being circulated in the language of submission only.

Annex

Report of the Working Group on Arbitrary Detention on its visit to Mongolia

Contents

I. Introduction

1. At the invitation of the Government, the Working Group on Arbitrary Detention conducted an official visit to Mongolia from 3 to 14 October 2022. The Working Group was represented by Elina Steinerte (Latvia) and Matthew Gillett (New Zealand), who were accompanied by staff from the Office of the United Nations High Commissioner for Human Rights.

2. The Working Group on Arbitrary Detention extends its gratitude to the Government of Mongolia for the invitation and for its cooperation during its first official visit to the country. The Working Group met with officials of the Ministry of Foreign Affairs, the Ministry of Health, the Ministry of Justice and Home Affairs, the Ministry of Labour and Social Protection, the Office of the Prosecutor General, the Ministry of Defence, the Supreme Court, the Subcommittee on Human Rights of the State Great Hural, the General Intelligence Agency, the National Human Rights Commission, the General Judicial Council, the Mongolian Bar Association and the Advocates Association of Mongolia.

3. The Working Group made both announced and unannounced visits to 21 facilities in Ulaanbaatar and to various facilities in Tüv province, including prisons, police stations, sobering-up centres, temporary protection shelters, the National Centre for Mental Health, substance addiction treatment centres, residential care centres for older people and a detention facility for foreign nationals. The Working Group concluded that two of those facilities, namely the Child Protection Response and Temporary Protection Shelter and the Batsümber State Residential Care Centre for Older People, are not places of detention (see appendix). The Working Group was able to confidentially interview around 65 persons deprived of their liberty, received immediate and unimpeded access to all places it wished to visit and is grateful to the Government for its exemplary cooperation in this regard.

4. The Working Group would like to thank the Resident Coordinator, the United Nations country team and staff for their support during its visit. The Working Group is also grateful to stakeholders, including representatives of civil society and lawyers in the country, who shared their perspectives on the arbitrary deprivation of liberty, and thanks them for the information and assistance provided.

5. The Working Group shared its preliminary findings on 14 October 2022. It intends to continue its constructive dialogue with the Government on the issues discussed in the present report.

II. Overview of the institutional and legal framework

A. International human rights obligations

6. Mongolia is party to major international human rights instruments, including the International Covenant on Civil and Political Rights and its Second Optional Protocol; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the International Convention for the Protection of All Persons from Enforced Disappearance and its inquiry procedure; the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child and two of its Optional Protocols;[1] and the Convention on the Rights of Persons with Disabilities.

7. Mongolia is not party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

8. Mongolia has participated in three cycles of the universal periodic review, in 2010, 2015 and 2020.

[1] Optional Protocol on the involvement of children in armed conflict and Optional Protocol on the sale of children child prostitution and child pornography.

B. National legal framework

1. Constitutional protections

9. The current democratic Constitution of Mongolia was adopted in 1992. Chapter two of the Constitution, entitled "Fundamental Rights and Freedoms", upholds the right to life and the right to personal liberty and safety in articles 16 (1) and 16 (13), respectively. In particular, article 16 (13) provides that no one may be searched, arrested, detained, persecuted or restricted of liberty except on grounds and procedures prescribed by law.

10. Furthermore, the Constitution guarantees due process rights, including the right to fair trial, the right not to testify against oneself, the right to receive legal assistance, to have evidence examined, to be tried in one's presence, to seek pardon and to be presumed innocent until proven guilty (article 16 (14)). The Constitution also enshrines other fundamental rights and freedoms.

11. Article 18 (5) of the Constitution states that in allowing foreign citizens and stateless persons to exercise the basic rights and freedoms provided for in article 16, the State may legislate to restrict other than inalienable rights of foreign citizens and stateless persons on the basis of national security, the security of the population, and public order. Article 19 (1) sets out that the State is accountable for guaranteeing the protection of human rights and freedoms and shall restore such rights if they are infringed.

2. Criminal Code and Criminal Procedure Code

12. Revisions to the Criminal Code of Mongolia, enacted by Parliament on 3 December 2015, set out, inter alia, the principle of legality in article 1.4, which states that no one may be subjected to criminal liability for his or her opinion or beliefs. The principle of justice and equality before law is stipulated in article 1.3. In cases of wrongful arrest or detention, officials themselves may be prosecuted under article 13.9 and may face fines, community work and travel restrictions for a period of up to one year.

13. The revisions to the Criminal Procedure Code, enacted by Parliament on 18 May 2017, introduced several amendments to align the arrest and detention system of Mongolia with its obligations under international human rights law. According to the revised code, initial detention in police custody cannot exceed 6 hours and the maximum period of detention without judicial oversight was reduced from 72 hours to 48 hours, which is commendable. [2] Furthermore, the detaining authority must immediately inform the Prosecutor once an arrest is made[3] and the Prosecutor must seek judicial authorization for the ongoing detention of the arrestee.[4] If 48 hours expire without the court's authorization being delivered, the detention centre must inform the relevant authorities and release the arrestee. The judge's decision on detention must be objectively justified owing to flight risk, evidence tampering, harm to persons or other enumerated reasons.[5] Whereas, previous to the revisions, judges could rule on continued detention without a hearing, they are now required to hold a hearing on the matter in the presence of the arrestee, the defence lawyer and the prosecutor, which is also commendable.

III. Good practices and positive developments

A. National Human Rights Commission

14. The National Human Rights Commission of Mongolia, which was established in 2000 with a composition of three Commissioners, has a broad mandate to protect and promote human rights. The Working Group notes the 2020 revision of the Law on the National Human Rights Commission of Mongolia and praises the advancement of the mandate of the

[2] CCPR/C/GC/35, paras. 32–33.
[3] Mongolian Criminal Procedure Code, articles 31.4.1 and 31.5.2.
[4] Ibid.
[5] Ibid., article 31.4.

Commission through the revised law, notably by: ensuring compliance with the Paris Principles; introducing changes in the appointment process of the Commissioners in order to ensure more transparency; and ensuring that the Commission's annual report will be heard in Parliament.

15. The Working Group welcomes, in particular, the strengthening of the Commission's mandate to compel change by issuing binding directives and recommendations, in accordance with articles 26 and 27 of the revised law. Failure to comply with those measures within a set period may serve as a legal basis for dismissal of the relevant authority. At the time of its visit, the Commission delivered 17 such directives and 27 recommendations. The 2020 revisions, as well as the adoption of the Law of Mongolia on the Legal Status of Human Rights Defenders, in April 2021, and the Law on the Protection of Personal Data, in December 2021, have led to an increase in number of Commissioners to seven, with three Commissioners now being vested with specific thematic portfolios.

16. The Working Group also recalls that the budget of the National Human Rights Commission is vital, enabling it to carry out its mandate independently and effectively. It therefore commends the introduction of legal provisions to strengthen its financial independence by including the Commission's budget in the consolidated budget of the State. The incremental increase in the budget of the Commission, with 4.5 billion tugriks allocated for 2023, will further enable its work. The Working Group urges the allocation of the requisite human and financial resources to the Commission, especially for the new thematic functions that have been vested in it to enable it to fully and effectively discharge all of its different functions.

B. National preventive mechanism

17. The Working Group strongly welcomes the designation of the national preventive mechanism in Mongolia, in accordance with its ratification of the Optional Protocol to the Convention against Torture in 2015. The mandate of the mechanism has been vested with the National Human Rights Commission, with a designated Commissioner in charge of its work. This is a permanent role, which will remain in the portfolio of the Commissioner for the duration of his/her mandate; the work of the Commissioner will be supported by a newly established National Preventive Mechanism Unit.

18. The Working Group is concerned, however, that, while it was decided to establish a National Preventive Mechanism Unit composed of 10 experts from various disciplines, owing to required budgetary savings it will operate with only 5 staff for an initial period of two years. The Working Group is also concerned about the role of the Civil Service Council in the selection of the staff of the Unit and the minimal role allocated in staff selection to the Commissioner in charge. The Working Group underlines the importance of the ability of the mechanism to function independently and urges the Government to ensure its autonomy in selecting staff. It is also crucial, given the geographical size of Mongolia and the fact that some places of deprivation of liberty are located in very remote regions of the country, that the Unit commence work with a full complement of 10 staff as soon as possible.

19. The Working Group was informed that the budget of the national preventive mechanism has been earmarked in the overall budget of the National Human Rights Commission, which is positive. However, the Working Group is seriously concerned that the mechanism does not have full financial independence since the Commissioner in charge is unable to independently allocate the funding designated for the mechanism's work without the authorization of both the Chief Commissioner and the Head of Administration of the National Human Rights Commission. This has an adverse effect on the ability of the mechanism to carry out unannounced visits to places of deprivation of liberty, which is essential to its mandate. The Working Group urges the Government to safeguard the financial independence of the mechanism, in particular as it relates to its ability to carry out unannounced visits.

20. The Working Group received testimony regarding visits carried out by the National Human Rights Commission and the national preventive mechanism, which is highly commendable. The Working Group recalls the vital role that regular independent oversight

has in preventing arbitrary deprivation of liberty and urges the Government to further strengthen the ability of both the Commission and the mechanism to carry out their functions independently and effectively. To that end, the Working Group urges a further increase in the financial resources at the disposal of the mechanism to enable it to implement its mandate effectively and independently.

C. Protection of human rights defenders

21. The Working Group welcomes the recent adoption of the Law of Mongolia on the Legal Status of Human Rights Defenders, which came into force on 1 July 2021. While the strong involvement of civil society in the drafting process is highly commendable, the Working Group observes that the subsequent revision of the law was conducted by a Parliamentary working group with few opportunities provided for civil society input.

22. The Working Group notes that the law sets out strong protections for the work of human rights defenders and that Mongolia is the first country in Asia to have adopted such a specific legal framework. The law also establishes a protection mechanism and a Commissioner from the National Human Rights Commission has been designated to coordinate its work. The Working Group commends these steps and encourages the effective implementation of the law in practice.

23. Notwithstanding the above-mentioned positive developments, the Working Group is concerned about specific provisions of the law, including article 5.1.5, which requires human rights defenders to "respect honour, reputation, rights and legal interests of others" and, similarly, article 8.1.3, which prohibits human rights defenders from damaging the human rights, freedom, dignity, reputation and business reputation of others. Noting that the legitimate work of human rights defenders often involves criticizing and challenging existing policies and practices, such vague and broad wording, especially the terms "reputation" and "business reputation", may be misused in order to silence and criminalize their work. Further, article 7 restricts the resources that human rights defenders may receive by prohibiting funding from entities, organizations or persons carrying out activities that are considered to be terrorist or extremist or that harm national unity. Framed in very broad terms, this provision may be used to restrict funding sources for the vital work of human rights defenders, fundamentally undermining their ability to carry out their functions.

24. Legal provisions formulated in vague and broad terms may give rise to a breach of the principle of *lex certa* and violate the due process of law, which is undergirded by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights. Vaguely worded provisions may be used to deprive individuals of their liberty without a legal basis that conforms with the essential prerequisite of the principle of legality.

25. The Working Group recalls that detaining individuals on the basis of their activities as human rights defenders violates their right to equality before the law, to equal protection of the law under article 7 of the Universal Declaration of Human Rights and their protected status under article 26 of the International Covenant on Civil and Political Rights.

D. Amnesty laws

26. The Working Group was informed of several amnesty laws passed in the last decade, including the 2021 Amnesty Law, which was adopted on the 2230th anniversary of Foundation of the first Mongolian Statehood, the 815th anniversary of the Great Mongol Empire and the 100th anniversary of People's Revolution of Mongolia. In accordance with the law, some 2,000 prisoners were released or had their sentences reduced, which the Working Group views as a positive development. The Working Group also commends the work of the National Human Rights Commission in assisting a number of individuals who had been excluded from the amnesty in successfully challenging that exclusion. The Working Group urges the Government to include all prisoners within the scope of any further amnesty laws, since the 2021 law excluded individuals sentenced for serious crimes.

E. Detention in the context of migration

27. The Working Group was pleased to learn that there is no practice of systemic detention in the context of migration in Mongolia. The Working Group was informed that only seven foreign nationals had been detained in 2022 because of breaching their visa conditions and that no one was being held at the immigration detention facility during its visit. It was also informed that there is a presumption against detention, especially against the detention of families, women and children, which is highly commendable.

28. The Working Group also notes the current provisions of the Law on the Legal Status of Foreign Nationals, specifying a maximum upper limit for detention in the immigration context in law. Under article 36.6, the law permits detention ordered by a judge for a period of up to 14 days, which can be extended, once, by a period of up to 30 days based on the proposal by the State administrative body in charge of foreign nationals. The Working Group recalls the importance of ensuring that immigration detention facilities are located in different premises from criminal justice facilities.

29. Since the announcement of partial mobilization in the Russian Federation on 21 September 2022, there has been a large influx of Russian citizens to Mongolia. Noting that there are no visa requirements for Russian citizens to enter Mongolia for periods up to 30 days, people have been able to arrive freely and some special arrangements have been put in place to assist them with the legalization of their status after the initial 30-day period, including arrangements for different types of visas and even temporary residence permits. No Russian citizens have been detained in the context of this recent situation. The Working Group lauds the approach adopted by the Government in this regard.

F. Care for older persons

30. The Working Group visited the Batsümber State Residential Care Centre for Older People in Tüv province. It was informed that admission to State-run care institutions of persons in need of assisted living, such as older persons and persons with disabilities, is regulated by Order A-157 (2013) issued by the Ministry of Labour and Social Protection. Admission to the State Residential Care Centre is voluntary and, if the application for admission is submitted by a caretaker, the consent of the older person is essential; residents can be discharged at their own request. The Working Group concludes that it is not a place of deprivation of liberty and commends the adoption of the voluntary admission approach.

31. The Working Group notes, however, that despite positive legislative and policy measures undertaken by Mongolia, the provision of care for older persons requires further attention. It was informed that there is a shortage of staff willing to work in remote areas and a lack of financial and social security incentives to encourage such a commitment. Given the large size of such facilities, staff are often faced with a heavier workload compared to that of their colleagues in other settings. While the commitment of the staff is laudable, the situation is not sustainable and a systemic and strategic approach is required. The Government is invited to address these challenges, inter alia, by considering an assessment of the jobs performed in such settings as “hard” according to the job qualification system set out in the 2021 Labour Law, by ensuring the continuity of applicable strategic policies and guidelines and by considering the provision of care for older persons in assisted living facilities on a smaller scale.

IV. Main findings concerning the right to personal liberty

32. In determining whether the information provided, including from persons interviewed during its visit, raised issues regarding the arbitrary deprivation of liberty, the Working Group referred to the five categories of arbitrary deprivation of liberty, outlined in paragraph 8 of its methods of work (A/HRC/36/38).

A. Detention in the context of the criminal justice system

1. Implementation of the revised Criminal Code and the Criminal Procedure Code

33. The Working Group welcomes the adjustments the regulatory framework and the entry into force of the new Criminal Code and Criminal Procedure Code, effective as of 1 July 2017, which have increased opportunities for suspects to meaningfully challenge the basis of their detention and avoid arbitrary detention. The reforms, together with the granting of amnesty to large numbers of prisoners, have reportedly led to a decrease in the overall number of persons in pretrial detention.

34. While the 2017 amendments to the Criminal Procedure Code are positive, their implementation has revealed shortcomings in the functioning of various parts of the criminal justice system, which may undermine the country's adherence to international human rights law.

35. The Working Group received consistent testimony that it is a commonplace occurrence for people to be summoned to police stations as witnesses and to find, de facto, that they are not free to leave. Many people reported having spent the whole day at the police station under such circumstances. Further, such periods of time are not officially counted as part of the permitted 6 hours of police detention nor as part of the maximum allowed 48-hour period of detention. People summoned to be interviewed by the police as witnesses may discover, when questioned, that they are being considered as suspects. Such treatment deprives individuals of important protections, including the opportunity to consult with a lawyer and the right to be cautioned against self-incrimination. Moreover, once a person is officially held in police custody for the permitted 6-hour period, the 6 hours are not customarily counted as part of the 48-hour period. The Working Group consistently observed that the length of time people were held in police custody significantly exceeded the permitted maximum allowed 48-hour period on a routine basis.

36. Five years have passed since the amendments of the Criminal Procedure Code took effect. Since that time, multiple interlocutors have referred to occurrences of the above-mentioned shortcomings on repeated occasions. The Working Group requests that the Government review the implementation of its criminal procedures in the areas set out below, as a matter of urgency.

2. Police custody

37. In relation to the questioning of suspects in specifically designated interrogation rooms at police stations, the Working Group was informed that, once interrogations are finished, suspects are typically not at liberty to leave. Following interrogations, they are usually formally arrested and transferred to pretrial detention. Under international human rights law, deprivation of liberty occurs when persons are held without their free consent; deprivation of liberty can occur in any type of location and does not need to be officially labelled as an arrest or detention to engage protection against arbitrary detention.[6] Equally, any period of time, even for a few hours, qualifies as detention.

38. Suspects who find that are not at liberty to leave after being interrogated are, in fact, being detained from the moment they come under the control of the relevant authorities. Interrogation rooms, set up with video and audio recording equipment, which is mandatory, are a significant deterrent against serious violations of human rights, such as mistreatment and torture, but are not sufficient in and of themselves to ensure that people enjoy their full due process rights as required under international human rights law. Above all, noting that people are not free to leave such interrogation rooms, such rooms must be considered to be places of deprivation of liberty.

39. In addition, the Working Group has been informed that, in practice, video recordings are deleted after 14 days, which impedes the ability of monitoring bodies, including the National Human Rights Commission, to effectively exercise oversight, as well as the ability of suspects to file complaints. In this regard, the Working Group recalls that, according to

[6] A/HRC/30/37, para. 9, and annex, guideline 1.

the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), inspectors shall have the authority to access all relevant information.[7] It also echoes the recommendations of the Committee against Torture, which called on Mongolia to ensure that all interrogation rooms in detention centres in all parts of the country have closed-circuit television cameras and equipment to ensure the video and audio recording of interrogations and to make such recordings available to defendants and their counsel, at no cost to the defendants.[8]

40. In addition to interrogation rooms, the Working Group viewed two other types of detention spaces at some police stations: (a) sobering-up rooms; and (b) locations where those sentenced to arrest as a sanction for infringements (petty crime) may be held for up to 30 days. Although both types of locations are regulated by specific legal frameworks, both represent places of detention and thus international human rights law relevant to arbitrary detention is applicable.

41. As stated by the Human Rights Committee, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee "promptly" before a judge following his or her arrest, any longer delay must remain absolutely exceptional and be justified under the circumstances.[9] The right to judicial review within 48 hours of being taken into custody applies from the moment a person is deprived of liberty, and the clock should not be reset if a detainee is moved from one type of space to another. The Working Group noted that this is a particular problem if a person is first taken to a sobering-up facility, where the maximum permitted period of detention is 24 hours, and then transferred to police custody, where the maximum permitted period of detention is 48 hours. Under such circumstances, it appears that it is common for the clock to be reset at the time of the transfer, meaning that the actual detention period would exceed the permitted 48-hour period. Moreover, because judges do not normally work over the weekend, if people are detained on a Friday there are further difficulties in adhering to the 48-hour limit. The Working Group recalls that affording detainees the opportunity to be heard promptly by a judicial or other authority is an essential safeguard against arbitrary detention[10] and calls upon the Government to address this as a matter of priority.

42. With regard to detention in sobering-up facilities, the Working Group was informed that they are used by the police to hold people for a maximum period of 24 hours. Individuals are released when they are sober, after paying a fee of 4,150 tugriks for expenses incurred during their stay.

43. The Working Group found that, although conditions at sobering-up facilities were basic, they had some amenities, including for medical examinations. Registers indicated that detainees were generally released within the 24-hour limit, that medical checks were conducted and recorded and that closed-circuit television cameras were operational. The Working Group was concerned to learn that during some national holidays, sometimes amounting to seven consecutive days, people are left in sobering-up cells, and that lesbian, gay, bisexual, transgender and intersex persons are often verbally and physically abused. It is important that the staff of sobering-up facilities avoid perpetuating a punitive approach, particularly given that the individuals in question have not been subjected to any due process when brought to such facilities; any verbal or physical abuse of those placed in sobering-up facilities is prohibited and sanctioned.

3. Procedural guarantees and fair trial rights

44. The Working Group noted with grave concern the high percentage of arrests without the use of warrants issued in advance. According to data provided by the Office of the Prosecutor General to the Working Group, in 2020, 99.3 per cent of arrests were performed without ex ante court warrants, and in 2021, this figure was 98.3 per cent. The Working Group considers that such an extremely high percentage of arrests without ex ante judicial

[7] General Assembly resolution 70/175, annex, rule 84.
[8] CAT/C/MNG/CO/1, para. 9; and CAT/C/MNG/CO/2, para. 16 (c).
[9] Human Rights Committee, general comment No. 35 (2014), para. 33.
[10] General Assembly resolution 43/173, annex, principle 11 (1); see also A/HRC/30/37, annex, guideline 7.

vetting is incompatible with the country's international human rights obligations. Although the revised Criminal Procedure Code requires ex post facto judicial authorization within 48 hours in such cases, people's rights may have already been prejudiced if there is no proper basis for the arrest. Conversely, judicial vetting in advance, whenever possible, would insulate against the risk of wrongful arrests.

45. The Working Group is particularly concerned by the prevalence of arrests without advance warrants by specialized agencies such as the General Intelligence Agency and the Anti-Corruption Agency. Given the specifics of the investigative work of the agencies, it is crucial they seek judicial warrants in advance of arrests, barring exceptional circumstances. Arrests without warrant are only permitted in specific exceptional circumstances under international human rights law, for example, when a suspect is found in flagrante delicto, but must never be the presumptive norm for detention processes. The Working Group reiterates the recommendations of the Committee against Torture that the Government should take effective measures to guarantee that all detained persons are afforded in practice all the fundamental legal safeguards from the outset of their deprivation of liberty, in accordance with international standards, including ceasing the practice of carrying out arrests without a legal arrest warrant.[11]

46. The Working Group is also concerned by the significant role that confessions have in investigative practices and subsequent legal proceedings. Of the 12,000 to 13,000 cases decided annually, around 40 per cent reportedly involve confessions. While the use of confessions in criminal justice is a feature of most legal systems and is not problematic per se, this should not be resorted to as a substitute for proper investigations designed to establish objective facts. Instances were reported in which confessions were coerced from suspects through pressure, threats and intimidation. Such practices violate international human rights law and are not conducive to effective fact-finding, as reaffirmed in the Principles on Effective Interviewing for Investigations and Information Gathering (the Méndez Principles), which the Working Group endorsed in 2021.[12]

47. In addition, the Working Group notes the use of an "expedited procedure" for less serious criminal offences. If an offence carries a maximum sentence of eight years or more in prison, a criminal case must be filed and a trial must be held before a criminal court. Conversely, if an offence carries a maximum sentence of under eight years in prison, suspects may choose to undergo an expedited procedure, conditional upon acceptance of responsibility for the crime. The existence of such a procedure is not, per se, contrary to human rights norms and can be a means of maintaining efficiency in the criminal justice system and reducing the caseload of courts. However, the systemic benefits must not come at the expense of the right of individuals to legal assistance nor their right against self-incrimination, that is, being forced to testify against themselves. In particular, the Government must ensure that the expedited procedure is not used to induce or coerce confessions against the will of suspects.

48. Further, although Mongolian law recognizes the right of suspects to have access to a lawyer before making any confession of guilt and officials conducting arrests are obliged to inform arrestees of their due process rights ("Miranda" rights), defence lawyers and detainees informed the Working Group that suspects are frequently pressured to confess and statements they had previously provided as witnesses are often used to as a means of coercion. Thus, many suspects confess responsibility prior to seeing a lawyer. The right to legal assistance must be conveyed to suspects upon their arrest by law enforcement officials and must be duly respected and facilitated. No confessions without the presence of a lawyer should be admitted in legal proceedings. Suspects must have prompt access to a lawyer from the very outset of deprivation of liberty in order to guarantee the presence of a lawyer in person, including during investigation interviews.[13]

49. Specific time frames for the investigative and judicial processing of cases are set by the regulatory framework. However, the heavy caseloads faced by the investigators,

[11] CAT/C/MNG/CO/2, para. 12.
[12] A/HRC/51/29, paras. 53–55.
[13] CAT/C/MNG/CO/2, para. 12.

prosecutors and judges alike mean that the set time limits are not always adhered to and the ability of investigators, prosecutors and judges to give each case on their docket detailed consideration is adversely impacted.

50. In addition, the Working Group is concerned that defence lawyers do not have full access to their clients' files, especially to contest the necessity of pretrial detention. The Criminal Procedure Code stipulates that full access to case files must be provided to the defence upon completion of an investigation. In practice, since the imposition of pretrial detention is usually decided while investigations are still ongoing, this provision is used to deny defence lawyers access to case files, significantly impeding their ability to contest pretrial detention. The Working Group learned that defence lawyers must piece together evidence supporting requests for pretrial detention from hearsay and thus must contest the imposition of such detention without access to the facts.

51. Furthermore, if access to case files is granted, defence lawyers are often given only very short notice that the files are available, most commonly on the day that the files are due to be transferred to the prosecutor. If defence lawyers have time to get to investigators' offices, they are prohibited from taking photocopies or even photographs of the materials in the files and have to copy the contents by hand, insofar as they are able, in the short time provided.

52. The Working Group reiterates that any failure to allow defence lawyers fair access to case files is a serious violation of the rights under article 10 of the Universal Declaration of Human Rights and under article 14 (1) and 14 (3) (b) of the International Covenant on Civil and Political Rights to a fair hearing and to have adequate time and facilities for the preparation of defence in full equality.

53. Such a lack of equality continues into trial proceedings since, for example, pursuant to article 9.1 of the Criminal Procedure Code, only investigators or prosecutors can request an expert conclusion. In practice, therefore, defence lawyers are unable to request expert conclusions as part of legal proceedings, which puts the defence at a disadvantage.

54. Compounding this encroachment of the right to prepare the defence, court hearings themselves are often brief, often even less than an hour for serious crimes, with sentences of up to 20 years imposed. These significant breaches of the principle of equality of arms are incompatible with the obligations of Mongolia under articles 9 and 14 of the International Covenant on Civil and Political Rights.

55. The Working Group urges the Government to uphold the rights of the defence, including that defence lawyers have adequate time, resources and access to materials underlying charges in order to meaningfully represent their clients.

4. Prisons

56. Sentenced individuals generally serve their sentences in one of the three types of prisons: open prisons; closed prisons; or a closed special unit, of which there is only one. The Working Group takes positive note of the fact that convicted persons are only sent to prisons once their sentences are finalized and that there were no pretrial detainees in prisons during its visit.

57. Moreover, the Working Group notes as positive the fact that prisoners held in open prisons are employed and receive a salary. Moreover, they are also rewarded for good behaviour and work through a system of so-called bonus days, whereby every 30 days that prisoners work and good behaviour is reported are counted as 40 days served. This means that prisoners can accumulate up to 120 bonus days annually, thus reducing their overall sentences. However, bonus days can be deducted for breach of discipline and the Working Group is concerned about the arbitrary fashion in which this is decided as the process is not formalized.

58. Moreover, prisoners are subjected to a strict behavioural regime, which at times is dehumanizing. For example, all prisons have red lines painted on the floor, approximately a meter from each cell, to maintain a distance between prisoners and guards. Prisoners are not permitted to step across the red lines, meaning that, to cross the courtyard, they must walk around the perimeter. The Working Group received consistent testimony that prisoners are

falsely penalized for stepping on the red line. The Working Group is also particularly concerned by the reluctance of prisoners to engage with the delegation owing to fear of reprisals, in the form of the deduction of bonus days, for having spoken to the Working Group.

59. The Working Group urges the Government to revise the current approach to the deduction of bonus days, to formalize the process and to eliminate possibilities for its abuse. Moreover, the practice of prisoners not being permitted to step over the red lines must cease immediately. It calls upon the Government to ensure that no reprisals are taken against individuals, including prisoners, who spoke to the Working Group.

60. The Working Group also learned about an early conditional release mechanism, stipulated in article 6.12 of the Criminal Code. It notes as positive that all prisons it visited had methodological councils, which propose prisoners for early conditional release. Together with the system of bonus days described above, this allows, in principle, for a significant reduction in the actual time served. However, there were cases when methodological councils refused early conditional release without providing an explanation to the prisoner. The Working Group again expresses its concern over the lack of a formalized and transparent process through which the methodological councils make such decisions. The Government should review the practice of the methodological councils with a view to formalizing the applicable procedures and ensuring transparency in the decision-making process.

61. Of further concern is the suicide watch protocol in prisons, which involves the handcuffing of individuals who are considered to be at risk of committing suicide. While there is an obligation to check on the condition of such individuals at 15 to 20 minute intervals, there is no upper limit for the time they can spend in handcuffs. Similarly, handcuffs are used when prisoners are transferred between facilities, which, noting the geography of Mongolia, can take an entire day or more. Prisoners, including juveniles, are transported in vans, handcuffed and without seatbelts, at significant risk of injury. The Working Group urges an immediate review of these practices.

62. In terms of the conditions of detention, the efforts to improve conditions in some prisons are notable. However, across all prisons it visited, the Working Group was disturbed about the food provided to prisoners. Prisoners receive palatable meat with their meals only once per week; during the rest of the week prisoners are served animal intestines. The Working Group invites the Government to address this situation as matter of priority in order to ensure compliance, in particular, with rule 22 of the Nelson Mandela Rules.

5. Special closed unit (Prison No. 405)

63. The Working Group visited the special closed unit (Prison No. 405) for people serving life sentences, including people who have received a sentence of one year for disciplinary breaches. The applicable regime in the closed unit is particularly strict as prisoners are held in solitary confinement and those on life sentences must serve at least 10 years under such a regime. Recalling the recommendation of the Human Rights Committee in 2017,[14] the Government should urgently revise this regime and ensure that solitary confinement measures applied in the closed unit respect the provisions of the International Covenant on Civil and Political Rights and the Nelson Mandela Rules, in particular rules 43 (1) (b) and 44.

64. The Working Group was also disturbed to learn that prisoners cannot move anywhere in the closed unit without hand and leg cuffs, despite the large number of guards, the prison bars and the closed-circuit television system. It was particularly disturbed to find leg cuffs affixed to the floor in the room where prisoners have online family meetings, as well as in the prison library. The Working Group urges the immediate cessation of these arrangements.

65. Finally, those held in the closed special unit as a means of disciplinary action are not able to work, are not eligible for conditional early release and cannot earn bonus days, a practice the Government should revise without delay to satisfy the purpose of the sentence of imprisonment, as stipulated in rule 4 of the Nelson Mandela Rules.

[14] CCPR/C/MNG/CO/6, para. 20.

66. The Working Group is disturbed by the oppressive and punitive manner in which individuals in the closed special unit are treated. As specified in rule 5 of the Nelson Mandela Rules, the prison regime should seek to minimize any differences between prison life and life at liberty. The Government should urgently revise the regime and treatment of individuals held in the closed special unit (Prison No. 405).

6. Criminalization of certain acts

67. The Working Group notes with concern several provisions in national legislation that are not fully aligned with the requirements of international law on the prohibition of arbitrary deprivation of liberty.

68. Article 13.4 of the Criminal Code introduces the autonomous crime of forced disappearance, which is welcome. However, the definition of the crime does not encompass all types of deprivation of liberty as it refers only to "unlawful detention", while an offence of enforced disappearance may be initiated as lawful deprivation of liberty and subsequently become unlawful owing to the occurrence of other elements of the offence, as noted by the Committee on Enforced Disappearances in 2021.[15]

69. Article 19.4 of the Criminal Code penalizes illegal cooperation with foreign intelligence agencies and agents, article 19.6 prescribes the crime of "sabotage" and article 13.14 introduces the crime of criminal libel. These crimes are broadly worded, and the Working Group is concerned that they could be used to interfere, inter alia, with the legitimate work of human rights defenders and/or legitimate expressions of opinion of individuals. In this regard, the Working Group received accounts of individuals being detained for protesting against strategic development projects, without having committed any violent crime or causing serious property damage. Similarly, the 1994 Law on Procedures for Organizing Peaceful Assemblies and Demonstrations, amended in 2017, which requires prior authorization of all public gatherings, can be used to curb the legitimate exercise of freedoms of expression, association and assembly.

70. Vaguely and broadly worded laws can have a deterrent effect on the exercise, inter alia, of the rights to freedom of thought, conscience and religion, freedom of opinion and expression, freedom of peaceful assembly and association and participation in political and public affairs as they have the potential for abuse, including the arbitrary deprivation of liberty. The Working Group calls upon the Government to revise these provisions.

71. Further, the Working Group learned of the introduction of legal restrictions to combat the spread of the coronavirus disease (COVID-19) pandemic. While these provisions no longer apply, the Working Group heard testimony of the regulations being used to curb the legitimate expressions of opinion and freedom of association and assembly. Lawyers for those detained for protesting against restrictions were also reportedly harassed and, in some cases, detained.

72. The emergency measures introduced to address public health emergencies should not be used to limit fundamental rights and freedoms, including the rights to freedom of expression and peaceful assembly and association. These powers must not be used to deprive particular groups or individuals, such as human rights defenders, journalists, members of political opposition parties, religious leaders or health-care professionals, of their liberty.[16]

73. Finally, the possession of drugs for personal use is currently criminalized in Mongolia. The Working Group urges the Government is urged to review its policy on drugs and stresses that drug policies should be anchored in a medical approach.[17]

B. Detention due to infringements

74. Pursuant to the 2017 Law on Infringements, individuals can be sentenced to arrest, ranging from 7 days to 30 days, for petty crimes such as traffic offences. Detainees, called

[15] CED/C/MNG/CO/1, paras. 16–17.
[16] A/HRC/45/16, annex II, para. 22.
[17] A/HRC/47/40, para. 38.

arrestees, serve their sentences in dedicated short-term detention facilities under the authority of the General Executive Agency of Court Decision. The Working Group visited such facilities and observed a generally more relaxed regime, although the red lines noted in prisons were also used in the majority of facilities. The Working Group reiterates that the use of such red lines should cease at all detention facilities in Mongolia.

75. Further, owing to the lack of dedicated courts, suspects in infringement cases appear before regular criminal courts. In practice, since criminal matters take precedence, suspects usually have to wait until their hearing can be fitted in. It is not uncommon for people to be called to court in the morning and to wait for their hearing until late afternoon, without any waiting facilities being provided. Hearings themselves are usually exceptionally short, lasting 15 to 20 minutes. While individuals are entitled to legal representation, it is not provided free of charge and hearings are usually conducted without the presence of a lawyer. While appeals are possible within 14 days of the decision of the court of first instance, in practice this is rare, given the short duration of the sentences imposed and the fact that arrestees are usually taken to a short-term detention facility immediately after sentencing. In addition, arrestees are liable to a fee of 3,800 tugriks for each day spent in a short-term detention facility. Some arrestees are engaged in maintenance work and are not obliged to pay for the days they worked.

76. The Working Group is concerned over the range of conduct that is penalized under the 2017 Law on Infringements and recalls that the deprivation of liberty should always be a measure of last resort. The Government should revise the range of acts punishable by arrest, ensuring that the principle of personal liberty is upheld in accordance with article 9 of the International Covenant on Civil and Political Rights. Further, arrestees should not be liable for payment in connection with their detention in short-term detention facilities. Finally, recalling that safeguards against arbitrary detention are applicable even when detention is of brief duration, the Working Group urges the effective implementation of due process guarantees, in particular the right to legal assistance.

C. Child justice

77. Child justice, which is regulated under article 6.2 and chapter eight of the Criminal Code, sets the minimum age of criminal responsibility at 16. For serious crimes, in accordance with article 6.2.2 of the Criminal Code, responsibility is set at age 14. The Working Group was informed of numerous alternative measures to custody that are widely employed in relation to children in conflict with law; it also observed that individuals under age 16 are practically never detained by the police and that the pretrial detention of children is rare, which is highly commendable.

78. However, the justice system has no specialized courts for youth and that "Juvenile Committees" play a role in overseeing judicial outcomes for children. The Working Group is concerned about the absence of a comprehensive juvenile justice system in Mongolia, including the lack of specialized courts for juveniles. It urges Mongolia to implement earlier recommendations of the Committee on the Rights of the Child and the Committee against Torture to establish an effective, specialized and well-functioning juvenile justice system in compliance with international standards, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).[18]

79. It is of further concern that children detained in general pretrial detention facilities are not provided with educational activities whereas children who have been sentenced have access to schooling in the special educational-disciplinary facility in Ulaanbaatar. Children wear school uniforms and show great enthusiasm for their education. The facility was in a poor state of repair, however, with broken toilets and shower facilities and limited classroom space. The Working Group recalls the relevant standards contained in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and urges immediate attention to the above conditions of detention.[19]

[18] CRC/C/MNG/CO/3-4, para. 76; CRC/C/MNG/CO/5, para. 43; and CAT/C/MNG/CO/2, para. 24.
[19] General Assembly resolution 45/113, annex, paras. 32–34.

D. Detention in the context of psychosocial disability

80. The 2013 revised law on mental health provides the legal framework for both voluntary and involuntary admission to the National Centre for Mental Health, the main facility for persons with psychosocial disabilities. At the time of the Working Group's visit, the facility had 552 patients with an official capacity of 550; it was also serving a large number of outpatients. While most patients spend about a month in the centre, some have been there for 20 to 25 years. Of that population, the Working Group was concerned that while 120 individuals could be medically discharged they remain at the Centre indefinitely owing to the lack of community-based services. The initiative by the centre, dating back over 20 years, to establish assisted living arrangements for some patients in traditional Mongolian *gers*, situated within the compound of the centre, is highly commendable. The Working Group urges further expansion of similar assisted living arrangements and community-based services in all 21 provinces of Mongolia.

81. Persons who commit criminal acts but are not competent to undergo criminal proceedings due to psychosocial disabilities are placed in a closed facility at the Centre. While conditions are basic, the facility is clean and communal gathering spaces, including an outdoor exercise yard, are available. The placement of such persons in the Centre is subject to the authorization of a judge and the length of their stay is periodically reviewed by the court. While the review process and the decision to release individuals rests with the judiciary, the decision is also informed by assessments provided by medical staff.

V. Conclusions

82. **The Working Group commends the Government of Mongolia for its invitation and for its willingness to submit itself to scrutiny. It believes that the findings in the present report will support the efforts of the Government to address situations of arbitrary deprivation of liberty.**

83. **Positive changes are being made across Mongolia in relation to the deprivation of liberty, including the strengthening of the mandate of the National Human Rights Commission through the 2020 revision of the Law on the National Human Rights Commission; the designation of the national preventive mechanism; the adoption of the Law of Mongolia on the Legal Status of Human Rights Defenders; the adoption of several amnesty laws, including the 2021 Amnesty Law marking the 2230th anniversary of foundation of the first Mongolian Statehood, the 815th anniversary of the Great Mongol Empire and 100th anniversary of People's Revolution of Mongolia; the absence of systemic detention in the context of migration; the establishment of the minimum age of criminal responsibility at age 16; a general approach not to detain children; and the voluntary admission of persons in need of assisted living to State-run care institutions.**

84. **However, the Working Group also observed a number of challenges within the criminal justice system that place defendants at risk of arbitrary detention, namely:**

(a) **Shortcomings in the implementation of the revised Criminal Code and the Criminal Procedure Code, as reflected, inter alia, in periods of police custody significantly exceeding 48 hours and in the summoning of individuals to police stations as witnesses and their subsequent treatment as suspects, thus depriving them of important procedural guarantees;**

(b) **Video and audio recordings made in interrogation rooms are often deleted after 14 days, which poses obstacles for oversight bodies such as the National Human Rights Commission to effectively exercise its control as well as for suspects to the enjoyment of their full due process rights;**

(c) **The time period for presenting individuals deprived of liberty by arrest or detention before judicial authorities often surpasses the 48-hour limit, thus violating their right to be brought promptly before a judge under article 9 (3) of the International Covenant on Civil and Political Rights; this adversely impacts the right of those deprived of liberty to bring proceedings before a court so that a decision may be made**

without delay on the lawfulness of detention, in accordance with article 9 (4) of the Covenant;

(d) **There are reported instances of people being left in sobering-up cells for extended periods of time during national holidays, sometimes for as many as seven consecutive days, and of lesbian, gay, bisexual, transgender and intersex persons being verbally and physically abused in such settings;**

(e) **Breaches of procedural and fair trial guarantees, including a high percentage of arrests without warrants being obtained in advance; data reveal that confessions play a significant role in investigative practices and subsequent legal proceedings, with around 40 per cent of cases decided annually involving confessions; instances were also reported in which confessions were coerced from suspects against their will, often without the presence of legal counsel; defence lawyers are frequently denied full access to their clients' files to contest the necessity of pretrial detention, contrary to article 10 of the Universal Declaration of Human Rights and articles 14 (1) and 14 (3) (b) of the International Covenant on Civil and Political Rights; and court hearings are often brief, lasting less than an hour even for serious crimes, with sentences of up to 20 years imposed, in breach of articles 9 and 14 of the Covenant;**

(f) **The system of bonus days employed in open regime prisons to reward good behaviour by reducing the length of sentences is commendable, however, the system is not formalized and such bonus days can be deducted for breaches of discipline in an arbitrary fashion; similarly, the early conditional release mechanism, stipulated in article 6.12 of the Criminal Code, lacks transparency;**

(g) **Prisoners are subjected to a very strict behavioural regime, including: (i) the use of painted red lines delineating space on the floors of prisons that prisoners are barred from stepping across; (ii) poor provision of food; and (iii) a suicide watch protocol consisting of the handcuffing of suicidal individuals without an upper time limit being prescribed;**

(h) **The regime in the special closed unit (Prison No. 405), where prisoners are held in solitary confinement and have to move outside their cells in hand and leg cuffs, is particularly oppressive and punitive; in addition, leg cuffs are affixed to the floor in the room where prisoners have online family meetings and in the library; individuals held in the special closed unit as means of disciplinary action are not able to work, are not eligible for conditional early release and cannot earn bonus days;**

(i) **Some provisions in national legislation are not fully aligned with the requirements of international law on the prohibition of the arbitrary deprivation of liberty, including several broadly worded provisions in the Criminal Code, in particular articles 13.14, 19.4 and 19.6, which could be used to interfere with the legitimate expression of individual opinions as well as the criminalization of the possession of drugs for personal use.**

85. **Challenges regarding detention in the context of infringements include:**

(a) **Provisions of the 2017 Law on Infringements, which penalize a broad range of conduct, and its sentencing regime, which includes arrest from 7 days to 30 days, are at odds with the principle of personal liberty stipulated in article 9 of the International Covenant on Civil and Political Rights; individuals arrested under the law are liable to a fixed fee for each day spent in short-term detention and/or sobering-up facilities;**

(b) **The lack of dedicated courts to hear cases pertaining to infringements: hearings in ordinary criminal courts are subject to delays and are exceptionally short; legal representation of suspects is not free of charge so that hearings are usually conducted without a lawyer, in contravention to article 14 (3) (d) of the International Covenant on Civil and Political Rights; and the right of appeal is rarely exercised in such cases.**

86. **In relation to child justice, the Working Group notes the following shortcomings:**

(a) **The absence of a comprehensive framework on juvenile justice in conformity with international standards in Mongolia, including of specialized courts for juveniles;**

(b) **The special educational-disciplinary facility for sentenced children in Ulaanbaatar visited by the Working Group lacked the requisite conditions of detention compliant with relevant international standards, including the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.**

87. **The lack of community-based services for persons with psychosocial disabilities has resulted in a significant number of individuals having to remain at the National Centre for Mental Health indefinitely. The Working Group commends the introduction of assisted living arrangements for some individuals in the traditional Mongolian *gers* situated within the compound of the National Centre.**

VI. Recommendations

88. **The Working Group recommends that the Government take the following measures, building on its positive initiatives, to address the arbitrary deprivation of liberty:**

(a) **Support the further allocation of human and financial resources to the National Human Rights Commission, in particular for the new thematic functions that have been vested in it, enabling it to fully and effectively discharge all its functions, and engage with it constructively in implementing the present recommendations;**

(b) **Ensure the autonomy of the national preventive mechanism in selecting its staff; enable the National Preventive Mechanism Unit to commence work with a full complement of 10 staff as soon as possible by allocating sufficient resources; and ensure financial independence of the national preventive mechanism by enabling the Commissioner to allocate the funding designated for its work independently;**

(c) **Amend broadly worded legal provisions of the Law of Mongolia on the Legal Status of Human Rights Defenders in order to obviate the possibility of individuals being detained for being critical of or for challenging existing policies and practices and to ensure the principle of legality stipulated in article 11 (2) of the Universal Declaration of Human Rights;**

(d) **Include all prisoners in the scope of any future amnesty laws;**

(e) **Ensure that immigration detention facilities are located in different premises from the criminal justice facilities;**

(f) **Consider assessing the jobs performed in State-run care institutions for persons in need of assisted living as "hard", according to the job qualification system of the 2021 Labour Law, and providing care for older persons in assisted living facilities on a smaller scale;**

(g) **In relation to detention in the context of psychosocial disability, the Working Group recommends that the Government support the expansion of assisted living arrangements and community-based services across all 21 provinces of Mongolia.**

89. **The Working Group recommends that the Government take the following measures in relation to the criminal justice system:**

(a) **Review the implementation of criminal procedures to ensure, inter alia: that the period of time spent in police custody does not exceed the maximum of 48 hours; that the 48-hour period includes the total amount of time individuals spent deprived of liberty; and that individuals summoned to police stations as witnesses are treated witnesses not suspects;**

(b) **Ensure that interrogation rooms throughout the country have closed-circuit televisions and video and audio equipment to ensure that interrogations are**

recorded; that recordings are kept for at least six months; and that recordings are made available, at no cost, to defendants and their counsel;

(c) **Ensure that detention without a warrant, in particular as practiced by specialized agencies such as the General Intelligence Agency and the Anti-Corruption Agency, is only permissible under exceptional circumstances, such as cases in flagrante delicto;**

(d) **Ensure that detainees are brought before a judge within 48 hours following their arrest and that any longer delay remains exceptional and is justified under the circumstances;**

(e) **Ensure that sobering-up centres avoid perpetuating a punitive approach to individuals in their custody and that any verbal or physical abuse of individuals in sobering-up centres is prohibited and sanctioned; the practice of charging for staying in sobering-up facilities must stop;**

(f) **Take effective measures to guarantee that all detained persons are afforded, in practice, all fundamental legal safeguards from the outset of their deprivation of liberty, in accordance with international standards;**

(g) **Eliminate the use of forced confessions by implementing the Principles on Effective Interviewing for Investigations and Information Gathering (the Méndez Principles) to assist the work of law enforcement agencies, allowing access to legal representation during questioning, eliminating confessions as a cornerstone of the investigative process and effectively investigating all allegations of forced confessions and the use of excessive force;**

(h) **Guarantee defence lawyers equal access to case files to at all stages of legal proceedings, including the pretrial stage, and allow lawyers to make copies of case files, in compliance with article 10 of the Universal Declaration of Human Rights and articles 14 (1) and 14 (3) (b) of the International Covenant on Civil and Political Rights;**

(i) **Enable defence lawyers to request expert conclusions as part of legal proceedings;**

(j) **Ensure that court hearings allow sufficient time for meaningful scrutiny of each case;**

(k) **Revise the current approach to the deduction of so-called bonus days in prison settings by formalizing the bonus-day process and eliminating possibilities for abuse; review the practice of the methodological councils without delay in order to formalize the applicable procedures for early conditional release; and ensure transparency in decision-making processes;**

(l) **Erase all red lines on prison floors that prisoners are not allowed to overstep without a threat of disciplinary action;**

(m) **Review the suicide-watch protocol in prisons to ensure an upper limit for the length of time that such individuals spend handcuffed;**

(n) **Urgently revise the solitary confinement regime in the special closed unit (Prison No. 405) and ensure that solitary confinement measures applied in that facility respect the provisions of the International Covenant on Civil and Political Rights and the Nelson Mandela Rules, in particular rules 43 (1) (b) and 44; the use of hand and leg cuffs, especially those fixed to the floor in meeting rooms, must cease immediately;**

(o) **Revise vaguely and broadly worded provisions of the Criminal Code to guarantee the legitimate work of human rights defenders and legitimate expressions of the opinions of individuals and decriminalize the possession of drugs for personal use.**

90. **The Working Group recommends that the Government take the following measures in relation to the deprivation of liberty in the context of infringements:**

(a) **Consider establishing dedicated infringement courts; ensure that legal representation during hearings is available free of charge and that arrestees are not charged for detention in short-term detention facilities;**

(b) **Revise the range of acts punishable by arrest under the Law on Infringements to ensure that the principle of personal liberty is upheld, in accordance with article 9 of the International Covenant on Civil and Political Rights.**

91. **The Working Group recommends that the Government take the following measures in relation to child justice:**

(a) **Establish an effective, specialized and well-functioning juvenile justice system, in compliance with international standards, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules);**

(b) **Ensure that children detained in general pretrial detention facilities are provided with educational activities;**

(c) **Ensure the requisite conditions of detention in the special educational-disciplinary facility for sentenced children in Ulaanbaatar in compliance with relevant international standards.**

Appendix

Detention facilities visited by the Working Group

The Working Group visited the following 21 facilities:

- National Mental Health Centre of Mongolia
- First Division of the Police Department in Bayanzürkh District
- Sobering-up facility at the First Division of the Police Department in Bayanzürkh District
- Bayangal District Police Department, Police Division No. 1
- Sobering-up facility at the Bayangal District Police Department
- Railway Police Agency
- Sobering-up facility at the Railway Police Agency
- Open and Closed Prison (Prison No. 415)
- Centre for Treatment and Employment of People with Alcohol and Substance Addiction
- Temporary Protection Shelter in Tüv Province
- Dzuunmod Police Station in Tüv Province
- Sobering-up facility at Dzuunmod Police Station
- Open and Closed Prison (Prison No. 407)
- Child Protection Response and Temporary Protection Shelter
- (not a place of deprivation of liberty
- Closed Prison No. 409
- Pretrial Detention Facility (Prison No. 461)
- Special educational-disciplinary facility for children in conflict with the law
- Batsümber State Residential Care Centre for Older People
- (not a place of deprivation of liberty)
- Special closed unit (Prison No. 405)
- General Executive Agency of Court Decision
- Detention unit for foreign nationals