

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

69th session (Geneva 31 July – 18 August 2006)

Mongolia (18th periodic report)

Information submitted to the Committee

Mongolia submitted its 18th periodic report¹ due in 2004. The State party did not submit written replies to the list of issues² submitted by the Committee. No explanation was given. The report was very descriptive of the domestic and international laws in place ensuring the respect of Articles 2 to 7 of the *Convention on the Elimination of All Forms of Racial Discrimination* (the Convention). This included a wide array of international conventions to which Mongolia is a party. Information relating to government structure and geographical factors was provided in a separate core document³. A draft version of the State report was submitted to the Mongolian National Human Rights Commission, as required by Mongolian law. This independent Commission can report its concerns directly to parliament.

A parallel report was submitted by Save the Children⁴, a non-governmental organisation (NGO), which drew attention to the education status of children from minority ethnic groups. It suggests that children in these groups may suffer from a lack of opportunities and lag behind.

Mongolia has one reservation towards Article 17.1 of the Convention⁵ as it finding this article discriminatory since it restricts the right of some States to join the Convention. This was not addressed by the Committee. The Committee also asked about Mongolia's position with regards to Article 14.1⁶, which the State party accepted fully and unconditionally. The Committee's Concluding Observations, however, noted that this had not yet been done officially and urged the State party to do so.

Themes and Issues

The delegation representing the State party was comprised of the Minister for Justice and Home Affairs, the Permanent Representative of Mongolia to the United Nations, as well as other Government officials. Although the delegates seemed slightly uncomfortable working in English, this high-level delegation was well prepared and appeared committed to a constructive dialogue with the Committee. The session was brief, going through only one round of questions. The main issues covered regarded the implementation of the Convention, the status of foreign citizens and stateless persons, and ethnic minorities' rights to education.

Legal status of the Convention in Mongolia

With regards to the implementation of the Convention, the State party explained that Mongolia's legislation takes account of both international and domestic law. Any international treaty to which Mongolia is a party is **self-executing** in the sense that it automatically becomes part of domestic legislation. When there is a conflict with already existing domestic legislation, the international treaty takes precedence. A general concern for the Committee, however, was that legislation only takes into account individuals and does not consider the prosecution of an organisation as a whole if it is the organisation itself that carries out an integrated and systematic form of discrimination.

The Committee also requested information on the ethnic composition of the **Government** and the **representation** of minority groups in the **public sector**. In this respect, the State party explained that Mongolia does not have a form of "affirmative action" or any other system to

¹ CERD/C/476/Add.6, (26 October 2005)

² Available at http://www.ohchr.org/english/bodies/cerd/docs/AdvanceVersion/CERD_C_476_Add6.doc

³ HRI/CORE/MNG/2005, (8 February 2006)

⁴ Available at <http://www.ohchr.org/english/bodies/cerd/docs/ngos/soc-full.pdf>

⁵ Article 17.1 of ICERD defines which parties may sign the Convention. The full text of ICERD is available at <http://www.ohchr.org/english/law/cerd.htm>

⁶ Article 14.1 of ICERD recognises the competence of the Committee to receive and consider individual or group complaints.

ensure the equal or proportional representation of minorities. In its Concluding Observations⁷ the Committee pointed out low levels of minority representation and recommended that the State party adopt measures to ensure adequate representation. Furthermore, pointing to General Recommendation 13, it was also recommended that the State party adopt measures for the training of law enforcement officers to abide by the principles of the Convention.

Status of foreign citizens and stateless persons

The Committee inquired about the rights of non-citizens for obtaining citizenship. The State party replied that rules for obtaining citizenship were dependent solely on one of the parents having citizenship. If a child's parents' status is undefined, they are granted citizenship. However, there was no mention of how adult non-citizens can obtain citizenship. In this regard, the Committee recommended that the relevant amendments be made in the legislation to ensure that there is no discrimination based on nationality.

The second area of concern, mentioned by several members, related to an article of the Law on the Legal Status of Foreign Citizens⁸. This article allows parliament to restrict non-citizens rights if 'incompatible with local culture'. In this regard, the State party pointed to an error in translation, stating that the wording should actually be 'against local culture'. While the Committee did not follow up on this article specifically, it did recommend for the State party to adopt comprehensive legislation to prevent and prohibit discrimination based on race for non-citizens.

The Committee criticised the legislation in place for the employment of non-citizens following which they lose their residency authorisation if they change their employment. The Committee recommended that the legislation be changed to allow non-citizens to seek alternative employment unless residency is specifically dependent on a remunerated activity.

Finally, concerns were expressed regarding the limitations of civil, political, economic, social, and cultural rights of non-citizens. Indeed, non-citizens are barred from being members of political parties or forming a political party, and cannot be employed full time in the public sector. The Committee expressed satisfaction with the new Civil Code that gives the same rights to non-citizens and citizens in civil legal matters, but, pointing to General Recommendation 30, recommended that the State party take measures to ensure the respect of those rights "to the extent recognised under international law".

The Committee also criticised Mongolia's lack of legal definition for **refugees**, who they fear could be indirectly discriminated against because of this. The State party mentioned that the Mongolian Government is actively working towards adopting the *1951 Convention Relating to the Status of Refugees*, and is working with the UNHCR in the meantime to alleviate refugees' suffering. While the Committee was pleased with the cooperation with the UNHCR and recommended ratifying the *1951 Convention Relating to the Status of Refugees*, it also requested that the next periodic report include information on the treatment of refugees and what measures are in place to ensure their rights are respected.

Minorities' educational and cultural rights

The parallel report submitted to the Committee by Save the Children concerned the education of children from minority groups. The Committee followed up on this report, expanding it to address the education of minorities in general, and inquired about the measures in place to promote education and to provide primary education in both Mongolian and the native language. The State party responded by stating that minority groups receive funding for their own schools if they meet the State requirements for primary education.

The State party further elaborated on the presence of language and cultural programmes for minorities. Examples were given of specific language programs in place. However, the examples given referred to one minority group, the Tsaatans, and no information was given to indicate a systematic programme in place to promote the education of minorities. This was of particular concern since the Kazakhs, the largest minority, did not receive any mention.

⁷ CERD/C/MNG/CO/18 (Unedited), (August 2006)

⁸ Article 10.7

Accordingly, the Committee requested that the State party facilitate the education of minority groups, and requested that in its next periodic report, the State party present information on the issue along with the texts of the laws concerned.

Reports of racial discrimination

In referring to cases of racial discrimination, the State party mentioned that none had been reported so far. This did not satisfy the country Rapporteur (Mr. Chengyuan Tang), who stated that this did not necessarily mean that racial discrimination does not take place. Accordingly, he suggested that the State party investigate this and, in its Concluding Observations, the Committee recommended that the State party adopt legislation and measures to clearly prohibit and prevent racial discrimination. It also requested that in the next period report the State party present reported cases as well as the prosecutions and penalties that ensued.

Conclusions and Next Steps

The recommendations provided in the Concluding Observations generally covered most of the issues mentioned. The Committee deplored the **lack of statistics** in the report, which failed to provide a satisfactory explanation of what daily lives are really like for minority groups, and recommended that the State party provide more statistics in the future. The report was also criticised for being a little brief, lacking references to specific laws and not containing enough concrete examples of when such laws were applied.

Generally speaking however, the Committee seemed very pleased with the State party's approach to human rights. It applauded the creation of an independent National Human Rights Commission on several occasions, and commended the State party's openness to an 'active' dialogue. The atmosphere of the two sessions appeared positive, with the Committee generally pleased by Mongolia's progress despite financial difficulties and the nomadic nature of several minorities, which makes their access and registration more difficult.

The State party is requested to provide information within one year about how it has followed up on the Committee's recommendations. Finally, the Committee requested that the State party submit its 19th periodic report jointly with the 20th and 21st periodic reports on 5 September 2010.