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|  | United Nations | CED/C/MNG/CO/1 |
|  | **ADVANCE UNEDITED VERSION** | Distr.: General11 May 2021Original: English |

**Committee on Enforced Disappearances**

 Concluding observations on the report submitted by Mongolia under article 29 (1) of the Convention[[1]](#footnote-1)\*

1. The Committee on Enforced Disappearances considered the report submitted by Mongolia under article 29 (1) of the Convention[[2]](#footnote-2) at its 348th, 350th and 352nd meetings[[3]](#footnote-3), which took place virtually from 21 to 23 April 2021 due to the COVID-19 pandemic. At its 358th meeting, held on 6 May 2021, the Committee adopted the present concluding observations.

 A. Introduction

2. The Committee welcomes the report submitted by Mongolia under article 29 (1) of the Convention, which was submitted in conformity with the Committee’s reporting guidelines. Moreover, the Committee thanks the State party for its written replies to the list of issues.

3. The Committee further expresses its appreciation for the constructive dialogue with the delegation of the State party on the measures taken to implement the Convention, in which its concerns were addressed, and welcomes the frankness with which the delegation responded to the questions posed by the Committee. It thanks the State party for the additional information and clarifications received during the oral interventions, as well as in writing after the dialogue.

 B. Positive aspects

4. The Committee commends the State party for having ratified almost all of the United Nations core human rights instruments[[4]](#footnote-4) and their optional protocols,[[5]](#footnote-5) as well as the Rome Statute of the International Criminal Court.

5. The Committee also welcomes the measures taken by the State party in areas related to the Convention, including:

 (a) The amendment of the Criminal Code, in 2017, which saw the insertion of article 13.4 criminalizing the offence of enforced disappearance;

 (b) The adoption of the Law on Protection of Witnesses and Victims, in 2013, to expand the rights of victims of crimes;

 (c) The amendment to the Law on National Human Rights Commission, in 2020, to establish a torture preventive mechanism.

6. The Committee welcomes that the State party has extended a standing invitation to all special procedures of the Human Rights Council to visit the country.

 C. Principal subjects of concern and recommendations

 1. General information

7. The Committee considers that, at the time of the drafting of the present concluding observations, the legislative framework in force in the State party for preventing and punishing enforced disappearance was not in full compliance with the Convention. The Committee therefore recommends that the State party give due consideration to the present concluding observations, adopted in a constructive and cooperative spirit with the view to ensuring the full implementation of the Convention.

8. While noting the information that civil society organizations as well as the National Human Rights Commission of Mongolia were invited for their comments on the State party’s draft replies to the list of issues, the Committee is concerned that these stakeholders were not involved in the preparation of the State party’s initial report. In this regard, the Committee welcomes the statement made by the State party’s delegation that, following the dialogue, it would recommend that the Government revise the existing procedures for preparing periodic reports with a view to further engaging stakeholders for their inputs.

9. **The Committee recommends that the State party ensure the participation of the National Human Rights Commission and civil society organizations in the whole cycle of reporting to the Committee, from the preparation of its reports to the implementation of the recommendations.**

 Direct applicability of the Convention

10. The Committee notes with appreciation the confirmation by the State party’s delegation that the Convention can be directly applied by all civil and military jurisdictions. However, while noting that other international human rights treaties, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child, have been directly invoked before national courts, the Committee notes that the Convention has never been directly applied.

11. **The Committee calls upon the State party to take all the necessary measures, including by enhancing its awareness raising efforts, among the public as well as judiciary officers and lawyers, about the Convention, including about its scope, significance and direct applicability.**

 Individual and inter-State communications

12. The Committee notes that the State party has not yet recognized the competence of the Committee to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention (arts. 31 and 32).

13. **The Committee encourages the State party to recognize the Committee’s competence to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention respectively, with a view to strengthening the framework for protection from enforced disappearance provided for in the Convention.**

 National human rights institution

14. The Committee welcomes the information provided by the State party that, since the submission of the State party’s report, the law on the legal status of human rights defenders has been adopted and that a selection process for a new member of the National Human Rights Commission who will be in charge of handling complaints received from human rights defenders is underway. However, the Committee remains concerned about reports of the insufficient financial and human resources available to the Commission to discharge its mandate effectively and independently in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (art. 2).

15. **The State party should** **ensure that the selection process of the member of the National Human Rights Commission of Mongolia in charge of handling complaints be completed shortly. It should also take the necessary measures to provide the Commission with sufficient human, technical and financial resources to effectively carry out its mandate, including to promote and protect the rights enshrined in the Convention, in particular as relates to the prevention of enforced disappearances.**

 2. Definition and criminalization of enforced disappearance (arts. 1–7)

 Offence of enforced disappearance

16. The Committee commends the State party for having adopted an autonomous offence of enforced disappearance in art. 13(4) of the Criminal Code. It further welcomes the intention expressed by the delegation of the State party during the dialogue to recommend that article 13(4) of the Criminal Code is revised so as to bring it in full compliance with the Convention. In that connection, the Committee notes with concern that the definition contained in this provision does not fully conform to that in article 2 of the Convention. First, the current definition does not encompass all types of deprivation of liberty, as it only refers to “unlawful detention”, while an offence of enforced disappearance may be initiated as lawful deprivation of liberty and subsequently become unlawful due to the concurrence of other elements of the offence. Second, the Committee is concerned that paragraph 2 of article 13.4 of the Code is only applicable to “officials authorized to conduct investigative activities, prosecutors and judges”, thus not fully encompassing all “agents of the State” and “persons or groups of persons acting with the authorization, support or acquiescence of the State” as set out in article 2 of the Convention (arts. 2 and 4).

17. **The Committee recommends that the State party take the legislative measures necessary to bring the definition of enforced disappearance contained in article 13.4 of the Criminal Code fully into line with the definition set out in article 2 of the Convention.**

 Enforced disappearance as a crime against humanity

 18. While noting that enforced disappearance is included in the definition of genocide in article 29.5 of the Code, the Committee is concerned that domestic legislation does not criminalize the widespread or systematic practice of enforced disappearance as a crime against humanity. In this respect, the Committee welcomes the statement made by the delegation during the dialogue that it would recommend legal amendments to codify enforced disappearance as a crime against humanity (art. 5).

 19. **The Committee recommends that the State party explicitly recognize enforced disappearance as a crime against humanity, in line with article 5 of the Convention.**

 Criminal responsibility of superior officials and due obedience

20. The Committee regrets that the State party did not provide clear information on the way existing legislation ensures the full compliance with articles 6 (1) and (2) of the Convention (art. 6).

21. **The Committee recommends that the State party take the measures necessary to: (a) hold criminally responsible and duly punish any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance, in accordance with article 6 (1) (a) of the Convention; and (b) ensure that domestic legislation specifically establishes the criminal responsibility of superiors and provides for the prohibition of invoking superior orders or instructions to justify an offence of enforced disappearance, in line with articles 6 (1) (b) and (2) of the Convention.**

 Appropriate penalties

22. The Committee considers that the penalties provided for the offence of enforced disappearance in article 13.4 of the Criminal Code, which range from a fine to a maximum of 12 years of imprisonment, are not commensurate with the extreme seriousness of the offence. The Committee takes notes with interest of the affirmation by the delegation that all mitigating and aggravating circumstances could be applied directly from human rights treaties. However, it notes that neither the specific aggravating circumstances stipulated in article 13.4 of the Criminal Code for the crime of enforced disappearance nor the general aggravating circumstances provided for in article 6.6 of that Code include cases of enforced disappearance against persons with disabilities or other particularly vulnerable persons, as set out in article 7(2)(b) of the Convention. Similarly, it notes that the mitigating circumstances provided in article 6.5 of the Criminal Code do not specifically include “bringing the disappeared person forward alive”, in line with article 7(2)(a) of the Convention (art. 7).

23. **The Committee recommends that the State party adopt the legislative measures necessary to ensure that the penalties for the crime of enforced disappearance are in line with article 7 of the Convention, taking due account of its extreme seriousness and guaranteeing that, in no circumstances, the perpetration of the crime could be penalized only with a fine or a travel restriction. The Committee invites the State party to consider establishing for the offence of enforced disappearance all the specific mitigating and aggravating circumstances provided in article 7 (2) of the Convention.**

 3. Criminal responsibility and judicial cooperation with regard to enforced disappearance (arts. 8–15)

 Statute of limitations

24. The Committee is concerned that the statute of limitation that would apply to the crime of enforced disappearance ranges from 3 to 12 years, which can result in a very short duration. The Committee also takes note of the explanation provided by the State party’s delegation that, according to its law enforcement and judicial practice, a crime of continuous nature is considered to have been “accomplished” when the crime ceases, and paragraph 2 of article 1.10 of the Criminal Code, read in conjunction with paragraph 3 thereof, is thus in compliance with article 8 of the Convention. However, the Committee remains concerned about the vague language contained in article 1.10 of the Code specifying the moment at which the statute of limitations commences for a crime of enforced disappearance (art. 8).

25. **The Committee recommends that the State party take the necessary measures to ensure that, in line with article 8 of the Convention, the statute of limitations for an offence of enforced disappearance is of a long duration and proportionate to the extreme seriousness of the offence, and, taking into account its continuous nature, commences from the moment when the offence ceases.**

 Prompt, independent and impartial investigation

26. The Committee notes the statement made by the State party’s delegation that, in most cases, investigators decide whether to initiate criminal investigation within five days upon receiving a complaint. However, the Committee is concerned that this five-day timeframe under article 171.1 of the Criminal Procedure Code can permit late intervention of the competent authorities, which does not guarantee prompt investigation of an alleged enforced disappearance, as set out in article 12 (1) and (2) of the Convention. The Committee welcomes the information that the broad power granted to the National Security Council of Mongolia to appoint or dismiss judges has been rescinded in 2021. Nevertheless, the Committee is concerned that such power to appoint or dismiss heads of the prosecution service remains with the National Security Council (art. 12).

27.  **The Committee recommends that the State party consider reviewing the five-day timeframe in article 171.1 of the Criminal Procedure Code to initiate criminal investigation with a view to ensuring, in law and in practice, that the competent authorities systematically undertake without delay a thorough and impartial investigation in all cases of alleged enforced disappearance. The State party should also pursue its efforts to guarantee the full independence and impartiality of the authorities in charge of the investigation and prosecution of criminal allegations, including by removing from the National Security Council all power to appoint or dismiss prosecutors.**

 28. The Committee notes with satisfaction the information provided by the State party that cases of alleged misconduct by public officials would be assigned for investigation to a different investigative body to which the suspected officials do not belong. However, the Committee regrets the insufficient information about any specific mechanism or procedure in place to guarantee that law enforcement or security forces, whether civilian or military, whose members are suspected of involvement in the commission of an enforced disappearance do not participate in the investigation (art. 12)

29. **The Committee recommends that the State party increases its efforts to guarantee, in law and in practice, that law enforcement or security officials who are suspected of having committed the offence of enforced disappearance are suspended** **from their duties until an investigation is completed and do not take part in the related investigations.**

 4. Measures to prevent enforced disappearance (arts. 16–23)

 Non-refoulement

30. While noting the State party’s statement that consideration is being given to this matter, the Committee is concerned that article 44.2 of the Criminal Procedure Code does not include the risk of facing enforced disappearance as one of the grounds that would prevent the expulsion, return, surrender or extradition of a person to another country (art. 16).

31. **The State party should ensure that the principle of non-refoulement enshrined in article 16 (1) of the Convention is strictly respected in all cases and without exceptions. In this respect, the Committee recommends that the State party:**

**(a) Consider explicitly incorporating into its domestic legislation a prohibition on carrying out an expulsion, refoulement, surrender or extradition when there are substantial grounds for believing that the person concerned may be in danger of being subjected to enforced disappearance;**

 **(b) Ensure that any decision taken in the context of procedures of expulsion, refoulement, surrender or extradition evaluating the risk of a person being subjected to enforced disappearance can be appealed and that such an appeal has suspensive effect.**

 Search for disappeared persons and return of remains

32. The Committee notes with appreciation the delegation’s confirmation that a genetic database on missing persons exists in the State party and that the drafting process of a new data protection law, which would include a dedicated chapter on privacy issues relating to the genetic database, is underway. The Committee, however, regrets that the State party did not provide sufficient information on this draft law and that the current measures in place do not sufficiently guarantee that the use of such data is strictly limited to the purpose of the identification and search for disappeared persons (arts. 19 and 24).

33. **The State party should continue its efforts to systematically update and maintain its genetic database so that all available information on located human remains can be checked against the genetic data related to disappeared persons. The State party should also take the necessary measures to guarantee that the personal information collected in existing databases, including medical and genetic data, shall not be used or made available for purposes other than the search for the disappeared person, in full compliance with article 19 of the Convention.**

 Training

34. The Committee welcomes the provision of training programmes on human rights, including a module on enforced disappearance, to government officials, judges, prosecutors and law enforcement officials. Nonetheless, the Committee notes with concern that no specific training programme on the Convention is currently provided to military and medical personnel (art. 23).

35. **The Committee recommends the State party to ensure that all law enforcement and security personnel – whether civil or military – medical personnel, public officials and other persons who may be involved in the custody or treatment of persons deprived of their liberty, including judges, prosecutors and other officials responsible for the administration of justice, receive specific and regular training on the provisions of the Convention, in accordance with article 23 (1).**

 5. Measures to protect and guarantee the rights of victims of enforced disappearance (art. 24)

 Right to reparation and prompt, fair and adequate compensation

36. The Committee notes the State party’s confirmation that victims of enforced disappearance have a right to submit a separate civil claim for compensation in addition to their criminal proceedings and that dedicated funds have been established to provide compensation to victims of serious crimes in cases where the perpetrators lack sufficient resources. However, the Committee regrets that the State party did not provide information on the average length of relevant proceedings and the other forms of reparation available to victims of enforced disappearance, in compliance with article 24 (5) of the Convention (art. 24).

37. **The State party should guarantee the right to reparation and to prompt, fair and adequate compensation of all persons who have suffered harm as a direct result of an enforced disappearance. To this effect, the Committee recommends that the State party adopt the necessary measures to ensure that its domestic legislation provides for a comprehensive system of compensation and reparation that complies fully with article 24 (4) and (5) of the Convention and other relevant international standards; that is under the responsibility of the State; that is applicable even if no criminal proceedings have been initiated; and that is sensitive to the specific needs of the victim, in view of, inter alia, their sex, sexual orientation, gender identity, age, ethnic origin, social status and disability.**

 Legal situation of disappeared persons whose fate has not been clarified and that of their relatives

38. The Committee considers that the State party’s system governing the legal situation of disappeared persons whose fate has not been clarified does not accurately reflect the complexity of enforced disappearance. In particular, the Committee is concerned that the relatives of a disappeared person can access social welfare services, family and property rights only upon the issuance of the declaration of death and the passage of one year thereafter. In this respect, the Committee reiterates that, in view of the continuous nature of enforced disappearance, in principle and unless there is concrete evidence to the contrary, there is no reason to presume that a disappeared person has died, so long as his or her fate has not been clarified (art. 24).

39. **In the light of article 24 (6) of the Convention, the Committee recommends that the State party adopt the measures necessary to review its domestic legislation in order to ensure that it deals appropriately with the legal situation of disappeared persons whose fate has not been clarified and that of their relatives in fields such as social welfare, financial matters, family law and property rights, without having to declare the disappeared person dead. In this respect, the Committee encourages the State party to set up a procedure to obtain a declaration of absence as a result of enforced disappearance.**

 Right to form and participate in organizations and associations

40. The Committee regrets the absence of information concerning any measures in place to guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, in line with article 24 (7) of the Convention (art. 24).

41. **The State party should take the necessary measures to promote and protect the rights enshrined in article 24 (7) of the Convention.**

# **6. Measures to protect children from enforced disappearance (art. 25)**

 Legislation concerning the wrongful removal of children

42. While taking note of the crime of forgery of official documents in the Criminal Code of the State party, the Committee is concerned that existing domestic legislation does not include specific provisions penalizing all acts relating to the wrongful removal of children, as contained in article 25 (1) of the Convention (art. 25).

43. **The Committee recommends that the State party:**

**(a) Review its criminal legislation with the aim of incorporating as specific offences the acts described in article 25 (1) of the Convention and of providing for appropriate penalties that take into account the extreme seriousness of the offences;**

**(b) Establish specific procedures for returning the children referred to in article 25 (1) (a) of the Convention to their families of origin;**

**(c) Establish specific procedures for reviewing and, where appropriate, annulling any adoption, placement or guardianship that originated in an enforced disappearance and for re-establishing the true identity of the children concerned, taking into account the best interests of the child.**

 D. Fulfilment of the rights and obligations of the Convention, dissemination and follow-up

44. **The Committee wishes to recall the obligations undertaken by States upon ratification of the Convention and urges the State party to ensure that all measures it adopts are in full accordance with the Convention and other relevant international instruments.**

45. **The Committee also emphasizes the particular cruelty with which enforced disappearances affect women and children. Women victims of enforced disappearance are particularly vulnerable to sexual and other forms of gender violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisal as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves are subjected to disappearance or because they suffer as a result of the disappearance of their relatives, are particularly vulnerable to the violation of their human rights. Therefore, the Committee places special emphasis on the need for the State party to take into account systematically gender issues and the specific needs of women and children when implementing the present recommendations and all the rights and obligations of the Convention.**

46. **The State party is encouraged to disseminate widely the Convention, the additional information submitted under article 29, paragraph 4, of the Convention and the present concluding observations in order to raise awareness among all State authorities, civil society actors and the population at large. The Committee also encourages the State party to promote the participation of civil society in the process of implementation of the present concluding observations.**

47. **In accordance with the Committee's rules of procedure, the State party is requested to provide, by 7 May 2022, information on the implementation of the recommendations contained in paragraphs in paragraphs 17 (Offence of enforced disappearance), 35 (Training) and 39 (Legal situation of disappeared persons whose fate has not been clarified and that of their relatives) of the present concluding observations.**

48. **Under article 29 (4) of the Convention, the Committee may subsequently request additional information from the State party on the implementation of the Convention, including on the steps taken to implement the recommendations contained in the present concluding observations.**

1. \* Adopted by the Committee at its twentieth session (12 April – 7 May2021). [↑](#footnote-ref-1)
2. CED/C/MNG/1 [↑](#footnote-ref-2)
3. CED/C/SR.348, CED/C/SR.350 and CED/C/SR.352 [↑](#footnote-ref-3)
4. Mongolia is not party to the Convention on Migrant Workers [↑](#footnote-ref-4)
5. CCRP OP1; CEDAW-OP; CESCR-OP; CRPD-OP. [↑](#footnote-ref-5)