



# International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General  
30 September 2021

Original: English

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## Committee on Enforced Disappearances

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

1. The Committee on Enforced Disappearances considered the report submitted by Mongolia under article 29 (1) of the Convention<sup>1</sup> at its 348th, 350th and 352nd meetings,<sup>2</sup> held on 21, 22 and 23 April 2021, via videoconference owing to the coronavirus disease (COVID-19) pandemic. At its 359th meeting, held on 6 May 2021, it 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 provided during the oral interventions and in writing after the dialogue.

#### B. Positive aspects

4. The Committee commends the State party for having ratified or acceded to almost all of the United Nations core human rights instruments and their optional protocols,<sup>3</sup> and the Rome Statute of the International Criminal Court.

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

(a) The amendment of the Criminal Code, in 2017, including the insertion of article 13.4, in which the criminal offence of enforced disappearance was introduced;

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\* Adopted by the Committee at its twentieth session (12 April–7 May 2021).

<sup>1</sup> CED/C/MNG/1.

<sup>2</sup> See CED/C/SR.348, 350 and 352.

<sup>3</sup> Mongolia is not a State party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It has ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and has acceded to the Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.



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

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

6. The Committee welcomes the fact 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**

#### **Compliance with the Convention and participation of stakeholders**

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 a view to ensuring the full implementation of the Convention.

8. While noting the information that civil society organizations and the National Human Rights Commission of Mongolia were invited to provide 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 input.

**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 may 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 measures necessary to enhance its awareness-raising efforts, among the public and among 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 respectively (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 under way. 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 process of selecting the new member of the National Human Rights Commission, who will be in charge of handling complaints, is completed soon. It should also take the necessary measures to provide the Commission with sufficient human, technical and financial resources to discharge its mandate effectively, including promoting and protecting the rights enshrined in the Convention, in particular as relates to the prevention of enforced disappearance.**

## **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 article 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 be revised so as to bring it into 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 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 concurrence of other elements of the offence. Second, the Committee is concerned that article 13.4 (2) of the Criminal Code is applicable to investigating officials, prosecutors and judges only, 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 Criminal 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 classify 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 accordance 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 in which existing legislation ensures full compliance with article 6 (1) and (2) of the Convention (art. 6).

**21. The Committee recommends that the State party take the measures necessary: (a) to 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) to ensure that domestic legislation specifically establishes the criminal responsibility of superiors and provides that orders or instructions from superiors may not be invoked to justify an offence of enforced disappearance, in accordance with article 6 (1) (b) and (2) of the Convention.**

#### **Appropriate penalties**

22. The Committee considers that the penalties for the offence of enforced disappearance provided for 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 notes with interest the affirmation by the delegation that all mitigating and aggravating circumstances may 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 offence of enforced disappearance nor the general aggravating circumstances provided for in article 6.6 of that Code includes 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 effectively contributing to “bringing the disappeared person forward alive”, in accordance 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 offence of enforced disappearance are in accordance with article 7 of the Convention, taking due account of the extreme seriousness of the offence and guaranteeing that under no circumstances may the offence be punishable by a fine or a travel restriction only. The Committee invites the State party to consider establishing all of the specific mitigating and aggravating circumstances for the offence of enforced disappearance provided for in article 7 (2) of the Convention.**

### **3. Criminal responsibility and judicial cooperation in relation to enforced disappearance (arts. 8–15)**

#### **Statute of limitations**

24. The Committee is concerned that the statute of limitations that applies to the offence of enforced disappearance ranges from 3 to 12 years, which can result in a very short duration. The Committee also notes the explanation provided by the State party’s delegation that, according to its law enforcement and judicial practice, a crime of a continuous nature is considered to have been “accomplished” when the crime ceases, and that article 1.10 (2) of the Criminal Code, read in conjunction with article 1.10 (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 the offence of enforced disappearance (art. 8).

**25. The Committee recommends that the State party take the necessary measures to ensure that, in accordance with article 8 of the Convention, the statute of limitations for the offence of enforced disappearance is of 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 a criminal investigation within five days of receiving a complaint. However, the Committee is concerned that this five-day time frame, provided for in article 171.1 of the Criminal Procedure Code, can permit late intervention by 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 time frame for initiating a criminal investigation, provided for in article 171.1 of the Criminal Procedure Code, 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 did 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 civil or military, whose members are suspected of involvement in the commission of the offence of enforced disappearance do not participate in the investigation (art. 12)

29. **The Committee recommends that the State party increase 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 has been completed and that they 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 articles 406.1 and 411 of the Criminal Procedure Code do not include the risk of facing enforced disappearance as one of the grounds preventing 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 exception. 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 may be appealed and that such an appeal has a 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 under way. However, the Committee 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 purposes of identifying and searching 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 may 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, is not 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 or medical personnel (art. 23).

35. **The Committee recommends that the State party 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 receive 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 or on 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 receive reparation and prompt, fair and adequate compensation of all persons who have suffered harm as a direct result of enforced disappearance. To this effect, the Committee recommends that the State party take the measures necessary 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 or 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 may have access to social welfare services and 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, as 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 requiring that the disappeared person be declared 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 accordance with article 24 (7) of the Convention (art. 24).

41. **The State party should take the measures necessary 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 noting the crime of forgery of official documents in the Criminal Code, the Committee is concerned that existing domestic legislation does not include specific provisions penalizing all acts relating to the wrongful removal of children, as provided for 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 of children that originated in an enforced disappearance and for re-establishing the true identity of the children concerned, taking into account their best interests.**

### **D. Fulfilment of the rights and obligations set out in the Convention, dissemination and follow-up**

44. The Committee wishes to recall the obligations undertaken by States when becoming parties to the Convention and, in this connection, urges the State party to ensure that all the measures that it adopts are in full accordance with the Convention and other relevant international instruments.

45. The Committee also wishes to emphasize the particularly cruel effect of enforced disappearance on women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender-based 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 were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations. In this context, the Committee places special emphasis on the need for the State party to ensure that gender issues and the specific needs of women and children are systematically taken into account in implementing the recommendations contained in the present concluding observations and all the rights and obligations set out in the Convention.

46. The State party is encouraged to widely disseminate the Convention, its report submitted under article 29 (1) of the Convention, the written replies to the list of issues drawn up by the Committee and the present concluding observations, in order to raise awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the State party and the general public. The Committee also encourages the State party to promote the participation of civil society in the process of implementing the recommendations contained in 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 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 the State party to submit additional information on the implementation of the Convention, including on the implementation of the recommendations contained in the present concluding observations.

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