



International Convention for the Protection of All Persons from Enforced Disappearance

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Summary record of the 348th meeting

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Chair: Mr. Ayat

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The meeting was called to order at noon.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Mongolia (CED/C/MNG/1; CED/C/MNG/Q/1; and CED/C/MNG/RQ/1)

1. *At the invitation of the Chair, the delegation of Mongolia joined the meeting.*
2. **Mr. Munkh-Orgil** (Mongolia), introducing his country's initial report (CED/C/MNG/1), said that the rights enshrined in the Convention were protected under the Constitution, article 16 (13) of which provided that no person could be arrested, detained or deprived of his or her liberty, except on grounds prescribed by law. Although the National Human Rights Commission and other stakeholders had not been consulted in connection with the drafting of the initial report, they had been invited to comment on the draft replies to the list of issues and their comments were reflected in the final document (CED/C/MNG/RQ/1).
3. Following the ratification of the Convention by Mongolia, a new article on enforced disappearance, article 13.4, had been incorporated into the Criminal Code. However, in the process of preparing the initial report and the replies to the list of issues, the delegation had noted that certain discrepancies existed between the wording of article 13.4 and that of article 2 of the Convention. For instance, under article 13.4 (2), only investigating officials, prosecutors and judges could be held criminally liable for an act of enforced disappearance, whereas article 2 of the Convention provided for criminal liability for all "agents of the State". In the light of those discrepancies, the delegation would recommend that the Government should consider rewording the article in question to bring it into line with the Convention. Although the widespread or systematic practice of enforced disappearance was not defined as a crime against humanity in the Criminal Code, it was included in the definition of the crime of genocide in chapter 29 of the Code. Under the Criminal Code, the statute of limitations applicable in respect of enforced disappearance was considered to begin on the day that the offence ceased and not on the day that it started. Another recent development was the adoption by the parliament of a new law on the legal status of human rights defenders.
4. **Mr. Teraya** (Country Rapporteur) said that he wished to know whether the Government might consider recognizing the Committee's competence to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention, respectively, which was necessary for its full implementation. He would be grateful to receive information on the "human rights NGO forum" (CED/C/MNG/RQ/1, para. 2) that had been asked to provide comments on the State party's draft replies to the list of issues. It would be interesting to know what feedback that forum had provided and how the State party had responded to it. The delegation might also summarize the comments made by the National Human Rights Commission on the draft replies and how the State party had responded to them.
5. Noting that, as at 2 June 2020, there had been no cases in which the Convention had been directly applied by the courts or the administrative authorities, he asked whether that was still the case and whether the National Human Rights Commission had received any complaints of violations of Convention rights. The Committee would be grateful to learn whether a case of enforced disappearance could be brought before the Mongolian courts solely on the basis of alleged violations of the Convention or another human rights instrument or whether article 13.4 of the Criminal Code would also need to be invoked. The delegation might also indicate whether the courts could issue rulings based solely on such instruments.
6. **Ms. Kolaković-Bojović** (Country Rapporteur) said that she would be grateful if the delegation could specify how the definition of enforced disappearance contained in the Criminal Code incorporated the various constitutive elements of enforced disappearance contained in the Convention definition of the offence. In the light of the information provided by the head of delegation, she understood that only specific State agents, namely, investigating officials, prosecutors and judges, could be held liable for offences of enforced disappearance under article 13.4 of the Criminal Code. If her understanding was correct, she wished to know whether there was any possibility of also holding other State agents, such as members of the armed forces or the intelligence services, criminally liable under that article.

If not, she wondered whether they could instead be held liable under article 13.9 of the Criminal Code, on unlawful arrest or detention.

7. She would be interested to hear whether the State party's statistics on enforced disappearance reflected the fact that different persons could be held liable for the offence under different articles of the Criminal Code, depending on whether they were a State agent and on what position they held. If the Government took up the delegation's recommendation to amend the Criminal Code to bring certain provisions into line with the Convention, she wondered who would oversee that process and when the necessary amendments might be introduced.

8. She would welcome confirmation that, under article 13.4 of the Criminal Code, persons convicted of committing an offence of enforced disappearance would be liable to a travel ban lasting between 6 months and 2 years, a fine of between 1,350,000 and 10,000,000 Tugriks or a custodial sentence of between 6 months and 2 years. The delegation might also confirm that an act of enforced disappearance was punishable by a custodial sentence of between 2 and 8 years when it was committed against two or more persons, and by a custodial sentence of between 5 and 12 years when it was committed by an organized criminal group or when it caused serious harm to the victim's health or resulted in his or her death. She would be interested to know whether the delegation considered those sentences to be consistent with article 7 of the Convention, which required States parties to make the offence of enforced disappearance punishable by appropriate penalties that took into account its extreme seriousness. She would also like to know which provisions of the Criminal Code provided for the punishment of a superior who violated article 6 of the Convention and what penalty such a violation would carry.

9. Article 7 (2) (a) of the Convention provided that each State party could establish mitigating circumstances, in particular for persons who, having been implicated in the commission of an offence of enforced disappearance, effectively contributed to bringing the disappeared person forward alive or made it possible to clarify cases of enforced disappearance or to identify the perpetrators of an offence of enforced disappearance. It was her understanding that, when imposing penalties, courts were required under article 6.5 of the Criminal Code to consider the rendering of medical or other assistance to the victim upon committing a crime or the rendering of assistance in uncovering a criminal offence as mitigating circumstances. She wished to know whether the article on mitigating circumstances would be applied in cases where disappeared persons were brought forward alive.

10. Article 7 (2) (b) of the Convention provided that each State party could establish aggravating circumstances, in particular in the event of the death of the disappeared person or the commission of an offence of enforced disappearance in respect of pregnant women, minors, persons with disabilities or other particularly vulnerable persons. It was unclear whether article 13.4 of the Criminal Code provided similar protection for persons with disabilities or other particularly vulnerable persons.

11. From the information provided in the replies to the list of issues (CED/C/MNG/RQ/1, paras. 45–46), and the information provided by the head of delegation, it seemed that the widespread or systematic practice of enforced disappearance was not classified as a crime against humanity in national law; rather, in order for enforced disappearance to be considered a crime against humanity, it had to involve intent to commit genocide. She would like to know whether the State party intended to amend its Criminal Code in order to bring it into line with article 5 of the Convention.

12. Notwithstanding the information provided in the written replies (CED/C/MNG/RQ/1, paras. 49–52), she still had doubts over whether any persons who committed, ordered, solicited or induced the commission of, attempted to commit, were an accomplice to or participated in an act of enforced disappearance could be held criminally liable under national law. She would appreciate further clarification from the delegation in that regard.

13. **Mr. Teraya** said that the replies to the questions raised in paragraph 10 of the list of issues (CED/C/MNG/RQ/1, paras. 53–63) suggested that more serious offences were punished by harsher penalties and that longer statutes of limitations applied in such cases, which was a requirement of the Convention. However, since Mongolian criminal law did not

define enforced disappearance as a crime against humanity, he wished to know how the State party ensured compliance with article 8 of the Convention in respect of statutes of limitations.

14. According to paragraph 56 of the written replies, offences committed knowingly against minors or pregnant women or against two or more persons were punished by 2 to 8 years' imprisonment, a penalty which he found to be too lenient and too vague. Likewise, the five-year statute of limitations applicable in respect of such offences seemed altogether too short. He would welcome the delegation's comments on those observations.

15. Notwithstanding the explanation provided by the head of delegation, it was still unclear from the information provided in paragraph 58 whether the provisions of the Criminal Code on statutes of limitations were fully consistent with article 8 (1) (b) of the Convention. It would be helpful if the delegation could clarify the meaning of the phrases [that a statute of limitations] "commenced from the date of draw as accused" [and was] "recalculated from the date of the last criminal offence committed" in article 1.10 (2) and (3) of the Code, respectively. What was important, however, was that the term of limitation started from the date on which the crime of enforced disappearance ended, given its continuous nature. He understood from the written replies that the statute of limitations applicable in cases of enforced disappearance could be either 5 or 10 years. He would therefore appreciate an explanation of how and the circumstances in which each statute of limitations was applied.

16. The delegation might also explain what was meant by the phrase "no criminal liability was imposed for the criminal offence" in paragraph 64 concerning the enforceability of the Criminal Code outside the territory of Mongolia. He would welcome clarification of the information provided in paragraph 65, which described the persons who could be held criminally liable for offences committed outside the country, as it seemed to suggest that the State party might not be able to establish its competence to exercise jurisdiction over the crime of enforced disappearance in all the circumstances provided for under article 9 (2) of the Convention.

17. Moreover, the statement in paragraph 48 of the initial report ([CED/C/MNG/1](#)), to the effect that inquiry, investigation, prosecution and court proceedings must be conducted in the territory where offences had occurred, unless the offender was extradited to the requesting State in accordance with the international agreements to which Mongolia was a party, seemed to suggest that the State party might not be competent to prosecute a person who had committed a crime abroad but who was present in the country, which would run counter to articles 9 (2) and 11 (1) of the Convention. He would appreciate comments from the delegation on that observation.

18. From the information provided in paragraph 68 of the written replies, he understood that the Code of Criminal Procedure did not entitle the military authorities to investigate or prosecute persons accused of enforced disappearance. He wondered whether other legislation, such as military law, could give military authorities that kind of power, especially in times of war or in emergency situations.

The meeting was suspended at 12.40 p.m. and resumed at 12.50 p.m.

19. **Mr. Munkh-Orgil** (Mongolia) said that the Government of Mongolia was currently considering making the declarations provided for in articles 31 and 32 of the Convention. The Ministry of Justice had requested the opinions of other governmental agencies and would submit the matter to the Cabinet for decision in the coming months. The delegation would recommend that the Government and the parliament should make the declarations in question. The National Human Rights Commission had likewise recommended that the Government should make those declarations.

20. **Mr. Khosbayar** (Mongolia) said that any provisions or definitions contained in the Convention could be directly applied by the courts. Those provisions also extended to the military, particularly in cases involving violations of human rights, including those resulting from torture, trafficking in persons and abduction.

21. **Mr. Battseren** (Mongolia) said that, under national law, only investigators, prosecutors and judges could be held criminally liable for offences of enforced disappearance. To date, no cases had been brought before the courts under article 13.4 of the Criminal Code. Mongolia had, however, set precedents in applying the Convention against

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Although the wording of the Criminal Code and the Convention differed, the Code did cover accomplices to a crime, which would be applicable in cases involving violations of the Convention. The Code also dealt with the refusal to acknowledge deprivation of liberty and the concealment of the fate or whereabouts of the disappeared person.

22. The unlawful detention of a person was punishable by a travel ban or imprisonment. Damage caused by enforced disappearance, whether material or moral, was covered by national law. The Code of Criminal Procedure set forth a definition of the victim and victims' rights. Victims of enforced disappearance were considered to be not only the person who had been disappeared but also the persons directly affected by the disappearance. The Criminal Code covered the failure to act to prevent the commission of the crime.

23. **Mr. Munkh-Orgil** (Mongolia), lamenting the linguistic challenges of communicating the complexities and nuances of the Mongolian legal system in English, said that, regrettably, the coherent and comprehensive explanations provided by the members of the delegation had not been adequately reflected in the interpretation. The delegation would submit more detailed information on the matter in writing. He wished to reiterate that the Committee's concerns regarding the need to align the definition of the crime of enforced disappearance in the Criminal Code with that contained in article 2 of the Convention, and to codify the widespread or systematic practice of enforced disappearance as a crime against humanity, would be relayed to the Government. Amendments would then need to be drafted and submitted to the parliament for consideration. For that reason, it was not yet possible to give an accurate timeline for the introduction of such amendments.

24. Article 1.10 (3) of the Criminal Code stated that the statute of limitations commenced from the date of commission of the crime. However, according to judicial practice, in the case of continuous crimes such as enforced disappearance, the period of limitation commenced from the moment when the offence ceased. The Government was therefore of the view that the provision was consistent with article 8 (1) (b) of the Convention.

25. **Mr. Khosbayar** (Mongolia) said that the Criminal Code contained a broad definition of persons who might be involved in the commission of a criminal offence, which included principals, instigators, accomplices and direct or indirect participants. State agents could also be prosecuted for commission by omission. A person's level of involvement and the stage at which he or she participated in an act of enforced disappearance – given the continuous nature of that crime – were taken into account by judges during sentencing. With regard to mitigating and aggravating circumstances, judges also took international laws and conventions into consideration.

26. **Ms. Kolaković-Bojović** said that, regrettably, she had found it difficult to follow some of the delegation's responses. She was sensitive to the difficulties of interpreting the finer points of legal concepts into English and was appreciative of the State party's willingness to provide additional answers in writing.

27. She wished to know whether the process of drafting public policies or preparing reports for submission to international human rights treaty bodies involved public consultation and, if so, whether government departments were actually obliged to seek input from civil society and the National Human Rights Commission or whether it was merely optional. It would be useful to know more about the process through which non-governmental organizations (NGOs) were able to take part in the drafting of reports and whether the Government had any plans to encourage greater participation on their part. She would also welcome more detailed information on the mitigating and aggravating circumstances that were considered by judges during sentencing and on the specific penalties imposed for the crime of enforced disappearance.

28. **Mr. Teraya** said that he would be interested to know whether there were any barriers to the participation of NGOs in the preparation of reports to the treaty bodies. He would also welcome more information on the recently adopted law on the legal status of human rights defenders.

29. He noted with interest that the Mongolian courts had directly applied international treaties in several cases ([CED/C/MNG/RQ/1](#), para. 8); however, he remained unconvinced

that the definition of enforced disappearance in national law was in full compliance with that contained in article 2 of the Convention. He would therefore be interested to hear more about how international treaties could be applied directly by the courts, and whether victims of enforced disappearance, or other persons with a legitimate interest, were entitled to take proceedings before a court on the basis of the Convention alone, without having to rely on article 13.4 of the Criminal Code.

30. Concerning the statute of limitations, while he was largely satisfied with the answer provided by the head of delegation, he wondered whether that legal interpretation of article 1.10 of the Criminal Code was widely accepted. He wished to point out that the text of that provision included in paragraph 58 of the written replies was very difficult to understand.

31. **Mr. Munkh-Orgil** (Mongolia) said that, in addition to providing additional technical information in writing, he proposed to submit to the Committee an improved translation of article 1.10 of the Criminal Code, on the statute of limitations. To his mind, the lack of clarity on the matter stemmed from the poor quality of the translation of that article in paragraph 58 of the written replies. A more accurate translation should help clear up the confusion.

32. The Government had established a procedure detailing how government departments and agencies should collect and process information and prepare drafts of reports to be submitted to the human rights treaty bodies. The procedure stipulated that effective cooperation with other stakeholders, including civil society organizations and the National Human Rights Commission, was required. Regrettably, it appeared that the procedure had not been followed, as the National Human Rights Commission had not been consulted prior to the submission of the initial report. The delegation would certainly flag the issue, and enquiries would be made to determine the reasons for the oversight. The draft replies to the list of issues had been sent to the Commission and circulated among civil society organizations with an interest in the topic; however, the Commission alone had provided input. Thus, there was no impediment to the participation of NGOs or other stakeholders in that regard. While it was not considered necessary to take specific measures to encourage greater or more active participation on their part, it was true that efforts to achieve closer cooperation might be needed.

33. The recently adopted law on the legal status of human rights defenders was based on a model law of the United Nations. Under the new law, the mandate of the National Human Rights Commission would be broadened through the appointment of a new commissioner to head a unit dealing solely with complaints of attacks, threats and intimidation against human rights defenders.

34. Lastly, on the application of international conventions by the courts, he wished to explain that, while precedents had been set in applying the Convention against Torture and the Convention on the Rights of the Child, the Criminal Code took precedence in the adjudication of cases and in sentencing. There was nothing to preclude a person or victim of any crime, including of enforced disappearance, from filing a complaint directly with the courts; however, court proceedings could only be launched through the Prosecutor General's Office, which assessed all claims and forwarded them to the courts in the event that it deemed there was a case to be answered.

The meeting rose at 1.40 p.m.