



International Convention for the Protection of All Persons from Enforced Disappearance

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Summary record of the 350th meeting*

Held via videoconference on Thursday, 22 April 2021, at noon Central European Summer Time

Chair: Mr. Ayat

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* No summary record was issued for the 349th meeting.

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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 (continued) (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. Teraya** (Country Rapporteur), referring to the questions raised in the list of issues about procedural safeguards during the preliminary investigation phase (CED/C/MNG/Q/1, para. 12), said that he understood from paragraph 70 of the replies to the list of issues (CED/C/MNG/RQ/1) that an authorized investigator could initiate investigation proceedings when there was reasonable suspicion that an offence of enforced disappearance had been committed, whereas, according to paragraph 69, such proceedings could be brought only at the request of another State. If that was the case, the provision concerned was inconsistent with article 10 (1) of the Convention, which did not establish such a condition. Clarification of that point would be appreciated. Similarly, he would welcome clarification of the information contained in paragraph 71 of the written replies on the identification and treatment of foreign nationals and stateless persons during the preliminary investigation phase. He would also be grateful if the delegation could confirm that no allegations of enforced disappearance had been received by the Mongolian authorities since the submission of the written replies.
3. He noted that, according to the initial report (CED/C/MNG/1, para. 56), an investigator could conduct an investigation “within five days after receiving” a complaint or a report of a crime. However, such a time frame was not in keeping with article 12 (1) of the Convention, and five days was a long time to wait before launching an investigation into a suspected case of enforced disappearance. The written replies referred to the urgent need to provide the National Human Rights Commission with the necessary human and financial resources. He wondered whether the police was facing similar shortfalls. He also wished to know whether the Law on Police provided for the possibility of conducting ex-officio investigations.
4. Impartiality was crucial to any investigation. The Committee was mindful of the communication addressed to the Government of Mongolia by the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers on 14 May 2019 concerning the amendments to the Law on the Legal Status of Judges and the Law on the Public Prosecutor’s Office, which had introduced a new procedure whereby judges and heads of the prosecution service could be dismissed on the basis of a recommendation from the National Security Council. The Special Rapporteurs were concerned that the above-mentioned amendments fell short of international standards relating to the independence of the judiciary, the autonomy of the prosecution service and the separation of powers. Furthermore, the Human Rights Committee had stated in its concluding observations on the sixth periodic report of Mongolia (CCPR/C/MNG/CO/6, para. 31) that it remained concerned about reports that corruption continued to exist within the judiciary, undermining the independence of judges and the confidence of the public in the justice system. He would welcome the State party’s views on those issues.
5. While noting the information provided on the exclusion of officials from investigations into an alleged offence of enforced disappearance when they were suspected of having been involved in its commission (CED/C/MNG/RQ/1, para. 80), he wondered which authority could bar an investigator, prosecutor or judge from participating in investigations, prosecutions or criminal proceedings under article 4.1 (2.13) of the Code of Criminal Procedure. He also wished to know whether any person with a legitimate interest who considered his or her Convention rights to be affected could request the exclusion of a judicial officer from the proceedings. The meaning of the term “refusal request” in paragraph 80 (a) was likewise in need of clarification. It would be helpful to receive further information on who was authorized to consider the admissibility and the merits of such requests.
6. He wished to draw attention to the report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on its visit to Mongolia (CAT/OP/MNG/1, para. 26), in which the Subcommittee had expressed its concern

that the current investigation model, whereby acts of torture and ill-treatment allegedly committed by public officials were currently being investigated by public officials themselves, was more akin to a form of peer investigation, lacking in independence and impartiality and thus failing to ensure effective oversight. In the light of that report, it would be useful to receive details on the steps taken to ensure the impartiality of the investigation process in the State party.

7. While he welcomed the detailed information provided in the written replies about a person's right to file a complaint with the courts in the event of his or her rights being violated during criminal proceedings (CED/C/MNG/RQ/1, paras. 83–87), including the right to appeal a decision not to open a criminal investigation into an alleged offence, he would like to hear more about how that complaints procedure worked in practice and whether the National Human Rights Commission was involved in it. He would also be grateful if the delegation could comment on how the Law on the Protection of Witnesses or Victims referred to in the written replies (CED/C/MNG/RQ/1, para. 88) was implemented in practice.

8. Lastly, the delegation might explain the provision under article 42.4 (4) of the Code of Criminal Procedure according to which legal assistance was not enforceable if it did not meet the requirements under the Code or international treaties to which Mongolia was a party (CED/C/MNG/RQ/1, para. 94). He wished to recall that, under article 27 of the Vienna Convention on the Law of Treaties, parties could not invoke the provisions of their internal law as justification for their failure to perform a treaty. He would thus be grateful for additional information on the above article of the Code of Criminal Procedure as it pertained to the primacy of international treaties.

9. **Ms. Kolaković-Bojović** (Country Rapporteur) said that she would be grateful if the delegation could update the Committee on any plans to incorporate the principle of non-refoulement into its national law, beyond the constitutional provisions on the direct applicability of the Convention. She wondered whether, in practice, Mongolia would consider receipt of diplomatic assurances to be sufficient grounds for granting an extradition request, even when there was reason to believe that the person might be at risk of enforced disappearance in the requesting State.

10. She would also like to know whether the State party intended to introduce an explicit prohibition of secret detention in its national law and to hear more about the institutions authorized to visit places of detention and the conditions under which such visits were conducted. She would also appreciate an overview of the procedures by which any person with a legitimate interest in cases involving the violation of the rights of detained persons under article 17 of the Convention could lodge a complaint with the courts. She wondered whether there had been any cases in which a person with a legitimate interest in bringing such a complaint had been denied that right and whether obstructing such a remedy carried criminal penalties.

11. She would also appreciate further information on the integrated database for the exchange of information between the courts and law enforcement authorities, which she understood to contain the details of persons against whom criminal proceedings had been brought, and on whether the database met the requirements relating to the keeping of registers and/or records of persons deprived of their liberty set out in article 17 (3) of the Convention.

12. It would likewise be helpful to hear about the current implementation status of the revised Law on the National Human Rights Commission, especially regarding the establishment of an independent unit to support the member of the Commission who would take over responsibility for the national torture prevention mechanism.

13. Lastly, she would appreciate it if the delegation could confirm that the Law on Privacy imposed no restrictions on access to the information referred to in article 18 (1) of the Convention. The Committee would be interested in hearing about the restrictions imposed under article 4 of that law, particularly as they pertained to secrecy of correspondence, health status, property status, family life and other forms of secrecy defined by law.

The meeting was suspended at 12.30 p.m. and resumed at 12.40 p.m.

14. **Mr. Munkh-Orgil** (Mongolia) said that, contrary to what was stated in the replies to the list of issues (CED/C/MNG/RQ/1, para. 69), the authorities were empowered, under the

Code of Criminal Procedure, to initiate a criminal investigation in response to a report of an offence of enforced disappearance committed abroad, even when no request had been made by another State. Under national law, the investigating authorities were required to initiate a criminal investigation into a reported offence within five days of having received the report. Therefore, the authorities had a maximum of five days in which to decide whether to launch an investigation. The police, prosecution services and judicial authorities had sufficient resources to carry out their work effectively.

15. Although legislative amendments adopted in 2017 had made it possible for the National Security Council to participate in decisions concerning the election and dismissal of judges, that power had been withdrawn from the Council under the revised Law on Courts, adopted earlier in 2021. While the Council was still empowered to participate in the selection of senior prosecutors, it would lose that right as soon as the relevant legislative amendments were adopted. Under the Code of Criminal Procedure, victims, victims' family members and other parties to legal proceedings were entitled to request the recusal of a judge.

16. Police officers suspected of having committed an act of torture were not permitted to participate in the investigation into that act. Under the current procedure, such an investigation would be assigned to a different branch of the investigative authorities. A few months ago, for instance, an investigation into an allegation of torture made against officers of the intelligence service had been assigned to the National Police. The case would be reassigned again if it came to light that the police officers responsible for the investigation might also have participated in the act in question.

17. The Law on the Protection of Witnesses or Victims was being actively implemented by a special unit attached to the National Police. Article 42.4 of the Code of Criminal Procedure set out the general guidelines and principles governing judicial cooperation. If a foreign State submitted a request for judicial assistance in connection with an investigation involving a Mongolian national, the authorities would be required to refuse the request if the national in question was a minor.

18. The principle of non-refoulement was enshrined in the Code of Criminal Procedure. In principle, the Government would accept the diplomatic assurances of another State that a person facing extradition to that State would not be subjected to enforced disappearance. However, that situation had never arisen in practice. Secret detention was not explicitly prohibited by national law. However, the Prosecutor General's Office, the National Human Rights Commission and the department responsible for the enforcement of judicial decisions maintained a full list of detention facilities, which was available for consultation. Although no case of secret detention had ever been reported, the delegation acknowledged that national law was not fully consistent with the Convention in that regard. Consequently, it would recommend that the relevant legal gap should be closed. Members of the National Human Rights Commission, police detectives and prosecutors had unlimited access to places of detention. The Prosecutor General's Office had a constitutional obligation to monitor the lawfulness of detention and the conditions of places of detention.

19. The National Police, the Prosecutor General's Office and the department responsible for the enforcement of judicial decisions used an integrated online database to exchange information. The Prosecutor General's Office managed the database and checked any updates to the information stored in it. Under the revised Law on the National Human Rights Commission, a member of the Commission had been made specifically responsible for torture prevention and would collaborate with non-governmental organizations working in that area.

20. Article 43.3 of the Code of Criminal Procedure set out the situations in which the Government could refuse a request to extradite an individual to another State. Such a request could be refused if the subject of the request was accused by another State of having committed an offence that was not an offence under Mongolian law or if he or she faced a risk of being executed or tortured, was a permanent resident of Mongolia or had committed an offence for which the statute of limitations had expired. However, an extradition request could not currently be refused because the subject might be at risk of enforced disappearance in the requesting State. The Law on Privacy did not provide for any restrictions on access to the information listed in article 18 (1) of the Convention. In fact, the authorities responsible

for places of deprivation of liberty were required to transmit all such information to the families and lawyers of the persons being held there.

21. **Mr. Teraya** said that, while he welcomed the information provided by the delegation, he remained of the view that the maximum time frame of five days for an investigator to launch an investigation into an alleged act of enforced disappearance was overlong and was therefore not in line with article 12 (1) of the Convention. Concerning the procedure by which an individual could report an alleged case of enforced disappearance and the remedies that were available in the event that the competent authorities refused to investigate (CED/C/MNG/Q/1, para. 14 and CED/C/MNG/RQ/1, paras. 83–87), he would appreciate a reply to his question concerning the role of the National Human Rights Commission in that procedure. Lastly, he wished to receive clarification on whether the State party took both the Code of Criminal Procedure and the provisions of international treaties into account in determining whether to attach any limitations or conditions to requests for judicial assistance or cooperation (CED/C/MNG/Q/1, para. 15 and CED/C/MNG/RQ/1, para. 94).

22. **Ms. Kolaković-Bojović** said that she would be interested to learn more about the process of proposing candidates for judgeships and the authority responsible for appointing judges. She would also welcome details on the procedure in place to ensure that any person deprived of his or her liberty or, in a case of enforced disappearance, any person with a legitimate interest, could exercise the right to take proceedings before a court to obtain a decision on the lawfulness of the deprivation of liberty. She wished to know whether the integrated database containing the details of persons against whom criminal proceedings had been brought (CED/C/MNG/RQ/1, paras. 131–132), which she assumed included persons deprived of their liberty, met all the requirements set out in article 17 (3) (a) to (f) of the Convention. Lastly, she would like to know whether an independent unit to support the new head of the national torture prevention mechanism had now been established.

23. **Mr. Munkh-Orgil** (Mongolia) said that he wished to assure the Committee that, while investigators and prosecutors had a maximum of five days in which to open an investigation into an alleged case of enforced disappearance, prosecutors did not wait that long before launching an inquiry. Indeed, under the Law on Police, police officers were required to take measures immediately after an alleged offence was reported. Those measures included securing the crime scene, conducting initial inspections, collecting and verifying evidence and launching a search for possible perpetrators.

24. Persons wishing to exercise their right to seek a court decision on the lawfulness of a deprivation of liberty could file a complaint under article 8.2 of the Code of Criminal Procedure, which would be taken up by the Prosecutor General's Office. Appeals against a prosecutor's refusal to investigate could be filed with the National Human Rights Commission in a parallel procedure or lodged with a higher authority. It should be pointed out, however, that the National Human Rights Commission had neither the power to conduct an independent criminal investigation nor the right to participate in the police's assessment of the complaint's validity. It should also be emphasized that the wording of article 17 (2) (f) of the Convention was reflected in article 30.2 of the Code of Criminal Procedure, which provided that any person had the right to report a criminal offence to the Prosecutor General's Office.

25. Under the revised Law on Courts, the council responsible for overseeing the judiciary was in charge of announcing judicial vacancies, evaluating the applications received and selecting appropriately qualified candidates, who were subsequently appointed by the President of Mongolia.

26. The information that was entered into the integrated database was fully compliant with article 17 (3) of the Convention. Further details could be submitted to the Committee in writing. Lastly, an independent unit to support the new head of the national torture prevention mechanism had already been established within the National Human Rights Commission. However, the post itself had yet to be filled; applications were currently being received and, once a list of candidates had been drawn up, the parliament would select the office holder.

The meeting rose at 1.30 p.m.