



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Twentieth session

Summary record of the 352nd meeting*

Held via videoconference on Friday, 23 April 2021, at noon Central European Summer Time

Chair: Mr. Ayat

later: Mr. Baati

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* No summary record was issued for the 351st 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) said that, according to paragraph 163 of the replies to the list of issues (CED/C/MNG/RQ/1), the State party had yet to create a database containing the genetic data of disappeared persons and their family members for the purposes of searching for and identifying persons reported as disappeared. However, it was stated in paragraph 164 that a regulation on the development and application of a genetic database had been approved in 2012. He therefore wished to know the reasons for the delay in setting up the database and the time frame envisaged for its creation. He also wondered whether the aforementioned regulation was fully compliant with article 19 (1) and (2) of the Convention, which covered the collection, processing, use, storage and protection of personal information, including medical and genetic data.
3. He found it regrettable that, to date, no specific training on the Convention had been carried out (CED/C/MNG/RQ/1, para. 168). He wished to recall that, under article 23 (1) of the Convention, the State party had an obligation to ensure that the training of law enforcement personnel, whether civilian or military, medical personnel, public officials and other persons who might be involved in the custody or treatment of any person deprived of his or her liberty included the necessary education and information regarding the relevant provisions of the Convention. Nevertheless, he would like to know more about the training courses provided by the National Human Rights Commission, which, according to paragraph 169 of the written replies, “covered some elements of enforced disappearance”. In particular, he would welcome information on the courses’ content and duration, and on the personnel who had participated in them. In a similar vein, he would be interested to know how many judges, investigators and prosecutors had participated in the series of training courses on the revised Criminal Code and the Code of Criminal Procedure, and, in particular, whether the topics covered included international human rights conventions. Details on any training dispensed to military and medical personnel would also be appreciated.
4. **Ms. Kolaković-Bojović** (Country Rapporteur) said that she would welcome clarification on article 8.1.2 of the Code of Criminal Procedure, under which a court, prosecutor or investigator could issue a “resolution to establish a victim” (CED/C/MNG/RQ/1, para. 172). She wished to know whether such a resolution had to be issued in order for victims to exercise their rights, at which stage of proceedings and on what basis the relevant determination was made, whether victims could appeal a negative decision and whether victims could still initiate criminal proceedings even if they had not been recognized as such. She would also like to know what mechanisms and procedures were in place to enable victims to exercise their right to obtain reparation and compensation, whether claims for compensation were dealt with in the course of criminal proceedings or under separate civil proceedings, how long compensation procedures usually took to complete and how much was generally awarded, and what criteria had been established to ensure that the compensation awarded was fair and adequate. It would be useful to know whether the State party had created a compensation fund for cases in which victims were unable to obtain compensation from the perpetrator of the crime.
5. She would welcome an account of the non-monetary forms of reparation, such as those provided for in article 24 (5) (a) to (d) of the Convention, that would be available to victims of enforced disappearance. She wondered whether any period of limitation applied to the remedy of reparation, whether there was a national service responsible for providing support, assistance and reparation to victims and, if so, what types of support and reparation were available. She would be interested to learn more about the procedure provided for under article 22.2 of the Civil Code (CED/C/MNG/RQ/1, para. 175) to enable the relatives of disappeared persons whose fate had not been clarified to exercise their rights in the areas of social benefits, family law and inheritance, in keeping with article 24 (6) of the Convention. In particular, she wished to know whether a declaration of absence or a declaration of death

would be issued in respect of a disappeared person under that procedure, and what impact such a declaration would have on the State party's obligation to continue the search and investigation into a case of enforced disappearance until the fate of the disappeared person had been clarified. It would also be helpful to know whether the State party guaranteed the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of acts of enforced disappearance and the fate of disappeared persons, and to assist victims, in accordance with article 24 (7) of the Convention.

6. Lastly, she wished to know whether the State party had plans to bring its national law into line with article 25 of the Convention, in particular, by criminalizing the wrongful removal of children whose father, mother or legal guardian had been subjected to enforced disappearance or children who had been born during the captivity of a mother subjected to enforced disappearance. She would also like to know more about the procedure and criteria for reviewing or annulling an adoption, how such a procedure could be initiated and by whom, whether the child's right to establish his or her true identity was taken into consideration and how the State party ensured that the best interests of the child were taken into account.

The meeting was suspended at 12.20 p.m. and resumed at 12.30 p.m.

7. *Mr. Baati took the Chair.*

8. **Mr. Munkh-Orgil** (Mongolia) said that, regrettably, the information contained in paragraph 163 of the written replies was inaccurate: a genetic database did in fact exist. It was governed by the regulation on the development of an integrated database and the updating, storage, usage, secrecy and disposal of medical and genetic data mentioned in paragraph 164. A bill on the protection of privacy, which would contain a chapter on the protection of the data contained in the genetic database, was currently being drafted.

9. Courses on the content and implementation of the Convention had been incorporated into lawyers' training. Law enforcement officials received training on human rights protection and the international conventions to which Mongolia was a party. Over the past two years, some 11,000 participants – among them government officials, law enforcement officials, judges and prosecutors – had attended one or more of the above-mentioned courses.

10. Judges typically decided on the compensation payable to victims in the course of criminal proceedings. However, victims also had the right to submit a claim under the Civil Code. Both avenues were therefore open to victims. A decision recognizing a person as a victim of enforced disappearance would normally be taken by the investigating officer after he or she had reviewed the facts of the case. A negative decision could be appealed before a prosecutor, who would then review the information and issue a second decision, which could, in turn, be appealed before a judge.

11. A special State fund had been established to ensure that victims of certain violent crimes, including enforced disappearance, received compensation in the event that the perpetrators of those crimes were unable to pay. The period of limitation applicable to claims for compensation was 10 years from the date of commission of the crime.

12. **Mr. Battseren** (Mongolia) said that judges usually decided who was responsible for covering a victim's costs and damages in the course of court proceedings. Chapter 45 of the Code of Criminal Procedure set out the procedure for determining the material and moral damage caused to the victim, including reputational damage, and the procedure for restoring rights to social benefits and property ownership. Earnings lost as a result of deprivation of liberty were taken into account in both civil and criminal proceedings.

13. **Mr. Nyamdavaa** (Mongolia) said that the international conventions to which Mongolia was a party were among the main subjects covered by the continuous training offered to law enforcement personnel by the National Police Authority. In cooperation with the National Human Rights Commission, train-the-trainer courses were conducted every year; once trained, those staff members were responsible for providing continuous training to law enforcement personnel in the divisions to which they had been assigned. To date, more than 1,200 police officers had participated in continuous training on human rights issues.

14. **Mr. Battseren** (Mongolia) said that, while the wrongful removal of children whose father, mother or legal guardian had been subjected to enforced disappearance was not established as a specific offence in the Criminal Code, such conduct was covered by the chapter on crimes against the rights of children and the chapter on crimes against the freedom of liberty and integrity of persons, which included kidnapping and trafficking. Deliberately changing a child's identity was punishable by a term of imprisonment.

15. **Mr. Teraya**, welcoming the fact that the State party had already created a genetic database, said that the delegation might indicate whether the data that it contained were managed in accordance with article 19 (1) and (2) of the Convention. He would likewise be grateful to receive specific information on the human rights training provided to military and medical personnel, particularly in relation to the Convention. He wished to commend the State party's willingness to work with the Committee to conduct specific training on the Convention (CED/C/MNG/RQ/1, para. 170). In that regard, he wished to draw the delegation's attention to various guidance documents prepared by the Committee, including the guiding principles for the search for disappeared persons (CED/C/7), which were a useful source of information on best practices and provided more detailed information on States parties' obligations under the Convention.

16. **Ms. Kolaković-Bojović** said that, if she had understood correctly, victims of enforced disappearance would be entitled to submit a claim for compensation at the criminal proceedings stage. If that was the case, she wished to know whether the criminal courts would be obliged to decide on the matter or, given how lengthy criminal proceedings could be, whether judges could direct victims to lodge a claim with the civil or administrative courts. She would also welcome information on the procedure by which victims could initiate civil proceedings and on the provision made for costs, legal representation, protection and support in such cases.

17. She would appreciate a response to her questions as to whether a national victim support service existed and, if so, what services it provided; and whether the State party guaranteed the right to form and participate freely in the organizations and associations mentioned in article 24 (7) of the Convention. She would likewise be grateful to receive additional information on the procedure by which the family members of a person reported as disappeared would be able to exercise their rights to social benefits and property. In particular, she wondered whether a declaration of absence issued in respect of the disappeared person would be sufficient for that purpose or whether family members would be obliged to request a declaration of death.

18. **Mr. Munkh-Orgil** (Mongolia), responding to the questions posed by Mr. Teraya, said he had been informed that the regulations governing the data contained in the genetic database were not yet fully consistent with article 19 of the Convention. However, once adopted, the bill on the protection of privacy, which, as he had already explained, would contain a chapter on the use of genetic and medical data, should remedy that oversight and ensure that such data were used for the sole purpose of searching for disappeared persons. Regrettably, no specific training on the Convention was provided to military and medical personnel, although military personnel did receive general training on human rights. Measures would be taken to address that training gap, and his Government would make full use of the Committee's guidance documents for that purpose.

19. Turning to the questions posed by Ms. Kolaković-Bojović, he said that, in the vast majority of cases, the compensation payable to a victim was decided by a judge in the course of criminal proceedings. However, in particularly difficult cases, the matter could be adjudicated under a special procedure. If the victim was dissatisfied with the criminal court's decision as to compensation, he or she had the right to submit a separate claim to the civil courts. The procedure for doing so was fairly straightforward, was not financially burdensome and did not affect the victim's rights with regard to bringing a criminal case. Regarding legal representation, it was likely that the lawyer representing the victim in the criminal proceedings would also represent him or her in the civil case.

20. Support services for victims of violent crime, including legal assistance, psychosocial, medical and other forms of social assistance were provided by a special unit of the national police. The unit in question was supervised by the Ministry of Justice and Home Affairs and

was run in cooperation with other entities of the criminal justice system, such as the Prosecutor General's Office. Lastly, it was his understanding that a declaration of absence would not be sufficient to enable the family members of a disappeared person to exercise certain legal rights, such as inheritance or property rights; a declaration of death would be required in those circumstances.

21. He wished to thank the Committee for what had proved to be a fruitful and constructive dialogue. The discussion had provided a welcome opportunity to reflect upon his country's obligations under the Convention and to take stock of the progress that his country had made and the areas in which further efforts were required. The Government of Mongolia looked forward to continued cooperation with the Committee. The delegation would provide more detailed information on certain points in writing.

22. **The Chair** said that he wished to thank the delegation of Mongolia for having risen to the challenge of participating in a virtual dialogue with the Committee, despite the constraints that such a format had imposed. Nonetheless, the interactive dialogue had been a critical first step in establishing ongoing cooperation between the Committee and the State party.

The meeting rose at 1.30 p.m.