



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

Distr.: General
2 June 2020

Original: English
English, French and Spanish only

Committee on Enforced Disappearances

Nineteenth session

7–25 September 2020

Item 5 of the provisional agenda

Consideration of reports of States parties to the Convention

**Replies of Mongolia to the list of issues in relation to its
report submitted under article 29 (1) of the Convention***


[Date received: 22 May 2020]

* The present document is being issued without formal editing.

GE.20-07309(E)



* 2 0 0 7 3 0 9 *

Please recycle 



Replies to the list of issues (CED/C/MNG/Q/1)

A. Reply to paragraph 1 of the list of issues

1. The issue of recognizing the Committee's competence is under the consideration by relevant authorities of Mongolia. Acknowledgment on issuance of declaration will be provided within this year.

B. Reply to paragraph 2 of the list of issues

2. Consultation with the National Human Rights Commission and civil society organizations on the draft report was not conducted during the course of the report preparation by the Government. However, the report was circulated to the National Human Rights Commission and Human rights NGO Forum followed by a request to provide comments on the list of issues and the relevant comments have been provided in written.

C. Reply to paragraph 3 of the list of issues

3. Articles 10.2 and 10.3 of the Constitution of Mongolia state that "Mongolia shall fulfill in good faith its commitments under the international treaties to which it is a Party" and "The international treaties to which Mongolia is a Party shall become effective as domestic legislation upon the entry into force of the laws on their ratification or accession" respectively.

4. Reference to article 50.3 of the Constitution stipulating "The supreme court or other courts shall have no right to apply laws that are not in line with constitution or have not been promulgated" the courts apply only constitutional or promulgated laws, without any limitations on application of international treaties.

5. This constitutional provision is referred to the article 7.3 of the Law on Court of Mongolia, which stipulates "The court shall apply laws and international treaties of Mongolia that came into force and were officially published".

6. According to article 43.5 of the Law of Mongolia on State Great Khural (Parliament), which states "Laws and other resolutions of the State Great Khural shall be published in full in "State Bulletin" the Convention on Protection of All Persons from Enforced Disappearance was published in the State Bulletin from March 18, 2020. With this provision in place the courts can directly apply the Convention.

7. The same applies to administrative authorities. As of present, there are no cases of direct application of the Convention provisions by court.

8. Nonetheless, there are some practices of applying directly international treaties by courts. Namely:

(a) Criminal procedure practice: Supreme Court decision # 84 from April 10, 2017 (application of the Article 1.1 of the Convention against Torture); Decision # 37 from May 16, 2018 (application of the Article 3.1 of the Convention on Child Rights);

(b) Civil procedure practice: court decision # 183 from November 13, 2017 (application of Convention of Child Rights, Articles 7.1 and 9.3);

(c) Administrative procedure practice: court decision # 128 from September 21, 2017 (application of Convention on Child Rights, Articles 3.1 and 32.1), decision #446 from April 17, 2018 (application of ILO Convention 111 on Discrimination (Employment and Occupation), Article 1.1.1).

D. Reply to paragraph 4 of the list of issues

9. Currently, there is no legislation in place to specifically prohibit the invocation of exceptional circumstances as a justification for enforced disappearance.

10. However, as stipulated by article 16.13 of the Constitution all the persons shall enjoy the right to liberty and integrity. Moreover, it shall be prohibited to deliberately, against of legally established grounds and regulations to search, arrest, detain, prosecute or restrict the freedom of any person. It is also prohibited to subject a person to torture, inhumane or cruel treatment and derogation. Where a person is arrested, he/she, his/her family or legal counsel shall be notified on the grounds and reasons of arrest within a timeframe established by law. The article 19.2 of the Constitution stipulates that human rights and freedom established by the Constitution and other laws can be restricted only by law during a state of emergency or war. Such a law shall not affect the right to life, the freedom of thoughts, conscience and religion, as well as the right not to be subjected to torture, inhuman and cruel treatment. Although the provisions do not specify the wording of “Enforced disappearance”, it is an act to violate rights to personal safety, freedom and life. Therefore, it is legitimate to consider that the concept of protection from enforced disappearance rests in the provisions of the Constitution so it belongs to the non-derogable rights.

11. Furthermore, Article 2 of Law on State emergency, enacted in 1995, stipulates “The legislation on States Emergency shall consist of the Constitution, this law and other legislations adopted in conjunction with these laws”. Article 17.1 of the law stating “...in addition to complying with the requirements of emergency situation, where the scope of necessary measures are identified, and international human rights treaty commitments of Mongolia...” and article 18 of the law specifying that human rights restriction imposed in the state of emergency do not contradict with the constitutional article on the right to life, the freedom of thoughts, conscience and religion, as well as the right not to be subjected to torture, inhuman and cruel treatment. Conceptually, the law replicates the constitutional prohibition of enforced disappearance.

12. Paragraph 1.1.7, article 6.6 of the Criminal Code stipulates “commission of criminal offence by taking an advantage of a state of emergency, disaster, cataclysm and riot shall serve as aggravating circumstances”.

E. Reply to paragraph 5 of the list of issues

Reply to part 1

13. The Criminal Code defines “enforced disappearance” criminal offence as follows:

“Article 13.4 Enforced Disappearance

1. An act of unlawful detention of a person, provided that it is not a criminal offence against criminal proceedings, shall be punishable with a fine equal 1,350,000–10,000,000 units of national currency (togrog), or travel restriction for a term 6 months up to 2 years, or sentence for a term 6 months up to 2 years.

2. An act of causing harm to legitimate rights and interests of others, provided that it is not a criminal offence stipulated in the special part of the law and is derived from unlawful doings of an official conducting investigation, prosecutor or judge, including detention, unlawful concealment and derivation of liberty of persons or concealment of the information on deprivation of liberty, or refusal to acknowledge on thereof, shall be punishable with sentence for a term 1 up to 5 years.

3. If the criminal offence is commissioned:

3.1. knowingly, to minors or pregnant women; or

3.2. against two or more persons, a sentence for a term 2 up to 8 years shall apply.

4. If the criminal offence is commissioned:

- 4.1. by organized criminal group; or
- 4.2. resulted in serious damage to victim's health, or caused victims' death, a sentence for a term 5 up to 12 years shall apply."

14. In order to make constitutive elements of "enforced disappearance" criminal offence defined in the article 13.4 compatible with the notion of "enforced disappearance" spelled out in article 2 of the Convention, the definition specifies "... provided that it is not a criminal offence stipulated in the special part of the law and is derived from unlawful conduct of investigation deprivation of liberty of persons or concealment of the information on deprivation of liberty, or refusal to acknowledge on thereof ...".

15. Aforementioned legal disposition suggests that constitutive element of such crime is a violation of right to liberty and freedom, act of unlawful detention, concealment and deprivation of liberty, or concealment of information on or refusal to acknowledge on deprivation of liberty and freedom the family, legal counsel or other persons, whose interests are affected, by state authority themselves or with their authorization or support, and thus, shall be considered as inaction. Hence, it does not contain constitutive elements of other crimes, including human trafficking, abduction, unlawful arrest or detention.

16. An act of unlawful detention of a person results in restriction of right to free travel for certain period against his/her will or detention in own premises or other locations.

17. Furthermore, article 1.2, para 1 of the Criminal Code stipulates that any criminal offences and criminal liabilities shall be defined solely by the Code. Para 4 of the article states that commentaries to the Criminal Code terms and definitions shall be done in compliance with terms and definitions spelled out in the Law of Mongolia and international treaties ratified and acceded by Laws of Mongolia. These provisions enable courts to apply directly provisions of the Convention while providing commentaries on article 13.4.

Reply to part 2

18. Although the law specifies that authority to conduct investigation, prosecutor or judge is a subject of the crime, other persons participated in an act of enforced disappearance can be held liable pursuant relevant provisions of Chapter 3 of the Criminal Code in compliance with article 6 provision (a) of the Convention.

19. Article 3.1, para 2 of the Criminal Code defines perpetrator, organizer, instigator and accessory as accomplices or participants, who deliberately joined to commit a criminal offence.

20. Moreover, a competent official, who is not a part of crime pre-agreement, however, failing to take appropriate measures despite of his/her knowledge on the criminal offence shall be held liable according to article 13.4 of the Criminal Code. If enforced disappearance is committed and significant damages are caused to others as a result of negligence and failure by an official to prevent the criminal offence and exercise proper monitoring over it, sanctions stipulated in article 23.5, para 1 shall be applicable in compliance with article 6(b) of the Convention.

Reply to part 3

21. By its nature a concealment of information and refusal to acknowledge interested persons on unlawful detention of a person make "Enforced disappearance" stated in the article 13.4 of the Criminal Code different from "Unlawful arrest or detention" stated in article 13.9 of the Criminal Code.

22. Particularly, an act of unlawful detention, concealment or refusal to acknowledge thereof by an official authorized to conduct investigation, prosecutor or judge despite absence of detention grounds specified in article 14.9, para 1 of the Criminal Procedure Law shall be criminalized as enforced disappearance according to the article 13.4 of the Criminal Code.

23. An act of enforced disappearance with intent to destroy national, ethnical, racial or religious certain groups shall be criminalized as genocide (article 29.5 of the Criminal Code).

24. While article 13.9 of the Criminal Code defines state authorized official as a subject of unlawful arrest or detention, article 13.4 of the Code provides for broad spectrum of subjects and specifies any persons as a subject of enforced disappearance.

Reply to part 4

25. As per the article 13.2 of the Criminal Code an act of kidnapping shall be punishable with a sentence for a term of 1–5 years or 2–8 year with presence of aggravating circumstances.

26. As per the article 13.3 of the Criminal Code an act of taking a hostage shall be punishable with a sentence for a term of 2–8 years or 5–12 years with a presence of aggravating circumstances.

27. Sanctions imposed on act of enforced disappearance are:

- “(1) fine of 1,350,000–10,000,000 togrogs, or
- (2) travel restriction for a term 6 months–2 years, or
- (3) sentence for a term of 1–5 years with presence of aggravating circumstances without choice of sanction, or 2–8 years with presence of serious aggravating circumstances without choice of sanction; or sentence for a term 5–12 years for organized crime or for causing serious damage to victim’s health, or for victim’s death.”

F. Reply to paragraph 6 of the list of issues

Reply to part 1

28. As it is stipulated in article 5.3 in general part of the Criminal Code the amount of fine shall be 100–40,000 units, one unit shall be equal to 1,000 togrogs. Travel restriction shall be imposed for a term of 1–5 months. Sentence shall apply for term of 6 months up to 20 years, or life sentence.

29. In compared to sanctions stipulated in the general part of the Criminal Code, sanctions imposed for basic element of enforced disappearance shall be as follows:

- “(1) fine of 1,350,000–10,000,000 togrogs; or
- (2) travel restriction for a term 6 months up to 2 years; or
- (3) sentence for a term 1–5 years with presence of aggravating circumstances without choice of sanction, or 2–8 years with presence of serious aggravating circumstances without choice of sanction; sentence for a term 5–12 years for organized crime or for causing serious damage to victim’s health, or for victim’s death.”

Reply to part 2

30. Aggravating circumstances for enforced disappearance crime are stipulated in the article 13.4, para 3 of the Criminal Code as follows.

31. The criminal offence is commissioned “knowingly, to minors or pregnant women” or “against two or more persons”.

32. Serious aggravating circumstances for enforced disappearance crime are stipulated in the article 13.4, para 4 of the Criminal Code as follows.

33. A criminal offence is commissioned “by organized criminal group” or resulted in serious damage to victim’s health, or caused victims’ death.

34. Aggravated sanction for enforces disappearance are applied in compliance with the article 7 (b) of the Convention.

35. In the event of commissioning other criminal offence in parallel with “enforced disappearance” crime stipulated in the article 13.4 of the Criminal Code, penalties imposed

for each criminal offence shall be combined according to the procedures stated in the article 6.8 of the Criminal Code. The total lump sum of identical penalties imposed for multiple criminal offences shall not exceed the ceiling of the sentence imposed on the criminal offences with the highest sanctions stated in the chapter. Whereas, the total lump sum of penalties imposed on criminal offences stipulated in multiple chapters shall not exceed the ceiling of the sentence imposed in the chapter with the highest sanction.

36. Under article 6.5 of the Criminal Code the court shall consider the following 7 mitigating circumstances while imposing criminal sanction:

- “(1) Provision of medical or other assistance to the victim upon committing the criminal offence; or
- (2) compensation of caused loss or damage; or
- (3) commission of criminal offence due to misperception of the circumstances; or
- (4) commission of criminal offence due to physical, mental coercion, or
- (5) Commission of criminal offence in a state of being dependant on others in terms property, official position and other factors; or
- (6) self-confession; and
- (7) providing assistance in detecting criminal offence committed by others and tracking crime proceeds.”

37. Under article 6.6 the court shall consider the following 8 aggravating circumstances while imposing criminal sanctions:

- “(1) committing criminal offence in extreme brutal or mockery way causing physical, psychological suffering or pain; or
- (2) intentionally committing the criminal offence specified in a single chapter of the Special part of the Code twice or more times, or
- (3) committing the criminal offence as a group; or
- (4) committing the criminal offence in violent for the society way; or
- (5) committing the criminal offence with intent to conceal or facilitate another criminal offence; or
- (6) committing the criminal offence against the victims or their immediate relatives in conjunction to their official or public duty; or
- (7) committing the criminal offence against a dependant person although knew of his/her inability of self defense; and
- (8) committing the criminal offence by taking an advantage of a state of emergency, natural disaster, cataclysm or public riot.”

38. The court shall not apply aggravating circumstances not specified on this article.

G. Reply to paragraph 7 of the list of issues

Reply to part 1

39. Any acts committed by person or groups without State authorization or support shall fall under the regulation provided in the article 13.4 of the Criminal Code.

40. If an act of enforced disappearance criminal offence is not committed with participation of non-State agents and the act of unlawful detention is not a criminal offence against criminal proceedings, the act shall be regarded as a matter of the Criminal Code article 13.4, para 1 regulation. It means that any act of enforced disappearance committed by a person who is not authorized to conduct investigation shall be criminalized according

to the article 13.4, para 1 of the Criminal Code in conformity with the articles 3 and 4 of the Convention.

41. “Not a criminal offence against criminal proceedings” stated in the article means, according to the Chapter 21 of the Criminal Code, that it is not a criminal offence in terms of “Illegally performing professional functions of lawyer”.

42. In this case, under the article 2.1 of the Criminal Procedure Law, the criminal proceedings shall be conducted according to territorial jurisdiction and the subject affiliation. If the criminal offence is commissioned by organized groups, criminal proceedings shall be conducted by the police division in charge of combating organized crime.

43. A court shall necessarily take into account articles 6.5 (Criminal offence mitigating circumstances) and 6.6 (Criminal offence aggravating circumstance) of the Criminal Code while sanctioning the criminal offender. Articles 3.7 and 3.8 of the Criminal Code regulate criminal offence committed by groups and organized criminal groups respectively. Criminal offence committed by organized criminal group shall be criminalized and sanctioned as enforced disappearance and, in addition, according to the article 20.3 of the Criminal Code, as criminal offence in establishing and joining organized criminal group.

Reply to part 2

44. At present, there is no information on sanctions imposed due to absence of lodged complaints.

H. Reply to paragraph 8 of the list of issues

Reply to part 1

45. As of current, the widespread or systematic practice of enforced disappearance is not codified in national legislation as a crime against humanity.

46. However, chapter 29 of the Criminal Code codifies “Crime against mankind and peace”, where article 29.5 specifies “Genocide” as a criminal offence. The article states “an act of enforced disappearance with intent to commit genocide to destroy national, ethnic, racial or certain religious group shall be considered as a crime against humanity”.

47. The Enforced disappearance stipulated in the article 13.4 of the Criminal Code is considered as a crime against humanity and, hence, it is to fall under the regulation of article 29 of the Criminal Code.

Reply to part 2

48. Sanctions for a criminal offence of “Genocide” shall be 12–20 year or life term sentence.

I. Reply to paragraph 9 of the list of issues

Reply to part 1

49. Chapter 3 of the Criminal Code codifies accomplices of a criminal offence. In particular, article 3.1, para 1 defines accomplice as “deliberate union of two or more persons with intent of criminal offence”, whereas para 2 defines “perpetrator, organizer, instigator and accessory as accomplice of a criminal offence”. Articles 3.2–3.5 of the Criminal Code provide for detailed definition of criminal offence perpetrator, criminal offence, organizer, criminal offence instigator and criminal offence accessory. An act of enforced disappearance criminal offence committed by organized criminal group is codified as aggravating circumstances.

Reply to part 2

50. Article 4.6 of the Criminal Code regulates execution of order or instruction, with paragraph 1 stating “Causing harm to legally protected interests shall not be deemed as criminal offence, provided that it is caused by military personnel or law enforcement officer, who is not able to or does not know of an illegality of an order or instruction rendered verbally or in written by higher ranked official. An official who rendered illegal order or instruction shall be deemed as perpetrator of a criminal offence.” Paragraph 2 of the article stipulates “Military personnel or law enforcement officer shall be deemed as perpetrator of a criminal offence if the instruction is intentionally executed by military personnel or law enforcement officer, though explicitly illegal order or instruction to commit or not to commit an act of explicit criminal nature stipulated in the Code is a subject of a direct discretion and self decision that fall under official duty and authority of a military personnel or law enforcement officer. An official rendering order or instruction shall be deemed as perpetrator who committed the criminal offence using others”; and in case of not executing explicitly illegal order or instruction, a person rendering order or instruction shall be deemed as having attempted to commit a criminal offence.

Reply to part 3

51. Please, see paragraph 50 above. In addition to that, there is an article 5.4 of the Law on Police stipulating “A police officer shall have a right to refuse to enforce unlawful decisions of higher hierarchy of police establishment and provide an explanation for such refusal”. This provision serves as a safeguard to refuse executing unlawful orders or orders that instruct, permit or support enforced disappearance, and thus, to be immune of any responsibilities.

Reply to part 4

52. Please, see paragraphs 50 and 51 above.

J. Reply to paragraph 10 of the list of issues**Reply to part 1**

53. The enforced disappearance criminal offence is codified in the article 13.4 of the Criminal Code, where a Statute of limitation is applied. In addition to that, the article 29.5, para 1 of the Criminal Code criminalizes an act of enforced disappearance with an intent to destroy national, ethnical, racial or religious certain groups as a criminal offence against humanity security and peace. According to the article 1.10, para 4 of the Criminal Code no statute of limitation applies for this type of criminal offence.

54. Article 13.4, para 1 of the Criminal Code stipulates “An act of unlawful detention of a person, provided that it is not a criminal offence against criminal proceedings shall be punishable with a fine equal to 1,350,000–10,000,000 units of national currency (togrog), or travel restriction for a term of 6 months up to 2 years, or sentence for a term of 6 months up to 2 years”. Criminal Code amendments introduced on January 10, 2020 establish a statute of limitation of 3 years for a crime of enforced disappearance.

55. According to the article 13.4, para 2 of the Criminal Code, which states “An act of causing harm to legitimate rights and interests of others, provided that it is not a criminal offence stipulated in special provisions of the law and is derived from unlawful doings of official conducting investigation, prosecutor or judge, including detention, unlawful concealment and derivation of liberty of persons or concealment of the information on derivation of liberty, or refusal to acknowledge on thereof shall be punishable with sentence for a term 1 up to 5 years” a statute of limitation shall be 5 years.

56. Moreover, a criminal offence commissioned “knowingly, to minors or pregnant women” or “against two or more persons” shall be punishable with 2–8 years with a statute of limitation of 5 years.

57. A criminal offence commissioned “by organized criminal group” or resulted in serious damage to victim’s health, or caused victims’ death shall be punishable with 5–12 years sentence with a statute of limitation of 12 years.

Reply to part 2

58. Article 1.10, para 2 of the Criminal Code stipulates “A statute of limitation shall be commenced from the date of draw as accused”. Furthermore, para 3 of the article stipulating “If a person, who committed a criminal offence, commits intentionally the criminal offence once again before expiration of the statute of limitation mentioned in the first paragraph of this provision, the statute of limitations shall be recalculated from the date of the last criminal offence committed for each criminal offence respectfully” is conceptually compatible with article 8 (b) of the Convention.

59. Since the judiciary practices consider enforced disappearance as criminal offence of continuous or long duration nature, the date of commissioning the criminal offence commences from the date of deprivation of liberty of a person by detention. Hence, the statute of limitation shall apply from the date of completion, or disruption of criminal act, or cease of the criminal offence until the offender is drawn as accused.

Reply to part 3

60. Existing term of statute of limitation serves as sufficient guarantee for victims of enforced disappearance to bring criminal, civil or administrative actions to seek the right to an effective remedy.

61. Chapter 45 of the Criminal procedure law stipulates on compensating damages caused by unlawful actions of judges, prosecutors and investigators during the course of criminal proceedings. Damages caused by any activities with participation, authorization or support of a civil servant can be compensated according to the Criminal Code.

62. Moreover, the victims can initiate civil actions to seek for effective remedies. In this case, the statute of limitation shall be 10 years according to the article 75 of the Civil procedure law.

63. There is no statute of limitation for administrative actions for seeking remedies.

K. Reply to paragraph 11 of the list of issues

Reply to part 1

64. Article 1.6 of the Criminal Code provides for enforceability of the Criminal Code outside the territory of Mongolia. Paragraph 1 of the article stipulates that criminal liabilities according to the Code shall apply in an event of Mongolian nationals or stateless persons permanently residing in the country commits criminal offence stated in the Code and no criminal liability was imposed for the criminal offence.

65. Criminal liabilities shall be imposed according to the Code, provided that it is stated in the international treaty of Mongolia, if the victim is Mongolian national, or, as per article 1.6, para 5, if the criminal offence is committed against interests of Mongolia outside the territory of the country by foreign nationals or stateless persons who are non-permanent residents of Mongolia and were not held criminally liable for the criminal offence.

66. As of currently, there is no encounter with cases where (b) and (c) were applied.

Reply to part 2

67. Please, See paragraphs 64, 65, and 66 above.

Reply to part 3

68. As it is defined in article 1.4, para 1.9 of the Criminal procedure law, “investigation proceedings” mean proceedings conducted with prosecutor’s consent or by investigator independently during an investigation or inquiry proceedings. The law does not entitle the

military authorities with a right to investigate and/or prosecute persons accused of enforced disappearance.

L. Reply to paragraph 12 of the list of issues

Reply to part 1

69. The Criminal procedure law of Mongolia provides for conducting, in compliance with established domestic legislations, proceedings in the own territory of Mongolia only with a presence of a request from another State.

70. However, an authorized investigator can exercise a right to initiate investigation proceedings, provided he/ she traced or detected a reasonable suspicion of involvement of the alleged in enforced disappearance offender in the territory of the country. Measures of detention custody can be taken in these circumstances.

Reply to part 2

71. Please, refer to the comment 12.2 above. With an intent to apply administrative instruments to identify the person, the article 52, para 1.4 of the Infringement procedure law provides for “criminal court can issue a resolution to detain the foreign national or stateless person for 14 days based on the request from an immigration and naturalization inspector to establish personal identification of the suspect, and with a view of potential obstacles to be caused by the suspect to the infringement investigation proceedings”. Paragraph 2 of the article provides for “criminal court can issue only once a resolution to extend the detention duration of the foreign national or stateless person specified in paragraph 1.4 of the article for a period of up to 30 days based on the request from an immigration and naturalization inspector”. A measure of taking into custody shall be taken in accordance with criminal proceedings stated in the comment 12.1 above if any evidence or facts are found, which prove that the person could have committed enforced disappearance criminal offence.

Reply to part 3

72. The Criminal procedure law states that in an event of suspecting and arresting a foreign national an investigator must acknowledge the respective diplomatic mission within 6 hours after the arrest. The investigator must acknowledge the diplomatic mission within 2 hours upon issuance of a resolution on draw of the person as accused and follow up detention.

73. A person detained under article 19.2 of the Law on enforcement of the resolution on arrest and detention of suspected and accused person has a right to “communicate with family or other persons at the written consent of a competent official who issued a resolution on detention or his/her superior”; or “A detained foreign national can communicate, at the consent of an official stated in the article 19.2 through the detention facility administration, with the diplomatic mission or consular official of the State of which he/she is a national of”.

74. Furthermore, a person or a legal entity shall be provided with opportunity, conditions and time for acquiring legal assistance, self-defense or defense by a defense counsel.

75. Pursuant article 5.1, para 2 of the law a defense counsel shall have a right to immediately communicate in private with the detained person.

76. Pursuant article 7.7, para 6 and article 31.8, paras 1.7 and 1.8, in case of violation of the procedures the victim shall have a right to file a complaint to hold the judges, prosecutors or investigators liable for violating the law and claim a compensation of damages incurred by him/her.

M. Reply to paragraph 13 of the list of issues**Reply to part 1**

77. There were no allegations of enforced disappearance received since the submission of the report.

Reply to part 2

78. Pursuant article 30.3 of the Criminal procedure law investigators or prosecutors have an obligation to initiate criminal proceedings regardless of absence of official complaint, provided that he/she detected any sign of the criminal offence.

Reply to part 3

79. Article 4.1 of the Law on Police defines police as “state specialized authority with a competence and mandate to combat crime ...”, whereas article 93 states “A budget of Police shall be incorporated in and funded from the state budget, and shall be sufficient to provide for prompt, continuous and efficient operations of Police”. The Investigation authority¹ with sufficient budget and human resources operates under the Police:

(a) Article 11.2 of the “Law on enforcing a resolution on arrest or detention of a suspect and persons drawn as accused” defines “Investigator, defense counsel, prosecutor or judge who investigate or prosecute a detained person” as a subjects authorized to access the places of detention;

(b) An investigator has a right to access necessary documents and information relative to the criminal offence during the course of criminal proceedings.

Reply to part 4

80. Investigator, prosecutor or judge shall be refused of participating in investigation, prosecution or criminal proceedings on the following grounds:

(a) Article 4.1, para 2.13 of the Criminal procedure law stating “refusal request of the investigator or prosecutor involved in criminal proceedings, or decision on assigning other investigator or prosecutor to handle the case”; or

(b) Article 6.3, para 1.3 stating “if necessary, transferring the case from one to another investigator upon notifying the prosecutor exercising supervision over the case; or

(c) Article 10.1, para 1.4 stating “presence of other grounds to consider that the official has direct or indirect conflict of interest in the case”. Involvement of investigator, prosecutor or judge in the commission of the offence can be established based on complaint, allegation and information or through the internal supervision of a respective authority. Investigation shall be initiated against the officials should the act commissioned by the subjects be of criminal offence nature, and criminal liability shall be imposed if they are found guilty.

N. Reply to paragraph 14 of the list of issues**Reply to part 1**

81. Pursuant 30.2 of the Criminal procedure law any person has a right to report on criminal offence.

82. An investigator or prosecutor has an obligation to receive an allegation or information on criminal offences committed, under preparation or to be committed.

¹ Article 6 of the Law on Police. Structure and system of Police. Article 6.5: The Police shall operate divisions in charge core functions, specialized operations and combating transnational organized crime.

Reply to part 2

83. A person or legal entity considering that their legally protected rights and interests were violated or affected during the course of criminal proceedings shall have a right to file a complaint with the court.

84. In addition, article 8.2 of the Criminal procedure law enables a victim to file a complaint.

85. The following articles of the law legalized the following rights:

(a) Article 30.10 with respect of the right to file a complaint against refusal to open a criminal case at the stage of inquiry;

(b) Article 30.14 with respect of the right to file a complaint against a closure of the inquiry of the criminal case;

(c) Article 30.14, para 5 with respect of the right to file a complaint to the higher instance prosecutors;

(d) Article 32.6 with respect of the right to file a complaint on withdrawal of investigation case or invalidation of draw as accused resolution.

86. Article 15.7 of the Criminal procedure law provides for:

(a) “A participant shall file a complaint against proceedings and decisions of an investigator with the supervising prosecutor, whereas complaint against proceedings and decision of supervising prosecutor shall be filed with the prosecutor of higher instance of the corresponding prosecutors office within 3 days upon the decision was made”;

(b) “A prosecutor who received a complaint shall review and resolve the complaint within 14 days, and in case of necessity to examine additional materials or to take other measures, a prosecutor shall resolve such complaint within 21 days;

(c) “A Prosecutor who reviewed a complaint shall issue an order to either annul or amend the resolutions or proceedings of investigator or prosecutor, or to refuse to receive the complain”;

(d) A person who filed a complaint shall be explained that he/she may, within 3 days upon the receipt of the resolution, make a petition to the General Prosecutor’s Office if he/she does not accept the way the complaint has been resolved, or the resolution itself, or its grounds.

87. Moreover, the right is guaranteed to file a complaint with the National Human Rights Commission.

Reply to part 3

88. Chapter 13 of the Criminal procedure law regulates matters pertaining to the protection of witnesses and victims. Protection of witnesses and victims is ensured at the inquiry or investigation stage based on a proposal of investigator or request from witnesses, victims or legal counsel, whereas at the stage of trial it is ensured at the request of witnesses, victims or legal counsel, or based on prosecutor’s proposal. Mongolia has enacted the “Law on Protection of Witnesses or Victims” in 2013, which serves as a legal safeguard for protection of the rights of witnesses and victims.

89. The Law on protection of witnesses or victims aims to “Establish legal basis for protection of life and health of witnesses or victims, as well as to ensure their access to information and providing support and assistance to them during the course of criminal proceedings”. The persons that fall under the law protection are: first, witnesses or victims; second, if necessary, related persons² to witnesses or victims, third, a person who provided

² Article 5.3 of the Law on protection of witnesses or victims states “...witnesses or victims related persons shall mean their spouses, common law partners, parents, grandparents, children, step or adopted child, brothers, sisters and grandchildren”.

with valuable for the criminal offence detection information or documents, or other assistance, or a person who did not participate as a witness in the criminal proceedings.

90. Article 8.3 of the Criminal procedure law provides for the obligation of investigator, or prosecutor to notify a criminal offence victim, his/her legal representative or legal counsel on their security matters.

91. In addition, articles 13.5, 21.5 and 21.12 of the Criminal Code criminalized threat, unlawful influence on a witness or victim, and torture respectively.

92. An act of harassing or threatening witnesses or victims shall serve as a ground to detain an accused person according to article 14.9, para 1.2 of the Criminal procedure law. It also ensures participation and a right of assigned defense counsel to defend other participants of the crime.

93. Amendment was made to the Law on National Human Rights Commission to establish torture preventive mechanism. Moreover, testimony procedures and testimony room standards are established by article 25.1 of the law. Audio and video records of the testimony are made in order to prevent violation of human rights. Court trial proceedings are also recorded audio and visually according to article 11.7, para 1 of the law.

O. Reply to paragraph 15 of the list of issues

Reply to part 1

94. Article 42.4, para 4 of the Criminal procedure law of Mongolia states that legal assistance is not enforceable, if it does not meet requirements of the Criminal procedure law or international treaties of Mongolia, or contradicts with sovereignty and security of Mongolia, or violates the Laws of Mongolia.

95. In all other cases a prosecutor or investigator shall enforce a request of foreign respective institutions and officials as it is stipulated in article 42.4, para 1 of the Criminal procedure law.

96. As of present, there was no practice of extradition of a criminal offender. There was neither any request of legal assistance received from a victim of enforced disappearance, nor requests sent.

P. Reply to paragraph 16(a) of the list of issues

97. Chapter 13 (Criminal offence against personal liberty and integrity) of the Criminal Code, which criminalized an act of enforced disappearance does not specify the criminal offence as political or connected with a political offence.

Q. Reply to paragraph 16(b) of the list of issues

98. Although the MLA agreements that the Government signed do not specify a type of extraditable criminal offence, it is stated that a minimum penalty of extraditable an offence shall be a year sentence. There is no report on enforced disappearance criminal offence and no requests received on extradition of a criminal offender. The Convention provision is applicable in Mongolia given that there is no offender extradition agreement in existence.

R. Reply to paragraph 16(c) of the list of issues

99. The Convention has not been applied for the purposes of extradition. However, the following measures will be taken to ensure compliance with international treaties and conventions on mutual legal assistance or extradition proceedings, and to meet requirements of international standards and norms:

“(1) Improvement of coherence between relevant domestic institutions;

(2) Establish “Information database” to integrate statistics, data and information on official sources of treaties and agreements on mutual legal assistance in criminal cases or extradition; or on received requests, execution and processes of the requests.

(3) Training courses for relevant officials.”

S. Reply to paragraph 16(d) of the list of issues

100. As per article 26.1.2 of the Law on Prosecutor an “extradition and surrender of person for the purposes of enforcement of a resolution” shall be a duty of the General Prosecutor Office. Namely, according to article 29.2 of the Law on Prosecutor, the Prosecutor General of Mongolia makes a decision on extradition or surrender of the person to a foreign State, based on the provisions of international treaties and laws.

101. Chapter 5 of the “Guidelines on legal assistance proceedings for criminal cases” adopted on February 19, 2019 by ordinance #A/16 of the Prosecutor General regulates in details the “proceedings of extradition and surrender of a criminal offender”.

102. Article 43.3 of the Criminal procedure law (Refusal of extradition) specifies refusal grounds as follows:

- (a) Mongolian national; or
- (b) The person is granted the right to asylum in Mongolia; or
- (c) The action or inaction of the person is not regarded as a criminal offence in Mongolia; or
- (d) The person subjected to extradition has served a sentence for the criminal offence; or
- (e) The case has been previously withdrawn; or
- (f) The statute of limitation for the offence has expired according to the law of Mongolia; or
- (g) The person has been drawn as accused on other grounds; or
- (h) A presence of circumstances that preclude a punishment; or
- (i) A real threat of torture for the person is imminent in case of extradition; or
- (j) The person is subjected to a death penalty by the laws of the country which submitted a request for extradition.

103. The articles relative to the extradition are being revised and made compatible with international practices and the Convention.

T. Reply to paragraph 16(e) of the list of issues

104. A decision of the Prosecutor General on extradition is issued in a form of “consent”. If a person deems that his/her rights are violated or affected as a result of the decision he/she “... shall have a right to appeal to the court in order to restore the rights ...” according to article 1.13 (Appeal to the court) of the Criminal procedure law.

105. The principle of non-refoulement under article 16 (1) of the Convention is guaranteed by article 10.3 of the Constitution of Mongolia, which states “The international treaties, to which Mongolia is a Party, shall become effective as domestic legislation, upon the entry into force of the laws on their ratification or accession”.

106. Incorporation of the principle of non-refoulement under article 16(1) of the Convention in to domestic respective law is under consideration at present.

U. Reply to paragraph 16(f) of the list of issues

107. There is no any legal regulation on the subject matter. However, existing practices suggest that diplomatic assurances can be accepted through diplomatic channels.

V. Reply to paragraph 17(a) of the list of issues

108. In national legislation there is no explicit provision on prohibition of secret detention.

109. However, under article 16.13 of the Constitution it is stipulated “No one shall be searched, arrested, detained, persecuted or restricted of liberty, except on the grounds and procedures prescribed by law. No one shall be subjected to torture, inhuman, cruel or degrading treatment. Whenever the person is arrested, his/her family and legal counsel shall be notified within a period of time prescribed by law of the reasons and grounds of such arrest. The privacy of citizens, their families, confidentiality of correspondence and communication, and the inviolability of home residence shall be protected by law.”.

110. Articles 1.4.1 and 5.6.1 of the Criminal Code stating “Criminal charges shall be imposed to a guilty person whose act of commission of the criminal offence, specified by the law, has been established by court” and “Sentence shall mean deprivation of liberty of a criminal offender for certain period or life term and detaining in detention places of open or closed regimes” codify the concept of sentencing the person by isolating him/her from the society based on the court resolution.

111. Article 4.4.1 of the “Law on enforcement of resolution on arrest or detention of suspect or accused persons” stating “An ordinance or resolution issued by an authorized official strictly based on grounds of procedures stipulated in the Criminal procedure law shall serve as a ground to enforce arrest or detention decisions” is enforced strictly.

112. The scope of authority of these laws establishes a legal restriction on an act of secret detention in Mongolia.

W. Reply to paragraph 17(b) of the list of issues

113. The legal guarantee is afforded to all the persons deprived of liberty from the very outset of deprivation of liberty to enjoy a legal safeguard, including communication with their legal counsels, family or any others persons of their choice, and in the case of foreigners, they can communicate with consular authorities.

114. Communications and visits are organized, and counsels have a full access to a places of detention in compliance with article 19.2 of the “Law on enforcement of resolution on arrest or detention of suspect or accused persons”, which stipulates “A detained person can communicate with relatives and other persons at the written consent of the person who issued detention resolution or his/her superior”.

115. Visits by families are organized twice in a week under the provision 13.1 of the Internal regulations of detention places, with each visit allowing up to three persons for 20 minutes. There are no other restrictions relative to communications and visits by families.

116. Article 11.2 of the law stating “Investigators, legal counsels, prosecutor or judge who investigate or prosecute the case of the detainee shall access the detention place upon presenting their identification documents” allows an official, who has deprived the detainee of liberty and a legal counsel to inspect detention conditions and provide legal assistance.

117. Article 19.1 of law provides for “a private meeting of detainee and his/her legal counsel. Detainee shall be provided with conditions for a private meeting with his/her legal counsel”. There is no time limit established for a private meeting, and the meeting room is organized to accommodate private talks.

118. As of present, there are no appeals or complaints filed with respect to private meetings with legal counsels, and no cases of restriction of such meetings.

119. Article 5.3 of the “Law on enforcement of resolution on arrest or detention of suspect or accused persons” provides for “Unless it is otherwise stipulated in international treaties of Mongolia, according to the Constitution of Mongolia, the Law on legal status of foreign nationals, this law and other laws a foreign national or stateless person arrested or detained in the territory of Mongolia shall have rights, freedom and obligations same to that of Mongolian nationals”. Article 19.3 of the law stating “Detained foreign national can communicate with the diplomatic representative or consular officer of home country at the consent of an official specified in article 19.2 of the law and through the administration of the detention place” enables a foreign national exercise own rights. There is no case of violation of these provisions as of current.

120. In case of taking into custody a foreign national or stateless person, the provision 2.13 of “Detention place internal regulations” provides for introducing laws or procedures in the language of respective country or English, and submission of written notification to the diplomatic mission or consular office of the respective State. There is no restriction in a number and duration of visit by diplomatic mission representative or consular officer.

121. Articles 32.3 and 32.4 of the “Law on enforcement of resolution on arrest or detention of suspect or accused persons” state “Depending on the nature of the criminal offence committed or personal conditions, a suspect or accused person can be detained in a solitary confinement at the proposal of an investigator or prosecutor” and “It shall be prohibited for detainee in a solitary confinement communicate or exchange any items with detainees in other rooms” respectively.

122. Also, articles 34.1 and 34.9 of the law state “A suspect or accused person, and underage person who committed infringement shall be detained in a disciplinary room up to 15 days and one week respectively” and “A person who committed infringement shall be detained in a solitary confinement” respectively.

123. Article 34.9 of the “Law on enforcement of resolution on arrest or detention of suspect or accused persons” states “Detainees in solitary confinement shall be restricted of their rights to communicate via letters or telegraph, be visited by persons other than investigator, prosecutor, judge or defense counsel, purchase additional food supply, have a meeting and access books, journals and newspapers until the term of disciplinary punishment expires. Any parcels addressed to the person in a solitary confinement shall be given upon his/her release from the solitary confinement”.

124. Article 19.1 of the “Law on enforcement of resolution on arrest or detention of suspect or accused persons” states “A detainee can communicate in person with his/her defense counsel in detention place. A detainee shall be provided with adequate conditions to communicate with his/her defense counsel”. There is no time limit for a detainee to communicate with his/her defense counsel.

125. A prosecutor who supervises the enforcement of imposed sentence and members of the National Human Rights Commission have a direct access to detention places and exercise a regular supervision over the detention proceedings on whether they are carried out in compliance with established laws and rules.

126. As of present, no complaint or allegations regarding failures to observe the rights of detainees to communicate with defense counsels or families.

X. Reply to paragraph 17(c) of the list of issues

127. Article 17.1.17 of the “Law on enforcement of resolution on arrest or detention of suspect or accused persons” states “A detainee shall have a right to file complaint, allegation or request on personal matters and detention place conditions, regulations or operations to any authority or official”. The same right applies to the criminal offence participants, including suspect, accused, defendant, victim, civil plaintiff, civil defendant, legal person, their legal representative or legal counsel. Other persons cannot appeal to the court.

128. Under article 22 of the “Law on enforcement of resolution on arrest or detention of suspect or accused persons” a detainee has a right to submit an appeal, request or complaint addressed to the state or local administration, other authorities or officials through the administration of the detention place. Such appeal, request or complaint cannot be supervised by the administration of the detention place, and shall be forwarded to a respective authority in a sealed envelope not later than next day.

129. All other appeal, request or complaint addressed to state authority or official other than the ones mentioned above shall be forwarded by the administration of the detention place within 3 days upon receipt and supervision of such appeal, request or complaint.

130. Any complaints with respect of an investigator or prosecutor proceedings shall be forwarded to a respective authority within 3 days upon receipt of such complaint.

Y. Reply to paragraph 17(d) of the list of issues

131. Joint orders A/194, 128 and A/92 of the Minister for Justice and Home Affairs, the Chair of Judiciary General Council and the Prosecutor General established an integrated database for information exchange between court and law enforcement authorities.

132. The integrated database enables an exchange of information on criminal offence proceedings between police, prosecutor office, court and court resolution enforcement through integrated network based on state telecommunication facilities and provides for consolidated registration system to collaborate on criminal proceedings.

Z. Reply to paragraph 17(e) of the list of issues

133. Article 11.12 of the “Law on enforcement of resolution on arrest or detention of suspect or accused persons” specifies authorized subjects to access places of detention as “An investigator, defense counsel, prosecutor or judge that investigate or prosecute the detainee shall access the detention place to communicate with the detainee upon presenting their identification documents”.

134. These authorized officials have a right to inquiry on any person subjected to suspected enforced disappearance.

135. With a view to prevent torture and other forms of cruel, inhumane or degrading treatment, a member of the Human Rights Commission in charge of torture prevention “... shall have a right to access freely and inspect places of deprivation of liberty or detention places” according to article 34.1.1 of the “ Law of Mongolia on National Human Rights Commission”. Article 34.1.3 of the law states on the rights of officials to “obtain any information on a place of deprivation of liberty or a person who is deprived of liberty”.

136. Article 7.1.18 of the “Law of Mongolia on State Great Khural” specifies the authorities of the State Great Khural members, including the right to “access any institution freely, while exercising entitled mandate, and communicate any person without delay, and obtain necessary information”.

137. The legal provisions stated above ensure that the investigator, prosecutor or judge who carry out investigation or prosecution have a direct access to the places of detention only in relation to criminal proceedings, inquiry or investigation.

138. Whereas, in addition to having a direct access to the places of detention, a prosecutor monitoring over the enforcement of sentence and members of the National Human Rights commission exercise a supervision over the compliance of detention proceedings with the established laws and rules.

139. The Parliament of Mongolia has adopted a revised Law On National Human Rights Commission on January 23, 2020 in compliance with the optional protocol. The law defines functions of an independent member or unit in charge of torture prevention, and, thus establishing a legal framework for national mechanism. The law provides for assigning an independent member in charge of national mechanism on torture prevention and

establishing an independent unit to provide professional and methodological support to the member. The process of assigning the member and establishing the unit is ongoing. The revised law also provides for the independent member to be selected through competitive selection, nominated and approved by the Parliament.

140. However, due to the lack of funds to cover respective cost of the member and unit in the Human Right Commission budget for 2020, there is an urgent need for human and financial resources.

AA. Reply to paragraph 17(f) of the list of issues

141. A prosecutor shall exercise supervision of the operations of places of deprivation of liberty according to article 56 of the Constitution, article 22, 23 and 24 of the Law on Prosecutor and article 45 of the Law on enforcement of resolution on arrest or detention of suspect or accused persons.

142. While examining operations of the places of deprivation of liberty, the prosecutor shall verify existence of detention ordinance or resolution, expiration dates of thereof, identification of detained person against the resolution and relevant documents; examine personal file of detainee, its composition; communicate in person with the detainee, receive their requests; carry out search and inspection if necessary, and check an adequacy of surveillance camera.

143. The following procedure shall be followed with while releasing a detained person at the court resolution, judge ordinance, or resolution of a head of detention place or prosecutor upon expiration of legally specified term:

- An administration of a detention place shall release immediately the person upon receipt of a court resolution or ordinance on release;
- A head of a detention place shall notify, in written, not less than 24 hours prior to expiration of detention term specified in the law, the official who issued the resolution of release or respective prosecutor. In case of absence of an official resolution from a competent authority on continuation of detention or release, the head of the detention place shall immediately, based on own resolution, release the detainee upon expiration of detention term specified in the law;
- A reference containing all information on the detainee during detention term or release reference shall be written by the detainee or his/her legal counsel and attached to the personal file of the person.

144. Although it is not provided by law, a head of detention place, while releasing a detained person, shall transfer the person to the official who issued the release resolution.

145. Release of a detainee from a detention place or place of deprivation of liberty shall be done in presence of guard, statistician, social worker or doctor. Supervisory functions of a head of a detention place are performed by sentence enforcement unit of the Court resolution enforcement general authority during the process of release. Statistical unit of the authority shall exercise registration supervision.

AB. Reply to paragraph 17(g) of the list of issues

146. A complete mechanism is established to impose criminal or disciplinary sanctions to a person who failed to record the deprivation of liberty of any person, or for recording of any information, which the official is responsible for the official register knew or should have known to be inaccurate in compliance with article 22(b) of the Convention. In particular, article 22.1 of the Criminal Code criminalizes abuse of power or office, whereas the term “abuse” means using official duties, office or official powers against official interests, or for personal gain and deliberate failure to act the way it should be, or to act the way it should not be, or an act of exceeding an office power, and shall be punishable with 1–8 years sentence.

147. Furthermore, article 23.4 of the Criminal Code criminalized an act of recording deliberately false information in the State registry and fabrication of forged documents. Paragraph 1 of the article imposes criminal sanctions to “a public official or public servant who deliberately records false information into State registry, destroys or alters information or supplies others with documents with false information for purposes of personal benefit or to benefit others...”. Article 23.5 of the Code criminalized an act of Negligence.

148. Article 23.5.1 of the Criminal Code stipulates “An act of an official to fail to perform or perform insufficiently duties, specified in the laws or administrative normative acts, causing considerable damages shall be punishable with deprivation of right to be appointed or elected to public office for a term up to 2 years with a fine equivalent of 2,700–5,400 units of togros, or travel restriction of 6 months up to one year, or 6 months up to one year sentence”.

149. Article 23.5.2 of the Code stipulates “An act of causing human death or considerable damage to others as a result of failure to provide prompt emergency assistance service by law enforcement officer or medical personnel shall be punishable with deprivation of right to conduct professional activities for up to 2 years and 6 months up to 2 years sentence.

150. Disciplinary sanctions are applicable under Law on Public service, Law on Police, Law on Court resolution enforcement and Law on Prosecutor.

AC. Reply to paragraph 18 of the list of issues

Reply to part 1

151. National laws of Mongolia ensure that all the participants of a criminal offence, including suspect, accused, defendant, victim, civil plaintiff, civil defendant, legal person or their legal representative or legal counsel have a right to access all the information stated in the article 18.1 of the Convention.

152. Article 1.14.1 of the Criminal procedure law states “A person or legal entity who considers own rights and legitimate interests are violated or affected shall have a right to self defense, or to be defended by a defense counsel, or receive a legal assistance”. Article 1.14.2 of the law states “A person or a legal entity shall be provided with opportunity, conditions and time for acquiring legal assistance, self-defense or defense by a defense counsel”. Article 15.1 of the law provides for “A participant of a criminal proceedings shall have a right to submit a request on protection of own legitimate rights and interest to a court, investigator or prosecutor”.

153. Under the article 19 of the “Law on enforcement of court resolution on arrest or detention of suspects or accused person” a detained person shall have a right to a meeting in private with his/her defense counsel in the detention place.

154. In addition, a detained person shall have a right to communicate with family or other persons at the written consent of a competent official who issued a resolution on detention or his/her superior”, and a detained foreign national can communicate with the diplomatic mission or consular official of the State of which he/she is a national of.

155. Article 18.2 of the Convention is duly applicable, and an official who fails to allow an access to the information stipulated in article 18.1 of the Convention shall be held liable as per article 13.4.2 of the Criminal Code. In addition, double charges shall be imposed to a person who threatened or obstructed, or used a force to the person seeking the information.

156. Law on Privacy of 1995 imposed certain limitations. Particularly, under the article 4 of the law, privacy shall include correspondence secrecy, health information secrecy, property secrecy, family secrecy or other type of secrecy determined by law.

157. Article 5.1 of the law requires “An individual shall ensure protection of own privacy”.

158. Article 5.2 states “If necessary, privacy of an individual can be taken under protection of the state or institution based on the grounds determined by legislation”.

159. Article 5.3 states “A competent official of a legally authorized institution shall access an individual secrecy only on the grounds determined by legislation”.

160. Article 5.4 states “It shall be prohibited for a person who accessed legally or with affidavit of support secrecy of an individual to disclose it to others”. However, article 5.6 creates a legal basis for disclosing such information at the decision of a respective state authority or official in cases when it is unavoidable for reasons of national security, national defense, public health and protection of legitimate interests.

Reply to part 2

161. A criminal offence participant shall have a right to appeal against criminal proceedings carried out according to resolutions of investigator, authorized official, prosecutor or court.

162. Under article 13.4.2 of the Criminal Code “A punishment of 1–5 years sentence shall apply if an act of causing damage or harm to legitimate rights and interests of others, due to concealment of information or refusal to reveal on unlawful detention or deprivation of liberty of a person by an official authorized to carry out investigation proceedings, prosecutor or judge, is not of criminal nature.

AD. Reply to paragraph 19 of the list of issues

Reply to part 1

163. A database of genetic data of disappeared persons and their relatives for purposes of identifying any remains in the case of death or for the search of the disappeared person is not in existence at current.

164. However, the “Regulation on developing and application of genetic database” approved by the Justice and Home Affairs Minister order # A/16 in 2012 provides for developing integrated database, updating, storage, usage, ensuring secrecy and disposal of genetic formation of humans and bio samples of human origin. The database is stored with the National institute for judiciary analysis and used for search of disappeared persons, identification of mortal remains and determining relatives. Genetic information of victim and other material proof of bio origin shall be stored in the database. All the information of the database, including personal information, unidentified body, mortal remains and bio material proof, shall be stored in DNA formation database for 70 years.

Reply to part 2

165. Government resolution number 28 from 2009 established a procedure on bury of certain mortal remains. The procedure regulates activities pertaining to receipt of mortal remains of those with no identification document, residential address or family members by Judiciary medical unit of the Institute of judiciary analysis in the capital city and aimag or soum clinic and their storage in morgue for up to 30 days.

166. Activities on identification of a mortal remains and locating families are carried out by police. Judiciary verification medical analysis of the mortal remains shall be done at the decision of investigator, prosecutor or court. Results of analysis shall be compiled and delivered to the aimag or capital city Governor’s office and Criminal Police. Remaining copies of the results shall be kept in archives of the Institute of judicial analysis and local administration.

167. If family members of buried person are identified at later stage and request an access to respective documentation and transfer of mortal remain to another bury location, the authorities shall locate the place of bury and make results of analysis and other information available. These proceedings shall be officially documented.

AE. Reply to paragraph 20 of the list of issues

168. As of current, no specific training on Convention was conducted.

169. However, starting 2016 the National Human Right Commission initiated series of trainings on 8 topics jointly with the Mongolian Bar Association, including a training on “Application of international human rights treaties in judicial practice”. The training covered some elements of enforced disappearance. Specialized training on the Convention is amongst priority issues in the agenda.

170. Series of training courses were conducted for judges, investigator and prosecutors in relation to enforcement of revised Criminal Code, Criminal procedure law and Law on enforcement of court resolution effective since July 1, 2017. It is essential to improve sequence, quality and availability of the training courses that require a strong cooperation at national and international levels. It will be of significant benefit for the State to launch an extensive cooperation with the United Nations Committee on Enforced Disappearance in conducting specific training on the Convention.

AF. Reply to paragraph 21 of the list of issues

Reply to part 1

171. Article 8.1.1 of the Criminal procedure law defines broadly “Victim as a person or legal entity who incurred life, health and other damages with respect to the rights or freedom, property or non-property damages as a result of criminal offence”. The Criminal Code criminalizes enforced disappearance and defines a person who incurred life, health and other damages with respect to the rights or freedom, property or non-property damages due to or as a result of the criminal offence as a victim. These provisions of the national legislations entirely conform to the definition of the Convention article 24(1).

Reply to part 2

172. Under article 8.1.2 of the Criminal procedure law a court, prosecutor or investigator shall issue a resolution to establish a victim. As of current, there is no case of criminal proceedings with established victim of enforced disappearance.

Reply to part 3

173. Criminal procedure law specifies in details “Victim, civil plaintiff or civil defendant”. Under article 8.2, para 1.9 of the law a victim has a right to claim a compensation for incurred damages resulted from a criminal offence. Article 8.5.2 of the law states “A person or legal entity who incurred property or non-property damages resulted from a criminal offence shall have a right to submit a civil claim against a suspect, accused or defendant, or a person responsible for property or non-property damages caused. The court shall consider the claim along with the criminal offence”.

AG. Reply to paragraph 22 of the list of issues

Reply to part 1

174. Upon receipt of complaint or information on disappearance of a person from his/her residential location an inspector of the respective territorial police unit shall proceed with investigation, and upon expiration of 30 days the complaint shall be forwarded to the criminal police. The criminal police shall continue the investigation, carrying out undercover operations as needed, and assigns criminal investigator in case of suspicious disappearance or possibility of becoming a victim of a criminal offence.

175. If the person remains disappeared from his/her residential location for 2 year, an interested person shall appeal to the court to declare the disappeared person as missing according to article 22.2 of the Civil Code. The court shall establish custody over a property of a missing person. Any financial liabilities relative to support of dependants of a missing person or payment of taxes, or contractual payment obligations shall be covered from the proceeds of the property under custody. If a missing person is located and returned to a place of residence, the court shall annul the declaration on decease and terminate custody over the property. The returned person shall have a right to claim all the properties back,

including the property transferred to others on other grounds. However, the returned person shall not have a right to claim any profit accumulated as a result of economic use of the property. The court can issue a resolution to compensate, wholly or partially, a cost of sold, missing or damages property if a property custodian sold the property to others.

Reply to part 2

176. Under article 24 of the Civil Code a person is considered as deceased:

“(1) A court can declare a person as deceased at a request of an interested person if a location of the person remains unknown for another 5 years or 1 year elapses since the person disappeared in fatal conditions;

(2) A date of effectiveness of court resolution shall be regarded as a date of decease of the person.”

Reply to part 3

177. The Police conducts a search of a person in accordance with the legislation and legislative acts such as Criminal Code, Criminal procedure law, Law on Police, Law on Intelligence operations, Law on Court, Law on Prosecutor, Civil procedure law, Law on Court decision enforcement, Law on Prevention crime and infringement, Guidance on Prosecutor’s supervision over the investigation proceedings, Procedure on investigative operations of police and Procedure on exchange of information with Interpol.

178. Upon receipt of complaint or information on disappearance of a person from his/her residential location an inspector of the respective territorial police unit shall proceed with investigation, and upon expiration of 30 days the complaint shall be forwarded to the criminal police. The criminal police shall continue the investigation, carrying out undercover operations as needed, and assigns criminal investigator in case of suspicious disappearance or possibility of becoming a victim of a criminal offence.

179. If the person remains disappeared from his/her residential location for 2 year, an interested person shall appeal to the court to declare the disappeared person as missing according to the Civil Code. If a location of the person remains unknown for another 5 years and 1 year elapses since the person disappeared in fatal conditions the interested person shall appeal to the court to declare the person as deceased.

180. According the legislations such as the Law on Intelligence operations and Procedure of police on investigative operations the police shall continue searching for the missing or deceased person until information on or mortal remains of the person is found.

181. Search for belongings or transportation means shall be ceased when inquiry or investigation establishes the case as “withdrawn or unfeasible due to emergence of new circumstances” according to the Criminal procedure law.

182. The police shall cease investigation proceedings the following circumstances:

- (a) a person, livestock or items are found; or
- (b) missing person is determined as deceased; or
- (c) unknown mortal remains are identified; or
- (d) emergence of circumstances making investigation unfeasible.

AH. Reply to paragraph 23 of the list of issues

Reply to part 1

183. Article 13 of the Criminal Code criminalizes an act of enforced disappearance and applies aggravating circumstances in case of criminal offence committed knowingly to minors and pregnant women. The criminal offence shall punishable with 2–8 years sentence.

184. Articles 23.2.2 and 23.3.1 of the Criminal Code criminalize acts of falsification or use of forged documents, and concealment or destruction of documents. The minimum

penalty for falsification or use of forged documents is a fine equivalent of 450,000–540,000 units togrogs, and maximum is travel restriction for a term 1 months up to 1 year. The minimum penalty for concealment or destruction of documents is a fine equivalent of 450,000–540,000 units togrogs, and maximum is a sentence for 6 months up to 1 year.

185. An act of criminal offence resulted in serious damage to other's property is punishable with a fine equivalent of 2,700–14,000 units togrogs, or travel restriction for 6 months up to 3 years, or sentence of 6 months up to 3 years.

Reply to part 2

186. Under article 55 of the Family law a consent of parents to give their child for adoption and application for adoption shall be made in written and certified by public notary. Unless otherwise provided by law, a consent of guardian, caretaker or orphanage is required in case of giving an orphan child for adoption or lack of legal capacity of both parents.

187. As provided by law, a child above 7 shall give his/her consent for adoption, and a child of a parents deprived of their parental rights shall be given for adoption after 6 months since the date of court resolution on adoption entered into effect.

188. A person interested in adopting a child shall submit an application to the governor of the soum or district where the child resides. The governor shall review the application and make a decision on adoption within 20 days since the date of receipt of application. Based on the decision, the civil registration worker shall register the child adoption.

189. Article 58 of the Family law regulates adoption of child by foreign nationals.

190. If the following circumstances appear after child adoption, the court shall annul adoption based on appeal of biological parents of adopted child, or authorities protecting the child rights or at the personal appeal of the child above 14:

- (a) Abuse of parental rights by a person adopted a child; or
- (b) Cruel treatment of adopted child; or
- (c) Use of forged documents for adoption; or
- (d) Single parent, Mongolian national above 60 with no relatives and depending on other's care or foreign nationals above 60; or
- (e) A person who is or was deprived or restricted of parental rights;
- (f) A person who returned an adopted child due to personal fault; or
- (g) A person seeking a person gain; or
- (h) A person who was determined as legally, wholly or partially, incapable by court; or
- (i) A person suffering from tuberculosis or mental disorder, or addicted to alcohol or drug;
- (j) A person who has been repeatedly charged for criminal offences or serving a sentence.

Reply to part 3

191. There is no time limit to annul decisions of administrative authorities.
