



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
23 October 2019

Original: English
English, French and Spanish only

Committee on Enforced Disappearances

List of issues in relation to the report submitted by Mongolia under article 29 (1) of the Convention*

I. General information

1. Please indicate whether the State party intends to make the declarations provided for in articles 31 and 32 of the Convention, which relate to the Committee's competence to receive and consider individual and inter-State communications (arts. 31 and 32).
2. Please provide information on the participation of civil society organizations and the National Human Rights Commission in the preparation of the State party's report and on any activities carried out by the Commission in relation to the Convention.
3. Please indicate whether national courts or administrative authorities can directly apply the provisions of the Convention. Please provide examples, if any exist, of jurisprudence where the provisions of the Convention have been invoked.

II. Definition and criminalization of enforced disappearance (arts. 1–7)

4. In reference to paragraph 12 of the State party's report, please indicate whether there is any legislation in place to specifically prohibit the invocation of exceptional circumstances as a justification for enforced disappearance (art. 1).
5. Please provide the exact and full wording of the definition of "enforced disappearance" contained in the revised Criminal Code and explain how it comprises all three constitutive elements of the crime in line with article 2 of the Convention. Please indicate whether the wording "agents of the State" mentioned in paragraph 14 of the State party's report would also include "persons or groups of persons acting with the authorization, support or acquiescence of the State" and provide examples. Please also explain the difference between article 13.4 of the Criminal Code (illegal custody and enforced disappearance) and article 13.9 (illegal arrest and detention) and clarify how an "arrest, detention, abduction or any other form of deprivation of liberty" followed by the other elements of article 2 of the Convention would be punished under domestic legislation (arts. 2 and 4).
6. While taking note of the information provided in paragraphs 29 to 36 of the State party's report, please clarify the maximum and minimum penalties provided for in the Criminal Code for the crime of enforced disappearance and clarify the mitigating or aggravating circumstances that can be applied, indicating the maximum and minimum penalties when these apply (art. 7).

* Adopted by the Committee at its seventeenth session (30 September to 11 October 2019).



7. Please provide information on how the acts defined in article 2 of the Convention are prohibited and prosecuted when they are committed by persons or groups acting without the authorization, support or acquiescence of the State. In this regard, please indicate whether any complaints of such conduct have been lodged, and if so, please provide disaggregated data, including by sex, age and nationality, on the investigations carried out and their results, including the proportion of proceedings launched that resulted in convictions, and on the sanctions imposed on the perpetrators (arts. 3 and 12).

8. In reference to paragraphs 24 to 26 of the State party's report, please indicate whether the widespread or systematic practice of enforced disappearance is codified in national legislation as a crime against humanity. If this is the case, please provide information on the consequences provided for under domestic law, including the maximum and minimum penalties and its imprescriptibility (arts. 5, 7 and 8).

9. While taking note of the information provided in paragraphs 27 and 28 of the State party's report, please explain how national legislation holds criminally responsible all the persons specified in article 6 (1) (a) and (b) of the Convention. Please provide information on the relevant legislation that prohibits invoking the orders of a superior, including orders from military authorities, as a justification of enforced disappearance, and indicate whether the notion of due obedience as a criminal law defence has any impact on the effective implementation of this prohibition. Please indicate whether national legislation guarantees that persons who refuse to obey orders or instructions that prescribe, authorize or encourage enforced disappearance will not be punished. Please also provide information on any remedies available to subordinates against any potential disciplinary measures resulting from their refusal to carry out a criminal act ordered by a superior (arts. 6 and 23).

III. Judicial procedure and cooperation in criminal matters (arts. 8–15)

10. In reference to paragraphs 37 to 39 of the State party's report, please clarify whether the State party applies a statute of limitations to the crime of enforced disappearance, including as a crime against humanity, and if so, please clarify the period of statute of limitations applicable. Please also explain how article 1.10 of the Criminal Code is compatible with article 8 (b) of the Convention, given that the period of statutory limitation of the offence commences from the date of the commission of the offence. Please also explain how the State party guarantees that no statute of limitations applies for criminal, civil or administrative actions brought by victims of enforced disappearance seeking the right to an effective remedy (art. 8).

11. In reference to paragraphs 40 and 41 of the State party's report, please explain how national legislation ensures the competence of the State party to exercise jurisdiction over the crime of enforced disappearance in the cases contemplated under article 9 (1) (b) and (c) of the Convention and provide examples of cases where (b) and (c) were applied. Please also clarify whether the State party has the competence to prosecute an alleged offender who has committed an enforced disappearance abroad when he or she is present in any territory under its jurisdiction. Please indicate whether military authorities are competent under domestic law to investigate and/or prosecute persons accused of enforced disappearance, and if so, please provide information about applicable legislation (arts. 9 and 11).

12. While taking note of the information provided in paragraphs 43 to 46 of the State party's report, please indicate the procedures in place to ensure the presence of an alleged offender before the authorities, including in the absence of an extradition request from another State. Please report on the existing legal, administrative or judicial measures to carry out a preliminary inquiry or investigation to establish the facts should the State party take the measures referred to in article 10 (1) of the Convention, including in the absence of a request from another State to conduct an investigation. Please also indicate how the State guarantees that a person in custody pursuant to article 10 (1) can communicate immediately with his or her consular authorities (art. 10).

13. Please indicate whether there have been any allegations of enforced disappearance received by the State party since the submission of the report. If so, please provide information on the investigations conducted and their result. Please provide additional information on all the measures in place to ensure a prompt, thorough and impartial investigation of alleged cases of enforced disappearances, including in the absence of an official complaint. Please provide information on the authorities responsible for investigating cases of alleged enforced disappearance, including the budget and the human resources at their disposal, and indicate (a) whether they are subject to any limitations which may restrict their access to places of detention where there are grounds to believe that a disappeared person may be present; (b) whether there are any restrictions on their access to all the documentation and other information relevant to their investigation. Please also indicate whether there are any mechanisms in place to exclude any officials of law enforcement and security forces, or any other public officials, whether civilian or military, from the investigation into an enforced disappearance when such officials are suspected of having been involved in the commission of the offence (arts. 1, 2 and 12).

14. In relation to paragraph 54 of the State party's report, please provide further information on how the State ensures that any individual who alleges that a person has been subjected to an enforced disappearance can report the facts to the competent authorities, irrespective of the relationship with the disappeared person. In reference to paragraph 55 of the State party's report, please provide further information on the remedies available to the complainant in case the competent authorities refuse to investigate his or her case. Please also provide information on the mechanisms available to ensure the protection from any ill-treatment, intimidation or sanction of the complainants, their representatives, witnesses and other persons participating in the investigation, prosecution and trial, or who request information concerning a person deprived of liberty (arts. 12, 18, 20 and 22).

15. Please indicate whether there are any limitations or conditions in national legislation that could be applied in relation to requests for judicial assistance or cooperation in the terms established by articles 14 and 15 of the Convention. Please provide examples, if any exist, of cases involving the offence of enforced disappearance in which mutual assistance was requested by or from Mongolia, including the results of any such request (arts. 14 and 15).

IV. Measures to prevent enforced disappearances (arts. 16–23)

16. In relation to expulsion, return, surrender or extradition of a person, please provide information on:

(a) Whether the crime of enforced disappearance is considered under national legislation as a political offence, an offence connected with a political offence or an offence inspired by political motives for the purposes of extradition. If any of the foregoing is true, please indicate the steps taken to comply with art. 13 (1) of the Convention (arts. 13 and 14);

(b) Whether the crime of enforced disappearance is an extraditable offence in all treaties with all States and provide examples, if any exist, of cases where the State party granted extradition and when extradition was denied for cases of enforced disappearance. In the absence of an extradition treaty, please explain how the Convention is used as basis for the extradition and indicate whether the State party has used the Convention for such a purpose (art. 13);

(c) Whether the State party plans to eliminate any obstacles to extradition that exist in national legislation, in extradition treaties or in agreements with third countries with respect to the crime of enforced disappearance (art. 13);

(d) The authority that determines the expulsion, return, surrender or extradition of a person and about the mechanisms and criteria applied before carrying out any of these procedures in order to evaluate and verify the risk of a person being subjected to enforced disappearance or other forms of serious harm to life and personal integrity (art. 16);

(e) Whether any decision on expulsion, refoulement, surrender or extradition can be appealed, before which authorities it can be brought, what the applicable procedures are

and whether the decision regarding such an appeal is final. Please describe any other measures in place to ensure strict compliance with the principle of non-refoulement under article 16 (1) of the Convention (art. 16);

(f) Whether the State party accepts diplomatic assurances when there is reason to believe that there is a risk that the person may be subjected to enforced disappearance (arts. 13 and 16).

17. With regard to detention and access to places of deprivation of liberty, please:

(a) Provide information on the prohibition in national legislation of secret detention (art. 17);

(b) Provide information on the measures that guarantee, in law and in practice, that all persons deprived of liberty, regardless of the place of deprivation of liberty, are afforded fundamental legal safeguards from the very outset of the deprivation of liberty, including the right to communicate with and be visited by their counsel, family or any other person of their choice, and that in the case of foreigners, they can communicate with consular authorities. Please provide information on any conditions or restrictions that may apply to these rights, including for detainees in solitary confinement, and their compatibility with article 17 (2) (d). In this respect, please also indicate whether there are any time limits for a person deprived of liberty to meet with his/her counsel after his/her deprivation, and report on allegations relating to making access to family members conditional upon a detainee confessing or providing information. Indicate whether there have been complaints or allegations regarding failures to observe these rights and, if so, please provide information about the proceedings carried out and their outcome, including any sanctions imposed (art. 17);

(c) Provide information on the applicable legislation to guarantee, in the case of a suspected enforced disappearance, that any person with a legitimate interest, including those other than the person deprived of liberty, can bring proceedings before a court in order to decide on the lawfulness of a detention. Please indicate the measures to prevent and impose sanctions for obstructing and delaying this remedy (arts. 17 and 22);

(d) Provide information on the existence of any official registers of persons deprived of liberty, irrespective of the place of deprivation of liberty, and indicate the measures adopted to ensure that they contain all the information listed in article 17 (3) of the Convention, and that they are completed, updated immediately and monitored (art. 17);

(e) In reference to paragraph 82 of the State party's report, provide information on any other independent bodies or administrative mechanisms that exist to inspect all places of deprivation of liberty and the measures in place to guarantee their independence and unrestricted access to all places of deprivation of liberty. Please indicate whether a national preventive mechanism has been established, following the ratification in 2015 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 17);

(f) Provide additional information on the legislation and practice to ensure the verification of the release of persons deprived of liberty in all places of deprivation of liberty, as well as information on the authorities in charge of monitoring the release (arts. 17 and 21);

(g) Provide information on the measures in place to prevent and sanction the conduct described in article 22 (b) and (c) of the Convention (art. 22).

18. Please report on the measures in place to guarantee that any person with a legitimate interest, including those other than family members and counsel, can access all information listed in article 18 (1) of the Convention and clarify whether the Law on Privacy of 1995 or any other provisions could impose restrictions on access to this information. Please explain the means for appeal against the refusal to disclose such information and indicate the measures in place to prevent and impose sanctions on the delay or obstruction to such appeal (arts. 18, 20 and 22).

19. Please indicate whether there exists a database of genetic data of disappeared persons and their relatives for the purposes of identifying any remains in the case of death

or for the search of the disappeared person. Please provide information on any mechanisms in place to locate victims and, in the case of death, to locate, respect and return their mortal remains to relatives (arts. 19 and 24).

20. In relation to paragraphs 119 and 120 of the State party's report, please indicate whether the State party provides, or plans to provide, specific training on the Convention to civil and military law enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges and other officials responsible for the administration of justice (art. 23).

V. Measures to provide reparation and to protect children against enforced disappearance (arts. 24 and 25)

21. Please provide information on the definition of "victim" in national legislation, including the text of the Criminal Procedure Code and other relevant legislation, and explain how it conforms with the definition contained in article 24 (1) of the Convention. Please indicate whether a victim of enforced disappearance is obliged to initiate criminal proceedings in order to be considered a victim. Please report on the rules and procedures in place to enable victims of enforced disappearance to obtain reparation and compensation and indicate whether there are any time limits for victims to access these resources. Please also indicate the kind of reparation provided to victims and include the relevant text (art. 24).

22. Please provide information on the legal situation in national legislation of disappeared persons whose fate has not been clarified and that of their relatives in fields such as social welfare, financial matters, family law and property rights. In this respect, please indicate whether a declaration of absence or a declaration of death of the disappeared person is granted in these cases. If so, please provide information on how long after the disappearance such a declaration is issued and on the impact it might have on the State party's obligation to continue the search and investigation into an enforced disappearance, until the fate of the disappeared person has been clarified (art. 24).

23. Please indicate the relevant provisions of the Criminal Code applicable to acts under article 25 (a) and (b) of the Convention and specify the maximum and minimum penalties provided for such acts. Please provide information on the procedures in place to review and, if necessary, annul the adoption of children that originated from an act of enforced disappearance and to guarantee the right of disappeared children to have their true identity re-established. Please indicate whether there is any time limit to annul the adoption or placement of a child that originated from an act of enforced disappearance (art. 25).
