



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

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## Committee on Enforced Disappearances

### Report on follow-up to the concluding observations of the Committee on Enforced Disappearances\*

#### I. Introduction

1. The present report reflects the information received by the Committee between its twenty-third and twenty-fourth sessions in follow-up to its concluding observations on Brazil and Mongolia under article 29 (1) of the Convention,<sup>1</sup> and the assessments and decisions that the Committee adopted at its twenty-fourth session.
2. The assessments contained in the present report refer only to the recommendations that were selected for the follow-up procedure and in relation to which the States parties were requested to submit information within one year of the adoption of the concluding observations. The present report does not constitute an assessment of the implementation of all the recommendations made to the State party in the concluding observations, or a comparison between States parties.
3. To carry out its assessment of the information provided by the States parties concerned, the Committee uses the criteria described below:

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*Assessment criteria*

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- A    Reply/action satisfactory:** The State party has provided evidence of significant action taken towards implementing the Committee's recommendation.
- B    Reply/action partially satisfactory:** The State party has taken steps towards implementing the recommendation, but additional information or action is necessary.
- C    Reply/action not satisfactory:** The State party has sent a reply, but action taken or information provided is not relevant or does not implement the recommendation.
- D    No reply regarding a recommendation:** The State party has provided no information on implementation of the recommendation.
- E    Information or measures taken are contrary to or reflect rejection of the Committee's recommendation:** The reply reveals that the measures taken are contrary to or have results or consequences that are contrary to the recommendation of the Committee or reflect rejection of the recommendation.

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\* Adopted by the Committee at its twenty-fourth session (20–31 March 2023).

<sup>1</sup> CED/C/BRA/FCO/1 and CED/C/MNG/FCO/1.



## II. Assessment of follow-up information submitted under article 29 (1) of the Convention

### A. Brazil

**Concluding observations:** [CED/C/BRA/CO/1](#), adopted 23 September 2021 (twenty-first session)

**Recommendations to be followed up:** Paragraphs 13 (statistical information), 15 (offence of enforced disappearance) and 19 (military jurisdiction)

**Reply:** [CED/C/BRA/FCO/1](#), due 27 September 2022, received 5 December 2022

**Information from other stakeholders:** Federal Public Defender's Office, received 14 December 2022, and Conectas Direitos Humanos, received 26 December 2022

**Paragraph 13:** The State party should take the steps necessary to swiftly generate accurate and up-to-date statistical information on disappeared persons, disaggregated by sex, age, nationality, place of origin and racial or ethnic origin. Such statistical information should include the date of disappearance; the number of persons who have been located, whether alive or deceased; and the number of cases in which there may have been some form of State involvement within the meaning of article 2 of the Convention. In this connection, the Committee recommends that the State party speed up the implementation of the National Register of Disappeared Persons, ensuring that it contains, at a minimum, all the information referred to in the present recommendation.

#### State party's reply

4. The reply of the State party is provided in [CED/C/BRA/FCO/1](#), paragraphs 1 and 2.

#### Committee's evaluation

5. [C]: The Committee notes the information provided by the State party regarding the collection of statistical data by State authorities relating to cases of disappearance. However, the Committee notes that the data referred to does not enable the identification of victims of enforced disappearance. While, according to the information available, 65,225 cases of disappearance have been reported to the police in Brazil, cases of enforced disappearance cannot be extracted from this overall figure, and no information is available on the sex, age, nationality, place of origin and racial or ethnic origin of the disappeared persons, the date of disappearance, or the number of persons who have been located, whether alive or deceased. The Committee therefore reiterates its recommendation contained in paragraph 13 of its concluding observations that the State party swiftly generate accurate and up-to-date statistical information on disappeared persons, and requests the State party to submit updated information in that regard in its next report under article 29 (4) of the Convention.

**Paragraph 15:** The Committee recommends that the State party take the measures necessary: (a) to speed up the adoption of an autonomous offence of enforced disappearance, ensuring that its definition is fully compatible with article 2 of the Convention and that it provides for appropriate penalties that take into account its extreme seriousness; and (b) to ensure that the application of the adopted offence in cases of enforced disappearance that commenced prior to its entry into force but continued thereafter is not subject to any limitations, including those that may be imposed on the basis of the Amnesty Law.

### State party's reply

6. The reply of the State party is provided in [CED/C/BRA/FCO/1](#), paragraphs 3 and 4.

### Committee's evaluation

7. [C]: The Committee notes that, according to the State party, the General Coordination Office on Disappeared Persons expressed a favourable opinion regarding Bill No. 6240/2013, which, the State party asserts, demonstrates its interest in welcoming the recommendations submitted by the Committee. While the bill, under discussion in the Chamber of Deputies, defines the offence of enforced disappearance in accordance with article 2 of the Convention and recognizes that the offence is imprescriptible, an autonomous offence of enforced disappearance has not yet been adopted. Additionally, the Committee notes that the State party does not provide information as to the second part of its recommendations, related to the Amnesty Law, which would prevent the prosecution of the offence in cases committed during the dictatorship. The Committee therefore reiterates the recommendation contained in paragraph 15 of its concluding observations and requests the State party to submit updated information in that regard in its next report under article 29 (4) of the Convention.

**Paragraph 19: Recalling its statement on enforced disappearance and military jurisdiction,<sup>2</sup> the Committee recommends that the State party swiftly take the measures necessary to ensure that the investigation and prosecution of cases of enforced disappearance is expressly excluded from the competence of military courts.**

### State party's reply

8. The reply of the State party is provided in [CED/C/BRA/FCO/1](#), paragraphs 5 to 7.

### Committee's evaluation

9. [C]: The Committee notes the assertion by the State party that the military courts are not competent to prosecute and judge cases of enforced disappearance. Nonetheless, no further information is provided on the measures taken to ensure the implementation of this principle in practice, especially in view of the allegations received by the Committee that the scope of the competence of military justice has increased since 2004. In that regard, the Committee notes that according to the information available, although the civil justice system maintains jurisdiction over intentional homicide of civilians by military personnel, the State military justice system and the military police understand that the investigation is still conducted by means of a military, not civil, police inquiry. Furthermore, in accordance with the provisions of Law No. 13491/2017, military offences involving enforced disappearance can still be investigated by the military authorities and judged by a military court. In view thereof, the Committee reiterates the recommendation contained in paragraph 19 of its concluding observations and requests the State party to submit updated information in that regard in its next report under article 29 (4) of the Convention.

### Committee's decision

10. The Committee decides to send a letter to the State party communicating its evaluation. The letter will emphasize that the State party, when implementing the Committee's recommendations and when submitting additional information under article 29 (4) of the Convention, should take into account the specific guidance and request for information contained in the present report.

11. The deadline for the submission by the State party of additional information under article 29 (4) of the Convention is 27 September 2027.

<sup>2</sup> [A/70/56](#), annex III.

## B. Mongolia

<b>Concluding observations:</b>	<a href="#">CED/C/MNG/CO/1</a> , adopted 6 May 2021 (twentieth session)
<b>Recommendations to be followed up:</b>	Paragraphs 17 (offence of enforced disappearance), 35 (training) and 39 (legal situation of disappeared persons whose fate has not been clarified and that of their relatives)
<b>Reply:</b>	<a href="#">CED/C/MNG/FCO/1</a> , due 7 May 2022, received 9 September 2022

**Paragraph 17: The Committee recommends that the State party take the legislative measures necessary to bring the definition of enforced disappearance contained in article 13.4 of the Criminal Code fully into line with the definition set out in article 2 of the Convention.**

### State party's reply

12. The reply of the State party is provided in [CED/C/MNG/FCO/1](#), paragraphs 2 and 3.

### Committee's evaluation

13. [C]: The Committee notes with appreciation that the State party has taken legislative measures to amend its Criminal Code to review the definition of the autonomous offence of enforced disappearance, previously contained in article 13.4 of the Criminal Code, and that the related bill, including draft article 29.12 on enforced disappearance, is currently under consideration by the parliament. Nonetheless, the Committee remains concerned that, while the bill reflects some elements of the definition contained in articles 2, 5, 6 and 7 of the Convention, its current formulation is not fully in accordance with the Convention.

14. In that regard, the Committee would like to draw the attention of the State party to the following key points of the current draft article 29.12 of the bill.

#### *Article 2 of the Convention*

15. With regard to the deprivation of liberty in whatever form against the will of the disappeared person, the Committee recommends that the State party:

(a) Remove the qualifier “illegally” in reference to acts of deprivation of liberty, since enforced disappearance may be initiated with a lawful deprivation of liberty that is followed by other acts making it unlawful;<sup>3</sup>

(b) Remove the phrase “or has caused damages or harms to the legal rights and interests of a person as result of deprivation of his/her liberty” (para. 1), since such a consequence is not provided for in article 2 of the Convention, and the phrase adds requirements that may prejudice the understanding and scope of application of the offence of enforced disappearance.

16. With regard to the refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person, the Committee invites the State party to use the exact formulation used in article 2 of the Convention, as follows: “followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”.

17. With regard to the direct or indirect involvement of the State, the Committee recommends that the State party:

<sup>3</sup> [CED/C/MNG/CO/1](#), para. 16.

(a) Amend the term “state official” to “agent of the State”, to ensure full compliance with the wording of article 2 of the Convention;

(b) Insert the word “support”, in full compliance with the wording of article 2 of the Convention, to read as follows: “acting with the authorization, support or acquiescence of the State”.

(c) Remove the qualifier “unlawfully”, used in the draft article in reference to the notion of concealment, as that qualifier would suggest the possibility of “lawful” concealment of the fate or whereabouts of the disappeared person, which is incompatible with the absolute prohibition of enforced disappearance set out in article 1 of the Convention.

*Articles 5, 6 and 7 of the Convention*

18. On criminal responsibility and penalties, the Committee notes that elements of articles 6 and 7 of the Convention are addressed in the draft legislation. However, the Committee is concerned that the draft legislation is not in full compliance with articles 6 and 7 of the Convention.

19. With regard to criminal responsibility, the Committee recommends that the State party fully and exactly reflect the wording of article 6 of the Convention.

20. While noting the penalties indicated in the draft legislation, the Committee reiterates that those penalties, in particular the minimum sentence of one year of imprisonment in the absence of aggravating circumstances, are not commensurate with the extreme seriousness of the offence of enforced disappearance.<sup>4</sup>

21. In addition, the Committee is concerned that, through the phrase “unless commission of these acts bears the nature of other offences referred to in the Special part of this Code”, the draft legislation links the penalty for enforced disappearance to the penalties for other offences that may be involved.

22. In view thereof, the Committee recommends that the State party:

(a) Ensure that the penalties contained in its new Criminal Code take due account of the extreme seriousness of the offence of enforced disappearance;

(b) Remove all phrases that link the penalty for enforced disappearance to the penalties for other offences that may be involved.

23. Furthermore, the Committee is concerned about the language used in paragraph 3 of the draft article to the extent that it departs from the Convention. In particular, the Convention does not establish a distinction between whether the criminal responsibility falls upon one person or upon a group, or whether the offence affects one person or several persons. Accordingly, the Committee recommends that the State party:

(a) Use the exact wording of article 7 (2) in reference to mitigating and aggravating circumstances, and delete the note, which is not in conformity with the Convention;

(b) Ensure that a review is conducted, in full compliance with the Convention and other international standards, of the wording of paragraph 3.1. In that connection, the Committee notes that:

(i) The word “incapability” should read “disability”, in accordance with Convention on the Rights of Persons with Disabilities;

(ii) The text should be amended to ensure that the aggravated responsibility of perpetrators is not limited to cases in which the perpetrator was unaware of the victim’s disability;

(iii) The other conditions for aggravated responsibility of perpetrators that are not provided for in article 2 of the Convention, namely the requirement that the offence

<sup>4</sup> CED/C/MNG/CO/1, para. 22.

be committed against a “person who is under one’s control” or a “person who is unable to defend himself”, should be removed;

(c) Explicitly recognize enforced disappearance as a crime against humanity, in accordance with article 5 of the Convention.<sup>5</sup>

24. The Committee therefore reiterates its recommendations contained in paragraphs 17, 19, 21 and 23 of its concluding observations, and requests the State party to provide updated information on their implementation when submitting its next report under article 29 (4) of the Convention.

**Paragraph 35: The Committee recommends that the State party ensure that all law enforcement and security personnel – whether civil or military – medical personnel, public officials and other persons who may be involved in the custody or treatment of persons deprived of their liberty, including judges, prosecutors and other officials responsible for the administration of justice, receive specific and regular training on the provisions of the Convention, in accordance with article 23 (1).**

#### **State party’s reply**

25. The reply of the State party is provided in [CED/C/MNG/FCO/1](#), paragraph 4.

#### **Committee’s evaluation**

26. [B]: The Committee notes the information provided by the State party that work is under way to establish a working group, and also notes that no information was provided in the State party report as to specific action taken in that regard. However, in an email dated 7 December 2022, the Permanent Mission of Mongolia to the United Nations Office and other international organizations in Geneva informed the Committee that an interministerial working group responsible for implementing the Committee’s recommendations was about to be established within the Ministry of Justice and Home Affairs, and that a plan of action had been drafted that included the organization of multiple training activities on the Convention and its usage, for judges, prosecutors, law enforcement officials, lawyers, and students from law schools. The Committee welcomes the affirmation that such progress is being made, and requests the State party to submit more complete and updated information in that regard, including whether the working group has been established and whether the planned training activities have been held, in its next report under article 29 (4) of the Convention.

**Paragraph 39: In the light of article 24 (6) of the Convention, the Committee recommends that the State party adopt the measures necessary to review its domestic legislation in order to ensure that it deals appropriately with the legal situation 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, without requiring that the disappeared person be declared dead. In this respect, the Committee encourages the State party to set up a procedure to obtain a declaration of absence as a result of enforced disappearance.**

#### **State party’s reply**

27. The reply of the State party is provided in [CED/C/MNG/FCO/1](#), paragraph 5.

#### **Committee’s evaluation**

28. [C]: The Committee notes the information provided by the State party that work was under way to establish a working group. Nonetheless, no further information is provided. The Committee therefore reiterates the recommendation contained in paragraph 39 of its concluding observations and requests the State party to submit updated information in that regard in its next report under article 29 (4) of the Convention.

<sup>5</sup> [CED/C/MNG/CO/1](#), para. 19.

**Committee's decision**

29. The Committee decides to send a letter to the State party communicating its evaluation and inviting the State party to submit a report under article 29 (4) of the Convention. That report should include updated information on the measures taken to implement all the Committee's recommendations contained in its concluding observations, and specifically the three paragraphs prioritized for follow-up. In that context, the letter will emphasize that the State party should take into account the specific guidance and requests for information contained in the present report, and the Committee's Guiding Principles for the Search for Disappeared Persons.<sup>6</sup>

30. The deadline for the submission by the State party of its next report under article 29 (4) of the Convention is 5 April 2027.

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<sup>6</sup> [CED/C/7](#), annex.