



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

Distr.: General  
7 March 2019

Original: English  
English, French and Spanish only

---

**Committee on Enforced Disappearances**

**Report submitted by Mongolia under article 29 (1)  
of the Convention, due in 2017\***

[Date received: 27 December 2018]


---

\* The present document is being issued without formal editing.

GE.19-03850(E)



\* 1 9 0 3 8 5 0 \*

Please recycle 



1. Hereby, Mongolia submits its initial report on the measures taken to give effect to the provisions of the International Convention for the Protection of All Persons from Enforced Disappearance, in accordance with Article 29, paragraph 1 of the Convention. The present report covers the period from October 2014 to July 2018.
2. Mongolia signed the Convention on 6 February 2007. Subsequently, the Convention was ratified by the Parliament on 9 October 2014.
3. Currently, there has been no registered case of enforced disappearance in Mongolia. Therefore, the present report provides information regarding the legal environment that prohibits such crime.

## **General Information**

4. Mongolia is located in North-East Asia between the 41° 35' and 52° north latitude and 87° 44' and 119° 56' east longitude. It is a landlocked country with a territory of 1 562.0 thousand square kilometres. Desert and steppes cover the majority of the land with forests accounting for less than 10 percent. There are abundant resources of minerals and raw materials such as gold, copper, uranium, and coal deposits. Mongolia shares a 3,543 kilometre border with the Russian Federation to the North and 4,709.6 kilometre border with the People's Republic of China to the South. It is 2,392 kilometres from West to the Eastern frontier and 1,259 kilometres from North to the Southern frontier.
5. Mongolia adopted a parliamentary form of a government and enacted its new democratic Constitution in 1992. The State Great Khural (Parliament) and the Presidential elections are held every 4 years. Additionally, local elections are held every 4 years, whereby the self-governing bodies (Citizens' Representative Hural) of 21 aimags (aimags are subdivided into soums; soums into bags) and the capital city (the capital city is subdivided into districts and districts into khoroos) are elected.
6. As of 2017, the population of Mongolia was 3,867 thousand people. 49.2 percent of the total population is men and 50.8 percent women, giving a sex ratio of 96.7. In the total population, the proportion of people aged 0–14 years stands at 30.4, the proportion of people aged 15–64 years stands at 65.7 and the proportion of people aged 65 years and over stands at 3.9.

## **General legal framework**

7. Article 16 of the Constitution of Mongolia provides that “the right to personal liberty and safety. No one shall be searched, arrested, detained, persecuted or restricted of liberty, except on 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 the law of the reasons for 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.”
8. Within the scope of work to improve the Mongolian criminal legislation, Criminal Code, Criminal Procedure Code, Law on Prosecutors, Law on Court Decision Enforcement were revised and entered into force on 1 July 2017. Furthermore, Law on Protection of Witnesses and Victims was enacted in 2013.
9. In the revised Criminal Code, for the first time, the enforced disappearance is legislated as a criminal offense.
10. Mongolia is also a party to other similar international agreements, namely International Covenant on Civil and Political Rights (1974), First and Second Protocol to the International Covenant on Civil and Political Rights (1991 and 2012 respectively), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol (2002 and 2015 respectively) and Rome Statute of the International Criminal Court (April 2002).

---

## **Information related to each substantive article of the convention**

### **Article 1**

11. As mentioned above, the paragraph 13 of Article 16 of the Constitution of Mongolia provides that “the right to personal liberty and safety. No one shall be searched, arrested, detained, persecuted or restricted of liberty, except on 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 advocate (legal counsel) shall be notified within a period of time prescribed by the law of the reasons for 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.”

12. Moreover, paragraph 2 of Article 19 refers that “in case of State of emergency or war, the human rights and freedoms as prescribed in the Constitution and other laws may be subjected to restriction exclusively by law. Such law shall not affect the right to life, the freedom of thought, conscience and religion, as well as the legal provisions concerning the right to not to be subjected to torture, inhuman, degrading or cruel treatment.”

13. If a police, military personnel or a government official violate the law, abuse power or fail to perform the official duty properly when using force, firearms and special tools during the state of emergency, one shall be legally liable under the law (article 21 of the Law on State Emergency).

### **Article 2**

14. One of the basic elements of the enforced disappearance crime is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the state. In accordance with the revised Criminal Code, illegal custody and enforced disappearance of persons (article 13.4), illegal arrest and detention (article 13.9) are considered as criminal crimes that violate the personal liberty and safety by illegally detaining, arresting and enforced disappearance.

15. Moreover, except in specific cases of deprivation of the personal liberty under the Criminal Procedure Code, it is strictly prohibited by law as it violates fundamental human rights and freedoms. In the event of a restriction of these rights and freedoms under the law, it is comprehensively regulated to be done only with court’s order and under the supervision of the prosecutor.

### **Article 3**

16. Under this provision, the States Parties are obliged to investigate enforced disappearances committed without the authorization, support or acquiescence of the State and to bring those in to justice. In Mongolia, the enforced disappearance is considered as a criminal crime. Acts similar to enforced disappearance namely abduction, illegal arrest, detention, and human trafficking also fall under an offense.

17. In accordance with the Criminal Procedure Code, the common grounds to establish the jurisdiction of criminal proceedings shall be subject to territorial jurisdiction.

### **Article 4**

18. The Criminal Code includes crimes such as illegal custody and enforced disappearance of persons in article 13.4 and illegal arrest and detention in article 13.9. These crimes include acts that violate personal liberty and safety guaranteed by the Constitution of Mongolia.

19. In other words, the right to personal liberty and safety is protected by law and it may be only limited exclusively under the law. Namely, someone whose guilty is determined by court shall be imposed a sentence (imprisonment, restriction of the right to travel). Or during investigation process accused may be arrested or detained for the crime if there is a reasonable ground or rule referred to in the Law on Criminal Procedure. Otherwise, liberty and safety of any person shall not be restricted.

20. For instance, Article 1.8 of the Criminal Procedure Code prohibits “searching, arresting, detaining, investigating, deprivation of liberty, infringing the right to ownership, initiating a criminal case and consider as an accused, be deemed as guilty, and imposing criminal liability except on the grounds or rules provided by law.” Moreover, if persons detained, arrested or confined except otherwise provided by law shall be released immediately under the law.

21. The component /element/ of the “enforced disappearance” has been defined in the Criminal Code in compliance with the components of other crimes of illegal detention, arrest and confinement by an authorized person that are crimes against Criminal procedure.

22. For instance, “if the unlawful detention of a person does not have an element of a crime against the Criminal procedure “then it constitutes basic component of the enforced disappearance crime. An aggravated component of the enforced disappearance includes acts that “damage and harm other’s legal rights and interests caused by illegal detention, deprivation of liberty in the course of illegal concealing or detention, restriction of freedom by hiding and refusing to disclose information regarding a person deprived of liberty by an official authorized to carry out an investigation, a prosecutor, and a judge” Moreover, the aggravated component of the enforced disappearance does not constitute elements of the crimes in the Special Part of the Criminal Code. In other words, the act of illegal detention is to violate personal liberty and safety in similar with “human trafficking,” “taking a hostage,” and “kidnapping,” which are specified in the Special Part of the Criminal Code, but it does not have an aim/intention related to nature of those crimes.

23. In addition, the enforced disappearance shall not include elements of an “unlawful arrest and detention,” which is a different type of crime against criminal procedure provided in the Criminal Code. Under article 13.9 of the Criminal Code, this crime is defined as “a violation of personal liberty, an arrest or detention by an authorized official in breach of grounds and rules provided by law.”

## **Article 5**

24. “Crime against mankind and peace” was consolidated under article 29 of the Criminal Code. In article 29.5 the act of “Genocide” is considered a crime.

25. This crime comprises “acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such: killing of members of the group; causing grave bodily injuries to members of the group; imposing measures intended to prevent births within the group; transferring children of the group to another group or deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part”.

26. Additionally, there is a specific regulation in the Mongolian legal system. Under article 10 of the Constitution of Mongolia “the international treaties to which Mongolia is a Party shall become effective as domestic legislation upon entry into force of the laws on their ratification or accession”. Therefore, this provision is a legal ground for international treaties, to which Mongolia is a Party, to be applied the same as domestic legislation.

## **Article 6**

27. According to article 13.4 of the Criminal Code, a provision related to enforced disappearance, an official, authorized to carry out an investigation, a prosecutor and a judge shall be subjected to criminal liability, if he/she damages and harms other’s legal rights and interests by illegal detention, deprivation of liberty in course of illegal concealing or

detention, restriction of liberty by hiding and refusing to disclose the information regarding a person deprived of liberty.

28. Furthermore, under article 13.9, if an authorized official violates the grounds and procedures established by law and infringes upon freedom, arrests and detains, then he/she shall be subjected to criminal liability.

## Article 7

29. Under paragraph 1 of the article 13.4 “illegal detention of a person that does not have elements of a crime against the criminal procedure shall be punishable by a fine equal to 1350 settlement units, or to restrict the freedom of movement for duration of six months up to two years, or imprisonment for a term of 6 months to 2 years.

30. If incurred damages and harms to other’s legal rights and interests as a result of illegal detention, deprivation of liberty, concealing the information on illegal detention and restriction of freedom or refusal to disclose such information by an official authorized to carry out an investigation, a prosecutor or a judge do not include the nature of the crime specified in the Special Part of this Law, then it shall be punishable by imprisonment for a term of one to five years.

31. If this crime is committed knowingly against a minor or a pregnant woman or against two or more persons, then it shall be punishable by imprisonment for a term of two to eight years.

32. The same crime is specified under aggravating circumstances if it is committed by an organized criminal group, which has caused grave harm to the victim’s health or death, shall be punishable by imprisonment for a term of five to twelve years.

33. However, the act of violation of a person’s freedom, arrest or detention by an authorized official that violates the grounds and procedures established by law shall be punishable by a fine equal to 5400 units, 240–720 hours of community service or a restriction of a freedom of movement from one month up to one year (Article 13.9).

34. Also, under paragraph 2 of article 13.9 “the same crime committed out of revenge, personal or lucrative motives shall be punishable by deprivation of the right to hold specified positions or engage in specified business for a term of one to five years, by a fine equal to 5400 to 27 000 units, restriction of freedom of movement from one to five years, or by imprisonment for a period of one to five years.” The provision under the Convention “the offence of enforced disappearance shall be punishable by appropriate penalties which take into account its extreme seriousness” is fully referred to in Mongolian legislation.

35. Additionally, article 6.5 of the Criminal Code provides Circumstances which mitigate punishment. When imposing penalty the court shall recognize the surrender, detection of the crime, or active assistance in the detection of the offender or property gained by way of crime as circumstances to mitigate liability (subsection 1.5 of the article 6.5).

36. The genocide, which constitutes “acts with intent to destroy a national, ethnic, racial or religious group ... or enforced disappearance”, shall be punishable by imprisonment for a term of 12 to 20 years or life imprisonment (article 29.5).

## Article 8

37. According to article 1.10 of the Criminal Code, a period of statutory limitation of the offence shall commence from the date when offence has been committed until the decision of the first instance court enters into effect.

38. In case, it is determined the following period has passed since the date of the offence, an accused shall not be prosecuted:

(a) If five years have passed since committing an offence specified in the Special Part of this Code, imprisonment for a minimum of more than one year and a maximum of

eight years or less, or restriction of the right to travel for a minimum of more than one year has been imposed;

(b) If 12 years have passed since committing an offence specified in the Special Part of this Code, imprisonment for a minimum of five years or more and a maximum of 15 years or less has been imposed;

(c) If 20 years have passed since committing a crime specified in the Special Part of this Code that is not punishable by life imprisonment but imprisonment for a minimum of 12 years or more and a maximum of 20 years or less has been imposed.

39. However, in the Criminal Code “acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such: killing of members of the group; causing grave bodily injuries to members of the group; imposing measures intended to prevent births within the group; transferring children of the group to another group or deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part” are considered as a criminal crime as well as a crime against security of mankind and peace. It has been regulated that there is no statutory limitation period for the crime against the security of mankind and peace.

## Article 9

40. Persons who have committed offences in the territory of Mongolia shall be subjected to criminal liability under the Criminal Code. This code shall also be equally applied to the territory of Mongolia including land of the diplomatic mission, on board of ships or air planes carrying the flag of Mongolia. However, if foreign citizens enjoying the diplomatic immunity have committed offences in the territory of Mongolia it shall be settled as provided in the international treaties to subject him/her to criminal liability (Article 1.5 of the Criminal Code).

41. Citizens of Mongolia shall not be extradited to a foreign state for investigation or prosecution in criminal cases. However, foreign nationals and stateless persons who committed offences beyond the territory of Mongolia, but are present in the territory of Mongolia, may be extradited to the foreign states for investigation or prosecution as provided in an international agreement to which Mongolia is a party. Nevertheless, article 1.7 of the Criminal Code provides, if under the law of requesting states there are sufficient grounds for the death penalty and torture, foreign nationals and stateless persons shall not be extradited to the foreign states for prosecution in criminal cases or for being subjected to criminal liability.

42. Moreover, jurisdiction of the criminal procedure is regulated by the Criminal Procedure Code. This code is applied to the jurisdiction of the crimes committed in the territory of Mongolia and on land owned by a diplomatic mission or on board of ships or airplanes carrying the flag of Mongolia.

43. According to article 43.5 of the Criminal Procedure Code (Detention for the extradition), if there are grounds for the satisfaction of the request of the authorized organization of foreign country, the court shall settle the prosecutor’s request to arrest and detain person until the date of the extradition. The prosecutor shall inform the requesting authorized organization of foreign country on date and place of the transfer. If the person detained is not received within 30 days, he/she shall be released by a court order. Also, if a new request has been made, the released person may again be detained.

44. Moreover, article 42.4 of this Law regulates a request by a foreign State organization authorized to conduct a criminal investigation. Under the request of foreign State organization or an official authorized to conduct a criminal investigation, an investigator, prosecutor or court shall grant it in accordance with general rules of this Law. However, norms of foreign criminal investigation may be applied if international treaty or agreement provides so.

45. If the granting of a request does not meet requirements of the Criminal Procedure Code and international agreements pertaining to the particular matter, contradicts

sovereignty and security of Mongolia or violates legislation, the received documents shall be returned stating the reason for non-implementation.

46. The paragraph 10.1 of the Article 14.13 of the Criminal Procedure Code provides “an adult family member of an accused or relatives or defense counsel/advocate/ shall be notified about his/her detention within two hours after the decision made. In case of foreign nationals, Diplomatic mission of that person’s country, and in the absence of diplomatic mission, central state administrative body in charge of foreign relations shall be notified. Furthermore, paragraph 5 of Article 31.6 establishes that “an investigator shall notify within six hours adult family members of the suspect or relatives or defense counsel about the arrest of the suspect. If a person being arrested is a foreign national, Diplomatic mission that he belongs to shall be notified.” Subsequently, foreign nationals have full access to consular assistance.

47. Currently, Mongolia has 19 signed agreements governing relations on mutual legal assistance with respect to criminal cases, 15 legal assistance agreements on extradition of offenders.

## **Article 11**

48. In Mongolia, the criminal sanctions shall not be the nature of inhumane, cruel treatment, or degrading his/her honor and dignity (article 6.1 of the Criminal Code). The inquiry, investigation, prosecution and court proceedings shall be conducted in the territory where offences have been occurred unless offender is extradited to requesting State in accordance to international agreements to which Mongolia is a party.

49. The court shall make its decision based on a thorough and factual examination of evidence, which was presented to the court. Also, the court imposes the appropriate punishment specified by law to the defendant if determines nature of the crime components of the offence and legal qualification of offence properly and if recognizes alleged offenders as guilty, takes into consideration circumstances of the case, the personal situation of the alleged offenders, the extent of the guilt and circumstances to mitigate or aggravate liability.

50. Mongolia ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2002 and the criminal legislation is in compliance with provisions of this Convention. For instance, physical and mental coercion by a state official or convincing others, giving permission, or otherwise agree to carry out the action with a purpose to get a testimony or explanation, to force a confession, to impose penalties, and to discriminate shall be subject to criminal liability.

51. In Mongolia all persons are equal before the law and court without being discriminated against their nationality, origin, language, race, age, sex, social origin and status, property, profession, occupation, religion, sexual orientation, disability, opinion, and education and legal entities irrespective of their capital, income, activity, organizational structure.

## **Article 12**

52. Article 1.8 of the Criminal Procedure Code (Ensuring personal liberty) prohibits searching, arresting, detaining, investigating, deprivation of liberty, infringing the right to ownership, initiating a criminal case and prosecuting as an accused, be deemed as guilty, and imposing the criminal liability except other grounds and rules provided by this Law.

53. Additionally, prosecutors shall immediately release persons if he/she is arrested and detained over longer period of time specified in the court order or without a court approval unless otherwise provided by this code. The code clearly lays out that during the arrest persons shall be informed the reasons and grounds for the arrest, and be reminded of the right to an attorney, to defend him or herself, to lodge a complaint to the court, and to testify against him or herself.

54. Mongolian local legislation guarantees the rights of citizens to submit a petition and a complaint freely. For instance, in sub-paragraph of 12 of article 16 of the Constitution of Mongolia states “the right to submit a petition or a complaint to State bodies and officials. The State bodies and officials shall be obliged to respond to the petitions or complaints of citizens in conformity with law”.

55. An investigator or a prosecutor is obliged to accept complaints and reports concerning committed, preparation or attempt of the crimes. In case of a refusal to accept the complaint or the report concerning offence, complainants may make complains in accordance with provisions of the Criminal Procedure Code.

56. While the complaints and reports are reviewed if it is necessary to determine the presence of criminal grounds an investigator may inspect the scene of crime, get samples for test, obtain fingerprints, imprint or impress with tracer, interrogate a witness, temporarily seize transport means, goods, or money significant to a case, and conduct an investigation within five days after receiving the complaint or report.

57. An investigator or a prosecutor is obliged to take all measures provided by law to determine factual circumstances of the case based on thorough and complete examination of a proof in order to establish conditions to convict or acquit the accused or defendant and to aggravate or mitigate the indictment.

### **Article 13**

58. The Chapter 43 of the Criminal Procedure Code of Mongolia regulates issues related to the extradition of persons for enforcing court order to/from foreign jurisdiction. A prosecutor submits an opinion, to a court, on arrest and detention of the accused and detain him/her until extradition and then the prosecutor shall inform the requesting authorized organization of foreign country on date and place of the extradition and carry out the transfer in cooperation with the police.

59. Paragraph 3 of the Article 10 of the Constitution of Mongolia states “the international treaties to which Mongolia is a Party shall become effective as domestic legislation upon entry into force of the laws on their ratification or accession”. Thus, if international norms contradict with local/domestic norms, the court may apply the international norms. Mongolia is working to include a crime of the enforced disappearance as an extraditable offence to the newly concluded bilateral agreements on mutual legal assistance on extradition.

### **Article 14**

60. Currently, Mongolia has bilateral international agreements on mutual legal assistance on extradition of offenders with 15 countries and with 19 States on criminal cases. Within these agreements, Parties may provide mutual legal assistance.

### **Article 15**

61. In accordance to Article 14 of the Convention, Mongolia is able to cooperate within the frameworks of its agreements on mutual legal assistance with other states.

### **Article 16**

62. As specified in Article 42.1 of the Criminal Procedure Code the request legal assistance on a criminal case or the request to be conducted an investigation shall be made and if necessary to execute interrogation, examination, search, experiments, seizure of property or other criminal proceedings provided in this Law on foreign jurisdiction the request shall be carried out in accordance with agreements on mutual legal assistance and other international agreements.



63. Currently, in Mongolia, there has been no case or act recorded containing elements of enforced disappearance. Also, inquiry and investigation departments, as well as the prosecutor's office, have not received complaints or reports concerning such crime.

## **Article 17**

64. The paragraph 13 of Article 16 of the Constitution of Mongolia provides "the right to personal liberty and safety. No one shall be searched, arrested, detained, persecuted or deprived of liberty, except on 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 for 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."

65. The paragraph 14 of Article 16 of this Law, if a person considers that the rights or freedoms provided by Mongolian law or international treaties have been violated, he/she has a right to appeal to the court to protect his/her rights. Also, it lays out rights to be compensated for the damage illegally caused by others, not to testify against himself/herself, his/her family, or parents and children, to self-defense, to receive legal assistance, to have evidence examined, to fair trial, to be tried in his/her presence, to appeal against a court decision, and to seek pardon. It is prohibited to compel to testify against himself/herself, to coerce or use force to testify. Every person shall be presumed innocent until proven guilty by a court by due process of law. The penalties imposed on the convicted party shall not be applicable to his/her family members and relatives.

66. Chapter 7 of the Criminal Procedure Code regulates issues concerning rights of an accused and his/her guarantees. It is regulated to take measure of restraint in order to ensure normal criminal proceedings by the decision of the court, prosecutor or investigator taking into account the nature of a crime and personal circumstance of the accused.

67. The accused has a right to know what offence he/she has been accused of and to be presented with decrees to prosecute as the accused and on measures of restraint that have been taken. The investigator and prosecutor shall explain for which offence, a legally summoned or arrested suspect is prosecuted for. Moreover, he/she has a right to give a verbal or written explanation concerning the accusation presented to him/her, and to present evidence, submit a request to examine the evidence. The investigator, the prosecutor, and the court shall provide the accused a right to self-defense or to have a defense counsel, and access to a legal assistance.

68. Under the laws of Mongolia, police detention facility, pre-trial detention and arrest centers and prisons have been built.

### **Police detention facility**

69. In accordance with Article 26.1 of the Law on the National Police Agency "police officials may apprehend a suspect up until six hours in order to identify the name and the address and establish whether there are grounds for detention in relation to the offences. A police officers shall inform family members of suspected persons who is over 18 or defense/legal counselor after his detention immediately, and record notes on the fact. As soon as grounds for apprehension are cleared, he/she shall be released right away. The Cabinet member in charge of internal affairs, in consultation with State Prosecutor General, shall issue the rules and regulations of the Police detention facility.

### **Pre-trial detention center**

70. Under article 31.12 of the Criminal Procedure Code, a judge shall issue an order to release a suspect who was arrested without a court order, if there is no sufficient evidence to suspect in committing a crime and in case he/she was not caught at the offence scene or immediately after committing it.

71. If, after the expiration of 48 hours of arrest, no decision by a prosecutor to prosecute him/her as accused or detention order of the court is yet delivered to, a chief of the detention center shall inform the investigator, prosecutor and judge and release the suspect.

72. If the arrested suspect, the detained accused or defendant lodges a complaint or request in accordance with this Law, the administration of the detention center shall deliver the complaint within 12 hours to the addressee.

73. Furthermore, according to article 7.7 of this Law an arrested suspect, and detained accused or defendant shall be entitled to make a request to be reviewed the lawfulness of his detention by the court and he/she shall be entitled to lodge a complaint for a release, if there is illegal detention or arrest. Also, he/she is entitled for compensation of damages caused due to unlawful actions of the investigator, prosecutor or court in the criminal proceedings and to lodge a complaint to be imposed liability to the guilty persons.

#### **Center for Arrest /House arrest/**

74. As provided in the Law on Administrative offenses, Court Decision Enforcement Agency executes the court decisions for the arrest. According to the Law on Court Decision Enforcement, Center for Arrest and Arrest facilities have buildings with arrest cells, rooms with guards. These cells/rooms, in where arrested persons stay, should meet international standards. The Cabinet member in charge of internal affairs, in consultation with State Prosecutor General, adopts the rules and regulations of the center for arrest. The internal regulations of the Center for Arrest include issues regarding receive, assign and release of the detainee; center records and its contents; list of items allowed in center cells; have meetings to resolve the detainee complaints; use of telephone; receiving and allocating letters and parcels; taking out for open air, organization of security; hygiene requirements; detainee physical and personal item inspection; confiscating, storing and returning of personal items; calculating costs during detention; organizing compulsory labor under administrative measure; temporary release; engaging detainee to labor; and monitoring activities of the center for arrest etc.

#### **Prison**

75. In accordance with the Law on Court Decision Enforcement, the person convicted by court order to imprisonment serves the sentence physically.

76. At the prisons, a committee comprised of the deputy director in charge of security, a social worker, a registration official, a doctor and a general duty officer (shift leader) admits newly arrived inmates who are sentenced to imprisonment. The process of receiving the inmate is based on court order to imprisonment that entered into force, notarized copy of the electronic identity card or birth certificate. If there is no such document, it is required an official attestation with a photo from a civil registration organization, national health insurance, and social welfare booklet, decision by the authorized body to deliver the inmate to that prison. The inmate's family shall be immediately informed on the arrival of the inmate to this facility, location of the prison, and explain visiting schedule and forbidden items.

77. Juveniles sentenced to imprisonment serve in Training and Educational special institution known as locked school.

### **Article 18**

78. The rule on conditions and regulations to enforce decisions of the arrest or custody, detention for the suspects and accused is regulated by the Law on decision enforcement on arrest or detention for suspects, accused persons.

79. Article 4.1 of this Law specifies "the order or decree issued by authorized official in accordance with regulations provided in Criminal Procedure Code shall be a ground to execute the decision on arrest and detention.

80. Moreover, under article 5.1 of this Law, arrested or detained person shall enjoy the rights and freedoms and fulfill the duties of a Mongolian citizen except those restricted by this Law. Unless otherwise provided in the Constitution of Mongolia, Law on the Legal Status of Foreign Nationals, this Law and other laws, and specified international agreements to which Mongolia is a party, foreign nationals or stateless persons who are arrested or detained on Mongolian territory shall enjoy the rights and freedoms and fulfill duties same as a Mongolia citizen.

81. This Law shall be equally applied irrespective of detainee's nationality, ethnic origin, language, race, age, sex, social origin and status, property, official position, occupation, religion, opinion, belief, and education.

82. Inquiry officer, investigator, lawyer, prosecutor, and judge who are reviewing or prosecuting detainee's case have a right to enter the detention facility to meet with him/her (article 11).

83. When admitting the person for detention, the administration of a pre-trial detention center shall open a personal file and include the following:

- Decision on detention of the detainee;
- Detainee's photo;
- Fingerprints;
- Records on visits, meetings, and change of clothes;
- List of documents, belongings, money, and valuables that have been confiscated during the detention;
- Information on detainee's personal condition;
- Information on health condition and weight;
- Records on activities such as doctor's examination, whether the detainee was on a hunger strike, or whether the detainee requested to see inquiry officer, investigator, prosecutor, judge or lawyer;
- Record the year, month, day and time of the arrival and release.

84. Decisions by following organizations or officials shall be the ground for the release of the detainee:

- (a) Court decree or judge's order issued according to the regulations provided by law;
- (b) Decree of a prosecutor or decree of inquiry officer or investigator approved by the prosecutor;
- (c) Pre-trial detention center's director or prosecutor decree to release the person who finished detention period provided the law.

85. The administration of the pre-trial detention center is obliged to release the person, as soon as it receives the decree or order to release the detainee. The director of the pre-trial center has a duty to submit a written notification to the official who imposed the conviction and the supervised prosecutor, at least 24 hours before, about the termination of the detention period specified in the law. After the notification, if the administration of the pre-trial detention center does not receive a decision from the authorized official whether the detained person should be released or kept in detention continuously, as soon as detention period finishes, the pre-trial center's director shall release the detained persons under his/her decree.

86. State Prosecutor General and his subordinate prosecutors shall supervise the activities and conditions of the detention center and implementation of regulations.

87. Authorized prosecutors supervise the process of the enforcement for arrest and detention of a suspect or accused and the prosecutor who is reviewing the case shall have following rights:

- (a) Access to the center without impediment;

- (b) Meet detainees and other persons;
- (c) Read the detainee's personal file and other necessary documents;
- (d) Review and solve the petition, complaint, and offense.

88. Including these articles in this law indicates in compliance with the provisions of the Convention.

89. Disease prevention, medical treatment, and disinfection in the detention center shall be carried out in accordance with relevant regulations on health protection. The Detention center's administration is obliged to meet sanitary and hygiene requirements to protect the health of detained persons.

## **Article 19**

90. Article 16 of the Constitution of Mongolia specifies that to guarantee and protect by law the fundamental right of a person to safeguard or seek protection of his/her privacy.

91. In accordance with the provision of the Constitution of Mongolia to protect the privacy of persons, Law on Privacy was adopted on April 21, 1995.

92. According to article 2 of this law, the personal secrecy includes any information, document and material object that are kept confidential by Mongolian citizens, foreign nationals and stateless persons in compliance with Mongolian legislation and its disclosure is detrimental to person's legal interest, reputation, and dignity. Also, under this Law secrecy of correspondence, secrecy of health information, secrecy of property, secrecy of family, and other secrecy defined by law comprised in the personal secrecy.

93. Namely, the secrecy of health information includes data on a person's physical deformities, illnesses other than contagious diseases dangerous to public health.

94. In exceptional basis where the protection for national defense and national security, public health and legal interests is needed, personal secrecy of health and other kinds may be disclosed by a decree of a relevant state authorized body/official specified by law, within the scope defined in a law. Otherwise, it is prohibited to reveal such information.

95. Under the Law on Privacy, "only officials of the authorized state organizations exclusively entitled by law may have access to personal secrecy data, strictly according to grounds and regulations determined by law." The article 1.11 of the Criminal Procedure Code provides that "private and family correspondence shall be protected by law and this right may be restricted only according to grounds and regulations provided by law".

96. In order to maintain the criminal proceedings without torture, inhumane treatment, article 1.9 of the Criminal Procedure Code prohibits "to torture, to treat inhuman or cruel way anybody under criminal proceeding and to insult his/her reputation. Also, the law prohibits inhuman treatment, and to use methods that inflict damage to his/her reputation, body and emotional state during the interrogation of a suspect, accused, a defendant, victim or witness.

## **Article 20**

97. Article 16 of the Constitution of Mongolia guarantees the right to personal liberty and freedom and the right to freedom of movement and it is prohibited to violate these rights unless otherwise provided by law.

98. Namely, the Criminal Procedure Code specifically states that deprivation of liberty such as arrest or detention of a suspect, and detention and investigation of an accused shall be restricted "only with judge's permission" and in accordance with grounds and regulations provided by law.

99. One of the principles of criminal proceeding laid out in the Criminal Procedure Code prohibits searching, arresting, detaining, investigating, deprivation of liberty, infringing the right to ownership, initiating a criminal case and prosecute as an accused, deem guilty, and

imposing criminal liability grounds and regulations provided by law (Article 1.8 of the Criminal Procedure Code).

100. The law states clearly grounds and rules that the arrest, detention, and restriction of freedom of movement measures for the persons who become participants in the criminal proceedings shall be taken with only permission of the court.

101. There are no provisions in the Criminal Procedure Code that the relatives of the person deprived of liberty referred to the paragraph 2 of article 18 of the Convention and his/her representatives or counsel are restricted rights to access information defined in the Article 18 of this convention.

102. There are no regulations relevant to restricting the right to information referred to in article 18 if a person under the protection of the law and deprivation of the liberty is subject to only judicial control. Thus, conducts defined in article 2, and article 17, paragraph 1 are not violated.

103. See above, in the article 17 of the Convention, law provisions and grounds relevant to receiving and providing the information referred to in subsections (a) through (g) of the article 18, paragraph 1 and responsible authority and officials.

104. Mongolian law provides the regulation relevant to the right of relatives of the persons deprived of liberty, their representatives or their counsel to immediate access to information referred to in article 18, paragraph 1 before they approach the court in order to determine whether the restriction of liberty is lawful.

105. For instance, an investigator shall notify within six hours adult members of an accused family or relatives or counsel about the arrest of the suspect. If an arrested person is a foreign national, the Embassy or Diplomatic mission of that person's country shall be notified (article 31.6 of the Criminal Procedure Code).

106. If the court decides to apply detention measures of restraint to the accused person, his/her adult family member or relatives or counsel shall be notified about the detention within two hours after the decision on detention issued. In case of foreign nationals, notify the Embassy or Diplomatic mission of that person's country, and in the absence of a representative office, Central state administrative organization in charge of foreign relations shall be notified (article 14.13 of the Criminal Procedure Code).

107. A suspect and his/her legal representative or counsel have rights to access and copy the indictment, as well as request an explanation from an investigator regarding the grounds of detention.

108. If relatives of the person deprived of liberty, their representatives or their counsel are able to obtain the information referred to in article 18, paragraph 1 of the Convention without hindrance, they may request the court review whether the deprivation of liberty is legal.

109. If rights protected by law and legitimate interests of a person or legal entity have been violated during the criminal proceeding, he/she has a right to claim for judicial remedy (article 1.13 of the Criminal Procedure Code). In addition, the article 1.14 refers to that a person or legal entity whose rights or legitimate interests have been violated shall have a right to make a self-defense, or to access a legal counsel, or to get legal advices.

110. The rights of detainees are specified in article 17 of the Law on enforcement of decision to arrest or detain of suspects, accused:

- To receive information and explanation on his/her rights and duties, detention center regulations, and submitting petition, complaint, and request;
- To be ensured personal safety;
- To have a private meeting with the director of the detention facility or an official authorized in charge of the supervision of detention facility activities, during his/her work-related visit;
- To have meetings with a counsel, and access to legal assistance;

- To keep documents and notes pertinent to protection of person's own legitimate interests, other than those may be related to state secrets and a criminal offense that might be misused;
- To keep books, newspaper, magazines, and hygiene products in the cell;
- To be served with food containing calories specified in this law and be provided with beddings space to sleep, mattress, and cover;
- To sleep at least eight hours during the night;
- To receive medical treatments in accordance with the law on health insurance;
- To use tools for written and electronic correspondence, in accordance with internal regulations of the detention facility;
- To perform religious rituals without breaking internal regulations of the detention facility;
- To walk air open area for duration specified in the internal rule of the detention facility;
- To use textbooks and books to improve his/her education and knowledge;
- To receive visits;
- To participate in civil legal deal through a representative with power of attorney;
- To submit petition, complaint, and request regarding activities, regulation, and conditions of the detention facility or issues linked to him/her to any organization or official.

111. With written consent from an authorized official who issued the detention order or the senior official, a detainee may meet with relatives and other persons. Also, with permission of authorized official, through detention facility administration, foreign nationals in detention may meet with a member of the staff of the Diplomatic mission or consulate of that person's country.

## **Article 21**

112. In the Criminal Procedure Code, regulation related to the arrested, detained and detainees' release are provided in each stage of the criminal procedure. Namely, article 31.5 of this law refers to that the prosecutor shall immediately release a suspect who is illegally apprehended during the arrest without court order provided by law. Also, if 48 hours of the arrest expires and if no prosecutor decision to initiate a criminal case and indictment or court order for detention has been received, a chief of detention center shall notify the investigator, prosecutor, and court on the fact and release the person.

113. In order to verify the release of persons deprived of liberty that they have actually been released, under the Criminal Procedure Code they shall be given certifications. In cases of releasing minors, certificates shall be handed over to their parents, guardian, or legal representative.

114. In addition, the law provides to release immediately if the detained defendant is acquitted, released on probation, imposed non-custodial sentence, or dismissed he shall be released immediately.

115. One of the principles of the criminal proceeding is to ensure personal liberty. It is referred to in article 1.8 of the Criminal Procedure Code and under this provision, the prosecutor shall immediately release persons detained without the court order or detained for a longer term than provided by court decision, unless otherwise provided by law.

116. Application, cancellation or change of measures of restraint for accused shall be resolved through judicial session with participation of prosecutor, legal representative of the accused, counsel and accused, if requested accused himself/herself, and if counsel is absent then appointed counsel (article 14.3 of the Criminal Procedure Code).

117. The cancellation of measures of restraints applied by court decision shall be carried out immediately. Since the legal representative or counsel of the accused attends the judicial session, they would be informed about the release of the detainee. Thus, the release can be verified.

118. As for the suspect under arrest:

- If 48 hours of the arrest expires and no prosecutor decision to initiate a criminal case and considering him as accused or court order for detention has been received, a chief of a detention center shall notify the investigator, prosecutor, and court and release the person;
- Upon the release, suspects shall be given a certification on when, where, on what grounds, on whose decision they were arrested and when, on whose decision was released;
- Detained minors that are subject to release shall be handed over to their parents, guardian, or legal representative;
- Investigator shall submit all the materials relevant to suspect's arrest and release records to the prosecutor within 24 hours (article 31.12 of the Criminal Procedure Code);
- Given that provisions on releasing a suspect, informing authorized officials, making a record about the release, handing over minors are specifically provided in the Criminal Procedure Code, it is ensured that persons deprived of liberty are released in a manner permitting reliable verification that they have actually been released.

## **Articles 22 and 23**

119. Personnel training of prisons with ordinary and strict securities, specialized organization for training and education, detention center and facilities, clinic hospitals and specialized prison hospitals, and vocational training centers are conducted under "Rule to organize trainings for court decision enforcement agency personnel", approved by Order A/274 of 31 December 2015 of the Chief of the General Agency for Court Decisions enforcement. There are two types of trainings – basic and specialized. The basic training provides mandatory education on legislation, human rights, organizational ethics, knowledge on military affairs and work preparedness for General Agency for Court Decisions enforcement personnel. The specialized training offers education on general knowledge, communication, behavior and self-development to the personnel.

120. Trainings on human rights and new legislation have been organized frequently for police officials and Immigration Agency personnel.

## **Articles 24 and 25**

121. Chapter 13 of the Criminal Procedure Code contains grounds and procedures to issue a court decision to protect the safety of witnesses and victims. Also, under chapter 35 of the Law, witness and victim protection is ensured during the trial.

122. The main purpose of witness and victim protection is to prevent intimidation, pressure, and torture.

123. In order to ensure the safety of victims, upon their request, in accordance with article 8.3, prosecutor and investigator shall inform witnesses and victims about convict's early-release hearing, application, cancellation or change of measures of restraint, initiation or termination of the case, suspension, re-opening of the investigation, or transferring the case to prosecutor.

124. Moreover, Mongolia adopted the Law on Protecting Witnesses and Victims in 2013. This law established the legal grounds to protect witnesses and victims' lives and health during the criminal proceeding, and to provide information and assistance. In accordance with this law, two types of protection measures implemented for witnesses and victims,

which includes security and psychological protections. Currently, legal and psychological assistance are provided to witnesses and victims.

125. If necessary, relatives of witnesses and victims such as spouse, partner, parents, grandparents, children (biological, step- or adopted), biological siblings, grandchildren can be taken under protection (Article 5.2).

126. Authorized organizations to investigate, prosecute or judge and court decisions enforcement organization have been organizing capacity development trainings for investigators, prosecutors and judges on how to handle witnesses and victims and protecting minor witnesses and victims. In addition, rules regarding dealing with witnesses and victims have been developed and applied (Article 25.4).

---