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CONTENT

EDITOR-IN-CHIEF'S NOTE

Dear readers, welcome to next special edition №96 of the Mongolian Journal of Law.

The Mongolian Journal of Law is famous for the fact that it is the first peer-reviewed academic journal in Mongolia. As it enters its 22nd year of publication, the Mongolian Journal of Law remains a leading national law journal. The Journal moved into 2023 with a refreshed and extended editorial board, including new members. The reason why we extended the Editorial Board is related to the journal's range and the development of new areas of law in Mongolia.

As one of the oldest law journals in Mongolia, keeping our vision firmly centered on publishing and promoting the highest quality of articles related to the main branches of law is important. However, we must also continually adapt to the rapidly developing new fields of law. We hope that the legal industry of Mongolia will develop more proficiently and be full of prominent scholars who become proficient in specific niche areas of law.

Finally, we want to thank the professors and researchers who joined us in this new fascinating, and promising academic work and devote their valuable time and effort to the Editorial Board of the journal from time to time. We would also like to thank our authors for their intellectual work, which is the most important part of our efforts to develop the academic law journal.

We wish you every success in your academic endeavors!

May your 2024 be full of success and bless you with health, wealth and happiness!

Sincerely

Director ERDEM-UNDRAKH.KH (Dr.jur)

PRESENTATION FOR THE INTERNATIONAL CONFERENCE ON ENDING GENDER RELATED KILLINGS OF WOMEN AND GIRLS

Erdem-Undrakh.Kh (Dr.jur)
Director of the National Legal Institute of Mongolia

International Conference on Ending Gender Related Killings of Women and Girls

Current methods and challenges for collecting femicide data in Mongolia

Speaker: Erdem-Undrakh Khurelbaatar (Dr.jur)
Director of the National Legal Institute of Mongolia

Seoul, Korea
25-27 September, 2023

Ladies and gentlemen,
Distinguished guests,

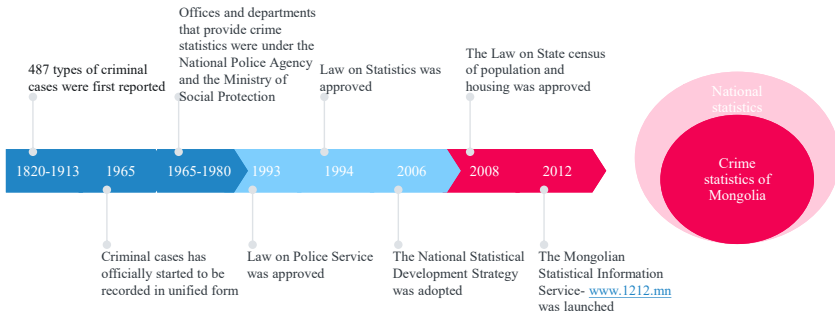
I am the Director of the National Legal Institute of Mongolia which is a legal research and information institute under the Ministry of Justice and Internal Affairs. My main major is criminal law and criminology. Today, I stand before you to present the Current methods and challenges for collecting femicide data in Mongolia.

Before discussing the topic, I would like to express my gratitude to the United Nations Entity for Gender Equality and the Empowerment of Women, and the Centre of Excellence for Statistics on Crime and Criminal Justice in Asia and the Pacific for organizing today's international conference.

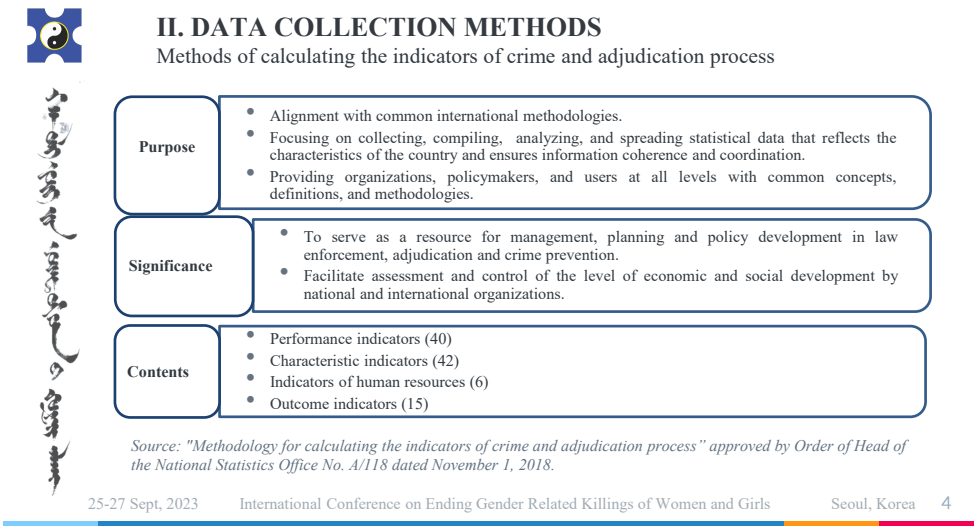
CONTENT

Mongolia, like many other countries, presents a challenge for collecting an accurate data of the intentional killings of women and girls. To address this issue, we will look at the data collection methods of crime overall and the crime data published by governmental bodies of Mongolia. Also, we would discuss about the crime data against women in the White Paper on Crime of Mongolia.

I. HISTORICAL BACKROUND AND OVERVIEW OF CRIME DATA COLLECTION IN MONGOLIA



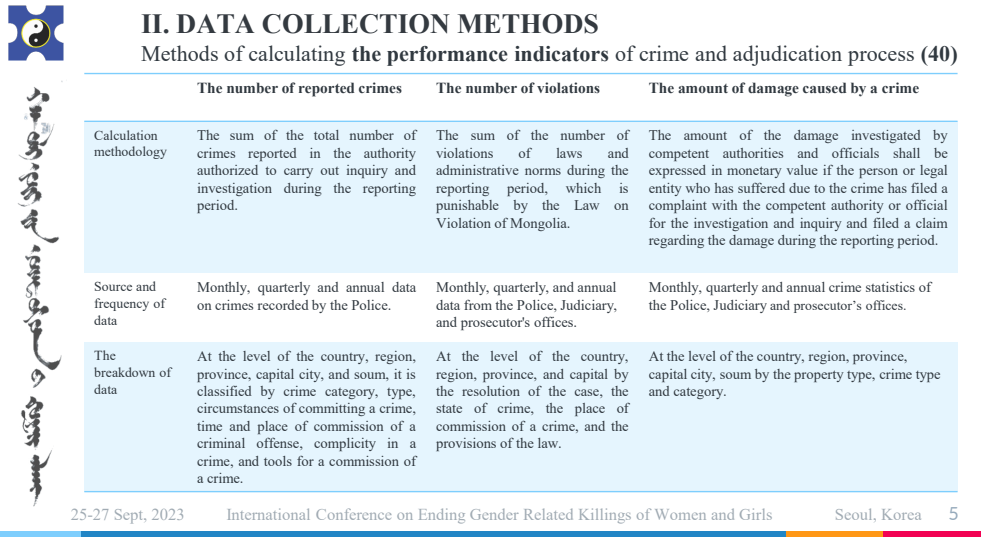
The crime statistics in Mongolia is one of the components of the national statistics, so in this slide, I highlighted the major historical events. In 1994, the Law on Statistics was approved by the Parliament. In 2006, the Parliament adopted the National Statistical Development Strategy. And in 2012, the Mongolian Statistical Information Service which is widely used in Mongolia has launched. The statistical development of Mongolia has a history of 30 years which is quite short compared to many other countries.



Beside the Law on Statistics and the Law on State census of population and housing, the methods for collecting crime data is regulated by the "Methodology for calculating the indicators of crime and adjudication process". It was approved by the National Statistics Committee in 2018.

The goal of this methodology is to make the statistical indicators of our country in line with the common international methodologies. It provides the organizations, policymakers and users at all level with the common concepts, definitions and methodologies.

The methodology includes a total of 103 indicators divided into 4 groups. We don't have a time to review all the indicators, so let's take a look at some indicators from each group.



When calculating the number of reported crimes, we take the total number of crimes reported in the authority which was authorized to carry out inquiry and investigation during the reporting

period. In terms of data breakdown, is it classified by the crime category, type, circumstances of committing a crime, time and place of the commission of a criminal offence, complicity in a crime, and the tools for a commission of a crime at the national level. The data is also categorized by the country, regions, provinces, capital city and soum which is a small territorial unit within the province of Mongolia.

II. DATA COLLECTION METHODS

Methods of calculating **the outcome indicators** of crime and adjudication process **(15)**

	Crime Rate	Crime Detection Rate
Calculation methodology	The total number of crimes recorded during the reporting period is divided by the annual average number of the population aged 16 and over, and multiplied by 10,000. When calculating the annual average number of the population aged 16 and over, the first number of the year is added to the final number of the population aged 16 and over in Mongolia and divided by 2.	The total number of cases in which criminal cases have been initiated and the accused is being investigated is compared to the total number of inquiry cases initiated and expressed as a percentage.
Source and frequency of data	Annual police crime data.	Annual police crime data.
The breakdown of data	At the level of the country, region, province and capital.	At the level of the country, region, province and capital.

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In order to calculate the crime rate, the total number of crimes recorded during the reporting period is DIVIDED BY the annual average number of the population aged 16 and over and MULTIPLIED BY 10,000. To calculate the annual average number of the population aged 16 and over, the first number of the year is added to the final number of the population aged 16 and over in Mongolia and divided by 2.

II. DATA COLLECTION METHODS

Methods of calculating **the characteristic indicators** of crime and adjudication process **(42)**

	The number of crime victims	The number of homicide victims	The number of deceased crime victims
Calculation methodology	The number of people who reported that the rights were violated, the mental and physical ability to function was lost due to a crime, and whose case has been reviewed by the prosecutor, and who have determined as the victim of the crime by judge, prosecutor or detective.	The number of victims of intentional and unlawful killing which was determined by the investigation of judicial authorities.	The number of deceased crime victims within the reporting period.
Source and frequency of data	Monthly, quarterly and annual crime data recorded by the Police and the Judiciary.	Annual statistics of the Police and the Judiciary.	Monthly, quarterly and annual crime data recorded by the Police and the Judiciary.
The breakdown of data	Classified by gender, age and type of crime at the country, region, province, capital city level.	Classified by gender, age at the country, region, province, capital city level.	Classified by gender, age and type of crime at the country, region, province, capital city level.

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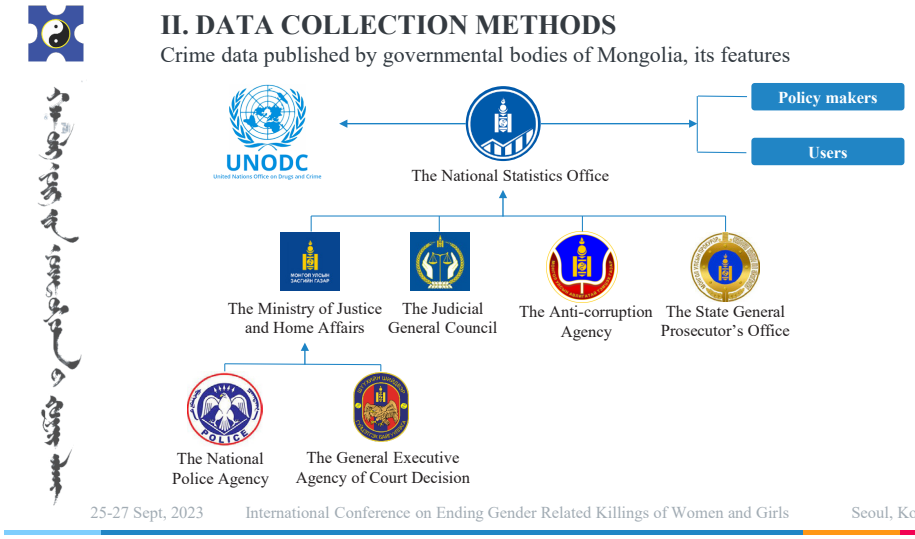
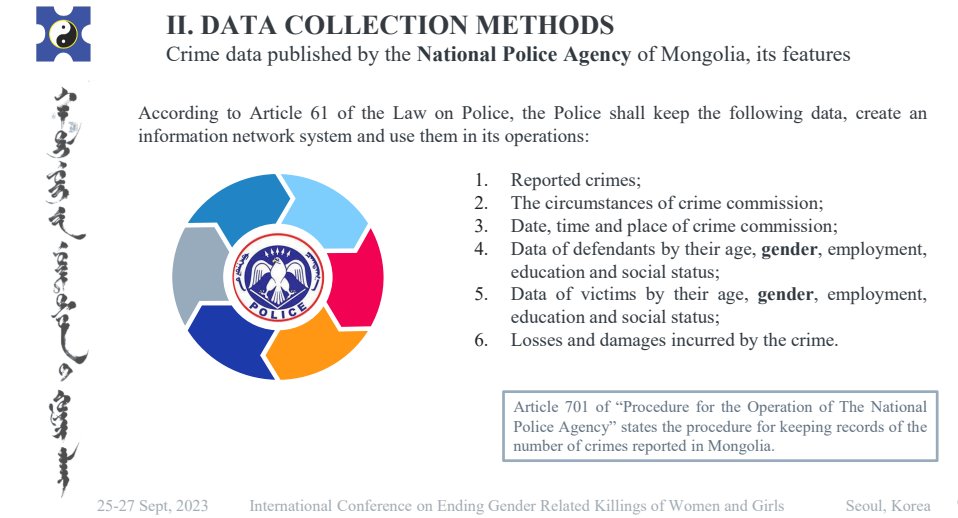
The important number is the number of homicide and femicide victims. It is calculated by the number of victims of intentional and unlawful killing which was determined by the investigation of judicial authorities. The data is collected by the annual statistics of the Police and the Judiciary reports.



There are several governmental bodies that collects the crime data in Mongolia. The data from the National Police Agency and the General Executive Agency of Court Decision is collected by the Ministry of Justice and Home Affairs. The data from the Ministry and the Judicial General Council and the Anti-corruption agency, the State General Prosecutor's Office is collected by the National Statistics Office. Then, all the data is analyzed and published to public. The National Statistics Office also sends this data to the United Nations Office on Drugs and Crime and to policymakers and other users in Mongolia.



The Law on Police was approved by the Parliament in 2017. According to the Article 61 the Police shall maintain the statistical records of 22-25 types of data, create information network and database and use them in its operation. The main data related to our topic is shown in this slide. The Police shall collect the data of victims by their age, gender, employment, education and social status.

II. DATA COLLECTION METHODS

Crime data published by the **State General Prosecutor's Office** of Mongolia, its features

The State General Prosecutor's Office collects the following crime statistics:

1. Data of the prosecutor's supervision over the inquiry and investigation of the criminal case;
2. Data of the prosecutor's supervision over the execution of the punishment of criminal cases.

In 2015, the Research, Analysis and Inspection Department became a structural unit of the State Prosecutor General's Office. Due these changes, the department has been reorganized and is now operating as the Center of Crime and violation /Delicts/ registration and analysis.

The State General Prosecutor's Office is responsible for collecting the data of the prosecutor's supervision over the inquiry and investigation of the criminal case, also the data of the prosecutor's supervision over the execution of the punishment of criminal cases.

The Center of Crime and Violation registration and analysis is responsible for analyzing the activities of the prosecutor's offices and ensuring the confidentiality and security of the database.

II. DATA COLLECTION METHODS

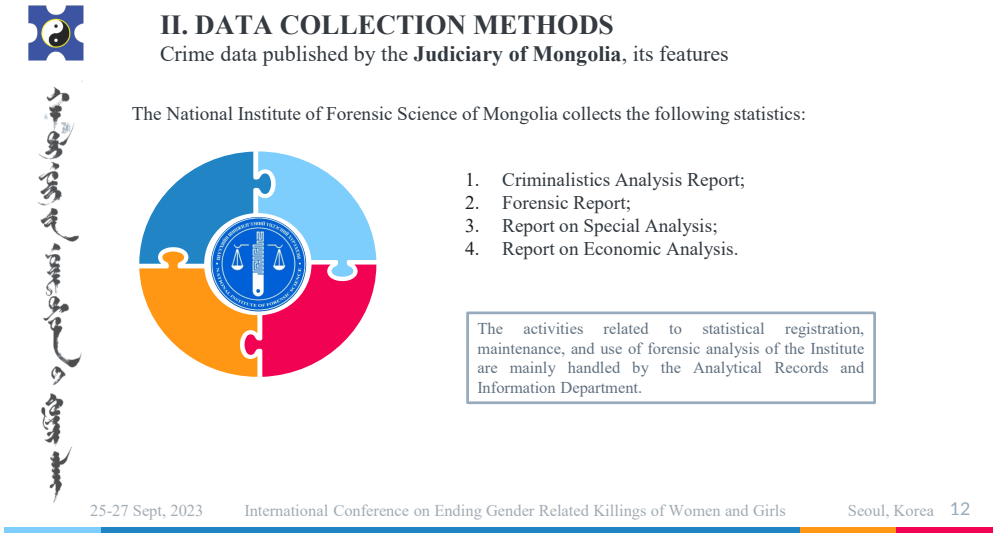
Crime data published by the **Judiciary of Mongolia**, its features

The Judicial General Council collects the following statistics:

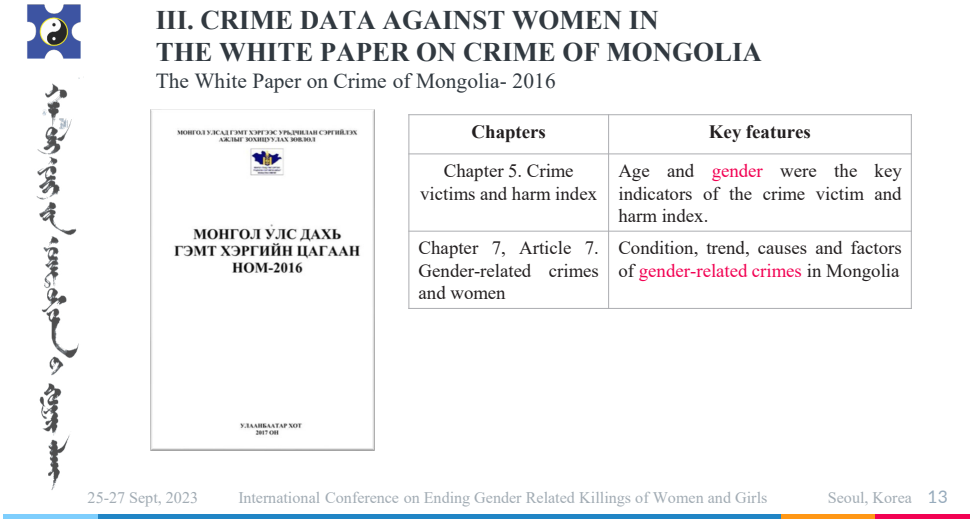
1. Criminal case reports from First Instance courts;
2. The report on the victims of criminal cases from the First Instance courts;
3. The report of the sentence imposed by the criminal court;
4. The report of preventive measures of courts;
5. The report on the execution of the criminal court decisions;
6. Criminal case reports from Court of Appeal;
7. Criminal case reports of the Supreme Court.

According to Article 75 of the Revised Law on Court of Mongolia, Judicial General Council shall produce statistical information on court administrative activities. study the practice of court administration, create an electronic database of court, such as legal theory and practical research and manuals, as well as organize its regular update and usage.

The crime data is collected by the Judicial General Council of Mongolia. It collects criminal case reports from First Instance Court, the Court of Appeal and the Supreme Court. The important information is that the crime victim data is analyzed and categorized by the indicators of gender. Also, the crime harm index is also categorized by gender.



The National Institute of Forensic Science of Mongolia is a state organization that exclusively implements forensic analysis in Mongolia. On average, the Institute conducts more than 60,000 analyses per year, of which 98% is conducted in criminal cases.



In 2016, the first ever White Paper on Crime was published in our country. It is a comprehensive research document that provides an in-depth analysis, discussion, and proposed solutions related to various aspects of crime and criminal justice. In 2016, the Members of Mongolian Association

of Criminology and other researchers developed the White Paper on Crime for over 9 months by the request of the Office of the Coordination of Crime Prevention Council of Mongolia.

There are 2 chapters in the White Paper on Crime of 2016 which was dedicated to crime harm index and gender-related crime. Chapter 5 shows the crime victims and harm index of crimes committed during 2007-2016, where gender was the key indicator. Also, the condition, trend, causes and factors of gender-related crimes was included in this document. This shows the first step of the development of Mongolia in addressing the importance of combating gender-related crime.

III. CRIME DATA AGAINST WOMEN IN THE WHITE PAPER ON CRIME OF MONGOLIA

The White Paper on Crime of Mongolia- 2017

Chapters	Key features
Chapter 4. Article 2.2 Women and crime	It shows: 1. The number of women investigated for the registered crimes; 2. Prosecutor's supervision on women related criminal offenses; 3. The number of women sentenced by the criminal court; 4. The condition of crimes with female victims. • The number of female victims nationwide was categorized by the type of crime they were victim of; • The number of deceased and injured women was also analyzed by the type of crime.

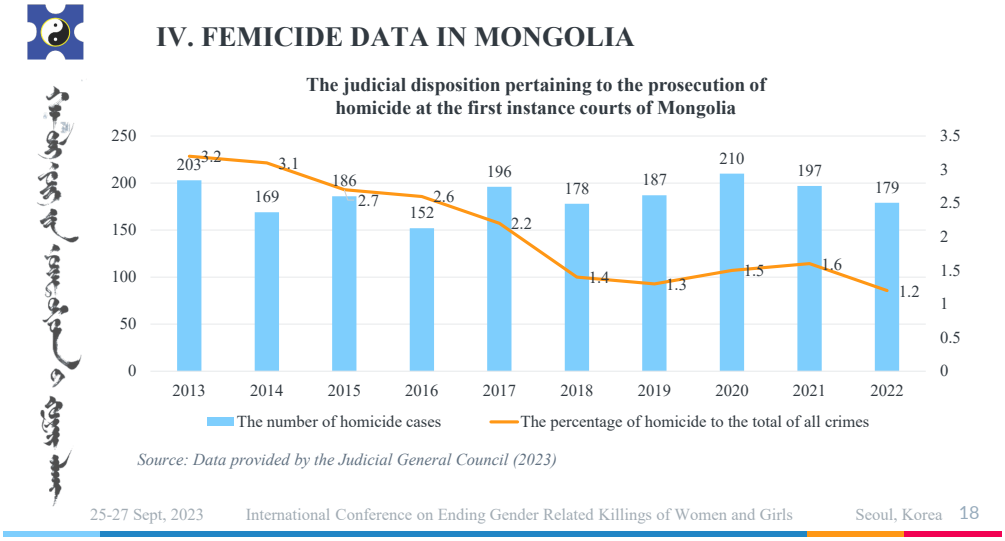
In 2018, the White Paper on Crime of Mongolia of 2017 was published. In the Chapter 4, the conditions of crime with female victims and the number of deceased and injured women was also analyzed by the type of crime. This means it has a basic data on femicide on a certain level. The data was collected by the National Police Agency, the Prosecutor's offices and the Judiciary reports of 2017.

III. CRIME DATA AGAINST WOMEN IN THE WHITE PAPER ON CRIME OF MONGOLIA

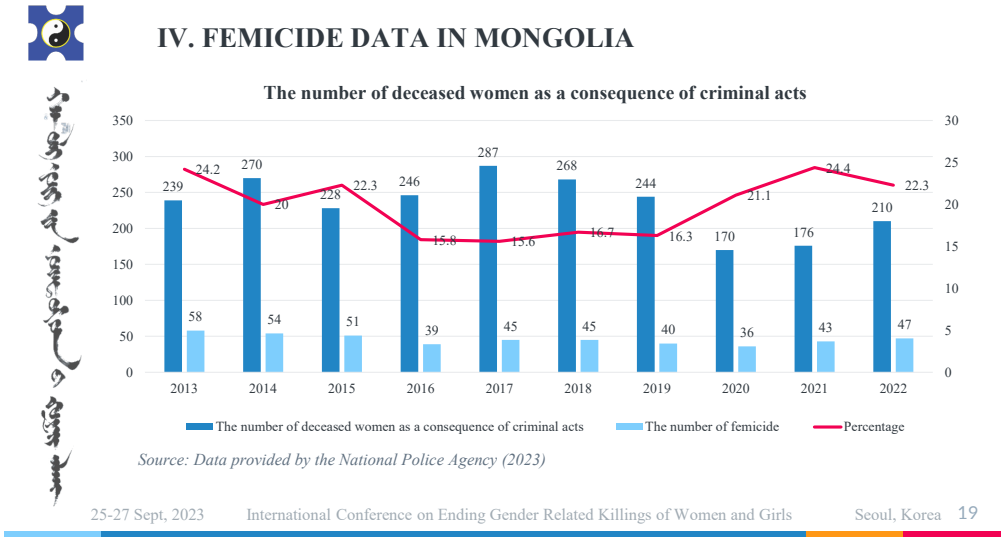
The White Paper on Crime of Mongolia- 2018

Chapters	Key features
Chapter 3, Article 1 Women and crime (Based on 2017 and 2018 data from the Police, Prosecution's Offices and Courts)	1.1.Women involved in crime • Classification based on the type of crimes • Territorial classification (capital, districts and provinces)
	1.2.Female victims of crime • Classification based on the type of crimes • Territorial classification (capital, districts and provinces)

Next is the White Paper on Crime of Mongolia of 2018. The Chapter 3 is also dedicated to the women involved in crime and female victims of crime. The victims were classified based on the type of crimes and the territory of crime commission. In previous White Papers on Crime, only the number of victims of killings of women was included with the condition of the crime. But this chapter tried to show the crime data by the capital city, districts and provinces of Mongolia.

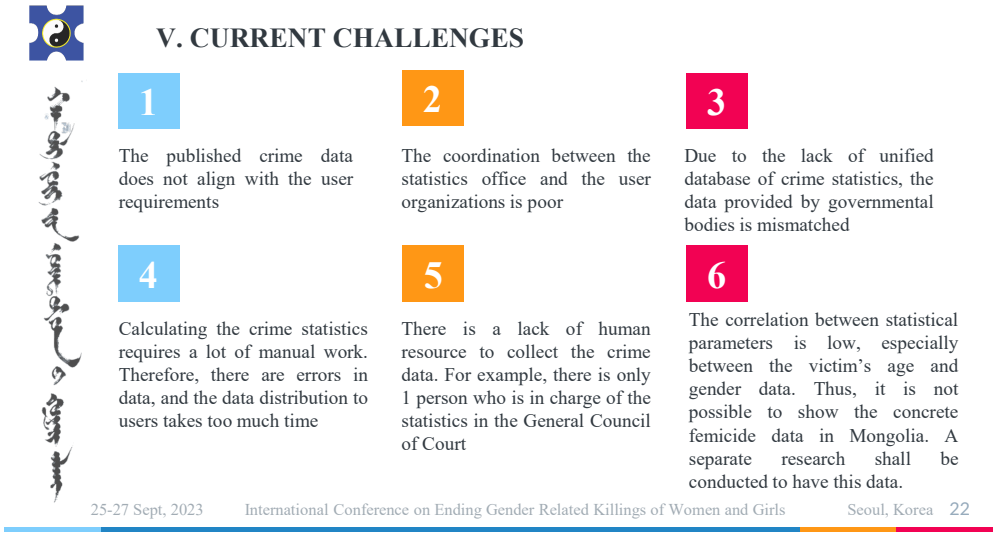


Moreover, the judicial disposition pertaining to the prosecution of homicide and femicide at the first instance courts of Mongolia from 2013 to 2020 shall be addressed. In the chart, the percentage of homicide and femicide to the total number of crimes is decreased annually.



The number of deceased women as a consequence of crime was provided by the National Police Agency in 2023. For the last 10 years, the average percentage of femicide victims in the total number deceased women as a consequence of the crime was 19.7%.

We need to compare femicide data that was given by different governmental bodies. As you can see here, the data collected by the State General Prosecutor's Office of Mongolia is higher than the data collected by other authorities during the same period of time. The data is highly mismatched. This means that variability in data sources, definitions, and methodologies across different agencies can hinder the comparability and reliability of femicide data in Mongolia.



In conclusion, the issue of femicide in Mongolia is a pressing concern that demands the accurate data collection for effective policy-making and interventions. There are many challenges that Mongolia faces in terms of collecting comprehensive data on femicides in Mongolia.

First of all, the published crime data does not align with the user requirements. Many cases go unreported or misclassified, limiting our ability to address the problem fully.

The coordination between the governmental bodies and user organizations, the lack of unified database of crime statistics are also challenge.

Calculating the crime statistics require a lot of manual work. Thus, encouraging research and innovation in data collection methods, including the use of technology, can lead to more effective and efficient data collection process.

Another challenge is a lack of human resource to collect the crime data. For example, there is only 1 person who is in charge of the statistics in the General Council of Court in Mongolia. So, investment in training and capacity building for professionals involved in data collection and analysis is crucial.

The correlation between statistical parameters is low, especially between the victim's age and gender data. Thus, it is not possible to show the concrete femicide data in Mongolia. A separate research shall be conducted to have this data. So, sharing the best practices and learning from experiences in other countries can accelerate progress, which is being done today thanks to this international conference. Together, we can learn and create a safer, more equitable world for all.

Thank you, Ladies and Gentlemen, for your patience and attention. If you have any questions, feel free to ask.

THE LEGAL FRAMEWORK OF MEDIATION IN MONGOLIA AND THE CHARACTERISTICS OF BUSINESS DISPUTES

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ABSTRACT:

With the arrival of the information technology era and the increase in market competition, it is worth studying the international practice of countries that support mediation for commercial and financial disputes. In other words, the results of the legal transactions between citizens, businesses and the industry will ultimately lead to insolvency, debt burden or bankruptcy. Therefore, there is a need to improve the understanding of financial nature and the implementation of contracts, and to support them with flexible policies within the framework of legal norms. For example, it is important to give them the opportunity to increase economic growth, work in a stable market, and improve the conditions of financial transactions.

Therefore, the role of mediation participation is to respond to the understanding of the nature of financial and commercial contracts, to provide flexible access within the scope of dispute resolution clauses, to change the contract based on the agreement of the parties, to maintain the confidentiality of financial information, and to provide them with confidence. It is characterized by time and cost savings.

As a result, the mediation procedure is characterized by the fact that it is implemented based on the method of handling disputes that are suitable for out-of-court settlement.

Further, the purpose of this research work is based on the experience of conducting mediation in court, we will determine the conditions and opportunities for mediators to work in the presence of state and non-state organizations, professional associations, arbitration, and type of business dispute.

KEYWORDS:

Type of business dispute, commercial and financial dispute, judicial and non-judicial procedures, mediation procedure, mediator, state and non-state organization, professional associations, arbitration.

INTRODUCTION

One of the non-judicial dispute resolution methods is mediation. Mediation is the operation of a mediator to support non-judicial settlement of disputes between parties in accordance with

the grounds and procedures provided by law. In other words, mediation can be understood as the process of bringing the disputing parties to a mutual agreement with the participation of a third party.

We have tried to study the implementation of the legal framework for mediation and the types of business disputes.

THE CURRENT LEGAL FRAMEWORK OF MEDIATION IN MONGOLIA

The 1992 Constitution of Mongolia set forth the goal of comprehensively developing a humane and civil democratic society and included the following legal regulations. For example, Mongolia shall have the economy based on different forms of ownership and complying with the universal trends of the world economic development and the peculiar specifics of its country, the state shall recognize any forms of public and private property, to protect the rights of owner by law and to regulate the economy in order to ensure the national economic security, the development of all business modes and the social development of population[1].

Mongolia has intensively implemented the legal reform policy, and since the adoption of the "Law on Mediation" in 2012, the mediation system has been implemented for more than 10 years[2]. As a result, legal disputes were arranged to be resolved in a non-judicial manner with the support of a mediator.

As a result, mediation was legalized so that it can be used in civil cases and arbitration proceedings. In addition, mediators were involved in civil law disputes, labor rights disputes, and disputes arising from family relationships.

Article 13.5 of the Civil Procedure law added the provision that "if there is a dispute in the contract between the parties, the agreement to resolve it through mediation shall be considered as the establishment of a preliminary settlement procedure out of court"[3].

In accordance with the applicable legal regulations, if the parties request mediation, the judge shall issue an order to transfer the claim to the mediator. In the transferred claim, the mediator in the court of that level will conduct the mediation process, and after the parties draw up and sign the settlement agreement in writing, the settlement agreement will be submitted to the judge. If the parties reach a settlement, the judge will confirm the settlement agreement and issue an order dismissing the case. However, if the parties do not voluntarily comply with the order confirming the settlement agreement, the enforcement of the court decision will be carried out. If the contract signed by the parties is unclear or unclear, the judge has the right to issue an order refusing to confirm the contract.

It is of great importance that the order of the judge who handled the case in a simplified manner reflects the evidence based on the evidence, written confirmation that the parties have reconciled, the plaintiff has withdrawn his claim, the defendant has accepted and fulfilled the claim, the settlement agreement and the results of the mediation process.

It is believed that there has been an opportunity to make conclusions and analyzes on the issues being resolved in the dispute, and to gain some experience in how to implement the possibility of reconciliation during the process.At the moment, it is possible to mention the activity of mediation in the civil court of first instance of Bayanzurkh and Bayangol districts. For example, they dealt with issues such as loans, employment contracts, health and property damage, divorce and cohabitation, labor disputes, dismissal, child support, paternity, salary determination, etc.

However, with the development of the country, the expansion of financial markets and business activities in the process of regulated markets, the number of commercial and financial

[1] The Constitution law of Mongolia, 1992, Art.5.

[2] The Mediation law of Mongolia, 2012, Art.4.

[3] The Civil Procedure law of Mongolia, 2002, Art.13.

disputes and the need for mediators to participate in certain types of disputes continue to increase. Because in the process of business cooperation, taking into account the consequences of the dispute, there is a lack of opportunities to provide assistance and mediation techniques to the disputing parties.

In addition to mediation in court, due to the specifics of sector legal regulation, it is advisable to conduct non-judicial preliminary settlement of disputes, and to create basic legal conditions for mediation in the specified organizations in accordance with the norms allowed by law. For example, in section 8.1 of Article 8 of the Law on Mediation, the provision that "Governmental and non-governmental organizations and professional associations may employ a mediator to resolve disputes arising from legal relations in the field in accordance with the direction of their activities" shall be implemented. Also, it is worth considering carefully the provision of Article 40.4 of the Law on Arbitration: "If the parties have specifically agreed and given the right, the arbitration panel shall adhere to ethical standards deemed fair without applying any law, or resolve the dispute through mediation"[4].

THE IMPLEMENTATION OF MEDIATION IN COMMERCIAL AND FINANCIAL DISPUTES

In the process of international mediation, business disputes are classified into commercial disputes and financial disputes.

Commercial organizations have been involved in solving many problems, such as researching the market situation, creating conditions for entering the market, market information, investment, and technological innovation. However, the regulation of disputes related to business activities and transactions is still problematic. For example, with the rapid development of international trade, small and medium-sized enterprises and numerous enterprises will develop their business and conduct cross-border transactions, and many financial, tax, and commercial problems, as well as disputes over the performance of contractual obligations, will tend to arise. In addition, along with this, the use of e-commerce continues to grow.

International trade is growing rapidly, with cross-border transactions being entered into by a growing number of entities, including small and medium-sized enterprises[5].

International commercial disputes often tend to be high-value cases with a considerable level of complexity and therefore more time and cost consuming compared with domestic commercial disputes[6]. Respondents also mentioned that it would enhance the credibility of mediation and promote the wider use of mediation as an internationally recognized and viable option for commercial dispute resolution[7].

Businesses consider the mode of resolution as a very crucial decision to undertake considering the high stakes that usually characterize a commercial dispute[8].

Commercial dispute mediation aims to provide parties with independence in dispute resolution and provides the parties with an opportunity to fully resolve their issues and transform business relationships. The goal of the mediation parties is to fulfill their interests, to allow the parties to accept, effectively legitimize and to be more sustainable in the future. Depending on the needs and interests of the parties involved in dispute resolution, mediation has many advantages, such as objectively looking at the dispute, providing an opportunity for quick reconciliation,

[4] The Arbitration law of Mongolia, 2017, Art.40.

[5] Uncitral Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation with guide to enactment and use (2018), United Nations Commission on International trade law, Vienna, Austria, 2022, p.14.

[6] Veronika Vanišová, Current Issues in International Commercial Mediation: Short Note on the Nature of Agreement Resulting from Mediation in the light of the Singapore Convention, Charles University Law Faculty, 2019, p.2.

[7] The Singapore Convention on Mediation /The United Nations Convention on International Settlement Agreements Resulting from Mediation/ (New York, 2018) consultation response, 2023, p.6

[8] Diar Ramadani, The Effectiveness of Solving Commercial Disputes: Alternative The Effectiveness of Solving Commercial Disputes: Alternative, Dispute Resolution Vs Commercial Litigation in Kosovo, 2021, p.8

creating conditions for continuing business relations, allowing the parties to reach a consensus on the nature of the dispute, and not making binding decisions. Mediation in commercial disputes is neither a special form of mediation, nor a type of mediation that would require special approaches differentiating from other types of mediation (if they are divided pursuant to disputes that are resolved through mediation)[9].

Commercial dispute mediators require high skills, extensive knowledge of economics, finance, law, analysis of market conditions, and sensitivity to approach any issue from a neutral point of view. For example, when preparing for commercial mediation, the following issues should be considered. It includes:

- Identify and analyze controversial issues
- Identify realistic expectations in the context, time constraints, available resources, legal implications, business and commercial activities, costs, etc.
- Determining the needs and interests of the parties in dispute resolution
- Prioritize the issues according to the needs of the parties
- Determine business direction, position, trade-offs, and explore possible solutions
- Be prepared to satisfy the needs of the other party by striving to make the proposed proposal reasonable and legal
- Identify the strengths and weaknesses of the parties
- Investigate the validity of available evidence and documents to support the claims made
- Re-estimation of the parties' needs, strengths and weaknesses, positions and copies of documents
- Focus on the interests of the parties
- Developing strategies and tactics by discussing issues, presenting proposals, testing the positions of the parties, etc.

The mediator's role is to help the disputants explore issues, needs, and settlement options[10].

Commercial mediation ensures privacy and confidentiality, protects sensitive business information, and if there are reasons for disputes between the parties due to business operations, and the parties cannot resolve it themselves, commercial disputes can be resolved by non-judicial means by contacting mediators. Commercial mediation includes commercial contracts, IT disputes, professional integrity, property disputes, construction, insurance, inheritance and trust disputes. Countries with experience in training commercial mediators include England, India, Moldova, Serbia, etc.

Mediation of financial disputes, on the other hand, aims to resolve financial issues, non-disclosure of financial information, explore possible alternatives to financial agreements, and seek to reach a financial agreement. Financial disputes include securities, assets, tax debts, financial loan disputes, etc. For example, taxes, fines, and penalties that have not been paid within the period specified in Article 50.1.1 of the General Tax Law of Mongolia, i.e., "the date on which the tax must be paid and reported in accordance with tax laws and regulations for taxes specified in the taxpayer's tax return," are considered tax liabilities. In doing so, the tax debt is settled in the order of main tax debt, interest and penalty.

The tax authorities collect tax debts in an uncontested manner, by confiscating cash and seized assets, freezing assets and receivables, and distributing income. However, this does not create conditions that allow taxpayers to pay their debts in a difficult manner. In developed countries, tax dispute mediators are employed as part of non-judicial preliminary settlement during the proceedings in order to create the possibility of granting tax credits and to create conditions for paying debts for a certain period of time, taking into account the possible indicators of business profits. For example: Netherlands, Austria, Holland, Germany, etc.

[9] Handbook-Advanced Training on Commercial Mediation, Luxembourg, 2022, p.5

[10] A Guide to Commercial mediation and Arbitration for Business People, American Arbitration Association, 2013, p.5

Mediation is a consensual procedure rooted in party autonomy and by default, the parties can agree to initiate a mediation process at any point in time during their relationship[11].

Regarding financial disputes, the parties shall collect and exchange financial information on income, expenses, assets, investments, savings, pensions, and liabilities. Mediation of financial disputes creates a safe space and a neutral and fair environment for all parties involved to express their opinions and interests, overcome obstacles, encourage cooperation rather than confrontation, open up the process of solving problems through soft policies, and create trust and respect. possible. A financial intermediary is unique in that it does not make decisions or impose solutions. Organizations dealing with financial inter mediation include the China International Economic Trade Arbitration Commission, the American Financial Industry Regulatory Authority, and the Hong Kong Financial Dispute Resolution Center. Also, countries that train mediators of financial disputes well include America, England, Australia, Canada, and Singapore.

With the adoption of the Model Law on International Commercial Mediation in 2018, it covers transactions involving commercial relations in addition to the commencement of dispute proceedings from the date parties agree to mediate. This includes: for example, any trade agreement for the supply or exchange of goods and services, distribution and usage agreements, etc.

With the Fourth Industrial Revolution and the coming age of artificial intelligence, countries are increasingly using online mediation. Online mediation is a dispute resolution process that uses an online video conferencing platform to allow parties and a neutral mediator to hold sessions remotely. For online mediation, all processes will be conducted remotely using digital platforms such as zoom, skype, and teams[12]. Parties and mediators do not meet face-to-face and all communication is digital. Online mediation is characterized by the fact that it saves time in resolving disputes, facilitates the mediation process, and facilitates the participation of participants in the mediation session in an easy, cheap and technological way. Also, in order to ensure the confidentiality and smooth conduct of the mediation, there will be a need to participate in a quiet space, technical and technological availability, capacity, information security and confidentiality, and to establish basic rules for the participation of the parties. In our country, the understanding of mediation in online form can be created to provide free services to citizens with the necessary knowledge and information within the framework of certain norms. For example, Legislation on alternative dispute resolution in cases that include the electronic aspect of commerce (e-commerce) has been recognized as one of the levers for encouraging growth, strengthening trust and ensuring progress towards the completion of a single market, at the European Union level[13].

SITUATIONS WHERE BUSINESS DISPUTES ARE RESOLVED THROUGH MEDIATION

Mediation is a process in which a neutral third party intervenes to resolve a dispute between two or more parties. The effectiveness of national and international sources of law is very important in resolving business disputes through mediation. For example, let's consider some provisions of the legal regulation of mediation. It includes:

For example, countries that have joined the above international convention include Belarus, Brazil, China, Singapore, Turkish, Malaysia, and the Philippines[14]. In other words, when countries join the convention, it will become a big opportunity to implement mediation at the international level.

[11] Ilaria Forestieri and Philipp Paech, Mediation of Financial disputes, 2018, p.2

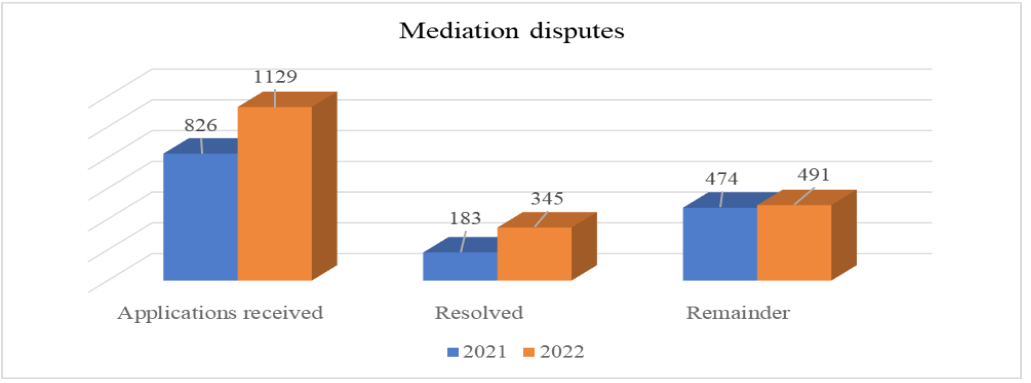
[12] Guidance on online commercial mediation procedures, Luxembourg, 2021, p.7

[13] Recommendations for Strengthening the Use of Mediation in Croatia, American, 2017, p.6

[14] https://www.singaporeconvention.org/jurisdictions

Legislation source	International and national source provision
Mediation law of Mongolia (Article 8.1, 2012)	Governmental and non-governmental organizations and professional associations may employ a mediator to resolve disputes arising from legal relations in the field in accordance with the direction of their activities.
Law of Mongolia on Arbitration (Article 43.1, 2017)	If the parties reach an agreement during the arbitration process, the arbitration panel shall terminate the proceedings, and if the arbitration panel does not reject the request of the parties, the terms of the settlement shall be reflected in the main arbitration decision and confirmed.
Report of the United Nations Commission on International Trade Law, (United Nations, New York, 2018, draft article 13.49)	Convinced that the adoption of a convention on international settlement agreements resulting from mediation that is acceptable to States with different legal, social and economic systems would complement the existing legal framework on international mediation and would contribute to the development of harmonious international economic relations.
The Singapore Convention on Mediation (Ministry of Justice, 2023, 6.3) /The United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018)/	Commercial mediation can support businesses who may be looking for more cost-effective methods of resolving their disputes, outside of the traditional routes of litigation and arbitration, with aspirations of preserving their important and potentially long-standing business relationships by reaching an amicable and mutually agreed resolution.

The form of mediation can be classified as mediation at the court of first instance, mediation at the arbitration, and preliminary resolution process disputes. For example, mediation at the court of first instance.



Source: Statistics for the 1st quarter of 2022 in the court of first instance of civil cases of Bayanzurkh district[15]

According to the above study, the number of disputes not resolved in the process of mediation increased from 474 in 2021 to 491 in 2022. This continues to show that difficulties are still being faced in the process of acting as a mediator in the proceedings.

[15] https://www.bzd.civilcourt.gov.mn/.

Conciliation Center is active under National and International Trade Arbitration. In other words, the parties can resolve any disputes with the help of a professional mediator and reach a mutual agreement. The mediators of the mediation center are mediators with official certificates of mediators specializing in public and civil law. The advantage of using this mediation center is that it provides opportunities for quick, cost-effective, amicable resolution of disputes in a short period of time, as well as flexible arrangements and opportunities for parties to participate. The types of disputes handled by national and international commercial arbitration include any contractual dispute, labor dispute, and property dispute. Mongolian International Arbitration received 187 cases and resolved 131 cases in 2021. The average duration of arbitration proceedings was shortened by 3 months, the number of arbitration cases accepted per year increased by 115 percent compared to 2019, and the number of cases resolved per year increased by 152 percent compared to the same year. The Mongolian International Arbitration has received more than 180 cases in 2022[16].

Construction disputes are expected to occupy a significant place in commercial disputes in Mongolia. For example, according to Article 25 of the Universal Declaration of Human Rights, everyone has the right to housing and essential social services, but according to Article 343 of the Civil Code, violations of employment contracts continue to occur. However, due to non-fulfillment of contractual obligations, construction, commissioning, and handover of buildings were not put into operation within the appropriate time frame, construction work was incomplete, construction materials were delayed due to the quality of construction materials, poor construction quality indicators, and property defects continue to create conditions for disputes. For example, let's take a look at the types of dispute issues that are dealt with in the preliminary resolution process disputes.

To the Ministry of Construction and Urban Development, its subordinate organizations and officials, in the reporting period of only the third quarter of 2022, the Ministry received a total of 792 applications and complaints from citizens and organizations in accordance with the Law on Resolving Petitions and Complaints from Citizens to Government Organizations and Officials, there are 368 land management disputes, 222 disputes related to the state housing corporation, and 161 disputes related to the construction development center[17]. From this, it cannot be denied that this type of dispute may increase in the future.

In terms of financial disputes, considering the information reported by the head of the General Department of Taxation:

- In the framework of reforming tax laws, 2,572 enterprises were liquidated between 2020 and 2022 by conducting a risk assessment and introducing an easy service that allows immediate liquidation if there is no risk.
- In Article 26.1 of the Law on State Registration of Legal Entities, the Tax Office forwarded the proposal to remove 58,630 legal entities from state registration, which have not submitted their financial statements for eight or more quarters in a row.
- In November 2020, 5153 taxpayers with a tax debt of 257.9 billion MNT, and 540 taxes with a tax debt of 128.2 billion MNT in May 2022, closed current accounts in commercial banks of taxpayers who have implemented tax debt collection activities during the pandemic[18]. The closure of accounts in 12 commercial banks of the payer was canceled[19].

According to these statistical indicators, taking into account the damages caused by the disputes during the implementation of the contract and the tax debt due to the failure of the taxpayer to report the tax return on time, measures are taken up to the liquidation of the enterprise, removal

[16] https://news.zindaa.mn/4f9z (Information on the "Discussion on non-judicial dispute resolution" held by the Mongolian Chamber of Commerce and Industry on November 29, 2022).

[17] https://www.barilga.mn/.

[18] https://www.mta.mn/.

[19] Zuun newspaper No. 238.

from the state register, and the closing of the account. I think it would be more appropriate to use the method of conciliation to reach a consensus and a clear solution to the disputed issues of the parties by non-judicial means.

CONCLUSION

- Since 2012, the legal basis for non-judicial settlement of legal disputes with the support of a mediator was established in Mongolia, and more than 10 years of experience has been accumulated. In doing so, court mediators were often used to resolve disputes arising from civil law, labor rights, and family relationships.
- Furthermore, in the context of international trends, it is worth saying that the need to study the experience of mediation in other countries in a certain field and train not only electronic mediators, but also mediators specialized in commercial and financial disputes arises due to the characteristics of the market.
- Recently, business disputes have been classified into commercial disputes and financial disputes. In this regard, commercial mediation has been implemented in countries.
- According to the research results, the types of business disputes are increasing and causing problems in Mongolia. Therefore, in the future, there is a need to legalize the types of commercial mediation and train mediators to resolve financial disputes.
- The Law on Mediation allows governmental and non-governmental organizations and professional associations to employ mediators to resolve disputes arising from legal relations in the field in accordance with the scope of their activities. It is necessary to prepare a commercial mediator in the context of business disputes related to the provisions of this law.

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ASSESSMENT OF NON-PECUNIARY DAMAGES SOME PROBLEMS

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ABSTRACT:

Human emotions are a way of expressing one's position in the external world and one's inner attitude. Mental state is responsible for evaluating[1] and determining the things in the environment, which can be expressed in a variety of positive and negative ways. A person suffering from emotional depression manifests negative emotions and has the following characteristics: mourning, sleeplessness, depression, emotional pain, suffering, despair, fear, shame, anger, anxiety, remembering and forgetting, and physical health is adversely affected. Affects.[2]

In the judicial practice of our country, it is considered possible to compensate for emotional damage if a number of features and prerequisites are met. (1) Intentionally or recklessly guilty, (2) The action was manifested in an action that was disgusting, repulsive, causing significant emotional harm to anyone, (3) The above action caused obvious emotional harm to the plaintiff. One basis for determining emotional harm is the causal connection between the act that caused the harm and the consequence. In this regard, Blake's Dictionary states, "Although the plaintiff must prove emotional distress, the defendant's vexatious and serious conduct, such as to cause emotional harm to anyone who sees it, is of great importance in proving whether emotional harm has occurred." As a result, it is very difficult to determine whether emotional distress has been caused to the victim, and it is very effective to determine emotional damage with the help of psychologists and doctors.[3]

KEYWORDS:

Non-physical damage, victim, emotional damage, damage assessment, damage assessment method

The issue of causality between the crime and the damage, which is the subject of a civil claim, is a relatively broader concept than the characteristic of the objective aspect of the crime, considered by criminal law theory, which is the act, omission, its harmful effects, and the causality between them. Harmful consequences of a crime is a violation of the rights and interests of a person, society, state, organization, or enterprise protected by the Criminal Law, which has made changes or caused real damage, or created conditions for such damage means to

[1] B. Batsaikhan, M. Delgerjav. General psychology. First edition. Ulaanbaatar, 2013. p. 212.

[2] M.Lee Huffaker. Recovery for Infliction of Emotional distress: A comment on the mental anguish accompanying such a claim in Alabama. 2003. p.1004.

[3] Black's law dictionary (7th ed. 1999).

be.[4] Harmful consequences of a crime are the criteria for determining the degree of harm caused by the criminal act or non-action. The damage is not only the damage caused to the person, society, state, organization, enterprise or victim protected by the Criminal Law, but also the direct intention of the criminal, which does not contain the characteristics of the object of the crime, but due to the crime or omission of the subject, in that case, the citizen protected by the Criminal Law, the law It is the damage caused to a person's material and non-material rights and interests. The concepts of harm, damage, and harm have not yet been defined, and there is no explanation that "such things are included in the damage" for the damage caused. In the English grammatical sense, harm is understood as a legal violation or guilt, which is not consistent with our common understanding, so it should be understood as a consequence of a legal violation or guilt. Harm has the same meaning in any language, and it is reasonable to believe that harm is the loss, damage, or destruction caused by a crime, while harm is the consequence of the same nature, which is disruptive and takes a long time. Damage or property damage is part of the broader concept of tort. Looking at how some foreign scholars have defined it[5]: Considering that harm is a broader concept than harm, some researchers consider harm as a monetary expression. Because it is believed that damages are compensated in money, on the other hand, damages are manifested in the form of physical and moral pain caused by the destruction or damage of property, loss of income, loss or reduction of working ability, loss of breadwinner, and other additional expenses. It is also considered that the evaluation is relative. According to the above definitions, "harm", "harm" and "harm" were defined as follows.

It includes: The concepts of "harm", "harm" and "harm" are different. The part of "harm" that can be valued in money, or damage to property, is explained as "damage". Also, the term "damage" is relatively more reflected in the writings of academics, and there is a fixed concept in court practice as well. "Damage" is a material or non-material negative consequence of the violation of a certain person's rights. The main characteristics of damages are: Quantifiable and measurable: Close and strong causal link between the legal violation and the consequences. Damage can be classified as follows. It includes: A. In the legislation, damages are legalized as follows.

1) Material and non-material damages,

2) Property and non-property damage,

"Ed" means "things that can be used and enjoyed" and "property" means the common name of property and value belonging to people and society in the Mongolian language. But "property" means the same content as "things" and "things" is a general name for anything in Mongolian language.[6] Property damage is damage that can be expressed in money or in physical form to the tangible economic wealth owned or possessed by the claimant. Non-pecuniary property damage is damage to the dignity, reputation, mental and intellectual values of a citizen or legal entity, as well as the right or demand to grant benefits or demand from others, which can be compensated in money, or can be restored in the same way as before. It is required that the amount of damage to intangible assets that cannot be restored in the old way can be expressed in monetary terms. The concepts that are treated differently in law and scholarly work are tort and damage. Academician S. Narangerel "...crime is the reduction or destruction of the subjective rights or wealth of a citizen. ...crime is a broad concept divided into property and non-property. The monetary assessment of property damage is called damage.[7] Some researchers say, "Tort in the most general sense is: Caused by a wrongful act.

However, the Supreme Court of Mongolia, according to Resolution No. 15 dated May 22, 2009, "...property and non-property damage" according to Article 497, Section 497.1 of the Civil

[4] S. Jamtsan. Theory of Criminal Law of Mongolia. Ulaanbaatar, 2009. pp.360-361.

[5] T. Munkhjargal. Civil law. Special types of duties. Ulaanbaatar., 1998, p.144.

[6] Y. Tsevel. Brief dictionary of the Mongolian language., Ulaanbaatar, 1996., p.716., p.869

[7] B. Bilegsaikhan, D. Orosoo, D. Tsolmon, Consequences of court decisions in administrative cases, Ulaanbaatar, 2005, p.25.

Code, means the rights, life, health, and dignity of others. , reputation, business reputation, and property, which is defined as criminal liability in the Criminal Code, socially dangerous, culpable, harm caused by actions or omissions" does not directly define non-material damage, but the list or non-material The object of damage is determined by calculation method. So, is the concept of non-pecuniary damage controversial only in our country? Consider how it is noted in some foreign language sources.[8]

According to the resolution of the plenary session of the Supreme Court of the Russian Federation[9], emotional damage is defined as moral and physical suffering. It is caused by the loss of a relative, inability to continue an active social life, loss of a job, disclosure of family or medical secrets, dissemination of defamatory or professional information, deprivation or restriction of rights for a certain period of time. It is explained that there may be health problems and injuries. On the other hand, in countries with Anglo-Saxon legal system, which is in force in the United States and England / countries that were basically British colonies/ or in countries where standard law applies, a standard assessment was made. Judging from the position of foreign and domestic academics and laws, there is no established theory defining non-material damage, not only in terms of terms but also in terms of content. However, there have been constant attempts and approaches to define it. It varies depending on the legal system and legal development. Differentiation of non-material damage is important in relation to its compensation. Just as there are many causes of wrongdoing, there are many ways to recover damages. In other words, depending on the nature of the legal violation, the idea is to have appropriate methods for compensating damages. In her work, Varpakhovskaya E.M. considered non-material damage from the point of view of criminal proceedings, and in doing so, classified it as physical, emotional, and business reputation[10]. Also, Master Ts. Odonchimeg said, "According to the research process, theory and practice, the non-material damage caused by crime can be divided into the following types. It includes: • Damage to honor, reputation, and business reputation; • Psychological damage; • It can be classified into 3 types: physical damage /sickness, pain, suffering, etc.." The concept of non-material damage and the issue of its compensation involve many issues, starting with the term, its type, form, amount, and method. Researchers expressed their position on how to determine the amount of non-material damage.

As mentioned in the previous section, the relationship of compensation for non-pecuniary damage is regulated by the norms of civil law, but the norms of civil law still cannot fully regulate the relations that should be regulated. Because the object of non-pecuniary damage in the civil law is too narrow or limited only to honor, fame, and business reputation, other types of non-pecuniary damage are compensated as follows.[11] In Mongolia, lawsuits for non-pecuniary damage compensation are relatively rare, and according to the court decision database, claims for non-pecuniary damages are usually dismissed or the victim's initial claim is reduced to a mandatory settlement. The court does not fully meet the claims for damage to honor, reputation, business reputation, or damages.[12] During the research, it was observed that there are more court decisions that compensate non-material damages caused during the inquiry and investigation in the court decision fund. The following 2 points can be noted from the court decision. It includes: • Plaintiffs determine the amount of non-pecuniary damages themselves. This is due to the lack of methods and methods for determining the amount of non-material damage. For this reason, in all but one of the studied court decisions, the amount of compensation for non-pecuniary

[8] P. Bayanbaatar, "Scope of emotional harm in civil law and ways to eliminate it", Mongolian government and law, 2008, No. 4 (56).

[9] "Some issues of application of legislation on compensation for emotional damage", resolution of the plenary session of the Supreme Court of the Russian Federation, December 20, 1994, No. 10.

[10] Varpakhovskaya E.M. Voprosy compensatsii moralnogo vreda dotevshemu v rossiikom criminalym sudoproizvodstve. Irkutsk-2004.

[11] Ts. Odonchimeg, Some issues of solving claims of non-pecuniary damage caused by crime during criminal proceedings /Master's thesis/, Police Academy, 2005, p.24.

[12] L. Byambaa, Deciding on business reputations for reputation, honor, and fame, Journal of the Rule of Law, 2004, p.2.

damage is reduced from the value of the claim. • It is believed that the judgments of the court are based on the fact that non-pecuniary damages have not been established. In Mongolia, relations related to compensation for non-pecuniary damage are regulated by the Civil Law. Section 8.1 of Article 8 of the Civil Code states: "Civil legal relations shall be established on the following grounds", Section 8.1.5: "Injury", Section 9.4: "Civil rights shall be protected in the following manner", Section 9.4: "Non-material offences". to remove the damage", Article 228.1, "The person responsible for removing the damage is obliged to restore the violated rights of the other party to the state before the damage was caused. If it is not possible to restore the violated rights, or if relatively large costs are incurred, the damages can be compensated in money", Article 230.1, "The victim has the right to demand the removal of non-pecuniary damage", and Article 230.2, "Only in cases specifically provided by law, non-pecuniary damage can be compensated in money" 497.1 of Article 497: "A person who causes damage to the rights, life, health, honor, reputation, business reputation, or property of others by illegal intent or careless actions shall be responsible for repairing the damage." Section 511.1 of Article 511 states that "If the person who has spread news that discredits the dignity, reputation, or business reputation of others cannot prove that it is true, he shall be obliged to compensate non-material damage in money or other forms, regardless of the removal of property damage." Article 511.2 states that "the amount of non-pecuniary damages shall be calculated in money within the scope of the claimant's demands, taking into account the means of spreading the news, the scope of the spread, and the consequences on the victim's mind, and the person who caused the damage shall be obliged to deny the form of spreading the news and by other means." regulated respectively.

From the point of view of civil law, non-material damage is not specified, and the concept of non-material damage includes only the honor, reputation, and business reputation of others. In addition, the provision of non-pecuniary damages does not regulate how to compensate in monetary form the emotional damage caused by causing damage to the body, health, or property of others. Section 1 of Article 45.1 of the Law on Criminal Procedure states that "Citizens, foreigners, stateless persons, and legal entities of Mongolia shall be entitled to compensation for property damage, honor, the right to have the reputation, business reputation, health, and emotional consequences removed, and to receive pensions and allowances, to own an apartment, and to restore other rights", Article 45.4, Part 1, "Non-property damage and emotional harm Claims for compensation in the form of money shall be filed in accordance with the procedures specified in the Civil Procedure Law. According to the above regulations, the Civil Code does not provide for monetary compensation for emotional damage caused by causing damage to the body, health, or property of others, but the Criminal Procedure Law provides the possibility to claim monetary compensation for emotional damage caused by a crime. clearly specified in the law. In addition, Article 17, Clause 17.4 of the Family Law stipulates that "if it is determined that the rights and interests of the spouses have been harmed due to the invalidity of the marriage, the party whose rights have been violated has the right to recover material and emotional damages from the guilty party in accordance with the provisions of the Civil Code." The Family Law allows for emotional damages, but does not provide for monetary compensation. Also, the prerequisite for claiming emotional damages is that the rights and interests of the spouses have been damaged by the invalidity of the marriage. According to the law, the scope of claiming emotional damages is the above prerequisite. When the Supreme Court applied the provision for non-material damage and emotional damage, it concluded that the court cannot meet the requirement in the absence of such regulation in the Civil Code, which is the same as refusing to apply the law. The Civil Code stipulates monetary compensation for non-pecuniary damage only in cases specifically provided by law, and this specific provision is included in the Criminal Procedure Code, which is a detailed law. Both arrangements can be explained in terms of systematization. Criminal law prohibits the application of the law by analogy, but civil law accepts the application of the law by analogy.

From this point of view, the researcher believes that it is quite possible to apply the regulations 45.1 and 45.4 of the Criminal Procedure Law in order to increase the scope of the regulation 230.2 of the Civil Code.

In the case of Mongolia, when studying the laws and regulations, there are limited legal possibilities to claim emotional damages caused by damage to other people's life, health and property. This is because the concept of non-pecuniary damages in the Civil Code refers to the honor, fame, and business reputation of others, and if emotional damages are claimed in monetary form, this arrangement requires only the provisions of the law. In other words, the regulation granting the right to demand must be included in the Civil Code. However, the Criminal Procedure Law clearly provides for the possibility of claiming emotional damages in monetary form, but the regulation is applied differently by each court, which violates the rights and interests of citizens. Regulatory framework in 497.1 of the Civil Code: The fifty-second chapter of the Civil Code deals with "Obligations arising from harm" and the civil law of Mongolia enumerates the objects or rights arising from violations. Article 497.1 of the Civil Code states that "A person who causes harm to the rights, life, health, honor, reputation, business reputation, or property of others by illegal intentional or careless actions or omissions shall be responsible for repairing the damage." stated. In the above regulations, the range of non-pecuniary damage is limited only to honor, reputation, and business reputation, so in court practice, monetary compensation will be provided only if the above rights are provided for in the law. has been denying the basis of harm. In addition, in Resolution No. 15 of May 22, 2009 of the Supreme Court[13], "Property and non-property damage is defined as damage to the rights, life, health, honor, fame, and property of others according to Article 497.1 of the Civil Code. Criminal liability shall be understood as the harm caused by actions or inactions that are dangerous to society, culpable, as well as "Article 230.2 of the Civil Code, non-pecuniary damages shall be compensated in money only in cases specifically provided for in the law, and human life" , bodily organs, pain, pain, and emotional state cannot be compensated with money in the absence of legal regulations for evaluating non-material damages. According to the above explanations and application recommendations, it can be seen that non-pecuniary damage is limited by the provisions of 497.1 of the Civil Code, and the judicial practice of our country does not establish such a broad interpretation of the scope of values.[14]

The tendency to limit the ability to recover emotional damages in the form of money under the conditions specified by law: When the Civil Code was adopted in Mongolia, the regulation in 230.2 of the Civil Code of the Anglo-Saxon law "Punitive damage" or the practice of awarding damages as a punishment for a wrongful act, did not reflect in the law, but due to the fact that he supported the idea of measuring and awarding actual damages in continental law.[15] However, §253 of the Civil Code of Germany includes a provision that apart from economic damages, emotional damages caused by violations of rights such as life, health, freedom, and sexual integrity can be compensated with money, and in Anglo-Saxon law, "Punitive The tendency to limit the issue of "damage" shows that there is a social need to revise Article §230 of the Civil Code of our country by combining the non-material damage removal methods of the above two legal families. In other words, we need to notice that some concepts and concepts that were understood at the time of the adoption of the Civil Code are changing. In other words, in our country, due to the law limiting the possibility of financial compensation for emotional damage, the right to compensation for emotional damage caused by damage to the body, health, and property of others is still limited. The approach to reparation of emotional damage has been actively developed since the end of the

[13] Resolution of the Supreme Court of Mongolia, "On the application of some articles and provisions of the criminal procedure and civil law regarding the elimination of damages caused by crimes in criminal and civil proceedings", p.15.

[14] J. Oyuntungalag. Objectives of Criminal Law: A Legal and Economic Approach. Rule of Law, 2019, Series 1 (71), p.9

[15] Gunther Christian Schwartz and Manfred Wandt. Law of Statutory Obligations: The law of torts or obligations arising from torts. 3rd edition, Ulaanbaatar city, 2017. 3rd party.

18th century, and it is believed that research works and works have had a significant impact on the establishment of the practice of reparation of emotional damage, rather than court decisions and practice. In recent years, the concept of emotional distress, pain, and suffering has been considered as a separate independent study from the concept of suffering, pain, and pain used in tort law, and the concept of emotional distress has been emphasized even more or emotional injury).[16] This is because depression is not comparable to ordinary stress, and a person suffering from depression shows symptoms such as lack of sleep, lack of eating and drinking habits, lack of mental concentration, and constant anger. Because of this, it is believed that there is a high probability of affecting the nerves and the psyche, and even getting mental and neurological diseases.[17] Enlarging the concept of non-material damage to the law: Expanding the concept of non-material damage in the law will increase the possibility of monetary compensation for emotional damage caused by this crime. Because the regulation of the right to claim is not clearly specified in the special section of the Civil Code, it is clearly mentioned in this report that there is a situation where emotional damage caused in other ways than honor, fame, and business reputation cannot be recovered in monetary form.[18] In §253.1 of the Civil Code of Germany, "A fine may be imposed for compensation of non-material damage only in cases provided by law." damages may be assessed in money other than pecuniary damages." arranged. Although in Germany, as in our country, compensation for non-pecuniary damages is regulated only in cases specified by law, the protected value of non-pecuniary damages specified in the special class is reflected in a broad context. Therefore, our country will be able to exercise its right to monetary compensation for non-material damages other than material damage to life, health, and freedom by adding an amendment to Article 511 of the Civil Code.[19]

CONCLUSION

In our country, the concept of emotional crisis or distress is a new concept. From this point of view, there is a problem in exercising one's right to independently claim emotional damage caused by material or non-material damage caused by others and to be compensated in monetary form. In this study, the concept of emotional damage is studied and defined in detail from the perspective of psychology and psychiatry, and emotional distress or distress refers to the emotional, intellectual pain and suffering caused by the illegal actions of others, including grief, depression, anger, loss of pride, shame, public humiliation, despair, and emotional distress. Depression can be as damaging to the mind and spirit as it is to a physical injury and can cause lasting damage to the body as well. Therefore, emotional damage is studied as emotional damage separately from the suffering, pain, and pain of physical injury as understood in tort law, and damages are compensated. It is concluded that there are several problems for our country in compensation for emotional damage. The concept of "emotional damage" includes honor, fame, and business reputation of others, and is caused by others.

[16] In criminal law, it is often understood as pain and suffering caused to the body and health of others, and it is mentioned in textbooks and studies. However, apart from the above concept, there are other symptoms that lead to emotional suffering, pain, and crisis, and the researcher clearly mentions that due to this, harm is caused to others. The Supreme Court of the United States has defined emotional and mental injury as not emotional damage.
M. Lee Huffaker. Recovery for Infliction of Emotional distress: A comment on the mental anguish accompanying such a claim in Alabama. 2003. p.1003, James V. Calvi and Susan Coleman.

[17] American Law and Legal systems. Fourth edition, 2008, p.256.

[18] B. Otgonzul. Bachelor's thesis on improving the legal regulation of non-material damage and its elimination, SZS of NUM, 2011, pp. 40-42.

[19] The researcher studied the violation of the right to monetary compensation for emotional damage and the way to solve it, and did not include in his research how to evaluate emotional damage by the court. Because research related to how to assess emotional damage is an independent research object.

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B. Otgonzul. Bachelor's thesis on improving the legal regulation of non-material damage and its elimination, SZS of NUM, 2011, pp. 40-42.

THE INTEGRATED LEGAL INFORMATION SYSTEM OF MONGOLIA: DEVELOPMENT AND REFORM

/Democratizing legal information through technology/

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ABSTRACT:

The Integrated Legal Information System of Mongolia is a data platform, providing legal information and regulations of Mongolia and its purpose is to ensure accessible legal information and transparency and classification of legal norms of Mongolia. The aim of this paper is to report basic information on the system development and its environment in Mongolia.

KEYWORDS:

Legal information system, legal information database, legal reform, mobile application, system operator.

I. INTRODUCTION

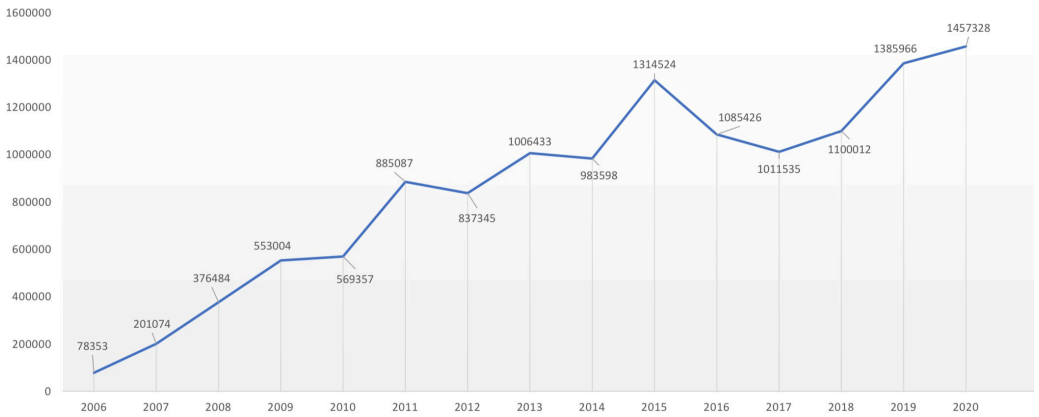
The justice sector in Mongolia has changed significantly in the 20 years since the country became a democracy. The World Bank and other international partners have provided significant assistance for reform processes, particularly in areas concerned with the development of an independent judiciary. During the early and economically difficult times following the establishment of democracy, reform activities naturally focused on legal reforms, such as the creation of a legislative framework for democratic institutions, the transition to a market economy, and the necessary changes in the relationship between the state and the people. Within this reform, the Government of Mongolia has decided to develop an integrated legal system. Thanks to the financial support from the World Bank, the integrated legal information system (www.legalinfo.mn) was successfully developed in accordance with agreement No. LJR-IT-04/01 on the software development of the integrated legal information system and supplement of the supply of necessary equipment for programming interface", and the system was generally available on September 27, 2006.

The integrated legal information system is developed for the following purposes. It includes:

- To provide the opportunity to access, receive, and search the legal information on effective legislative acts of Mongolia;
- To collect, restore, and classify laws and legislative acts and to ensure their transparency;
- To create a legal information system in order to develop and expand the legal information database.

It systematizes the legislation in Mongolia by forming an integrated legal database and is widely used by lawyers, civil servants, scholars, researchers, students and law firms due to their work in the legal and civic fields in general. As of today, about 13700 laws and legislative acts have been uploaded to the system. In the early years, the average number of visitors was only about 200 to 300 per week. It now reaches 16000 per day.

Table 1. Number of visitors to the integrated legal system of Mongolia /legalinfo.mn/



II. THE INTEGRATED LEGAL INFORMATION SYSTEM AND LEGAL ENVIRONMENT

In Mongolia, effective laws and other normative administrative acts are published in the integrated legal information system within the period stated in this regulation. Laws and other legal information published on this website are not considered official acts. In other words, laws and administrative acts are deemed effective after it published in the state's official journals.

The following state authorities manage the daily updates of laws, normative administrative acts, and other regulations issued within their jurisdiction, while the National Legal Institute of Mongolia, the system operator, is responsible for the overall performance of the system.

- The office of the State Great Khural,
- The Cabinet Secretariat/ The Office of the Government.
- Ministry of Justice and Internal Affairs
- Ministry of Foreign Affairs,
- The Office of the President of Mongolia
- The Office of the Constitutional Court of Mongolia
- The Office of the Supreme Court.

"The National Program for Improvement of Legal Education for the Public" was approved by Decree No 50 of the Government of Mongolia Decree dated February 14, 2018. The National Council is responsible for implementing the program nationwide and coordinating cross-sectoral activities and monitoring implementation. As stated in Section 6.3 of the National Program for

Improvement of Legal Education for the Public, the National Legal Institute of Mongolia carries out the functions of the working group of the National Council and manages the operation of the integrated legal information system'.

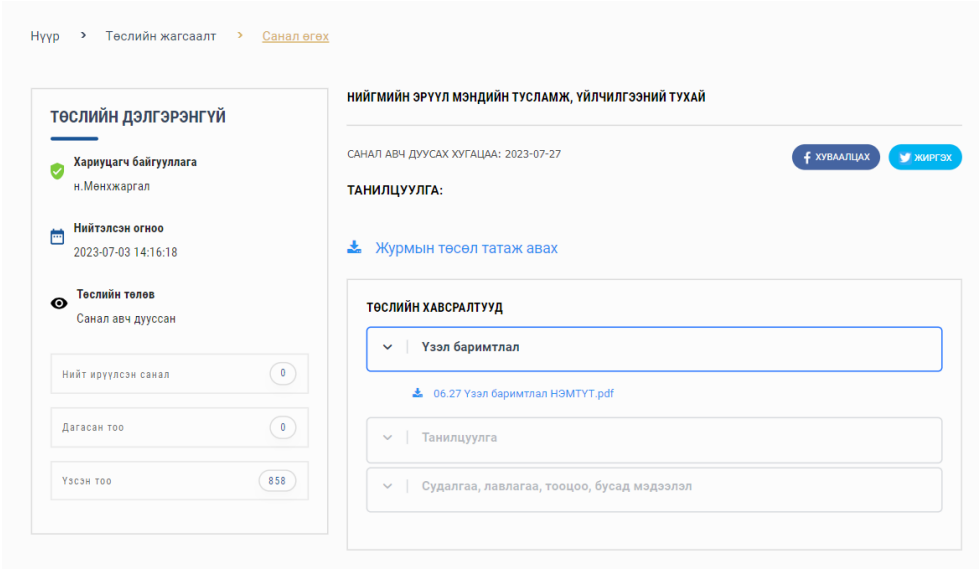
The Regulation on the Operation of the Integrated Legal Information System was adopted by Resolution by the Ministry of Justice and Home Affairs and the main relationship arising from the operation of the system. According to this regulation, laws and legislative acts should be classified into the following categories. It includes:

<table>
<tr><td>1. Laws
2. International treaties
3. Resolutions of the State Great Khural
4. The Decrees of the President
5. Decisions of the Constitutional Court of Mongolia
6. Resolutions of the State Supreme Court</td><td>The state authorities shall upload laws and decisions to the system within 5 business days from the effective date.[1]</td></tr>
<tr><td>7. Government Resolutions
8. Ministerial decrees
9. Decisions of government agencies
10. Decisions of Heads of the bodies appointed by the Parliament
11. Resolutions of local self-governing bodies of aimag
12. Resolutions of local self-governing bodies of soum
13. Orders of Governors of aimag and capital city
14. Orders of Governors of soum and district
15. Decisions of some organizations exercising state functions under contracts or in accordance with law</td><td>These acts are called "administrative acts". The state authorities that adopt an administrative act shall submit the original copy and soft version of the act to the Ministry of Justice. The Ministry of Justice and Home Affairs shall provide them with the National Legal Institute of Mongolia.</td></tr>
<tr><td colspan="2">16. Drafts of administrative acts and laws related to foreign trade and investment
17. Other draft laws and administrative acts and other legal information</td></tr>
</table>

Moreover, some types of draft laws shall be published in the integrated legal information system according to the Law on Legislation. In detail, Section 4 of Article 38 of the law states that "If the law initiator developed a legislation draft that affects the business environment, such as trade, investment, and taxation, the documents specified in the sub-paragraphs 40.1.2 and 40.1.3 of this Law shall be uploaded to their official website and the unified legal database for at least 60 days and a proposal from the public shall be received. A detailed introduction of the draft law shall be translated into English and uploaded along with it".

[1] The effective date is the date on which a statute, contract, or other such legally binding instrument takes effect or becomes operative and enforceable

Figure 1. List of draft laws



The following legal information that should be uploaded to the system is unofficial translations of laws. Since 2021, the National Legal Institute is responsible for the English translation of laws related in the business and/or investment sector, based on the direction of the Government of Mongolia within the legal reform to promote foreign investment and economic growth. As of today, about 270 unofficial translations have been published on www.legalinfo.mn.

III. ROLE OF SYSTEM OPERATOR AND OTHER PARTICIPANTS

According to Article 45.3 of the Law on Legislation of Mongolia, the National Legal Institute is responsible for uploading the electronic legal database to the unified legal database. In other words, the National Legal Institute of Mongolia is the system operator. The system operator monitors and controls the operation of the mainframe hardware and software and ensures they function properly. In case of malfunction or an unusual situation, the operator will communicate with system programmers, who are selected.

Participant	Name	Role
Owner	The Ministry of Justice and Home Affairs	- To finance; - To adopt rules on development, usage, and safety;
System operator	The National Legal Institute	- To ensure that the system runs smoothly and it's safety/data protection; - To select a professional hardware and/or software development company to conclude an agreement with the service providers and review the progress of contracts; - To organize laws and administrative acts in accordance with the regulation - To diffuse laws and administrative acts that are uploaded and reviewed;

		- To restructure and make substantial movement/ change - To change the status of laws and administrative acts that have no legal effect; - To grant permission to access and upload to the reviewer, the portal operator, and the classifier; - To grant permission to access the subsystem network; - To ensure system maintenance; - To write down necessary expenses related to the system on its annual budget draft;
System User /Authorities for adding information/	▪ The office of the State Great Khural, ▪ The Cabinet Secretariat/ The Office of the Government. ▪ Ministry of Justice and Internal Affairs ▪ Ministry of Foreign Affairs, ▪ The Office of the President of Mongolia ▪ The Office of the Constitutional Court of Mongolia ▪ The Office of the Supreme Court.	- To add and upload information; - To submit an annual report on adding information to the Ministry of Justice and Home Affairs;

IV. SYSTEM DEVELOPMENT AND FINANCING ISSUE

In Mongolia, reforms and initiatives to accelerate digitalization are underway. The government's digital nation plan includes digital infrastructure, e-governance, information security, digital literacy, innovation and production as well as national development accelerator. The e-Mongolia platform launched in October 2020 has made government services accessible online. New laws enacted by Parliament in December 2021 will advance digitalization and cover areas such as the transparency of public information, protection of personal information, use of digital signatures, provision of virtual asset services, and cybersecurity.

Since 2006, the system has been developed twice to reach its current version. Normally, the Ministry of Justice and Home Affairs covers the cost of maintaining the system. However, the World Bank and USAID have provided funds to develop the system in 2006 and 2021. First, the integrated legal information system (www.legalinfo.mn) was successfully developed in 2006 thanks to the financial support from offered by the World Bank.

Figure 2. Version 1 of www.legalinfo.mn

Available date: October 22, 2006
Domain address: www.legalinfo.mn
Project financier: The World Bank
Contractor: MCS LLC

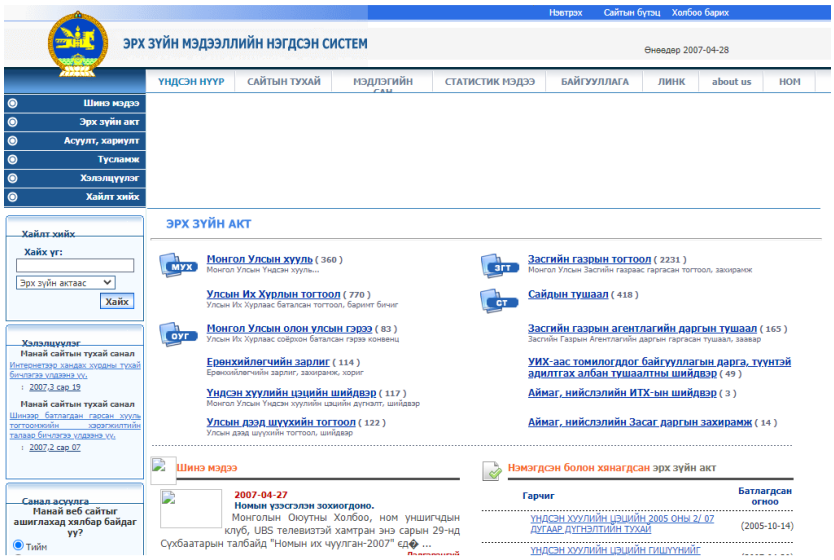


Figure 3. Version 2 of www.legalinfo.mn

Available date: September 26, 2021
Domain address: www.legalinfo.mn
Project financier: The Ministry of Justice and Home affairs
Contractor: Interactive LLC

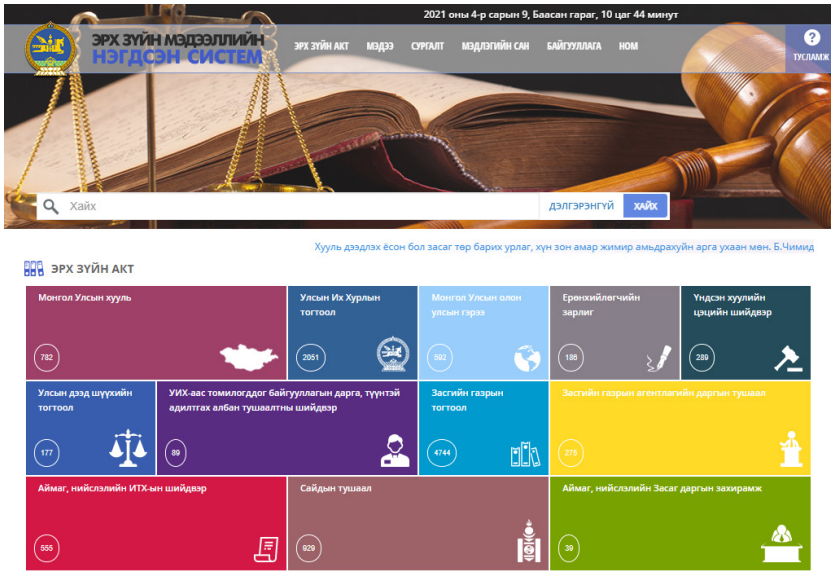
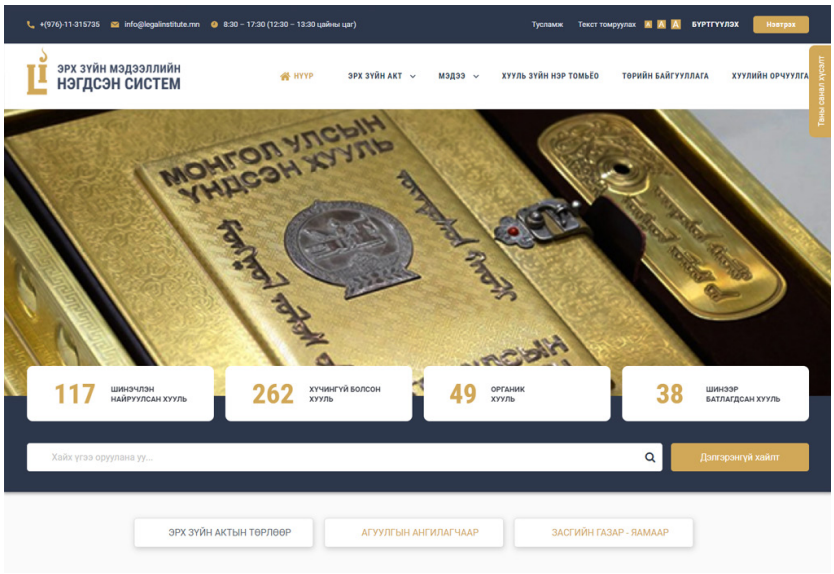


Figure 4. Version 3 of www.legalinfo.mn

Available date: 2021
Domain address: www.legalinfo.mn
Project financier: USAID
Contractor: Interactive LLC



The system was developed into version 3.0 of itself by Interactive LLC in 2021 with financial support from USAID. The website at www.legalinfo.mn (Version 3) is designed to work with all web browsers, including Internet Explorer, Chrome and Firefox. In addition, the integrated legal information website is designed to be compatible with all common mobile devices. There are two search options: a basic search and an advanced search. The site offers a variety of options to narrow your search by type of legislative acts, status (effective or not), word, title, date, number, and registration number.

Furthermore, a registration can be set up on the website, giving users the opportunity to make recommendations and suggestions regarding draft laws and normative administrative acts. Citizens also can log in using DAN integrated system of authentication. This system will serve as a platform to verify and identify when citizens receive all types of e-services.

V.FURTHER DEVELOPMENT

The current version only publishes the legislation, English translations, and normative administrative acts. In other words, it is necessary to further improve the system to provide legal information to the public in a more convenient way. For this reason, the Government of Mongolia is putting effort into developing and promoting the system. It shows:

Vision 2050 of Mongolia's long-term development policy document	7.4.II.1. Developing the integrated legal information system and the protection system of intellectual property rights with artificial intelligence-based technology.

2021-2024 Strategic action plan of the Government of Mongolia	4.1.8. Increase the transparency of information on the activities of state agencies and ensure the active participation of citizen and public.
2021-2024 Strategic action plan of the National Legal Institute of Mongolia	4.1. Ensuring the normal operation and developing the Integrated Legal Information System

At www.legalinfo.mn, there is no semantic relationship between laws and other regulations, making it difficult for users to obtain comprehensive legal information on a particular topic. For instance, in order to study related resolutions and commentaries of the Supreme Court or decisions of the Constitutional Court on a certain legal provision, one shall search for them separately. Thus, without professional help public generally has limited access to the legal information they need for their daily activities. Therefore, modern developments are needed in these areas of the Integrated Legal Information System. For this reason, NLI has selected Interactive LLC and has started to develop hyperlinks with the financing of the Asian Development Bank since June 2023.

We are working on developing hyperlink search and comparison search links and integrating artificial-intelligence based technologies into the Integrated Legal Information System of Mongolia. Artificial-intelligence based technology can provide answers to common legal questions and explain the content of regulations with schemes and illustrations.

Besides searching hyperlinks, foreign investors face some difficulties when accessing the website, as the front-end design of the system is not presented in English.

VI. CONCLUSION

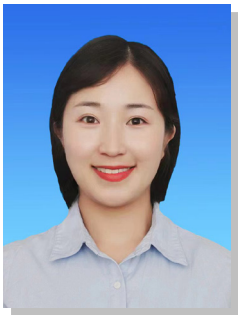
Creating and introducing the procedure and a culture to collect legal information in an organized and structured manner has been the largest and the most fundamental step taken in recent years. The Government of Mongolia, in particular the Ministry of Justice and Affairs and the National Legal Institute of Mongolia, were the contributors to the process of creating and developing this legal information system.

The Government of Mongolia has been working on the democratization of legal information for 20 years and has successfully developed the integrated legal information system. The integrated legal information system is not only a computer system based on legal information database, but it is a reflection of the country's democracy.

The integrated legal information system has played a key role in the National Program to improve Legal Education for the Public and in the Digital Nation Plan, revolutionizing the way the public and officials understand the relationship between state authorities and the public. The integrated legal information system /www.legalinfo.mn/ was an important part of the process of digitizing public services and ensuring the transparency of public information.

Despite the fact that the system has been developed twice in the past 20 years, it is time to keep up with technological advances and transform the system into a more sophisticated version. The Government of Mongolia has been working to accelerate digitalization across the country for several years, and the issue of introducing AI-based technology into the legal information system is likely only a matter of time.

COMPARATIVE STUDY BETWEEN THE CIVIL CODES OF MONGOLIA AND KOREA



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ABSTRACT:

The main role of comparative private law in the development of legal sciences is to examine the laws, principles and concepts of relevant laws, based on comparative study of private laws of other countries, which are not limited to studying an individual private law. It can provide ways and knowledge that are required to deal with certain legal problems within a national society.

Since the establishment of diplomatic relations between the Republic of Korea and Mongolia on March 26, 1990, the cooperation between the two countries has been developing rapidly in all spheres including politics, economy, society, and culture with firm ties and exchanges of legal scientists and scholarly works.

As the framework of cooperation between the two countries expands, so does the number of Mongolians living in Korea while Mongolia has also become a country where many Koreans settle which result in increased international migration and movement. Consequently, a growing tendency of marriage between Koreans and Mongolians is observed. As such, a mutual understanding of the civil codes, which is the basic law governing private legal relations, is needed.

In this article, it briefly discusses the historical background, the main content and emphasis of the Civil Code of the Republic of Korea and focuses on the concepts and reforms of the Civil Code reflecting the common and different concepts and legal regimes comparable to the Mongolian Civil Law.

KEYWORDS:

Civil Code, Comparative Study, Korean Civil Code, Comparative Civil Law

I. INTRODUCTION

The main role of comparative private law in the development of legal sciences is to examine the laws, principles, and concepts of relevant laws, based on comparative study of private laws of other countries, which are not limited to studying an individual private law. It can provide ways and knowledge that are required to deal with certain legal problems within a national society.

Since the establishment of diplomatic relations between the Republic of Korea and Mongolia on March 26, 1990, the cooperation between the two countries has been developing rapidly in all spheres including politics, economy, society, and culture with firm ties and exchanges of legal scientists and scholarly works.

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In this article, it briefly discusses the historical background, the main content and emphasis of the Civil Code of the Republic of Korea and focuses on the concepts and reforms of the Civil Code reflecting the common and different concepts and legal regimes comparable to the Mongolian Civil Law.

II. REFORMS IN THE CIVIL CODE OF THE REPUBLIC OF KOREA

The early days of Korea's first civil code development that had witnessed many phases of social changes as well as its historical development is no doubt an object of interests for legal scholars. Historically, the Civil Law of the country can be divided into two separate periods, namely, a period with China-influenced law and the second one when European, especially German law dictated the country's civil law. These two periods are of different origins of legal systems with different ideologies.

Up until the early nineteenth century, Korea belonged to the Chinese law system, which was derived from Confucianism. However, from the beginning of the early nineteenth century, Korea established ties with the West, and as a result, a new era of changes came to the Korean society with reforms taking place in political, economic as well as legal and social sectors.[1]

From then on, the country went through changes that led into the Western legal system. However, the traditional and historical aspects of the Korean Civil Code were interrupted upon the imposition of the Japanese Civil Code under the Japanese occupation of Korea that took place in 1910. The country had no choice but to adopt and follow the Japanese Civil Code. The Japanese Civil Code of the period originated from the French Civil Code and had an integrated structure of the first draft of the German Civil Code. Thus, Korea, since that time, has joined the Western Civil Law based on the Civil Codes of Germany and France.

A serious discussion of the Korean own Civil Code was initiated under the U.S. military administration over the country following the end of Japan's colonial rule on August 15, 1945. The period of the U.S. Army Military Government (1948-1975) in Korea – The development of the Korean Civil Code was carried out by the U.S. Army Military Government and Charles S. Lobingier /Lobingier. C/, a legal advisor to the U.S Military Government played a major role in the process by having drafted a "Proposed Civil Code for Korea" in 1949. The work has played a great role in the compilation of the new Korean Civil Code.

In regard to the principles of what the Civil Code of Korea should be, Lobingier stressed the following: 1) The code should have a complete and comprehensive coverage of the topics in the relevant sections and be integrated with the existing code, 2) the structure of the code as well as the order of the provisions should be logical and scientific and, therefore, easy and convenient to use, 3) the code should adopt a clear and concise legal terms and avoid ambiguity.

Let us briefly analyze how he categorized the chapters of the Civil Code of Korea. Lobingier's proposed Civil Code consisted of: Part I - Persons, Part II - Rights and Obligations,

[1] Young Joon Kwon, Introduction of Civil law of Korea, Korea Legislation Research Institute, Springer 2013, Pp.113.
Also see: Kim Heung Jin, Civil law and Civil special law (realtor primary) (2010) (Korean edition) Pp.12-18.

Part III - Property, and Part IV - Succession to Property. In doing so, he integrated the Civil Code and the Commercial Code altogether. However, Korean national jurists considered the Civil Code proposed by Lobingier under the U.S. Army Military Government to be overly influenced by American law and therefore decided to draft their own Civil Code.

In the decade following the end of the Japanese colonial rule and the subsequent declaration of independence, South Korea started to draft and maintain its own national codes. The compilation of the Civil Code was completed and enacted on February 21, 1958 and entered into force on January 1, 1960. The Civil Code system of Korea is largely based on that of the Japanese Civil Code (Pandects system), which in turn followed the German Civil Code that utilized the Roman law system.

In the forty years since it became effective in 1960, the Civil Code of the Republic of Korea has been amended nine times. In 1984, a system of leasing land owned by another person on deposit basis was introduced under the property rights.[2]

In the early 1990s, the Civil Code underwent a number of revisions largely due to the socioeconomic changes that took place in Korea as well as international trends, such as the formation of the European Union and the movement of the International Court of Justice. The 1992 revisions in the Civil Code intended to amend the following 1) amending and incorporating controversial arrangements used in judicial practices into the Civil Code, and 2) identifying and revising outdated normative powers to meet the requirements of the ever-evolving modern Korean society. In other words, the amendment sought to provide legal frameworks that can effectively address such issues that may arise in the future. 3) Re-considering the legal terminologies used in the Civil Code and revising them subsequently [3].

The following revisions were made in the Civil Code:

(a) Major amendments

In 2004, 766 articles under the Property chapter of the Civil Code were reviewed for consideration for amendments and consequently, amendments to 130 articles were made. In addition, the most progressive part of the Civil Code reform was the updating of the content in the General Provisions related to human rights. Thus, the rights and obligations of foreigners are recognized under the Civil Code. In order to clarify the fundamental principles of the Civil Code, a new set of regulation has been established to articulate the underlying principle of respecting the rights of individuals, protecting ownership right to dispose of property, freedom of expression and the protection of privacy as set out in the Article 10 of the Constitution of Korea.

(b) Amendments made in regards to ownership right to dispose of property

The changes in the ownership right to dispose of property included an additional item for the validity of the period of the power of representation, the right to retain possession, a provision protecting the living habitat from harm, and the authorization of the construction near boundary line. Another important amendment concerns the right to registered lease on deposit basis. The right to lease on deposit basis is included in the introduction of new provisions.

(c) Amendments made in regards to loan

In the case of loan, additional provisions are added to clarify the means of the guaranty system, according to which the lender gives the guarantor a formal statement and the lender is obliged to inform the guarantor if the borrower does not execute the contract for more than three months. To mitigate the problematic liabilities arising from the guaranty, the duration of guaranty is limited to a period of three years and the contractual right to terminate the contract upon the

[2] Young Joon Kwon, Introduction of Civil law of Korea, Korea Legislation Research Institute, Springer 2013, Pp.114-115.

[3] Kim Dong-hoon, Comparison of Mongolian and Korean civil law and Future Perspectives, Legal Science in Mongolia: Today and Future, p. 179, School of Law, National University of Mongolia, 2015.

advance notice is newly introduced. The amendment concerning the rescission of the contract is articulated in the Section I or General Provisions under the Contract Chapter thereby enabling the termination of the contract.

(d) New provisions introduced

In modern times, traveling has become a widespread activity everywhere and the volume of tourism business is increasing which, in turn, result in a number of disputes that require normative legal arrangements. Thus, a set of new arrangements have been introduced to safeguard traveler's rights to settle disputes. In addition, the general principles of brokerage contracts are incorporated into the Civil Code given the current social circumstances where various intermediaries take place in everyday private legal relationship.

III. COMPARISON BETWEEN THE CIVIL CODES OF MONGOLIA AND THE REPUBLIC OF KOREA

First, let us examine the common aspects of the Civil Codes of both countries, after which we will look at the different features.

A. Common features:

(a) Development trend to guide the economy

The rationale behind the revision of the Civil Code of Mongolia (1994) was to create the legal framework to address civil legal relations associated with socio-economical changes that the country was experiencing with the transition from socialist system into a market-oriented economy. The subsequent civil law reform envisaged in the Civil Code of 2002 is also a part of the new system that is required for the current market economy.

It is clear from the objectives and fundamental principles set forth in the Article 1 of the Civil Code of Mongolia that the country is to pursue a market-oriented economy backed with liberal thoughts of school. This is set forth in the civil legislation with the following fundamental principles: property rights are inviolable, principles of contract freedom and individual autonomy. Furthermore, contractual arrangements in Sub-chapter Two regulate modern economic activities such as lease contracts, franchise agreements, travel agreements, intermediary contracts and so forth.

The Civil Code of the Republic of Korea also articulates the constitutional principles such as "The economic order of the Republic of Korea shall be based on respect for the freedom and creative initiative of enterprises and individuals in economic affairs", and "Protection of property rights shall be guaranteed for all people".

The Korean Civil Code framework protects the validity of a transaction that is not contrary to public order, and under this legislation, the owner exercises the right to use, benefit and dispose of the property. Moreover, regulatory legal arrangements for different types of collaterals, non-performance of loan repayment obligations, compensation for loss caused by non-performance of an obligation, termination of contracts and as well as regulations for new types of contracts all provide each of the subjects in the civil legal relations with a favorable legal environment for performing various economic activities.

In conclusion, both Mongolian and Korean Civil Code contain, in many respects, common features promoting a market economy.

(b) Influence of German legal system of continental civil law

The civil law of Mongolia without doubt belongs to the German legal family and its main characteristics lies in the Pandects system. The order and content of the provisions in the Civil Code follow the German legal traditions. However, the Civil Code of Mongolia does contain

some traces of the civil law of the former Soviet Union since Mongolia remained under the influence of the latter for the most part of the last century.

Similarly, as mentioned earlier, the civil legislation of the Republic of Korea belongs to the German legal family. The 1960 Civil Code that originally interpreted the Pandects system through the Japanese legal traditions strongly reflected the German civil law features rather than its predecessor.

B. Distinct features:

Thus, the Civil Codes of both countries follow the German Pandects system; however, they do differ in terms of certain provisions governing the specific relations within the civil law. These include:

(a) Difference in historical and cultural background is reflected in the Civil Codes

The political, economical, historical and cultural features characteristics of a socialist society are reflected in the civil law of Mongolia. This can be seen from particular legislations that seek to address the issues arising from privatization of state-owned properties, transferring the management of affairs of factories and organizations and privatization of land, all of which continue to this day.

Traditionally, Mongolian societal organization, governance and management of economy have long been shaped by its nomadic pastoral lifestyle. Family affairs, marriage and human rights issues are particularly distinctive compared to other cultures. Moreover, regulatory legal arrangements tend to safeguard its national security interests foremost given its small number of population. This can be seen from the legislations regulating the right to own immovable property. For instance, it is articulated in the Civil Code "Land, other than the one in private ownership of citizens of Mongolia, shall be in state ownership"[4]. This provision clearly states that no foreign citizen can own land in and within the territory of Mongolia and that the state remains the sole owner of its land with exception of the land owned by Mongolian citizens. Furthermore, the Civil Code says, "Relations with regard to privatization, possession and use of State-owned land shall be regulated by law"[5]. Accordingly, a set of legislations have been created and enforced namely, the Law of Mongolia on Land, and the Law on Allocation of Land to Mongolian Citizens for Ownership.

As a result, the legal terminologies pertaining to land property are divided into separate legal definitions such as the right to ownership, the right to possession and the right to use. Different definitions of relevant rights in property-related legislations are confusing for non-professionals and lawyers alike. For instance, it is difficult to distinguish whether a certain right grants land ownership or possession only, or the right incorporates both. Moreover, when it comes to disputes involving different subjects with differing rights such as a legal dispute between two subjects one of which acquired the right to possess the land through transfer of rights while the second one built a building on the same land, it is simply not easy to rule out.

In addition, Mongolian culture and traditions honor personal dignity, therefore, the protection of rights pertaining to good name, dignity and reputation against damage are detailed in the Civil Code. Another feature distinctive to nomadic pastoral lifestyle is the provision on Lost Livestock. This provision is separate from the provision regulating Acquisition of Property without Ownership. Furthermore, the provisions on Family Property Rights and Property Rights of Spouses do reflect the features characteristic of Mongolia's familial and spouses' relationships.

On the other hand, private law of Korea primarily utilizes the Western European civil law traditions and therefore, the legal provisions characteristic of the Korean society is relatively limited in its legislations. One exception is the provision that regulates the so-called system of

[4] Article 102.1, Civil Code of Mongolia, 2002.

[5] Article 102.5, Civil Code of Mongolia, 2002.

"leasehold assets on deposit basis", according to which the lessee shall pay the payment of 70-80 per cent of the price to the lessor during the term of the lease and at the time of contract expiration, the lessee is entitled to obtain the repayment of deposit money. In this case, the interest from the security deposit serves as a loan settlement. Advance payment of 10 per cent is usually required upon signing the lease and the parties have the freedom to cancel or refund the advance payment upon the commencement of the lease.[6]

(b) Structure of the Civil Code

While the private law of Korea strictly separates the Civil Act from the Commercial Act, the private law of Mongolia incorporates them into a single legislation, the Civil Code. It governs all types of commercial contracts namely, Stock Exchange Transactions, Gift, Loan, Leasing, Franchising, Carriage, Insurance, Storage and Securities Contracts under the chapter on Executing Obligations. The concept of unified private law governing both commercial law and contractual obligations through a single code is derived from the Swiss and Italian legal traditions and Mongolia chose to adopt it upon reforming its civil law.

On the other hand, under the Korean private law, business activities involving commercial contracts are governed by a separate act, the Commercial Act of Korea. The Commercial Act regulates contractual relations and obligations concerning leasing, franchising, carriage, insurance, bill of exchange and securities.

It should however be noted that the current paper is not intended to conclude whether the concept of unified civil law is advantageous compared to the concept of separating Commercial Code from the Civil Code or vice versa.

The last chapter of the Civil Code of Mongolia covers the regulations concerning private international law. This is a trace of socialist civil law traditions of the former Soviet Union. On the contrary, in Korea, private international law is regulated by a separate legislation, the Private International Act.

The regulation of family law in Mongolia is divided into two different codes. Inheritance is covered by the Civil Code while other familial relationships involving family and relatives such as marriage, divorce, adoption, child custody and alimony are regulated by the Family Act which was enacted in 1999. At the same time, Family Property Rights are regulated by the section on Property under the Civil Code. In addition, the Civil Code stipulates the legal aspects of property rights in regard to inheritance in details.

In the Civil Code of Korea, the legal notion of Self-help is stipulated under the Property Rights part and acts of compelled defense and action taken in desperate situation are deemed unlawful while these acts are deemed legal under the Mongolian Civil Code.

(c) Specific provisions

In regard to human rights and dignity: The civil legislation of Mongolia emphasizes and is based on the principle of equality and autonomy of participants to civil legal relations to ensure the protection of fundamental human rights and dignity set out in the Constitution. Through specific provisions, it protects the civil rights to good name, dignity and reputation against damage caused by distribution of information and unauthorized use of personal photographic and videotape images. Moreover, the Civil Code defines civil legal capacity in details namely, full civil capability, partial civil capability, and some legal capability.

Void transaction, Refusal to enter into a transaction, Expiry of right to claim or statute of limitation: The Civil Code of Mongolia provides the legal framework for void transaction; however, it does not contain any provision on revocation or refusal to enter into a transaction.

[6] Article 565, Civil Act of the Republic of Korea, 2016.

Property: Similar to others legal cultures, the Mongolian civil legislation classifies land and building on it as immovable property. Foreigners are entitled to own buildings in Mongolia, however, they are not allowed to own the land; land ownership is allowed only for Mongolian citizens.

The right to build buildings and installations on others' land and the right to limited possession and use of others' property (usufruct) are specified through sets of provisions in the Civil Code.

The rights of pledge to property and property right are granted only to fair possessor and owner of property and the pledgee is entitled to retain pledge items until his or her demand is satisfied. However, the Code does not provide specified provisions in regard to the scope of claim to be secured i.e. principal, interest, penalty and expense for enforcement of the pledge.

Obligations: In the Korean Civil Code, the part that covers obligations mainly consists of provisions dealing with claims and rights to demand, while under the Mongolian Civil Code, the part stipulating obligations mostly concerns with execution of obligations. Furthermore, the system of transferring property to ownership to ensure execution of obligations under contract is covered by the part dealing with Obligations. However, the Code does not provide any provisions concerning obligee's rights to execute obligations on obligor's behalf, the right to discharge the obligor of obligations, the right to possess and store items (assets) collected to ensure the execution of obligations as well as cancellation of obligations. The part covering Obligations include contractual obligations arising different kinds of contracts namely, Brokerage contract, Tourism contract, Guardianship contract, Warranty contract, Payment contract and so on. In addition, standard contract conditions have been spelled out in details in order to safeguard consumers' rights and interests under the contract law of the Civil Code.

Obligations arising from damage: The Mongolian Civil Code provides a relatively detailed description of obligations arising from damage, and the main features are derived from the relevant provisions of the German Civil Code. A separate sub-part of Non-contractual Obligations under the part of Obligations covers these obligations or liabilities for damage. A legal person who causes damage to others' rights, life, health, good name, dignity, business reputation or property deliberately or due to negligent action (inaction) shall be bound to make compensation for that damage. The original provisions in the German Code do not elaborate on the unlawfulness of deliberate or negligent action (inaction) or the nature of the violation of socially accepted norms and order. On the contrary, the Mongolian Civil Code does provide specific provisions relating to various liabilities for damage. For instance, if government officials cause damages, the state shall be bound to make compensation for that damage. This is stipulated through the provision "The state shall compensate for the damage to legal persons who were taken to court as defendant, sentenced, arrested, detained or gave a written notice not to leave the place without legal grounds and those right were restored after, and irrespective of the degree of fault by investigator, police officer, prosecutor or judge". [7]

IV. CONCLUSION

The main role of comparative private law in the development of legal sciences is to examine the laws, principles and concepts of relevant laws, based on comparative study of private laws of other countries, which are not limited to studying an individual private law. It can provide ways and knowledge that are required to deal with certain legal problems within a national society.

Through comparative study, one may identify the legal developments of a particular society in the field of private law. On the other hand, it helps improve regulatory framework for national law, systematically integrate the harmony and use of various sources of law, be recognized by

[7] Kim Dong-hoon, Comparison of Mongolian and Korean civil law and Future Perspectives, Legal Science in Mongolia: Today and Future, p. 180, School of Law, National University of Mongolia, 2015

other countries, create confidence-building measures in international economic relations as well as to resolve emerging civil disputes that are not yet regulated by normative powers of private law.

It is therefore crucial to address the issues of compensation, contract rescission and the liability for non-compliance with the terms of the loan contract under the Civil Codes of Mongolia and Korea if the two countries are to continue the Pandects system. It is also necessary to establish electronic property registration system and enable the advance acquisition of real estate based on electronically registered power of representation.

In the case of Korea, it is imperative to create unified civil legal framework in preparation of the re-unification process of the two Koreas in the Peninsula.

In conclusion, both Mongolian and Korean Civil Code without doubt belongs to the German legal family and its main characteristics lies in the Pandects system. Thus, the Civil Codes of both countries follow the German Pandects system; however, they do differ in terms of certain provisions governing the specific relations within the civil law. These include: As a result, the legal terminologies pertaining to land property are divided into separate legal definitions such as the right to ownership, the right to possession and the right to use in Mongolia. in the Civil Code "Land, other than the one in private ownership of citizens of Mongolia, shall be in state ownership."

The right to build buildings and installations on others' land and the right to limited possession and use of others' property (usufruct) are specified through sets of provisions in the Mongolian Civil Code. The Mongolian Civil Code provides a relatively detailed description of obligations arising from damage, and the main features are derived from the relevant provisions of the German Civil Code.

Although the legal system of Mongolia, which belongs to the continental legal family, well reflects the country's national and cultural characteristics, it is still being tested against the framework of market economy criteria as globalization further advances.

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THE PRACTICE OF POSITIVE CRIMINOLOGY: MINDFULNESS PROGRAMS IN THE FEMALE CORRECTIONAL FACILITY IN MONGOLIA

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ABSTRACT:

Positive criminology is a new term for a perspective associated with theories and models that relate to socially inclusive, positively experienced influences that assist individuals in desisting or refraining from criminal and deviant behavior[1].

A quantitative study of female prisoners who participated in a Meditation course in a rehabilitative prison introduces features of positive criminology.

A total of 28 female prisoners participated in an everyday "Deep Consciousness & Energy Meditation Course' run by "Thank You Center" NGO. Interviews and surveys were conducted with participants 1 to 6 months after the course. The findings describe elements of positive criminology that had a significant impact on the prisoners in rehabilitation. For instance, perceived goodness, positive relationship with the prison staff and fellow prisoners, positive effects on depression, self-control and confidence in the future were improved.

KEYWORDS:

re-integration, positive criminology, mindfulness, rehabilitation, meditation program, re-offending.

INTRODUCTION

Positive criminology is a new conceptual perspective of criminology, encompassing several theories and models. Positive criminology refers to a focus on individuals with forces and influences that are experienced as positive, which distance them from deviance and crime, whether by means of formal and informal therapy programs and interventions.

The perspective of positive criminology broadens that of traditional criminology, which focuses mainly on understanding the factors and processes that lead individuals and groups to what is defined as deviant and criminal behavior. Positive criminology is implemented in treatment and

[1] Natti Ronel, Noa Frid and Uri Timor. The Practice of Positive Criminology, International Journal of Offender Therapy and Comparative Criminology 57(2), 2013. 133–153.

rehabilitation of individuals and groups that have demonstrated deviant and criminal behavior, by emphasizing positive experiences that may potentially prevent or discourage continued criminal behavior[2].

For example, a study conducted in a prison where volunteers taught Vipassana courses to inmates who had undergone drug rehabilitation in the USA and other countries[3] of that the main change in the prisoners' behavior and consciousness was the development of a process of self-acceptance and recognition of their own ability to change.

On the cognitive–behavioral level, the main influences included recognition of inner strengths, self-examination, and a new way of thinking. These helped prisoners create an inner order in their world; reduce the feelings of alienation, confusion, and anger that characterized their daily lives; pay more attention to their families; change their behavior in general; raise their self-awareness; and take personal responsibility for their lives[4].

Quantitative study of female prisoners who have participated in a Mindfulness Programs in a rehabilitative prison introduces characters of positive criminology in the Female Correctional Facility of Mongolia.

Mongolia currently has over 272 female prisoners in the nation's Open and Closed Correctional Units[5]. A variety of interventions in the Female Correctional Facility have been developed to improve prison management and reduce re-offending. Mindfulness programs, including correctional-based meditation therapy, represent one category of interventions. Meditation training is organized 5 working days of the week at 07.00 in the morning and 19.00 in the evening, and over 30 prisoners are involving in the traing for 2 months at the moment.

In accordance with Article 218.3 of the Law on Enforcement of Court Decisions, "correctional facility may carry out the offender rehabilitation with financing from government and non-government organizations and project implemented with international organizations". As well as, in article 219 of the law "Offender rehabilitation shall be organized step-by-step according to tailored plan and program considering the nature of the crime, personal perception, age, gender and sentence conditions, in individual or group settings. In organizing correctional based rehabilitation activities and officers may get assistance from other organizations". These provisions are the legal basis for the offender rehabilitation in the correctional facilities.

Systematic reviews of meditation in various prison settings generally have shown positive effects of meditation on a wide range of psychosocial stress factors[6]. Meditation has been shown to significantly improve psychological, behavioral, and physical health. The program, in particular, has shown consistent reductions in psychological distress and risk of repeated crimes.

Survey

A total of 28 female prisoners participated in the course run by volunteers in prison. Then interviews were conducted with participants of the Meditation program after 3 to 4 months. In terms of the age, all the participants were from 28- to 62-year-old.

[2] Natti Ronel and Ety Elisha, A Different Perspective: Introducing Positive Criminology, International Journal of Offender Therapy and Comparative Criminology 55(2), 2011. 305–325. SAGE Publications

[3] https://www.vridhamma.org/Vipassana-in-Prisons-History-and-Spread

[4] Frid, N. (2008). "Power of silence"—The influences of the Vipassana program on prisoners. Unpublished MA thesis, Bar-Ilan University, Ramat-Gan, Israel

[5] Report of the Offender Rehabilitation Program in the Open and Closed Correctional Units №407, October 2023.

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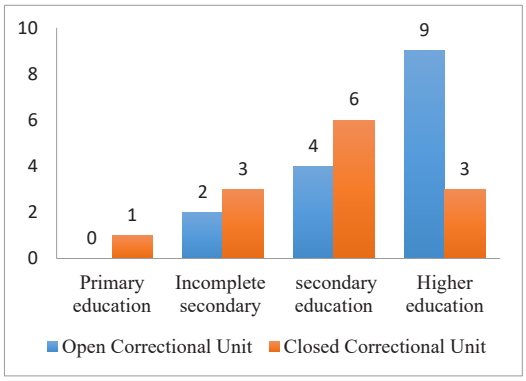
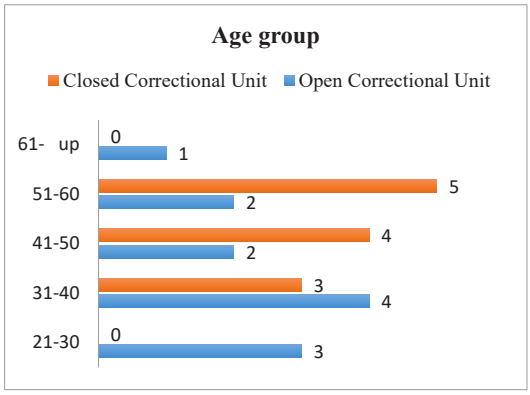


Table 1

Table2



The vast majority of the participants (78%) had secondary education, 42% of whom had higher education.

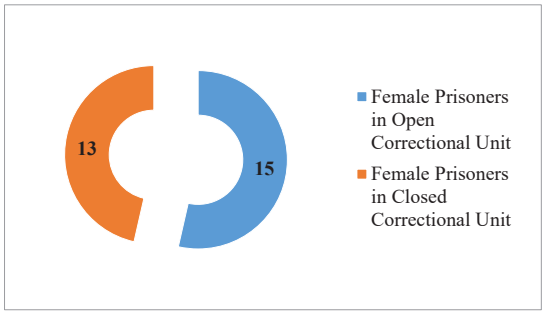
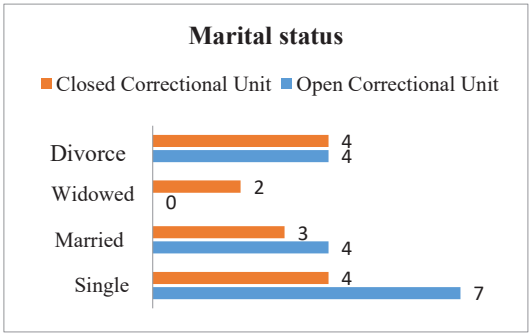


Table3

Table4



The age groups containing the highest number of people (7) were 31-40 and 51-60 with 41-50 being second (6) /Table-2/. 53% of the participants (15) were from the closed correctional unit, whereas 47% (13) were from the open correctional unit /Table-3/. In terms of marital status, 39% (11) were single, 29% (8) were divorced or disconnected, 25% (7) were married, and 7% (2) were widowed /Table 4/.

The figure above show personal backgrounds of the female inmates who are involving in the program. 71.5% of total female prisoners in the survey were first-time offenders, and 28.5% were repeat-offenders. Participants also completed twelve questionnaires designed to reflect aggression, meditation program experience, perceptions of the meditation program impacts, anxiety and self-control. Questions were focused on female prisoners' perceptions of the ability of prison mindfulness program and meditation interventions more broadly' to shift reactive behavioral patterns, reduce violence, increase emotional awareness, self-control and confidence, and reduce the likelihood of re-offending.

Furthermore, an interviews explored the participants perceptions of these impacts both as related to themselves and their more general perception of positive influence on other prisoners. They were also asked about other mindfulness programs in the prison and their perception of the effects of these programs. The figures below show that the Meditation course experience of the female prisoners.

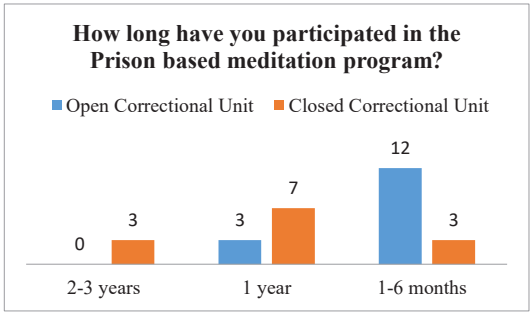
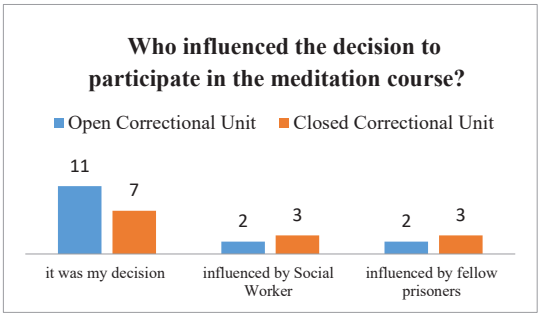


Table5

Table5 shows the answers to the questions "How long have you participated in the Prison meditation program?" 53% (15) had been participating for 1-6 months, while 36% (10) had participated for a year with only 10% (3) participating for 2-3 years. Of the 10%, none were from the open correctional unit. Meditation courses in correctional facilities for inmates are based on voluntary. Therefore, 28 of the 30 inmates involving in the meditation were participated in our survey.

Almost two-thirds of the participants said that it was their decision. The remaining participants were equally split between being influenced by a social worker and being influenced by fellow prisoners /Table6/.

Table6



The results were overwhelmingly positive with 57% saying they were fully confident and 39% saying they were confident /Table7/.

Table8 shows the answers to the questions "Do you believe these impacts mostly influenced you during your time in prison - or do you think the impacts are longer-term?". The vast majority (85%) answered that the impacts will be continued longer-term

During my interview the participants explained that while physical practices help to warm up the body, and increase a sense of presence and awareness, they found that one of the primary functions of the physical practice was to set up for the calm required in meditation.

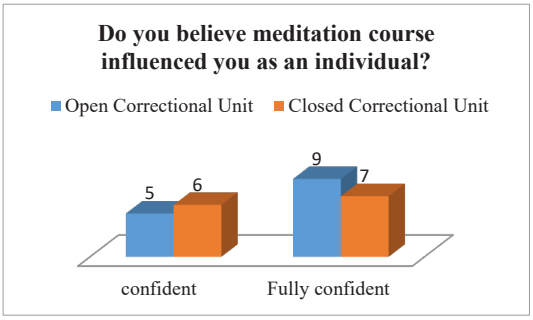
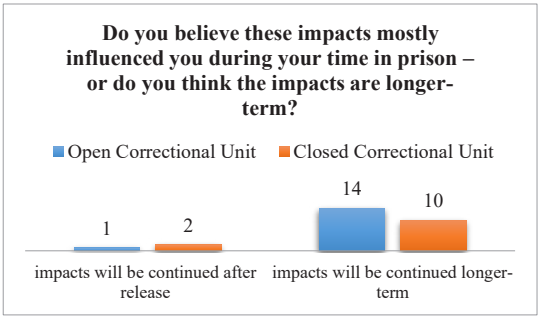


Table7

Table8



They explained that during this calm, they found that the most powerful emotional and psychological transformation could occur, as meditation and breath practices offered the opportunity to cultivate calm and ease; a cure to the tension of prison life. The following cases show that the participants have been impacted greatly by these practices. One of the female inmates who interviewed has stated:

"I've been to a lot of anger management sessions. I was dealing with a lot of anger, and also guilt and shame… Meditation helped me keep that balance. And it helped me to just be calm. The most interesting thing was that it worked immediately. From the first time I practiced, my body felt light. I felt peace."

(51-60 years of age, 3 years in the program, Closed correctional unit)

Most of the participants were beginners in the course (1-8 months), although three of them rejoined a second course (41 to 50 years of age). They had been incarcerated for a variety of offenses such as murder, property crime, fraud, and drug-related offences.

It can be said the meditation course for prisoners have a positive effect on the outcomes show below. The figures below show that the Perceptions of the Meditation Course Impacts.

Perceptions of the Meditation Course

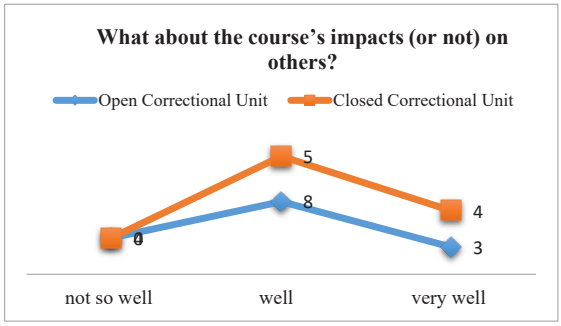
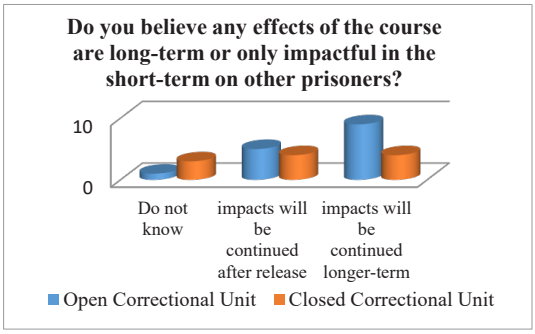


Table9

Table10



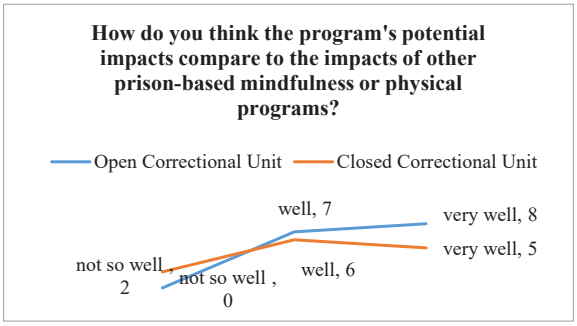


Table11

Table12

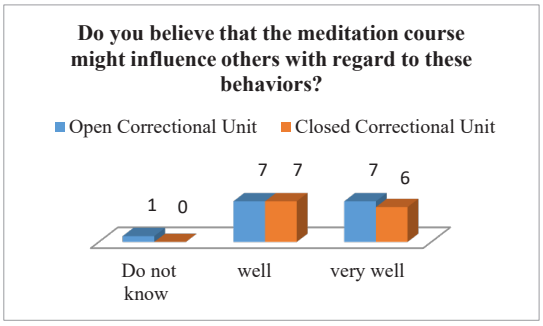
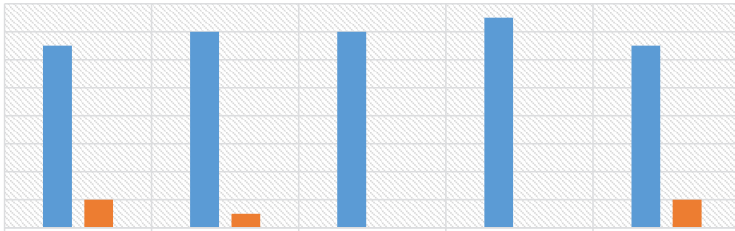


Table9 shows the answers to the question "What about the course's impacts (or not) on others? A significant portion (71%) of the participants found the impacts to be positive. As well as, looking at the answers to the questions in the Table10 most of them believed the impacts would continue longer-term, while others believed the impacts would continue after release. Select few didn't know either way. Finaly, apart from 1 participant, everyone agreed that the course would have a positive influence /Table12/.

With regard to depression scale

Table13

Open Correctional Unit

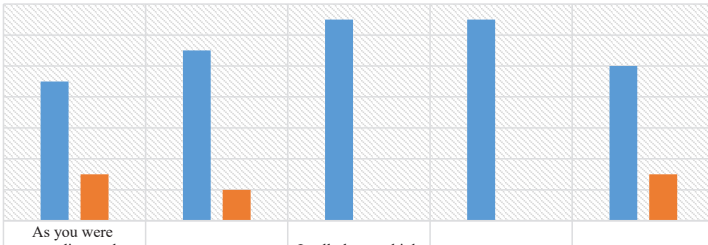


	As you were responding to the questions in the scale, did you think about the effects of the program on these behaviors?	Do you think the meditation program was influential?	In all, do you think that the program might reduce the likelihood of re-offending?	Do you currently engage in any mindfulness practice?	Can your meditation program be the most effective training?
Yes	13	14	14	15	13
No	2	1	0	0	2

Tables 13 and 14 show the depression status of prisoners in Closed Correctional Unit and Open Correctional Unit of the Female Correctional Facility.

Table14

Closed Correctional Unit



	As you were responding to the questions in the scale, did you think about the effects of the program on these behaviors?	Do you think the meditation program was influential?	In all, do you think that the program might reduce the likelihood of re-offending?	Do you currently engage in any mindfulness practice?	Can your meditation program be the most effective training?
Yes	9	11	13	13	10
No	3	2	0	0	3

The current study has several unavoidable limitations. First, the sample size is small and not representative, as it included only a unique group of prisoners who chose to join the course.

Second, we did not monitor the behavior of the prisoners nor any other visible variable before and after the course. Any impact that we described is based on the subjective narratives of the participants as shared with the researcher.

Nevertheless, the in-depth inquiry into the participants' subjective experience offers significant insights, with practical and theoretical implications.

CONCLUSION

The findings associated with positive criminology represent four main themes: perceived goodness, positive relations with the prison staff, a positive social atmosphere, and overcoming an ordeal.

In comparison, the current findings regarding the impact of the meditation course show the rehabilitation option as a complementary perspective, that is, by focusing on several "how to" principles that are associated with positively experienced interventions. These findings describe the rehabilitative power of positive experiences within the prison, generated by participating in the meditation course.

In summary, female prisoners indicated that the "Deep Consciousness & Energy Meditation Program facilitated the following outcomes: positive psychological impact resulting in reduced depression and anxiety, a reduction of aggressive tendencies, a reduction of physical ailments including addictive behaviors, and an increase in social participation and dedication to community. Results of this randomized controlled pilot study showed significant reductions in total trauma symptoms in female prison inmates practicing the Deep Consciousness & Energy Meditation Program.

The participants expressed responsibility and regret for crimes committed, mistakes made, and anger and resentment that they had suffered for many years. They also expressed gratitude and hope for their future. It indicates the possible benefit of further research in this area, to compare the rehabilitative power of this practice with others and explore the conditions under which its application creates a significant impact.

However, limitations include that this is a pilot study with small numbers and conducted during a relatively short time. Future studies are encouraged to use larger numbers of subjects, be conducted over a longer period, and to include a more active control condition to account for time and attention.

Based on the findings mentioned above, the following suggestions are recommended:

1. Assisting and supporting social workers and psychologists to independently organize meditation sessions among the female prisoners in the correctional unit by the director and high-ranking officers of the correctional institute.

2. In the near future, a longitudinal study is beneficial to study the results of meditation sessions implemented in the women's correctional unit, whether it affects prisoners after release, and how it can be improved in conjunction with the rehabilitation programs that affect the inmates' behaviors.

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CONFLICTS OF INTERESTS IN MULTIPLE DIRECTORSHIPS IN THE UK

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ABSTRACT:

This paper seeks to critically examine how UK law handles conflicts of interest arising from holding numerous directorships, particularly when such directorships are competing. When a person is a director of two or more companies, it is referred to as having multiple directorships. In the context of business, it is not unusual. The most prevalent type of this type of directorship is when a person holds one or more non-executive directorships in businesses in the same industry as well as in industries other than the industry in which they are an executive director. Holding several directorships allows one to use their knowledge of a specific industry to generate commercial innovations. However, it was unable to eliminate conflicts of interest, particularly when they involved rival businesses.

The most well-known case in this area is London and Mashonaland Co Ltd v. New Mashonanland Co [1891]. In this case, the idea that a firm's director may serve as a director of a rival company unless expressly forbidden by contract has been upheld.

A prior authorization is now required for the appointment of multiple directors by uninterested directors, according to the CA 2006. The first step towards being fully informed about potential conflicts of interest is obtaining authorization to appoint someone to competing directorships. Nonetheless, a person serving as a director of two or more rival companies may encounter a conflict of interest in a variety of circumstances. Following the appointment, the following conflicts of interest could not be avoided by authorization. This paper argues that authorization in CA is insufficient to achieve the no-conflict rule's preventive goal. Moreover, it may involve perpetual and daily conflicts of interest in rival directorships, which finally result in the director's dismissal.

KEYWORDS:

Conflicts of Interests, Multiple Directorships, Companies Act 2006, the no-conflict, and no-profit rules.

I. Multiple directorships

The term 'multiple directorships' refers to a situation where one person holds directorships of two or more companies.[1] It is not uncommon in business practice.[2] The most common form of this kind of directorship occurs in situations where one individual is an executive director of a company while holding one or more non-executive directorships of companies either in the same sector or different sectors. Normally, when the companies of which one individual is a director run businesses in different sectors, conflict of interests does not arise itself. However, in a situation where a person holds multiple directorships in companies that compete, it is likely to give a rise to conflicts of interest. This paper will focus on issues relating to competing directorships owing to the likelihood of arising conflicts of interest.

According to the Companies Act 2006, a director owes a fiduciary duty to avoid conflicts of interest to the company. This applies to either a situation where his personal interests conflict with that of the company or a situation where the company's interests (or director's duties to the company) conflict with the director's other duties.[3] The latter may occur during multiple directorships.

The effect of multiple directorships on the governance of the company

Multiple directorships have both advantages and disadvantages. On one hand, it is argued that people who hold multiple directorships may bring significant expertise and experience to the boards and may also contribute relevant insights, connections, contacts, and experience.[4]

On the other hand, it is almost inevitable that some issues will arise from it including conflicts of interest. They are, for example, the phenomenon of busy directors, the need to focus on the interest of the company, and issues concerning confidential information and diminution of competition.[5]

Multiple directorships are practically important. Hence, large companies generally exclude directors from receiving information and participating in discussions and relieve them from any obligations to disclose confidential information that belongs to the other company by a way of inserting a provision in the articles.[6]

Another concern is that multiple directorships may mitigate the individual's ability to devote sufficient time to the business of the company, ultimately, it could affect the governance of the company. Corporate governance codes have tried to regulate these issues. For example, Provision 15, UK Corporate Governance Code 2018 states that directors have sufficient time to fulfil their responsibilities. It further stipulates: 'When making new appointments, the board should take into account other demands on directors' time. Prior to appointment, significant commitments should be disclosed with an indication of the time involved.' Moreover, a similar regulation is found in Principle H of the Code, which states: 'Non-executive directors should have sufficient time to meet their board responsibilities.'[7]

[1] Rosemary Teele Langford, *Company Directors' Duties and Conflicts of Interest* (OUP 2019) 153.

[2] Data regarding to the directorships of the top 500 companies in the UK and Australia by 30 June 2016 shows that around 21 per cent of directors of such UK companies held one outside directorship of a top 500 company, 9 per cent held two and approximately 5 per cent held three. See Langford (n 1) 152.

[3] Langford (n 1) 77.

[4] ibid 158.

[5] ibid 156.

[6] Brenda Hannigan, Company Law (6th edn, OUP 2021)

[7] See also UK Corporate Governance Code, Provision 34; Guidance on Board Effectiveness, paras 56, 76, 95.

II. The approach to competing directorships: The Mashonaland case

The regulation of competing directorships is now governed by section 175 of the CA. However, the legal principles concerning competing directorships were different with respect to history. London and Mashonaland Co Ltd v New Mashonanland Co [1891] is the most prominent case in this field. This case has been the authority of a proposition that a director of a company may be a director of a competing company unless prohibited by contract.[8]

In Mashonaland, Lord Mayo was a director of a company but never acted in such a role. He was not restricted from holding another directorship of similar companies in the articles of association. Several months later, a business rival issued a prospectus in which Lord Mayo was as a director of that company. The claimant company went to the court for an injunction to prohibit Lord Mayo from holding such office of the defendant company.[9] In this case, it was found that there was no actual damage to the claimant company and was no evidence that he had disclosed any confidential information to the dependent company. The court refused the injunction, and Chitty J reasoned that:

"even if Lord Mayo had been duly appointed to the claimant company's board, its articles did not contain any provision which required him to give 'any part of his time … to the business of the company, or which prohibited him from acting as a director of another company; neither was there any contract … to give his personal services to the plaintiff company and to another company".[10]

This proposition was then approved by the House of Lords in Bell v Lever Bros Ltd.[11]

However, in Mashonaland the fact was different. Firstly, Lord Mayo had not acted properly as a director of both companies, secondly, the claimant company had not suffered any loss. Moreover, the contracts and the articles of association had not incorporated provision prohibiting him from double employment. These facts had affected the rulings of judges in that case.

Things will be more complicated in modern times when the director holds competing directorships. The Mashonaland principle is likely to contradict the double employment rule that a fiduciary is prohibited from entering into a position that leads a rise to conflicting fiduciary duties to another person, without consent from both principles.[12]

As a fiduciaries, the company's directors are expected to promote the best interest of the company. When the interests of the companies that compete collide, the director who is a director of both companies put himself into a position that leads him to prefer one of the interests. The Australian case of Fitzsimmons is an example.[13] In that case, it was found that a director had breached the duty to promote the best interest of a company by a way that he did not disclose information regarding one of the companies to the board of the other company when two companies were transacting with each other.

Moreover, equity rule demands of fiduciaries a high standard of honesty. As commented by Millett LJ in Bristol and West BS v Mothew, a director acting two principles with conflicting interest must act in good faith in the interests of each. He cannot further the interest of a company to the prejudice of those other. [14]

It also raises the issue that it allows a director personally to compete with the company.[15] Michael Christie points out that '[t]he Courts should unhesitatingly acknowledge that these

[8] Derek French, Ryan, *Mayson, French & Ryan on Company Law* (37th edn, OUP 2021) 491.

[9] Alan Dignam and John Lowry, *Company Law* (11th edn, OUP 2020) 369.

[10] *London and Mashonaland Exploration Co Ltd v New Mashonaland Exploration Co Ltd* [1891] WN 165.

[11] [1932] AC 161, HL

[12] Len Sealy and Sarah Worthington, *Sealy and Worthington's Cases and Materials in Company Law* (11th edn, OUP 2016) 423. See Clark Boyce v Mouat [1994] 1 AC 428.

[13] Langford (n 1) 172.

[14] Bristol and West BS v Mothew [1996] 4 All ER 698 at 713.

[15] M Christie, '*The Director's Fiduciary Duty Not to Compete'* (1992) 55 Modern Law Review, 506.

judgments [those of Mashonaland and Bell v Level Brothers] are inconsistent with long established principles of Equity regulating directors.'[16]

In recent case, the merit of the Mashonaland principle has been challenged. In the case of In Plus Group Ltd v. Pyke, Sedley J concludes that the Mashonaland principle is a very limited one.[17] He made clear that he thought the position of a competing director is almost unsustainable and it was clear that all three judges in the case believed the Mashonaland principle, to be of very limited application, as where in effect the position of the director in one company is purely nominal to such an extent that the director attracts no fiduciary obligations from that position.[18]

The fact that one individual could not act as a director to two masters without putting himself in a position where he would prefer one of his duties over the other, the proposition that allowing competing directorships in the Mashonaland case would be critically challenged and possibly be revised in recent time. This is important in circumstances in particular the director concerned is involved in two competing businesses.

III. Conflicts of interest that may arise

In some cases, directors may face a dilemma as to which company's interests to prefer.[19] A scenario that constitutes a breach of duty is in cases where a company's directors who are going to set up a new business that will compete the company of which he is a director. It is said that the point at which preparations for a new business by a director constitute a breach of duty will depend on facts of a particular case.[20] When he carries on or is associated with a business competing with that of the company, the director concerned may be able to subordinate his personal interests to those of a single company but it is less easy to reconcile conflicting duties with more than one company.[21]

Conflicts of interest would be given to arise when directors pursue attractive commercial interests on behalf of other companies of which they are directors. The most common cases fin which directors may face conflicts of interest are relating to corporate opportunity. For example, the solicitation will occur when a director asks the first company's client to stop dealing with the company and deal with a competing business of which he is a director.[22] Where direct financial damage is caused to the company by the director's acts in promoting the interests of the second company there will be a breach of the conflicts rule.

IV. Sections 175 and 177 of the CA

Statutory formulation

Multiple directorships are now regulated by Sections 175 and 177 of the Companies Act (CA) 2006. Section 175(1) provides: [a] director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company'. This general duty applies in the use of property, information, or opportunity of the company as particularly provided in s 175(2). This duty also applies in situations where there is a conflict or possible conflict between duties as set out in 175(7). Therefore, it can be seen as conflicts of duties in multiple directorships are one form of the general duty to avoid conflicts of interests.

[16] ibid 506.

[17] [2002] 2 BCLC 201 at [81], CA.

[18] Hannigan (n 6)

[19] Langford (n 1) 171.

[20] See *Shepherds Investments Ltd v Walters* [2006] EWHC 836 (Ch); [2007] 2 BCLC 202 [108].

[21] Paul Davies, Sarah Worthington and Chris Hare, *Gower's Principles of Modern Company Law* (11th edn, Sweet & Maxwell 2021).

[22] See an Australian case of *Mordecai v Mordecai* (1988) 12 NSWLR 58.

The codification excludes conflicts of interest arising in relation to transactions or arrangements with the company by s 175. Moreover, equitable rules substantially changed concerning prior authorization. However, the most important situation in which the no-conflict rule is applied in equity is excluded from s 175. Self-dealing, a dealing between a fiduciary and the person to whom it owes a duty, is now regulated in a separate section in 177.

Equitable principles

The statutory duty to avoid conflicts of interest is based on two equitable principles, the no-conflict, and no-profit rules[23], which is considered a part of the latter. The rationale of the former rule is aimed to prevent the judgment of the fiduciary from being swayed by self-interest and the latter rule is intended to deprive the disloyal fiduciary of gains made in breach of duty.[24] As provided s 170(4), the court will interpret and apply the statutory duty taking into consideration the corresponding common law rules and equitable principles.

Under the no-conflict rule, a director has a duty to avoid situations where his interest conflicts with the company's interest. This rule is laid down by Lord Cranworth LC, in Aberdeen Rly Co v Blaikie Bros, where he emphasized that:[25]

'it is a rule of universal application that no one having such duties to discharge shall be allowed to enter into engagements in which he has or can have a personal interest conflicting or which possibly may conflict with the interests of those whom he is bound to protect.'

Moreover, a judicial formulation of no-conflict duty by Lord Herschell in Bray v Ford [1896] is more cited, which is as follows:[26]

'It is an inflexible rule of the court of equity that a person in a fiduciary position, such as the plaintiff's, is not, unless otherwise expressly provided, entitled to make a profit; he is not allowed to put himself in a position where his interest and duty conflict.'

As illustrated in Chan v Zacharia (1984), the fiduciary in breach of this duty: 'must account … for any benefit or gain which has been obtained or received in circumstances where a conflict or significant possibility of conflict existed between his fiduciary duty and his personal interest in the pursuit or possible receipt of such a benefit or gain'

The scope of the no-conflict rule is strict. It is set out in s 175(1) that a possibility of conflict could amount to a breach of duty rather than an actual conflict of interest. In Boardman v Phipps (1967), Lord Upjohn pointed out that there must be a 'real sensible possibility of conflict' between his duty and interest.[27] This relief is set out in the CA 2005. S 175(4)(a) states that the duty is not infringed if 'the situation cannot reasonably be regarded as likely to give rise to a conflict of interest'.

This threshold is derived from Lord Upjohn in Boardman v Phipps where he said:[28]

The phrase 'possibly may conflict' requires consideration. In my view it means that the reasonable man looking at the relevant facts and circumstances of the particular case would think that there was a real sensible possibility of conflict; not that you could imagine some situation arising which might, in some conceivable possibility in events not contemplated as real sensible possibilities by any reasonable person, result in a conflict.[29]

Under the no-profit rule, a person in a fiduciary position is not entitled to make a profit unless otherwise expressly provided.[30] As shown in Towers v Premier Waste Management Ltd [2011], the enforcement of the no-conflict rule is strict.

[23] French (n 8) 484.

[24] Hannigan (n 6) 221.

[25] Aberdeen Rly Co v Blaikie Bros (1854) 1 Macq 461 (House of Lords).

[26] *Bray v Ford* [1896] AC 44.

[27] Dignam and Lowry (n 9) 359.

[28] [1966] 3 All ER 721 at 756

[29] *Boardman v Phipps* [1967] 2 AC 46 (HL) 124.

[30] As stated by Lord Herschell in ***Bray v Ford*** [1896] AC 44 at pp 51–2:

The no-conflict rule is a preventative rule in nature. Liability is triggered (a) without inquiry into circumstances; (b) irrespective of whether the company suffered a loss; (c) whether the director is acting in good faith.[31] In Regal (Hastings) Ltd Gulliver (1942), This was despite fact that directors had acted in good faith and had used their own money and the company did not suffer any loss, as the company was incapable of commercially exploiting the opportunity. Section 170(2) makes it clear that a person who ceases to be a director will continue to be subject to the duty to avoid conflicts of interest, which is held in Cooley.

As mentioned above, s 175 (2) specifically states that the duty to avoid conflicts of interest applies to the use of any property, information or opportunity. Section 175 (2) reflects the common law rule that it is immaterial whether the company could take advantage of the property, information or opportunity. This regulation is based on the equitable corporate opportunity doctrine. Under this doctrine, there is a breach of fiduciary duty if a director of a company pursues for their own benefit a business opportunity that would be regarded in equity as belonging to the company.[32]

Sealy and Worthington have emphasized that "multiple directors are now caught by the duty to avoid conflicts of interest". They also say that "[t]he statutory formulation adopts . . . [the] equitable rule" about a director not having a conflict of interests, "and discards the controversial approach found in" old case law.[33] There are two exemptions from liability, regarding a conflict of interests under section 175 of the CA 2006.[34] The first is laid down in 175(4)(a) and the second is authorization by other directors.

Sections 177 and 182

Section 175(3) excludes the duty to avoid self-dealing from the application of general duty to avoid conflicts of interest. The self-dealing is then regulated by section 177, which has replaced equitable rule self-dealing by a more limited duty to disclose an interest to other directors.[35] Section 177(1) states: 'If a director of a company is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, he must declare the nature and extent of that interest to the other directors.' Therefore, when the companies of which one person holds multiple directorships transact, this section applies.

In similar terms, s 182 applies to cases where a director has an interest in a transaction after it 'has been entered into by the company'.[36]

V. Authorization by members

Competing directorships are now subject to the conflicts of duties rule, these appointments will need to be authorized in line with the process set out in s 175(5) and (6). [37] Before the CA 2006, If a fiduciary wanted relief from the scope of the no-conflict duty, he would have to seek the informed consent of the shareholders entailing full disclosure of relevant matters.[38]

Company Law Review was that the case law on conflicts of duty holds the potential to 'fetter entrepreneurial and business start-up activity by existing directors' and that 'the statutory statement of duties should only prevent the exploitation of business opportunities where there is a clear case for doing so'[39]

[31] Christie (n 15) 508.

[32] French (n 8) 486.

[33] Sealy and Worthington (n 5) 341–42.

[34] Parker Hood (2013) Directors' Duties Under the Companies Act 2006: Clarity or Confusion?, Journal of Corporate Law Studies, 13:1, 40.

[35] Dignam and Lowry (n 9) 358.

[36] Dignam and Lowry (n 9) 372.

[37] Langford (n 1) 159.

[38] Hannigan (n 6) 236. Citing New Zealand Netherlands Society 'Oranje' Inc v Kuys [1973] 2 All ER 1222;

[39] Dignam and Lowry (n 9) 371. Citing Completing the Structure.

A major changed has been introduced by the CA 2006 regarding the relief of the duty. Section 175(4)(a) allows directors to may authorize a conflict of interest and profiting from it. Authorization by the directors overrides any common law requirement for shareholder approval unless an enactment or the company's constitution imposes a requirement for shareholder approval in according to 180(1).[40] Such authorization by other directors which should be in accordance with the company's constitution.

Regarding a private company, section 175(5)(a) stipulates that the directors have the power to authorize conflicts in accordance with s 175(4) so long as there is nothing in the constitution which invalidates authorization by the directors. Section 175(5)(b) states that a public company must include an enabling provision in the articles allowing directors to exercise this power.

For a private company, the director can be excused if the authorization is not prohibited under the articles of association.[41] When it comes to a public company, authorization can be possible if such an action is permitted in the articles of association of the company.

General duties are not infringed by anything done by the directors in accordance with provisions in a company's articles dealing with conflicts of interest in accordance with 180(4)(b).

Dignam and Lowry summarise the rationale behind the authorization by the independent directors in the CA by referring to reports of the Company Law Review: the case law on conflicts of duty holds the potential to 'fetter entrepreneurial and business start-up activity by existing directors' and that 'the statutory statement of duties should only prevent the exploitation of business opportunities where there is a clear case for doing so.[42]

A distinction is made between authorization (which is given in advance of a potential breach) and ratification (which occurs after breach).[43] The only exception is if they permit him to take such opportunities after he has made full and frank disclosure and they have given full and informed consent.[44]

In order to prevent the breach of duties rather than cure it, the Corporate Governance is a better system than the directors' duties where the Cadbury Report 1992 states that it is a system where the companies are controlled and directed accordingly.[45]

Authorisation by the directors overrides any common law requirement for shareholder approval unless an enactment or the company's constitution imposes a requirement for shareholder approval in s 180(1). [46]

The power to authorise must be exercised by the disinterested directors acting in accordance with their duties, such as the duty to act in a way most likely to promote the success of the company (s 172) and exercising care and skill (s 174). It is noteworthy that the director seeking authorisation remains subject to all his other duties which are cumulative (s 179) including the duty to act to promote the success of the company. [47]

Section 175(5)(a) therefore implements the CLRSG's recommendation that conflicts may be authorised by independent directors unless, in the case of a private company, its constitution otherwise provides.[48]

Authorization by disinterested directors to appoint a person in competing directorships is a first step to being fully informed of the possible conflicts of interest. However, it could not prevent the following conflicts of interest after the appointment. In my humble view, authorization in CA cannot fulfill the preventative objective of the no-conflict rule. It just accepts the actual or real

[40] Hannigan (n 6) 236.

[41] See Model Articles

[42] Dignam and Lowry (n 9) 371.

[43] Langford (n 1) 343.

[44] reasoning of Roskill J in *IDC v Cooley* (1972)

[45] (SA Technical, 2012.

[46] Hannigan (n 6).

[47] Ibid.

[48] Dignam and Lowry (n 9).

sensible possible conflict of interest hoping to promote business development by the directors. However, it can entail a day-to-day and endless conflicts of interest in competing directorship, which ultimately lead the director to be removed from the position.

VI. Remedies for the breach of the duty

What would be the remedies for the company suffered in breach of duty and duty cases? Under the law the director concerned may be required to discharge any disloyal profits, for example, fees from the second directorship. In Chan v Zacharia (1984), it was held that the remedy for the breach of the duty in equity is to compensate the director's profit out of the breach.

However, this issue can be a collateral claim of the company when it sues. The company may seek compensation for the losses it may have suffered from biased advice given to it by its disloyal director due to the director's conflicting loyalties.[49] This constitutes a breach of directors' duty to act within the power in s 171(b).

Court rulings have stressed that the determination of liability for breach of fiduciary duty necessarily requires the court to engage in a fact-intensive exercise in examining the circumstances surrounding a director's alleged breach.[50]

CONCLUSION

The term 'multiple directorships' refers to a situation where one person holds directorships of two or more companies. It is not uncommon in business practice. The most common form of this kind of directorship occurs in situations where one individual is an executive director of a company while holding one or more non-executive directorships of companies either in the same sector or different sectors. On one hand, multiple directorships bring commercial innovations by utilizing one's expertise in a particular sector. On the other hand, it could not go away from the conflicts of interest, especially in cases the competing companies.

The Mashonaland principle has been an authority for a proposition that a director can be a director of companies that compete even though it contradicts with the equitable rule of double employment. In my humble view, there should be no conflict of interest and conflict of policies between the companies and their directors. Moreover, directors should always avoid taking all those steps, where is a possibility of clashing with their own and the company's interests.

The fact that one individual could not act as a director to two masters without putting himself in a position where he would prefer one of his duties over the other, the proposition that allowing competing directorships in the Mashonaland case would be critically challenged and possibly be revised in recent time. This is important in circumstances in particular the director concerned is involved in two competing businesses.

[49] Sealy and Worthington (n 12) 426.

[50] Dignam and Lowry (n 9) 363. 'The observation of Lord Upjohn in *Phipps v Boardman* (1967), to the effect that the circumstances of 'each case must be carefully examined to see whether a fiduciary relationship exists in relation to the matter of which complaint is made'.

The CA 2006 introduces a prior authorization for appointment of multiple directors by disinterested directors. Authorization to appoint a person in competing directorships is a first step to being fully informed of the possible conflicts of interest. However, there are a number of situations where an individual who acts as a director of two or more competing companies can face a conflict of interests. Authorization could not prevent the following conflicts of interest after the appointment. In my humble view, authorization in CA cannot fulfil the preventative objective of the no-conflict rule. It just accepts the actual or real sensible possible conflict of interest hoping to promote business development by the directors. However, it can entail day-to-day and endless conflicts of interest in competing directorship, which ultimately lead the director to be removed from the position.

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ENFORCEABILITY OF MULTI-TIERED DISPUTE RESOLUTION CLAUSE AND LEGAL CONSEQUENCE OF ITS NON-COMPLIANCE

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ABSTRACT:

Contracting parties are increasingly using multi-tiered dispute resolution clauses in international commercial contracts and bilateral investment agreements. The multi-tiered dispute resolution clause defines prior procedures to arbitration such as negotiation, mediation, conciliation, and expert determination. A problematic issue relating to the multi-tiered dispute resolution clause is a consequence of non-compliance with pre-arbitral alternative dispute resolution. The problem occurs with regard to the enforceability of MTDR provisions when one of the contracting parties does not follow the pre-arbitral procedures described in the contract. In that case, the enforceability of the steps prior to arbitration depends on (i) the approach of the courts or arbitral tribunals to the issue and (ii) the wording and criteria of the clause. This research paper focuses and studies on two main issues mentioned above. First of all, domestic courts or arbitral tribunals apply three main theories to this issue: a) full jurisdiction theory and b) qualified jurisdiction theory and c) admissibility theory. Further, this research paper examines case law from the ICC International Court of Arbitration and international investment arbitrations. Secondly, the wording and criteria play crucial roles in determining the enforceability of MTDR.

KEYWORDS:

Alternative dispute resolution, jurisdiction theory, admissibility theory, arbitral tribunal, and domestic court.

I. INTRODUCTION

In recent years, the multi-tiered dispute resolution ("MTDR") clause has increasingly been used in international commercial contracts[1], especially in international construction contracts[2] and even in bilateral investment agreements ("BIT"). The increase is related to the cost and time efficiency of alternative dispute resolution ("ADR"). Negotiation, mediation, conciliation, and expert determination save the time and cost that would be incurred in the arbitral proceeding.[3]

[1] K.Didem, "Enforceability of Multi-tiered Dispute Resolution Clauses", 27 Journal of International Arbitration 6 (2010), p.577. ("*Didem*") https://www.researchgate.net/publication/323457329_Enforceability_of_Multi-Tiered_Dispute_Resolution_Clauses, [last accessed on 30 July 2023].

[2] Didem, p.552.

[3] S.Tania, "Using Alternative Dispute Resolution to Save Time", 33 The Arbitration and Mediator 1 (2014), p.62. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2721472, [last accessed on 30 July 2023].

Therefore, contracting parties choose negotiation, mediation, conciliation, and expert determination as pre-arbitration steps.

Simultaneously, a problematic issue has arisen relating to the enforceability of the MTDR provisions.[4] If one of the parties submits a claim to an arbitral tribunal without completing the prior procedures set forth in the MTDR provision, the enforceability of the MTDR clause will be assessed by the arbitral tribunal. In that case, the enforceability of the procedures prior to arbitration depends on the (A) approach of the courts or arbitral tribunals to the issue[5] and (B) the wording of the clause.[6] First of all, approaches or theories of the courts or arbitral tribunal regarding this issue, jurisdiction, and admissibility theories, are examined. Some national laws follow the first theory while others adopt the second. Certain countries do not establish a specific approach or theory to address this problematic issue. Secondly, the wording and criteria of the MTDR clause are addressed. The requirements for such clauses are examined by comparing standard terms of international organizations and studying arbitral awards.

II. Enforceability of Multi-Tiered Dispute Resolution Clause

2.1. Multi-Tiered Dispute Resolution Clause

The MTDR clauses provide for dispute resolution processes generally composed of negotiation, mediation, expert determination, and finally arbitration.[7] From a historical point of view, the ADR, as a complement to arbitration, emerged in the late 1970s in the United States of America and became popular in Europe at the beginning of the 1990s.[8] The MTDR clause gives disputing parties an opportunity to settle their dispute amicably. Nowadays, one of the most challenging jurisdictional issues of international comm ercial and investment arbitration is related to the MTDR clause. Although the MTDR clause is in the interest of the legal entities involved in international business relations, the enforceability of this type of clause has been a complicated problematic issue in recent times.[9]

The MTDR clause can be constituted by distinct steps such as negotiation, mediation, conciliation, expert determination, and arbitration. A) Negotiation is a process to settle the dispute by reaching an agreement that is acceptable for both sides without the intervention of a third party and it is considered to be the least disruptive and least expensive method of dispute resolution.[10] B) Mediation is a consensual technique in which a neutral facility helps the parties reach a negotiated settlement of their dispute.[11] C) Conciliation and mediation are often used interchangeably both in practice and in literature.[12] While a mediator has no authority to propose a solution to the parties, a conciliator makes proposals for and draws up the terms of, a settlement.[13] D) Expert determination is a procedure in which a dispute between the parties is submitted to one or more experts who make a determination on the matter referred to it/them.[14]

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[4] K.Ewelina, *Enforceability of Multi-Tiered Dispute Resolution Clauses*, Oxford: Hart Publishing, 2017. p.1 ("*Ewelina*") https://booksc.org/s/?q=Kajkowska%2C+Ewelina, [last accessed on 30 July 2023].

[5] Ibid.

[6] Didem, p.570.

[7] Didem, p.551.

[8] A.Dilek, "Multi-Tiered Dispute Resolution Clauses after UML on Mediation 2018 and the Singapore Convention", 41 Public and Private International Law Bulletin 1 (2021), p.195. ("*Dilek"*) https://doi.org/10.26650/ppil.2021.41.1.819689, [last accessed on 30 July 2023].

[9] Didem, p.553.

[10] Dilek, p.196.

[11] *Mediation*, International Chamber of Commerce. https://iccwbo.org/dispute-resolution-services/mediation/?msclkid=279b8dbfb33b11ecb2843bc1df3f25e8, [last accessed on 30 July 2023].

[12] Didem, p.554.

[13] Dilek, p.196.

[14] *What is Expert Determination?*, World Intellectual Property Organization. https://www.wipo.int/amc/en/expert-determination/what-is-exp.html, [last accessed on 30 July 2023].

2.2. Jurisdiction and Admissibility Theories

What will happen If the ADR provided in the MTDR clause is not exhausted? This is at the heart of the controversial problem. In other words, if one of the contracting parties submits the claim to arbitration without exhausting the negotiation or mediation mechanism specified in the dispute resolution clause, does the arbitral tribunal have jurisdiction to hear the case? The enforceability of the MTDR clauses in arbitration is concerned with a fundamental question as to whether compliance with an agreed ADR procedure invokes arbitral jurisdiction. The answer to this problem has significant consequences for the stability and effectiveness of any arbitral award.[15] Considering the ADR as a matter affecting the arbitral jurisdiction leads to conflicts between arbitral awards and the court's decision on the arbitral jurisdiction. The reason for addressing this issue is that international private law and domestic legal systems have been striving to provide a solution to this problem as appropriately as possible. Therefore, the domestic courts and arbitral tribunals of Mongolia should have a common position and understanding on this issue.

Two different theories and explanations are addressed to give an answer to the fundamental question of whether the arbitral tribunal has jurisdiction to resolve the dispute when a claimant resorted to the arbitration without exhausting the ADR. (A) The first is a jurisdiction theory providing that failure to exhaust the contractual ADR before filing the claim in arbitration, negatively affects the jurisdiction of the arbitral tribunal.[16] The jurisdiction theory has two variants such as full jurisdiction theory and qualified jurisdiction theory. (B) The second theory named admissibility theory, states that the agreed ADR process has no bearing on the jurisdiction of the tribunal but, instead, affects the admissibility of the claim.[17] As an illustration, the dispute resolution clause states the two-layered mechanism consisting of negotiation and arbitration. The dispute has arisen from the contract and the claimant first resorted to the arbitration. In this case, according to the jurisdiction theory, the arbitral tribunal does not have jurisdiction to hear the case as the negotiation has failed to exhaust. On the other hand, in accordance with the admissibility theory, the arbitral tribunal has the jurisdiction to resolve the dispute, however, the claim is not admissible. Effects of each theory have been provided below.

№	Theory	Effect	
		Positive effect	Negative Effect
11.	Full jurisdiction theory	• The arbitral tribunal will not have jurisdiction to hear the dispute if the pre-arbitral ADR was not exhausted. • The court is allowed to review the arbitral award on jurisdiction.	• A claimant' s failure to exhaust the pre-arbitral ADR prevents an arbitration clause from taking effect and renders the whole dispute resolution mechanism futile. In this regard, the court can resolve the dispute instead of the arbitration. • The failure to exhaust the pre-arbitral ADR is a ground to set aside the arbitral award.[18]

[15] Ewelina, p.167.

[16] Ibid.

[17] Ibid.

[18] Ibid.

22.	Qualified jurisdiction theory	• The arbitral tribunal will not have jurisdiction to hear the dispute if the pre-arbitral ADR was not exhausted. • The court is allowed to review the arbitral award on jurisdiction.	• The qualified jurisdiction theory does not distort the intention of the parties to have their claims heard in arbitration after the fulfilment of the prescribed ADR procedures. Hence, It does not alter the negative effect of an arbitration clause to exclude a dispute from the jurisdiction of state courts. • The failure to exhaust the pre-arbitral ADR is ground to set aside the arbitral award.[19]
33.	Admissibility theory	• The pre-arbitral ADR clause is a mere procedural matter, not a part of the arbitration agreement. Hence, their fulfilment does not affect the jurisdiction of the arbitral tribunal. • The court has no jurisdiction to review the arbitral tribunal's decision on this matter since it does not fall under the arbitral jurisdiction.	• The pre-arbitral ADR clause has no bearing on the arbitral jurisdiction. • The failure to exhaust the pre-arbitral ADR is not a ground to set aside the arbitral award.[20]

Table: Effects of jurisdiction and admissibility theories

The above-mentioned two theories have been strongly explained in the arbitral awards. In this research paper, the case laws of the ICC International Court of Arbitration and international investment arbitrations are examined to highlight grounds, advantages of the jurisdiction, and admissibility theories on the MTDR clause.

2.2.1. Cases of ICC International Court of Arbitration

ICC International Court of Arbitration follows the jurisdiction theory[21] as it considers the MTDR clauses from the perspective of the jurisdiction, not admissibility. Furthermore, it decides the cases concerning the multi-layered mechanism as a condition precedent of the arbitral jurisdiction. Early decisions of the ICC International Court of Arbitration rejected the enforceability of the ADR clauses due to their ambiguous formulation.[22] Currently, it has a position that enforceability and the effect of the multi-layered mechanism on the jurisdiction depends on the precise wording of the relevant provision and the intention of the contracting parties.[23]

In the ICC Case No. 4230, there was a two-tiered dispute resolution clause and the respondent argued that the claimant had not respected the conciliation requirement prior to arbitration. The arbitral tribunal found that it had jurisdiction due to the wording of the clause ("all disputes related to the present contract may be settled amicably) which was not expressly obligatory. In so

[19] Ewelina, p.175.
[20] Ewelina, p.181.
[21] Ewelina, p.174.
[22] Ibid.
[23] Ibid.

doing, the tribunal implied that an expressly obligatory clause could be enforceable.[24]

Hence, the wording of the MTDR provisions is essential to decide whether the tribunal has jurisdiction to hear the case or not.

In ICC Case No. 10256, a three-tiered dispute resolution clause was stated in the contract that provided for mutual discussions by the parties acting in good faith, mediation, and finally arbitration. The respondent argued that mediation was a prior condition for arbitration and the claimant was not entitled to initiate arbitration until there was mediation. However, the arbitral tribunal found that the reference to meditation was not mandatory due to the wording of the clause which stated "either party … may refer the dispute to an expert for consideration of the dispute.[25]

In this regard, the vague wording of the clause has led the arbitral tribunals to decide that the parties did not intend to be bound by the ADR and forced into an amicable settlement.

In ICC Case No. 6276, a three-tiered dispute resolution clause which was constituted by amicable settlement, engineer's decision, and arbitration, was stated in the contract. The arbitral tribunal held that the pre-arbitral process was strictly binding on the parties because the clause was formed in great detail. Moreover, the tribunal found out that the claimant did not exhaust the ADR.[26]

As a result, the ICC International Court of Arbitration strictly follows the jurisdiction theory. Following the case law of the ICC International Court of Arbitration, the arbitral tribunals have jurisdiction over the dispute if the clause shows a binding nature by using words like "shall" and it is formed precisely by writing procedures and stages of each ADR in great detail. On the contrary, the arbitral tribunal does not have jurisdiction over the dispute if the clause uses words such as "may" and "should" that express mere possibility.

2.2.2. Cases of International Investment Arbitrations

In BITs, there are such clauses to resolve the dispute amicably before the arbitral proceeding. This shows how commonly the MTDR clauses are used. The closest example is the "Canada-Mongolia" BIT in which the two-layered dispute settlement clause was stipulated. Article 21(1) of the Mongolia-Canada BIT specifies that "the disputing parties shall hold consultations in an attempt to settle a claim amicably before a disputing investor may submit a claim to arbitration. Consultations shall be held within 30 days of the submission of the notice of intent to submit a claim to arbitration…'[27] Furthermore, Article 9(2) of the Mongolia-Egypt BIT states the amicable settlement within 6 months.[28] Similar provisions were stipulated in many other BITs.[29]

International investment arbitrations do not have a common position and understanding regarding the status of the MTDR clause. Some arbitral tribunals have ruled that the ADR clause was a jurisdictional requirement that can prevent the arbitral tribunal from exercising its jurisdiction. On the contrary, certain arbitral tribunals established that multi-layered clauses were

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[24] Peter M. Wolrich, "Multi-Tiered clauses: ICC Perspectives in Light of New ICC ADR Rules", *The International Bar Association 2002 Conference*, Curtis, Mallet-Prevost, Colt & Mosle LLP, 2002. p.3. https://fidic.org/sites/default/files/39%20multi_tiered_clauses-wolrich02.pdf, [last accessed on 30 July 2023].

[25] Dyala J. Figueres, "Multi-Tiered Dispute Resolution Clauses in ICC Arbitration (Introduction and Commentary)", 11 International Court of Arbitration Bulletin 1 (2003), p.72. arbitrationlawMulti-Tiered-Dispute-Resolution-Clauses-in-ICC-Arbitration-intro-and-comment.pdf(international-arbitration-attorney.com), [last accessed on 30 July 2023].

[26] Ibid. p.76-78.

[27] Canada-Mongolia BIT, 2016. https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/3698/canada---mongolia-bit-2016-?msclkid=2b609f18b28011ec95654d26ba57109b, [last accessed on 01 August 2023].

[28] Egypt - Mongolia BIT, 2004. https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/1373/egypt---mongolia-bit-2004-?msclkid=02c96a3eb3ca11eca3d0c7dfd21738f1, [last accessed on 01 August 2023].

[29] Mongolia - Tajikistan BIT, 2009, Article 9(2). https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/4662/download, [last accessed on 01 August 2023].
Mongolia - Qatar BIT, 2007, Article 8(2). https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/4672/download, [last accessed on 01 August 2023].
Croatia - Mongolia BIT, 2006, Article 10(2). https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/3616/download, [last accessed on 01 August 2023].

mere procedural matters, not a jurisdictional requirement.

The earliest tribunals of the United Nations Commission on International Trade Law ("UNCITRAL") applied the admissibility theory and decided that non-compliance with the ADR only led to the inadmissibility of the claim. The Link-Trading tribunal stated that "the purpose of the six-month waiting period of negotiation in the BIT is to encourage parties to exercise reasonable efforts to resolve disputes before resorting to the costly and time-consuming remedy of international arbitration."[30] The Ethyl Corp v. Canada tribunal also held that "the requirement of a six-month waiting period of negotiation stated in Article VI(3)(a) of the Treaty, is not a jurisdictional provision, but a procedural rule that must be satisfied by the Claimant."[31] Therefore, based on initial case laws, it can be concluded that the MTDR clause is a procedural matter, not a jurisdictional requirement and it does not preclude the tribunal from having jurisdiction over the dispute.

Notwithstanding this, the latest tribunals of ICSID followed the jurisdiction theory and decided that non-compliance with the ADR precluded the tribunal from exercising its jurisdiction. For instance, the Kiliç tribunal concluded that the ADR requirements set forth in the dispute resolution clause are to be treated as conditions and that the failure to meet those conditions goes to the existence of the tribunal's jurisdiction, and is not to be treated as issues of admissibility.[32] The Enron v. Argentina tribunal also stated that "the six-month negotiation period requirement is a very much jurisdictional one. A failure to comply with that requirement would result in a determination of lack of jurisdiction."[33]

Therefore, the latest approach in international investment arbitration is the jurisdiction theory, where ADR serves as a condition precedent to jurisdiction.

2.3. The Wording of the Multi-Tiered Dispute Resolution Clause

As can be inferred from the previous section, the arbitral tribunals have been applying the jurisdiction theory in order to respect the intentions of the parties to use the ADR as a pre-condition to time and cost-consuming arbitration. However, the arbitral tribunals have focused on the wording of the MTDR clause. Although the enforceability of the MTDR clause can be assessed case-by-case, the following fundamental criteria are nominated by researchers who analyze the arbitral awards relating to the MTDR clauses. These criteria are a) mandatory language; b) detailed content; c) time scale; and d) consequence of non-compliance.[34]

a) Mandatory language - the MTDR clause should be mandatory in order to be valid or enforceable.[35] If the wording of the ADR clause is vague, its non-binding character will be concluded that the arbitral tribunal has jurisdiction over the dispute before the ADR stages. The arbitral awards mentioned in the previous section support this conclusion. Imprecise clauses are likely to be ignored by the party bringing the claim, and considered unenforceable by the court or arbitral tribunal.[36] For instance, the word "may" indicates the mere invitation to the ADR process. On the contrary, the words "shall" and "must" express the intention of the parties to be bound by the ADR stages.

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[30] *Link-Trading Joint Stock Company v. Department for Customs Control of the Republic of Moldova*, Award on Jurisdiction, UNCITRAL, 16.2.2001, [6]. https://www.italaw.com/sites/default/files/case-documents/ita0467_0.pdf, [last accessed on 04 August 2023].

[31] *Ronald S. Lauder v. The Czech Republic*, Final Award, UNCITRAL, 3.9.2001, [187] https://www.italaw.com/sites/default/files/case-documents/ita0451.pdf, [last accessed 04 August 2023].

[32] *Kiliç İnşaat İthalat İhracat Sanayi Ve Ticaret Anonim Şirketi v. Turkmenistan*, Award, ICSID Case No. ARB/10/1, 2.7.2013, [6.3.15] https://www.italaw.com/sites/default/files/case-documents/italaw1515_0.pdf, [last accessed on 04 August 2023].

[33] *Enron Corporation and Ponderosa Assets, L.P. v. Argentine Republic*, Decision on Jurisdiction, ICSID Case No. ARB/01/3, 14.1.2004, p.88. https://www.italaw.com/sites/default/files/case-documents/ita0290.pdf, [last accessed on 04 August 2023].

[34] Ewelina, pp.216-222.

[35] T.Andrew, "The Courtesy Trap - Fidic's Sub Clause 20.5 – Amicable Settlement and Emirates Trading", 1 The International Construction Law Review 1 (2016), p.77. https://www.corbett.co.uk/wp-content/uploads/Tweeddale-The-Courtesy-Trap-FIDIC-20-5-ICLR.pdf?msclkid=9124f392b33d11ec903d646e608d45f0, [last accessed on 04 August 2023].

[36] Ewelina, p.216.

b) Detailed content – A precise description of the processes comprising a multi-tiered mechanism is fundamental to the validity the of escalation clause.[37] If the mediation is stated in the MTDR clause, the procedure to appoint the mediator should be agreed upon. Also, the scope of the obligation to attempt the negotiation and mediation should be defined. Additionally, the clause should specify that submission to the court and the arbitral tribunal is not allowed during the negotiation and mediation.[38]

c) Time-scale - To be effective, it is better to provide a timetable for each stage. The beginning and end should be clearly stipulated in the MTDR clause.[39] The precise time scale supports the enforceability or validity of the MTDR clause.

d) Consequence of non-compliance - The parties should describe the consequences of failure to comply with the agreed ADR procedure.[40] If the negotiation has failed, the consequence can be precisely identified in the clause. The failure to reach a mutual agreement to settle the dispute during the negotiation can lead to arbitration. For instance, "unless the relevant step is complied with in accordance with the clause, an arbitral tribunal will not have jurisdiction to hear the case."[41]

III. Enforceability of the Multi-Tiered Dispute Resolution Clause in the Mongolian Legal System

The MTDR provisions are included in international commercial contracts that choose Mongolian laws as governing law. Furthermore, domestic contracts are increasingly using the MTDR clause. In such cases, the Mongolian legal system has not established or adopted a unified approach to this problematic issue. Although the arbitral tribunal states that such clauses are not qualified as a jurisdictional requirement, problems arise when the court sets aside the arbitral award and deems such clauses as a jurisdictional requirement.

Article 18(7) of the Law of Mongolia on Arbitration (2017) ("Law on Arbitration") stipulates that "if the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within 30 (thirty) days after having received notice of that ruling, the court to decide the matter, which decision shall be subject to no appeal."[42] Under this Article of the Law on Arbitration, the court has the authority to review the arbitral tribunal's decision on the jurisdiction. Therefore, a dispute relating to the MTDR clause of international commercial contracts that choose the Mongolian laws can be decided by the domestic court if the respondent argues that the arbitral tribunal decided it has jurisdiction over the dispute when the claimant has not exhausted the ADR. In that case, if the position and understanding of the domestic courts may conflict with the arbitral tribunals, and then, the arbitral award will be set aside easily and the stability of arbitral awards would be fragile.[43]

This problematic issue should be settled before the discrepancy between arbitral awards and decisions of courts will occur. This is because there is no possibility for the Supreme Court to establish a common position on this matter given that decisions of the courts of appeals on the jurisdiction of the arbitration are subject to no appeal.[44] A common or unified position and

[37] Ibid.

[38] *Model ADR Clauses for Commercial Contracts: A drafting guide to key ADR clauses for early resolution of disputes*, Centre for Effective Dispute Resolution, Model-ADR-Clauses-for-Commercial-Contracts-2020.docx (live.com), [last accessed on 04 August 2023].

[39] Ibid.

[40] C.Boog, "How to Deal with Multi-Tiered Dispute Resolution Clauses Clauses, Swiss Federal Supreme Court", 26 ASA Bulletin 103 (2008), p.111. https://iupress.istanbul.edu.tr/en/journal/ppil/article/multi-tiered-dispute-resolution-clauses-after-uml-on-mediation-2018-and-the-singapore-convention, [last accessed on 05 August 2023].

[41] Ewelina, p.222.

[42] Law of Mongolia on Arbitration, 2017, Article 18(7). https://legalinfo.mn/mn/detail/12456, [last accessed on 05 August 2023].

[43] Ewelina, p.181.

[44] Law of Mongolia on Arbitration, 2017, Article 6.2 (**Law on Arbitration**). https://legalinfo.mn/mn/detail/12456, [last accessed on 05 August 2023].

understanding on this issue can be established by law and it will prevent the instability and ineffectiveness of arbitral awards in the future. As a matter legal principle established in the Law on Arbitration, if the arbitration agreement is concluded between the parties, the court has no jurisdiction to resolve the dispute. In this regard, the full jurisdiction theory may contradict the aforementioned principle.

No jurisprudence has been published yet on the enforcement of the MTDR clause in Mongolia. In particular, on the official website of Mongolian courts, www.shuukh.mn, no such decisions have been published. In other words, there are no court decisions in which the court assessed the enforceability of MTDR clauses providing for arbitration as the final resort. Additionally, any arbitral award on the status of the MTDR clause has been published on the Reports of Arbitral Awards of the Mongolian International Arbitration Center. Notwithstanding this, a unified or common position on this matter should be established since the use of MTDR provisions in international commercial contracts and various types of domestic contracts is increasing.

The leading example of the use of the MTDR clause in Mongolia is the Standard Procurement Contract of Goods, Works, and Services with State and Local Funds. Any dispute arising out of the performance of the procurement contract shall be settled amicably as stated in the General Terms and Conditions ("GTC") of the Procurement Contract.[45] In the event that the parties cannot resolve the dispute amicably, the Court of Mongolia shall resolve the dispute.[46] In this regard, although the ADR is mandatory in nature, detailed content and time scale are uncertain. Currently, MTDR clause has been widely used in the long-term contracts such as the Cooperation Agreement, Engineering, Procurement and Construction contract and Power Purchase Agreement etc.

Moreover, the Draft Revised Law of Mongolia on the Investment (2023) ("Draft Revised Law on the Investment") specifically set out the MTDR clause. Unless otherwise specified in the laws of Mongolia, disputes related to investment between the investor and the Mongolian state organization shall be resolved through negotiations.[47] If disputes cannot be resolved by negotiation within 6 months, and unless the parties agree otherwise, disputes related to investment may be resolved by ICSID Arbitration.[48] The Government shall approve the procedure for settlement of disputes through negotiation.[49] It should be pointed out here that the dispute resolution mechanism is often specifically agreed upon in the BITs, not in the investment laws.

IV. Comparative Research

Influenced by the global trend to institutionalize the ADR, MTDR clauses have garnered increasing attention from the legislature and courts. Countries around the world have attempted to settle this problematic issue by adopting specific theory or approach. This section analyses the experiences and regulations of other countries.

4.1. England

Under English law, the court is empowered to review the tribunal's decision concerning the exhaustion of the ADR commitments. Section 9(2) of the English Arbitration Act 1996 states that "an application may be made notwithstanding that the matter is to be referred to arbitration

[45] General Terms and Conditions of the Procurement Contract of Goods, Works, and Services with State and Local Funds ("**GTC**"), Article 6.18.

[46] GTC, Article 6.19.

[47] Draft Revised Law of Mongolia on the Investment, 2023, Article 30.1. (**Draft Revised Law on the Investment**) https://d.parliament.mn/tusul/c448af33-a382-44d6-8362-5c4600d28d0f, [last accessed on 05 August 2023].

[48] Draft Revised Law on the Investment, Article 30.2.

[49] Draft Revised Law on the Investment, Article 30.5.

only after the exhaustion of other dispute resolution procedures."[50] In English law, the jurisdiction theory has been dominantly applied. The decision in Wah (Aka Alan Tang) & Another v Grant Thornton International Ltd & Others concerned an application for challenge of an arbitral award based on jurisdictional grounds under section 67 of the Arbitration Act 1996.[51] In this case, the tribunal adopted the position that a pre-arbitral settlement attempt was not a necessary condition of the commencement of arbitration.[52] On the contrary, the court determined that compliance with an ADR clause was a prerequisite to arbitral jurisdiction. However, the court refused to set the award aside because the conciliation clause in the contract was insufficiently precise to have any binding force.[53] Therefore, all MTDR clauses do not preclude the jurisdiction of arbitral tribunals.

4.2. Switzerland

Switzerland's courts assess the MTDR clause from the perspective of the jurisdiction theory. The Swiss Courts may find the escalation process is mandatory such as mandatory language and specific deadlines.[54] The jurisdiction theory has been followed in Switzerland, where the effects of non-compliance with multi-tiered clauses are discussed predominantly in the arbitration context. In this case, the court set aside an arbitration award on grounds of lack of jurisdiction.[55]

In the case where the respondent submitted a jurisdictional objection concerning the non-fulfillment of the contractual ADR by the claimant in the arbitral proceeding, the tribunal rejected the respondent's objection and proceeded to give an award. Then, the respondent raised the claimant's non-compliance with ADR clauses again in the national court. The court concluded that the award had been made without the tribunal having jurisdiction and, therefore, must be set aside.[56] In Swiss jurisdiction, the MTDR clause will be considered enforceable if certain requirements are met. These requirements include language that unmistakably states that the MTDR mechanism is binding and compulsory and a condition precedent for any later arbitration, including a definite timeline, include and identifying the persons responsible for progressing the MTDR proceedings, and identifying a final outcome/approach to the courts or the arbitral tribunal/ etc.[57]

Thus, the countries mentioned above apply the jurisdiction theory and focus on the wording of the MTDR clause to determine the consequence of non-compliance.

V. Conclusion and Suggestion

The contracting parties agree to MTDR clauses for a variety of reasons, the most common of which is to facilitate the resolution of routine disputes quickly and efficiently with a minimum of disruption to the parties' relationship and the underlying transaction. The use of MTDR provisions is increasing worldwide. However, problems arise regarding the enforceability of MTDR provisions when one of the parties fails to follow the steps described in the contract. In such cases, the enforceability of procedures before arbitration will depend on the (a) approach of the courts or arbitral tribunal to the issue (full jurisdiction theory, qualified jurisdiction theory, and admissibility theory) and (b) the wording of the clause. To conclude, the qualified jurisdiction

[50] Arbitration Act, 1996. https://www.legislation.gov.uk/ukpga/1996/23/section/9, [last accessed on 1 August 2023].

[51] Ewelina, p.169.

[52] Ibid.

[53] England and Wales High Court, Wah (Aka Alan Tang) & Another v Grant Thornton International Ltd & Others, [42],[43].https://www.casemine.com/judgement/uk/5a8ff76960d03e7f57eac3f3?msclkid=0c1140bbb29211ec87319aace111ba68, [last accessed on 05 August 2023].

[54] Ewelina, p.181.

[55] Ewelina, p.171.

[56] Ewelina, p.168.

[57] International Bar Association's Litigation Committee, Multi-Tiered Dispute Resolution Clauses, 2015. http://www.kiap.com/upload/iblock/5d7/handbook-multi_tiered-dispute-resolution-clauses-_1-october-2015_-_1_.pdf?msclkid=7689ab63b3ca11ecb04cd98f3b6e5c8e, [last accessed on 05 August 2023].

theory is the most suitable one to deal with this issue considering and balancing the negative and positive effects on the arbitral jurisdiction, parties intention to provide enforceability to the MTDR clause and principle of the Law on Arbitration.

• Ensuring the enforceability of the MTDR clause as desired by the parties and maintaining of the stability and effectiveness of arbitral awards are crucial. The qualified jurisdiction theory can align with these dual interests. Consequently, Article 18 of the Law on Arbitration can regulate the MTDR clause as a matter of jurisdiction. Under this Article, it can be stated that the arbitral tribunal has jurisdiction to resolve the dispute in the case where the pre-arbitral steps are exhausted.

• Concerning the enforceability and wording of the MTDR clause, specific criteria must be satisfied for the MTDR clause to be legally enforceable. Article 18 of the Law on Arbitration (2017) could stipulate the following essential criteria:

- mandatory language;
- detailed content;
- time-scale; and
- consequence of non-compliance.

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LATEST NEWS

THE JOINT ACADEMIC SEMINAR OF JAPAN, MONGOLIA AND UZBEKISTAN WAS SUCCESSFULLY ORGANIZED

The National Legal Institute of Mongolia and the Training & Research Institute (RTI) of the Ministry of Justice of Japan signed a joint research seminar in 2021 on the topic "Development and use of crime statistics for crime prevention" funded by the Ministry of Justice of Japan, it was successfully organized on February 27 to March 8, 2023 at the Training and Research Institute in Tokyo, the capital of Japan.

The seminar was attended by:

From Mongolia, Director of the National Legal Institute of Mongolia Erdem-Undrah.Kh (Dr.jur.), Researcher Buyanbat.H, Demidhand.D, Myagmarsuren.S, Enkhhuslen.O,

From the Japanese side, Toshinobu Uetomi, director of the Institute of Education and Research, Shintaro Naito, head of the Institute's International Cooperation Department (ICD), Hiroshi Suda, deputy director, Koji Yoshimura, deputy director of the Institute's Research Department, Minako Shoji, Hiroki Kunii, professors of the International Cooperation Department.

From Uzbekistan, a team headed by Yevgeny Kolenko, acting director of the Law Enforcement Academy of the Republic of Uzbekistan, and Nosirjon Askarov, head of the Academy's Center for Researching and Analyzing the Causes and Conditions of Crime, participated.

/Participants of the joint academic seminar of Japan, Mongolia and Uzbekistan on the topic "Development and use of crime statistics for crime prevention" /

Takushoku University Emeritus Professor Tadashi Moriyama, Ryukoku University Professor Hamai Koichi, National Police Academy Professor No Takahiro, Training and Research Institute Senior Researcher Junichi Ishihara, Head of the Kyoto City Police Department's Investigation Support Analysis Center also discussed theory within the seminar, which included practical combined courses.

During this joint seminar, the teams of the three countries discussed their respective reports on how crime statistics are developed in their countries, and exchanged experiences on how crime statistics are used to prevent crime.

Previously, the National Legal Institute of Mongolia and the Training and Research Institute under the Ministry of Justice of Japan jointly organized “The Criminal Procedure System of Japan and Mongolia” in 2021, seminars on “Prosecutor’s functions and features: Japan and Mongolia” and “Criminal proceedings and criminal liability related to juveniles: comparison between Japan and Mongolia” were successfully organized In 2022.

MEETING WITH REPRESENTATIVES OF THE CENTER FOR ASIAN LEGAL EXCHANGE (CALE), NAGOYA UNIVERSITY OF JAPAN

Director of the National Legal Institute of Mongolia Erdem-Undrakh.Kh (Dr.jur.) and Academic Secretary of the National Legal Institute Davaanyam.G (LL.D.) welcomed Professor Murakami Masako, Director of the Center for Asian Legal Exchange (CALE) for Nagoya University of Japan, Professor Okochi Minori, and Professor Sato Fumito on March 21, 2023.

Since 2006, the two organizations have been actively collaborating together under the terms of the "Academic Exchange Agreement". The parties exchanged views on expanding bilateral relations between the two organizations.

/Professor Masaki Murakami, Professor Okochi Minori and Professor Fumito Sato (right-left) with their translator/

Furthermore, the reform of Mongolian private law, the Integrated Legal Information System (www.legalinfo.mn) developed by the Institute and, the implementation of the "National Program for Improving Public Legal Education" as well as "D-Parliament" electronic system which aims to ensure public involvement in the legislative process were also discussed in the meeting.

MEETING WITH FORMER GERMAN MINISTER OF JUSTICE PROF. HERTA DÄUBLER-GMELIN

Erdem-Undrakh.Kh (Dr.jur.), Director of the National Legal Institute of Mongolia, and Davaanyam.G (LL.D.), Academic Secretary welcomed Former German Minister of Justice Prof. Herta Däubler-Gmelin on May 12, 2023. Professor Dr. Herta Däubler-Gmelin is a former Member of Parliament and Chair of the Human Rights and Humanitarian Assistance Committee of the German Parliament. From 1980 to 1983 she was Chair of the Judicial Committee of the German Parliament and from 1983 to 1993 Deputy Chair of the Parliamentary Fraction of the Social Democrats.

/Director Erdem-Undrakh.Kh (Dr.jur.), far right, stands with (right-left) Professor Dr. Herta Däubler-Gmelin, Chief Commissioner Sunjid.D of National Human Rights Commission and Davaanyam.G (LL.D) Academic Secretary of National Legal Institute/

The parties exchanged views on the Amendment to the Constitution of Mongolia, the control of the Constitutional Court, Independent Legal Research, its importance and gender equality. Member of the NHRC, Assoc.Prof.(Dr.jur.) Sunjid.D, Head of Administrative Department of the National Legal Institute Sarantsetseg.E (Ph.D.), Senior researcher Tumendemberel.B (Ph.D.) attended the meeting.

MEETING WITH JUDGES OF THE NEW HAMPSHIRE SUPREME COURT OF THE UNITED STATES

Representations of the National Legal Institute of Mongolia (NLI) welcomed Chief Justice Gordon MacDonald of the New Hampshire Supreme Court of the United States, Executive Vice President of the National Judicial Center of the States Michael Binger, and Director of the Center for Judicial Ethics David Sakar on May 23, 2023.

Davaanyam.G (LL.D.), Academic Secretary of the National Legal Institute and Michael Binger, Executive Vice President of the National Judicial Center of the States exchanged views on methods of disseminating legal information and introduced the activities of their organizations. Mr.Binger noted the importance of ensuring the participation of non-lawyers and using media platforms from which people can access information within the framework of promoting and spreading public legal awareness.

/Michael Binger, Executive Vice President of the National Judicial Center of the States, left, with Chief Justice Gordon MacDonald of the New Hampshire Supreme Court of the United States, and Director of the Center for Judicial Ethics David Sakar/

Mr. Macdonald emphasized that lawmakers should closely examine its impacts on society before a bill becomes a law.

THE CHIEF JUSTICES OF CANADA MET WITH REPRESENTATIVES OF THE NATIONAL LEGAL INSTITUTE

"Mr. Oleg Shakov, Director of the International Programs Division at Federal Judicial Affairs Canada, Mark Richard, Chief Justice of New Brunswick, and Marie T.Moreau, Chief Justice of the Court of King's Bench of Alberta, visited the National Legal Institute on September 28, 2023, as part of the Technical Assistance Partnership Project of the Office of the Commissioner for Federal Judicial Affairs and the Judicial General Council of Mongolia.

During the meeting, the Academic Secretary of the National Legal Institute, Tuvshinjargal.M (Ph.D.), presented the functions of the Institute and the implementation of the program to support legal education for all.

The guest representatives expressed that the project implemented in Mongolia has been successfully extended. They discussed the scale of the project to be implemented in the future and are currently studying the main cooperating organizations. They emphasized the importance of the role of the National Legal Institute of Mongolia in improving public legal education."

THE 19TH GENERAL MEETING OF THE ASIAN LEGAL INFORMATION NETWORK (ALIN) WAS HELD

The 19th General Meeting of member countries of the Asian Legal Information Network (ALIN) was successfully organized jointly by the Republic of Korea Law Research Institute (KLRI) and the National Taiwan University School of Law on September 4, 2023, in Taipei, Taiwan.

In recent years, the meeting of representatives from member countries has been organized online due to the pandemic situation.

In 2023, Director of the National Legal Institute of Mongolia, Erdem-Undrakh.Kh (Dr.jur.), personally participated in this face to face meeting with the right to vote.

/Representatives of member countries of the Asian Legal Information Network/

During the General Meeting, discussions covered the activity report of the Asian Legal Information Network, the direction of cooperation for the next year, the admission of new members, and the selection of the country to host the 20th regular meeting in 2024.

THE 19TH INTERNATIONAL CONFERENCE OF THE ASIA LEGAL INFORMATION NETWORK (ALIN) WAS HELD ON THE TOPIC "RE-BLOOMING OF TOURISM IN ASIA: LEGISLATION AND POLICY FOR PROMOTING TOURISM INDUSTRY"

The 19th international conference of the Asian Legal Information Network was successfully held on September 5, 2023, at the National Taiwan University School of Law. The National Legal Institute of Mongolia has been a member of the Asian Legal Information Network since its inception in 2005 and has regularly participated in the network's annual international academic conferences.

/Participants of the 19th International Conference on the topic "Re-blooming of tourism in Asia: Legislation and policy for promoting tourism industry/

In this meeting organized on the topic of "Re-Blooming of Tourism in Asia: Legislation and Policy for Promoting Tourism Industry", Anudari.E, a researcher from the National Legal Institute, delivered a speech on the topic "Policy and legal reform for the development of tourism in Mongolia".

In connection with the announcement of 2023-2025 as the Year of Visiting Mongolia, her speech highlighted the measures implemented by the Government of Mongolia and the approval of the revised draft of the Law on Tourism.

A CONSULTATION MEETING WAS HELD WITH REPRESENTATIVES OF THE EUROPEAN UNION DELEGATION TO MONGOLIA

The National Legal Institute's Director, Erdem-Undrakh.Kh (Dr. jur.), hosted a consultation meeting with representatives of the European Union Delegation to Mongolia on August 22, 2023. Emmanuel Vergne, an EU expert on the Twinning Project, and other EU delegates attended the meeting.

During the consultation meeting, discussions centered around assessing the current situation and identifying priority areas within the legal sector. Particularly, attention was given to the upcoming Twinning Project scheduled for a two-year implementation period starting in 2024. This project is tied to the legal sector reform under the Multi-Year Oriented Program, set to be carried out by the Delegation of the European Union in Mongolia from 2021 to 2027. Information was exchanged on the goals of the Twinning project, aligning with the national development priorities, with a focus on improving judicial reform and judicial administration.

/Emmanuel Vergne, EU expert on the Twinning Project (center) with EU delegate in Mongolia (left) and translator (right)/

/Left to right: Sarantsetseg.E, Head of the Administrative Department of NLI, Erdem-Undrakh.Kh (Dr.jur.), Director of NLI, Tuvshinjargal.M (Ph.D.) Academic Secretary of NLI and Anudari.E, researcher/

The meeting covered an overview of the National Legal Institute of Mongolia's functions, the ongoing national program to enhance legal education for all, and the promotion of Mongolian laws. Additionally, discussions took place regarding the potential for expanding cooperation in the future and the involvement of the National Legal Institute of Mongolia in the Twinning Project's implementation.

THE NATIONAL LEGAL INSTITUTE HOSTED REPRESENTATIVES OF THE MINISTRY OF GOVERNMENT LEGISLATION OF THE REPUBLIC OF KOREA

Director Erdem-Undrakh.Kh (Dr.jur.) of the National Legal Institute, hosted a meeting with Rhee Il, Director of the Legislative and Cooperation Division of the Ministry of Government Legislation of the Republic of Korea, Song Seunghwan, action officer, and Hwang Hyun-uk, a researcher, at the National Legal Institute of Mongolia on the 18th of August.

/Director Erdem-Undrakh.Kh (Dr.jur.) (center) with representatives of the Ministry of Legislation of the Republic of Korea and the National Legal Institute of Mongolia /

During the meeting, the director provided information about the legal reform process concerning changes in Mongolia's economic system. She presented measures taken to enhance the investment legal environment, the implementation of the Law on Free Zones, and initiatives aimed at improving the education of attorneys, civil servants, and citizens in connection with strengthening the free economic system. Additionally, they exchanged views on enhancing cooperation with the Ministry of Legislation of the Republic of Korea.

INTERNATIONAL ACADEMIC CONFERENCE ON "CONSTITUTIONAL COURTS IN NORTHEAST ASIA: KOREA AND MONGOLIA" WAS HELD ON JUNE 28, 2023.

The conference was jointly organized by the National Legal Institute of Mongolia, the Constitutional Law Institute of the National University of Mongolia, the Institute of Mongolian-Korean Law of the International University of Ulaanbaatar, and the Constitutional Research Institute of the Republic of Korea. The event was opened by State Secretary Sainzorig.P, who highlighted the importance of the meeting, and it was followed by the speech of the President Lee Heon Hwan of the Constitutional Research Institute of the Constitutional Court of Mongolia.

At the conference, Doctor Byambajargal.A, Legal Policy Advisor of the President, Justice Mr.Munkhsaikhan.O of the Constitutional Court of Mongolia, Justice Mr.Gangabaatar.D of the Constitutional Court of Mongolia, Amarsanaa.O, Director, Korea-Mongolia Law Research Center of Ulaanbaatar International University, the President Lee Heon Hwan of the Constitutional Research Institute of the Constitutional Court of Mongolia, Professor Han Dong-Hoon and Professor Jeon Kyung Keun introduced their presentation.

During the conference, researchers and scholars from Korea and Mongolia engaged in discussions and exchanged opinions on the activities of the Constitutional Courts in both countries and related issues.

In the closing speech of the conference, Davaanyam.G, the Academic Secretary of the National Legal Institute of Mongolia, emphasized the importance of drawing from the experience of the Constitutional Court of the Republic of Korea to enhance the constitutional review process in Mongolia.

THE DOCTORAL LECTURE SERIES AND BOOK OPENING CEREMONY OF DOCTOR BAYARMAA NYAMDOO WAS HELD

On April 21, 2023, the doctoral lecture and book opening ceremony of Dr. Bayarmaa Nyamdoo was jointly organized by the National Legal Institute and the Judicial Training, Research and Information Institute of the Supreme Court in the NLI.

Bayarmaa.N earned her doctor of law degree (LL.D) at the Advanced School of Law of Nagoya University of Japan in 2022 on the topic "Development of Real Property Law in Mongolia: Toward a Unified Foundation". Along with, she is a Justice of the Supreme Court of Mongolia

/During the lecture presented by Doctor Bayarmaa Nyamdoo/

The event was opened with remarking speeches by Justice G. Altanchimeg, Head of the Civil Affairs Chamber of the Supreme Court of Mongolia, Tsogt.Ts, Justice of the Administrative Chamber of the Supreme Court of Mongolia, and state-honored lawyer, associate professor Naranchimeg.D, Dr. Amarsanaa.B, Dean of the School of Law of NUM.

After her lecture, she introduced her newly published books such as "Some Issues of Commercial Law", "Some Issues of Real Estate Law" and "Development of Real Property Law in Mongolia: Toward a Unified Foundation".

Representatives of the Parliament of Mongolia, the Constitutional Court, the Supreme Court of Mongolia, Judicial General Council, National Human Rights Commission, School of Law of the National University of Mongolia, and Otgontenger University attended this lecture.

THE DOCTORAL LECTURE SERIES, ORGANIZED BY THE NATIONAL LEGAL INSTITUTE, WAS HELD WITHIN THE FRAMEWORK OF CORPORATE LAW ON MAY 8, 2023

Since 2014, the National Legal Institute of Mongolia has introduced new research works from masters and doctors under the theme of "Law and Development." Since 2018, we have consistently organized the "Doctoral Lecture Series" to introduce scholars who earn doctorate degrees and their research works to the public.

The opening remarks were delivered by the head of the Department of Private Law, Dr. Associate Professor Ulaanbaatar.B and Dr. Idesh.I.

Dr. Oyunjargal.B, Senior Lecturer at the National University of Mongolia, gave a lecture on the topic of "Executive Management System in Mongolia." Additionally, Dr. Tuvshinjargal.M, Senior Lecturer at the University of Finance and Economics, presented on "Merger of companies from the perspective of Turkish and Mongolian commercial law and competition law."

/Left to right: Dr. Idesh.I, Dr.Oyunjargal.B, Dr.Tuvshinjargal.M and Dr.Davaanyam.G, Academic Secretary of National Legal Institute /

DR.DULGUUN B, A DOCTOR OF LAW, PRESENTED A LECTURE AND LED A DISCUSSION ON “THEORETICAL CHALLENGES IN DISTINGUISHING ADMINISTRATIVE VIOLATIONS BASED ON THEIR CHARACTERISTICS.”

The National Legal Institute organizes the "Doctoral Lecture Series" to introduce accomplished scholars with doctoral degrees and share their research findings with the public.

On May 23, Dr.Dulguun B, Head of the Judicial Research Center of Judicial Training, Research and Information Institute of the Supreme Court of Mongolia (Ph.D.), gave a lecture on “Theoretical Challenges in Distinguishing Administrative Violations Based on Their Characteristics” followed by a discussion.

The lecture was opened with welcoming remarks from Davaanyam G, Academic Secretary of the National Legal Institute. Dr.Batbold D, an Associate Professor at the School of Law of the National University of Mongolia (Ph.D.) concluded the session with a closing speech.

A MEMORANDUM OF COOPERATION WAS SIGNED WITH THE INSTITUTE OF LANGUAGE AND LITERATURE OF MONGOLIAN ACADEMY OF SCIENCES

The National Legal Institute of Mongolia signed a Memorandum of Cooperation with the Institute of Language and Literature of Mongolian Academy of Sciences on June 27, 2023. The purpose of the memorandum is to implement the government's policy on science and technology within the framework of the Law on the Mongolian Language and the Law on Legislation and to expand cooperation between the two organizations.

The memorandum was signed by Erdem-Undrakh.Kh (Dr.jur.), Director of the National Legal Institute of Mongolia and Prof. Bat-Ireedui.J (Sc.D), Director of the Institute of Language and Literature.

Academic Secretary of the National Legal Institute, Davaanyam.G (Ph.D.) and the Academic Secretary of the Institute of Language and Literature, Ass.Prof, Shinebayar.O (Sc.D), the Head of the Department of Applied Linguistics, Munkhtsetseg.N attended the meeting.

THE 24TH SESSION OF THE INFOTERM GENERAL ASSEMBLY OF STATE PARTIES OF UNESCO

On May 31, 2023, the 24th session of the International Centre for Terminology (INFOTERM) General Assembly of State Parties of UNESCO was held virtual meeting and discussed the audited financial report, organizational performance, and operational plan for 2023.

The Infoterm was founded in 1971 by UNESCO with the objective to support and co-ordinate international co-operation in the field of terminology. Members of the Infoterm Executive Board and representatives of Mongolia, Germany, South Korea, Austria, Argentina, Poland, Colombia, Spain, Italy, Iran, Georgia, and Lithuania participated in the conference. Director of the National Legal Institute of Mongolia (NLI), Erdem-Undrakh.Kh (Dr.jur.) and Director of the Institute of Language and Literature of the Mongolian Academy of Sciences, Munkhtsetseg.N (Ph.D.) attended.

The NLI officially became a member of the INFOTERM in 2022. Director of the NLI, Erdem-Undrakh.Kh (Dr.jur.) introduced the establishment of the NLI's Legal Language Council as a result of the Law on Legislation being amended on May 4, 2023 and covered the operation and development of the Integrated Legal Information System www.legalinfo.mn website and the history and evolution of legal terms.

MEETING WITH UNIDROIT SECRETARY-GENERAL IGNACIO TIRADO WAS HELD SUCCESSFULLY

The Director Erdem-Undrakh.Kh (Dr.jur.) of the National Legal Institute held the meeting with UNIDTROIT Secretary-General Ignacio Tirado and Senior Legal Officer William Brydie-Watson on November 23rd.

UNIDROIT is an independent intergovernmental organization whose mission is to study the needs and methods for modernizing, harmonizing and coordinating private and particularly commercial law between states, as well as to develop legal instruments, principles and rules.

Mongolia became UNIDROIT's 65th member state on April 21, 2023. They exchanged views on enhanced future cooperation opportunities and partnership between the two institutes.

MEETING WITH MS.MARGARET SATTERTHWAITE, UNITED NATIONS SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS

Director Erdem-Undrakh.Kh (Dr.jur.) of the National Legal Institute of Mongolia welcomed Ms.Margaret Satterthwaite, UN Special Rapporteur on the independence of judges and lawyers, Ms. Melanie Santizo, Human Rights Officer at Office of the UN High Commissioner for Human Rights and Katarina Sydow, Legal advisor.

Director Erdem-Undrakh.Kh (Dr.jur.) introduced the general information on the Public Legal Education program, 1800-1202 podcast, and legal education training, and discussed further development.

Academic Secretary Tuvshinjargal.M (Ph.D.) of the National Legal Institute and Senior researcher Enkhkhuslen.O and researcher Demidkhand.D attended this meeting.

K-LAW ACADEMY OF THE KOREAN LEGISLATION RESEARCH INSTITUTE ORGANIZED ONLINE ACADEMIC SEMINARS

The National Legal Institute of Mongolia and the Korea Legislation Research Institute (KLRI) signed the Cooperation Memorandum on January 9, 2023. According to the Cooperation Memorandum, K-Law Academy held the online seminar series in 2023. The first seminar was organized in July, 2023.

K-Law Academy held its second and third online seminar under the theme of "South Korean Intellectual Property Law" on November 16, 2023 and December 14, 2023.

During the second seminar, Dr. Hyung-Gun Kim, Senior Principal Research Fellow, KLRI gave a lecture on the topic of "Introduction to Intellectual Property Laws of the Republic of Korea" to staff and researchers of the National Legal Institute of Mongolia

MEETING WITH THE REPRESENTATIVE OF THE UNIVERSITY TOULOUSE CAPITOLE WAS HELD

Mr. Charles Dagan, a visiting scholar from the University Toulouse Capitole, visited the National Legal Institute of Mongolia on December 4, 2023.

Mr. S.Biligsaikhan, Head of the Legal Training, Information and Promotional Center of the National Legal Institute of Mongolia exchanged views on bilateral cooperation and international relations on issues of mutual interest. Charles Dagan, the visiting scholar of the University Toulouse Capitole was invited to Mongolia by the School of Law, National University of Mongolia.

Ms. Munkhnaran.M (Ph.D.), a teacher from the School of Law, National University of Mongolia, and Ms. Sunjidmaa.B, a researcher from the National Legal Institute of Mongolia attended the meeting.

LEGAL EDUCATION TRAINING WAS ORGANIZED AT THE 39TH SPECIAL SCHOOL AND THE 59TH SECONDARY SCHOOL

The National Legal Institute of Mongolia organized legal education training on the topic "Children's rights in the digital environment" at the 39th special school and the 59th secondary school including 95 children.

The legal education training was conducted by Khatansaikhan.R, Senior researcher of the National Legal Institute of Mongolia.

THE NATIONAL LEGAL INSTITUTE OF MONGOLIA ATTENDED "2023 NORTHERN BORDER CULTURE FORUM: PROMOTING THE CONSTRUCTION OF 'NORTHERN BORDER CULTURE' BY THE POWER OF RULE OF LAW" AT THE INVITATION OF LAW SCHOOL OF INNER MONGOLIA UNIVERSITY

At the invitation of Law School of Inner Mongolia University, the National Legal Institute of Mongolia attended "2023 Northern Border Culture Forum: Promoting the Construction of 'Northern Border Culture' by the Power of Rule of Law". The forum was organized by the School of Law, Inner Mongolia University on November 25, 2023, in Hoh Hot, China.

Mrs. Enkh-Amgalan.B, who is a senior researcher of the National LegaI Institute of Mongolia, delivered a remarking speech on the behalf of Director Erdem-Undrakh Kh (Dr.jur.).

The forum consisted of 4 sub-forums and Ms.Selenge.E (Researcher of Private Law Sector) and Enkh-Amgalan.B (Senior researcher of Human rights and International Comparative Study Sector) introduced the presentation on the topic of "Private law reform in Mongolia and some issues in international economic cooperation" at the sub-forum named "Legal issues on China-Mongolian-Russian Economic Corridor".

/Left to right: Narantsogt.D, Professor (Doctor of Laws) of Law school of Inner Mongolia University, Enkh-Amgalan.B, Senior Researcher of NLI, Selenge.E, Researcher of NLI, Dai Qin, Associate Professor (Doctor of Laws) of Law school of Inner Mongolia University/

/"2023 Northern Border Culture Forum: Promoting the Construction of 'Northern Border Culture' by the Power of Rule of Law /

A hundred of scholars and specialists attended this forum which focuses on the issues of promoting the construction of culture by the power of the Rule of Law and respecting cultural heritage and legal history. In light of its main theme, legal issues related to the China-Mongolian-Russian economic corridor as well as the necessity for legal cooperation in implementing this program and further development trends were discussed.

/ The sub-forum named "Legal issues on China-Mongolian-Russian Economic Corridor/

THE NATIONAL LEGAL INSTITUTE OF MONGOLIA HELD NEGOTIATIONS ON DEVELOPING COOPERATION WITH SCHOOL OF LAW OF INNER MONGOLIA UNIVERSITY

The representatives of NLI visited Law School of Inner Mongolia University on November 27th 2023 and held negotiations on developing cooperation.

Officials including Director Prof.Ding Feng represented Law School of Inner Mongolia University and heads of departments of the school and a group of Mongolian-Chinese bilingual lecturers took part in the meeting. Two organizations introduced their functions and operations, exchanged opinions on opportunities and directions of cooperation in the field of legal research, legal training, promotion, and information, and discussed the draft of the memorandum of cooperation as a result of this meeting. For example, it was pointed out that there is a great need for cooperation in improving the quality and effectiveness of joint research on private law, especially commercial and trade law.

/ Representatives of the National Legal Institute of Mongolia and Law School of Inner Mongolia Univerity/

The parties emphasized the historical significance of previous cooperation by translating and publishing laws and regulations in Chinese, participating to international academic conferences, and mutually expressed their willingness to take the cooperation to the next level.

After the meeting, the representatives of NLI visited Inner Mongolia University and Law School and shared experience with the library and other facilities

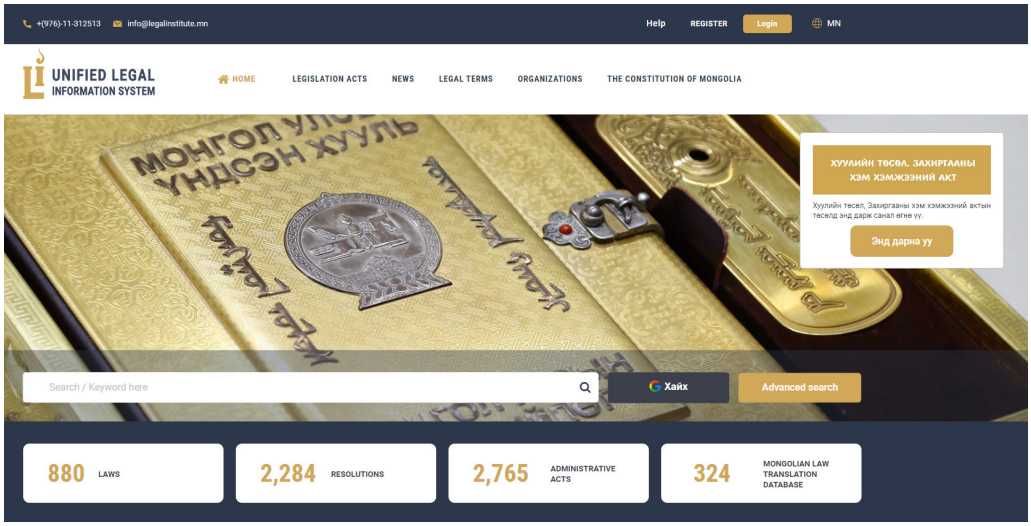
/ Selenge.E, Researcher of NLI, Enkh-Amgalan.B, Senior Researcher of NLI, Dai Qin, Associate Professor (Doctor of Laws) of Law school of Inner Mongolia University/

UNOFFICIAL ENGLISH TRANSLATION OF 186 LAWS OF MONGOLIA WERE UPLOADED TO WWW.LEGALINFO.MN

The Unified Legal Information System website www.legalinfo.mn has uploaded unofficial English translations of 186 laws and regulations of Mongolia to the public.

In 2022, out of 80 unofficial translations of laws, 43 laws were newly translated, and 37 old translations were revised, amended. As of 2023, 105 laws have been translated and have been updated.

An unofficial translation of about 324 laws, which relates to business and investment law and is part of the implementation of the Agreement between Mongolia and the United States of America on Ensuring Transparency in International Trade and Investment Matters, can be found on the website www.legalinfo.mn.



LIST OF RESEARCHES CONDUCTED BY THE NATIONAL LEGAL INSTITUTE OF MONGOLIA IN 2023

The Legal Research Center of the National Legal Institute of Mongolia conducted the following research and comparative studies in 2023. It includes:

As stated in the Plan:

1. Assessment of the implementation of the Law on Prosecutor
2. Comparative study on administrative appeal procedure
3. Assessment of the implementation of the execution of administrative court decision
4. Legislative needs assessment of amending the General Administrative Law
5. Assessment of the implementation of the Law on State and Official Secrets
6. Comparative study on legal regulation of state and official secrets
7. Assessment of the implementation of some regulations of the Law on Mediation
8. Rules on protection of the bona fide third party in agency relationship and its application.
9. Assessment of the implementation of some regulations of the Law on Administrative Offence

At the request of other authorities:

10. Legislative needs assessment of amending the Constitution
11. Cost assessment on the Amendments to the Constitution
12. Regulatory impact assessment on the Amendments to the Constitution
13. Cost assessment on the Proposed Law on Amendments to the Land Law of Mongolia
14. Regulatory impact assessment on the Proposed Law on Amendments to the Land Law of Mongolia
15. Regulatory impact assessment on the Proposed Law on Amendments to the Election of the State Great Khural of Mongolia
16. Cost assessment on the Proposed Law on Amendments to the Election of the State Great Khural of Mongolia
17. Comparative study on Traffic Safety Rules
18. Regulatory impact assessment on the Proposed Law on National Wealth Fund
19. Cost assessment on the Proposed Law on National Wealth Fund
20. Cost assessment on the Proposed Law on Commodity Exchange
21. Regulatory impact assessment on the Proposed Law on Commodity Exchange
22. Assessment of the implementation of some regulations of the Criminal Code of Mongolia
23. Legislative needs assessment of amending Law on the Constitutional Court of Mongolia
24. Regulatory impact assessment on the Proposed Law on the Constitutional Court of Mongolia
25. Cost assessment on the Proposed Law on the Constitutional Court of Mongolia
26. Legislative needs assessment of amending Law on the Constitutional Court Procedure
27. Regulatory impact assessment on the Proposed Law on the Constitutional Court Procedure
28. Cost assessment on the Proposed Law on the Constitutional Court Procedure
29. Assessment on some index of City Index of Ulaanbaatar
30. Regulatory impact assessment on the Proposed Law on the Amendments to the Law on Local Election
31. Assessment of the implementation of Law on control of the circulation of narcotic drugs and psychotropic substances

BOOK INTRODUCTION

The National Legal Institute of Mongolia compiles and publishes its research reports annually. In 2023, the institute refreshed the book cover design and published Volume IX (Private Law Research Paper Series), Volume X (Criminal Law Research Paper Series), Volume XI (Public Law Research Paper Series) and Volume XII (Administrative Offence Research Paper Series) with new design. .