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NEW SCHOLARS IN THE FIELD

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EDITOR-IN-CHIEF'S NOTE

Dear readers, welcome to another special edition of the Mongolian Journal of Law. As you know, the Mongolian Journal of Law is one of the leading academic legal journals in Mongolia that aims at promoting scholarly debate among legal researchers, lawyers, law students, and government officials.

Firstly, our goal is to provide our readers with papers on recent legal developments that will bring the Mongolian academic legal tradition closer to the international environment and make Mongolian legal scholarship more accessible to other scholars. Therefore, this edition contains a few, but interesting scholarly articles on legal issues in the branches of law, such as civil law, criminal law, and international law articles, as well as human rights issues.

Secondly, in 2021, we revised the Journal Policy and the Standard Operating Procedures (SOPs), and according to these changes, we updated submission criteria and the peer-review process. So that the Editorial Board is working diligently to redact highly qualified scholarly articles, essays, research reviews, court decisions, case studies, scientific commentaries, and reviews on the legal system and implementation of laws and regulations in Mongolia and abroad.

Besides, 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 academic legal journal.

For those who are considering submitting an article to the journal, any papers that you wish to submit, either individually or co-authored, are much appreciated and will make a substantial contribution to the development and success of the journal.

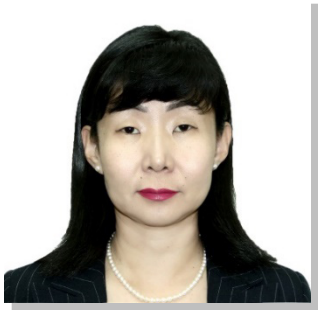
Finally, we wish you every success in your academic endeavors!

May your 2022 be full of success and bless you with health, wealth and happiness!

Sincerely,

Dr.jur. Erdem-Undrakh Khurelbaatar /Editor-in-Chief of the Mongolian Journal of Law and the Director of the National Legal Institute of Mongolia/

THE LEGAL REGULATION OF THE SERVICES FOR VICTIMS OF DOMESTIC AND FAMILY VIOLENCE



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ABSTRACT:

Domestic and family violence is a personal relationship between family members, but it is a social issue that is interrelated with many social issues and has a lot of social impact and harm. This is impeded with the guaranteed enjoyment of fundamental civil rights and freedoms and creates a violation of human rights. Domestic and family violence can also include violence against children, parents, or the elderly and can take on several forms, including physical, verbal, emotional, economic, spiritual, and sexual abuse[1]. In some cases, domestic and family violence is a crime. Therefore, victims of domestic and family violence need urgent and specialized services quickly. Measures to prevent domestic and family violence should be based on basic scientific research and theoretical concepts.

KEYWORDS:

Domestic and family violence, victim, theory, security protection, medical care, psychological, social welfare, child protection, legal assistance, contact mediate services

INTRODUCTION

In today's globalized world, the role of family members is becoming more important as the population grows as the country develops. The role of family members depends largely on social factors and the environment in which they live. It depends on them to live in peace in the family environment, to create happiness, and to increase financial opportunities.

Domestic and family violence creates discomfort in the family environment. There are cases when family members become victims as a result of this action. If a family member

[1] Domestic Violence By State 2021 (worldpopulationreview.com)

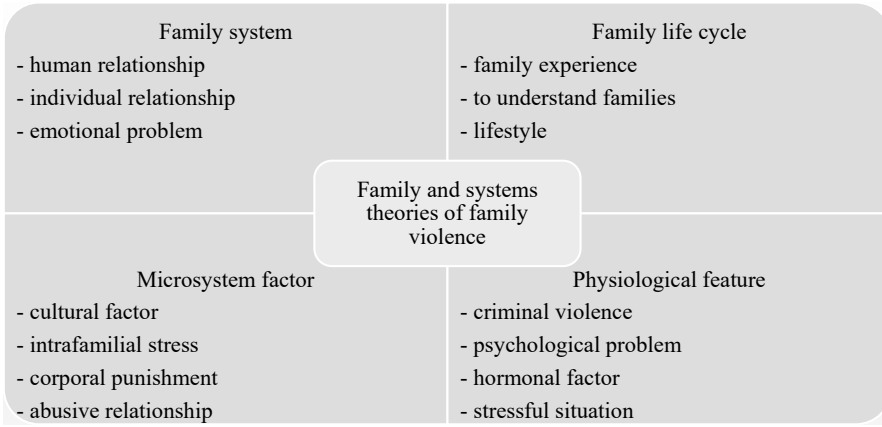
becomes a victim, they may need to be provided with specialized social services. These services include other services such as medical care, security protection services, legal assistance and social welfare services. At the international scientific level, researchers have studied the causes of domestic and family violence, theoretical concepts and approaches, economic and social factors, family environment. Victims of domestic violence must be provided with social services as soon as possible. In other words, it is important for the victim to return to a normal life, to reduce any stress, and to feel a positive environment. The special classification of services provided to family victims is aimed at delivering them with much-needed services in a prompt.

The understanding the theory of domestic and family violence

Domestic and family violence can cause problems for family members by disturbing the peace of the environment. As a result, family members are more likely to be victims of violence. Therefore, the government needs to develop a policy to take measures to prevent victims of domestic violence, to improve the work of relevant professional organizations, and to provide the necessary professional services to victims of violence as soon as possible.

The issue of reducing domestic and family violence is being developed based on the theoretical concepts of scientists, as well as scientifically based research. This is implementation of measures to prevent domestic and family violence should be based on specific theoretical principles. For example,

The concepts of domestic and family violence theory



Theoretical concepts of these scientists have studied the causes and conditions of domestic and family violence[2]. The study looked at the relationship between family environment, family relationships, psychological characteristics, social status, external and internal factors, lifestyle habits, and stress.

Domestic and family violence is the action or inaction that causes emotional, economic, sexual, or physical harm to a person. Domestic and family violence refers to a violent situation between current or former intimate partners – typically where one partner tries to exert power and control over the other, usually through fear. It can include physical, sexual[3], emotional, social, verbal, spiritual and economic abuse[4]. But family violence is a broader term that refers

[2] Maren E.Hyde-Nolan, Tracy Juliao, *Theoretical basis for family violence*, 2012. p.5-16

[3] Lori B. Girshick, *Woman-to-woman sexual violence:Does she call it rape?*, Northeastern University Press, 2002, p.25

[4] https://www.missionaustralia.com.au/what-we-do/children-youth-families-and-communities/domestic-family-violence.

to violence between family members, which can include violence between current or former intimate partners, as well as acts of violence between a parent and a child, between siblings, and more.

Domestic and family violence is an enduring social and public health issue of endemic proportions and global scale, with multiple and lasting consequences for those directly affected[5].

A strategic attitude is a victim-centered approach to protecting family victims. The following factors are involved in a victim-centered approach. For example,

A victim-centered approach is

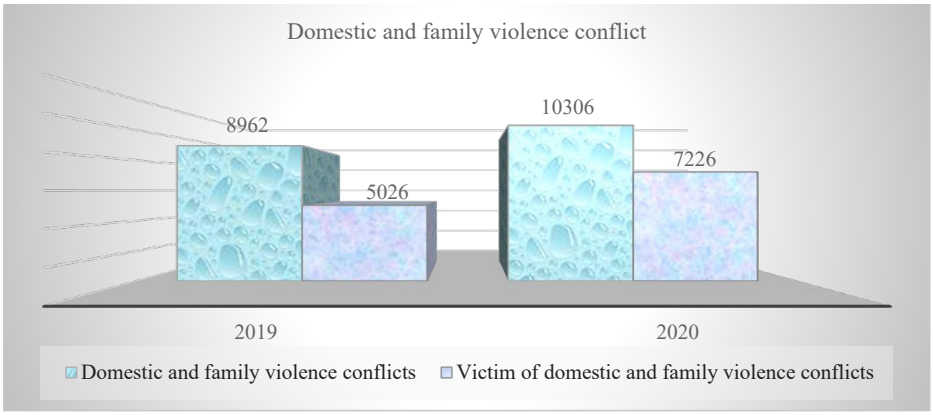
- understood as an approach that places the victim's priorities, needs, and interests at the center
- that empowers victims to make informed choices based on self-determination
- that safeguards them against policies and practices that may harm or re-traumatize them
- that ensure that victims' rights, voices, and perspectives are incorporated when developing and implementing policies and practices on domestic family violence and in the broader awareness raising against domestic violence and harmful gender attitudes

Victim services are focused on a safe environment, overcoming depression, self-protection and empowerment. It also adheres to the principles of non-discrimination, confidentiality, provide information, support, decision-making, and value orientation.

In order to study ways to prevent and avoid domestic violence, researchers have developed specific theoretical concepts and methods, and the government has developed specific policies.

Mongolia is trying to implement a broad legal framework to fight domestic and family violence. For example, strengthening the accountability of perpetrators of domestic violence as a crime, as well as preventing recurrence of violence through compulsory training to work with them, providing the necessary behavioral and psychological counseling, and establishing a system to protect victims of violence. , to raise awareness and to foster a zero-tolerance attitude towards violence in society. However, domestic and family violence continues. These include:

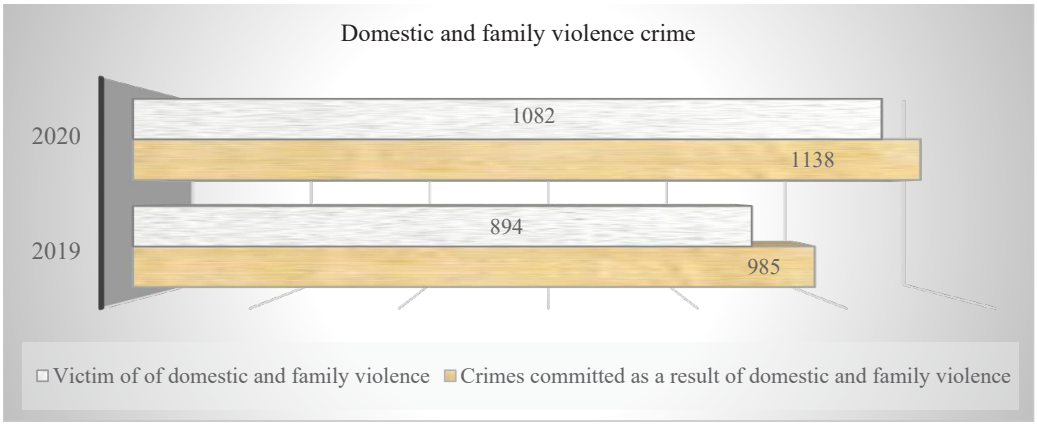
Figure 1.1. The domestic and family violence conflict of Mongolia



Source: https://1212.mn/BookLibraryDownload.ashx?url=domestic-violence_2020.pdf&ln=Mn

[5] Silky Meyer, Andrew Frost, *Domestic and family violence: a critical introduction to knowledge and practice*, New York, 2019, p.123

Figure 1.2. The domestic and family violence crime of Mongolia



Source: https://1212.mn/BookLibraryDownload.ashx?url=domestic-violence_2020.pdf&ln=Mn

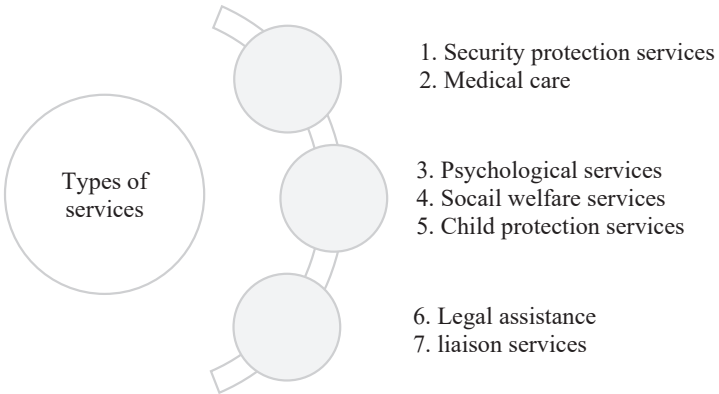
In Mongolia, from 2019 to 2020, the number of victims of domestic and family violence increased by 21 percent and the number of victims of domestic and family violence increased by 43.8 percent. Therefore, there is a need to protect victims of domestic and family violence and optimize the range of services provided to them.

The domestic and family violence victim services

A victim of domestic and family violence is a person who has suffered a violation of an inviolable interest. Victims of domestic and family violence have the right to seek protection from the authorities if their lives or health have been harmed or are likely to be harmed.

Services provided to victims of domestic and family violence can be divided into the following types. For example,

Types of services provided to victims of domestic and family violence



Services provided to victims are provided jointly by relevant organizations and officials, who are responsible for exchanging information about the services. When providing services to victims, the needs of children, the disabled, the mentally ill, pregnant women, and the elderly

must be considered. Each type of victim service can be considered differently. These include:

1. *Security protection services*. This service includes temporary shelter, one-stop service and other security measures[6]. The purpose of the temporary shelter service is to ensure the life, health and safety of the victim. The provision of temporary shelter services shall be based on the principles of ensuring security, maintaining confidentiality, ensuring the consent and participation of victims, and non-discrimination. Temporary shelters may be operated by governmental or non-governmental organizations. The location of the shelter is a secret[7]. The placement of the victim shall be based on the victim's request and the assessment of danger degree made by the police officer, the assessment of the situation by the social worker, the decision of the joint team and the decision to provide special protection for the child. For example, assess of danger degree to the life, health and safety of the victim of domestic and family violence. The assessment of danger degree included risk.

The assessment type of danger degree

Low rick of danger degree. Domestic and family violence perpetrator - a situation in which the victim meets without permission, tries to establish a relationship, suffers from depression, harms the child's upbringing, and puts economic pressure on the victim.

Medium rick of danger degree. Domestic and family violence perpetrator - a situation in which the victim and other family members are threatened, oppressed, pursued or persuaded.

High rick of danger degree. Domestic and family violence perpetrator - a situation in which the real threat to the life of the victim, his children and other family members, inflicted bodily harm, or may cause, violence escalated, under constant pressured, violent - uses or may use a foreign object or firearm, alcohol, drugs or psychotropic substances, the victim is a minor, disabled, elderly, pregnant or self-defense is limited for other reasons.

A police officer will assess the severity of a case for a victim who has repeatedly received calls and information of domestic and family violence on a case-by-case basis.

The social worker's assessment of the situation in cases of domestic and family violence[8] takes into account the police officer's of danger degree. A situational assessment is to identify solutions to problems faced by clients, children and families factors related to the issue a comprehensive study of their personal, social, and environmental backgrounds[9]. This assessment is evaluated by a legal organization on the level of evidence. In addition, the assessment consists of a review, risk identification and evaluation step.

One-stop services are provided to victims of domestic and family, sexual violence or to those who are at risk of potential violence[10]. For example, the social worker at the one-stop service center will provide the victim with the necessary services in a short time and mediate in medium and long-term rehabilitation.

2.*Medical care*. This is a comprehensive process of diagnosing, treating, nursing, facilitating, and rehabilitating illnesses, injuries, and functional disorders based on modern and traditional medicine. The types of medical care provided to victims are as follows:

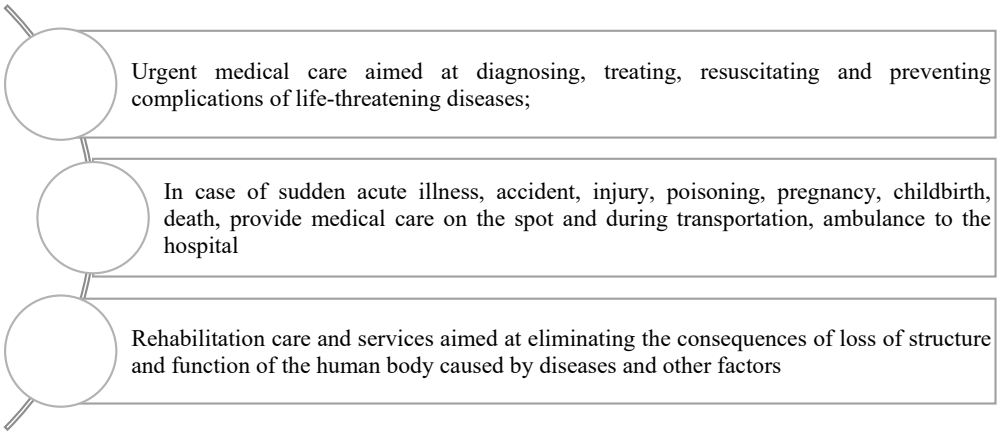
[6] Family violence combating law of Mongolia, 2016, Art.34

[7] Procedures assessment of danger dagree, Mongolia, 2017

[8] Laura Richards, Simon Letchford., *Policing domestic violence*, Oxford University Press, 2008, p.50

[9] The situation assessment procedure of Mongolia, 2017

[10] Procedures for providing and financing one-stop services of Mongolia, 2017



Medical professionals provide medical care on domestic violence affected physically, emotionally and sexually to detect to protect the life and health of the victim. For example, in the course of providing medical care, the medical staff shall identify the victim, inform the police, and record and document the cause of the victim's injuries and illness[11].

3.*Psychological services*. Psychological services for victims are divided into two categories: psychological counseling and psychological services[12]. Psychologists provide the following services to victims. These include:

- to evaluate the victim's psychological and physical condition and determine further psychological services
- to provide basic sedative counseling
- to make relevant assessments of the victim's health and physical condition and, if necessary, to issue conclusions and evidence
- to involve the victim in necessary short-term and long-term psychological services
- to provide psychological education and services appropriate to the stage, taking into account the specific needs, harm and mental trauma of each victim
- to prevent the victim from re-injury[13]

If necessary, psychological counseling is provided to the victim's family members. In addition, psychiatric care is provided to victims of acute psychological reactions and mental and behavioral disorders. For example, anxiety disorders, anxiety disorders, sleep disorders, body shape disorders, depression and anxiety disorders, post-traumatic stress disorder disorders, adaptation disorders, transformation and division disorders, and metabolic disorders. Psychiatrists provide outpatient and inpatient psychiatric care to victims.

4.*Social welfare services*. Social welfare is an allowance provided to deteriorating health, family care, lack of care, independently, or can't live a normal life without the help of others, means the provision of pensions, benefits and special services by the state to citizens with special needs and family members who are in need of social welfare support and assistance in order to meet their basic needs. For example, counseling, to be included in rehabilitation services, temporary placement and protection of victims of violence, to be included in day service, to be included in home care and welfare services, to provide other social welfare services based on the needs of citizens and their families, to increase the confidence of the homeless citizen and his family members to live, socialize, document and place them in temporary accommodation, to teach life skills, to involve victims of domestic violence in temporary shelter services.

[11] Procedures for providing medical care to victims of Mongolia, 2017

[12] Procedures for providing psychological services to victims of Mongolia, 2017

[13] Procedures for providing psychological counseling to victims of Mongolia, 2017

5.*Child protection services*. Child protection consists of a wide range of comprehensive and specialized activities aimed at preventing and responding to all forms of neglect of every child, pressure, violence and exploitation of children in all social environments. Child protection response service is the process of identifying children at risk, assessing the situation, providing security, support, mediation, social adjustment, and reunification into the family[14]. Violence against children means intentional or unintentional neglect, sexual misconduct, corporal punishment, and emotional distress that cause harm to the child's life, health, development, or physical or emotional well-being of the child. Child protection activities can take place in many areas, including family, education, health, cyberspace, community events, and cultural and sports activities.

6.*Legal assistance*. Legal assistance to victims is classified as legal advice and advocacy services. Advocacy is the provision of professional legal assistance by a lawyer to protect the client's rights, freedoms and legitimate interests. An attorney has the following roles in litigation. These include:

- to collect and present evidence;
- to question a witness and request the appointment of an expert;
- to apply to the court to obtain documents necessary for the provision of legal assistance from citizens, legal entities and organizations without the rights of legal entities, and to use audio, video and audio-visual recording devices in order to strengthen the evidence;
- to receive advice and inquiries from professional organizations, individuals and legal entities on issues requiring special knowledge;
- to file a complaint related to the proceedings; comment on the client's position;
- to present the client's demands, objections, evidence and grounds;
- to get acquainted with the evidence, demands, objections and explanations submitted by the opposite party and other participants, and to give explanations to them;
- to get acquainted with the evidence of the case, to make copies of the necessary materials at his own expense;
- to request to postpone the judicial session and other issues;
- to be provided with possible time and conditions to prepare for the defense;
- to participate in court hearings; to reject a judge, a panel of judges, a citizen's representative, a secretary of a judicial session, an expert, a translator or an interpreter;
- to ask questions to participants in the case, their representatives, witnesses and experts;
- to examine the evidence;
- to get acquainted with the minutes of court hearings and other proceedings;
- to appeal court decisions and appeal court rulings;
- to apply for enforcement of a valid decision (decision, ruling, decree, judge's order) of a civil court.

Legal advice can be provided by phone or electronically.

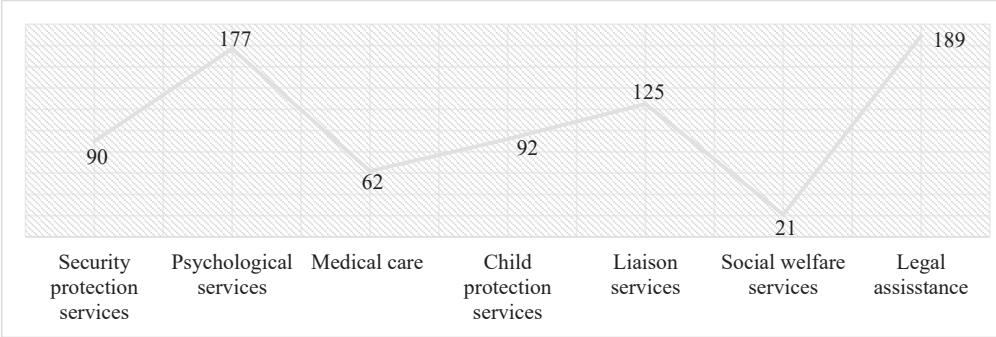
7.*Liaison services*. The purpose of the liaison service is to provide the victim with the necessary services, to protect their safety, to eliminate the negative consequences of the violence, to bring them back to normal, and to provide continuous support until the violence is over. There are four stages to a liaison process. For example: to study the victim's situation and needs, to explore the services and resources available to victims, to connect victims to protection, services, assistance and support, monitor service quality, provide feedback, and evaluate. The provision of liaison services to victims should take into account the risks posed by the perpetrator and ensure security. In addition, a code will be provided in the victim's file to ensure the victim's

[14] Child protection law of Mongolia, 2016, Art.5

confidentiality. Also, joint team members can provide domestic violence assistance individually or collectively.

The types of services provided to victims of domestic violence can be considered as follows. These include:

Figure 1.3. The services provided to victims of domestic and family violence of Mongolia



Source: Database of the National Center Again Violence of Mongolia, March-2021

Studies show that high-quality services provided to victims of domestic and family violence 189 people covered legal assistance, 177 people provided psychological services, and 125 people provided liaison services. For example, they have been involved in child protection services, provided financial support for education, and helped reunite children with their families. It also provides documentation for social welfare services, vocational guidance training, housing, and psychological rehabilitation.

At present in Mongolia, victims of domestic and family violence are mostly provided with legal assistance, psychological and liaison services. Furthermore, there is a need to improve the social protection services for victims of domestic and family violence.

Countries around the world continue to take measures to prevent and suppress domestic and family violence. For example,

Services	Medical care, security protection, health and referral, psycological services
	The aged rights service, financial assistance, legal advocacy, social welfare, liaison services
	Domestic violence line, child protection helpline, disability abuse and neglect hotline, elder abuse helpline, kids helpline

Source: Domestic and family violence services and support contact list[15]

Source: Domestic and family violence services and support contact list[15]

[15] https://www.facs.nsw.gov.au/domestic-violence/services-and-support/contacts/a z?fbclid=IwAR2K0ng92loZFNpD5-IckEMG2O9w-8FUMUAY1E_jyG2HRDbRdgnPtWaerLaI#1

As part of the prevention of domestic and family violence, efforts are being made to provide the necessary care and services to victims. These measures must form the necessary economic opportunities, material resources, human resources, food, health and legal services.

CONCLUSION

- There is a scientific basis for the theoretical study of the causes of domestic and family violence, disputes and ways to resolve them. For example, from a theoretical concept of view, it is more effective to study the relationships of family members together.
- The causes of family disputes are environmental, social and economic factors, and family relationships. For example, it should be noted that domestic and family violence is associated with the use of force, intimidation, threats, and pursuit to control and manage family members and partners.
- Domestic and family disputes are more likely to escalate into violence. As a result, family members are more likely to be victims. Victims of domestic and family violence should be provided with the necessary social services immediately.
- Currently, there are seven types of social services provided to victims of domestic and family violence in Mongolia. From these services, victims are more likely to receive psychological, mediation, and social welfare services.
- As part of measures to suppress and prevent domestic and family violence, it is important to study the experience of providing services to victims at the international level and to take the necessary measures as soon as possible.

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16. https://1212.mn/BookLibraryDownload.ashx?url=domestic-violence_2020.pdf&ln=Mn

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THE DEVELOPMENT OF THE CHINESE CRIMINAL JUSTICE SYSTEM

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ABSTRACT:

The criminal case and judicial system of the People's Republic of China are based on the experience of pre-Chinese sedentary citizenship and the Soviet Union. The situation has changed accordingly.

In general, before the reform and opening-up policy began, China's criminal justice system overemphasized the protection of collective human rights and, conversely, underestimated the protection of individual rights. Judicial Reform and Openness China's Criminal Justice System since 2000, the Chinese criminal justice system has gradually moved away from the Soviet Union in a bid to adapt to the concept of human rights, modern requirements, and global development.

KEYWORDS:

The criminal, justice system, development of the Chinese criminal

The basic criminal justice system in China was generally established in the early days of China's founding. Criminal law and principles of criminal procedure have been adapted from the experience of pre-establishment of China and the Soviet Union, and have altered adapting to China's domestic political influence and changes in the international situation at the time. In general, before the reform began with an open policy, China's criminal justice system paid too much attention to the protection of collective human rights and, conversely, underestimated the protection of individual rights.[1]

[1] Li Yuhua: 40 years of human rights protection in criminal trials: concepts, systems and details, "People's Court News", September 13, 2018 edition.

In China, the transition from human rule to the rule of law began in late 1978 with the adoption of reforms, but China's criminal justice system has not kept pace with the times. The protection of human rights in criminal proceedings has long lagged behind.

China's first criminal law, the Criminal Procedure Code, was enacted in July 1979 and came into force on January 1, 1980. The original criminal law essentially contained the principles of crime, the law of punishment, the principle of criminal equilibrium, the principle of punishment, and the humanity of reform. The first Criminal Procedure Code established the basic structure of the modern Chinese criminal justice system, ensured the implementation of Chinese criminal proceedings, reviewed cases, implemented the two-stage trial system, the people's jury system, and the death penalty. It is stated that In line with the planned economic system and centralized management model of the time, China's first criminal law and criminal procedure code contained a hint of power. The principle of sentencing in criminal cases has not been fully implemented since the first criminal law established an analogous system. China's first criminal law does not yet fully reflect the humanitarian nature of punishment. China's first criminal law still contains many inhumane factors in the punishment of human life, liberty, property, and professionalism. In terms of the death penalty, the death penalty is widely used in China's first criminal law, which is a common concept in Chinese criminal law.

Because the legislature was in the early stages of reform and openness, legislators lacked confidence in the rapid development of society and new trends in criminal crime, and the implementation of the Criminal Code and the Criminal Procedure Code was not fully up-to-date. The advanced concepts of the country's criminal justice system and the experience of countries governed by the rule of law have not been effectively absorbed. At the same time, it is clear that the country as a whole was not ready to deal with the situation, in which crime is on the rise. There is no doubt that reform and openness have led to a sharp rise in crime and a sharp deterioration in the public security environment. The original Criminal Code and the Criminal Procedure Code did not meet the goal of maintaining stability.

In desperation, the legislature passed a resolution in March 1982 "Strictly punishing criminals who have caused serious damage to the economy," thus implementing the principle of retrospective force in violation of the rule of law.[2] In September 1983, the legislature passed a resolution "On the severe punishment of criminals who posed a serious threat to public safety" (repealed on October 1, 1997) and "Criminals who pose a serious threat to public safety" The decision and decision on the order of the trial of the defendants without delay were adopted in 1997. The abolition of the "severe blow" measure, which was repealed on 1 January, has led to an increase in the death penalty and the imposition of severe penalties, in violation of the provisions of the original criminal procedure code.[3]

This "hard blow" operation began in 1983 and lasted for more than a decade. The basic principles of the "hard blow" process are the classification of substantive law and the principle of "faster than heavy" or "heavy" is the classification of substantive law, and "faster" is the legal classification of procedural law. The most common way to enforce this formal expeditious procedure was to abolish the trial of a criminal case. The " Joint office of the three chairmen, the public, the prosecutor, and the judiciary, headed by the political secretary of the local party committee," and the legal committee replaced the main trial and decided the issue of criminal liability directly for the accused. In order to expedite the Supreme Court's decision on major cases, part of its jurisdiction over the death penalty has been transferred to a supreme court. The Supreme Court abolished the death penalty procedure in some death penalty cases by merging the second-order death penalty procedure with the death penalty procedure. Thus, it was a time

[2] Editor-in-Chief Wang Zhenchuan: Resolutions of the Standing Committee of the National People's Congress on Institutional Reform of the State Council, "Yearbook for the New Era of China's Reform and Opening-up", 1982.

[3] Wang Zhenchuan, Editor-in-Chief: Decision of the Standing Committee of the National People's Congress on the Severe Punishment of Criminals Who Severely Disrupt the Economy, "China's New Era of Reform and Opening-up Yearbook", 1982.

of impunity in the Chinese criminal justice system. Most of the more influential criminals across the country have emerged for that time. During this period, the two foundations of the so-called " basic facts are clear and the basic evidence is finally confirmed ", the principle of sentencing, the principle of proceedings, and the criminal policy have long dominated the Chinese criminal justice system. As a result, China's criminal proceedings have had dire consequences. According to the "Report of the Supreme Court" held by the Chief Justice of the Supreme People's Court during the March 2018 National People's Congress, these unfair trials lasted for the last five years and were reviewed and resolved.[4]

With the establishment of the socialist government and the establishment of the rule of law and the establishment of the constitutional government, China has made a number of amendments to the Criminal Code and the Criminal Procedure Code. happened. In 1997, China revised its first criminal law to repeal the analogy system and anti-revolutionary crimes. Subsequently, nine amendments to the Criminal Code made the 1997 Criminal Code more sophisticated and reasonable. Prior to the 1997 revision of the Criminal Code, all criminal laws, including the Chinese Penal Code, had 71 death sentences. In 1997, the Criminal Code slightly reduced the number of death sentences to 68 types of death sentences. Amendments to the Criminal Code (8) in February 2011 abolished 13 types of the death penalty for crimes, while amendments to the Criminal Code (9) in August 2015 further reduced the death penalty for crimes and eliminated nine types of the death penalty. as a result, the Criminal Code left 46 crimes punishable by death, while raising the death penalty threshold. "Criminal offenses" have been replaced by "Intentional offenses" with the addition of a "disgusting circumstance".

Such limited use of the death penalty has become a central tenet of China's criminal justice system. In 2017, lawmakers approved an amendment to the Criminal Code (10) that would not impose the death penalty on people over the age of 75 and would penalize drunk driving. On December 26, 2020, the Standing Committee of the National People's Congress (NPC) approved the "Amendment to the Criminal Code of the People's Republic of China (11)" to reduce the age of criminal responsibility for minors to 12 years. Strengthen the protection of minors, in particular the penalties for sexual assault, the prevention and control of epidemics, the increase in the number of high-altitude incidents, the increase in the number of bus drivers, and the increase in the number of fraudulent crimes. Growth and the revision of regulations to combat intellectual property crime have effectively reflected the real need for justice and fair humanitarian care, laid the foundation for the proper prosecution of future crimes, and effectively supported the maintenance of social harmony and stability.[5]

The 1996 Criminal Procedure Code incorporates the basic concept and requirements of the presumption of innocence, stating that "the law prohibits the finding of guilt by a people's court without a decision." Another manifestation of the 1996 Criminal Procedure Code, which protects the rights of suspects and defendants in criminal cases, is that lawyers participate in pre-trial hearings, which has improved the system of enforcement of criminal proceedings. At the same time, the protection of victims' rights has been strengthened and their legal status has been expanded from plaintiffs to litigants. The Supreme Court and other supreme judicial bodies require that legislatures throughout the country do the work of rescuing victims of crime. The 1996 Criminal Procedure Code, which was amended to highlight the key role of the judiciary, changed the way the trial was conducted, creating a hostile ideology, but these reforms have not been effective in judicial practice. During this time, unjust crimes continue to occur.

The revision of the Criminal Procedure Code of the Republic of China in 2012 marked a major step forward in reforming China's criminal justice system and protecting human

[4] Zhou Qiang: Work report of the Supreme People's Court, "Communiquй of the Supreme People's Court of the People's Republic of China" March 9, 2018.

[5] Zhao Bingzhi, Yuan Bin: "Criminal Law Amendment (11)", "Research on the Criminal Law", Issue 2, 2021, pp. 45-54.

rights. The new version of the Criminal Procedure Code adds the general principles of "respect and protection of human rights", revises the rules of evidence, coercive measures, defense procedures, investigations and trials, and protects the rights of criminal courts and participants in court hearings. The judiciary is responsible for ensuring public safety, limiting the powers of the prosecutor's office, and protecting the rights of litigants.

The biggest impact of the amendments on 2012 to the Criminal Procedure Code is the real shift from the principle of presumption of innocence to the principle of benefiting unprincipled judges to Chinese criminal justice practice. Since the enactment of the revised Criminal Procedure Code on January 1, 2013, a number of criminal cases have been acquitted by the courts on the grounds that there is insufficient evidence and no criminal record has been established.

On August 22, 2014, the Supreme Court, the Supreme Prosecutor's Office, the Ministry of Social Security, and the Ministry of Justice held criminal trials in some areas to intensify litigation. In this way, in addition to the original simplified procedures and simple simplified procedures, the addition of accelerated procedures has improved the capacity of the courts to resolve accumulated cases.

In 2015, a reform of the quota system for legal officials was implemented across the country to determine the fairness of the judiciary. Legal staff will be subject to strict control by 39% of the staff in government ministries and central law enforcement agencies, and will be selected through a rigorous selection of qualified judges to ensure the quality of judges. Upon taking office, a judge shall be responsible for the quality of the proceedings within the scope of his or her responsibilities for the performance of the judicial session. In addition to implementing independent work for judges, the level of professionalism of judges needs to be improved in order to promote a more neutral position, independent thinking and fair judgment. Following this reform, the quality of China's criminal justice system has improved.

In October 2016, five supreme judicial bodies, including the Supreme Court, issued a "Proposal to Promote Judicial-Centered Criminal Procedure Reform" and sought to establish a "judicial-centered criminal justice system" that would effectively enhance the status of the judiciary. The status of social security and the prosecutor's office was reduced.

The essence of the reform of the "court-centered criminal procedure" lies in the reality of the trial. The factual nature of the trial means that the facts of the case, the admissibility of the evidence, the conviction and the sentence must be determined by the trial, so that the trial can play an important role in the case. The long-held notion that " a judge does not judge, a defendant does not judge" needs to be changed and the trial formalized. It is unlikely that a prosecutor or attorney will be able to rectify the situation by reviewing the file of the judge while attending the trial.

The two pillars of the reform of the "court-centered criminal justice system" are the principle of evidence-based judgment and direct speech. Evidence-based trials require that the principle be based on evidence that has been verified and substantiated. Trials play an important role in the acceptance of evidence. The public prosecutor must be responsible for proving the legitimacy of the evidence during the trial. The principles of direct trial include direct trial and oral trial. The principle of direct trial requires that the judge who made the decision in the case hear the case in person, which means the abolition of the long-established system of approving cases in Chinese criminal justice. The principle of oral trial requires that witnesses, victims, and experts participate in the trial, conduct oral interrogations, and modify the trial. the trial was in fact canceled

Undoubtedly, the reform of the "judicial-centric criminal justice system" will have a significant impact on the judiciary. In this reform, it is normal to initiate an investigation to remove unconstitutional evidence, and it is common for the protection of evidence to be a new type of advocacy in the context of judicial centralization, and for protection against attacks to exclude illegal evidence. If the investigator fails to appear in court to explain the circumstances and the

court declares that he or she did not rule out the use of illegal methods of gathering evidence, the relevant evidence shall be rejected. The method of reading the evidence has gradually changed, and the controversy in the courtroom has intensified.

In February 2017, the Supreme Court's "Proposal for the Comprehensive Promotion of the Judicial-Centered Criminal Procedure Reform" stated: must meet the standards to be formed. It is not allowed to draw conclusions that violate the law due to pressure from public opinion, assumptions, petitions, etc. "It's clear that it has a role to play in promoting crime prevention and judicial practice," he said. The Supreme Court also stated that "the principle of procedural fairness shall be observed and the actual fairness of court decisions shall be implemented through court hearings. Evidence of the trial, identification of the evidence, protection of the right to the court, presentation of the evidence of the trial to the court, review of the facts of the case, publication of the complaint to the court, decisive role in making a fair decision, etc. All of them will appear in court. "

In June 2017, the Supreme Court approved three regulations to deepen the actual reform of the judiciary. For example, "CItizen's Court Rules of Preliminary Criminal Procedure (Experimental)", "Citizen's Court Rules on Abolition of Illegal Evidence Procedures (Experimental)" and "Criminal Procedures of First Instance" The Citizen's Court Procedure of Investigation (pilot trial)" was issued, which provided the impetus for a real change in the judicial process.[6]

In August 2017, the Supreme Court, the Supreme Prosecutor's Office, the Ministry of Social Security, the Ministry of National Security, and the Ministry of Justice jointly introduced the legal aid duty procedure. In October 2017, the Supreme Court launched an experiment by the Ministry of Justice to fully cover the defense of a lawyer in criminal cases, thereby attempting to make criminal protection a necessary luxury product for lawyers.

In April 2018, the Law on the Citizen's Oath was adopted to ensure the fair participation of the people and to promote judicial justice. On October 26, 2018, the legislature approved the latest draft amendments to the Criminal Procedure Code. The amendment includes provisions for the establishment of a primary criminal justice system, for the improvement of the system of mitigation of punishment in criminal cases, and for the increase of expedited procedures.

As China's reform and openness resumes and the judicial system continue to advance, China's criminal justice system is increasingly reformed. The Soviet-era assassination of China's criminal justice system is slowly moving away from the idea of human rights, to the demands of the times, and to bringing the world back into line with social development.

[6] Dai Changlin: The basic ideas of the three procedures of pre-trial meeting, illegal evidence exclusion, and court investigation, Evidence Science, Issue 5, 2018, pages 519-521.

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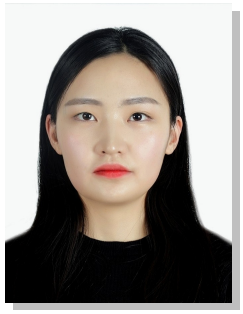
PUBLIC FAITH IN COMMERCIAL REGISTRATION



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ABSTRACT:

The commercial register is a publicly accessible directory in which all important data on merchants are listed in order to present their business activities in a comprehensible manner for customers and potential business partners. A company only counts as a company once it has been entered into the state register and is subject to the provisions of the laws of Mongolia. The commercial register should not be confused with the state register of legal entities. In this article, differences between these two registration systems are identified, and will introduce the specific regulations of the commercial register.

KEYWORDS:

Commercial register, state register, commercial transactions, merchant, declarative, constitutive, publicity, positive publicity, negative publicity, faith, third party, protection

Commercial law is a branch of civil law and includes the laws regulating the rights and relations of persons engaged in a trade or commercial pursuits.[1] The commercial register provides information on certain legal facts that are of interest for legal transactions in connection with commercial transactions.[2] This serves to ensure the security of business transactions because the commercial register reveals the legal relationships of merchants and can be viewed by everyone.

1. Functions of the commercial register

Some principles of commercial law are involved in every business transaction. Any registration has declarative (declaring), constitutive (creating) consequences or sometimes both. In some cases, the legal entity does not acquire legal capacity prior to registration, that's the constitutive consequence. A constitutive effect arises from a company not acquiring legal capacity until they are entered into the commercial register. However, information entered in the commercial register usually has declarative consequences. In other words, registration in

[1] Ralph E.Rogers, Clyde O.Thompson. 1921. Gano`s commercial law revised. American book company, page

[2] Peter Jung , Handelsrecht (Lernbьcher Jura), 8th edition, 2010, page

a commercial register does not change the legal status of a legal entity, it is only subject to notification to a third party.

The main purpose of the commercial register is to create the publicity[3] required for commercial transactions about facts that are subject to registration. The entry in the commercial register is publicly available, as potential business partners and customers should be given the opportunity to find out about the business situation of a company in advance. This means that third parties can also view your entry in the commercial register. The very presence of the entry suggests a high level of professionalism and creates a bonus of trust because the entry in the commercial register is associated with strict regulations. The entry in the commercial register serves as proof of the existence of the company, especially for foreign business partners. Conversely, merchants also use the commercial register to search for entries from their potential business partners. The commercial register is also used for control, protection and evidence function. In order to achieve this goal, it is absolutely necessary that legal transactions can rely on the correctness and completeness of the commercial register. If it is not possible to rely on information in a commercial register, it will not be able to facilitate business transactions.

Only the state registration database of names is available to the public in Mongolia, and it does not disclose to the public whether the legal entity is still operating or has debts. As a result, there are cases of concluding contracts and borrowing goods in the name of a company that is only on insolvent paper. Therefore, entering into a business transaction with an unauthorized person without checking whether the person has the right to represent the company may result in the transaction being annulled later. It is not clear who is responsible for the consequences of incorrect registration, whether the responsibility of the registration authority, the unregistered merchant, or the third party who entered into the transaction. Accordingly, there is no clear regulation on the protection of third parties who believe the information in the state register, and revocation by the registration authority undermines the stability of the business relationship.

Since the commercial register is a public directory that can be viewed by everyone, it has a publicity effect and thus creates a legal consequence. Depending on whether a certain fact is entered in the commercial register or not, a distinction is made between negative and positive publicity. Negative publicity protects the trust in the non-existence of unregistered facts, while positive publicity concerns the confidence in the correctness of the existing entries. The information in the registration may not be used against the merchants who entered their information correctly. The merchant can save himself numerous unpleasant problems by entering and announcing a registrable fact to the commercial register. Business partners also can protect themselves by using the information on commercial register.[4] Therefore, the merchants are obliged to register their information correctly and check whether it is accurately uploaded in the registration. Disclosure of certain business information is important to ensure the safety, speed, and reliability of commercial transactions.

The commercial register is also used for state control, because the registrar checks whether the facts or legal relationships to be entered have been justified in accordance with the law. Since an extract from the commercial register is reliable, it provides an appearance of evidence. It makes it easier for the merchant to provide evidence about facts that may be a prerequisite for certain facts.

[3] Publicity means “announcement in public”.

[4] Seiichi Ochiai, The Elements of Corporate Law, translated by Purevbaatar.R, Ulaanbaatar , 2017, page 47

2. Examples of commercial registration

German

German Commercial Register (=Handelsregister) is a public directory that keeps entries about the registered merchants in the district of the local district court and that provides information about the documents stored there.[5] The commercial register provides information on essential legal and economic circumstances (= facts) of merchants and companies and can be viewed by anyone. The German commercial register consists of two parts. Section A includes sole trader, general partnership (oHG), limited partnership (KG), European Economic Interest Grouping (EEIG) , and other legal entities. Section B includes legal entities with share capital. Such as stock corporation (AG), partnership limited by shares (KGaA), limited liability company (GmbH), mutual insurance association (VVaG), mutual pension fund association (PVaG).[6]

Section A of the commercial register shows legal form and seat of the company, owner or partner of the company plus power of representation, the amount of the limited partner's contribution of limited partnerships, appointment or dismissal of authorized signatories, a possible exclusion of liability in the event of a business takeover, opening, suspension or cancellation of insolvency proceedings, dissolution of society, termination of the company, managing directors, their powers and the members of the association are registered for the European economic interest group. Section B of the commercial register shows seat, legal form and purpose of the company, appointment or dismissal of authorized signatories, opening, suspension or cancellation of insolvency proceedings, dissolution of society, termination of the company for all companies. [7] Therefore, legal entities are obliged to register these facts. This obligation to register can be enforced ex officio with penalties.[8]

Companies may be required to disclose their annual financial statements in the electronic Federal Gazette. This disclosure obligation is intended to enable the public (business partners, creditors, shareholders, etc.) to obtain information about the economic situation and the performance of a company. This is to guarantee the protection of creditors and the functionality of the market. The Federal Gazette is an official gazette that is kept in electronic form and can be found on the website. [9]

The commercial register performs the functions of publication, evidence, control, and protection. Therefore, everyone can inspect the commercial register and documents submitted there in accordance with Article 9 (1) of the German Commercial Code. Data protection does not restrict this right of inspection.[10] In particular, there were a number of objections regarding the inspection of the annual financial statements corresponding to the disclosure obligation, all of the objections were rejected by the Bonn Regional Court. [11,12] The Federal Constitutional Court also rejected the appeal.[13]

By making it accessible to everyone, a commercial register not only ensures the speed and security of commercial transactions but also protects third party`s faith in the register. The commercial register provides important information about the legal and economic situation of businesses and companies. People can view and inquire about the activities of merchants

[5] Commercial Code in the revised version published in the Bundesgesetzblatt (BGBl., Federal Law Gazette), https://www.gesetze-im-internet.de/englisch_hgb/englisch_hgb.html

[6] Official Information Portal of the German Commercial Register, https://www.handelsregister.de/

[7] Official Information Portal of the German Commercial Register, https://www.handelsregister.de/

[8] Commercial Code in the revised version published in the Bundesgesetzblatt (BGBl., Federal Law Gazette), https://www.gesetze-im-internet.de/englisch_hgb/englisch_hgb.html, section 14

[9] Official Information Portal of the German Bundesanzeiger (German language), eBundesanzeiger.de

[10] Gerhard Lьke : Register view and data protection , NJW 1983, 1407

[11] Christian Starck , Balance Sheet Disclosure and Data Protection The German Tax Law, 2008, p. 2035

[12] LG Bonn, decision of June 30, 2008 - 11 T 48/07

[13] BVerfG, January 30, 2006 - 1 BvR 2126/05

and their partners through the registration website[14] or by contacting the office in charge. The Register Procedure Acceleration Act (Registerverfahrenbeschleunigungsgesetz) 1993 created the opportunity to keep the commercial register in electronic form. Since 2007, the commercial register has been kept completely electronically. [15] Both the transmission and submission of registration and storage of information carried out by electronic systems.[16] Information about the registered merchant can be downloaded online from the registration website.[17] For some purposes (e.g. submission to foreign authorities) one printout is not sufficient and an apostille by the president of the local court or regional court or certification by the Federal Office of Administration and legalization may also be required. Anyone can also request a reference from the commercial register. A simple document usually costs 10.00 euros, and a notarized document costs 20.00 euros (as of May 2016). The information is available in PDF format and on CD, and costs € 4.50 per print page. Ordinary articles (Veruffentlichungen) are free.[18,19] The legal and technical principles of register are governed by Sections 8-12 of the Commercial Law and the Commercial Register Ordinance (Handelsregisterverordnung).

Publicity effect of the Commercial Register

As previously discussed, the commercial registration's main purpose is to clarify the legal relationship associated with commercial activity. Article 15 of the German Commercial Code distinguishes between positive and negative publicity of registration. It stated that "As long as a fact required to be entered in the Commercial Register has not been entered and published, the person in respect of whose affairs it ought to have been entered cannot invoke it against a third party unless the third party knew of such fact" on Article 15.1 of the Commercial Law. This negative publicity ties in with what is not in the register. For example, the power of attorney has been withdrawn from an authorized officer. The managing director forgot to register this fact in the commercial register. The former authorized signatory continues to appear there as an authorized signatory. Contracts concluded by this former authorized signatory are therefore still binding on the company. In the case of correct entry but the incorrect publication of a fact that is subject to registration, a third party can invoke the fact that has been published incorrectly unless he was aware of the inaccuracy. This also applies if facts are incorrectly entered and therefore incorrectly disclosed.

Positive publicity is related to what is in the register. A third party can rely on the truth of submitted information on the register (for example: the power of attorney, revocation, liquidation of a company, shareholder status, shareholder representation, etc). If a fact is correctly entered and published in the commercial register, a third party cannot claim that he did not know the fact. Exceptions are legal acts that were carried out within 15 days of the announcement. The document obtained from the Commercial registration has the function of proof, as it is a public document specified in Article 415 of the German Civil Procedure Code.[20]

In article 15.3 of the same law stated that "where a fact required to be entered has been published inaccurately, a third party can invoke the published fact vis-a-vis the person in respect

[14] Official Information Portal of the German Commercial Register, https://www.handelsregister.de/

[15] Law on the Electronic Commercial Register and Cooperative Register and the Company Register (EHUG) of November 10, 2006, Federal Law Gazette I, p. 2553. Library of the Federal Court of Justice legal materials, accessed on July 23, 2018

[16] Commercial Code in the revised version published in the Bundesgesetzblatt (BGBl., Federal Law Gazette), https://www.gesetze-im-internet.de/englisch_hgb/englisch_hgb.html, section 12

[17] Official Information Portal of the German Bundesanzeiger (German language), eBundesanzeiger.de

[18] Official Information Portal of the German Commercial Register, https://www.handelsregister.de/

[19] "Commercial Register from Germany (english)". commercial-register.com.

[20] Code of Civil Procedure as promulgated on 5 December 2005 (Bundesgesetzblatt (BGBl., Federal Law Gazette) , https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html

of whose affairs the fact was entered, unless the third party knew of the inaccuracy".[21] In other words, if the information on registration is disclosed to the public with incorrect content and a third party enters into a transaction without knowing that the statement is incorrect, that party has the right to use the information in its disclosed form.

Therefore, if the business information changes, merchants should immediately update the information in the Commercial register, and after making the change, they should also check whether the information is written correctly. The principle of trust protection set forth in Article 15 of the Commercial law does not apply to documents that do not require or can be registered. Positive and negative publicity only applies to documents that are required to register.[22]

Japan

The purpose of Commercial Registration Act (商業登録法) is to maintain the credibility of trade names, companies by establishing registration for publicly stating certain matters of a merchant stipulated in the Commercial Code.[23]

The general principles of commercial registration are established in Chapter 3, Articles 8-10 of the Commercial law. The items to be registered in the commercial registration refer to those specified as matters to be registered by the Companies Act, the Commercial Registration Act or other law. The registered items are different for each type of commercial register, and the registered items of each type of register are organized as "wards" for the same type. In terms of registrable facts are divided in two sections "mandatory registration facts or obligations" (絶対的登記事項） and "voluntary facts of the parties" （相対的登記事項). [24] For example, according to Article 911.3 of the Companies Act, in order for a joint-stock company to be considered established, it must be registered at the location of the main branch. In this case, registrable facts are 1. Purpose, 2. Company name, 3. Location and address of fixed and branch, and 4. Amount of fixed assets.

Principles to protect the faith

Seiichi-Ochiai`s Elements of Corporate Law[25] explains the legal implications of commercial registration in Japan as follows. Article 9.1 of the Commercial Law and Article 908.1 of the Company Act essentially contain "general legal consequences of the commercial register". The first part of Article 9.1 of the Commercial Law and the first part of Article 908.1 of the Company Act stipulates that the matters to be registered may not be asserted against a third party in good faith until after the registration. That's considered as the negative publicity effect of the commercial register. The last part of Article 9.1 of the Commercial Law and the last part of Article 908.1 of the Company Act stipulates that the same applies even after the registration if the third party had a legitimate reason for not knowing that the information was registered. The effect of being able to counter a third party in good faith after the matters to be registered has been registered. Its positive publicity effect of the commercial register. As mentioned above, this regulation is intended to create an incentive for registration, so it is sufficient to immediately understand that you do not have the right to make a claim against facts published in the register.

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[21] Commercial Code in the revised version published in the Bundesgesetzblatt (BGBl., Federal Law Gazette), https://www.gesetze-im-internet.de/englisch_hgb/englisch_hgb.html, section 15

[22] Friedrich Schade: Publicity effects of the commercial register (Google Books) In: Wirtschaftsprivatrecht - Basics of civil and commercial law . Kohlhammer Verlag . S. 189. 2009. November 26, 2015.

[23] Commercial Registration Act of Japan, Act No. 125 of July 9, 1963, http://www.japaneselawtranslation.go.jp/law/detail_main?re=&vm=2&id=1863

[24] Masao Yanaga, Legal Mind, General Rules of Commerce and Commercial Act, 2nd revised edition, 2014 он, 2014, page 24, 弥永真生「商法総則・商行為法」、第2版補訂版、2014年、24頁

25 Seiichi Ochiai, The Elements of Corporate Law, translated by Purevbaatar.R, Ulaanbaatar, 2017, page 48

Article 9.2 of the Commercial Law and Article 908.2 of the Company Act stipulate that a person that registers false information intentionally or through negligence may not assert the falsity of that information against a third party in good faith. Even if the matter to be registered is substantive, it cannot be countered by a well-meaning third party before registration. The main difference between this regulation and Article 9.1 of the Commercial Law and Article 908.1 of the Company Act is that it is intended to protect the credibility of a person who believes that the registration is true. However, the law does not directly or unconditionally protect the trust of the person who believes in the existence of unrealistic information. In this case, the suspension shall be dealt with in accordance with the principle of deprivation of the right to suspend, and if the third party did not know or could not know that the information in registration was fair or unrealistic, the merchant shall not have the right to make a claim about such a case.

Commercial registration will also produce some special effects, some of which will generate new legal relationships, and some will make it subject to strong protection. For example, once a business name is registered, it will generate exclusive use rights and exclusive rights in the region, and it can also prevent unfair competition. For example, Article 19 of the Commercial Law stipulates: "In the same city, town or village, it is not allowed to operate the same business while registering a business name that has been registered by others." Identical or similar-sounding names are not included in the register in order to avoid the risk of confusion.

There are two main ways to disclose a commercial register to the public. First, there is a way to provide registration information based on a request from a related party, and second, there is a way to make it available to the public as a whole. [26] Japan used to provide registration information at the request of related parties, but under the revised version of the 2004 Commercial Registration Act, now it is possible for anyone to obtain an official copy of the information document from registration. Articles 10 and 11 of the Law on Commercial Registration provide regulations about this, and information can be obtained for a fee using the Registration Information Distribution System.[27] According to Article 10.1 of the Law on Commercial Registration, any person has the right to request confirmation of the information recorded in the registration book with a service fee. [28] Article 11 of the same law provides that any person has the right to make a request for issuance of a document that contains a summary of the registration items recorded in the register with service fee. Unless otherwise prescribed in an Ordinance of the Ministry of Justice, a request for issuance of a certificate of registered matters set forth in the preceding paragraph may be filed with the registrar of a registry office of another jurisdiction.

3. Differences between commercial registration and state registration of legal entities in Mongolia

Anybody may acquire assets that are material wealth, and intellectual values, that are non-material wealth, as well as rights, earned by means not prohibited by law or conflicting with commonly accepted behavioral moral norms. [29] However, participants of civil legal relationships are prohibited to undertake activities harmful to others, limiting freedom of market relations, illegally taking advantage of legitimate advantages while enjoying their own rights or fulfilling obligations.

The principle of exercising rights and responsibilities without any restrictions is intended to prevent and protect civil legal relations from any obstacles. Therefore, any activity or acquisition of legal capacity is based on law and state registration. The state registration system in Mongolia

[26] Isao Kitai, General Rules of Commerce and Commercial Acts Connected to Civil Law , 2nd Edition, 2013, 157 page, 北居功『民法とつながる商法総則・商行為法』(2013)、商事法務, 157

27 Official Information Portal of the Japanese Commercial Register , https://www1.touki.or.jp/

[28] Commercial Registration Act of Japan, Act No. 125 of July 9, 1963, http://www.japaneselawtranslation.go.jp/law/detail_main?re=&vm=2&id=1863

[29] Civil code of Mongolia § 83, State information, Ulaanbaatar, 2002, №7

consists of the state registration of citizens, the state registration of legal entities, and the state registration of property rights. [30] In Mongolia, there is no general law that regulates commercial activity. Therefore, the conditions and requirements for starting, ending, and conducting business are stipulated by several laws. In particular, the Law on Registration of Legal Entities is aimed at imposing certain obligations on merchants in order to protect the public interest.[31]

Legal entities shall have the rights and liabilities with registering in State Register, and terminating upon its liquidation according to law or its deletion from the State Register.[32] According to the General Law on State Registration, "state registration of legal entities" refers to registration activities provided by laws and related to creation, change and termination of rights and obligations of legal entities.[33] The types and forms of organizations are specified in the law, and the principle of "numerus clausus" applies in this relationship according to article 7 of the Civil Code of Mongolia and the Law on State Registration of Legal Entities. Therefore, it is possible to establish only the types of entities specified in the law.[34] This shows that the state registration of a legal entity has constitutive legal consequences. In other words, legal capacity is not acquired before registration of a legal entity, and registration has the effect of creating or revoking rights. State registration of a legal entity is a registration activity specified in the law related to the creation, change and termination of rights and obligations of a legal entity. The company`s independent and active operations will be effective only if it has full legal capacity and competence under market conditions. Therefore, it is important to expand the capabilities of the participants in civil legal relations.[35]

The participants of the survey on the regulation of commercial legislation rated the level of trust between the parties of contract as below average.[36] Business owners also responded that contracts and agreements were likely to not be properly enforced and that there were many cases of changes, cancellations, and non-compliance since their establishment. The protection of a third party who has entered into a transaction due to incorrect registration of a legal entity is not clearly regulated by law. Resolving these issues in accordance with the basic principles of the Civil Code has the effect of slowing down business activities, increasing costs, creating instability in contracts and disputes.

The current version of the General Law on State Registration, and a new version of the Law on State Registration of Legal Entities provides for the disclosure of certain information to the public. This has been reducing the reliability and security and costs of transactions. Despite significant changes, issues related to the registration of legal entities have not been fully resolved.[37] The registration information of a legal entity does not provide information on whether the company is operating stably, whether it has tax liabilities, and whether it is solvent. The fact that only legal grounds are available to the public makes it difficult to obtain information about business partners.

[30] General law on state registration§ 5.2, State information, Ulaanbaatar, 2018, №28

[31] Banzragch.G, Economic of administrative law,Ulaanbaatar, 2013, page 143-144

[32] Civil code of Mongolia § 26.1, State information, Ulaanbaatar, 2002, №7

[33] General law on state registration§ 3.1.3, State information, Ulaanbaatar, 2018, №28

[34] Enkhzul.D, Regarding some legal issues of private law organizations without legal status, and the cooperative established under the cooperation agreement, Ulaanbaatar, 2017, http://elbpartners.mn/post/2607

[35] Jambaldorj.O, Civil code of Mongolia (general grounds), Ulaanbaatar, 2012, page 126

[36] Business owners position on the regulation of commercial legislation, research report, Hans Seidel Foundation / Academy of Legal Education, 2020

[37] Commercial Law Research, Hans Seidel Foundation / Academy of Legal Education, 2019, page 9

	Commercial register	State registration of legal entities in Mongolia
Legal consequences	Declarative, constitutive	Constitutive
Inquiry and information	Open	Information specified by law shall be provided upon request.
Content	Merchants that are specified in law or can enter register voluntary basis.	Only legal entities regardless of their form are required to be registered in order to operate.
Principles of faith protection	Implemented.	There are no special regulations.
Registration of a sole trader	register	not register
To register a business entity established in the form of a legal entity	register	register
Registration of organizations without legal entity rights	register	not register

Table 1 Differences between commercial registration and state registration of legal entities

The lack of a system for registering sole traders and non-legal entities makes it impossible to fully comply with the principle of reliability and security of commercial transactions. Therefore, there is a need for a registration system that covers all business entities and merchants. Even if a legal entity is registered, it's hard to know about operational and financial information about the company and it does not help to ensure security of transactions.

4. CONCLUSION

Merchants enter into a relatively large number of transactions within the scope of their activities. Therefore, there is a need for legal regulations to facilitate and expedite commercial activities. On the other hand, merchants take some responsibilities because they perform professionally and take advantage of business activities.

The commercial register is a public register and is used for the publication of facts that are important for commercial transactions. The main purpose of the commercial registration system is to make commercial transactions secure by disclosing business information. Therefore, it is important that everyone is able to inspect the commercial register. The information recorded in the commercial register is intended to protect legal transactions. Every user can trust that all information in the commercial register is correct and that there are no facts that have not been disclosed. In other words, if the information on registration is disclosed to the public with incorrect content and a third party enters into a transaction without knowing that the statement is incorrect, that party has the right to use the information in its disclosed form. The merchant is also protected by the entries in the commercial register. As long as a fact is entered in the register, the merchant can rely on the fact that a third party must accept the fact in the commercial register.

It hasn't been long after Mongolia adopted the current Civil Code, but the social and economic situation has changed significantly since 2002. Businesses have expanded to an unprecedented extent. Following this, the question of the compatibility of the basic provisions of the Civil Code with the regulation of business activities has attracted the attention of researchers in recent years. A working group has been set up to further improve the legal framework for commercial activity and to develop separate legislation. As part of private law reform, the question of which form of registration will be introduced in Mongolia will be a matter of urgency in the near future. It is important to choose a method of full disclosure of information to the public, when introducing either registration system in Mongolia. The implementation of an open registration system for business information will ensure the security, speed, and reliability of commercial transactions and reduce costs.

REALIZING THE HUMAN RIGHTS OF PEOPLE WITH INTELLECTUAL DISABILITIES IN THE RESIDENTIAL INSTITUTIONS

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ABSTRACT:

As the human rights of people with intellectual disabilities is an evolving concept, recent development in this field challenges the very existence of residential institutions. This movement has been stimulated by the adoption of the Convention on the Rights of Persons with Disabilities. In the light of the Convention, the foundational principle on the enjoyment of legal capacity on an equal basis is seen as crucial for realizing the human rights of people with intellectual disabilities who are placed in residential institutions. It further emphasizes the deinstitutionalization of those groups of people and encourages community-based support services.

KEYWORDS:

Human rights, people with intellectual disabilities, legal capacity, residential institutions, non-discrimination.

INTRODUCTION

Everyone is entitled to equal human rights and freedoms without any discrimination. Even though this humble but essential principle has been widely recognized all over the world with the proclamation of the Universal Declaration of Human Rights[1], it still needs to be emphasized in the cases of people with intellectual disabilities. Despite the successful dominance of movements toward the realization of the human rights of people with disability over the past few decades, as a matter of international human rights law, people with intellectual disabilities are highly vulnerable to a wide range of human rights violations.

[1] Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1984) ('UDHR').

In particular, the residential institutions, which commonly accommodate people with intellectual disability, are still designed to separate them from the community and restrict their independent living. Within the residential institutions, there are specific risk factors that appear to cause human rights violations in relation to people with intellectual disabilities. Owing to their unique characteristic which differs from other people with disability, the legal capacity of people with intellectual disabilities is often restricted or limited, and sometimes denied by the residential institutions' interventions. These interventions include compulsory treatment, substitute decision-making and restrictive practices which lead to serious violations of human rights of people with intellectual disabilities.[2]

For that reason, the main task of this article is to support the idea of de-institutionalisation and emphasize the community-based support services for people with intellectual disabilities on the basis of the human rights model of disability which replaced an outdated medical model of disability. In order to clarify the above argument, this article will look at the UN Convention on the Rights of the Persons with Disability[3], while examining other relevant binding treaties, declarations, principles and documents of the UN Treaty bodies in relation to the human rights of people with intellectual disabilities.

The article is schematized as follows. Part I will look at the importance of the CRPD, which brought a paradigm shift from the medical model of disability to the human rights model of disability, while discussing the principles of legal capacity as the foundation of the treaty as a whole. Part II of the article will analyze the human rights issues of the people with intellectual disabilities who are housed in the residential institutions. In doing so, it will look at a specific case example of a person with an intellectual disability and make an effort to discuss human rights violations related to the case example.

PART ONE.
The Convention on the Rights of Persons with Disabilities, the catalyst for the para digm shift to human rights approach for people with intellectual disabilities

The term 'disability' has been conceptualized dominantly within the framework of the medical model of disability over a hundred years from the mid-nineteenth century.[4] In accordance with the medical model of disability, people with a disability have 'an impairment that needs to be treated, cured, fixed or at least rehabilitated.'[5] This model sees impairment as the limitation which secludes people with a disability from the effective participation in the social life.[6]

In terms of people with intellectual disabilities, they have been strongly affected by seclusion or isolation compared with other people with a disability. The historical background of how people with intellectual disabilities were treated by others gives some assumptions about this tendency. There have always been stereotypes against the social situation of people with intellectual disabilities and they were widely seen as 'feeblemindedness'[7] or 'changelings'[8]. It is also said that even though they needed protection, 'society also needed protection from them.'[9]

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[2] Rosemary Kayess and Phillip French, 'Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities' (2008) 8 Human Rights Law Review, 25.

[3] Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) ('CRPD').

[4] Jean Collins, 'From hospital to home: the drive to support people with intellectual disabilities in the community' (2015) 61 International Journal of Developmental Disabilities, 76.

[5] Theresia Degener, 'Disability in a Human Rights Context' (2016) 5, 35 Laws, 2.

[6] Ibid.

[7] Licia Carlson, 'Cognitive ableism and disability studies: feminist reflections on the history of mental retardation', (2001) 16 Hypatia, 124.

[8] C. F. Goodey, 'From natural disability to the moral man: Calvinism and the history of psychology', (2001) 14 History of the Human Sciences, 24.

[9] Licia Carlson, above note 7, 127.

Due to this discriminatory approach, along with the significant emphasis of the medical model of disability, many had been supporting the idea that those groups of people should be institutionalized for long-term care and support. Moreover, within the institutional structure, it has been common practice that people with intellectual disabilities are also excluded from other people with a disability and seen as main 'objects of pity and as burdens on their families and societies.'[10]

In brief, an outmoded view on people with intellectual disabilities was one of the principal justifications for a variety of restrictive services which are used for limiting their rights.[11] As a consequence, this non-human rights approach to lower the social status of people with intellectual disabilities significantly affects their very nature of being human. Therefore, it is often argued that "if there is one group which has historically been denied the dignity and value attached to the status of being human it would have to be people with intellectual disabilities".[12]

While this is the case, it can be concluded that the adoption of the UDHR was the catalyst for the human rights movement all over the world, including the human rights of people with intellectual disabilities. More importantly, the UDHR recognizes people with intellectual disabilities as human beings with human rights. Article 1 of the UDHR pronounces: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."[13] In addition, Article 6 of the UDHR specifies: "Everyone has the right to recognition everywhere as a person before the law."[14] The similar principle is also enshrined in Article 16 of the International Covenant on Civil and Political Rights[15]. In other words, these provisions conclude that every person has a right which has the capacity for reason and conscience.[16] These decisive commitments later gave much more power to the movements for the human rights of numerous vulnerable groups.

Subsequently, in the last few decades, a variety of instruments have been developed and adopted to address the human rights of people with a disability. Perhaps even more significantly, the increasing awareness on human rights has enabled changes of 'social attitudes and methods of providing support for people with a disability'.[17] In 1975, the principle of equal rights and non-discrimination for people with disability was enshrined the UN Declaration on the Rights of Disabled Person.[18] Prior to this general declaration, the UN Declaration on the Rights of Mentally Retarded Persons[19] had been adopted by the UN in 1971. Although these non-binding instruments were the preludes of the next major achievements for human rights of people with a disability, they generally reflected the medical model of disability.[20]

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[10] Rosemary Kayess and Phillip French, above note 2, 5.

[11] Patsie Frawley and Bronwyn Naylor, 'Human Rights and People with Disabilities in Closed Environments', (2014) 31 Law Context: A Socio-Legal Journal, 49.

[12] Tony Ward and Claire Stewart, 'Putting Human Rights into Practice with People with an Intellectual Disability', (2008) 20 Journal of Developmental and Physical Disabilities, 297.

[13] UDHR, Article 1.

[14] UDHR, Article 4.

[15] International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 3 (entered into force 23 March 1976) ('ICCPR'), Article 16.

[16] Rachel Fyson and John Cromby, 'Human rights and intellectual disabilities in an era of 'choice', (2013) 57 Journal of Intellectual Disability Research, 1164.

[17] Frances Owen and Dorothy Griffiths (eds), Challenges to the Human Rights of People with Intellectual Disabilities (Jessica Kingsley Publishers, 2009) 13.

[18] Para 2 of the Declaration on the Rights of Disabled Person reads: "Disabled persons shall enjoy all the rights set forth in this Declaration. These rights shall be granted to all disabled persons without any exception whatsoever and without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or any other situation applying either to the disabled person himself or herself or to his or her family." See United Nations Declaration on the Rights of Disabled Person, GA Res 3447 (XXX), UN GAOR, 13th sess, 2433rd plen mtg, UN Doc A/RES/3447 (XXX) (9 December 1975).

[19] United Nations Declaration on the Rights of Mentally Retarded Person, GA Res 2856 (XXVI), UN GAOR, 26th sess, 2027th plen mtg, UN Doc A/RES/2856(XXVI) (20 December 1971).

[20] Rosemary Kayess and Phillip French, above note 2, 14.

In the same way, the specific instruments which aimed to more detailed protections for people with intellectual disabilities were continued with the adoption of the Principles for the Protection of Person with Mental Illness and the Improvement of Mental Health Care (MI Principles)[21] in 1991. The Principles were known for calling significant changes in the institutional care of people with intellectual disability. Two years later, the UN adopted the Standard Rules on the Equalization of Opportunities for People with Disabilities.[22] The Standard Rules were considered to be the most crucial and wide-ranging document guaranteeing the rights of people with disabilities until the adoption of the CRPD.[23] It is important to mention here that, along with them, several regional initiatives were also offered. Namely, the Montreal Declaration on Intellectual Disabilities, which was formulated in the course of the Montreal Pan-American Health Organisation and World Health Organisation Conference on Intellectual Disability in 2004, aimed to 'remind the international community that an intellectual disability poses unique problems with respect to the acknowledgment and enforcement of the fundamental human rights of individuals with an intellectual disability.'[24]

It is true that significant developments toward the human rights of people with a disability in the international arena indicated that there was a new avenue for a more detailed binding treaty on the human rights of people with disabilities, including those with an intellectual disability, as they were still witnessing serious human rights violations.[25] As a result, with the effective collaborations of the high-level UN bodies, such as the General Assembly and the Office of the High Commissioner for Human Rights, the idea of integrating human rights of people with disability into a single binding treaty was realized in December 2006.[26]

The CRPD itself reinforced previous commitments on the equal recognition of every person before the law which was made by the UDHR and ICCPR, and challenged the existence of the long-run medical model of disability. In other words, the CRPD, which was purely based on the human rights model of disability, sees everyone with a disability, including people with intellectual disabilities, have equal rights as all people. To illustrate, Article 12.1 of the CRPD specifies that "States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law."[27], while Article 12.2 specifies that "States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life."[28] In other words, the principle of the enjoyment of legal capacity on an equal basis is seen as the foundation of the CRPD as a whole. This principle further obliges the State party to enable persons with disabilities to live independently and participate fully in all aspects of life.[29]

Fundamental to this is that the CRPD challenges the old stereotypes against people with intellectual disabilities and has brought increased human rights awareness in international human rights law. More importantly, the Convention encourages the international community to respect the dignity of the individual on an equal basis. In terms of the importance of the CRPD, the United Nations itself noted that:

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[21] Principles for the Protection of Person with Mental Illness and the Improvement of Mental Health Care, GA Res 46/119, UN GAOR, 75th plen mtg, UN Doc A/RES/46/119, (17 December 1991).

[22] Standard Rules on the Equalization of Opportunities for People with Disabilities, GA Res 48/96, UN GAOR, 48th sess, UN Doc A/RES/48/96, (20 December 1993).

[23] Joselin Lecomte and Celine Mercier 'The Emergence of the Human Rights of People with Intellectual Disability in International Law' in Frances Owen and Dorothy Griffiths (eds), Challenges to the Human Rights of People with Intellectual Disabilities (Jessica Kingsley Publishers, 2009) 47.

[24] Joselin Lecomte and Celine Mercier, above note 23, 50.

[25] Donato Tarulli, Christine Y. Tardif, Dorothy Griffiths, Frances Owen, Glenys McQueen-Fuentes, Maurice A. Feldman, Carol Sales, and Karen Stoner 'Human Rights and Persons with Intellectual Disabilities: Historical, Pedagogical, and Philosophical Considerations' (2004) 5 Encounters on Education, 163.

[26] Joselin Lecomte and Celine Mercier, above note 23, 64.

[27] CRPD, Article 12.1.

[28] CRPD, Article 12.2.

[29] CRPD, Article 9.1.

> "The Convention marks a 'paradigm shift' in attitudes and approaches to persons with disabilities. It takes to a new height the movement from viewing persons with disabilities as 'objects' of charity, medical treatment and social protection towards viewing persons with disabilities as 'subjects' with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of society."[30]

It can be said that the Convention does not oppose the special measures or support for people with intellectual disabilities, but it encourages the idea that the assistance must be needed to realize 'the equal enjoyment of human rights to groups of people who are particularly vulnerable or disadvantaged.'[31] As Article 1 of the CRPD defines its purpose as 'to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity, it has been seen as the 'most recent and most directly relevant international instrument on how the rights of people with intellectual disabilities can be protected.'[32]

In summary, the emergence of the CRPD challenges the current practice of residential institutions, where human rights are restricted and people with intellectual disability are secluded from society. Moreover, general principles and the provisions of the CRPD clearly encourage community-based care and support for people with intellectual disabilities in replace of the residential institutions. The next part of the article will look critically at some of the human rights issues that are arisen in relation to the residential institutions in order to support the idea that deinstitutionalisation and community-based support service as the realization of human rights of people with intellectual disabilities.

Part Two.
Human Rights Issues of People with intellectual disabilities who are placed in the residential institutions

The CRPD is certainly seen as the reinforcement of the legal capacity of people with intellectual disabilities as equal as other human beings, as mentioned earlier in the article, because people with intellectual disabilities are still most vulnerable to institutionalization and their fundamental human rights are in question within the residential institutions.[33] The Convention aims 'to ensure the full participation of people with disabilities in the community, including the fulfillment of their personal potential, politically, culturally and intellectually.'[34] In contrary, the living condition of people with intellectual disabilities in the residential institutions challenges their fundamental human rights, namely the right to equality and non-discrimination; the right to liberty; the right to live in the community and to choose where to live; and the right to be free from torture or to cruel, inhuman or degrading treatment or punishment, etc.

The following case example will be used to elucidate human rights violations of this group of people in the residential institutions. In doing so, a brief analysis of the relevant provisions of the CRPD will be conducted here in line with General Comments, Concluding Observations, and Guidelines of the Committee on the Rights of Persons with Disabilities and the Committee on Economic, Social and Cultural Rights.

[30] Frances Owen and Dorothy Griffiths (eds), above note 17, 13.

[31] Human Rights and Mental Illness (Human Rights and Equal Opportunity Commission of Australia, 1993) 21.

[32] Patsie Frawley and Bronwyn Naylor, above note 11, 63.

[33] Anna MacQuarrie and Connie Laurin-Bowie 'Our Lives, Our Voices: People with Intellectual Disabilites and Their Families' in Maya Sabatello and Marianne Schulze (eds), Human Rights and Disability Advocacy (University of Pennsylvania Press, 2014) 38.

[34] Patsie Frawley and Bronwyn Naylor, above note 11, 63.

Box 1

"A has an intellectual impairment and high support needs. She lives in a residential institution that accommodates 50 other people. A has a range of behaviours of concern, which result in her inflicting severe self-injury and violence towards others. Due to these behaviours A is subject to a number of so-called restrictive practices, including seclusion, and physical, mechanical and chemical restraint. These restrictive practices have been authorised by a guardian appointed by a guardianship tribunal.

A's citizen advocate is B, A communicates non-verbally and B is one of few people A responds to. B, has, for a number of years, been making representations to A's service provider and the government department that funds the institution calling for A to be provided with individualised accommodation and support services in the community. B believes, based upon research and professional advice, that A's behaviours of concern are largely a response to her environment.

A's service provider, and the government department that funds the institution, have refused A's requests. They say that because of A's high support needs and behaviours she must remain institutionalised. B is concerned that A will not benefit from the NDIS and would like to become her Guardian. He believes A would want this as well. B has also received a letter from the service

Article 5: Equality and non-discrimination

The principles of equality and non-discrimination are the fundamental matter of international human rights law.[35] In the above case example, so-called restrictive practices raise concerns over the equality and non-discrimination of people with intellectual disabilities as A is also one of the persons who has the right to access care and support within the institution. Therefore, service provider's decision to use restrictive practices is in contradiction to Article 5 of the CRPD. Articles 5.1 and 5.2 of the CRPD states that "1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law. 2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds."[36]

Furthermore, regardless of any disability, as well as behavior, in accordance with Article 12.4 of the CRPD, State must ensure that "all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law."[37] It was clarified in paragraph 20 of General Comment No. 1 that "the primary purpose of these safeguards must be to ensure the respect of the person's rights, will and preferences. In order to accomplish this, the safeguards must provide protection from abuse on an equal basis with others." [38] In A's case, his legal capacity was also denied when so-called restrictive practices were authorised by guardianship. In other words, it can be believed that A's guardianship was not intended to protect the interests of A and did not seek A's consent, which is crucial for all decisions regarding the issues of people with intellectual disabilities when authorising these restrictive practices.

In terms of this sort of substitute decision-making, General Comment No. 1 stresses that "Historically, persons with disabilities have been denied their right to legal capacity in many areas in a discriminatory manner under substitute decision-making regimes such as guardianship, conservatorship and mental health laws that permit forced treatment. These practices must be abolished in order to ensure that full legal capacity is restored to persons with disabilities on an

[35] Committee on the Rights of Persons with Disabilities, General Comment on Article 19: Living independently and being included in the community, 18th sess, UN Doc CRPD/C/18/1 (29 August 2017), Para 13.

[36] CRPD, Article 5.1 and 5.2.

[37] CRPD, Article 12.4.

[38] General Comment No. 1, above note 35, para. 20.

equal basis with others."[39] For example, in its Concluding Observations on the initial report of Australia, the Committee recommended the State party to take decisive steps to replace substituted decision-making with supported decision-making.[40] To be brief, A's case is one of the examples of the disability-based discrimination, which was previously defined in General Comment No. 5 of the UN Committee on Economic, Social and Cultural Rights.[41]

Article 14: The Right to Liberty and security of persons with disabilities

According to this case example, one of the possibly violated human rights can also be the right to liberty of people with intellectual disabilities in the residential institution. In this case, Article 14 of the CRPD is seen as the guarantee of the right to liberty and it further prohibits unlawful or arbitrary interference from anyone.[42] It also stresses that "…the existence of a disability shall in no case justify a deprivation of liberty".[43] In addition, in its Guidelines on Article 14 of the CRPD, the Committee noted that it 'has established that Article 14 does not permit any exceptions whereby persons may be detained on the grounds of their actual or perceived impairment."[44] Therefore, the decision of the residential institution to stay A in the residential institution is considered to be unlawful under Article 14. The reason is that this decision seemed to be based on his disability (or high support needs). It is contrary to the Convention's principle that prohibits discrimination on the basis of disability.

Moreover, the residential institution seemed to come to the decision without seeking A's consent because of his intellectual impairment. In terms of the lack of voluntary consent, it is argued that "the involuntariness of such detention includes the inability of the person to choose an alternative place to live (which would provide the services essential for survival and well-being), the inability to choose with whom they will live, and the inevitable suppression of personal autonomy to externally imposed rules (such as meal times, meal composition, sleeping times, and personal care arrangements)."[45] Again, as Article 12 of the CRPD recognizes the full enjoyment of legal capacity of people with intellectual disabilities, residential institutions must seek their consent when they make decisions about their care, support, and housing arrangements. This principle was reaffirmed in General Comment No.1 that "unsoundedness of mind" and other discriminatory labels are not legitimate reasons for the denial of legal capacity.'[46]

Additionally, the purpose of the restrictive practices, such as seclusion, is also incompatible with the right to liberty enshrined in Article 14. It is worth mentioning here that in its Guidelines on Article 14 of the CRPD, the Committee stressed that: "However, legislation of several States parties, including mental health laws, still provide instances in which persons may be detained

[39] General Comment No.1, above note 35, para 7.

[40] Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Australia, 118th mtg, UN Doc CRPD/C/AUS/CO/1, (21 October 2013), para 25.

[41] Paragraph 15 of General Comment No. 5 reads: "For the purposes of the Covenant, "disability-based discrimination" may be defined as including any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights. Through neglect, ignorance, prejudice and false assumptions, as well as through exclusion, distinction or separation, persons with disabilities have very often been prevented from exercising their economic, social or cultural rights on an equal basis with persons without disabilities. The effects of disability-based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services." See Committee on Economic, Social and Cultural Rights, General Comment No. 5: Persons with Disabilities, 11th sess, UN Doc E/1995/22 (9 December 1994), para 15.

[42] "States Parties shall ensure that persons with disabilities, on an equal basis with others: (a) Enjoy the right to liberty and security of person; (b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty." See CRPD, Article 14.1.(a) and (b).

[43] Ibid.

[44] Committee on the Rights of Persons with Disabilities, Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities, 14th sess, (September 2015) para 6.

[45] Phillip French, Accommodating Human Rights: A Human Rights Perspective on Housing, and Housing and Support, for Persons with Disability (People with Disabilities Australia, 2009) 30. cited in Patsie Frawley and Bronwyn Naylor, above note 11, 50.

[46] Committee on the Rights of Persons with Disabilities, General Comment No. 1: Article 12 Equal recognition before the law, 11th sess, UN Doc CRPD/C/GC/1 (19 May 2014), para. 13.

on the grounds of their actual or perceived impairment, provided there are other reasons for their detention, including that they are deemed dangerous to themselves or others."[47]

Article 19: The Right to live in the Community and to choose where to live

In the light of Article 5, 12 and 14 of the CRPD, Article 19 obliges the State to recognize "the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community."[48] Otherwise, it has become the guarantee against the isolation and seclusion of people with intellectual disabilities from society.

To illustrate, subsection (a) of Article 19 concludes that people with intellectual disabilities should not be housed in residential institutions as well. It reads: "Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement."[49] In its Concluding Observations, the Committee encouraged the Australian Government's decision regarding the closure of residential institutions and recommended to allocate the recourses necessary for support services in order to realize the right to live in the community.[50] In this circumstance, Article 19 is closely interrelated to Article 14 and people with intellectual disabilities must be provided with supported decision-making regarding their housing arrangement in order to realize their legal capacity and the right to make decisions about his or her life.

As discussed above, people with intellectual disabilities are rights holders as other human beings. On the other hand, they are duty bearers as other human beings as well. In some way, as mentioned in A's case example, the balancing rights and duties of those groups of people is a challenging issue especially in the case of those who have a range of behaviors of concern, which result in his/or her inflicting severe self-injury and violence towards others. According to the above case example, the service provider might have realized some glimpses of the challenges that people with intellectual disabilities face when they live independently in the community. In response to this issue, subsection (b) of Article 19 can be considered as the key provision. It reads: "Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community and to prevent isolation or segregation from the community".[51]

As well as, according to Article 19, it does not deny necessary care and support for people with intellectual disabilities. On the other hand, it sees care and support as part of the community itself. General Comment on Article 19 criticizes that involuntary institutionalization on the basis of impairment or associated circumstances such as presumed "dangerousness" and other factors… is often caused or increased by a lack of disability-specific support services. Therefore, it can be inferred that the purpose of community-based care and support is to provide people with intellectual disabilities with ordinary houses, neighborhoods, and legal rights enjoyed by every human being.[52] It is important to bear in mind that the Committee stresses that the realization of the right to live in the community is only possible when all economic, civil, social and cultural rights are fulfilled.[53] Moreover, General Comment on Article 19 specifies more detailed understanding about support services. It reads:

[47] Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities, above note 44, para 6.

[48] CRPD, Article 19.

[49] Ibid.

[50] Concluding observations on the initial report of Australia, above note 40, para 42.

[51] Ibid.

[52] Jean Collins, above note 6, 77.

[53] General Comment on Article 19, above note 38, Para 4.

> "The right to be included in the community relates to the principle of full and effective inclusion and participation in society as enshrined in, among others, article 3 (c) of the Convention. It includes living a full social life and having access to all services offered to the public and to support services offered to persons with disabilities to enable them to be fully included and participate in all spheres of social life. These services can, among others, relate to housing, transport, shopping, education, employment, recreational activities and all other facilities and services offered to the public, including social media. The right also includes, having access to all measures and events of political and cultural life in the community, among others public meetings, sports events, cultural and religious festivals and any other activity in which the person with disability wishes to participate."[54]

In short, Article 19 recognizes that those group of people have a right to demand necessary support 'to deal positively and safely with difficult situations, and to build on their experiences'[55] while taking his or her own risks. Otherwise, in A's case example, the decision to keep him in the residential institution makes him the subject to further restrictive services which might be imposed on him by the institution.

Article 15: Freedom from torture or cruel, inhuman or degrading treatment or punishment

It is said that people with intellectual disabilities are 'often deprived of liberty for longer periods of time without legal process and… exposed to cruel, inhuman and degrading treatment.'[56] [57] In this case example, as Article 5, 12, 14 and 19 of the CRPD are explicitly discussed, the right to be free from torture or cruel, inhuman or degrading treatment or punishment is also considered in relation. In other words, the CRPD itself prohibits disability-based detention in Article 14 and encourages community-based support services in Article 19 whereas Article 15 of the Convention states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation."[58] Article 15 reaffirms the classic provision of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[59] and expands this by considering the prohibition on medical or scientific experimentation.[60]

On the contrary, when the residential institution decided to use restraints on A, they only sought approval from his guardian as a substitute-decision maker. In the same way, so-called restrictive services, such as physical, mechanical and chemical restraints which are imposed by the residential institution are prohibited under Article 15 of the CRPD[61]. In its Guidelines, the Committee expressed its concern that these practices are not consistent with the prohibition of torture and other cruel, inhumane or degrading treatment or punishment against people with intellectual disabilities[62].

Based on the above discussion, the CRPD has become the touchstone of the paradigm shift in approach to people with intellectual disabilities all over the world. It strongly challenges the

[54] General Comment on Article 19, above note 38, Para 16 (b).

[55] Jean Collins, above note 4, 79.

[56] Joselin Lecomte and Celine Mercier, above note 23, 54.

[57] Dorottya Karsay and Oliver Lewis, 'Disability, torture and ill-treatment: taking stock and ending abuses', (2012) 16 The International Journal of Human Rights 820.

[58] CRPD, Article 15.1.

[59] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) ('CAT').

[60] Dorottya Karsay and Oliver Lewis, above note 57, 818.

[61] Article 15 of the CRPD states: "1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation. 2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment." See CRPD, Article 15.1 and 15.2.

[62] Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities, above note 44, para 12.

existence of the residential institutions and encourages their closure of them. Within the scope of the CRPD, care and support in the residential institution differs from the care and support in the community. In other words, the CRPD itself legalizes de-institutionalization and obliges State parties to take appropriate legislative and administrative measures. In particular, those civil and political rights discussed above require immediate realization in nature.[63]

Likewise, as mentioned earlier, the principles of equal and full enjoyment legal capacity are seen as a foundation of the CRPD as a whole. As the fundamental principle of international human rights law, all rights are interrelated and interdependent with each other. If principles of the equal and full enjoyment of legal capacity are directly or indirectly denied, not only the rights discussed above but also the rest of the rights which are enshrined in this Convention become void.

CONCLUSION

To sum up, this article outlines the UN Convention on the Rights of the Persons with Disability as the core international human rights law reference that provides the human rights model for people with intellectual disabilities in the residential institutions. Within the scope of the human rights model of the disability, people with intellectual disabilities possess all human rights as equal as others and exercise their legal capacity as a whole.

Based on the consideration of the provisions of the CRPD, it can be concluded that people with intellectual disabilities in residential institutions need to be de-institutionalized and provided with community-based support services for the realization of their human rights. This view is justified under the auspices of Articles 5, 12, 14, 19, and other provisions of the CRPD. Therefore, the CRPD came as the catalyst of the deinstitutionalization which supports people with intellectual disabilities to be active members of society and enables them to be human being as equal as others.

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3. Committee on the Rights of Persons with Disabilities, *General Comment on Article 19: Living independently and being included in the community*, 18th sess, UN Doc CRPD/C/18/1 (29 August 2017), Para 13.
4. Committee on the Rights of Persons with Disabilities, *General Comment No. 1: Article 12 Equal recognition before the law*, 11th sess, UN Doc CRPD/C/GC/1 (19 May 2014).
5. Committee on the Rights of Persons with Disabilities, *Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities*, 14th sess, (September 2015).
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[63] Rosemary Kayess and Phillip French, above note 2, 29.

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THE MISCARRIAGE OF CRIMINAL JUSTICE IN MONGOLIA: ADDRESSING MONGOLIA'S FAILURE OF DIFFERENTIATING BETWEEN THE CRIME OF TORTURE AND THE CRIME OF CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT UNDER THE CONVENTION AGAINST TORTURE

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ABSTRACT:

Since the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Mongolia has undertaken the obligation, *inter alia*, to criminalize the crime of torture in line with the international treaty. In addition, under the same treaty, Mongolia has the duty to criminalize acts or omissions which do not amount to torture — cruel, inhuman or degrading treatment or punishment. Mongolia, however, has failed to fully implement the international treaty, to which it is Party, by not adopting the definition of torture as defined in the Convention and not differentiating between the crime of torture and the crime of cruel, inhuman or degrading treatment or punishment. This resulted in the miscarriage of criminal justice, convicting defendants for the incorrect crime, which continues to this day.

KEYWORDS:

Public international law, Implementation of international law, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Criminal Code of Mongolia

I. Scope of the article

It has been 19 years since Mongolia ratified one of the most crucial international human rights treaties - the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Convention Against Torture"). Mongolia, nevertheless, to this day struggles to fully adopt the definition of torture, omitting essential elements, as defined in the Convention

[1] The views and opinions expressed in this article are the author's and do not reflect the official policy or position of the Office of the President of Mongolia.

Against Torture.

Furthermore, the current Criminal Code of Mongolia does not distinguish between the crime of torture and the crime of cruel, inhuman or degrading treatment or punishment as required by the Convention Against Torture. This results in incorrect convictions where the defendants are convicted for the crime of torture when, in reality, they have committed a lesser crime of cruel, inhuman or degrading treatment or punishment.

By means of the doctrinal (normative) research method[2] this article will review the international treaties, international customs, general principles, Criminal Code of Mongolia, and court decision regarding the crime of torture and the crime of cruel, inhuman or degrading treatment or punishment.

At this time, there is no academic literature in the Mongolian language regarding the failure of integrating the distinction specified in Article 1 and Article 16 of the Convention Against Torture in the Criminal Code of Mongolia. As such this article aims to address the miscarriage of criminal justice in Mongolia, addressing its failure of separating the crime of torture from the crime of other cruel, inhuman or degrading treatment and illustrating the negative impact of breaching the international obligation on the defendants.

This article, however, does not analyze each element specified in Article 1 of the Convention Against Torture. It will examine the difference between the crime of torture and the crime of cruel, inhuman or degrading treatment or punishment and the signification of such distinction, and the application of the law by the Criminal Court of Mongolia.

II. Mongolia's obligation under the international law

The general responsibility of Mongolia to perform international obligation derives from the Constitution of Mongolia, customary international law, general principles of international law and international treaty law.

As stated in the Constitution of Mongolia, Mongolia will fulfill its obligations under international treaties in good faith.[3] It can be reasonably presumed that the drafters of the Constitution of Mongolia took inspiration from the Vienna Convention of Law of Treaties.[4]

The Vienna Convention of Law of Treaty is infamous for codifying of then-existing customary international law related to international treaties.[5] Primarily Article 26 of the convention reflects the customary international rule,[6] which is also recognized as a general principle of international law,[7] that international agreements are binding and are to be implemented in good faith by State parties.

Similarly, the specific obligation to prohibit and prevent the crime of torture stems from the customary international law and international treaty law — International Covenant on Civil and Political Rights and Convention Against Torture. Is it generally recognized that the prohibition

[2] Research Methods for Law, 3 (Mike McConville and Wing Hong Chui eds. 2007); Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline? 94-95 (Mark Van hoecke ed. 2011).

[3] Constitution of Mongolia, 13 January 1992, Article 10 section 2.

[4] Inference can be made given that the Article 10 section 2 of the Constitution is verbatim to the Article 26 of the Vienna Convention on the Law of Treaties.

[5] Villiger, M. E. (2009). Commentary on the 1969 Vienna Convention on the Law of Treaties. Brill.

[6] Aust, A., & Servanda, P. S. (2007). Max Planck Encyclopedia of Public International Law; Villiger, M. E. (2009). Commentary on the 1969 Vienna Convention on the Law of Treaties. Brill, 363–8; Dцrr & Schmalenbach, Vienna Convention on the Law of Treaties (2nd edn, 2018) 467; Reinhold, S. (2013). Good faith in international law. UCLJLJ, 2, 40; D'Aspremont, J. (2014). The Sources of International Law, 31; Mitchell, A. D., Sornarajah, M., & Voon, T. (Eds.). (2015). Good faith and international economic law. OUP Oxford, 9–35.

[7] Lukashuk, I. I. (1989). The principle pacta sunt servanda and the nature of obligation under international law. American Journal of International Law, 83(3), 513-518.

on torture is not only a norm of customary law it constitutes a norm of *jus cogens*[8]and obligations *erga omnes partes*.[9]

Mongolia has ratified the International Covenant on Civil and Political Rights[10] and Convention Against Torture, giving rise to an international customary and treaty obligation regarding torture. Specifically, Mongolia has undertaken the duty to prevent torture,[11] not to expel, return or extradite a person to another State where he would be subjected to torture[12] and ensure that crime of torture is an offense under the domestic criminal law and is punishable by appropriate penalties which take into account the grave nature of the crime.[13]

Furthermore, in addition to ensuring the crime of torture is integrated into the domestic legislation, Mongolia has undertaken the obligation to prevent, in any territory under its jurisdiction, other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture.[14]

III. Differentiating between crime of torture and crime of cruel, inhuman or degrading treatment or punishment

State parties to the Convention Against Torture undertake the duty to ensure that both (i) torture[15] and (ii) cruel, inhuman or degrading treatment[16] are punishable under the municipal criminal law.

Convention Against Torture does not define, *per se*, the acts or omission which constitutes cruel, inhuman or degrading treatment or punishment. It is understood, however, that acts falling short of the definition in Article 1, particularly acts without the elements of intent or acts not carried out for the specific purposes outlined, may comprise cruel or inhuman treatment under Article 16 of the Convention while acts aimed at humiliating the victim constitute degrading treatment or punishment even where severe pain has not been inflicted.[17]

Article 1 of the Convention Against Torture defines torture as:

For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Article 16 section 1 of the Convention Against Torture states:

Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as

[8] Prosecutor v Zejnil Delalic, Zdravko Mucic also known as "Pavo", Hazim Delic, Esad Land`o also known as "Zenga", Case No: IT-96-21-T, Trial Chamber, 16 Nov 1998, para. 454. Also, Professor P. Kooijmans, Special Rapporteur for Torture, enumerated a number of specific international instruments that prohibit torture or other ill treatment. "Torture and other Cruel, Inhuman or Degrading Treatment or Punishment", Report of the Special Rapporteur, Mr. P. Kooijmans, appointed pursuant to Commission on Human Rights res. 1985/33E/ CN.4/1986/15, 19 Feb. 1986, para. 3.

[9] Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012, p. 422

[10] UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Article 7.

[11] UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, Article 2.

[12] *Id.*, Article 3.

[13] *Id.*, Article 4.

[14] *Id.*, Article 6.

[15] *Id.*, Article 1.

[16] *Id.*, Article 16.

[17] Nowak, M., & McArthur, E. (2006). The distinction between torture and cruel, inhuman or degrading treatment. Torture, 16(3), 147-151.

defined in Article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12, and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

The definition set out in Article 1 of the Convention Against Torture encompasses two elements that have been used to distinguish torture from cruel, inhuman or degrading treatment or punishment: severity of pain and purpose.[18]

IV. Severity

In Ireland v. the United Kingdom, the European Court of Human Rights stated that the distinction between torture and inhuman or degrading treatment derives principally from a difference in the intensity of the suffering inflicted.[19] The European Court of Human Rights supported its interpretation by referencing to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which stated: Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.[20]

In the Ireland v. the United Kingdom case, the Court said that:

whilst there exists on the one hand violence which is to be condemned both on moral grounds and also in most cases under the domestic law of the Contracting States but which does not fall within Article 3 (art. 3) of the Convention, it appears on the other hand that it was the intention that the Convention, with its distinction between 'torture' and 'inhuman or degrading treatment, should be the first of these terms attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering.[21]

The European Court of Human Rights has returned again and again to this formulation. For instance, the Grand Chamber of the European Court of Human Rights in case concerning Selmouni who was brutally interrogated by French law enforcement officers, who suspected his involvement in drug traffic that acts 'satisfied that the physical and mental violence, considered as a whole, committed against the applicant's person caused "severe" pain and suffering and was particularly serious and cruel'.[22]

The severity test was also adopted by the Inter-American Court of Human Rights.[23] The Court assessed whether, in view of its seriousness or intensity, an act or practice constitutes torture or inhuman or degrading punishment or treatment.[24]

V. Purpose

The United Nations Special Rapporteur on Torture, commenting on the interpretation of the 1984 Convention, stated that the decisive criteria for distinguishing torture from cruel, inhuman, and degrading treatment 'may best be understood to be the purpose of the conduct and the powerlessness of the victim, rather than the intensity of the pain or suffering inflicted.[25]

[18] Boulos, S. (2019). Towards reconstructing the meaning of inhuman treatment or punishment: A human capability approach. The Age of Human Rights Journal, (12), 35-61.

[19] Ireland v. The United Kingdom, 5310/71, Council of Europe: European Court of Human Rights, 13 December 1977, para. 167.

[20] *Ibid*.

[21] *Ibid.*

[22] Selmouni v. France, 25803/94, Council of Europe: European Court of Human Rights, 28 July 1999, para. 105.

[23] Loayza Tamayo Case (Provisional Measures in the Matter of Peru), Inter-American Court of Human Rights, 2 July 1996, para. 57.

[24] Lizardo Cabrera v. Dominican Republic, Case 10.832, Inter-Am. C.H.R., Report No. 35/96, OEA/Ser.L/V/II.102, doc. 6 rev. (1998) 82-83.

[25] Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment of punishment, UN Doc. E/CN.4/2006/6, para 39; Manfred Nowak (Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, Including an Assessment of Conditions of Detention, para. 187, UN Doc. A/HRC/13/39/Add.5 (Feb. 5, 2010).

The Grand Chamber of the European Court of Human Rights acknowledged that in addition to the severity of the treatment, there is a purposive element, citing in support the United Nations Convention Against Torture.[26]

As such the European Court of Human Rights considered that if the purposive element is not satisfied the acts cannot be considered as torture. For instance, where a school teacher had been beaten and brutalized by police, causing serious physical pain and suffering from lasting consequences to health, the European Court of Human Rights stated that 'it does not appear that the pain and suffering were inflicted on the applicant intentionally for the purpose of, for instance, making him confess to a crime or breaking his physical and moral resistance' and held the State responsible for the inhuman treatment, but not torture.[27]

The purpose criterion was also adopted by the drafters of the Rome Statute of the International Criminal Court as part of the elements of the crimes under its jurisdiction. What distinguishes both inhuman treatment and cruel treatment from torture as a war crime is the purpose criterion.[28]

VI. The disparity between the convention against torture and the criminal code of Mongolia

In 1992 Mongolian Parliament adopted the new democratic constitution.[29] As such, in 2002, a new Criminal Code of Mongolia was drafted in accordance with the new constitution. The crime of torture as defined in Article 100 section 1 of the Criminal Code of Mongolia as "systematic battery or other actions having the nature of torture" which do not result in either severe or less severe bodily injuries. The Code also criminalizes the forcing of testimony by an interrogator or investigator by threat, violence, torture, humiliation, deception or other illegal methods.[30]

Despite the fact that reference is made to "torture" the Criminal Code of Mongolia did not define the term in accordance with article 1 of the Convention Against Torture, failing to include the essential elements.[31] In addition the Criminal Code of Mongolia did not criminalize cruel, inhuman or degrading treatment or punishment.

In 2015, the Mongolian Parliament adopted the revised version of the Criminal Code of Mongolia. The revised Code criminalized the crime of torture,[32] even then it failed to include all of the contextual elements specified in Article 1 of the Convention Against Torture.[33] Specifically, and most significantly, omitting the term "severe" from the definition of torture. Accordingly, it forced few Criminal Courts of Mongolia to rely on the definition of torture set out in the Convention Against Torture instead of the Criminal Code of Mongolia, nonetheless, the Court overlooked the severity test.[34]

Moreover, the revised Criminal Code of Mongolia still failed to criminalize cruel, inhuman or degrading treatment or punishment. Consequently, failing to distinguish between the crime of torture and the crime of cruel, inhuman or degrading treatment or punishment resulted in many wrongful convictions. Many individuals were convicted for the crime of torture when their acts would likely have amounted to lesser crime — the crime of cruel, inhuman or degrading treatment or punishment.

[26] İlhan v. Turkey, 22277/93, Council of Europe: European Court of Human Rights, 27 June 2000, para. 85. See also, Cirino and Renne v. Italy, 2539/13 and 4705/13, Council of Europe: European Court of Human Rights, 26 October 2017.

[27] Krastanov v. Bulgaria, 50222/99, Council of Europe: European Court of Human Rights, 30 September 2004, para. 53.

[28] International Criminal Court, Elements of Crimes, 2011, ISBN No. 92-9227-232-2, Article 8(2)(a)(ii)-1; Article 8 (2) (a) (ii)-2; and Article (2) (c) (i)-3.

[29] Constitution of Mongolia, 13 January 1992.

[30] Criminal Code of Mongolia, 3 January 2002, Article 251 section 1.

[31] Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Mongolia, E/CN.4/2006/6/Add.4, 20 December 2005. See also, A/HRC/13/39/Add.6, para. 48; A/HRC/7/3/Add.2, para. 394; CCPR/C/MNG/CO/5, para. 13; CAT/C/MNG/CO/1, paras. 7 and 9.

[32] Criminal Code of Mongolia, 3 December 2015, Article 21.12 section 1.

[33] CCPR/C/MNG/CO/6, para. 21.

[34] Prosecutor v. B.B, First Instance Criminal Court of Bayangol district, number 958, 106/2019/0941/Э, 19 November 2019.

VII. Instances of miscarriage of criminal justice

First Instance Criminal Court Selenge aimag, on 22 July 2019, adjudicated a case concerning the crime of torture. The Criminal Court heard the case regarding the law enforcement officer Chinzorig who tried to obtain a confession by coercing the victim, who allegedly stole cattle, at the police station and by striking the victim's thigh and arm muscles with a rubber truncheon for a total of 2 times resulting in minor injury. After assessing the evidence and the Criminal Court found the defendant guilty of intentionally committing the crime of torture. During the trial, the Criminal Court relied on the defective definition of torture stipulated in the Criminal Code of Mongolia and did not assess whether the gravity of pain suffered by the victim amounted to torture.[35]

First Instance Criminal Court of Dornod Aimag in Prosecutor v. D.M and KH.B decided whether both defendants committed the crime of torture. Defendant KH.B, a law enforcement officer, punched the victim's left cheek three times then kicked his stomach while he fell to the ground. The defendant's acts were committed as a punishment given to the victim for giving false information. Accordingly, the Criminal Court convicted KH.B of a crime of torture.[36]

First Instance Criminal Court of Bayanzurkh duureg heard a similar case where law enforcement officer B.G tried to obtain a confession at the police station from the victim by striking the victim with an electric baton resulting in minor injury. After assessing the evidence and the Criminal Court found the police officer guilty of intentionally committing the crime of torture. Again, the Criminal Court in this case relied on the defective definition of torture and did not weigh the gravity of pain inflicted on the victim.[37]

Taking the evidence of three cases separately and having regard to perpetrators purpose and severity of the pain inflicted the ill-treatment in issue amounted to the crime of cruel, inhuman or degrading treatment or punishment, but not torture. In each case, based on the evidence presented, the victims suffered minor physical injuries, and there was no sign of long-term damage to their health and there was no assessment regarding the mental damage incurred. Accordingly, it is unreasonable to consider that the perpetrators committed torture — an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

VIII. Conclusion

Under international treaty law and customary international law, Mongolia has the obligation to prohibit, prevent torture and punish whoever is responsible for such heinous crime. In addition, Mongolia has the international responsibility to ensure that acts or omissions which do not amount to torture to be considered as an offense under its Criminal Code. In order to perform this obligation, the definition of torture in the Criminal Code of Mongolia must contain all contextual elements of torture as defined in the Convention Against Torture, including the crucial elements which differentiate the crime: severity of the pain and purpose. Subsequently, the Criminal Code of Mongolia must criminalize acts or omissions which amount to cruel, inhuman or degrading treatment or punishment.

Mongolia, however, failed to bring the definition set in the Criminal Code of Mongolia in line with the Convention Against Torture despite the recommendations given by the UN Human Rights Bodies. In addition, due to the defective definition of torture and lack of awareness, the crime of cruel, inhuman or degrading treatment or punishment has not been recognized as an offense in the Criminal Code of Mongolia.

[35] Prosecutor v. Dorjin Chinzorig, First Instance Criminal Court of Seleng Aimag, Number 122, Index 175/2019/0094/Э, 22 July 2019.

[36] Prosecutor v. D.M and KH.B, First Instance Criminal Court of Dornog Aimag, Number 2019/ШШЦТ/251, Index 168/2017/0033/Э, 12 September 2019.

[37] Prosecutor v. B.G, First Instance Criminal Court of Bayanzurkh District, Number 1526, Index 105/2020/1414/Э, 20 August 2020.

As such, the Criminal Courts of Mongolia are forced to apply the defective definition of torture without assessing the severity of pain inflicted on victims and to find defendants guilty of the crime of torture when in fact they have committed a lesser crime — the crime of cruel, inhuman or degrading treatment or punishment — considering the severity of the pain caused. This results in miscarriage of criminal justice by convicting defendants for the incorrect and graver crime.

Therefore, in order to fulfill the international obligation as enshrined in the Constitution of Mongolia, it is necessary to amend the current in-effect Criminal Code of Mongolia and define the crime of torture in accordance with the Convention Against Torture; and to officially recognize the crime of cruel, inhuman or degrading treatment or punishment as a separate crime; and lastly to assess the cases related to such crimes based on the severity and purpose test.

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30. Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment of punishment, UN Doc. E/CN.4/2006/6
31. Study on the Phenomena of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in the World, Including an Assessment of Conditions of Detention, para. 187, UN Doc. A/HRC/13/39/Add.5 (Feb. 5, 2010)
32. Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Mongolia, E/CN.4/2006/6/Add.4, 20 December 2005
33. A/HRC/13/39/Add.6
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37. CCPR/C/MNG/CO/6

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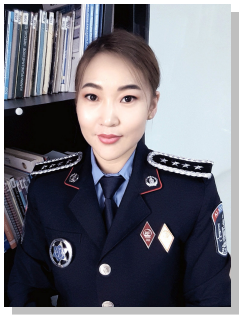
THE EXAMINATION OF ELECTRONIC SIGNATURES



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ABSTRACT:

At the beginning of the 21st century, the increasing use and importance of electronic signatures in commercial transactions were recognized by governments and the business community.

With the advent of electronic signatures and the inevitable disputes as to their authenticity, modern forensic document examiners find themselves in a similar situation, where they lose the opportunity to evaluate an original or wet-ink signature but gain quantitative data on speed, rhythm, and direction of stroke-features that examiners could previously only infer.

Therefore, the forensic document examiner's analysis of both the objective and subjective features of the questioned electronic signatures can lead to more demonstrable conclusions.

In 2017, The proficiency of forensic document experts in examining electronic signatures was tested by Heckeroth and Boywitt. In this study, despite the forensic document experts having little or no previous experience in examining electronic signatures, the study "did not show any evidence of systematic differences in the forensic document experts' conclusions concerning the authenticity of electronic versus conventional signatures." Furthermore, forensic document experts should undergo training in the examination of electronic signatures.

What is clear is that additional research and training must be conducted by the forensic document expert profession in the examination of digital signatures. These projects should be conducted with academics and manufacturers of relevant tablets and software.

Therefore, it is necessary to create opportunities for electronic signature examinations in Mongolia in the future.

KEYWORDS:

Electronic signature pads, excel graphic representation, air movement, dynamic information

INTRODUCTION:

Based on the needs of social life, in the late 19th and early 20th centuries, document experts in the field of Forensic Questioned Document began to examine and analyze signatures on all types of writing instruments in accordance with examination methods. In the past, the methods and techniques of signature analysis have been updated from time to time in accordance with the specifics of the object of examination.

In recent years, however, the use of electronic signatures has been widespread in many countries of the world. During the American Civil War of 1861, important strategic information was obtained using electronic signatures, and soon the process of certifying official correspondence was established.

The legal concept of electronic signatures was first enshrined in the 1999 Uniform Electronic Transactions Act of the State of California, USA.

In Mongolia, the Law on Electronic Signatures was adopted in 2011 and created a legal framework for the certification of documents online, but the implementation of the law is insufficient nationwide, with less than 2 percent of adults having digital signatures. Today, companies use digital signatures only when they submit their balance sheets to the tax authorities or submit documents when participating in any electronic tender. However, this is a matter of time and there is no doubt that the use of electronic signatures will increase in the future.

Therefore, it is necessary to study the theory and methodological basis of electronic signature examination in the field of Forensic science, and the current state of the techniques and equipment used. In addition, Mongolia needs to introduce electronic signature examination software used in other parts of the world. Furthermore, there is a need to develop electronic signature analysis software tailored to the specifics of Mongolian literacy.

The examination of electronic signatures:

According to Article 4.1.1 of the Law on Electronic Signatures of Mongolia, "electronic signature" is defined as "electronic data containing words, letters, numbers, symbols and images attached or aggregated to an electronic document for the purpose of identifying the person who signed the electronic document".

There are three general types of electronic signatures: symbols, biometrics, and digital signatures[1] and among the electronic signatures classified as symbolic are digitized images of a person's signature. These signatures are generally affixed to a document in the form of an image file, such as a JPEG. On the other hand, the digital signature is a "specific technical" implementation of electronic signing by applying cryptographic algorithms"[2].

With the advent of electronic signatures around the world, inevitable disputes as to the authenticity of signatures, and modern forensic document experts have been forced to resolve them. Thus, in the field of signature examination, a document expert began to examine electronic signatures created by the actual actions of the human body by signing only in his own name. Although it is not possible to determine the features of strokes that can be detected from a wet-ink signature in an electronic signature examination, several studies have shown that it is possible to analyze electronic signatures based on numerical data on signature speed, rhythm, and direction of stroke.

[1] Buckley, J. S., Margo, H. K., Whitaker, R. D., & Kromer, J. P., "The law of electronic signatures", Edition (pp. 162–167), 2017.

[2] Turner, D. M., "The difference between an electronic signature and a digital signature", Retrieved Feb 5, 2018 from https://www.cryptomathic.com/news-events/blog/the-difference-between-an-electronic-signature-and-a-digital-signature, 2016.

In connection with the enactment of the Uniform Electronic Transaction Act in California in 1999, the WJF / KAN Document Examination Laboratory in California contacted Topaz, the most widespread electronic signature tablet manufacturer in the United States at the time, then a research project has been launched to develop an electronic signature examination methodology.

Between 1999 and 2016, the laboratory conducted as well as several additional research projects, over 17 year period, the tools used to collect biometric signatures continued to evolve, from full-size tablets where customers sign forms using a pen stylus to phone apps where customers sign using their finger.

Based on the ***initial research***[3], the laboratory confirmed that "it is possible to make a valid examination report on the signature with a biometric signature obtained in electronic form". As a result, a number of examinations related to biometrically verified electronic signatures have begun.

At the conclusion of that initial study, the following was determined :

1. Although an original (ink-on-paper) signature will always provide the best three-dimensional view of the writing, the actual speed of the strokes in an ink-made signature can only be inferred in a subjective way.
2. Electronically captured signature files, however, provide far more forensically valuable data about the dynamics of the writing than could ever be determined from an examination of the original.
3. Tablets with a capture rate of about 100 Hz or higher acquire sufficient data (enough dynamic resolution) to permit valid forensic signature examinations.
4. When the captured e-signatures are plotted, there is sufficient detail to compare them with either known wet-ink signatures or electronic exemplars.
5. The timing data, overall execution time, and individual segment times provide a wealth of forensically viable evidence.
6. The signature examination tools that have been described in the forensic literature for more than 100 years are entirely applicable to the examination of e-signatures.

The second study

Between 1999 and 2012, William Flynn who Past-President of the American Society of Questioned Document Examiners developed a technique whereby (x-y) values from an electronic signature data file could be imported into an Excel spreadsheet for analysis(see Fig-1).

This technique allowed different types of plots to be graphically charted. These graphs were capable of displaying high-resolution graphic representations of the captured signatures(see Fig-2). By using a formula, with the (x-y) data as inputs, it was possible to plot the acceleration/ deceleration of the hand as it created the electronic signature(see Fig-3).

3 Flynn, W., "Electronic signature forensics", White paper prepared for Topaz https://topazsystems.com/Informationsforensics.pdf, 1999.

xPos	yPos	Pressure	Time
1647	2312	0	1868
1659	2281	692	1870
1674	2253	697	1872
1688	2230	716	1874
1705	2205	713	1876
1717	2187	729	1878
1732	2168	724	1880
1746	2151	723	1882
1759	2133	721	1884
1771	2120	729	1886
1784	2106	726	1888
1792	2094	737	1890
1800	2083	741	1892
1806	2074	748	1894

Fig-1. /x-y/ data pairs shown as imported into an Excel spreadsheet. Each data pair represents the position of the stylus on the capture device at successive moments in time. If the capture rate is 200 Hz, then each pair is acquired every 1/200Hz of a second.

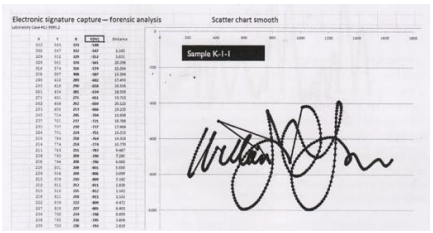


Fig-2. Excel plot of an electronically captured biometric signature. These plots are generated from the values contained in the /x-y/ data pairs and reconstruct the dynamic movement of the signer as their hand moved over the surface of the tablet.

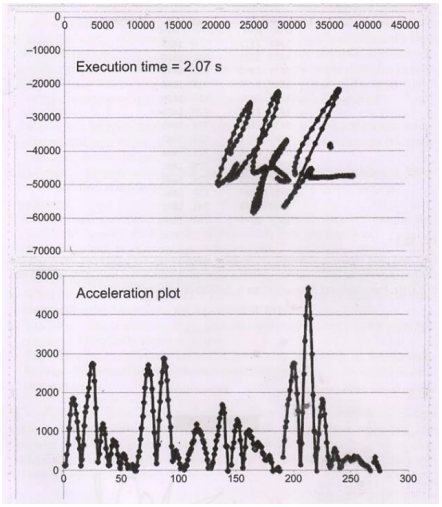


Fig-3. A typical acceleration/deceleration Excel plot derived from the changing positions of the stylus as shown by the (x-y) pairs divided by the device capture rate. In these plots, an upward movement shows an acceleration of the hand, while downward movements represent the hand slowing down.

Excel was chosen for plotting since it is both well known and readily available. This meant that as long as the signature's raw data file and the device's capture rate were available, a forensic examination could be conducted.

Flynn described the technique and a study he had conducted to ensure that the signature plots generated using the raw data were accurately charting the graphic representation of the captured signature, In this study, signatures were collected from a Topaz tablet that utilized a

stylus with a ballpoint pen tip. It was possible to place a piece of paper over the tablet and have the subjects sign their names with the inking stylus, thus capturing a wet-ink original signature and the corresponding (x-y) data points simultaneously. One hundred thirty signatures were collected using this technique, and as a result, it was possible to ascertain how closely the original ink signatures matched the Excel plots of the electronic versions.

The results were impressive. By making digital overlay images of the ink and plotted signatures, it was possible to directly overlay the two versions of the same signature. In this way, it was determined that there was an extremely high level of congruence between the original and plotted signatures. The only differences noted occurred when one of the writers executed a stroke using very light pen pressure. When that occurred, the capture tablet sometimes "lost contact" with the stylus, and a gap occurred in the electronic version (see Fig-4).

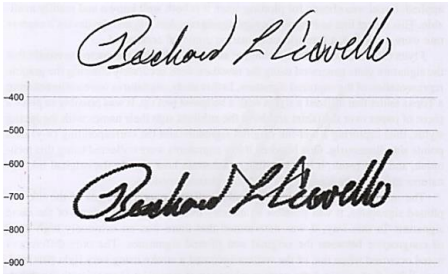
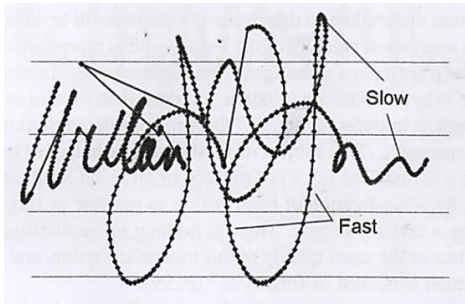


Fig-4. The straight lines in the plotted signature are the "air movements"-those moments during the execution of the signature where the stylus lifted from the tablet and "landed" at the start of the next stroke. An overlay of the ink-on-paper signature and the Excel plot of the same signature shows there is near perfect alignment between the two. These tests proved that the device was capturing high-resolution data and that these data could be successfully reconstructed in an Excel

Another benefit of using Excel plots was that the spacing of the data points could be used to visualize the acceleration and deceleration of the hand as it produced the signature (see Fig. 12.5). Being able to directly see the rhythm of the hand movement as it produced the signature became an important consideration in determining if an electronic signature was genuine or not.



Distance between data points relates to the speed of the stylus

Fig-5. Each "point" in this plot represents an (x-y) data pair. When the hand is moving quickly, the distance between data pairs increases. As would be expected, the hand can build up speed on the long upward and downward strokes (wide spacing of the data points) but must slow down to make the direction changes or end a stroke (bunching of the data points). The straight lines

The third study[4]

The third study was undertaken to determine if writers could be identified or differentiated through analysis of velocity plots. Velocity plots represent how far and how fast the hand moved between a signature's data capture points. In essence, they are a graph of a writer's rhythm. Osborn described rhythm as "a harmonious recurrence of stress or impulse or motion." Osborn considered rhythm a key element of handwriting, stating "...This subject of rhythm, or the balanced quality of movement, producing a natural and not a constrained or artificial result, has a very close connection with the identification of handwriting as genuine or forged or as having been produced by a certain writer... There is nothing in handwriting so difficult to successfully

[4] Annunziata Nicolaides, K., "Using acceleration/deceleration plots in the forensic analysis of electronically captured signatures", Journal of the American Society of Questioned Document Examiners, 15(2), 29-43, 2012.

imitate as the exact quality of this muscular rhythm, and a violation of it is the most common symptom of forgery..."[5].

In this third study, velocity charts of 119 signatures from 25 different writers were plotted. The plots were evaluated by comparing distance, time taken to execute the signature, and the graph's pattern, Analysis of the velocity plots showed a range of variation reflective of the graphic variation seen in the collected signatures.

Velocity charts of 119 signatures from 25 different writers were plotted. The plots were evaluated by comparing distance, time is taken to execute the signature, and the graph's pattern. Analysis of the velocity plots showed a range of variation reflective of the graphic variation seen in the collected signatures.

Findings from Ms.Nicolaides' study were as follows:

1. The rhythm of an electronic signature can be visualized using acceleration/ deceleration (or velocity) plots.
2. A writer's natural rhythm is consistent (see Fig-6).
3. Rhythm differs from writer to writer (see Fig-7).
4. Rhythm of genuine signatures differs from the rhythm of simulated, traced, or spurious signatures (see Fig-8).
5. Charting rhythm provides useful forensic evidence in an examination of electronic signatures.

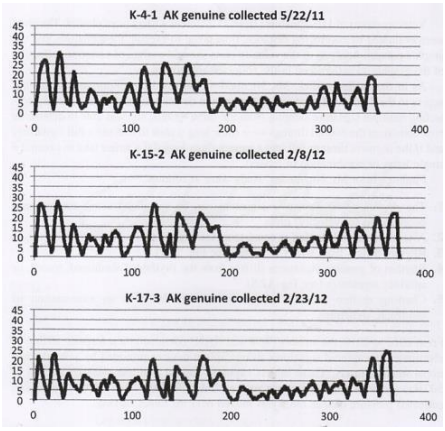


Fig-6.

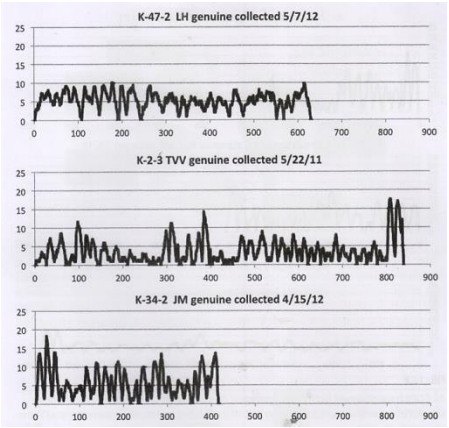


Fig-7.

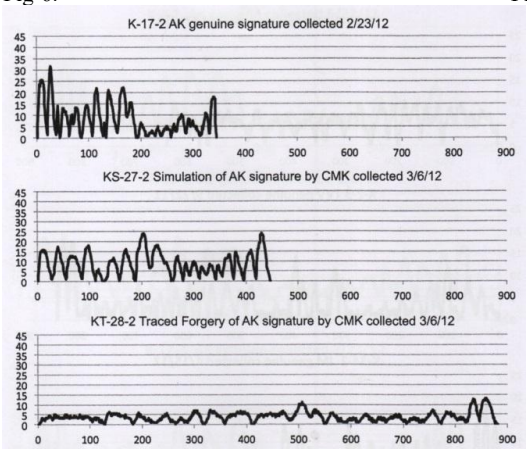


Fig-8.

[5] Osborn, A. S., "Questioned documents" (2nd ed., pp. 98-99), 1929.

The fourth study[6]

As a result of the data collected in earlier studies and with continued testing, WJF and KAN felt they had a sufficiently large sample set to determine if the quantifiable numerical data found in these signature files could be analyzed to validate or disprove subjective observations that had been described in forensic handwriting examination texts for over 100 years.

Three hundred forty-four biometric signatures were captured and plotted and their data was compiled in an Excel spreadsheet for comparative analysis(See Fig-9). The data were then calculated to provide complete signature execution times, average segment (stroke) length, average "speed" of the signatures, and the standard deviation of the calculated velocity.

It became clear when comparing and analyzing the data that the principles of forensic document examination were indeed corroborated by the dynamic data collected during the signing act. For instance, one of the first steps in a wet-ink signature examination is to evaluate the line quality of the questioned signature to determine if it exhibits indications of a "slow drawing effect." This often occurs during attempts to simulate or trace another person's signature because while trying to mimic or follow the movements of someone else, the previously unconscious act of signing becomes a conscious and deliberate act, which slows the hand. Comparison of the time it took to execute genuine, simulated, and traced signatures showed that simulated signatures took almost twice as long as genuine signatures to complete, while traced signatures took even longer(see Fig-10). This was further demonstrated when the average velocity of each type was compared(see Fig-11).

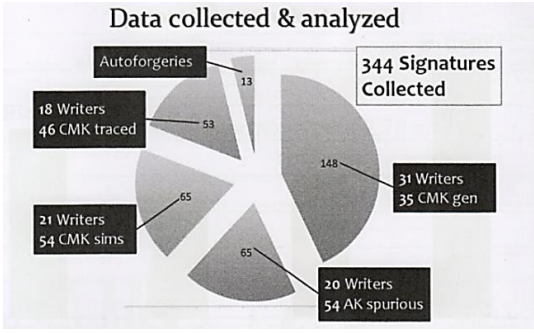


Fig-9.

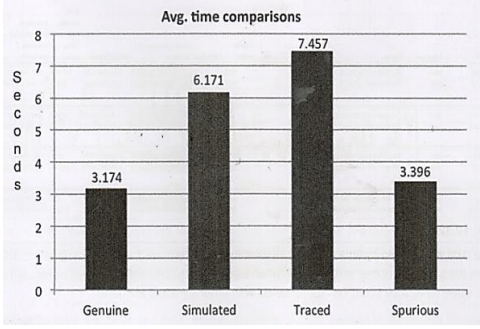


Fig-10.

In summary, the findings of the fourth Flynn-Nicolaides study were as follows:

1. There are quantifiable differences between signatures written naturally and unnaturally (simulated or traced).
2. There are quantifiable differences in signatures executed by different writers.
3. There are quantifiable variations in naturally executed signatures of one writer (see Fig-12).
4. The principles of forensic signature identification are corroborated by analysis of biometric signature data.

[6] Flynn, W., & Annunziata Nicolaides, K.., "An analysis of digitally captured signatures: are principles of forensic signature identification corroborated by analysis of quantifiable data?", In Presented at the annual conference of the American Academy of Forensic Sciences, Las Vegas, NV, 2015.

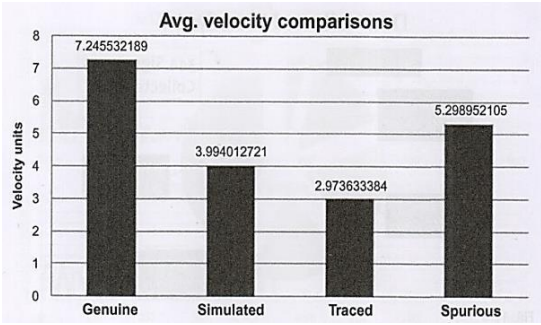


Fig-11.

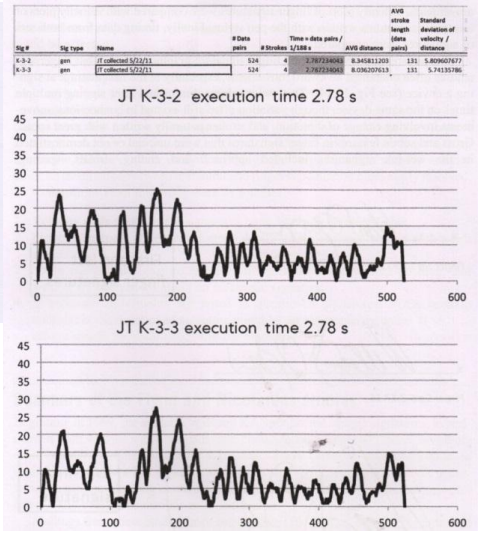


Fig-12.

The fifth study[7]

As electronic commerce grew in popularity, business owners were more frequently asking customers to sign devices using a finger. Consideration of writing conditions is part of any traditional examination since writing position and writing surface can affect the quality of a signature. The fifth study compared signatures made with one's finger to those made with a stylus.

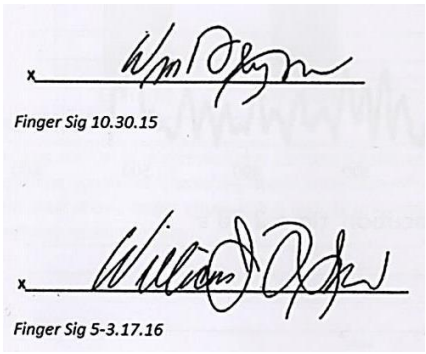
The data were sorted by time of signature execution to determine if any writer's dynamic data were the same as another writer's. Even when signatures by different writers were executed at the same time, they could be differentiated with other dynamic elements.

Signatures of four subjects were collected by placing paper on top of a Topaz signature pad and using an inking stylus, thus collecting both a wet-ink signature and the biometric signature data; 60 wet-ink signatures were collected along with the dynamic data for each. These same subjects were asked to sign on another device using a finger. All of the subjects signed on the same device. This device allowed the subject to sign while their elbow was supported if they chose to. Although 51 signature graphics were collected, the dynamic data were only available for 30 of these signatures. As a result, biometric data were collected for the first signature on the device for only one of the subjects. The wet-ink signatures were compared with the finger signature graphics and evaluated for letter formations, letter proportions, pen lifts, and awkward movements. Velocity plots of finger signatures were compared with velocity plots of electronic signatures written with the pen stylus. Finally, timing data from both sets of signatures were compared.

Comparison of the wet-ink and finger signature graphics showed that finger signatures often contained awkward movements, especially in the first attempt at signing a device (see Fig-13). This awkwardness diminished after signing multiple times on the same device, though variation often still existed in connections, movements involving a change of direction, and strokes are naturally written with great speed. Gross and subtle features in finger signatures that were unusual or not demonstrated in the wet-ink signatures included approach and ending strokes, spacing, connections, the direction of stroke, absence of i-dots, and letter formations. It was found that inter letter proportions were generally consistent, though intraletter proportions could be affected.

Velocity plot comparisons showed that velocity plots of finger signatures were consistent among themselves and also with velocity plots of signatures written with a pen stylus(see Fig-14).

[7] Annunziata Nicolaides, K., "Biometric electronic signatures: pen stylus v. finger", In: Presented at the annual general meeting of the American Society of Questioned Document Examiners, Pensacola Beach, FL, 2016



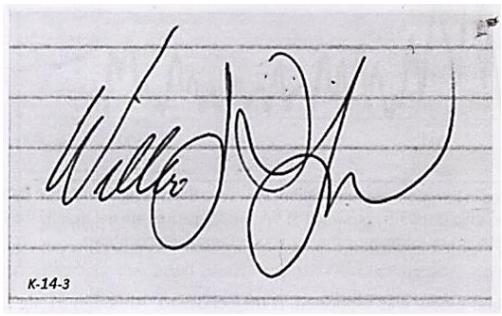
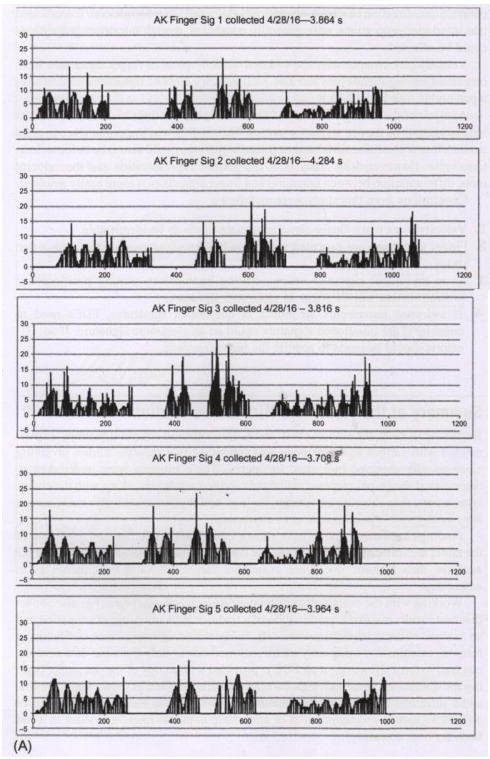
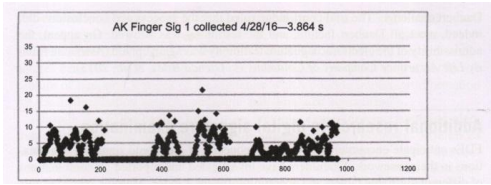


Fig-13.





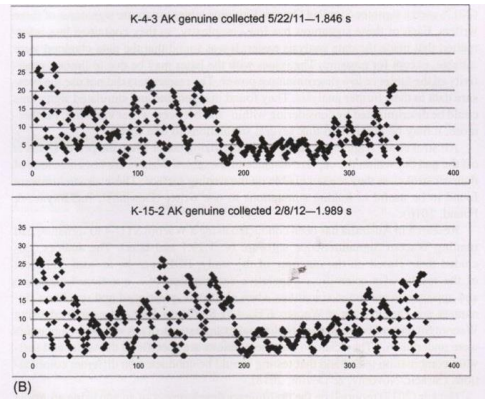


Fig-15.

Analysis of the timing data showed that the finger signatures took almost twice as long to execute as the pen stylus signatures. This finding was important since in prior studies, it was clear that simulated or traced signatures could also take twice as long to execute. However, with analysis of the graphic representation and the velocity plots, differentiation between unnatural and finger signatures is more easily resolved.

Conclusions from this study were as follows:

1. Velocity plots make finger signatures more likely to be identifiable.
2. Finger signatures are executed more slowly than signatures written with a pen stylus.
3. As in traditional signature exams, writing instruments, writing position, and writing surface can all affect an electronic signature.

4. If awkward movements are noted in questioned signatures, FDEs need to consider if the questioned signature could be an electronic signature. If so, efforts should be made to acquire biometric data.

In addition to the above studies, a number of experiments related to electronic signatures have been conducted. For example, air strokes are features captured by the digitizing tablet when the pen or stylus is off the pad but within the capture distance of the tablet. Writers are not conscious of their air strokes as they are not visible on the writing surface. These air strikes were found to be useful in linking simulations to one writer[8].

Research in Australia has been conducted using a Wacom STU-430 signature pad running Wacom SignatureScope software (v. 1.29.1 and later). The authors concluded that "Based on the outcome of the study, FDES can be at least confident of the results of a scientific comparative examination of a questioned signature and appropriate specimen signatures when electronic questioned and specimen signatures are captured on a Wacom STU-430 Signature Pad and examined using Wacom SignatureScope as when traditional examinations of ink-on-paper signatures were undertaken." They caution that these results are specific to the tablet and software combination tested and that testing should be conducted on different combinations[9].

Furthermore, the proficiency of FDES in examining electronic signatures was tested by Heckeroth and Boywitt. In this study, 66 FDES examined electronic signatures written on a smartphone Galaxy Note 4 using a Wacom stylus and captured with signotec software and signatures written on paper with a ballpoint pen. The FDES had known electronic signatures for comparison with the questioned signatures and known signatures written in ballpoint pen. Heckeroth and Boywitt noted that "..electronic signatures have one major advantage over pen-and-paper signatures: they allow for the capture of temporal features of the signature which provide important information for the differentiation between authentic and simulated signatures"[10].

Despite the FDES having little or no previous experience in examining electronic signatures, the study "did not show any evidence of systematic differences in the FHES' conclusions concerning the authenticity of electronic versus conventional signatures." Heckeroth and Boywitt caution that FDES should have access to sample electronic signatures when conducting examinations of electronic signatures. Furthermore, FDES should undergo training in the examination of electronic signatures. What is clear is that additional research and training must be conducted by the FDE profession in the examination of digital signatures. These projects should be conducted with academics and manufacturers of relevant tablets and software.

Finally, the forensic document expert's analysis of both the objective and subjective features[11] of the questioned and known electronic signatures can lead to more demonstrable conclusions.

Electronic signature analysis hardware and software:

Electronic signature examination hardware and software problems have been solved to a certain extent in the countries of the world. Most countries use Topaz electronic signature hardware and software products from the United States. In the case of a signature dispute involving Topaz's electronic signature pad, the company provides forensic documentation experts with free access to the company's Siganalyze electronic signature analysis software and hardware. However, if you use another company's hardware, you are not allowed to use Topaz examination software.

[8] Dewhurst, T., Ballantyne, K., & Found, B., "Empirical investigation of biometric, non visible, intra-signature features in known and simulated signatures", Australian Journal of Forensic Sciences, 48(6), 659-675. https://doi.org/10.1080/00450618.2015.1126637, 2016.

[9] Strach, S., Novotny, M., & Devlin, A., "Evaluation of Wacom's electronic handwritten signature technology", In Presented at the annual general meeting of the American society of questioned document examiners, Park City, UT, 2018.

[10] Heckeroth, J., & Boywitt, C., "Examining authenticity: an initial exploration of the suit ability of handwritten electronic signatures", Forensic Science International, 275, 144-154, 2017.

[11] Linton, M., "Forensic examination of signatures", 178, 2019.

Therefore, if Mongolians will use the company's electronic signature pad to strengthen the electronic signature from the beginning, it will be possible to use the company's "Siganalyze" software and hardware free of charge to analyze the electronic signature in the future.

Meanwhile, in 2019 to solve the problem of developing a methodology for the study of signatures made using a tablet with a stylus pen, a commission was formed from the experts of the Center for Forensic Expertise of the Ministry of Justice of the Republic of Kazakhstan in the field of forensic handwriting and computer technology expertise. It was related to the implementation of the "E-criminal case" project in Kazakhstan, which involves the translation of the procedural workflow into digital format and the use of a Wacom STU-430 pad to authenticate electronic procedural documents with an electronic handwritten signature[12].

CONCLUSION

1. The realities of our time dictate the need for the introduction of digital technologies in all spheres of society. The possibilities of forensic handwriting are constantly expanding due to the continuity of the process of accumulating expertise. Integration into the sphere of forensic handwriting of new achievements of science and technology, related fields of expertise, computer technology, requires a review of traditional approaches to the examination of documents.
2. The signature examination tools that have been described in the forensic literature for more than 100 years are entirely applicable to the examination of e-signatures and the captured electronic signature contains enough detailed information that it can be compared to specimens.
3. If the forensic document expert has attended academic training in electronic signature examination, it is possible to perform electronic signature verification analysis.
4. In Mongolia, there is a need to introduce software and equipment for electronic signature examination or to develop new software based on electronic signature equipment, and to create opportunities for electronic signature examination in the future.

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5. Osborn, A. S., *"Questioned documents"* (2nd ed., pp. 98-99), 1929.
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[12] Ilyas Ismailov, "Forensic examination of Electronic handwritten signatures" technical article, The Asian forensic sciences network newsletter, Issue 10, 18-20, 2020.

8. Dewhurst, T., Ballantyne, K., & Found, B., *"Empirical investigation of biometric, non visible, intra-signature features in known and simulated signatures",* Australian Journal of Forensic Sciences, 48(6), 659-675. https://doi.org/10.1080/00450618.2015.1126637 , 2016.
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10. Heckeroth, J., & Boywitt, C., *"Examining authenticity: an initial exploration of the suit ability of handwritten electronic signatures"*, Forensic Science International, 275, 144-154, 2017.
11. Linton, M., *"Forensic examination of signatures",* 178, 2019.
12. Ilyas Ismailov, *"Forensic examination of Electronic handwritten signatures"* technical article, The Asian forensic sciences network newsletter, Issue 10, 18-20, 202

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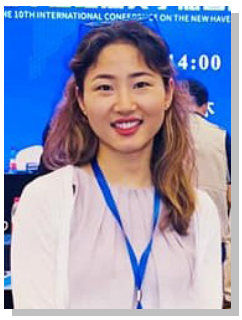
CURRENT PROBLEMATIC LEGAL ISSUES RELATED TO THE INTERNATIONAL INVESTMENT LAW

(An Appellate Body for International Investment Disputes and Jurisdiction of the Arbitration)



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ABSTRACT:

Through this paper, I am attempting to illustrate and to answer some questions put in front of myself that why do states endeavor to establish new investment dispute settlement mechanisms such as the Multilateral Investment Court in European Union and Investment Dispute Settlement Mechanism of the One Belt-One Road Initiative? Do we still need an international central body for settling investment disputes like ICSID? What is the current problem and possible solutions for the crisis within the Investor-State Dispute Settlement Mechanisms? Is it necessary to establish an Appellate Body for International Investment Disputes? In order to answer those questions, the paper will be covering the problems and possible solutions for the crisis within Investor-State Dispute Settlement Mechanism. In the final section of this paper, I want to ascertain the points whether investment agreement is one type of state contract (especially in the French "*contrat administratif*" concept) or not, if yes, whether it is possible to use arbitration for disputes, arising from administrative contract or not.

KEYWORDS:

Investment Law, International Investment Law, An Appellate Body for International Investment Disputes, Chinese Foreign Investment Law, Investment Agreement, Administrative Contract and State Contract.

I. Introduction

Importance of the international investment is to provide sustainable efficiency to the host country by offering greater competition; transferring capital, technology, and managerial skills;

enhancing market access; expanding the volume of international trade; and creating new jobs. Foreign investors benefit from their access to new markets, cheaper natural resources, and an expanded labor force.[1]

According to the statistics of the United Nations Commission on Trade and Development (UNCTAD) in 2018[2], foreign investment is regulated by 2955 bilateral investment treaties (BITs), and 379 treaties with investment provisions.

In those investment agreements and treaties, the state and an investor tend to choose arbitration for settling their disputes arising from an investment for the reason an arbitration has significant advantages over litigation in the court, such as party control of the process, typically lower cost and shorter time to resolution, flexibility, privacy, awards, which are fair, final and enforceable, decision-makers who are selected by the parties on the basis of desired characteristics and experience, and broad user satisfaction[3]. Also, arbitration carries advantages for both the investor and the host state, including for the investor gaining access to an effective international remedy, and for the state, by offering an international procedure for dispute settlement it improves its investment climate and is likely to attract more foreign investment.[4]

Dispute Settlement Mechanism in International Investment Disputes, currently, is a dramatic issue in the field of law. The first attempt to settle disputes related to investment cases of the investor-state dispute was an establishment of the International Centre for Settlement of Investment Disputes (ICSID), created by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) forced on 14 October 1966. ICSID's purpose was to remove major impediments and risks to foreign direct investments in the absence of specialized facilities for investment dispute settlement between foreign investors and States through conciliation and arbitration procedures.[5]

Even though ICSID was a great achievement for investor-state disputes settlement, the phenomenon, that the countries tend to hesitate to solve their disputes by ICSID, currently is arising. One of the ICSID problems is that illegality including corruption and bribery in respect of admission. Also, the European Union described the ICSID's problems that: 1) investment treaty provisions were interpreted in favor of investors; 2) there was inconsistency and unpredictability of arbitral decisions; 3) there was a lack of transparency; and 4) there was a lack of independence and impartiality of arbitrators, who belonged to a small elite group.

The debated options have the termination of investment treaties and disengagement from the Investor–State Dispute Settlement (hereinafter *ISDS*) system at one end of the spectrum. At the other end are proposals involving a further institutionalization of ISDS, in particular, the creation of a standing appellate mechanism or the establishment of a permanent international investment court. In addition, the principles of democracy and the rule of law can be used to back additional elements the future ISDS system should integrate.[6]

II. Analyzing the proposal about creating an appellate body for the international investment court

The fundamental reason to choose arbitration is related to the principle of finality, in which international arbitral awards cannot be appealed on the merits.

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[1] Yaraslau Kryvoi, International Centre for Settlement of Investment Disputes, Kluwer Law International, pg22 (2010)

[2] United Nations Commission on Trade and Development, International Investment Agreements, see at http://investmentpolicyhub.unctad.org/IIA, accessed in the 22nd, Jun 2018

[3] Edna Sussman, John Wilkinson, Benefits of Arbitration for Commercial Disputes, 2012, page 1 https://www.americanbar.org/content/dam/aba/publications/dispute_resolution_magazine/March_2012_Sussman_Wilkinson_March_5.authcheckdam.pdf

[4] Rudolf Dolzer&Christoph Schreuer, Principle of International Investment Law, 2nd Edition, pg236 (2012)

[5] Yaraslau Kryvoi, International Centre for Settlement of Investment Disputes, Kluwer Law International, pg21 (2010)

6 Stephan W.Schill, Reforming Investor-State Dispute Settlement (ISDS): Conceptual Framework and Options for the Way Forward, Strengthening the Global Trade and Investment System for Sustainable Development (E15 Task Force on Investment Policy, pg10 (2015)

According to the article 53(1) of the ICSID Convention, the award shall be binding on the parties and shall not be subject to any appeal or any other remedy except those provided for in this Convention. Each party shall abide by and comply with the terms of the award except to the extent that enforcement shall have been stayed pursuant to the relevant provisions of this Convention.[7] Based on this article of the ICSID Convention, it is impossible to establish an appeal body in the current ICSID system.

Several attempts to establish an appeal body for international investment disputes are showing. The discussion of an appellate mechanism for investment disputes moved into the mainstream during the second half of 2002 when the United States Congress enacted the Bipartisan Trade Promotion Authority Act, identified for U.S. free trade agreements a negotiating objective of "providing for an appellate body or similar mechanism to provide coherence to the interpretations of investment provisions in trade agreements".[8] Also, in November 2015, the European Commission submitted to the United States its proposal about establishing an investment court system in the Transatlantic Trade and Investment Partnership. The proposal consists of a two-tier tribunal to hear investor-state disputes, comprising a Tribunal of First Instance and an Appeal Tribunal. In October 2004, the ICSID added momentum to discussions of an appellate mechanism by releasing a working paper that floated the idea of a new ICSID "Appeals Facility".[9] The ICSID Convention provides for several 'internal' ICSID remedies including supplementation and rectification, interpretation, revision, and annulment. But a review of awards issued in ICSID investment arbitrations is conducted within the ICSID annulment regime which, in order to promote finality, prohibits any review on the merits.

Also, the articles 9.22 and 9.23 of the China-Australia Free Trade Agreement (2014) provide that the appellate mechanism can review awards that '90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award', or awards that 'a court has dismissed or allowed an application to revise, set aside or annul ... and there is no further appeal'. Therefore, a losing party may be possibly apply for the appellate mechanism under the China-Australia FTA to further review an award that has been reviewed by a court located in the seat of arbitration or the state where recognition and enforcement of the award is sought.[10]

The appeal mechanism of the arbitral awards is also restricted because of the main characteristic and fundamental principles of the arbitration such as speed and finality. The finality of an award is ultimately a direct consequence of the choice of the parties, who decided to arbitrate instead of litigating their dispute[11]. In the case that the parties agree to prioritize correctness or fairness over finality, this does not necessarily detract from the principle of finality but rather can conform to the spirit of arbitration, so long as the parties are in agreement about the procedure to be followed in any such appeal. The appeal of finality can sometimes depend on the size and complexity of the case, such that where the stakes are particularly high the need to protect against the risk of an aberrant award, by permitting court review, outweighs the desire for speed and finality. In this sense, the desire for a correct decision greatly outweighs any wish for speed and premature finality.[12]

But sometimes, fully allowing the appeal mechanism in the international arbitration frustrates the parties who desire to resolve their disputes by arbitration. For example, the Arbitration Act of England in 1979 marked the beginning of a fundamental shift in public policy

[7] Rudolf Dolzer&Christoph Schreuer. Principles of International Investment Law, 2nd Edition, pg310-311 (2012)

[8] Karl P.Sauvant and Micheal Chiswick-Patterson. Appeals Mechanism in International Investment Disputes, pg267 (2008)

[9] ICSID Secretariat, "Possible Improvements of the Framework for ICSID Arbitration 14-16" (22 October 2004) see at www.worldbank.org/icsid/highlights/discussionpaper.pdf

[10] Huang, Jie (Jeanne). 'Silk Road Economic Belt: Can Old BITs Fulfill China's New Initiative?'. Journal of World Trade 50, no. 4, pg753 (2016)

[11] Lord Mustill, A Commercial Way to Justice, 63 Arb.15 (1997)

[12] D.Wallace, Control by the Courts:A Plea for More, Not Less, 6 Arb. Intl. 253, 258 (1990).

in the relationship between the courts and arbitration, from strict judicial supervision of 'legal accuracy', to recognition of the need for greater 'commercial expediency' and finality in arbitral awards. But this development was considered by some to result in foreign users of English commercial arbitration remaining fearful that English courts were unsupportive of the arbitration process. Thus, an Appeal Mechanism of International Arbitration should exist in the balance between a tension of the rival goals of finality and fairness.

III. Investment Contract-Administrative contract/State contract

Host states dealing with foreign investors will frequently act in the exercise of sovereign powers (jure imperii) rather than in a commercial capacity (jure gentionis).[13]

There are several cases related to the dual procedural settlement that the state court revokes the authority of the arbitral tribunal, and assumes the facts. For example, *The Hub Power Co. v. WAPDA* case[14] concerned a foreign investment vehicle, which entered into an agreement with the Pakistani Government and the state-owned entity, WAPDA, in relation to a power project. A dispute arose regarding the price of electricity and the ICC arbitration was initiated in London as per the terms of the agreement. For the reasons that fraud and corruption against the foreign party, the Pakistani Government sued the Lahore High Court for preventing the claimant from proceeding with the international arbitration. The case was decided in favor of the Pakistani Government and the Court's decision was based on grounds of public policy and arbitrability.

From this case, it may be possible to conclude that when an investment dispute arises, the countries tend to interpret or argue that an agreement made between the state and an investor is a state contract, which means that jurisdiction of the dispute settlement will be kept host state's court.

In Iran, administrative contracts are contracts where one of the parties is a public person, which is examined by the Administrative Court.[15] The article 177 of the Swiss Federal Code on Private International Law[16] states that all pecuniary claims maybe submitted to arbitration. The article 2 of the Bulgarian Arbitration Law indicates that disputes relative to rights in rem or to possession of immovable property or to labor relations could not be submitted to arbitration. The article 3 of the Law of the People's Republic of China on Arbitration of August 31, 1994, provides that the following disputes shall not be submitted to arbitration: (1) disputes over marriage, adoption, guardianship, child maintenance, and inheritance; and (2) administrative disputes falling within the jurisdiction of the relevant administrative organs according to law.[17] In France, article 2061 of the French Civil Code (FCC) provides "except where there are particular statutory provisions, an arbitration clause is valid in contracts concluded by reason of professional activity. Some jurists think that Article 2061 of French Civil Code has arbitration possible in administrative litigations.[18]

The concept of arbitrability, properly so-called, relates to public policy limitations upon arbitration as a method of settling disputes. Each State may decide, in accordance with its own economic and social policy, which matters maybe settled by arbitration and which may not. In international cases, arbitrability involves balancing competing policy considerations. The legislators and courts in each country must balance the importance of reserving matters of public interest (such as human rights or criminal law issues) to the courts against the public interest in

[13] Rudolf Dolzer&Christoph Schreuer. Principles of International Investment Law, 2nd Edition, pg235 (2012)

[14] Sameer Sattar. National Courts and International Arbitration: A Double-edged Sword?, Journal of International Arbitration 27, no.1, pg 60 (2010)

[15] Gholamreza Arbabi, Reza Fanazad, Survey of Constraints and Barriers of Administrative Contracts in Public Law, Journal of Novel Applied Sciences, 3 (12), 2014, p. 1369

[16] Swiss Federal Code on Private International Law, http://www.umbricht.ch/pdf/SwissPIL.pdf

[17] Ching Lang Lin, Arbitration in administrative contracts: Comparative Law Perspective, Thиse IEP de Paris, 2014, p.30

[18] Yves Gaudemet, Arbitrage et droit public, DROIT ET PATRIMOINE, June 2002, p. 83, 86 Recited from Ching Lang Lin, supra note 17

the encouragement of arbitration in commercial matters.[19]

The German law recognizes the existence of public law contracts[20], which are used in lieu of individual administrative acts. This kind of contract will be administered when the rights and obligations of its parties will be aimed at fulfillment of public assignments, which are allocated in public law[21], also called state contract. As per the article 1675 far in to the requirements of the article 3132 of the Iran Administrative law, a contract shall be deemed to be an administrative contract where it is expressly qualified as such by the law or by the parties, or it is connected with an activity of the public service and implies a permanent participation of the party contracting with the administrative authorities in the execution of such service.[22] The article 11 of the former Interpretation of the Supreme People's Court on Several Issues Concerning the Application of "Administrative Litigation Law of the People's Republic of China[23] defines the an administrative contract that if an administrative agency, to advance the public interest or the goals of administrative governance, and in the scope of its statutory duties, consultatively enters into an agreement with citizens, legal persons, or other organizations that pertains to their rights and duties under administrative law, such agreement shall be deemed an "administrative contract".

The administrative contract has following characteristics, which indicates this kind of contract is different from a contract regulated by private law. First, at least one of the parties to an administrative contract has to be vested with public authority. Second, the administrative contract's subject matter covers issues of material public interest. What is the public interest in the context of the administrative contract? Some scholars argue that 2 kinds of the public interest/ public serve's notion can be used in the area of the public contract. State can be a party of the contract, entailing the existence of a form of organization, of an administrative apparatus, and a material sense that refers to an activity aimed at satisfying a general interest[24], which is not considered as the administrative contract. The administrative contract is considered invalid on the same grounds which apply to the invalidity of an administrative act, i.e. ultra vires, non-compliance with the prescribed form, material breach of administrative procedural rules, contravention to substantive legal provisions, or divergence from the objectives of the law.[25]

State contracts have played a major role in the foreign direct investment process that is the duties towards private investor parties to State contracts compensate for the more favorable position of the State by allowing for clauses on stabilization, choice of law, arbitration and the breach of contract on the part of the host country government.[26] From this perspective, it is possible to reach the conclusion that investment contract is administrative contract/state contract.

In fact, also this kind of contract, investment contract, characterizes principles of civil law such as contract freedom, equality of the parties and so on. Some scholars say that investment treaty arbitration is characterizes as a hybrid legal system or equates it with public/administrative law dispute settlement.[27]

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[19] Al-An Redfiern & Martin Hunter, International Commercial Arbitration, 2nd edition, 1991, p.137

[20] Sivkov, Tsvetan, Agreements under the Code of Administrative Procedure, Ciela Publishing House, 2012, p.137

[21] Paterylo I. Administrative contracts under German Law: Use of foreign experiences in Ukraine, Series JURISPRUDENCE, Edition 28, 2014, p.36

[22] Gholamreza Arbabi, Reza Fanazad, Survey of Constraints and Barriers of Administrative Contracts in Public Law, Journal of Novel Applied Sciences, 3 (12), 2014, p. 1368

[23] Interpretation of the Supreme People's Court on Several Issues Concerning the Application of "Administrative Litigation Law of the People's Republic of China (2015 Ineffective) http://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/1535/25WILJ0133.pdf?sequence=4

[24] Catalina G.Matei, Differences between the concession contract of public services and other contracts, Bulletin of the Transilvania University of Brasov, Series VII: Social Sciences, Law, Vol.6 (55), No, 1-203, pg158 (2013)

[25] Kamelia Yotoya, The Administrative Contract – Essence and Applicability, Dobrev&Lyutskanow Law Firm (2016)

[26] United Nations Conference on Trade and Development, State Contract: UNCTAD Series on issues in international investment agreements, No.E.05.II.D.5, pg1 (2004)

[27] Eric De Brabandere, Investment Treaty Arbitration as Public International Law: Procedural Aspects and Implications, pg2 (2015)

Is it possible that parties agree on the arbitration clause in the context of the administrative contract or use arbitration for solving disputes arising from administrative contract? In order to attempt answers to this question, I want to illustrate some legal theories, which can be applied to define the usage of the applicable law on the administrative contract (public law and private law).

There are three schools[28] of thought with regard to contracts to which the public administration is a party. Some authors believe that whenever the public administration enters into contractual relationships, the latter are of private law nature. Other authors claim that such cases are of mixed nature, comprising both the issuance of an administrative act and the conclusion of a civil law transaction. Still, others are of the opinion that the administrative contract is a legal institute sui generis. Although it is referred to as a contract, it is very different from a contract in the sphere of civil law.

UNCITRAL Model Law on International Commercial Arbitration does not detail the requirement for an arbitral matter other than "matters arising from all relationship of commercial nature, whether contractual or not". So it was left open to be determined by lawmakers of the countries whether public entities have legal ability to conclude the arbitration clause in administrative contracts or not. A dispute can only be submitted to arbitration when it is arbitrable. As per UNCITRAL Model Law on International Commercial Arbitration, we can conclude that different types of legislation regulate arbitrability by the way of taking a positive approach by defining the standard of arbitrability, or a negative approach by excluding arbitrability in certain cases.

In England, the common court will accept the disputes caused by administration contracting out. But unlike the civil dispute, the court administers the different laws. In France, contracting out is regarded as one practice of public management, so the related disputes should be solved by the administrative proceedings. In Germany, as a usual rule, the dispute about contracting out should be brought to the administrative court.[29] In Iran, the administrative contracts are contracts where one of the parties is a public person, which examined by the Administrative Court.[30] The article 177 of the Swiss Federal Code on Private International Law[31] states that all pecuniary claims maybe submitted to arbitration. The article 2 of the Bulgarian Arbitration Law indicates that disputes relative to rights in rem or to possession of immovable property or to labor relations could not be submitted to arbitration. The article 3 of the Law of the People's Republic of China on Arbitration of August 31, 1994, provides that the following disputes shall not be submitted to arbitration: (1) disputes over marriage, adoption, guardianship, child maintenance and inheritance; and (2) administrative disputes falling within the jurisdiction of the relevant administrative organs according to law.[32] In France, article 2061 of the French Civil Code (FCC) provides "except where there are particular statutory provisions, an arbitration clause is valid in contracts concluded by reason of professional activity. Some jurists think that Article 2061 of French Civil Code has arbitration possible in administrative litigations.[33]

[28] Buchkova, Pamela, The Administrative Contract: Substantive, Procedural and Comparative Legal Aspects, Phenea Publishing House, pg21-22 (2012)

[29] Zhu Yinghui, Research on Feasibility of Administrative Contract Responsibility System in China, Proceedings of the 7th International Conference on Innovation & Management, 2010, p.1055

[30] Gholamreza Arbabi, Reza Fanazad, Survey of Constraints and Barriers of Administrative Contracts in Public Law, Journal of Novel Applied Sciences, 3 (12), 2014, p. 1369

[31] Swiss Federal Code on Private International Law, http://www.umbricht.ch/pdf/SwissPIL.pdf

[32] Ching Lang Lin, Arbitration in administrative contracts: Comparative Law Perspective, Thıse IEP de Paris, 2014, p.30

[33] Yves Gaudemet, Arbitrage et droit public, DROIT ET PATRIMOINE, June 2002, p. 83, 86 Recited from Ching Lang Lin, supra note 17

IV. CONCLUSION

The Chinese Administrative Litigation Law went into force in the year 1989. The event was regarded as a milestone in Chinese history because for the first time in record that the masses were allowed to sue the government.[34] According to current effective Chinese Administrative Litigation Law[35], a person shall have a right to sue against government/administrative actions such as transgression of law or neglect of duty by making a written or verbal statement to any organ of state at any level and administrative contract.

Excellence administrative contracts and private different for all other contracts of course, trade, such as contracts, or labor contracts and other, administrative justice when viewed in disputes administrative contracts considered by some differentiation and heterogeneity which fits with the nature of the administrative contract and who is not applied by arbitration often considering disputes decades and which ones contracts administrative.[36] Management contracts link the sovereignty of the state of administrative contracts associated state sovereignty directly relates to a natural state wealth, as in the commitment contracts, which often extend to many years, their disputes shall be subject to eliminate, because the subject of the arbitration which maybe some kind of violation of the sovereignty of the state.[37]

As per of the article 78 of the Chinese Administrative Litigation Law states that "where the defendant fails to perform according to the law or as agreed upon or illegally modifies or rescinds an agreement as mentioned in item (11), paragraph 1, Article 12 of this Law, a people's court shall enter a judgment to require the defendant to continue to perform, take remedial measures, or compensate for losses, among others. Where the defendant legally modifies or rescinds an agreement as mentioned in item (11), paragraph 1, Article 12 of this Law, but fails to provide indemnity as required by the law, the people's court shall enter a judgment to require the defendant to provide indemnity". From this article, China does not allow to use of arbitration to solve disputes arising from administrative contracts. But there are some controversial arguments existing within legal scholars. Disputes involving administrative contracts principally are not within the scope of application of the Chinese administrative litigation system, which is applicable exclusively to claims initiated by citizens against administrative bodies. Most disputes involving administrative contracts should be submitted to administrative judges in the administrative chamber of the local people's courts. Arbitration and other ADR measures gradually are being accepted in jurisprudence.[38] In China, because of the government-owned land policy, in disputes involving lease contracts for agricultural land, even if they are arbitrable, they must be submitted to special arbitration commissions; this means that the will of the parties is inferior to government policy and that the parties do not have the liberty to choose arbitration.[39]

However, there is still doubt whether or not using arbitration in disputes administrative contracts like regular civil contracts, despite the different nature of these contracts and objectives such as public interest/policy used in common law countries and public order used in civil law countries, it is still crucial to choose arbitration on the reasons that is the speed of deciding the issues that raised in the dispute and not to prolong the conflict in administrative contracts and confidentiality.

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[34] Yang Lingping, The Ten Major Issues in Amending the Administrative Litigation Law, Journal of National Prosecutors College, Vol. 21 No.3 15-21, 2013, P15.

[35] The Administrative Litigation Law of the People's Republic of China (2017 Revision) http://www.pkulaw.cn/

[36] Wakene, Wondwossen, (2011), The Law of Administrative counteracts; Teaching Material, (University of Gondar, Faculty of Law) https://chilot.files.wordpress.com/2011/06/administrative-contracts.pdf

[37] Asam Saud Alsaiat, Disputes in administrative contracts and the possibility of utilizing, arbitration to solve them, Public Policy and Administration Research, Vol.6, No.6, 2015, p.47

[38] supra note 17, p.433

[39] supra note 17, p.434

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THE INTRODUCTION OF A NEW SCHOLAR

Tumendemberel Battsengel (Ph.D.)
Senior researcher of
the National Legal Institute of Mongolia

Education

1995 - 2005: Secondary school, Bat-Ulzii soum Uvurkhangai province
2005 - 2007: Orkhon University (English)
2008 - 2010: Daegu University, Korea (Language Course)
2010 - 2014: Daegu University, Korea (Mass communication; bachelor's degree)
2014 - 2016: Daegu University, Korea (Department of Law; Master)
2016 - 2020: Daegu University, Korea (Department of Law; Doctor)

Experience

2014.9 - 2016.2: International Graduate School(Research assistant)
2016.12 - 2018.2: Legal Research Institute (Teaching assistant)
2018.10 - 2020.8: Center for Multiculturalism and Social Policy (Research assistant)
2020.9 - 2021.9: Center for Multiculturalism and Social Policy (Participation Research)
2015.02 - 2021.9: Deagu Court (Freelancer translator)
2021.10 - recent: Member of Korean Constitutional Law Association
2021.10 - recent: Member of Korean Public Law Association

Research Paper

1. 몽골선거제도에 관한 고찰(국제법무 제8집 제2호, 2016.11.30.)
2. 몽골 헌법상 재산권에 관한 연구(대구법학 제14권, 2017.12.30.)
3. 몽골 전통과 법(대구법학 제16권, 2019.12.30.)
4. 유학생 노동의 불법성에 관한 연구(현대사회와 다문화 제16권 제2호, 2020.6.)
5. 몽골 법체계상 공용수용과 손실보상의 문제점과 발전방안에 관한 연구(국제법무 제12권 제2호, 2020.11.30.)

A Study of Legal System of the National Land Planning and Utilization and Loss Compensation (Abstract)

The property law, which is today guaranteed as a basic right in the constitution, came to function as a basic right closest to this value determined in the constitution. The function has been changed in this way when the guarantee of the right of property prescribed in the contemporary constitutionalist constitution was transferred to the modern welfare state constitution. The guarantee of a basic right is generally changed in a much-strengthened form through a change of era but in the case of the guarantee of the property right, as conceived that it has been changed in an opposite way to that flow and diverse forms of restriction have been added, it is taken as the subject of this research. There shall be some contradictions and conflicts, which must be normatively resolved, between the guaranty of the property right stipulated in Article 23 of the constitution and the national land utilization and development prescribed in Article 122 of the constitution. As long as a nation exists as a community, each guaranty over the property right has signified a guarantee within that limitation. However, from the guarantee of the property right as the basic right functioning as the highest value of the constitution, the original function which is an actualization of the function of the guarantee of freedom those who own the property right - 173 - within the area of it must not be forfeited. This research aims at suggesting a theory of the constitution aiming at resolving some problems caused from rule intrinsic contradictions and rule applications in the relation between the national land utilization and development and the guarantee of the property right in ways of accommodating rule and suggesting an empirical resolution method in accordance with the theory. As of this research, first of all, the relation between the national land planning and utilization and the guarantee of the property right will be reviewed. Especially, an accommodating resolving method was suggested since a method of avoidance had not to be taken when contradictions in the constitution norm happened by proving the contradictory relation in that the relation between the significance of the land in light of the nation and the property right in light of an individual was called as the property right and the property right as public welfare obligation through the theory of the constitution in a way of accommodation of this contradicting relation.

Secondly, the legal system and contents of rule concerning the national land planning and utilization were reviewed and additionally, the property right and the national land planning clauses in the constitution of Mongolia were analyzed and the land law, land privatization law, etc., in which the land planning was in detail were reviewed. Thirdly, a general theory of expropriation for achieving the purpose of the national land planning and utilization and loss compensation in relation to it was reviewed and resolving methods concerning problems such as remedy for violation of those possessing the property right, their participation, etc., for excluding development merit from abusing expropriation rights with the expansion of a public utility and a change of era, solving unbalance between rewarded people and owners of nearby lands and others, solving a problem of lack of participation of rewarded people in the execution process of public service were suggested, the expropriation institution in Mongolia was also analyzed, and a possibility of Mongolia's importing the expropriation institution in Korea and a standard which predicted and prepared for the arrangement of loss compensation system of Mongolia in the future was suggested. Lastly, as an improved method for guaranteeing rights of those owning the property right in loss compensation, first, execution of appropriate compensation in expropriation at a - 174 - higher level, second, abolishment of individual laws permitting expropriation, third, reestablishment of direction of a public utility, the fourth, introduction of the system of the shared amount by beneficiaries which can retrieve development merit occurred to owners of lands surrounding to a public utility.

We congratulate you Dr. Tumendemberel B. and wish you every success in your future endeavors!

THE INTRODUCTION OF A NEW SCHOLAR

Sarantsetseg Enkh-Amgalan (Ph.D.)
Senior researcher of
the National Legal Institute of Mongolia

Sarantsetseg Enkh-Amgalan was born in Mogod sum, Bulgan aimag on December 3, 1990. She's research focuses on political behaviors, elections, and political parties.

Education:

2017-2021 Doctor of Philosophy in Political Sciences, Department of Political Science and International Relations, Soongsil University, Seoul, South Korea

2016-2017 Yonsei University, Korean Language training

2012-2015 Ph.D. candidate, Department of political science, National University of Mongolia

2010-2012 Master of Political Sciences, Department of political science, National University of Mongolia

2006-2010 Bachelor of Arts, Department of political science, National University of Mongolia

1998-2006 Secondary school, Erdmiin Undraa Complex, Ulaanbaatar, Mongolia

Previous Position:

2021.10.01- Senior researcher, National Legal Institute of Mongolia

2019-2020 Teacher, Tongjin Secondary School, South Korea

2019-2020 Assistant, Department of Political Science and International Relations, Soongsil University, Seoul, South Korea

2017-2021 Teacher, Asian hub multicultural center, Seoul, South Korea

2010-2015 Academic affairs staff, National University of Mongolia

Research Paper:

Political system of Japan, Politology Scientific Journal, Ulaanbaatar, Mongolia, 2012, №372(66) IX ISSN 22276904

Political system changes and economic development of Republic of Korea, Politology Scientific Journal, Ulaanbaatar, Mongolia, 2013, (10) 388 ISSN 22276904

"Contemporary political Society" ISSN 2220-8666 /Summer/Winter/2012, Volume 2 number1/2 Scientific article

"Performing role of the Parliamentary election in the enforcement of Mongolian Democracy" Shine Toli Scientific Journal, 2020, №81,

The situation of South Korea's 21st Parliamentary election, Politology Scientific Journal, Ulaanbaatar, Mongolia, 2020, №18(534), ISSN 2227-6904

"Performing role of the Parliamentary election in the enforcement of Mongolian Democracy" Mongolian Studies, South Korea, 2020(63) ISSN1229-7097

11개 언어로 즐기는 감정 카드, БНСУ, 2020

"Voting Behavior and Political Support of Mongolian Voters: The 2020 Mongolian Legislative Election" (Abstract)

I have conducted research and written a paper on "Voting Behavior and Political Support of Mongolian Voters: The 2020 Mongolian Legislative Election" based on the Retrospective voting theory on the example of the 2020 parliamentary elections and the factors influencing the behavior and political support of Mongolian voters. In other words, it examines whether Mongolian voters make political decisions based on the theory of Retrospective voting (Fiorina 1981). In order to conduct the research, I've utilizes the information given from MEC LLC, I've collected a survey from 925 people in 6 different districts in Ulaanbaatar (Bayangol, Bayanzurkh, Songinokhairkhan, Chingeltei, Khan-Uul, Sukhbaatar). With the collected data and regression analysis of many factors was performed using the SPSS 26.0 statistical software.

The main objective of the study is to examine whether Mongolian voters make political choices within the framework of the Retrospective voting (Fiorina) theory. In order to conduct the research, I've divided the research into 2 categories. First, the evaluation of the performance of the Mongolian government, a study of the factors influencing the performance of the then Prime Minister Khurelsukh Ukhnaa. Second, a study of the factors influencing the decision-making process of Mongolian voters in general.

It was also a year; the coronavirus pandemic affected all sectors of society and made many changes around the world. The 2020 Mongolian parliamentary elections took place during these unprecedented times, and it was successful during this epidemic. Therefore, it is imperative to analyze the impact of the coronavirus pandemic on the choices of Mongolian voters and to try to find out how the corona affected the decision-making process of Mongolian voters.

We congratulate you Dr. Sarantsetseg E. and wish you every success in your future endeavors!

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ADVISOR TO THE MINISTER OF JUSTICE AND HOME AFFAIRS, ACADEMICIAN S.NARANGEREL RECEIVED A STATE AWARD

On the 110th anniversary of the establishment and development of the Justice and Home Affairs department in Mongolia, Narangerel Sodovsuren, Advisor to the Minister of Justice and Home Affairs, Honored Scientist of Mongolia, Academician of Mongolia, Doctor of Law, Emeritus Professor of the National University of Mongolia, was awarded the State Prize of Mongolia by Presidential Decree No. 100 of December 26, 2021.

On behalf of the entire legal profession, we would like to sincerely congratulate S.Narangerel, a member of the Editorial Board of the Mongolian Journal of Law, on receiving the first state award from Mongolian lawyers.

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A RESEARCH SEMINAR IN COOPERATION WITH THE LGEAL TRAINING AND RESEARCH INSTITUTE OF JAPAN WAS SUCCESSFULLY HELD

The National Legal Institute under the Ministry of Justice and Home Affairs of Mongolia and the Legal Training and Research Institute under the Ministry of Justice of Japan signed a memorandum of cooperation on August 11, 2021. The first event of this cooperation, a joint research seminar on "Criminal Procedure System: Japan and Mongolia" was successfully held online on October 8, 2021.

Prof. Dr. Naito Shintaro, Director of the International Cooperation Department of the Legal Training and Research Institute of Japan and Dr. Kh.Erdem-Undrakh, Director of the National Legal Institute of Mongolia expressed their gratitude to the parties for intensifying their cooperation and strengthening friendly relations during this difficult time of the global pandemic, and wished success to the participants of the seminar.

Ito Mizuki, Professor of International Cooperation, Institute of Education and Research, Japan, on "Japanese Criminal Procedure System" and S.Sukhbaatar, Academic Secretary of NLI on "Mongolian Criminal Procedure System". Leaders and researchers from the Japan Institute for Training and Research, the United Nations Institute for Crime Prevention in Asia and the Far East, the National Legal Institute of Mongolia, the Ministry of Justice and Home Affairs, the General Prosecutor's Office, and the School of Law of the National University of Mongolia attended this seminar and asked interesting questions, expressed their views, and made important contributions to enhancing the effectiveness and relevance of the discussion.

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RESEARCH CONTEST WAS ORGANIZED ON THE TOPIC "CHALLENGES AND IMPLEMENTATION OF GENERAL ADMINISTRATIVE LAW AND ADMINISTRATIVE PROCEDURE LAW"

In order to identify problems in the field of administrative law, to support the intellectual work of students, to develop their creative thinking and scientific attitude, the National Legal Institute successfully organized a research paper competition among undergraduate students of law universities and colleges under the topic "Challenges and implementation of General Administrative Law and Administrative Procedure Law".

Out of 30 students from law universities who submitted papers in this year's competition, 6 papers selected in the second round were held on November 4, 2021, and the judges selected the best papers. We would like to thank the Judge of the Supreme Court, Doctor of Law (LL.D) Ts.Tsogt, Member of the National Human Rights Commission, Doctor of Law (Ph.D.) D.Sunjid, Lecturer of Public Law Department, School of Law of the National University of Mongolia, (LL.M) B.Bayalagmaa.

R.Oyundelger, a 5th level student of School of Law of the National University of Mongolia, won the first place award on the topic "Implementation and difficulty of Article 123.2 of The Administrative Procedure Law (The Supreme Court's Objective On Ensuring Uniformity Of The Law)", B.Margad-Erdene, B.Uuganbolor, 5th level students of School of Law, the National University of Mongolia won the second place award on the topic "Does the Administrative Court of Appeals and the Court of Appeals have the right to aggravate the legal status of the appellant and its problems" and B.Ariunzaya, B.Nomin won the third-place award on the topic "Problems in reviewing and registering some administrative normative acts". In addition, the winning work was published in a special issue of the Mongolian Journal of Law dedicated to the 110th anniversary of the establishment and development of the Department of Justice and Home Affairs.

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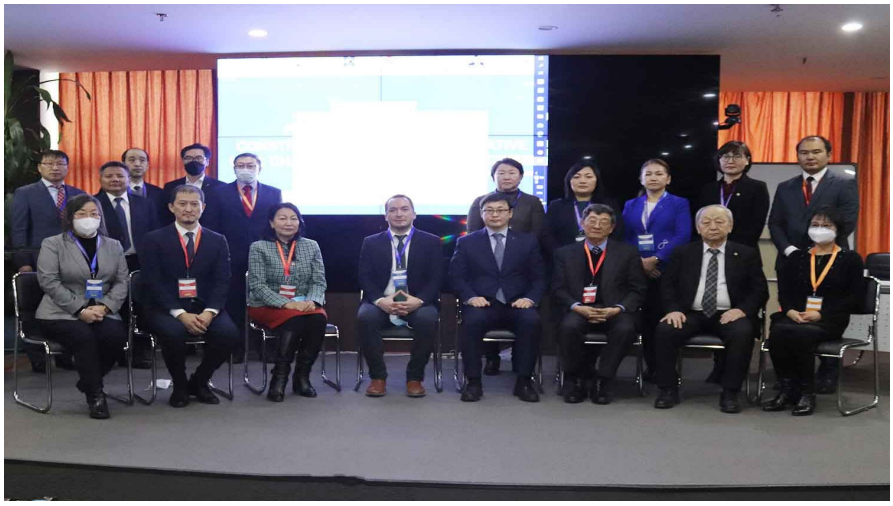
THE THIRD INTERNATIONAL CONFERENCE ON "FUNDAMENTAL ISSUES OF CONSTITUTIONAL AND ADMINISTRATIVE LAW: CHALLENGES IN THE ERA OF CRISIS" WAS HELD



On November 20 and 21, 2021, at the Central Library of the National University of Mongolia, the 3rd International Conference "Fundamental issues of Constitutional and Administrative Law: Challenges in the era of crisis" was held. The conference was organized by the School of Law of the National University of Mongolia, the Faculty of Law of the University of Nagoya, Japan, the Constitutional Court of Mongolia, the Asian Satellite Campus Institute of the University of Nagoya, the Institute of Judicial Training, Research and Information under the Supreme Court of Mongolia. The National Legal Institute, the Hanns Seidel Foundation, The Asia Foundation, the Mongolian Bar Association, the Chimid Foundation, and the legaldata.mn Foundation for Legal Research successfully co-organized the event. Representatives from China, Germany, Japan, South Korea, the United States and Estonia also participated online.

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SCIENTIFIC CONFERENCE ON "LEGAL TERMINATION OF MONGOLIA" WAS SUCCESFULLY HELD

The National Conference "Traditions and Evolution of Mongolian Legal Termination" was held for the third year in a row at the Bar Hall of the National Legal Institute. The conference was co-organized by the School of Law of the National University of Mongolia and the National Legal Institute, and was attended by the Institute of Judicial Training, Research and Information under the Supreme Court, the Institute of Philosophy of the Academy of Sciences, the Ministry of Justice and Home Affairs, the Parliamentary Research Institute of the Secretariat of the State Great Hural, the Capital City Citizens' Representatives Hural and the "legaldata.mn".

The conference was opened by B.Baasandorj, State Secretary of the Ministry of Justice and Home Affairs, and B.Amarsanaa, Director of the School of Law of the National University of Mongolia.

This national conference focused on the correct definition and interpretation of legal terms and concepts, the introduction of terminology and encyclopedias, the evolution of legal terminology, its impact on the legal system and how to address other issues. Eleven researchers made presentations in four main sections.

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SCIENTIFIC CONFERENCE ON "CURRENT AND FUTURE OF THE LEGAL FIELD: PROBLEMS AND SOLUTIONS" WAS SUCCESFULLY HELD

On December 3, 2021, on the occasion of the 110th anniversary of the establishment and development of the Department of Justice and Home Affairs in Mongolia, a scientific conference entitled "Current and Future of the Legal Field: Problems and Solutions" was successfully held at the Bar Hall of the National Institute of Law.

Opening the meeting, Minister of Justice and Home Affairs Kh.Nyambaatar said, "This year marks the 110th anniversary of the restoration of Mongolia's national freedom and independence and the establishment of five key ministries. This proud event, which marked the beginning of a new Mongolian history 110 years ago, is celebrated by the Mongolian government to be remembered for generations to come. On the occasion of the 110th anniversary of the establishment of a new legal service in Mongolia, the National Legal Institute marked the historical development of the legal service, including the Ministry of Justice and Home Affairs and its agencies and organizations. We hope that it will make a real contribution to determining the future direction."

The purpose of the conference is to review the current state of the legal field, to identify the problems of scientists and researchers in the field, to suggest possible solutions, and to monitor the future development trends. The conference was attended by representatives of the Ministry of Justice and Home Affairs, relevant agencies, organizations, prosecutors, courts, notaries, advocacy organizations, scholars and researchers, and a total of 15 speeches discussed at the conference were published as a special issue of the Mongolian Journal of Law dedicated to the 110th anniversary of the establishment and development of the Department of Justice and Home Affairs.

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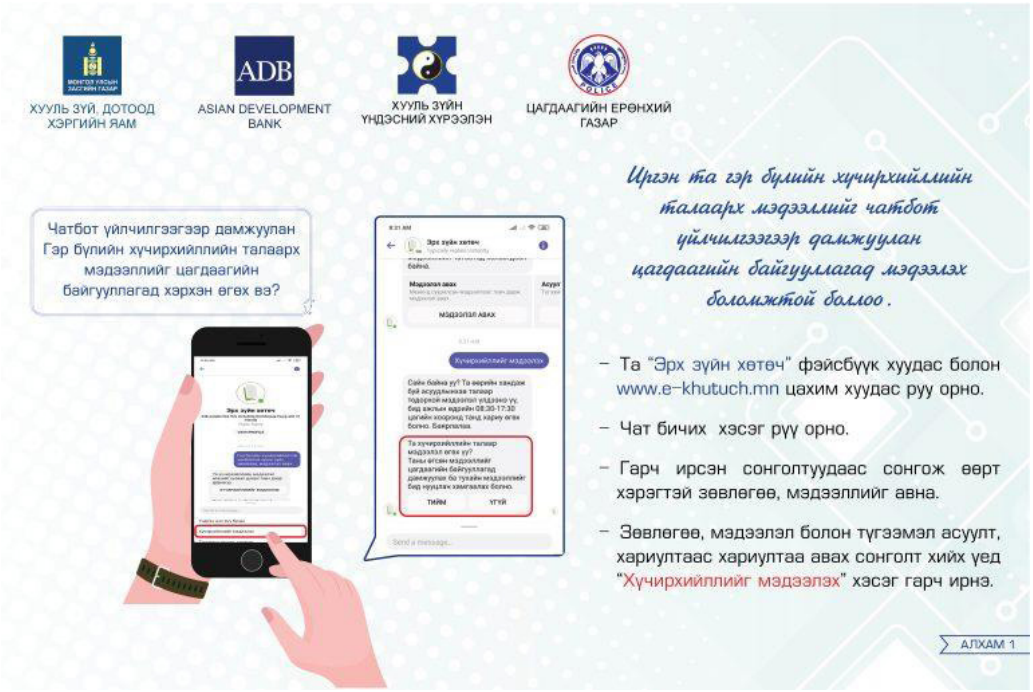
“VIOLENCE REPORTING” TO THE POLICE THROUGH CHATBOT SERVICES IS NOW AVAILABLE



The National Legal Institute launched on April 7, 2021, as part of the “Response and Prevention Against Domestic Violence” project implemented by the Asian Development Bank, the Ministry of Justice and Home Affairs, and the Crime Prevention Coordination Council The website www.e-khutuch.mn and the “Legal Guide” Facebook page have been providing legal advice and information on domestic violence and other issues through the chatbot service.

The purpose of the Domestic Violence Legal Counseling and Information Chat is to increase and strengthen the knowledge of citizens on legal and domestic violence, to provide legal advice and information to citizens, and to provide information and information on organizations dealing with victims of domestic violence.

The chatbot service has launched a new channel to report domestic and child violence, the Violence Report, and is working with the police.

The Law to Combat Domestic Violence states that information on domestic violence can be provided orally, in writing, or electronically. Citizens can provide information on domestic violence orally and in writing, as well as through the online chatbot service, which provides information on domestic violence to the police.

The information you provide about domestic violence is confidential.

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THE INTERNATIONAL CONFERENCE ON "PRIVATE LEGAL REFORM PROCESS AND CHALLENGES IN MONGOLIA" WAS HELD

On the occasion of the 110th anniversary of the establishment and development of modern legal service in Mongolia, the Ministry of Justice and Home Affairs, in cooperation with the Parliamentary Standing Committee on Legal Affairs and the University of Internal Affairs of Mongolia, organized an international conference on "Private Legal Reform Process in Mongolia and Challenges" on December 16, 2021, in the Great Hall of the Shangri-La Hotel.

Kh.Nyambaatar, Minister of Justice and Home Affairs opened the conference and emphasized the importance of the conference.

The international conference was attended by local and foreign scholars and researchers from the Russian Federation, the Federal Republic of Germany, the Republic of Korea, Japan, and the Republic of Kazakhstan, and the UN, as well as professors and guests from private law associations and law universities. They expressed their satisfaction and stressed that the conference was important and effective in summarizing the process and results of legal reform, intensifying private legal reform, identifying future development trends, and learning and introducing best practices in legal reform in foreign countries.

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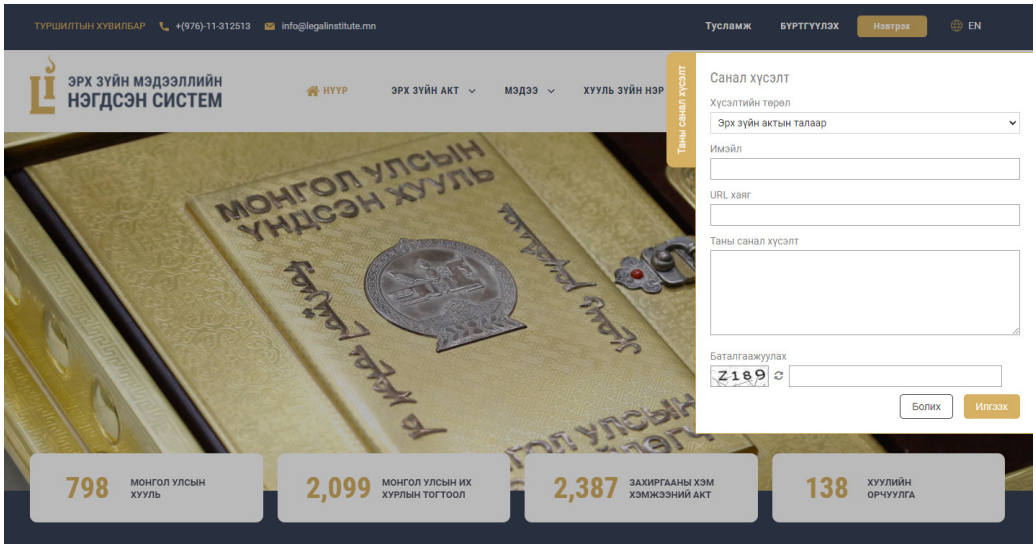
WWW.LEGALINFO.MN THE WEBSITE IS BEING UPDATED



Integrated legal information system /www.legalinfo.mn/ is being developed and updated by the software of the National Legal Institute and "Interactive" LLC. The updated version of the website was launched on a trial basis on October 15, 2021, and the adjustment and alignment will continue for three months as planned.

Therefore, users and lawyers of the Unified Legal Information System or www.Legalinfo.mn website, please cooperate with us and send your comments and suggestions on the updated version of the website to info@legalinstitute.mn e-mail and user feedback section of the website.

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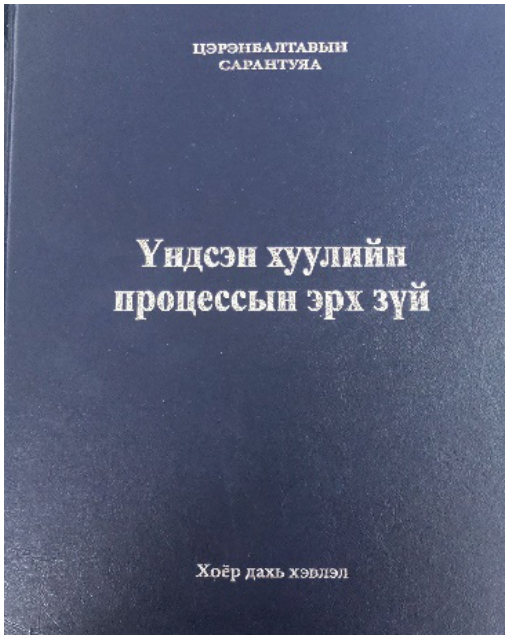
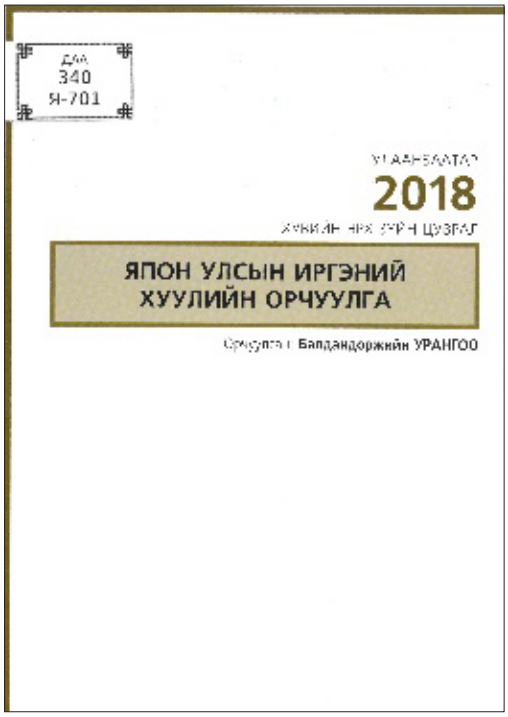
RECENT PUBLISHMENTS



Ts.Sarantuyaa. Constitutional law. Ulaanbaatar, 2021

The second edition of Constitutional Law not only includes the amendments to the laws related to the Constitutional Tsets in their entirety, but also enriches the content of the book with some examples of recent disputes resolved by the Constitutional Tsets. In doing so, it is recommended that some of the decisions and facts of the Tsets presented as examples in the first edition of the book be retained and that the source and information be passed on to readers.

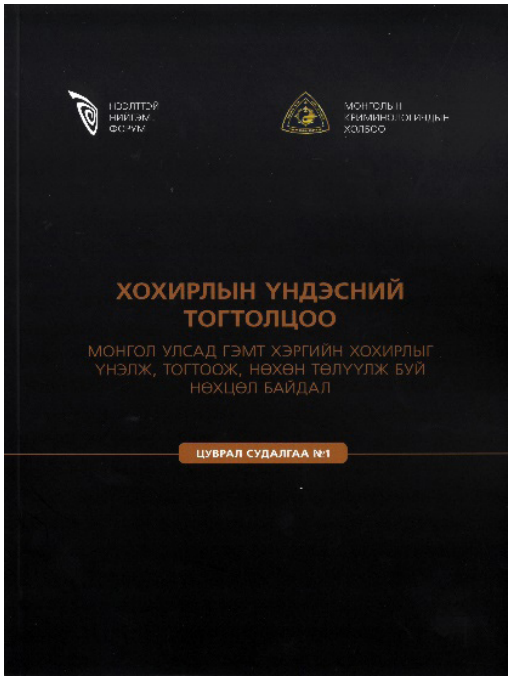
The second edition of the book aims to incorporate some of the findings and issues raised during the study of the theory and practice of the Constitutional Court into the basic scientific concepts of the process.



Translation of Japanese Civil Code. Ulaanbaatar, 2018 /Interpreter. B.Urangoo /

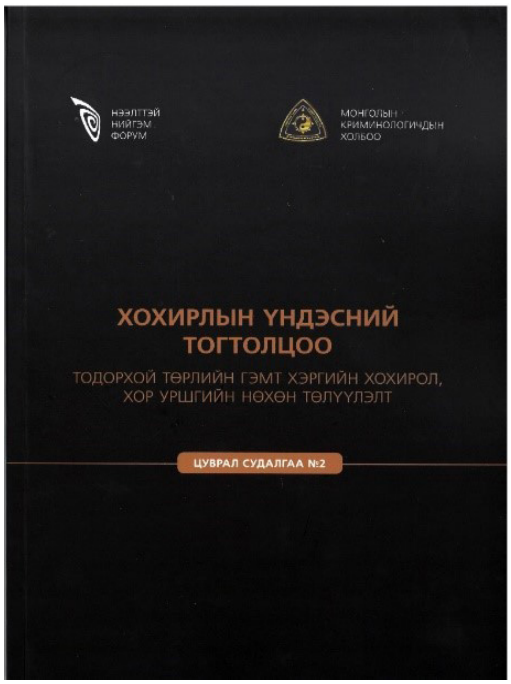
Japanese Civil Code is one of the world's first specialized civil laws with a long history and is of great research importance to Mongolia, which is an example of German and French civil law, reflecting the specifics of its country and continuing the tradition of specialized law called Codex.

B.Urangoo, Senior Lecturer, Department of Private Law, School of Law, National University of Mongolia, translated and published the full text of the Japanese Civil Code, which came into force on July 25, 2005.



National Damage System: The situation in which criminal damages are assessed, identified, and compensated in Mongolia. Series of studies №1. Ulaanbaatar, 2020-/Open Society Forum, Mongolian Association of Criminologists/

Researchers B.Munkhdorj, N.Tuya, G.Oyunbold, O.Munkhtsetseg, A.Erkegul, B.Ariuntuya, and B.Ariunjargal conducted the first study to assess the national damage system funded by the Open Society Forum. The importance of this study is to determine the number of monetary damages in the course of registration, investigation, prosecution, and prosecution of criminal cases in Mongolia, to study the legal environment and court practice for compensation, and to ensure the interests of victims. to study and propose the possibility of creating a legal environment that can be maintained.

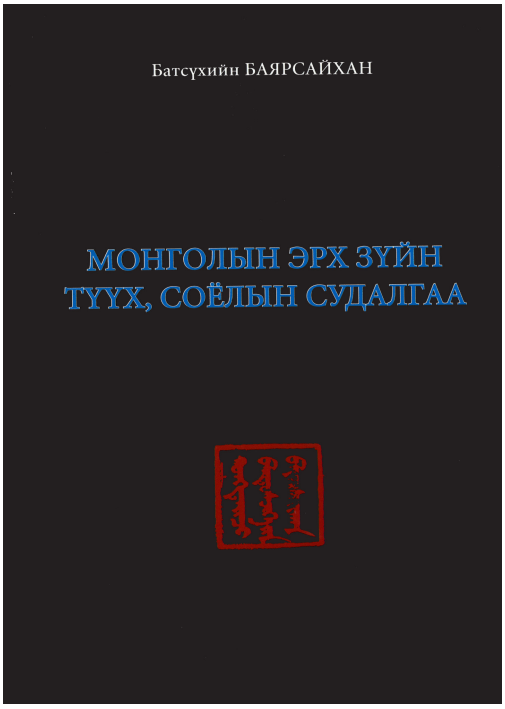


National Damage System: Compensation for damages and harms of certain types of crime. Series of studies №2. Ulaanbaatar, 2020.- / Open Society Forum, Mongolian Association of Criminologists /

The first study to assess the national damage system was funded by the Open Society Forum and conducted by Mongolian criminologists B.Munkhdorj, N.Tuya, G.Oyunbold, O.Munkhtsetseg, A.Erkegul, B.Ariuntuya, and B.Ariunjargal. In this study, certain types of crimes such as “murder” 40, 11.1 “causing serious damage to human health”, 11.4 “causing less damage to human health”, and 11.6 “causing minor damage to human health” were identified. Articles 150, 17.2, “robbery” 50, 17.3, “Fraud” 50, 11.7, “Domestic violence” 20, 12.1, “Rape” 19, 27.1 A sample of 30 “criminal case files” against traffic safety and vehicle use regulations was collected and studied.

T. Mendsaikhan. Contract law. Ulaanbaatar, 2021

The author of the book has been teaching private law, international business negotiation, arbitration, and contract law at the Law School of the National University of Mongolia since 1995, and has many years of experience as a lawyer and legal advisor. Based on this experience and research, he authored the book "Contract Law". The book consists of chapter XIII. The first two chapters detail the basic concepts, systems, and sources of contract law, while the next two chapters describe the basic concepts of contracts and agreements, and their types and categories. Chapter V explains the parties to the contract, their representatives, Chapters VI-VII explain the legal arrangements for the call for proposals, the contract proposal, the agreed response, and the procedure for concluding the contract, as well as practical recommendations for drafting the contract. Chapter VIII-X deals with the performance of contractual obligations, circumstances that impede it, breaches of contract, liability for damages, compensation of damages, transfer of contractual rights and obligations, participation of third parties in contracts, and termination of contracts under Chapters XI-XII. The last chapter of the book, Chapter XIII, deals with the specifics of international trade agreements.



B.Bayarsaikhan. Historical and cultural research of Mongolian law. Ulaanbaatar, 2021

The author has selected this work based on short scientific reports and articles in the field of Mongolian legal history and culture. The book is providing an opportunity to see and get acquainted with the topic, and secondly, to contribute to the research of researchers at a time when the value of traditional Mongolian legal culture and consciousness is growing in the modern Mongolian legal system. He studied "Legal / Anthropology" and "Legal Source Studies" and made important contributions to the development of applied sciences.

B.Buyankhishig. Basic codification and comparison of private law of Mongolia /ed. S.Narangerel, O.Jambaldorj, T.Urantsetseg/ Ulaanbaatar, 2021

"The study of codification is limited to the legal framework of the private law sector, which is important not only for the private law sector, but also for legal theory, thinking, legislative theory, legal techniques, and public law," said the professor. B.Urantsetseg's conclusion reflects the scope and significance of this work.

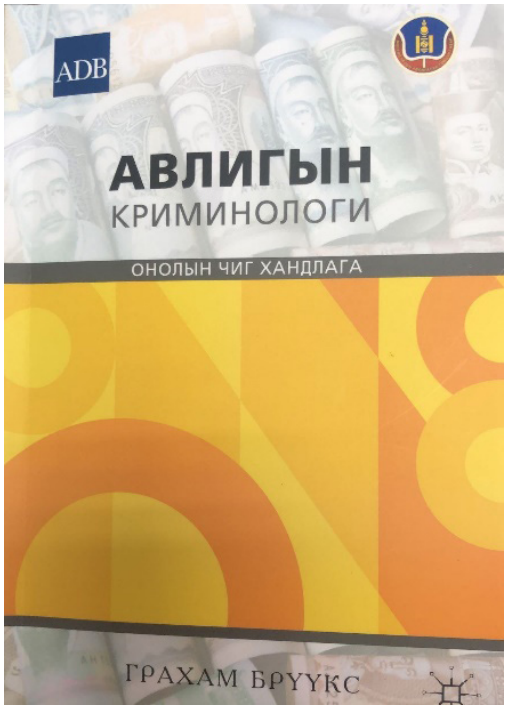
The creation is:

Chapter one: Private legal codification and the value system in society, the phenomenon of reception

Chapter Two: Theory of Codification in Comparative Law and the Tradition of Codification Thinking

Chapter Three: The Application of Codification Theory in Private Law

The author seeks to show that codification theory is not just a legal technique, but a branch of legislative theory with content requirements conditioned by modern social thinking. It also seeks to ensure that Mongolia's private legal codification is a civil law and that private legal codifications have made a significant contribution to the creation of codification thinking around the world.



Criminology of corruption. Ulaanbaatar, 2021

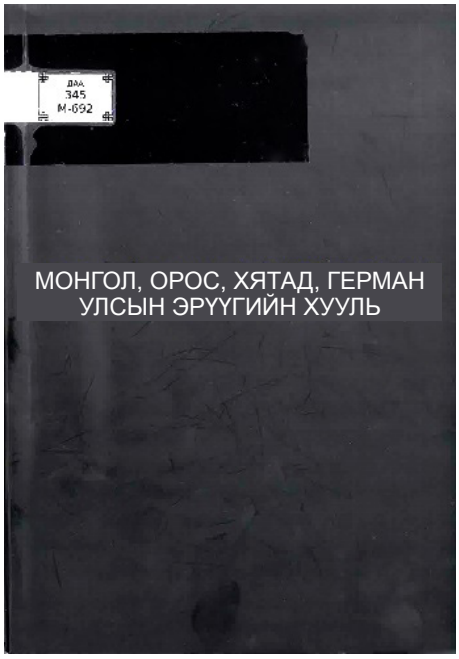
The book was translated and published with the support of the Asian Development Bank and the "Strengthening the Anti-Corruption System" project implemented by the Anti-Corruption Agency, the General Judicial Council, and the Prosecutor General's Office.

Graham Brooks, a professor of criminology, corruption, and other crimes at the University of West London, who has written extensively on corruption and collaborated with scholars from South Korea, Taiwan, Cyprus, and the United Arab Emirates, has compiled a comprehensive study of corruption is rare.

Although relatively "new" theories and approaches explain corruption, it is presented in a simple and straightforward manner, with detailed examples and examples that provide an innovative tool for crime prevention policymakers and law enforcement officials, not just in the fight against corruption.

Current state and development trends of legal education research: Proceedings of the scientific conference. Ulaanbaatar, 2021

With the support of the Law School of the National University of Mongolia, the University of Internal Affairs, the National Institute of Law, the Institute of Education under the Ministry of Education and Science, and the Mongolian Bar Association, a conference on "Current Status and Development Trends in Legal Education" was held on successfully organized online. More than 60 papers submitted to this conference have been compiled.



Criminal Code of Mongolia, Russia, China and Germany. Ulaanbaatar, 2021 /Interpreters. T.Zolboo, J.Erdenebulgan, M.Uyanga, B.Tamir, B.Batbayar/

From the history of human development, the first law to regulate legal relations was the Criminal Code, which is why it is called the "father" law.

Young researchers from the School of Law, the National University of Mongolia selected and translated the Criminal Code of the two neighboring countries, as well as the Criminal Code of Germany, which was the main basis for improving the criminal law legislation of the two countries. Legal translation, especially specialized legal translation, is time-consuming, wide-ranging in content, and has many complex issues, such as legal terminology and language, so it is rare for legal scholars and researchers to translate foreign criminal law in its entirety.

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