

NATIONAL HUMAN RIGHTS COMMISSION OF MONGOLIA

**15TH STATUS REPORT ON HUMAN
RIGHTS AND FREEDOMS
IN MONGOLIA**

Ulaanbaatar
2016

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CONTENTS

Introduction	5
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CHAPTER ONE.

Implementation of the right to be free from torture	8
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1.1 Implementation of the rights of prisoners	8
1.1.1 Prison condition and environment	11
1.1.2 Prison with maximum security 405 in Takhir Soyot	17
1.1.3 The right to healthcare and protection of health	19
1.1.4 Breaches and disciplinary sanctions	24
1.1.5 Prison Labour and Wages	28
1.1.6 About Rights to Education	32
1.1.7 Right to be free from torture	35
1.1.8 Rights to Visit	38
1.2 Human rights implementation situation of people deprived from their liberty	40
1.2.1 Implementation of the rights of patients in the National center for mental health of Mongolia (NCMHM)	40
1.2.2 Center for compulsory treatment and compulsory labour as an administrative measure for alcohol and drug abusers (Operates under the General Executive Agency for Court Decision)	52
1.2.3 Human right implementation of domestic violence victims who received temporary shelters under the Department for preventing domestic violence and crimes against children of Ulaanbaatar	59

CHAPTER TWO.

Right to legal assistance of suspects, accused, and defendants who are detained in pre-trial detention	66
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2.1. Explaining the person arrested on his/her right to have defense counsel or to defend himself/herself and right to lodge a complaint to court at a time of arrest	73
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2.2	Presenting the arrested on the decree on detaining him/her	76
2.3	Ensuring the right to legal counsel of own choice	77
2.4	The stage when inmates first got legal assistance	83
2.5	Legal assistance agreement	86
2.6	Role of advocates in criminal proceedings	91
2.7	Facilities where inmates have meeting with their advocates	99
2.8	Delay of trial due to absence of an advocate	104
2.9	Cases and reasons inmates resign from their advocates	109
2.10	Content of the complaints on legal assistance	114

CHAPTER THREE.

Rights of older persons 119

3.1	International trend	121
3.2	Current situation of social protection for older persons	123
3.2.1	Pension	124
3.2.2	Social welfare benefits, allowances and assistance for the aged	129
3.2.3	Institutional care	141
3.2.4	Employment promotion	142
3.2.5	Health Promotion	144

CHAPTER FOUR

Right to labour of court decision enforcement organisation 146

4.1	Working condition	147
4.2	Working hour and wage	149
4.3	Uniform supply	157
4.4	Special means	158
4.5	Health care issue	160
4.6	Training	161

Proposals delivered to the State Great Khural by the National Human Rights Commission of Mongolia 165

INTRODUCTION

“The Commission shall submit to the State Great Hural a report on the human rights situation in Mongolia within the 1st (first) quarter of every year.”

(Article 20.1, Law on the National Human Rights Commission of Mongolia)

The National Human Rights Commission of Mongolia is presenting its 15th report on human rights and freedoms in Mongolia to the State Great Khural after having discussed it at Commissioners’ meeting held on 29 March 2016.

This report has been developed based on inquiries, research and studies that the National Human Rights Commission (NHRCM) conducted, examination of complaints lodged to the Commission by individuals and entities, as well as outcomes of official demands and recommendations of the Commissioners, information received from public authorities and research conducted by civil society and other organisations.

This report focused on the following human rights issues:

Chapter One. Within the framework of the right to be free from torture, the NHRCM conducted research and inquiry on implementation of the basic rights, which are not restricted by law, of people serving sentences in Prison 401 with strict security, Prison 405 with maximum security, Prison 407 for woman, Prison 409 with strict security, Prison 411 for underaged, Prison 415 with strict security, Prison 421 with ordinary security, Prison 429 with strict security, Prison 443 with ordinary security under the administration of the General Executive Agency of Court Decision. Research and inquiries examined prison conditions, quality and accessibility of health care, employment and education opportunities, pay, and grounds for disciplinary measures.

Second part of this chapter is about the implementation of the rights of persons deprived from their liberty. In 2015 the

NHRCM conducted research and inquiries on the implementation of the rights of people, including underaged, receiving services from the National Center for Mental Health of Mongolia, Center for Compulsory Treatment and Forced Labour for Alcohol and Drug Addicted Persons, which is affiliated to the General Executive Agency of Court Decision, “Temporary Shelter House”, which operates under the Department for the Prevention of Domestic Violence and Crimes Against Child of Ulaanbaatar City Police. The findings of the research and inquiries show that Mongolia is not fully implementing its obligations under the international human rights treaties which it ratified.

Chapter Two. As restraint measures of arrest and detention affect human right to personal liberty and safety, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and other international legal norms and principles guarantee that every person charged with crime has right to defend himself in person or through legal assistance of his own choosing. However, in current situation advocates’ competence in criminal proceedings is limited as they have no power to gather evidence and to summon witness with important effect related to the case. This affects advocate’s effective input to debate at trial. Therefore, it is necessary to revise current national legal norms in compliance with international norms and standards.

Chapter Three. Article 16.5 of the Constitution of Mongolia guarantees the right to material and financial assistance in old age, disability, childbirth and child care and in other circumstances as provided by law. Legal framework to ensure this constitutional right is created by Law on Social Insurance and Law on Social Welfare to deliver essential services to those in need. However, challenges persist in ensuring full implementation of social rights of older persons calling for comprehensive policy framework and improvement of service quality, diversification, and accessibility.

Chapter Four. Article 16.4 of the Constitution of Mongolian declares “The right to free choice of employment, favorable conditions of work, remuneration, rest, and private enterprise. No one may be unlawfully forced to work.” This chapter covers following issues related to working conditions of court decision implementation agency personnel including occupational safety and hygiene, access to regular medical check-ups, extra-day and extra-hour pay, timely supply and quality of personal security equipment and uniform. National laws such as Constitution of Mongolia, Labour Code and Law on Court Decision Implementation and international treaties to which Mongolia is a state party, ensure everyone’s right to free choice of employment, speciality, favorable conditions of work, remuneration corresponding to their work performance, rest and leisure.

The Standing Committee on Legal Affairs of the State Great Khural (Parliament of Mongolia) discussed 13th and 14th report on human rights and freedoms in Mongolia at the same time on 1 October, 2015 and issued Resolutions 28 and #29. The Standing Committee on Legal Affairs recommended to the Government of Mongolia to develop an action plan to implement these resolutions and report back about the implementation within the first quarter of 2016. Therefore, it is not possible for the NHRCM to make conclusions on the implementation of previous recommendations provided in its 13th and 14th annual human rights reports.

15th report on human rights and freedoms in Mongolia is submitted to the State Great Khural based on Article 13.1 of the Law on the National Human Rights Commission of Mongolia for consideration and ensuing decisions to advance human rights and freedoms in the country.

NATIONAL HUMAN RIGHTS COMMISSION OF MONGOLIA

CHAPTER ONE

IMPLEMENTATION OF THE RIGHT TO BE FREE FROM TORTURE

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

(Article 5, Universal Declaration of Human Rights)

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

(Article 10.1, International Covenant on Civil and Political Rights)

The right to personal liberty and safety... No one may be subjected to torture, inhuman, cruel, or degrading treatment...

(Article 16.13, the Constitution of Mongolia)

“The State is responsible to the citizens for the creation of economic, social, legal, and other guarantees ensuring human rights and freedoms, for the prevention of violations of human rights and freedoms, and restoration of infringed rights.”

(Article 19.1, the Constitution of Mongolia)

1.1 Implementation of the rights of prisoners

Fulfilling human rights of someone during investigation, trials and conviction could be considered as one of the main indicators of a state on implementing human rights enshrined in national legislation and international treaties.

International community stand against torture, cruel, inhuman and degrading treatment. Therefore, a number of international standards have been adopted, so respective state parties put in line their national legislation with international. The United Nations strictly prohibits any acts of torture, cruel, inhuman and degrading treatment of especially those, whose

liberty is deprived through its treaties, standards, rules and procedures. People deprived from their liberty are considered as “vulnerable group” and a state party should treat them with carefully.

The United Nations clearly identifies rights of people deprived from their liberty as well minimum standard and condition of detention and conviction of people deprived from their liberty through the documents including: Universal Declaration of Human Rights¹, International Covenant on Civil and Political Rights², The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment³, Code of Conduct for Law Enforcement Officials⁴, UN Rules for the Protection of Juveniles Deprived of their Liberty⁵, Standard Minimum Rules for the Treatment of Prisoners⁶, Basic Principles for the Treatment of Prisoners⁷, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment⁸.

The Constitution of Mongolia⁹ states, “Mongolia fulfills in good faith its obligations under international treaties to which it is a Party. The international treaties to which Mongolia is a Party become effective as domestic legislation upon the entry into force of the laws on their ratification or accession.” For that reason as a State party Mongolia takes obligations before the United Nations, including respecting and following documents released by the UN.

¹ United Nations General Assembly resolution 217/A/III adopted on 10 December 1946.

² United Nations General Assembly resolution 2200/A/XXI adopted on 16 December and entered into force on March 23th, 1976.

³ United Nations General Assembly adopted on 10 December in 1966 and entered into force on June 26th, 1987.

⁴ United Nations General Assembly resolution 34/169 adopted on 17 December in 1979.

⁵ United Nations General Assembly adopting on its 68 Session on 14 December in 1990.

⁶ UN Congress on the Prevention of Crime and the Treatment of Offenders initially adopted in 1955.

⁷ United Nations General Assembly resolution 45/111 adopted on 14 December in 1990.

⁸ United Nations General Assembly resolution 43/173 adopted on 9 December in 1988.

⁹ Clause 16.2, Clause 16.3 Constitution of Mongolia.

Article 52.1 of the Criminal Code (2002) states, "Imprisonment represents restriction of freedom of a culprit for the terms specified in this Code with separation from society by confinement in the prisons." Imprisonment sentence is carried out with valid court order in prisons with ordinary, strict, special and maximum securities, which operate under the General Executive Agency of Court Decision. Mongolian legislation and international treaties to which Mongolia is a party ensure the basic rights, which cannot be a subject to restriction, even for prisoners.

Procedure of implementing court decision is regulated by the Constitution of Mongolia (1992), Law on Court Decision Enforcement (2002), Law on the Office of the Prosecutor of Mongolia (2002), Law on Arrest and Detention of Suspect and Accused (1999), Law on Administrative Enforcement of Compulsory Treatment and Forced Labour for Alcohol and drug addicted persons (2002) and rules, procedures and regulations issued by the Minister of Justice and the General Executive Agency of Court Decision.

Nation wide Mongolia has one pre-trial detention center, eleven prisons with ordinary security, ten prisons with strict security, one prison with special security, one prison for underaged or in other words locked school and combined prison for women with ordinary and strict security. Altogether there are 25 operating correctional facilities.

On March 25, 2016 there were 4279 inmates in prisons in total. 1844 inmates serving their sentence in prisons with ordinary security, 1998 inmates in prisons with strict security, 267 inmates in prisons with special security, 83 inmates in prison with maximum security and 87 inmates in short term incarceration¹⁰.

¹⁰ Information received by official letter 2a/117 dated March 24th, 2016 from General Executive Agency of Court Decision

Since its establishment, the NHRCM has been exercising its control over the places of detention with regards to enjoyment of human rights by inmates. This control was exercised through sudden or planned visits, inquiries, researches and monitorings.

In 2015 the NHRCM undertook a monitoring and research on the implementation of human rights enshrined in Mongolian laws and international treaties of inmates. This research involved 900 inmates from four prisons with strict security, two prisons with ordinary security, and a prison with maximum security as well as prison for women and a prison for underaged.

The research aimed to identify: environment of imprisonment, condition of facility, healthcare service, its quality and accessibility, prison labour, allocation of wages, disciplinary measures and its root, implementation of the right to education of inmates.

1.1.1 Prison condition and environment

The Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations in 1955 states, “All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation¹¹”, and “In all places where prisoners are required to live or work the windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation¹²”. However there are certain achievements in improving accommodation condition for prisoners by building new facilities or renovating the old ones, there are still cases of urgent need to change the condition of imprisonment and to take a careful attention to.

¹¹ United Nations Standard minimum rules for treatment of prisoners and its Article 10.

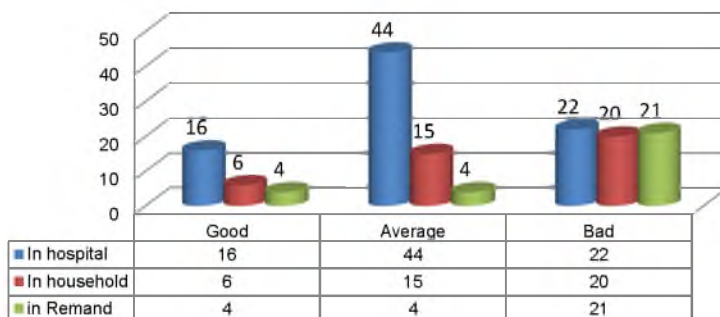
¹² United Nations Standard minimum rules for treatment of prisoners and its Article 11-a

Prison 401 in Ulaanbaatar city, which operates under the General Executive Agency of Court Decision is considered as a after-trial detention center as well as prison hospital. The building of this facility was built in 1954 as a hospital. Since then the building itself is dilapidated; however, the prison administration tries to repair and fix the building with their own resources. Especially, two hospital wards for men are unsuitable for providing medical care due to mouldy walls and ceilings, and water flows in through a hole in the roof.

Minister of Justice and Home Affairs approved a procedure rule on 28 September 2009 regarding "Security level and rules for warders", which states, "the remand center has same security level and warders as in a strict security level prison, external security should be same as strict and special security prison, and the external security procedure should be in line with security procedures of pre-trial detention center and prison with maximum security."

A remand center is considered a 25 m² part of prison hospital divided into eight rooms. A person found guilty under the court decision placed in the remand center prior to his/her imprisonment to prison mentioned in his/her court decision. Following persons could be placed at the remand center up to 30 days: person who has just finished his/her treatment at prison hospital, escaped and caught inmate, convicted person who is going to be relocated by the decision of relevant authorities. Prisoners will be placed to a room for up to 8-10 prisoners depending on their background, such as, transferred from another prison, newly convicted, reoffended. Condition of this remand center is barely suitable to detain someone due to poor environment, natural light, broken artificial ventilation. Inside the cell a bucket was used as a toilet, which makes the treatment itself a futile and violates the right their right to safe and secure environment.

156 inmates responded to a survey from the NHRCM. The question “How would you consider prison facility environment and condition?” has been answered “Good” by 16 prisoners, “Average” by 44 prisoners, “Bad” by 22 prisoners. The same question to prisoners working at prison household maintenance got “Good” by 6 prisoners, “Average” by 15 prisoners, “Bad” by 20 prisoners. Inmates in remand center answered “Good” by 4 prisoners, “Average” by 4 prisoners, “Bad” by 21 prisoners. Therefore, 122 prisoners out of 156 assumed the facility environment and condition as “Bad”, which is 78.2 percent.



Government Decree 460 dated on November 23th of 2015 designated to pre-trial detention center 461 the function of remand center; thus, general and environment condition for remand inmate have been improved.

Women prison 407 is located in Bayanzurkh district of capital city Ulaanbaatar. This prison is made up of two security level prison units (strict security level and ordinary security level). As it is prescribed in standards, those two different security level units are separated by metallic chain fence. About 8-10 women prisoners with strict security level are placed in a cells with security camera in each 10 cells. In addition, within the territory of prison 407, there are facility for imprisoned pregnant, breastfeeding women with their infants, hospital and factory.

Every cell has artificial ventilation and fanlight, which meets international standards¹³ and national regulations, such as Order A/230 of the Minister of Justice dated 8 December, 2014 regarding to Internal regulation of Prison, which says, "...heating and ventilation shall be in line with national legislation and international requirements".

The same order of Minister of Justice prescribes to place a prisoner into a cell with 2.5m² per person. The capacity of the ordinary security level unit of the women's prison 407 is 224 inmates; however, it was found during the NHRCM visit that 266 inmates were serving their sentence, and that breaches the abovementioned regulations.

The building for pregnant, breastfeeding prisoners was put into operation in 2013 and consists of kitchen, bathroom and toilet, laundry room, playroom and bedroom for prisoner. One bedroom's capacity is 6 beds, and in terms of its condition, ventilation, heating, humidity were within the standards and fulfilled all necessary requirements.

On a day when the NHRCM visited there were two pregnant prisoners and three prisoners with infants from 6 to 10 months. All of them were sharing one bedroom. During the visit it was found that prisoners with infants do not receive "allowance for pregnant, breastfeeding women and women with infants" stipulated in Article 13.1.4 of the Law on Social welfare. Thus, it is necessary for prison administration to take prompt actions in order to fix this issue.

Prison 411 for underaged people or "Locked school" is situated in the capital city Ulaanbaatar, and the building of this facility was built in 1960. Maintenance work was not undertaken

¹³ Article 11, Standard minimum rules for treatment of prisoners, 1955 "The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;"

sufficiently, which results in a bad environment condition for further use of this building, for example, putties fall down due to mold on ceilings and walls, and cracks on the building make negative impact on the safety use of this building. Thus, State specialized inspector issued its conclusion to renovate the building of the prison for underaged¹⁴.

The Government Decree 178 (dated on 22 August, 2001) established a new Prison 429 for prisoners with tuberculosis, and it is the only place in Mongolia where the prisoners diagnosed with tuberculosis are receiving treatment.

Prisoners' cells are located in 3 one storey buildings, which were previously used as a temporary military unit in Soviet times. The general condition of those buildings are very poor, walls, ceilings and flooring have holes and cracks, and water flows in through the hole in the roof, but there is no any official conclusions from the state specialized inspector on further use with the same purpose.

Hospital building at the prison 429 was put into operation in 2008. It has 40 rooms, 50 beds, and department for multidrug-resistant TB with capacity of 10 people. Order A/230 of the Minister of Justice dated 8 December, 2014 regarding to Internal regulation of Prison and its Article 3.3 states " a prisoner shall be put into a cell, area of which should be 2.5m² per person". Sizes of cells differs from each other, average size of cell was about 2 m² which is not complying norms established by Order A/230

Order 270 issued by the Minister of Justice and Home Affairs on 30 November, 2002, on "Rules and procedures on the conditions for disciplinary and solitary confinement cell" states, in its Clause 3.3, "Disciplinary and solitary confinement cell shall have window, ventilation, concrete ceiling, concrete or brick walls,

¹⁴ State inspector of the Office of the Specialized Inspection of the Capital city issued a conclusion #07-339/1526 on 9 June, 2010.

wooden flooring should be attached to the base floor or wooden bed attached to the floor, double steel door with door limiters and vision panel, doors shall have lock from outside, toilets and bathrooms should have metal security fence, temperature in cell should be within prescribed norms and there should be". However, not all disciplinary and solitary confinement cells correspond to the norms and prisoners confined in cold, humid cells. That has negative effect on the health condition of prisoners such as relapse of chronic illnesses, swelling, renal diseases and/or creates conditions under which health condition could be worsen.

For example, Prison 409 in capital city Ulaanbaatar, has three disciplinary cells in the basement of prison gatehouse. One cell out of three doesn't have window, cells room temperature is low and cold, poor condition, beverage bottles were used as a toilet, which does not meet sanitation standards. The cell size was 2.1 m² and cell temperature was 16°C, that is not complying with the norms established by Order 270 issued by the Minister of Justice and Home Affairs on 30 November, 2002, on "Rules and procedures on the conditions for disciplinary and solitary confinement cell" and its Clause 3.3.

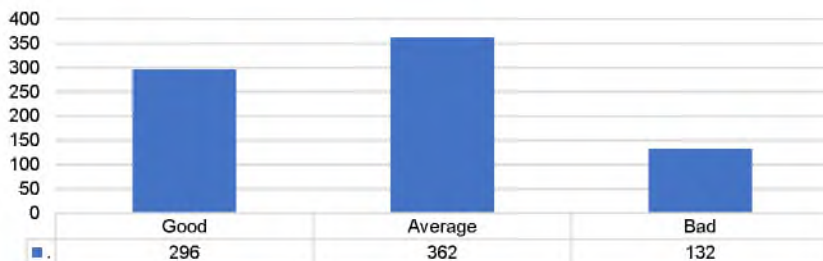
Case:

...I have spent one year in this prison. It is my 10th day in disciplinary cell, because I have used a cellphone, which is considered to be a disciplinary offence. Condition of disciplinary cell is very bad, it is very cold, humid. And they allow us to use toilet only three times a day...

(Interview with prisoner B.)

The NHRCM took a survey from 900 prisoners. The question "What is the prison condition?" received following answers from 790 prisoners where 296 (32.8%) of them considered the prison condition "Good", 362 prisoners (40.2%) said "Average" and 132 prisoners (14.6%) replied "Bad". In other

words, 494 prisoners (54.8%) are not satisfied with prison condition.



1.1.2 Prison 405 with maximum security in Takhir Soyot

The UN Special Rapporteur on Torture Manfred Novak visited Mongolian after he received an invitation from the Government of Mongolia. As part of his working visit Special Rapporteur visited prison 405 with maximum security in Takhir Soyot on 8 June 2005 and examined condition of imprisonment in it. It was noted by Special Rapporteur that all inmates were cuffed when they left their cells and had visits. Special Rapporteur in his recommendation part “L” to the Government of Mongolia recalls to end special isolation regime and prisoners be detained strictly in accordance with the Standard Minimum Rules for the Treatment of Prisoners.

The legal basis for imprisonment in the prison with maximum security constituted in Clause 52.11 of the Criminal Code of Mongolia states, “the court may decide imprisonment imposed on the convicts who are recognized recidivist or sentenced to imprisonment for more than 15 years after attaining the age of 18 for a grave crime to be served fully or partially in prison”, and Clause 53.3 of the Criminal code states, “Persons who have been sentenced to death shall be entitled to the pardon request to the President of Mongolia. In case of pardon the death penalty shall be substituted by imprisonment in prison for a term of 30 years”.

Internal rules and procedures of the prison adopted as an annex to the Order A/230 of the Minister of Justice dated 8 December, 2014 sets the following condition to the cell of a prison, “cell door shall be bars or iron doors with vision panel, doors shall have limiters, locked from outside and opening less than 45 degrees”, also “maximum number of inmates in one cell is two.”

Prison 405 has three floors with 73 cells, and each cell has been connected to the surveillance camera. By the time out the NHRCM visit 82 prisoners were serving their sentence.

Criminal code has not defined whether serving the sentence in a prison with maximum security is a type of punishment or it is a security type of a prison. As above mentioned Clauses 52.11 and 53.3 of the Criminal code could explain this as a type of punishment; however, the article 46 of the same law does not include imprisonment in a prison with maximum security as a type of punishment.

Clause 109.2 of the Law on Court Decision enforcement states, “inmate in a prison with maximum security shall be taken out for a walk according to rules and standards under the supervision and control for one hour per day, in case when rules for walking out have been breached the right to walking out shall be restricted immediately”. Order 51 of the Minister of Justice (2008) says that during the weekend, when guards have their leisure time, inmates do not go out for walking. In order to implement the aforementioned law the Minister of Justice released an order, and its annex “Prison security and controlling of inmates” states, “During the walking time all movements shall be terminated and all personnel of that shift shall control over the inmates.”

All the prisoners shall enjoy all the human rights regardless of their prison security regime and type of crimes they committed.

The Court decision enforcement law prescribes that inmates in the prison with the maximum security do not have long term visits like other inmates in other prisons. This is a violation of international standards; so it is necessary to allow inmates of the maximum security prison to receive a long term visits. The composition of inmates in the maximum security prison varies; there are prisoners who were convicted to capital punishment and prisoners who will serve some part of their imprisonment in maximum security prison, and inmates who were transferred from less security prisons as a disciplinary punishment.

Mongolia has ratified the ICCPR OP II on 5 December of 2012 and committed itself to abolish death penalty. Thus, the prison with maximum security's capacity is not meeting current challenges, and the number of prisoners might not fit to the actual capacity.

The NHRCM has already recommended out in its 11th report to specify the term "prison with maximum security" and to put in line the regulation on imprisonment and other normative basis. Unfortunately, none of them have not yet been done.

1.1.3 The right to healthcare and protection of health

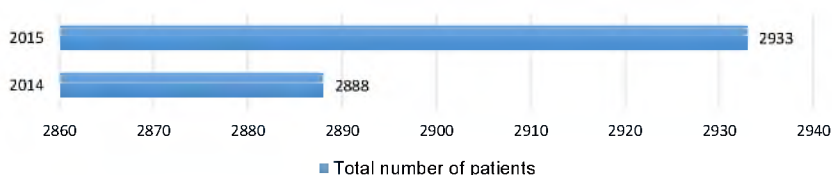
The healthcare services in prisons are provided through the Prison hospital, a small healthcare service points in each prison, and one special prison for treatment of tuberculosis prisoners. All of them are operating under the Sentence implementation department of the General Executive Agency of Court Decision.

Prison 401

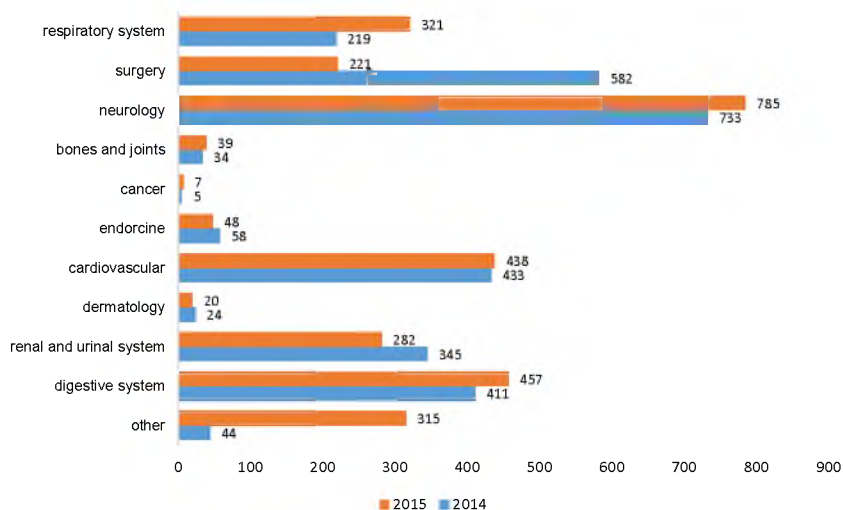
Clinic hospital (Prison 401) is operating to provide all necessary medical services to all prisoners to diagnose and prevent from diseases, ambulatory and clinic treatments and surgeries and with total capacity of 120 beds. There are four departments general, neurology, surgery, diagnosis. There is

also a nursery, traditional medicine, reception, emergency aid, pharmacy and disinfection. Total number of staff is 53 including 22 doctors, 23 nurses, and 7 care takers.

The number of patients in 2014 was 2,888 and in 2015 it was 2,933.¹⁵



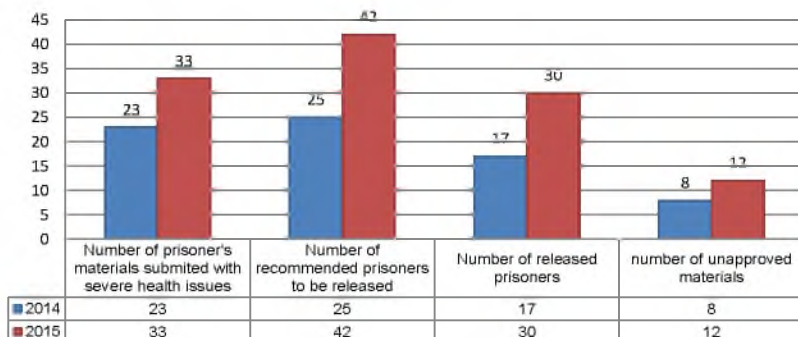
According to the disease statistics most of the patients suffer from diseases related to the digestive system, renal and cardio diseases and neurology.



Clinic hospital submitted materials to prosecutor office in order to release prisoners due to serious health concerns and in 2014 17 prisoners out of 23 and in 2015 30 out of 33 prisoners were released from their imprisonment before their due time.

¹⁵ Information sent to the NHRCM via email by Clinic hospital under General Authority for Implementing Court decision on 18 March 2016.

Comparison study on patients who were relieved of sentence



In 2014 352 patients had medical examination, and 34 of them had stationary treatment, 91 prisoners prolonged their loss of labour capability, 66 prisoners had been examined by specialist doctors, and 161 prisoners had passed related medical samples and tests. In 2015 328 prisoners had check-ups, 150 of them had tests and samples, 119 visited specialist doctors, 31 prisoners prolonged their loss of labour capability and 28 prisoners had stationary treatment at the hospital¹⁶.

Case:

... I have been placed to this hospital 5-6 times, but my health condition is not improving, and it's getting even worse. I lose my consciousness 1-2 times a day and I have now epilepsy. I have pains in my scrotum and have difficulties in urinating. The medical personal is ignoring my diseases and they do jokes about it...

(From the complainant S.)

Due to deficiency of rooms cabinets of dentists and laboratory have been merged and divided into 3 sections to store all medical equipments and drugs, doctors room and check-up rooms. According to the standard CS 11-0235:2013 on structure and operation of clinic hospital it prescribes to have a department of emergency treatment: However, during the inquiry emergency was emerged with reanimation, intensive therapy department.

¹⁶ Information sent to the NHRCM via email by Clinic hospital under General Authority for Implementing Court decision on 18 March 2016.

Takhir Soyot prison (Prison 429) operates with high security. Inmates with tuberculosis from all prisons have been placed in order to diagnose, provide treatment, to prevent and to give other complex medical assistance inmates would need. There are two positive and negative departments where inmates from different prisons with different security status are placed.

This hospital was established to treat tuberculosis only; therefore, it does not operate under hospitals of 1st or 2nd grade. Thus, the General Executive Agency of Court Decision has approved a separate standard CS 11-0236:2013 on 23rd of October of 2013.

The Sentence implementation department sends prisoners to run tests and diagnose the illness, after a tuberculosis positive results the Sentence implementation department transfers them to give medical treatment. In 2014 78 prisoners, in 2015 126 prisoners, and as March of 2016 41 prisoners were transferred to this hospital with tuberculosis positive diagnosis¹⁷.

Medical equipments at this hospital are old and unusable, so there is a urgent need to renew them. Especially, the disinfection camera of beddings, covers, blankets and other items of patients needs to be repaired and used according to the standards. Also, conditions of rooms of prisoners should be improved.

Prison 429 can run test for general blood sample, test on sporum and rephamicin resistance tests, and in some necessary cases additional tests and samples could be sent to Prison 401 or National Center for Contagious Diseases for biochemistry, flurography of chest, and serology. As prison authorities informed us, Global fund agreed to fund the purchase of equipments to run biochemistry tests within the prison facility.

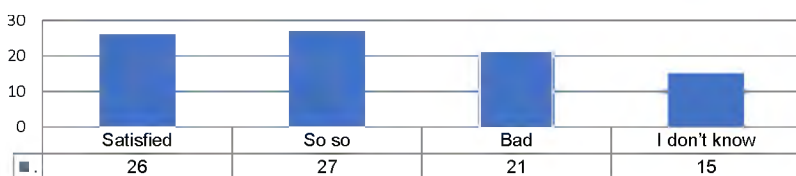
¹⁷ Information sent to the NHRCM by Prison 429 on 20 March 2016.

Through Joint project of World vision and Global fund prison receives extra 3 million tugriks to buy drugs and 1.2 million tugriks as an additional cost for meal for prisoners on monthly basis. However, project is coming to its end, and now it is necessary to include those expenses in the budget.

In 2006 prison 429 opened a new unit with 10 bed to treat multiresistant tuberculosis with financial support of Global fund, World vision, National Center of Contagious Diseases.

In 2015 budget for purchasing medicines was 2.5 million tugriks. During the inquiry the hospital was using 150 different types of medicines from which 8 types of medicines with quantity of 127 was expired, which is prohibited to be used by law on Medicine.

During the inquiry the NHRCM did a survey among prisoners on how they satisfied with the supply of medicines. 26 prisoners (29%) were satisfied, 27 prisoners (30%) were not satisfied fully, 21 prisoners (24%) were unsatisfied and 15 prisoners (17%) did not know the answer. As we see, 61 prisoners (71%) are not somehow fully satisfied with the medical supply.



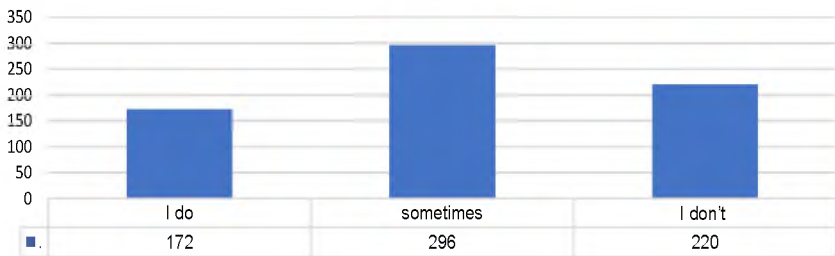
This situation is common for other prisons as well, lack of medicines lead to use of expired medicines, which is a violation of standard approved by the General Executive Agency of Court Decision on “Healthcare technology and operation of prison hospital”.

Case:

... healthcare service at prison hospital is very bad, unfriendly and non skilled staff, doctors always ignores the illnesses, and they don't try to treat the illness properly, plus the medical supply is very poor and medical equipments are in unsatisfied condition....

(From the interview with prisoners)

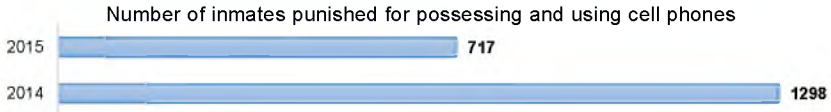
Whom asked “when prisoner is sick, does he receive medical assistance?” during the inquiry, 172 prisoners (19.1%) said that they receive medical assistance, 296 prisoners (32.8%) answered that sometimes they receive medical assistance, and 220 prisoners (24.4%) answered that they do not receive any medical assistance. In other words, 516 prisoners (57.2%) are not satisfied with medical services provided by the prison.



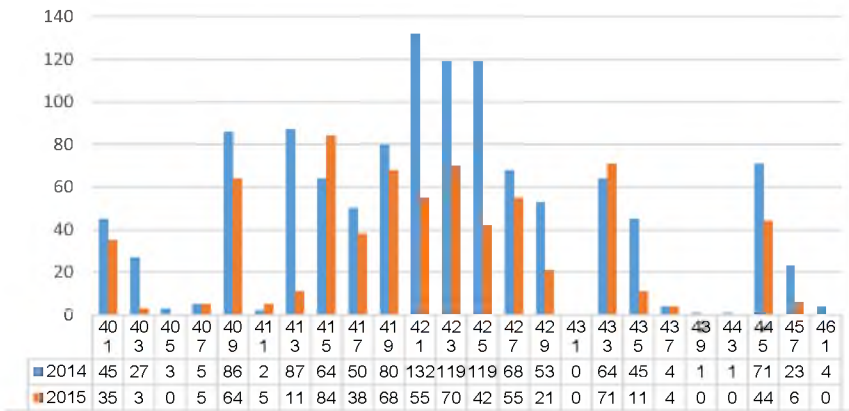
1.1.4 Breaches and disciplinary sanctions

The findings of the study on breaches in prisons show that prisoners mostly committed such breaches as having quarrels with others, consuming alcohol, organizing or taking part in gambling, disobeying a lawful direction of officers, possessing and consuming something that is prohibited, and possessing cell phones, and the latter (possessing and using cell phones) was reported as the most frequent one.

For example, disciplinary sanctions were imposed against 1298 inmates in 2014 and 717 inmates in 2015 for possessing and using cell phones¹⁸.



Number of cases of possessing mobile phones in each Prison Unit:



It is quite common that mobile phones are smuggled in by visitors, or by prison staff, and then when detected through the strict security control, the phones are sold back by prison staff to inmates. This is caused by several factors such as lack of efficient internal security system and insufficient inspection in prisons, and not charging the staff that are guilty of offences.

Case:

...Prison security has detected and stopped an offence committed by an inmate named "O" who received mobile phones stuffed into the holes inside tea bricks, which smuggled in by his mother-visitor, and sold them inside prison walls.

(Information provided by a Prison Unit)

¹⁸ Statistical data provided by the General Executive Agency of Court Decision, 2016

Commonly, “non-duty-related tasks” as a disciplinary sanction is imposed against inmates, who have breach records, in accordance with orders by the governor of the Prison.

Article 2-1 of the Forced Labour Convention (No29)¹⁹ states, “forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” In addition, the Abolition of Forced Labour Convention (No105)²⁰ emphasizes, “each member undertakes to suppress or not to make use of any form of forced or compulsory labour as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; as a method of mobilizing and using labour for purposes of economic development; as a means of labour discipline; and as a means of racial, social, national or religious discrimination.”

Provision of the term “forcing to non-duty-related tasks” in Clause 127.1.1of the Mongolian Law of Enforcement of Court Decisions violates the international conventions and treaties that Mongolia ratified and acceded to.

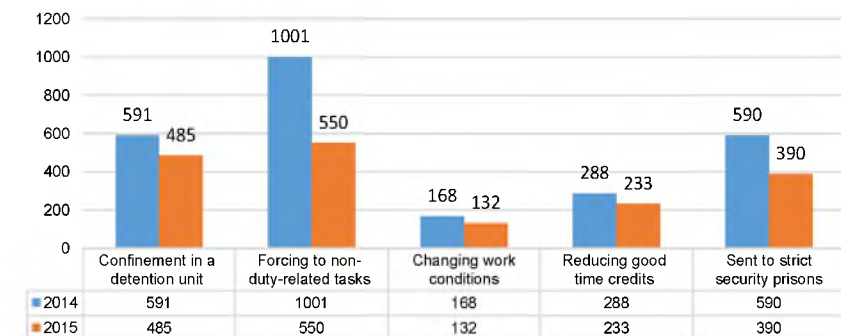
In response to the recommendations by the Commission addressed to the Ministry of Justice to make amendments to the Law of Enforcement of Court Decisions, and to the General Executive Agency of Court Decisions not to use the provisions of laws which violate the international conventions and treaties, the Government of Mongolia has drafted a new law on Enforcement of Court Decisions making some amendments.

¹⁹ In 2005, Mongolia ratified the Forced Labour Convention No29 adopted by the International Labour Organisation in 1930.

²⁰ In 2005, Mongolia ratified the Abolition of Forced Labour Convention adopted by the International Labour Organisation in 1930.

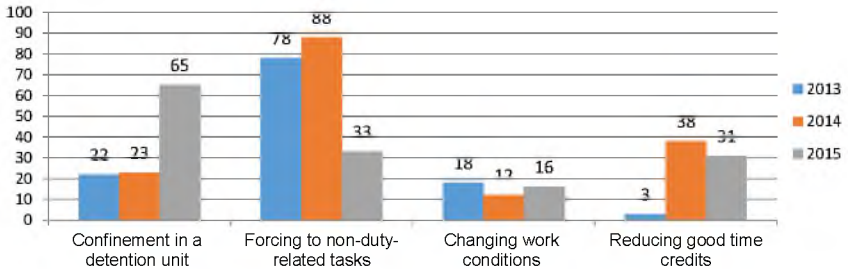
Clause 127.6 of the Law of Enforcement of Court Decisions provides, “if an inmate, who has more than two breach records a year, commits a breach, the governer of the Prison shall make a proposal to tighten imprisonment sentences to the prosecutor, and the court shall impose sentences based on the prosecutor’s decision.”

Statistics provided by the General Executive Agency of Court Decisions show that disciplinary sanctions were imposed against 2,048 inmates in 2014 and 1,400 inmates in 2015, particularly, in 2014, forcing to non-duty-related tasks was imposed to 1001 inmates, solitary confinement in a detention unit for up to 30 days was imposed to 591 inmates, sanction to change working condition was imposed against 168, and reducing good time credits (earning up days) was imposed to 288 inmates as well. In 2015, 550 prisoners were punished with the sanction of performing non-duty-related tasks, 485 inmates were punished to solitary confinement in a detention unit for up to 30 days, 132 inmates were forced to change their labour condition, and reducing good time credits was imposed to 233 inmates²¹.



²¹ Study report provided by the General Executive Agency of Court Decision to the Commission. 2016

The following graph illustrates the figures of disciplinary sanctions in a Prison.



As the legal provisions and figures show, it is necessary to put an end to breaches in prisons, to enhance the mechanism of charging the staff that is guilty of breaches, and to increase the staff awareness of the international conventions and treaties Mongolia ratified and/or acceded to, and national legislation frameworks as well.

1.1.5 Prison Labour and Wages

Prison Labour has positive effect on convicts’ recuperation and manner, and it is also very important to create opportunity for them to have fair employment after their release, to find their space in the society, to discover the passion and purpose of their life, to spend their time efficiently, to develop their skills, to gain knowledge and experience, to pay for damages that caused to others because of them through their wages, to transfer their wages to their families, and to have their accumulations.

In our country, Prison labour is regulated by Law of Court Decisions Enforcement; Labour Laws; Criminal Code; the procedure of “Measures to prepare workers in the construction industry,” approved by the Resolution 23 of 2009 of Mongolian Government; the procedure of “Prison labour,” approved by the Order A/232 of 23 December, 2013 of Chief of the General

Executive Agency for Court Decisions; and the procedure “to set prison labour norm and wage amount,” approved by the Resolution A/32 of February 6, 2013 of Director of General Authority for Implementing Court Decisions.

Statement of “Making convict to labour and providing training in the field of his/her work,” found in Clause 8.2.4 of Law of Court Decision Enforcement, does not comply with the content of “29th Forced Labour Convention of International Labour Organisation.”

All the member states, which ratified this convention, are obliged to remove all types of forced or compulsory labour as soon as possible, and during the transition period, related with the abolition of forced labour, it can be used only for social purpose as a special measure when they meet the condition and warranty, set forth in the convention. Specifically, direct using of the term “forced labour,” found in Clause 8.2.4 of Law of Court Decision Enforcement and approving it by law conflicts with the content and purpose of international convention.²²

According to the procedure of “Record of indebted convict and Monitor of debt payment procedure of convict,” approved by the Resolution A/14 of January 27, 2015 of the Head of Decision enforcement office of General Executive Agency for Court Decisions, 124.6 million tugriks out of labour wages of 898 convicts, currently imprisoned in all prisons, was spent to reimburse damages, caused to others by their crime in 2015.²³

Inmates work in the prison service and other industrial area. They also work in coal mining, printing and garment factories, brick, wood, double glazed window and the light block factory based on the contract with the entities. They do planting vegetables, putty, limestone crushing and crafts.

²² 11th Report on the situation of human rights and freedom in Mongolia. 50-61 pages. 2012.

²³ Letter 5-477 of March 15, 2016 of the Head of Decision Enforcement department of General Authority of Implementation of Court Decision.

It is stated in Clause 120.4 Law of Court Decision Enforcement, “a penal institution can make convicts of Low-and medium-security prisons to work in their individual or joint entity, or contracted entity with appropriate monitoring. However, statement and legalization such as “a penal institution can make convicts of high and special-security prisons to work only in its own production,” found in Clause 120.6 of above law, closes the opportunity for convicts of special-security prisons to labour and limits the opportunity for convicts of high-security prisons to labour. For example, Prison 407 is focusing on providing job considering prisoners’ work experience and interest. They provided jobs to 83 percent of all convicts of ordinary, strict, and maximum-security, especially jobs such as tailor, waffle embroidery, crafts, needle dressing, felt or leather covers, prison service, jobs of external contracted entities and works for improvement of the prison. 225 inmates work at about 12 entities under contract and receive wages. Although it has been very effective, wages are not granted to over 50 inmates who are working in prisoners’ living area, but only bonus days.

Out of 329 inmates of Prison 421 of Amgalan, Bayanzurkh district, Ulaanbaatar, 87 convicts are working inside prison zone, 23 inmates are working in the prison farm outside of prison zone, and over 100 inmates are working in construction, leather goods factory, brick factory, fluorite industry and road work as assistant under contract. 87 inmates, working in prisoners’ living zone, and 23 inmates, working for 7 jobs outside of prisoner’s living zone, do not receive wages, but only bonus days. Sometimes, those entities pay less salary. They also give food and goods instead of the salary.

It is common for other prisons that they do not give salary to those convicts who are working in the prison farm or in the cleaning services within prisoners’ living zone. It violates the Clause 121.1 of Law on Court Decision Enforcement of states “convicts shall receive salary appropriate to his/her labour quantity and quality,”.

The monthly minimum wage was set as 192,000 tugriks and 1,142.85 tugriks per hour by the Resolution 7 by National Tripartite Committee of Labour and Social Consensus of 11 April, 2014. According to this resolution, convicts are to receive 1142.85 tugriks per hour for their work. In addition according to the contract to hire convicts, made with other entities, labour wages shall be transferred into the accounts of the prison and all types of payment and deductions that are stated in law can be paid from this salary. Remaining money is to be transferred into the account of the convict.

Case:

I thought that I should receive 192,000 tugrik monthly as labour wages for my work. But in reality, I receive less. Actually, they said that they would give me 192,000 tugriks per month. But after working for three months, I received 215,000 tugrik... I worked at Undurbuyant LLC for three months. However, there were 126,000 tugriks in my account. In my estimate, there must be more than 570,000 tugrug. I bought goods of 120,000 tugriks from shop. Over 350,000 tugriks are missing. In fact, this is the case for all the convicts that they receive less than estimated.

(From interviews with prisoners during inspection)

Prisons and other contracted entities are obliged to provide labour safety for employed convicts and comply planning of the implementation of hygiene guidelines and rules. When they provide job for convicts or when convicts work there with contract, contracted entities shall provide labour gear, safety clothing, protecting tools, labour safety manual and consumer materials issuance. Especially for new and labour provisioned inmates, it is needed to provide safety instructions regularly and safety clothing and milk for those working in hazardous conditions.

However, many employed convicts have industrial accidents which harm their health due to the lack of providence safety from contracted entities and organisations where convicts work under contract.

Case:

While working at the cashmere combing sector of “Buyan” LLC under contract, I got industrial accident on December 17, 2014 and injured my 2,3,4,5th fingers of left hand. I went through surgery to cut off my two fingers. But until today, there is no identification for my disability. The place where I am imprisoned did not pursue to identify my disability and to involve me in social welfare.

(From interviews with convict B during inspection)

Case:

My daughter is serving in jail and she injured her shin while she was working in the prison yard in 2012. She also injured her leg again while she has working on construction in 2013. Thus, authority of the prison gave her light works due to her injury. However, authority of the prison was changed after April 2015, and they allotted difficult job to her to work in construction. I have complaints that they are oppressing her through reducing her bonus days and postponing her trial period.

(From the complaint of citizen D, sent to the Commission)

1.1.6 About Rights to Education

It is stated that “prisoners shall be educated according to the country’s education system” in the Article 77.2 of Standard Minimum Rules for the Treatment of Prisoners, adopted by the UN. It is also stated, “... have rights to education” in Clause 7 of the Article 16 of Mongolian Constitution and, “education training shall be held only in the prison accommodation” in Clause 125.2 of Law on Implementation of Court Decision.

Detention Center 411 for Juveniles or closed school is running activities with Secondary school status. It started having name of 110th General Education School with the purpose to provide basic education with specialized labour training and providing general education to the sentenced children by the Decree 258 of August 10, 2000 of Capital City Governor and Mayor of Ulaanbaatar.

By Decree of 20 November, 2009 of Metropolitan Education Department, it became 110th High School of Khan-Uul district which has Mongolian State Registration certificate and special license to conduct education training. On May 30, 2013, school's status was changed into Secondary school, and it was granted the certification of special license to conduct education training from Metropolitan Education Department.

This school is conducting its operations with elementary, middle, and high classes with 15 students, 6 teachers, and 159 textbooks.

Elementary grade teacher and Mongolian languages, mathematics, history and social science teachers are full-time working, and two teachers from Christina Nobel Foundation are working as part time. Due to human resource to work at this school, one teacher teaches 1-3 subjects and sometimes, non-professional teachers have taught some lessons. This violates Clause 1.3, which states, "the license to teach shall be provided in all professional directions," of the regulation of providing license to teach, and granting or reducing professional degree, approved by Order A/305 of August 2013 of Mongolian Education, Culture and Science Minister, and Clause 1.5 of same regulations, which states, "the license to teach in secondary school shall be provided to teachers who meet the criteria set forth in Clauses 2.1 and 2.2."

Case:

Mongolian language and literature teacher has taught Mongolian language, literature, Mongolian traditional script and music lessons, and Math teacher has taught mathematics, geometry and physics. Full-time teacher of history and social science has no license to teach and is of retirement age. The school does not employ teaching staff on the basis of selection because teachers do not want to work in our school even though they passed the selection.

(From interviews with officials during inspection)

As it is noted in job model specification of training manager of general education school, approved by Annex 3 of the Order 351 of 2007 of Education, Culture and Science Minister of Mongolia, it regulated that training manager is to be a professional teacher and civil servant. Thus, appointing a special civil servant as training manager of this school does not meet the requirement of the position of training manager, specified in above regulation.

Student profiles are documents of training to take notes of information of changes of students' academic performance, development and maturity. When the student profiles were reviewed during the inquiry, there were seven students' profiles missing, and rests lack personal records and migration marking. It violates "Instructions of Student's profile record of 12-year Secondary School," approved by Annex 6 of Order 361 of 2010 of Education, Culture and Science Minister of Mongolia.

Therefore, there is a need to comply it with international treaties and conventions which Mongolia has ratified, and domestic legislation, to improve the teaching quality of this school, and to increase the numbers of professional teaching staffs.

Other prisons have been organizing numerous schoolings among inmates, teaching alphabets to illiterate inmates, and running professional trainings and granting certifications in cooking, plastering, concrete armature, plumbing at Vocational training centers affiliated of General Executive Agency for Implementing Court Decisions.

In the prisons, involved in the inquiries, there are 38 illiterate inmates and 101 inmates with no civil documents or document breach.

There are two inmates of strict security prison, taking correspondence course at the University of Agriculture in

accordance with Clause 13.1.3, which states “convicts who have been sentenced in ordinary and strict-security prisons have rights to take correspondence course at university, institute or college by his/her own expense;” Clause 13.6, “correspondence course shall take place only in the prison accommodation;” and Clause 13.7, “Concerning convict’s correspondence course, convict’s family or attorney shall have prior agreement with the school’s principal and to make agreement allowing run the course only in prison accommodation. Governor of the prison shall organize guards during the final examination period,” Prison Internal Rules, approved by Order A/230 of 2014 of Mongolian Minister of Justice.

Case:

I had been studying at Technical school of Darkhan-Uul province, affiliated with University of Science and Technology, majoring in Food Technology and Hygiene, in 2007. When I committed crime on 13 March, 2012, I was in 5th year of school and writing my diploma thesis. I took a year off for three times according to the school rules and now, my time is running out. Therefore, I hope that you will grant me an opportunity to continue my studies and graduate from the school....

(From the complaints of convict B, sent to the Commission)

1.1.7 A right to be free from torture

Considering Article 3 part (a) of Geneva convention adopted by General Assembly of the United Nation in 1949, where it declares “Causing life or physical harm, for example murder, mutilation, cruel treatment and torture in all form is prohibited whenever, wherever”, Article 5 of Universal Declaration of Human Rights, and Article 7 of International Covenant on Civil and Political Rights, where it declares “None shall be subject to torture and other cruel, inhuman and or degrading treatment” and according to the “Declaration on the Protection of All Persons from Being Subjected to Torture and

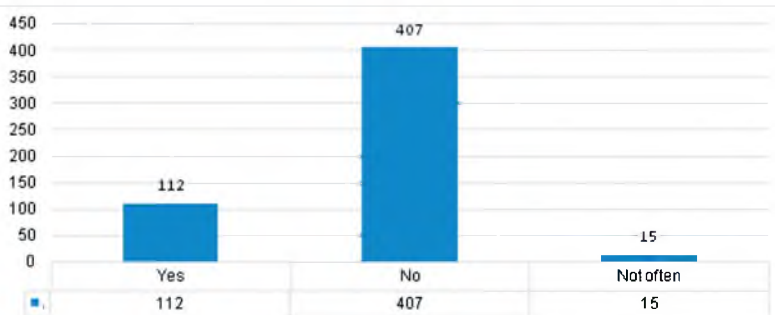
Other Cruel, Inhuman or Degrading Treatment or Punishment” adopted by General Assembly of the United Nation on 9 December, 1975, “The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” was adopted by the General Assembly of the United Nations on 10 December 1984.

Mongolia has acceded to the convention on 2 November, 2000 and signed Optional Protocol on 11 December, 2014. By doing so Mongolia bears responsibility before United Nations to prevent torture, suppress torture, and to give penalties to those who committed torture.

Clause 13 of Article 16 of Mongolian Constitution guaranteed the right to be free from torture by declaring, “... none shall be subjected to torture...;” moreover, the Criminal Code of the Mongolia prohibits torture and other cruel, inhuman or degrading treatment or punishment.

In recent years, as a result of step by step actions such as making maintenance or building a new prison building, introducing international standards, affiliate prisons and institutions of The General Executive Agency of Court Decisions have decreased incidents of some torture forms.

Inappropriate treatments from prison officials to prisoners such as abuse, verbal abuse, harassment and beatings are still present. 900 prisoners participated in the survey, and when asked, “Have you ever abused mentally, physically or verbally by prison officials?” 112 prisoner answered ‘yes’, 407 prisoners answered ‘No’, and 15 prisoners answered ‘Sometimes’.

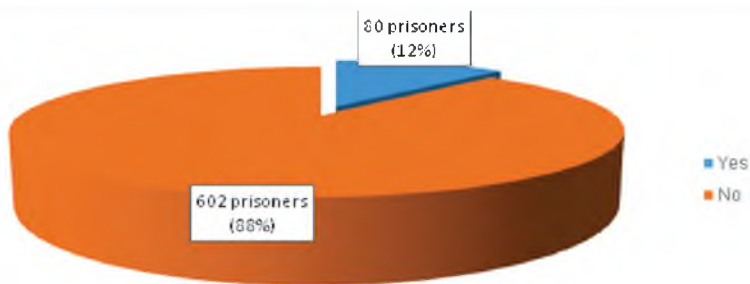


Case:

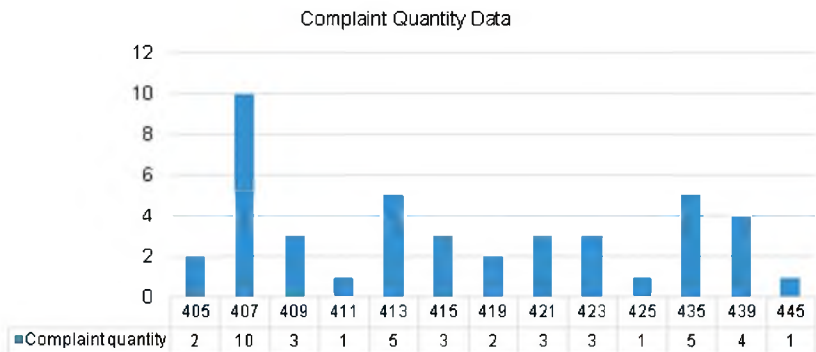
Prison officials always use verbal abuse against us, they discriminate between prisoners, and if we say something for oppose, and they threaten us with violation report or to tighten our regime...

(From the interview with prisoners)

When asked “Have you ever gotten injured from the beating by prison officials?” 80 prisoners answered ‘Yes’, and 602 prisoners answered ‘No’.



By 2015, 43 complaints came to the Commission on “inappropriate treatment such as abuse, verbal abuse, harassment, and beatings by prison officials and representatives”.



Case:

... While I was working at “Buyan Holding” LLC by my own request, I was injured and hospitalized because other prisoner kicked me. I filed complaint on 20 January, 2015 to supervising prosecutor who came for inspection. After that Major “A” and Captain “B” called me to shift officer room and beat me with a club for making complaint. Now I hold complaint for later occurrence...

(Complaint lodged by prisoner “N” to the Commission)

1.1.8 Rights to Visit

Visit is considered, from one hand, the lateral monitoring to prevent any kind of torture and the right of convicts to receive temporary and long-term visit or meeting is unique because it gives opportunities to convicts to meet their spouses, children, other members of their family, and relatives. Excessively or completely limiting their right renders inhumane and unethical relationship with the convicts.

Visiting and meeting restrictions, adopted by Law of Court decision enforcement in Mongolia, are too hard and completely limiting access to long-term visit for convicts who have been sentenced in jail is internationally considered the violation of human rights.

For our country, convicts have been exercising their rights variedly depending on their sentence regime.

For example, according to the Law on court decision enforcement, the numbers to receive package and temporary meeting is not limited for convicts of ordinary and strict security prisons, and he can receive long-term visit eight times per year. Inmates of high-security prisons may receive temporary visit once for two months and long-term visit once for three months as well as package once a month. Inmates of special security prison may receive temporary meeting three times a year, long-term meeting twice a year and package three times a year, and send letter twice a month. Those who are in maximum security prison may receive temporary visit twice a year, send letter once a month, but can not receive long-term meeting.

Enacting the rights of convicts to receive meeting and visit variedly by the laws depending on their prison security regime is a form of violation of their rights to communicate with the external environment. In accordance with the outcomes of survey and inquiry conducted by the Commission, following comments are recommended in order to provide the rights of convicts, guaranteed by the international treaties and conventions in which Mongolia is a party to, and domestic legislation.

- It should be included the clause of “one who did not violate human rights” into the requirements for promotion of staffs of General Authority for Implementing Court Decision.
- About convict labour, labour norms and setting wage rates, it should be complied with 29th Forced Labour Convention, which Mongolia is a party to, and 105th Forced Labour Elimination Convention, and it should be regulated by the procedure, approved by the members of the Government Cabinet in charge of labour issues and legal issues. Appropriate wages for their work should be provided not-discriminately to convicts.

- It should be provided the rights to health care and medical care services for convicts regardless of their prison location and regime. In doing so, it should be supplied with professional medical staffs, adequate medical tools, equipment, medicine and injections, and give, assistances and services that meets the standards.

1.2 Human rights situation of people deprived from their liberty

However, Mongolia is a state party to a number of international human rights treaties ensuring the rights of people deprived from their liberty, the actual implementation in Mongolia is not sufficient.

In 2015 the National Human Rights Commission of Mongolia has undertaken inquiries into several institutions where people are deprived from the liberty, including the National Center for Mental Health of Mongolia, Center for patients under the administrative restriction due to drug and alcohol abuse and temporary shelter for the victims of domestic violence.

1.2.1 Implementation of the rights of patients from the National Center for Mental Health of Mongolia (NCMHM)

The NHRCM has monitored the implementation of the rights of patients at the NCMHM in order to prevent human rights violations and improve the implementation of their rights since 2007.

The United Nations General Assembly's Resolution 46/119 adopted in 1991 on the "Protection of persons with mental illness and the improvement of mental health care" defines the "patient" as a person receiving mental health care and includes all persons who are admitted to a mental health

facility. The principles in this resolution ensures basic rights of all persons with a mental illness, or who are being treated as such persons, shall be treated with humanity and respect for the inherent dignity of the human person, have the right to the best available mental health care, which shall be part of the health and social care system and all persons have the right to protection from economic, sexual and other forms of exploitation, physical or other abuse and degrading treatment. Every person with a mental illness shall have the right to exercise all civil, political, economic, social and cultural rights as recognized in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and in other relevant instruments, such as the Declaration on the Rights of Disabled Persons and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Article 1 of the Convention on the rights of persons with disabilities states, “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others” as well as “States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs”.

It is a state duty to protect, promote, and fulfill the rights of all people with disabilities including people with mental, intellectual impairments and with this regard Mongolia made an international commitment.

The first hospital for mentally impaired people in Mongolia was established in 1929 with total capacity of 20 beds and one doctor. In 1983 this hospital started to operate under the Ministry of health as a Pshychiatric and narcological clinic, which was replaced by the Order of the Minister of Health in 2006 as the National Center for Mental Health of Mongolia.

The NCMHM has been working for 87 years and occupies 83 000 sq.m territory with 4 block buildings with total capacity of 520 beds, 83 doctors, 121 nurses and 126 medics (altogether 497 professionals are working at the NCMHM), and it is delivering various healthcare services for patients to be admitted for treatment of mental and pshychiatric illness, nursing clinic, clinic for children and adolencece, clinic for addiction studies, clinic for convicted patients.

Clause 12.4 of the Law on the Psychological Health states, “the composition and the rules and procedures of the admission commission shall be approved by the Ministry of Health” according to which a Commission comprised of 5 people were appointed.

Clause 12.3 provision stipulates, “a special commission shall determine the psychological health of a patient within 72 hours after the patient was admitted for treatment and whether the patient should receive compulsory treatment and if this person could harm others”. Therefore, in 2015 the special commission examined medical history of 5243 patients and prescribed compulsory treatment for 37 patient.

For the last three years 18 persons were recognised as incapable by the Court (4 persons in 2013, 6 in 2014 and 8 in 2015).

There are 22,356 registered people with mental illness and 14 586 of them have severe mental disorders, out of whom 4141

are living in the capital city Ulaanbaatar and another 10,445 of them are living in countryside²⁴.

According to joint Order 190/91 of the Minister of Health and the Minister of Population Development and Social Protection in 2014, 2846 people with mental deficiency were transferred to local clinics (healthcare unit for the smallest administrative unit).

1.2.1.1 Nursing clinic

Joint Order 94/158 of the Minister of Health and the Governor of Ulaanbaatar City on "Structural changes" dissolved Center for labour treatment and nursing for psychiatric patients in Maanit soum (small administrative unit in provinces in Mongolia) of Tuv province. All 174 psychiatric patients were placed to the Psychiatric clinic hospital. Thereafter, the center was nursing and treating not only psychiatric patients but also psychiatric patients without legal guardian and/or anyone who would look after them.

The NHRCM undertook inquiries in this center in 2007, 2011, 2016 on the situation of human rights of the patients. All findings and concerns regarding the human rights situation were reflected in the NHRCM recommendations in the 6th²⁵, 11th²⁶, 12th²⁷ and 13th²⁸ Annual reports on human rights and freedoms in Mongolia and were submitted to the State Great Khural of Mongolia.

In 2009 the Government of Mongolia issued a Resolution 303 on Second National Action Plan on "Psychiatric health" (2010-2019). Clause 4.1.6 of NAP intended to "examine the possibility to establish special nursing house for patients who were recognised as a patients with severe psychiatric illness,

²⁴ From the information received from statistic@ncmh.gov.mn on 22 March 2016.

²⁵ Annual Report on the Human rights and freedoms Situation of Mongolia in 2007, page 66. 2008

²⁶ 11th Annual Report on the Human rights and freedoms Situation of Mongolia, 92-97 pages. 2012.

²⁷ 12th Annual Report on the Human rights and freedoms Situation of Mongolia, 114-116 pages. 2013.

²⁸ 13th Annual Report on the Human rights and freedoms Situation of Mongolia, 131-132 pages. 2014.

legally incapable or psychiatric patients without legal guardians in 2011-2012". There is also a 2012-2016 Government action program adopted by the Government Resolution 120, where Clause 154.4 plans to "establish special nursing houses for patients with psychiatric illness, mental deficiency, severe psychiatric illness, disability" according to which the arrangements on legal, technical and policy level should be on the Ministry of Health and Sports and the Ministry of Population Development and Social Protection, however no work has been done on this matter²⁹.

Clause 5.1.8 of the Law on Psychiatric health states, "Accessible nursing houses for rehabilitation of homeless or people without legal guardian with psychiatric illness shall be established in provinces and districts with all necessary technical and other equipments," and Clause 7.1.5 states, "...there shall be a type of nursing service for people with psychiatric illness". Unfortunately those provisions have not yet been implemented.

As of January 2016 124 patients were on continuous medical treatment (one person for 21 years, one person for 18 years, 12 persons for 13 years, 110 persons for 1-12 years). With regard to gender it was 62 male and 62 female patients. There were 9 patients with additional disability ageing 11 to 16, 115 patients age ranges between 17-65. There were 9 underage patients and 79 patients above the age of 18 placed in Nursing clinic, and 36 patients were living at "Gers".³⁰

Annex 3 of the Order A/97 of the Minister of the Population Development and Social Protection of the 2013 states, "recovering patients should be placed in family like environment in order to socialize and increase self-sufficiency of them at the National Psychiatric Health Center." However, this institution does not hold a special license for that. In addition, Clause 4.1.4

²⁹ 13th Annual Report on the Human rights and freedoms Situation of Mongolia, page 131. 2014.

³⁰ Ger is a traditional Mongolian living tent/yurt

of Second National Action Plan on "Psychiatric health" (2010-2019) states, "Day time help services for social rehabilitation of psychiatric patients should be arranged in provinces and districts". According to previous regulations Nursing clinic has eight Gers with 36 patients.

There is no budget allocated to maintain and operate nursing clinic; therefore, the NCMHM covers all the costs of this clinic from its own budget, and average yearly spending is about 700 million Mongolian tugriks.

The National Center for Mental Health of Mongolia and the National Registration Office collaborated on registration and issuing documents to 45 patient of this clinic, therefore they started to receive their social welfare pensions and other subsidies³¹.

Since 2011 no work on registration and issuing documents have been conducted, and during the NHRCM inquiry there were 4 patients without National ID card, 9 patients without birth certificate, which means they were not receiving any pensions and other financial support they are guaranteed of.

81 out of 124 patients were recognised as they lost their ability to work, and 42 patients could not be recognised as such due to absence of documents.

Case:

There is a possibility that parents of the children admitted to the clinic might use their document and receive and spend money for children allocated by the Government of Mongolia. Our organisation have not yet undertaken any measures to ensure that money for children are allocated to children themselves directly.

(From the group interview with workers of the NCMHM)

³¹ 11th Annual Report on the Human rights and freedoms Situation of Mongolia, 92-97 pages. 2012.

The main human rights principle is that everyone shall enjoy human rights regardless of their ethnicity, race, gender, language, religion, political and other views, national and social status, wealth, origin and other status. All those human rights have been enshrined in the UDHR, ICCPR, ICESCR and other international human rights treaties. Clause 25.1 states, "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." The Constitution of Mongolia, through its article 14, enshrined that all persons lawfully residing within Mongolia are equal before the law and the court as well as that no person shall be discriminated against on the basis of ethnic origin, language, race, age, sex, social origin and status, property, occupation and post, religion, opinion or education. Everyone shall have the right to act as a legal person," and article 16.5 of the Constitution of Mongolia ensures the "right to material and financial assistance in old age, disability, childbirth and child care and in other circumstances as provided by law".

However, absence of documents of those patients restricted their access to state provided pensions, other allowances and state services for them. Moreover, that definitely, breaches all the international norms and domestic legislation.

The UN Convention on the Rights of the Child (1989) has first included provisions related to the issue of disability out of nine Core International Human Rights Instruments. Article 23 of the CRC states, "States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community".

Thus, there is a need to solve the the budget issue to improve living condition and upgrade the equipments for the children at the nursing clinic to meet all their special needs.

1.2.1.2 Psychiatric clinic

Patients with uncomplicated mental disease can attend social rehabilitation cabinet, psychotherapy and drug treatment in National Center for Mental Health of Mongolia for 1-3 months under the control of its doctors, if patients' conditions are improved, they will be transferred to district's and province's psychiatric cabinets.

Patients with 22 syndromes of psychiatric diseases are sent to I-IV clinics without a specific time of period or till the patients' disease will be healed, and those clinics can receive 255 patients in total. During the examination period of 1-22 years there were 285 patients under the age of 17-69 and among these patients there was 1 person who was in the clinic for 37 years.

According Annex 3 Order 233 Director of National Center for Mental Health of Mongolia's from 2014, patients with acute psychiatric diseases should be accepted in I-IV clinics and should be sorted and treated by hospitals of provinces and districts where they live. Hereunder there are 2475 patients from the capital city and 597 patients from the provinces in those clinics. In total there are 17 permanent patients (11 women, 6 men), whose family members do not want to have contact with them or there's no place to go for them.

In environmental hygiene requirement of health organisation MNS 5392:2013, Clause 4.2.6 states, "In psychiatric clinics, for patient's security and compliance against infection, there must be 6 square meters area or space per one patient's bed or one patient". However, in reality in one room there are

3-7 patients, it means 2-4 square meters space for one patient, which is not complying with the health organisation's standards.

And in "the health care organisation's structure and operation specialist center" MNS6330-2: 2012 the standard 12.8.4 it's stated, "linen must be hygienic", but the patients' rooms' conditions were not good enough, and the linens were in bad conditions.

The table shows the spaces of clinical nursing room space's condition:

Room number	Bed quantity in room	Total area of the room	Room space standard per one patient	Room space per one patient
No201	6	19 square meters	6 square meters	3.1 square meters
No202	7	14.3 square meters	6 square meters	2.04 square meters
No204	6	18.3 square meters	6 square meters	3.05 square meters
No207	3	19.1 square meters	6 square meters	6.3 square meters
No209	4	19.4 square meters	6 square meters	4.8 square meters

Clause 11.1.4 of Law on Psychiatric Health states, "food, housing and clothing should be provided to the patients with psychological disorder" and Clause 11.1.5, "Psychological patient shall be discharged from the hospital", Clause 28.7 of the same law states, "parent, legal guardians of the disabled children shall protect their rights and interests, and it is prohibited for parents and legal guardians to avoid to fulfil their obligations towards children with disabilities". Unfortunately, when the recovering patient is going to be discharged from the NCMHM obstacles

come from family members of the patients. Family members don't come for the patient, do not pay for their transportation to home in a province, and even when the hospital pays for the transportation, the family refuses to accept the patient.

Case:

The family members do not come for patients when we notify them about discharging patients from the hospital. Even when the Hospital pays transportation for patients to the provinces, their family members do not accept them; in some cases it is even worst, discharged patients are not allowed to let in their home. Due to this kind of circumstances we have 5-6 long-term patients. Sometimes when family refuses to live with the patients, they give a false call by claiming that the condition of those patients worsened. Security issue to be mentioned is the following. The emergency team has 1 doctor and 1 nurse, and when we receive a call, the emergency team is not able to use any equipments for self-defense. It is common practice that the family members of the patients are running out from their homes, patients attack and assault emergency team. However, we can receive a help from the police under relevant law; in practice, police rarely helps us. Therefore, emergency team needs to have a special security guard.

(From the interview with doctors during the inquiry)

1.2.1.3 Clinic for convicted patients or legal section

Clause 22.2 of the Criminal Code states, “A person who was imputable at the time of committing a crime but lost the ability to realize the socially dangerous nature of his/her act or omission or to control it due to a chronic mental illness, temporary mental derangement, mental deficiency or another serious illness during the consideration of the case in court shall not be subject to criminal liability. A court shall apply to such a person compulsory measures of medical character and decide the matter of imposing punishment after his/her recovery”.

There are 23 patients sentenced with compulsory measures of medical character at this clinic. The gender segregation is 15 men and 8 women. 21 patients out of 23 has committed a murder and 2 patients were convicted for robbery of other's property.

5 women out of 23 patients are not legally incapable for criminal liability and have mental deficiency. Only a light form of mental deficiency is medically treatable, while serious, severe forms of mental deficiency does not have medical treatments.

For the last three years 12 recovered patients' mandatory medical treatments were terminated by the court decision in 2013-3 patients, in 2014-1patient, and in 2015-8 patients. The clinic did not receive and admit any underaged patients by court decision for compulsory treatment³².

Order 311 of the Minister of Justice and Home Affairs on "Security of the facility for compulsory treatment" states, "hospital's windows shall have metal bars, doors shall have restrictors and vision panel, lights should be installed all through the building. There should be an isolation for the whole facility from outside environment with sound and surveillance camera."

There is an isolation room created under Annex 4 of Order 180 of the Minister of the Health and Sports issued in 2014, which states, "a person could be placed in isolation room for 24 hours for treatment, nursing in order to prevent any dangerous actions to the society, as well as to determine the psychological condition through observation".

³² Information of the study sent to the NHRM by the National Center for Mental Health dated 22 March 2016 via email account statistic@ncmh.gov.mn.

Case:

A person convicted for compulsory medical treatments by the court decision shall be put in the same environment as it would be medical facility, and all the standards related to the healthcare facility and service should be in compliance. Therefore, installing doors with metal bars and vision panels is inappropriate for medical facility, and it does not create a positive impact on the rehabilitation and treatment of persons placed in it.

(From the interview with doctors during the inquiry)

However, patients at this clinic are placed with court's decision with compulsory treatment, for their recovery medical standards and rules shall be fulfilled. Thus, there would be comfortable environment, appropriate relations and treatment with positive approach towards them. Thus, this increases the effect of the treatment.

The following recommendations on the human rights of NCMHM patients will be sent based on the outcomes of the inquiry conducted by the NCMHM:

- Renovate the food processing block B at the National Center for Mental Health of Mongolia and improve ventilation and disinfection should be provided on constant basis;
- To register all complaints from patients and their family members according to provisions in laws and other regulations;
- Renew mattress and bedding in legal section and section for patients with psychoclampsia improve ventilation and repair the surveillance camera;
- Provide with unlimited access to drinking water for patients with severe mental disorder at 4th clinic;
- Allocate all pensions and allowances for children at Nursing clinic;

- Arrange all necessary work to provide unregistered patients with documents, such as, national ID card in order to enroll those patients to social welfare services;
- To arrange the issue of birth certificate and enroll underaged children at the into national registration system clinic;
- Improve the facility equipment for children and disabled patients according to their needs;
- Install doors and windows of the legal section in accordance to the rule on “Security of the facility for compulsory treatment”;
- Advocate for the creation of special caring houses for those psychiatric patients without legal guardians for their permanent stay;

1.2.2 Center for compulsory treatment and compulsory labour as an administrative measure for alcohol and drug abusers (Operates under the General Executive Agency for Court Decision)

Center for compulsory treatment and compulsory labour as an administrative measure for alcohol and drug abusers (Center) is located in Bayan Soum of Tuv province. Facility building was first used in 1978 as a center to provide care services for patients with mental and psychiatric diseases, later the Minister of Health of Mongolia merged care house for mental and psychiatric patients with the Psychiatric clinic hospital and the building was transferred to the General Executive Agency for Court Decision³³.

The legal background for the Center’s operation is as follows: Law on the compulsory treatment and labour as an administrative measure for alcohol and drug abusers (in 2000), 107/A58 regulation of State Prosecutor General and the

³³ Resolution 351 of State Property Committee dated 5 June 2003.

General Executive Agency for Court Decision on “Security and condition of the place for compulsory treatment and labour” (in 2014), Order A/227 of acting Minister of Justice and its Annex 1 “Regulation on implementation of the decision of arrest”, Minister of Justice’s regulation on the security status of places of compulsory treatment (2002), internal regulation of the Center, Mongolian standards on “Common operation in diagnosis and treatment” (MNS 4621:2008), “diagnosis and treatment of psychological disorders caused by alcohol abuse” (MNS 5396-2:2004) and “Specialized center and its structure and functions of this healthcare organisation” (MNS6330-2:2012).

The Center consists of 2 parts, one is medical part (run by medics) and the second one is labour part (run by specialists) and security guards (run by court decision implementation office).

According to the Law on the compulsory treatment and labour as an administrative measure for alcohol and drug addicts administrative units, head of companies, police can apply to healthcare facility to determine whether a person has diseases related to abuse of alcohol and drugs. If a healthcare facility finds the person as an alcohol/drug abuser and if that person disturbs public order and refuses to participate in voluntary treatment programs or repeated his abuse of alcohol/drugs, then by court decision this person will be placed to the Center for compulsory treatment and labour.

For the last three years the Center had 1616 patients out of whom 685 patients in 2013, 381 patients in 2014 and 550 patients in 2015. 1523 patients out of 1616 were man, and 122 patients were women. 544 patients came for retreatment, 1075 patients were for their first time. The age segregation would be as follows, 109 patients were aged 20-29, 557 patients were 30-39, 658 patients were 40-49 and 290 patients were aged 50 and above³⁴.

³⁴ Documents gathered during the inquiry conducted by the NHRCM on 1 January 2016 into the Involuntary Treatment and Compulsory Labour Institution for alcohol and drug addicted persons

Patients were grouped and segregated into three buildings according to the Regulation on “Security and condition of the place for compulsory treatment and labour”, which indicates that patients will be segregated depending on their sex, type of treatment and health condition. The Center has capacity of 75 patients; however, during the inquiry there were 79 male and 9 female patients (88 patients in total).

The same regulation prescribes to have iron bars on windows, outside door shall have limiter, patient’s room and its door shall have observing window from outside, rooms shall have natural and electric lights, ventilation, center facility should have a wall to separate from outside world, sound alarm and surveillance cameras. Inquiry showed us that this provision is not implemented on the ground, thus, patients’ rooms had doors without limiters and observing windows, also the Center did not have sound alarm and surveillance cameras.

The Mongolian standard on requirement for healthcare facility environment and in its provision 7 sets up standards on frequency and cleaning methods for halls, training rooms, staff room for leisure, storage, equipments and whole surface. Departments are responsible for everyday cleaning. Clear-out should be done every two weeks by cleaning every surface and equipment. “Regulation on implementation of the decision of arrest” also states that every morning after a wake up all the bedding of the patient should be placed outside for a while.

However, buildings 1 and 3 have not had renovation for a long time, the hygiene and disinfection of beddings, blankets and mattresses were in poor condition, and most of the patients did not have shelves to keep their clothing and other personal items, so they were using a cardboard boxes. However, some rooms had old, broken lockers where everything was stored in a total mess.

under General Executive Agency for Court Decision.

The expense of 16 million tugriks was spent on renovation of the 2nd building in 2015 with improvement of toilets and clothing storage room, and this building better complies with the requirements for healthcare facilities in comparison with the buildings 1 and 3.

Case:

In November 2015 I was placed to this place by court decision from Ulaanbaatar to have a compulsory treatment. Now I work as a fireman. I have spent two months here, but they changed my bedding only twice

(From the interview with patient)

Specialised Inspection Office examined the Center only once on diagnosis, medicine and bio supplements, hygiene and infection control. The state inspector issued an assessment and delivered a demand to eliminate all breaches. Unfortunately, no follow-up actions have taken place since that time.

Another violation the NHRCM witnessed at the Center is that all the food in the menu did not have any calculation on nutritional values, which violates the regulation on compulsory treatment of persons with disease related to alcohol and drug abuse which prescribes to serve food with 3400 calories per day. In addition, cooks did not take and keep food samples as it is required, and there is no notes on technology card.

Drinking water of the Center was tested in 2012 by the Social Health Institute's Laboratory, and no other tests were run afterwards.

All patients had shower according to timetable. Shower room was dirty, unhygiene, and humid and had fungus. There was only one broken washing machine to wash all beddings, sheets, and clothing of patients, and this did not meet the standards in disinfection which could have negative effect on patients.

The Healthcare Office of Tuv Province issued a special permission to provide healthcare service until January 2017. This Center does not provide with outpatient or rehabilitation services, only stationary treatments.

The Center operates with 3 MDs, 1 doctor, 9 nurses (13 persons in total).

However the Center had all necessary medicines to provide with first aid, the number of necessary equipments for first aid was insufficient³⁵.

All patients come to this place by court decision. At first one MD and one narcologist do the examination, then doctors open medical history of patients. If a patient comes for the first time, the duration of stay could vary from 3 to 6 months; when patient has been placed multiple times, then duration of his/her stay will vary from 6 to 12 months. The main treatments are conducted with medicines and on pshycological level like detoxication, strenghtening the immunity, giving vitamins, decreasing addiction to alcohol /drugs, make alergic to the componenets of alcohol.

At the Laboratory we found out 8 types of 40 expired substance, 10 piece of disposable needles, which violate Mongolian law on medicine and medical equipment.

Mongolia ratified ILO Convention on Forced labour (C29)³⁶ and ILO Convention on Abolition of Forced labour (C105) in 2005³⁷.

³⁵ Supplement B of National Standard of Mongolia - Structure and activity of health organisations MNS 6330:2012, National Standard of Mongolia – Universal requirement for pharmacy MNS 5260:2015.

³⁶ Adopted by International Labour Office from 14th session of the International Labour Congress held in Geneva on 30 June 1930.

³⁷ Adopted by International Labour Office from 14th session of the International Labour Congress held in Geneva on 5 June 1957.

Clause 2.1 of the C29 defines “***forced or compulsory labour*** shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. Also Clause 2.2 states, “the term ***forced or compulsory labour*** shall not include any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations”.

Convention concerning the Abolition of Forced Labour in its Article 1 obliges, “Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour (a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; (b) as a method of mobilizing and using labour for purposes of economic development; (c) as a means of labour discipline;(d) as a punishment for having participated in strikes; (e) as a means of racial, social, national or religious discrimination.”

Clause 13.1.5 of the Law on the compulsory treatment and labour as an administrative measure for alcohol and drug abusers ensures that “depending on the quality and quantity of work patient shall receive a wage not below than minimum wage determined by the Government of Mongolia”. Clause 13.6 states, “a wage for patients for compulsory work should be paid through the bank account”. However, all the patients are involved in a work of maintaining the Center’s household (cleaning outside and inside of the Center environment, some repair and coloring works of fences, walls, and roads of the Center, planting and harvesting vegetables and flowerbed, helping in the kitchen and etc), and they do not receive any wages.

Patients of this Center are not convicted criminals, and they are people with alcohol/drug addiction receiving treatment. Therefore, it is a grave breach of Mongolia's international obligations not giving to them prescribed wages.

Case:

I have been here for treatment for alcoholic addiction. In the meantime I have done any work the administration of the institution assigned to me such as assistant at kitchen and cleaner. However, I never get anything like wage and only receive money from my family.

(Interview with a patient woman during the inquiry)

After the consideration of and analysis into the findings of inquiry and study, the NHRCM proposes the following recommendations with regard to the right to health and right to be free from forced labour at the Center for compulsory treatment and compulsory labour as an administrative measure for alcohol and drug abusers, operating under the General Executive Agency for Court Decision)

- Remove the provision with forced labour in the Law on the compulsory treatment and labour as an administrative measure for alcohol and drug abusers, thus put in line national legislation with the ILO C29, C105. Remove the jurisdiction of the General Execution Agency for Court Decision over the Center for compulsory treatment al labour as an administrative measure for alcohol and drug abusers and transfer it under the jurisdiction of the Ministry of Health;
- Improve the condition of the building of the Center with solution of budget issue;
- Implement the regulation 107/A58 in effect and install door limiters and observing windows in doors;
- Provide with necessary medical equipments;

- Have a full emergency aid kit and exclude all expired medicines according to rules from use;
- Renovate buildings 1 and 3 as well as shower building and clean and disinfect the facilities according to standards. Provide with individual lockers for patients to keep their personal belongings;
- In order to ensure the safe drinking water run test of the will on regular basis;
- Regularly take food samples and request specialised inspection office for their assessment;

1.2.3 Human right situation of domestic violence victims who receive temporary shelters under the Department for preventing domestic violence and crimes against children of Ulaanbaatar city

Child identification and allocation office of Metropolitan Police Department was established in 1996 and was carrying out duties such as delivery of runaway children or children who became homeless in result of child abuse to their parents or state orphanages.

By Order 71 of Chief of the General Police Department, dated November 11, 2014 about “Adoption of Metropolitan police structure, official position, staffing, rank and salary grade” Department for preventing domestic violence and crimes against children was established and under their authority “Temporary protection office for domestic violence victims” was established to carry out combined efforts such as fighting against domestic violence, to take preventive measures, to suppress, to detect, to temporary protect victims.

Current office receives more than 50 calls involving domestic violence per day, and after receiving a call District police department makes inspection and decision whether to

take the alleged victim under protection or not. 20-30 percent of the victims who are under its protection came themselves, and the rest were transferred through district police departments.

The east wing of the building the protection building was built as a kitchen for Bogd Khaan's consort Dondogdulam in 1920's, and 18,3 m x 13,9 m 1 store expansion building was built in 1992. The above-mentioned east wing of the building has relaxation rooms, kitchen, dining hall and storage for victims. This part of the building is 100 years old and registered in the 5th as cultural heritage in the Item list for Historical and cultural valuables' under protection of Ulaanbaatar city.

On October 10, 2011, Agency for Specialized Inspection of Ulaanbaatar undertook inspection and made evaluation on the building condition. In the evaluation was noted later issues: iron connection of the roof coating was disunited, as holes appeared due to corrosion, rain and snow soaked through ceiling thus wooden materials such as wooden coating of column and boards were eroded, ceiling caved and the daub was cracked, as in the effect of eroded wooden pole, soil bulb and melting, build fundament changed it's volume thus inner and outer wall was cracked horizontally and vertical. Even though Specialized Inspection Office of Ulaanbaatar delivered the evaluation result to Metropolitan Police Department as above-mentioned conditions are violating Clause 9.1.1 of Building code there was no complete maintenance made up to now. When "Temporary protection office" was established in November, 2013, Ministry of Justice funded budget of 42 million tugriks for inner room maintenance, in 2015, 3.2 million tugriks for the roof maintenance, and 13 million tugriks for toilet and bathroom maintenance had no effect. Current building was added to the list of buildings to build anew by the budget funds of Metropolitan in 2013, in 2014 construction cost was calculated as 2,166,890,052 (two billion one hundred sixty six million eight hundred ninety

thousand and fifty two tugrugs) by the Ulaanbaatar city Police department³⁸.

During the inquiry central door, staff room upper part hutments, east part of the building, where staff stay is too cold, roof leaks, work space for staff, e.g. guards room has leakage from ceiling and right below of the leakage point power cable is running, staff and victims' toilets and bathrooms don't meet the requirements, waste overflows from toilets, drink water runs with rust.

These conditions are violating basic rights of the staff and the victims who receive protection as guaranteed in Clause 23.1 of Universal Declaration of Human Rights "Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.", part 4 of Article 16 of Mongolian Constitution "insurance favorable conditions of work...", Clause 12.2.b of Article 12 of International Covenant on Economic, Social and Cultural Rights "... embraces adequate housing and safe and hygienic working conditions ...", part 2 of Article 16 of Mongolia Constitution "Has right to live in healthy and safe environment and to get protected from environment pollution and balance loss".

Case:

Staff office condition is hard as it is too cold in winter, and in summer rain leaks through. As guardroom is cold powering heater solves heating of the room. Wind blows through windows. Fungus grows in the rooms. Staff toilet is dirty. Some victims who lived in finer conditions refuses to live in such room. Most of our staff is women. But work environment is so bad. Especially bathroom organisation is bad, and sewage always reeks. As not only staff, also victim's drinking water runs with rust, we buy our own drinking water. The building is too old; therefore, we need to construct a new building.

(From the interview with the staff made during the inquiry)

³⁸ Construction budgeted expense of Children protection and identification center of Ulaanbaatar city Police department. BOLOR-OD Kh. Professional quantity surveyor of Mongolia. 2014.

Temporary shelter house has 8 rooms in total. Rooms 1, 2, and 3 for family purpose have 2 beds each, Room 4 for girls has 6 beds, Room 5 for boys has 6 beds, and Rooms 6, 7, and 8 serves for public purpose.

Clause 7.10 of Mongolian Standard about “General requirements for Victim protection building” MNS 6040:2009 states, “Windows and doors must have full working condition, locks and curtains” and Clause 7.5 of the same standard states “Allocated sleep area must be more than 5 square meters per person”. However, during the inquiry above mentioned standard requirements were not met as room doors didn’t have inner locks and can be locked outside with keys, each room had one window, and window locks doesn’t work, one window grip used between the rooms, and allocated sleep area per person is 1,6-4,8 square meters.

Clause 6.12 of Mongolian Construction Standards and Regulations “Fire safety conditions for facilities - CSaR 21-01-02” adopted by Mongolian Ministry of Infrastructure in 2002 indicates room and hall should have 2 emergency exits and expressed room type F1.1 which could contain more than 10 person at once (pre-school children facility, nursing facility for elders, special purpose facility for handicapped people, hospital, school dormitory, children facility) and class which could contain more than 50 persons at one time. The number of staff is 24 and can provide protection for 30 people at one time. 61 percent of the victims who received protections from this place until January 2016 are children. However, each window has iron bars; in case of accident the only emergency exit is the main door. Thus, the condition doesn’t meet the above written standard and regulation. In case of fire or earthquake such a condition could bring dangerous outcome to staff and to victims.

The building doesn't have security alarm equipment; even though it has 9 inner surveillance cameras and 2 external surveillance cameras by January 19, 2016, there was no security footage recorded. Therefore, this must be solved immediately to provide health safety and working and living condition for staff and for victims.

Case:

"We work in 2-3 hour shifts. And security footage is not stored. The reason is hard-drive is full. Professionals who inspected the security computer said there is no other way other than to improve the hardware. Currently we use Pentium IV computer for security."

(From the interview with the staff made during the inquiry)

The facility abides following: Police operation code 326 directed to implement Law on "Prevention of domestic violence by police department, to suppress, to detect, to provide protection for the victims" revised by General Police Department Chief in 2015, Mongolian Constitution (1992), Law on Fighting against domestic violence (2004), Law on Family (1999), Law on protection of children's rights (1996), Law on Prevention of Crimes (1997), Law on Police service (2013), Law on Protection of witness and the victims (2013), Mongolian Standard on "General requirements for victim protection facility" MNS 6040:2029, Joint Decree 128/188 by Minister of Social Welfare and Labour and Minister of Justice and Home Affairs dated 2009 (about enforcing implementation of Law about fighting against domestic violence) , Joint guidance 308/189/129 by Minister of Social Welfare and Labour, Minister of Justice and Home Affairs Minister, and Minister of Health dated 2009 on "the establishment of one-stop service center" , and other relevant laws and regulations.

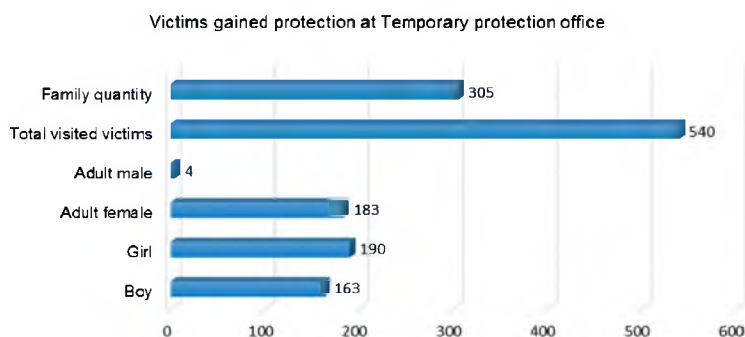
Since the establishment, 540 people received protection at Temporary shelter house by November 2015. 31 children (6%) were is lost children, 80 children (15%) were children who are strayed,

and 429 children (79%) were victims of domestic violence. 4 adult male (1%), 183 adult female (32%), 173 boys (36%), 190 girls (31%). 344 (61%) children who gained protection at this office came along with their parent and/or guardian.

Lost or strayed children are delivered to their parents, in case of the failure to find the guardian of the child the district offices work to deliver such children to orphanage. Such children mostly come at night time and if the parent and/or guardian would remain unknown they stay at the facility.

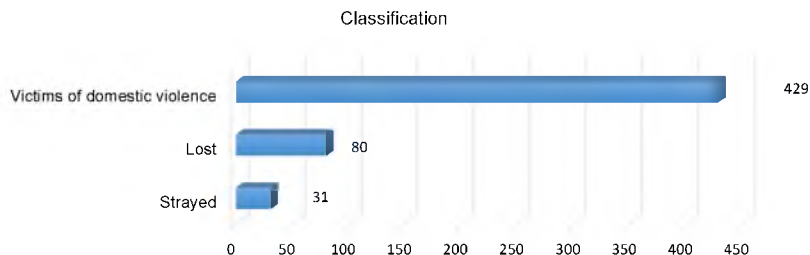
By 2015, there are 25 (from 10 family) victims who revisited Temporary shelter house. If we group them by age, there are 6 children of age 0-3, 7 children of age 4-9, 2 children of age 10-15, 1 person of age 20-25, 4 people of age 31-36, and 1 person of age 42-46.

People coming back to the Temporary shelter house are usually redirected to the National Center against Violence, joint team of the district committee, “Ariun Uils” NGO, victim’s family members and caregivers, Child and family development centers of the district. If a victim needs medical assistance and services, they provide first aid and connects to appropriate medical facility.



Temporary shelter house first provided service under name “Child identification and allocation office of Metropolitan Police

Department”, so even now lost, strayed children and grown-ups come to this place.



Part 3 of the Regulation 326 “About fighting against domestic violence” adopted by Chief of the General Police Department describes, “Temporary protection office is a place to provide protection and support to victims or potential victims of domestic violence and their children up to 30 days”. However, the above data shows 21 percent of total victims are not of described classification; thus, they could cause problems to general purpose of the facility, which is providing protection service for victims or potential victims of domestic violence and their child.

The following recommendations on the implementation of the right to healthy and safety environment of staff and victims, as well as acceptable working conditions for staff is provided as a result of report evaluation from inquiry.

- Renovate the temporary shelter house to meet the appropriate standard requirements;
- Ensure normal performance of surveillance cameras, to provide technical conditions to store security footage;
- Have drinking water examined by Specialised Inspection Agency for evaluation.

CHAPTER TWO

RIGHT TO LEGAL ASSISTANCE OF SUSPECTS, ACCUSED, AND DEFENDANTS WHO ARE IN PRE-TRIAL DETENTION

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(Article 11.1, the Universal Declaration of Human Rights)

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

... To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;

... To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

... To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(Article 14.3 (b), (d), and (e),
International Covenant on Civil and Political Rights)

Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and other international legal norms and principles determine that every person charged with a crime has right to defend himself/herself in person or through legal assistance of his/her own choosing because arrest and pre-trial detention measures touch the right to physical security and liberty.

“Basic Principles on the Role of Lawyers³⁹” defines an advocate as a pivotal in court proceedings. According to Part 1 of the Principles “All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.”

According to Part 3 of the Principles, lawyers, in advising and assisting their clients and protecting their rights, have duties to act freely and diligently in compliance with human rights and fundamental freedoms recognized by national and international law and in accordance with recognized standards and ethics of the legal profession.

Right to legal assistance is guaranteed in Clause 14 of Article 16 of the Constitution of Mongolia, “the citizens of Mongolia shall be guaranteed the privilege to enjoy...self-defense; receive legal assistance; have evidence examined; a fair trial; be tried in his/her presence; appeal against a court judgement, seek pardon...,” in Clause 1 of Article 55, “the accused shall have a right to defense”, and Clause 2 of the article, “the accused shall be accorded legal assistance according to law and at his/her request.”

Out of total 2,036 complaints the National Human Rights Commission of Mongolia handled for the past three years 286 complaints concerned violation of rights of persons arrested and detained as a suspect, accused, and defendant to legal assistance.

From 2013 to 2015 Commissioners, in their powers under the Law on National Human Rights Commission of Mongolia, delivered a letter of demand⁴⁰ and seven letters of recommendation⁴¹ to the Government Cabinet of Mongolia and relevant law enforcement agencies about ensuring the rights of suspects, accused, and defendants to legal assistance

³⁹ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba on 27 August to 7 September 1990

⁴⁰ Clause 19.2 of Article 19 of the Law on the National Human Rights Commission of Mongolia.

⁴¹ Clause 19.3 of Article 19 of the Law on the National Human Rights Commission of Mongolia.

and access to meeting with lawyers privately and maintained oversight on their implementation.

The Commission included the situation on the rights to self-defense and legal assistance in its 2001, 2009, and 2010 annual human rights reports, which were submitted to the State Great Khural of Mongolia along with relevant proposals and recommendations.

These recommendations cover the issues of implementation of these rights, revising national legislation in harmony with international norms and standards, improving the provisions on the role of advocates in criminal procedure and increasing their rights and responsibilities, providing them competence to gather evidence, establishing positions of lawyers who provide legal aid for financially incapable clients and who are funded by the state budget, increasing the number of advocates in the provinces, enabling the participants of criminal proceedings, and ensuring they adhere to their professional ethics.

The Standing Committee on Legal Affairs of the State Great Khural considered the 2009 human rights annual report of the National Human Rights Commission of Mongolia, which covered the issue of the right to self-defense and legal assistance, and released its Resolution 13 in 2010, by which it tasked the Government Cabinet to prepare and submit a proposal to the State Great Khural on harmonizing regulations to arrest a suspect, accused, and a defendant within the Criminal procedure code and other domestic laws on the role of advocates in criminal proceedings with international treaties Mongolia is a party to and universally recognized human rights principles.

Adoption of the Law on legal status of lawyers in 2012 and Law on legal aid for the financially incapable accused in 2013 has contributed greatly to the promotion and protection of human rights and freedoms as the enactments of these laws brought

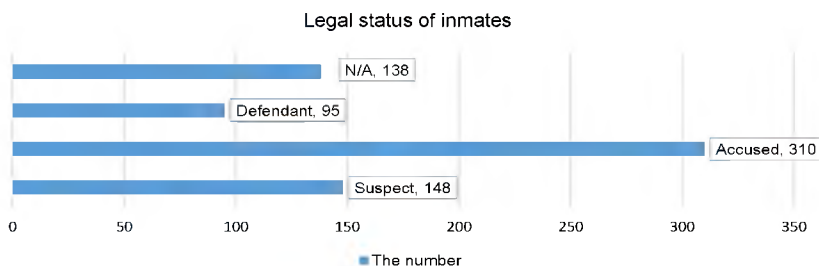
various systemic reforms in the functions and organisation of advocates and created an independent structure to manage service of legal aid for the financially incapable accused within the Ministry of Justice.

Within the scope of legal reform, it is important that legislation on the roles of advocates in the criminal procedure be revised in compliance with the treaties Mongolia is a party to and internationally recognized human rights principles and it be ensured participants of criminal procedure enjoy their right to choose their lawyers on by themselves.

In 2015 the Commission undertook research on how advocates provide the suspects, accused, and defendants, with legal assistance and identified the current situation and urgent issues.

Within the scope of the study the research team had the suspects, accused, and defendants in the Pre-trial Detention Center 461 and pre-trial detention houses in Darkhan-Uul and Orkhon Provinces fill a questionnaire and interviewed with employees of the court decision enforcement organisation and lawyers of the Legal Assistance Centre, Mongolian Bar Association, Mongolian Advocates' Association, and Metropolitan Advocates Council of Ulaanbaatar City, whose proposals were included in this report.

The survey involved 691 pre-trial detention inmates, 559 out of whom or 80.8 percent are male and 56 or 8.2 percent female.



When asked how long they have been detained, out of 691 participants 90 did not answer, and 601 participants answered as shown in the bellow.



As stipulated in the Criminal Code of Mongolia the period suspects, accused, and defendants are to be detained during the investigation differs with classes of crime, and this measure is undertaken according to the pre-trial detention periods for investigation. These measures are undertaken in accordance with procedures on investigation with detention, its extension, and reason and ground of arrest and detention of minors stated in Articles 69 and 366 of the Criminal Procedure Code.

A suspect is arrested as an urgent measure for up to 72 hours and detained for 14 days for investigation, in which the period of custody is included. As for the accused, the pre-trial detention for investigation lasts up to 2 months and the period during which the inmate was detained as a suspect is counted within this period too.

Total period of the detention for the investigation for less grave crime is four months, for grave crime 12 months, and extremely grave crime up to 24 months. On the other hand, for some crimes the court can extend the period of pre-trial detention by 6 months if it is necessary to detain the accused for investigation longer than the period stated in Clause 69.3 of Criminal Procedure Code⁴².

⁴² Clauses 81.2, Article 84, Clause 91.2, 145.4, and 177.2, and Article 302 of the Criminal Code of Mongolia.

To extend the period of pre-trial detention, the investigator shall deliver a decree with grounds on extension of period for investigation with detention to a prosecutor prior to 7 days before expiration of the period, and the prosecutor shall deliver it to court. Judge shall release the proposal to extend period of detention within 72 hours and extend the period of pre-trial detention for investigation for up to 30 days at a time if it is inevitable necessity to keep the accused in detention for investigation depending on the complicated nature of the case.

This indicates total period of pre-trial detention for investigation can be 30 months at large as stipulated in the Criminal Procedure Code. However, as stated in Clause 366.4, Article 366 of the Criminal Procedure Code the general period of pre-trial detention for investigation for minors is one month, and the total period of pre-trial detention for investigation for less grave crime is two months, for grave crime four months, and for extremely grave crime up to 6 months.

Total period of detention for investigation shall include the period of detention as urgent measure arrest and as a suspect and accused, as well as previous period of detention in case of another or new investigation with detention for separated and integrated cases and newly added period of detention in case of returned case for supplementary investigation. However, if a person who served sentence for certain period is detained for supplementary investigation due to the suspension of the previous court decision and return of his/her case, the period of serving the suspended sentence is not counted for total period of detention for investigation.

There a number of human right violations occur as the investigator and prosecutor fail to fulfill their duty to immediately cancel or change the restraint measure by proposing to the judge when the period of investigation with detention expires,.

If the period of restraint measure expires when an accused is transferred to court, it is imperative that the extension of detention

be resolved, and the period of investigation with detention should need to be extended, this must be decided by the general judge according to the procedure stipulated in Clause 69.9, Article 69, the Criminal Procedure Code. However, in practice defendants unlawfully remain in detention because the restraint measure is not settled when he/she is transferred to court⁴³.

Case:

...I have been detained for 5 months. In the meantime, as my detention was expired at a weekend, I was taken out on so-called surety, put into drunk tank for a night, and detained back again....

(From an interview with an inmate of Pre-trial detention center 461)

As indicated from the study and inquiries conducted by the NHRCM and complaints handled by it, the accused and defendants are detained for investigation for over-extended period at court stage, and this extended period of detention is not counted within the total period of detention based on the official letter of the Chief Judge of the Criminal Case Chamber of the Supreme Court. This is serious violation of the international treaties Mongolia is a party to and domestic laws.

Case:

Complainant B, who was accused for the crime specified in Clause 145.4, Article 145, Criminal Code of Mongolia, was detained 40 months, which is 10 months longer than the period stipulated in law, complainant S, who was accused for the crime specified in Clause 145.3, Article 145, was detained for 13 months and 14 days, which is 44 days longer than the period stipulated in law, and complainant Z, who accused for the crime specified in Clause 145.3, article 145, for 13 months and one day, which is 31 days longer than the period specified in law.

Complainant U, who was accused for the crime specified in Clause 145.4, Article 145, was detained for 716 days from 19 August 2014 to 14 December 2015, and the court of trial returned his case for supplementary investigation twice. He was detained as a defendant for 166 days...

(From the complaints lodge by inmates B, S, Z, and U, who were detained in Pre-Trial detention center 461)

⁴³ Report of the inquiry the National Human Rights Commission of Mongolia conducted into Pre-trial detention center 461 in 2015

2.1. Explaining the person arrested on his/her right to have defense counsel or to defend himself/herself and right to lodge a complaint to court at a time of arrest

International legal norms require to provide the arrested person with information on and an explanation of his rights and how to avail himself of such rights. This requirement also include the issues of notifying it to third person, access to medical assistance, complaint on lawfulness of the restraint measure, refusal to give testimony against oneself, complaints about ill-treatment and conditions of the restraint measure, and right to remedy of one's rights⁴⁴.

Article 9.1 states, "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law," and Article 9.2, "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."

Principle 10 of Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment⁴⁵ states, "Anyone who is arrested shall be informed at the time of his arrest of thereason for his arrest and shall be promptly informed of any charges againsthim", and Part 2 of Principle 11, "A detained person and his counsel, if any, shall receive prompt and fullcommunication of any order of detention, together with the reasons therefor."

Furthermore, the Body of Principles requires to record the reason of arrest, the time of the arrest and the taking of the arrested person to a place of custody as well as that of his first

⁴⁴ Article 13, General Comment 2 of the Committee against Torture.

⁴⁵ Adopted by UN VIII Conference, which was held on 'Prevention of crime and treatment to those who commit legal infringement' from 27 August to 7 September 1990 in Havana, Cuba.

appearance before a judicial or other authority, the identity of the law enforcement officials concerned, and precise information concerning the place of custody as appropriate, and such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law⁴⁶.

According to the Criminal Procedure Code, a suspect is arrested if he/she has attempted to escape or if there is sufficient evidence to suspect him/her in committing grave or extremely grave crime, and investigator shall be obliged to draw up a decree of arresting a suspect and shall deliver it to a prosecutor and the prosecutor shall submit it to court for approval. Only in instances not permitting a delay, an investigator may immediately arrest the suspect and deliver the decree to a prosecutor and court within 24 hours.

The court must, within forty eight hours from the moment of receiving the decree of arrest, made a decision in the presence of defense counsel and prosecutor to sanction detention or free the person arrested. On the other hand, the judge shall issue a decree to release the arrested person if there was not sufficient evidence to suspect in committing a crime, there are no grounds to apply measures of restraint as confinement under guard against a person being arrested, or he/she was arrested in violation of the Law without sufficient evidence to charge him/her for grave or extremely grave crime.

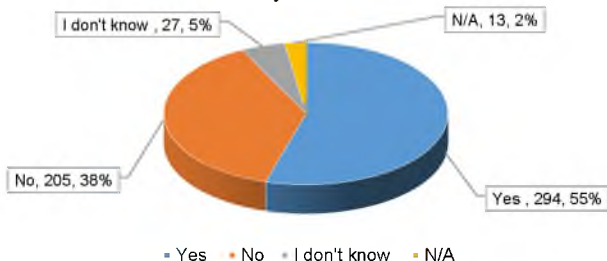
Clause 5, Article 10 of the Criminal Procedure Code states, "At an arrest of a suspect he/she shall be informed on the reason and grounds for the arrest, and reminded his/her right to have an defense counsel, to defend him/herself, to lodge a complaint to court and not to give testimony against him/herself," and Clause 3, Article 59 states, "Decree of arrest shall be presented to the suspect and his/her rights provided in Article 35 of this Law shall

⁴⁶ Principle 12 of "Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment"

be explained to the suspect including the right to give testimony together with defense counsel and this fact shall be reflected in the record.”

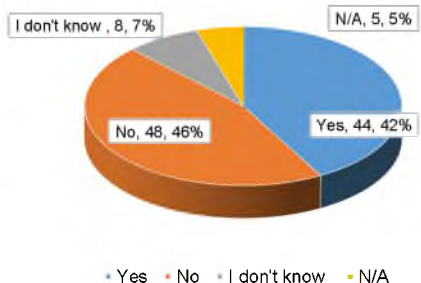
As stated in the study 294 inmates out of total 529 inmates with legal counsel or 55 percent, at a time of arrest, were reminded their right to have legal counsel or to defend oneself, to lodge a complaint to court and not to give testimony against oneself, and 205 inmates or 38 percent were not given information.

Were you reminded your rights to have defense council or to defend yourself, to lodge complaint to court, and not give testimony against yourself?



While out of 108 inmates who don't have legal counsel three inmates didn't answer this question, 105 inmates answered as follows:

Were you reminded your rights to have defense council, to defend yourself, to lodge complaint to court, and not to give testimony against yourself?



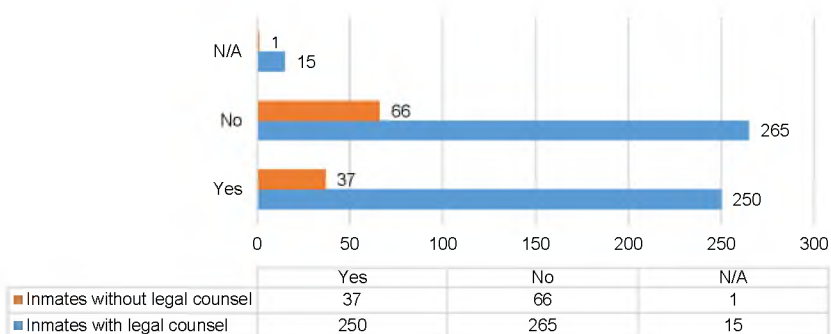
This indicates suspects, accused, and defendants can not get legal assistance because they are not reminded their right to have defense counsel, to defend oneself, to lodge a complaint to court, and not to give testimony against oneself.

2.2. Presenting the arrested on the decree on detaining him/her

Clause 68.7, Article 68, Criminal Procedure Code states, “investigator, prosecutor, or judge shall inform familymembers, relatives or defense counsel of the person detained on the decision to detain within the time limits provided for by Article 61 of this Law.” As stated in this legislation, the suspect is entitled to the right to be presented with decree on initiation of a case against him/her, on his/her arrest, and on taking measures of restraints against him/her, and an accused has right to be presented with decree to prosecute as the accusedand with decree on measures of restraint have been taken⁴⁷.

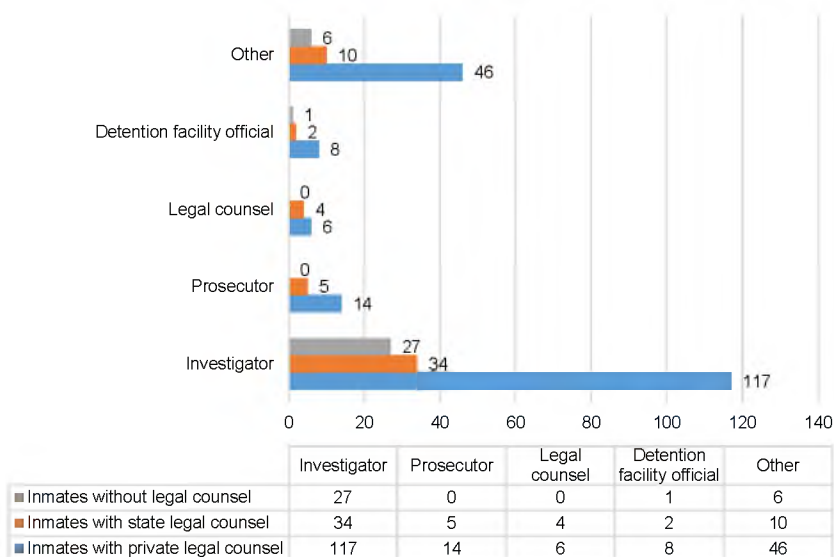
According to the outcome of the study, presenting the inmates decrees of judge on taking restraint measure varies.

Were you presented the decree on detaining you?



⁴⁷ Clauses 35.2.2 and 36.2.3, Criminal Procedure Code

When asked which officials presented the decree on detaining, the inmates gave below answers.

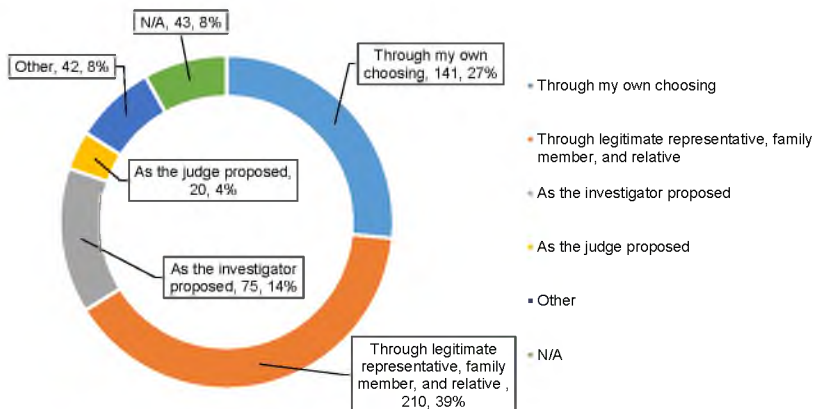


2.3. Ensuring the right to legal counsel of own choice

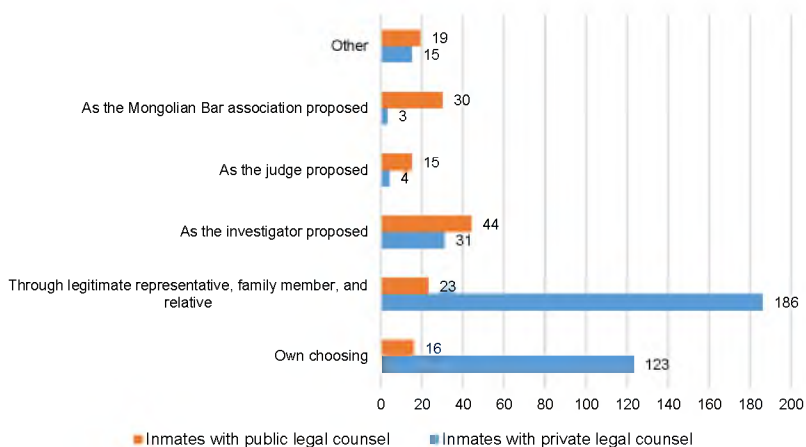
It is important that every person being investigated for criminal offence be represented by defense counsel of his own choosing or the court take measure to secure the participation of defense counsel in the case in order to ensure normal process of the court, and if the person under investigation is financially incapable, the state has a duty to provide free legal assistance for him.

Whereas 27 percent of the inmates with legal counsel have legal counsels of their own choosing, 39 percent chose legal counsels through their legitimate representative, family members, and relatives. On the other hand, 14 percent or 75 inmates chose their legal counsels as the investigators proposed.

How did you choose your legal counsel?



Below shows how the inmates choose between private and public legal counsels.

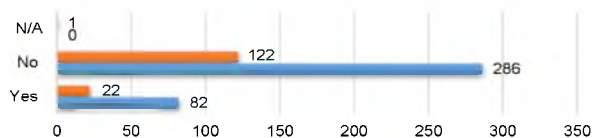


Clause 39.4, Article 39, Criminal Procedure Code states, “When suspect, accused, defendant or victim has not selected a defense counsel, upon their request, the inquiry officer, investigator, prosecutor, and court shall provide an opportunity for a defense counsel to participate in the criminal proceedings, but it is prohibited to urge to him name of a particular lawyer.”

As stated in Article 37, Law on legal status of lawyers, an investigator, prosecutor, and court can provide the information on names and addresses of lawyers and legal entity of law to ensure the persons' right to have advocate and legal assistance. In addition, the person who wants to have legal assistance could not choose a defense counsel due to health, financial capacity, and other excusable reasons, the investigator, prosecutor, and judge shall take measures to have a defense council appointed by informing Mongolian Bar Association on this matter. However, it is prohibited to urge to him name of a particular lawyer.

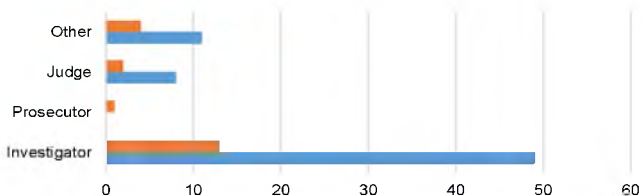
While an investigator, prosecutor, and judge has a duty to provide opportunity for a suspect, accused, and defendant to have legal assistance, no one has a right to infringe the person's right to have legal defense of own choosing. The outcome of the study indicates there are cases where the inmate is urged to choose particular lawyers.

Were you urged to choose a particular lawyer?



	Yes	No	N/A
Inmate with public defense lawyer	22	122	1
Inmate with private defense lawyer	82	286	0

Who urged you to choose the particular lawyer?



	Investigator	Prosecutor	Judge	Other
Inmate with public defense lawyer	13	1	2	4
Inmate with private defense lawyer	49	0	8	11

Case:

The investigator who is investigating my case proposed an advocate to me. I got a public advocate because I don't have financial capability. However, the public advocate told my family that he will defend me more reliably if we paid him additional fee, or else he will see into my case materials before the trial if he has time...

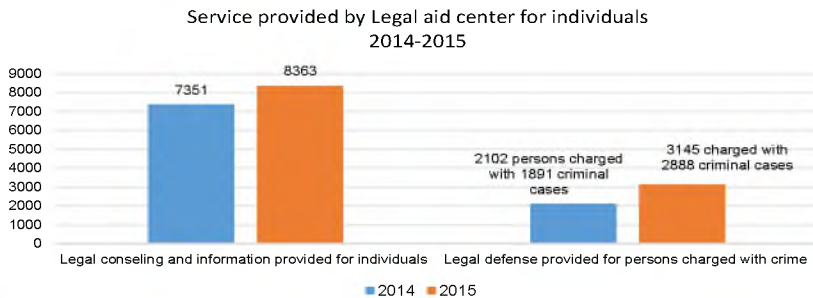
(Interview with inmate O, who is detained in Pre-trial Detention Center 461)

At national level legal aid centers were established in 8 districts of UB city, 21 provinces, and 2 soums, and total 50 lawyers are working at 36 branch offices.

As stated in Article 19, Law on legal aid for financially incapable persons, private lawyers can be employed for financially incapable persons on the following circumstances:

- The public lawyer has conflict of interest with the client;
- More than one clients who have conflicted interest against one another have requested legal aid;
- The client has rejected the public lawyer in accordance with the ground and procedure stated in law;
- There is not any Legal Aid Center branch office in the territory.

Compared statistics of the services provided by the Legal Aid Center in 2014 and 2015 indicates the number of people provided with legal aid services has grown by 49 percent within a year.⁴⁸



⁴⁸ Letter 1/73 of Legal Aid Center dated 29 February 2016

While the number of crime cases per lawyer of the Legal aid center was 6-8 cases per month in 2014, this number grew up to 8-10 cases per month in 2015. Public advocates, the number of whom is equal only to one percent out of total 5000 lawyers with license to carry out legal professional activities, are participating as advocates in trials of 30-35 percent of total crime cases which are handled through court proceedings⁴⁹.

Public advocates made defense service agreements with their clients according to the template adopted by decree No. A/19 of the Minister of Justice dated 17 February 2014. As the case is included in their work performance assessment after the agreement was approved by client through his signature, there is not any case where a public advocate has not made agreement with his client. In addition, a public advocate records on interview with his client and its brief contents on interview template and has his client put his signature on it in order to get it accounted in his work performance.

If Legal Aid Center should need to hire a private advocate when there is not any private advocate who could provide legal defense service free of charge, it involves an private advocate who works in the territory by giving him request, and the defense service fee of the private advocate is financed from state budget.

Moreover, if it is necessary to involve a private advocate, a branch office of Legal Aid Center makes legal defense agreement according to the aforementioned approved template, and the private advocate who provided defense service under that agreement is expected to gather case files, prepare defense service report according to the approved template, and deliver it to the branch office of the Legal Aid Center within due time.

⁴⁹ Official letter 1/73 by Legal aid center dated 29 February 2016

Case:

I started providing defending service for inmate B with reference to the letter dated 4 December 2015 delivered by Pre-trial Detention Center 461 to the Legal Aid Center. When I saw the client, he said, "Yesterday an advocate appointed for me came to see me and said he would defend me. He dialed with my younger sibling who is vendor in black market and agreed to defend me for some money."

I told him, "There is not any lawyer named M in the Legal aid center. I am the lawyer appointed for you by the Legal aid center according to your request. You have a right to decide by yourself which lawyer you will have. Under the relevant law lawyers who provide legal aid free of charge are named public defense lawyers. Do you know from where that lawyer acquired your personal information?" He was surprised and said, "I don't know. I only lodged my request to the Legal aid center"...

(from interview with A, lawyer at the Legal aid center)

Freedom of choosing an advocate means choosing one's advocate based on one's own conscience with regard to specialization, experience, personal development, reputation, and the rate of service fee of the advocate. Moreover, rather than appointing a certain advocate directly to a client by claiming the request for advocate is put forward for financially incapable person, involving the advocate the client selected on his own only ensures the client's right to legal assistance guaranteed in international legal norms and Constitution of Mongolia.

When providing legal assistance for financially incapable persons by public and private advocates through Legal Aid Centers and Mongolian Bar Association, it is important to attend their choices. To clarify, involving the advocate of the person's own choosing ensures his right to choose advocate on his own and helps substantive implementation of their right to legal assistance.

As Clause 37.3 of the Law on legal status of lawyers states, "If the person requesting for legal assistance cannot select

his advocate due to financial incapability or other reasonable grounds, an investigator, prosecutor, and judge shall take a measure to have an advocate appointed by notifying Mongolian Bar Association,” relevant organisations should coordinate their activities cohesively, regularize the information exchanges, and ensure the person accused can select his advocate at the time he was first charged with crime so that arrested and detained suspects, accused, and defendants who could not select their advocates can enjoy their right to legal assistance.

2.4. The stage when inmates first got legal assistance

A person who was charged with crime is entitled to appropriate time and condition to prepare for defense at trial. Appropriate time to prepare for defense at trial depends on types of relevant activities (investigation stage, trial stage, court of appeal stage etc.) and the circumstances of the case. Despite being not determinant, relevant grounds include complexity of the case, necessary information from the accused, opportunity to review the case file, and time limitation stipulated in domestic legislation, etc⁵⁰.

According to international legal norms and principles, right to legal assistance could be postponed in exceptional cases. It is specifically stipulated in law to restrict this right solely in unavoidable circumstances in order to maintain public security and order, and such a decision should be released by court and other competent authorities. Even in such cases right to have advocate must be resumed within no more than 48 hours since arrest⁵¹.

Principle 15 of “Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment” states, “Notwithstanding the exceptions contained in principle ...

⁵⁰ Paragraph 32, General Comment No. 32, UN Human Rights Committee.

⁵¹ Principle 7, Basic Principles on the Role of Lawyers.

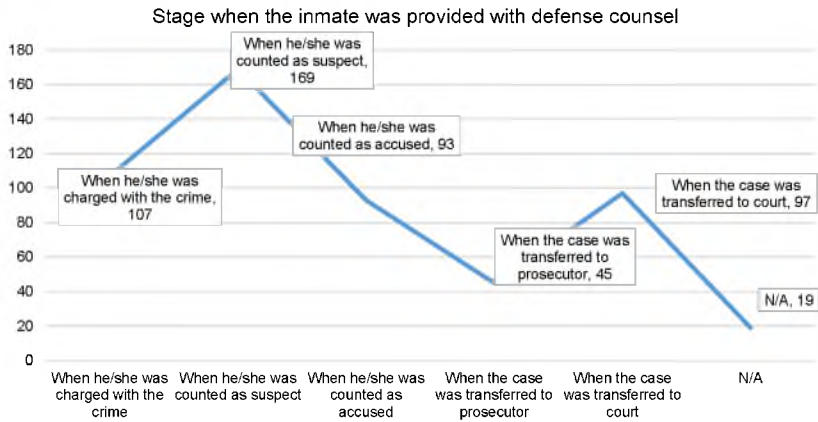
communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days”, and Paragraph 3 of Principle 18 states, “The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.”

Case:

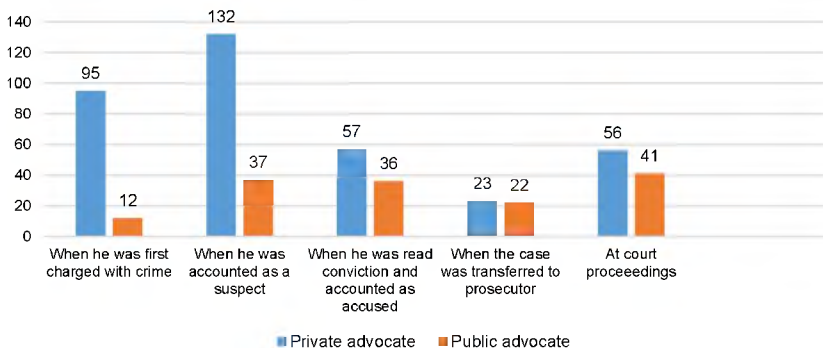
Investigation lasts minimum 2 months. At greater length it could take even two years. We are shown the case file only after investigation activity ended. It is important that we be provided with sufficient time and decent condition to read the case file. However, currently we read case files sitting at a corner of the office room of the investigator. In the meantime there go on investigation or interview of other cases. Lately, we are told case files will be shown to us only after the case is transferred to the prosecutor. I wonder from where this procedure comes out..

(from interview with lawyers of Darkhan-Uul province)

As Clause 38.3 of Criminal procedure code states, “Defense counsel has the right to take part in criminal proceedings starting from the moment when immediate actions stipulated in Clause 172.3 of this Code were initiated, or when, if no such an action was initiated, some one is deemed as suspect in a crime,” the Commission studied at which stage (from the time he/she was charged to the time the case was transferred to court) the participants of study were provided with defense counsels.



Below is compared statistics on which stages of criminal proceedings the inmates get public and private advocates in higher percentage:



According to the study there are incidents where the inmates were provided advocate's assistance at late stages such as when the inmate was accounted as accused and when his case was transferred to prosecutor or court.

Therefore, as advocates can not attend during the investigation every time, they should need to participate in interrogations and trials without reading case files, and clients will need to participate in the interrogations and trial sessions

without time to consult and have clear understanding and mutual trust with their advocates, which results in circumstances where their right to legal assistance is not implemented, and their rights are violated.

Prosecutor's organisation should improve their oversight into how investigators ensure the persons under investigation to legal assistance within the scope of their function to monitor over the criminal investigation.

Public advocates have a duty to attach the court judgment within the folder of the case in which he provided legal assistance. The analysis made on these indicates in 70 percent out of total cases resolved by court in 2014 and 2015 charge was dropped based on public advocate's suggestion as a whole or partially with regard to certain acts, and the sentence was transmuted into lighter sentence than the sentence which the state prosecutor proposed.

In addition, 38.43 percent of total clients the Legal Aid Center provided service for in 2014 was provided with advocate at court stage, and this statistics decreased to 30 percent in 2015. This indicates 30 percent of clients who were served by this Center could not be provided with advocate from the initial stage of criminal proceedings⁵².

2.5. Legal assistance agreement

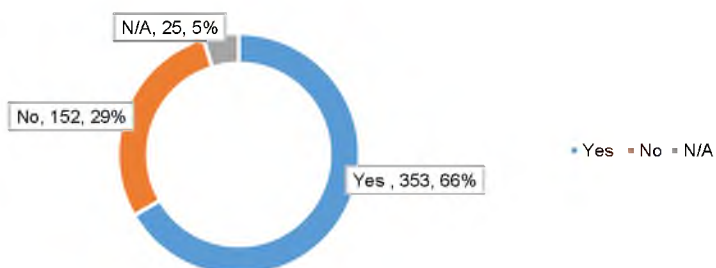
Legal assistance agreement is bipartite transaction and belongs to the type of assistance agreement. Legal assistance agreement is peculiar as it regulates relation where a consultant provides a client with assistance and service according to the client's needs and request, and a client pays service fee stated in the agreement.

⁵² Official letter 1/173 of Legal Aid Center dated 29 February 2016

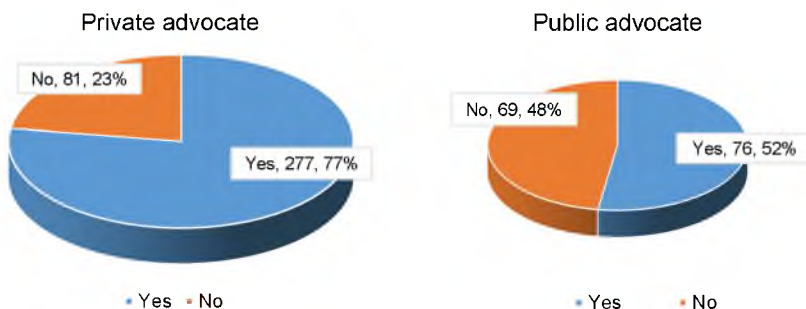
According to Clause 37.1 of Law on legal status of lawyers any person who requests for legal assistance has right to directly approach an advocate and make a transaction or to lodge a request to Mongolian Bar Association, which has a duty to give information on names and addresses of listed advocates.

Out of total 530 inmates with advocate 375 inmates have private advocates, and 155 inmates have public advocates. When asked whether they could make legal assistance agreement with their advocates every time, 353 inmates or 66 percent answered that they made agreement, 152 inmates or 29 percent answered that they didn't, and 29 inmates or 5 percent didn't answer.

Did you make written agreement of legal assistance with your advocate?

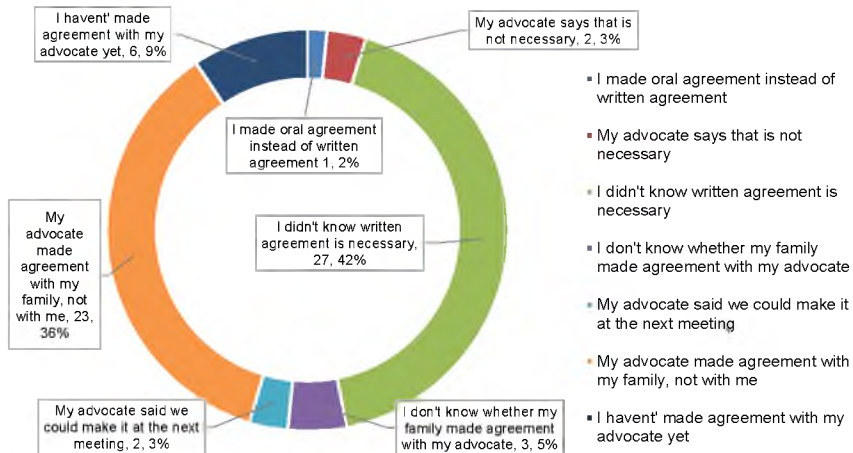


Below are the comparison by inmates with private advocate and inmates with public advocate:

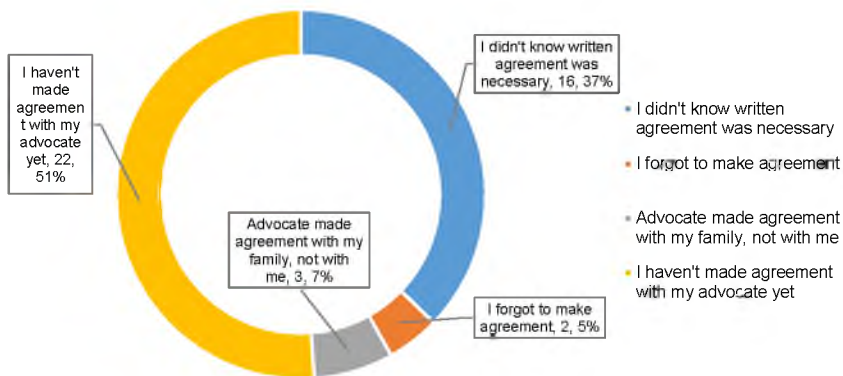


When asked about the reasons, inmates with advocate who didn't make agreements with their advocates gave the following answers:

Why didn't you make agreement with your private advocate?

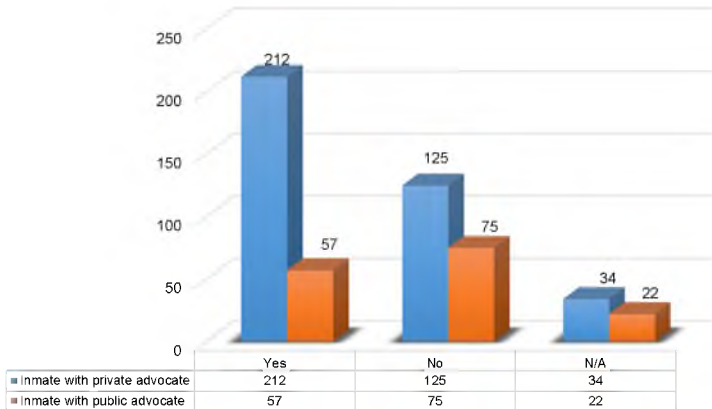


Why didn't you make agreement with your public advocate?



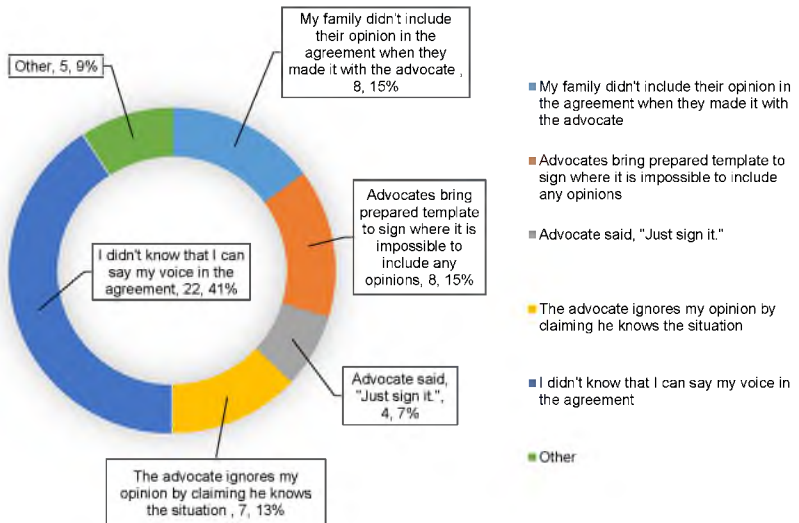
When asked whether they could include their terms in the agreements with the advocates, the inmates gave the following answers:

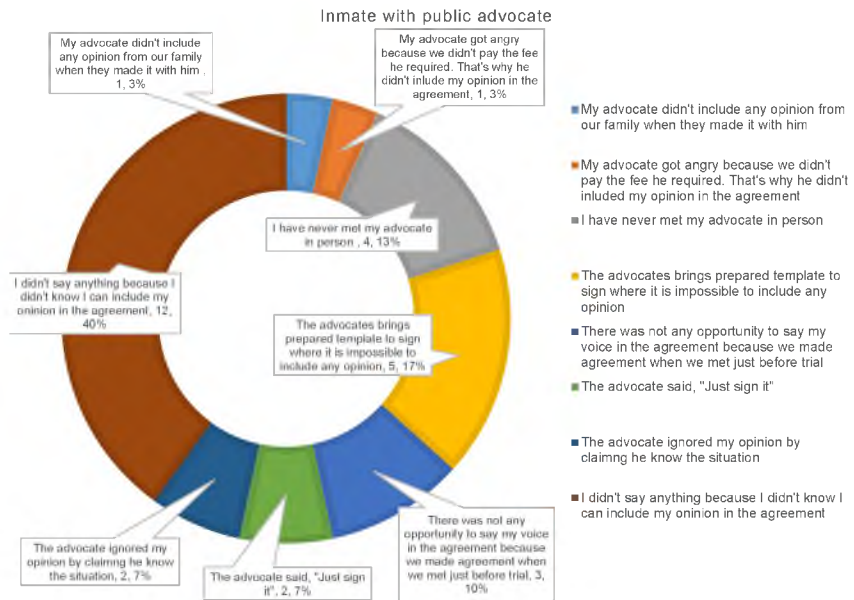
Did your advocate integrate your opinion in the legal assistance agreement?



The outcome of the study indicates there are following reasons the inmates' opinions weren't included in the agreement:

Inmate with private advocate





An agreement is a statement of parties' will and is made by their free will in order to fulfill their benefits, interests, and needs, and the participants must be equal.

However, advocates tend to make legal assistance agreements based on one-sided will without giving thought to their clients' voice by merely extracting their signatures.

One of the issues advocates must negotiate on with their clients when they make agreements is service fee, and according to Clause 41.1 of Law on legal status of lawyers the amount of legal assistance fee must be established through negotiation by the agreement. It means accustoming to making written agreement on legal assistance service fee is a guarantee through which they can substantially enjoy their lawful rights.

It is important that from the time the legal assistance agreement is made an advocate notify his client on service fee

and methods to account it, issue a receipt whenever he received fee, keep regular communication with his client in order to comply with every provision of the agreement, and provide his client with relevant information periodically.

2.6. Role of advocates in criminal proceedings

An advocate participates in criminal proceedings from the time a measure of immediate action is commenced, if such a measure is not commenced, from the time the person charged with crime is arrested and detained as a suspect or presented with the decree to prosecute him as an accused, and provide legal assistance at request of a relative of a suspect, accused, and defendant or as assigned officially and agreed mutually.

From the time of beginning to participate in criminal proceedings of a case an advocate has duties to provide legal assistance and to take all the necessary measures allowed by law by studying personal manner of a suspect, accused, and defendant, establishing how he participated in the crime and why he violated law, evaluating evidences accurately, preventing transfer of the case to the court with ungrounded prosecution, and clarifying important causes with legal grounds to acquit the suspect and the accused at the stage of investigation or to mitigate the prosecution.

On the other hand, an advocate has rights to meet with a suspect, accused, and defendant, to familiarize with a case file, to take necessary notes from the file, to provide evidence, to have private meeting with a suspect, accused, and defendant detained, to have an expert assigned, to question a witness, to submit a special request to have other investigative activities conducted, to lodge complaint on actions of an investigator, and to participate investigation⁵³.

⁵³ Article 41 of Criminal Procedure Code defines rights and duties of an advocate.

Case:

In practice there are a number of cases where interrogation is conducted whole day and throughout night without presence of an advocate. It is prohibited to conduct interrogation at night in cases other than action without delay. Nonetheless, they bring the statement they extracted through interrogation conducted around 12.00 a.m and 1.00 a.m as evidence to the trial. After getting an advocate the client says different statement from the one he gave during the interrogation. In reality investigators don't like the person under investigation having an advocate and try to complete the case file when the advocate is absent.

(From interview with lawyers in Orkhon province)

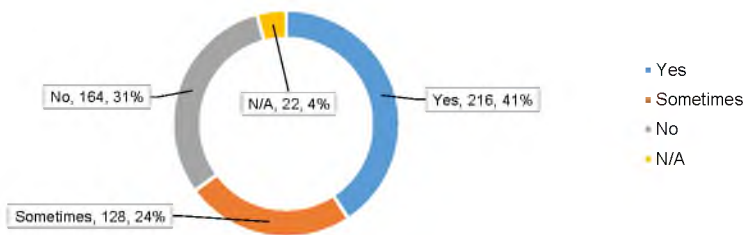
Case:

In Criminal Procedure Code it is constituted that a person shall have advocates from the time when he was counted as a suspect. However, advocates are not presented to the case file until the person was counted as an accused. After the person was counted as a suspect, the advocate may participate only when the interrogation is conducted. Apart from this there is not any opportunity for advocates to work for their clients and to read the case files...

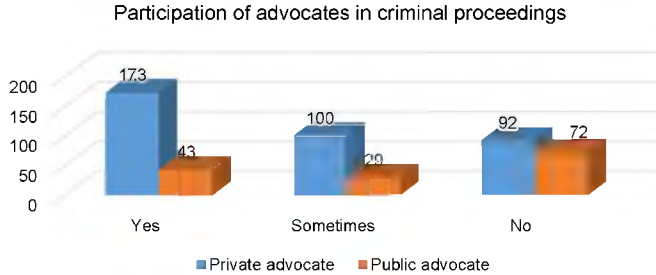
(From interview with lawyers in Darkhan-Uul)

When asked how advocates participate in criminal proceedings, defend legitimate interest of the persons detained as suspects, accused, and defendants, and provide legal assistance, the inmates with advocates gave the following answers:

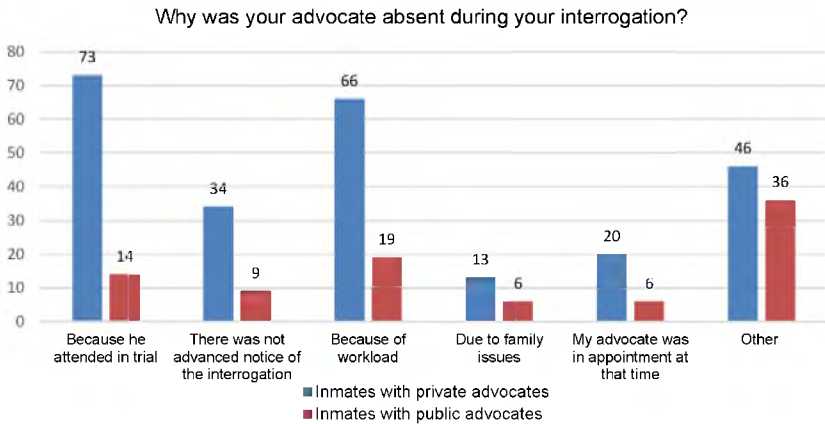
Did your advocate participate in every action of criminal proceedings?



Below is comparison of statistics of participation of public and private advocates in criminal proceedings:



When asked on the reasons their advocates were absent during trial sessions, 113 inmates out of 293 inmates who answered “sometimes” and “No” didn't give answer, and others gave the following answers:



As a statement made by a suspect, accused, and by a defendant is used to verify evidence such as documents and information that are relevant to resolve the case, presence and participation of an advocate during interrogation of his client plays important role in defending legitimate interest of the client. Especially, if there arises a dispute on a statement included in the record of interrogation, the record of interrogation will be doubtful to be assessed as evidence.

Thus, attendance of an advocate during the interrogation is a guarantee of human rights and a circumstance where a suspect, accused, and defendant can enjoy their rights stated in law in full effect.

Unless in the circumstance stated in Article 40 of Criminal Procedure Code a suspect, accused, and defendant or his legitimate representative, family member, as well as other person at his request chose an advocate, an investigator, prosecutor, and judge have obligation to ensure he be assigned an advocate.

Public awareness on right to legal assistance is not sufficient, and professional activities and competence of advocates who implement right of a suspect, accused, and defendant to legal assistance is set very limited in criminal proceedings with a regulation to merely submit a "request.

Activity of proof of crime is a set of activities to collect, verify, examine, and evaluate evidences for the purpose of determining circumstances that are relevant to resolving a criminal case justly from every aspect with substantive grounds in accordance with law⁵⁴. An important part of criminal proceedings is activity of proof, and legalizing more broadened participation of an advocate in collecting and evaluating evidences to acquit and mitigate sentences will be main condition where rights of a suspect, accused, and defendant is ensured.

As stated in Clause 41.3.8 of Criminal Procedure Code an advocate has rights to read all the documents attached within the crime case after investigation ended and to photocopy the evidences that don't concern confidential data of the State, organisation, and individual person with his own expenses. According to this provision an advocate is forced to engage in criminal proceedings in limited capacity and to be unable to appropriately defend the person charged with a crime.

⁵⁴ B.Amarbayasgalan and J.Erkheskhulan, "Criminal procedure law of Mongolia", Training manual, UB, 2007

Case:

...Difficulties we face at investigation and prosecutor's stage include their attitude to neglect their duty to examine requests of advocates with reasonable grounds and to pay token attention.

(From interview with lawyers in Orkhon province)

According to Clause 41.2 of Criminal Procedure Code from the moment he consented or was assigned to the case, an advocate does not have the right to withdraw from defense without a valid reason and to collect evidence illegally. However, advocate's capacity to collect evidences legally is limited within the only regulation stipulated in Clause 41.3.6 of Criminal Procedure Code where an advocate may acquire explanations and references with consent of individual persons and organisations.

As stated in Clause 41.3.2 of Criminal Procedure Code an advocate has rights to submit petition to collect objects, documents, information and other evidences required for providing legal assistance ... or to present them and to have them inspected and included in the file of the case, or to submit evidences stated in Clause 92.3. Advocate's requests to collect evidences shall be handled according to the rules to submit a petition and request stated in Articles 102, 103, and 107. Main means to gather evidences is a specific operation of criminal proceedings, and as stated in Clause 137.1 of Criminal Procedure Code it is mandatory for third party witnesses, and a person whose property or documents are being seized or searched or an adult member of his/her family or his/her defense counsel or any one of them to be present during seizure or search.

This indicates the current legal environment where an advocate doesn't have right to collect evidences individually with right to merely request relevant competent authority defined by law in order to have important facts and information relevant to the case examined and evaluated as evidences makes an advocate dependent on state authority.

Case:

...Advocates lack power and strength in participating in criminal proceedings, and society and law enforcement organisations give us inferior assessment. Decision on any dispute or case usually ignores advocates. It is understood that evidence of prosecuting party is right, and evidences of acquitting party is not collected. Acquitting evidence is provided by only advocates. However, when advocates put forward acquitting evidence, they have recently been told bluntly that they faked evidences to acquit their clients. When advocates say they have witnesses, they are told they have plotted it with the witnesses. In truth, documents and statements that were extracted by violating the Constitution and Criminal Procedure Code are included in the case file as evidences. There are even CCTV records among the evidences unknown on who produced it when, where, and how.

(From interview with advocates in Orkhon province)

Even though the burden of proving charge or innocence and relevant requirement has not been set in international law, UN Human Rights Committee states, “The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt ...”⁵⁵.

Especially, testimony extracted without presence of defense counsel is deemed to be statement acquired by serious violation of human rights, so other international non-treaty norms require it to be removed from evidence. For instance, “When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect’s human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods ...”⁵⁶.

⁵⁵ General Comment No.30, UN Human Rights Committee, par 30.

⁵⁶ Part 16, Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the

“Basic Principles on the Role of Lawyers⁵⁷” and General Comment No. 32 of UN Human Rights Committee state, “The right to equality before courts and tribunals also ensures equality of arms. This means that the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant.”

Case:

In 2015 a criminal police agent suspected a minor for a crime and interrogated the minor in his office room, but he did not comply with the legal provision to ensure the presence of advocate in interrogation. Without any scrutiny, he made the minor sit in his room whole day and overnight and pushed him to state on the crime as instructed, the child obeyed. The child also didn't say anything on this to his advocate later. The statement was included in the case file as written before. However, when he stated the truth at the trial, judge said, “Do you have proof? Did you submit complaint on this? Have you told your advocate?”. When the defendant said, “No,” the judge ignored it by claiming it wasn't proven.

(From interview with advocates in Orkhon province)

Under Article 40 of Criminal Procedure Code, The participation of defense counsel in and investigation and a judicial examination shall be obligatory in cases of following suspect, accused or defendant:

- mute, deaf, blind, and other persons who by reason of their physical or mental defects are not able to exercise their right to defense themselves;
- minors;
- persons who do not have command of Mongolian language;
- to whom death penalty may be applied;
- if one of suspects, accused or defendants who have contradicting interests on a case has a defense counsel, then other suspects, accused or defendants;

Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

⁵⁷ Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

- if financially incapable person requests to have an advocate participate.

In aforementioned instances, defense counsel is not engaged by the suspect, accused, and defendant him/herself, or by his legal representative, member of family, relative or by other persons upon his/her commission, the inquiry officer, investigator, prosecutor or court shall be obliged to secure the participation of defense counsel in the case⁵⁸.

According to the study there are number of cases where an advocate ensure the rights of his client at every stage of criminal proceedings. Especially, it is common reason of both public and private advocates' failure to defend their clients' legitimate interests and rights and to provide defense service at sufficient level due to their absence in trials or workload.

As a statement made by a suspect, accused, and defendant is used to verify evidence such as documents and information that are relevant to resolve the case, presence and participation of an advocate during interrogation of his client plays important role in defending legitimate interest of his client. Outcome of the study reveals advocates can not participate in every stage of criminal proceedings.

Case:

I am working on several cases which are being examined by Independent Authority against Corruption. My client was detained without my knowledge. It is obligatory that I was supposed to be notified in advance on why my client was detained. Then after detaining him for 14 days without substantive grounds, he was established innocent, and the case was dropped. I wish the Commission address this issue.

(From interview with lawyers in Darkhan-Uul)

⁵⁸ Clause 40.2, Criminal Procedure Code

Thus, there is a need to revise current legislation under which an advocate can only attend interrogations according to procedures that set specific process in compliance with international principles through which an advocate can participate in every time his client gives statement during interrogation.

As stated in Clause 17.1 of Criminal Procedure Code court proceedings must be undertaken based on principles of debate between prosecuting and acquitting parties of equal stand.

As aforementioned, it is necessary to harmonize national legislation with international standards and norms by changing current legal environment where an advocate participates in criminal proceedings without having rights to collect evidences in his capacity and to call a witness who is relevant to the case on his own and is unable to be an effective party of debate.

2.7. Facilities where inmates have meeting with their advocates

Paragraph 8 of “Basic Principles on the Role of Lawyers⁵⁹” states “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials”, and Principle 18 of “Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment⁶⁰” states, “A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel,” “A detained or imprisoned person shall be allowed adequate time and facilities for consultations with his legal counsel,”and

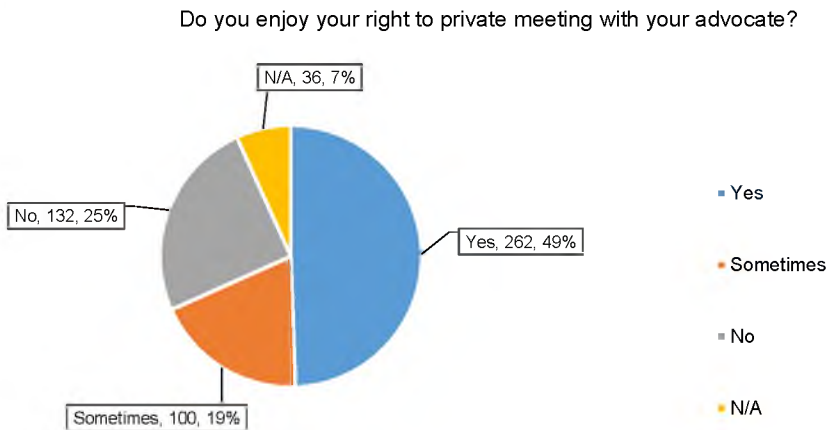
⁵⁹ Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

⁶⁰ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UNGA Resolution A/RES/43/173, 9 December 1988.

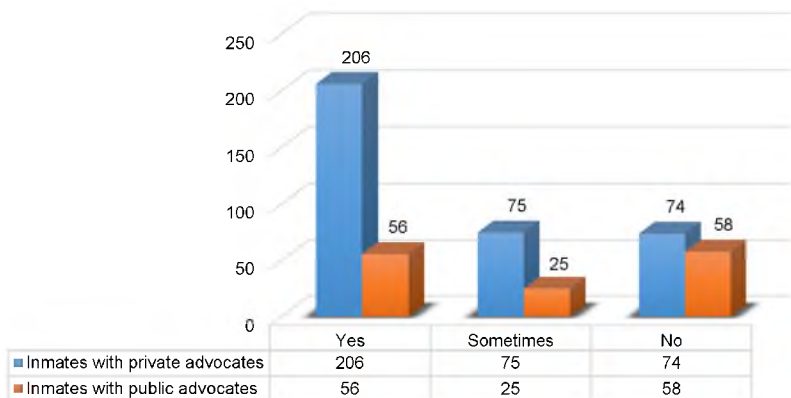
“Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official. ”

A person charged with crime must have adequate time and facilities for the preparation of his defense, to defend himself in person, meet his advocate in private, or communicate with him. This right concerns every stage of criminal proceedings, especially at the stage prior to trial.

When asked whether they can enjoy their right to have private meeting with advocates, 36 inmates out of total 530 inmates who have advocates didn't answer, 262 inmates answered they enjoy the right, other 100 inmates or 19 percent answered sometimes, and 132 inmates or 25 percent answered, “No.”

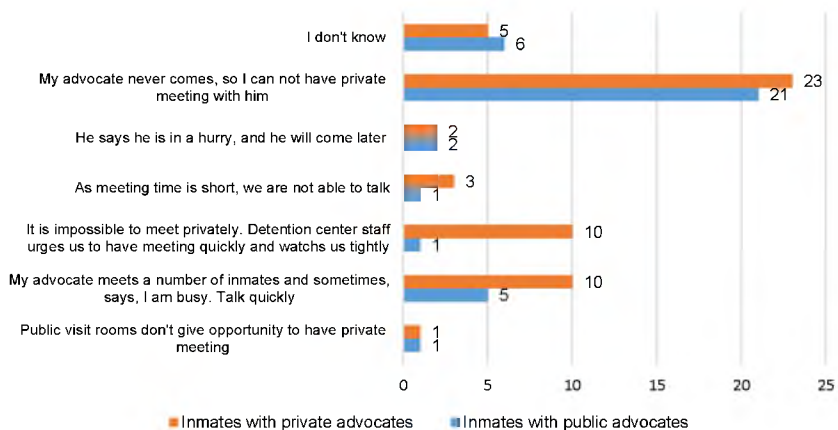


Below is comparison of the statistics by inmates with private advocates and inmates with public advocates:



Above figure indicates 16.7 percent of the inmates with public advocates can not enjoy their right to meet their advocates in private in full effect, while 30 percent of the inmates with private advocates can't enjoy this right.

What is the reason you can not have private meetings with your advocate?



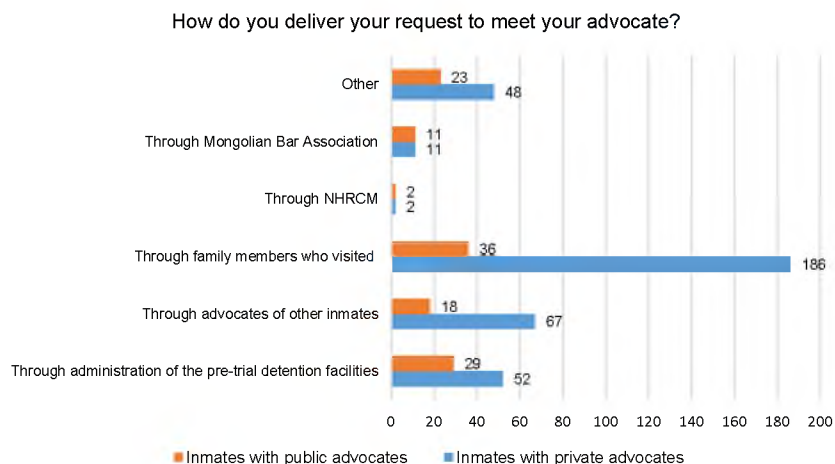
During private interview inmates complained that their advocates don't come in time and make them wait long, and

staff of the pre-trial detention center urge the inmates finish their meetings shortly.

Case:

... I saw my advocate only twice since I was detained 8 months ago and never had a private meeting and a talk with him...

(From interview with an inmate of Pre-trial Detention Center 461)



According to the study the person detained needs to deliver his request to meet the advocate through his family members, advocates of other inmates, and other relevant organisations due to advocate’s failure to come for meeting in time. This is a form of bureaucratic and troublesome practice. Thus, it is time that work responsibility of advocates was improved.

Case:

It is necessary to improve the rules within Pre-trial Detention Center 461 that regulate visiting schedule and calling procedure, to set up electronic schedule based on the advocates' number to represent in court, and to introduce a system to inform advocates on their schedule to have meeting with their clients through phone or electronically. This has been discussed for years, but it still has not been resolved. If the advocate who came before us meets with his client for 10-15 minutes, other advocates will have to wait 2-3 hours for their turns, which is very troublesome.

(From interview with advocates of Ulaanbaatar City)

Case:

..It is impossible to meet my client in private in the pre-trial detention house. There is not such facility where an advocate and a client can have a private meeting. Even though this right is guaranteed, law enforcement organisation caused a barrier. There is an investigation room in the pre-trial detention house. They have meetings there. However, advocates talk to their clients from beyond wall or glass windows barrier through phones. However, there is not anything to keep noise, so advocates waiting for their turns and other people visiting other inmates sit there hearing our talking.

...Visiting room in the pre-trial detention house only offers space enough for one-on-one meeting. Thus, if advocates come at the same time, apart from one having meeting with his client others need to wait outside in the cold in order to avoid hearing their talks.

(From interview with advocates of Darkhan-Uul province)

Case:

...Pre-trial detention house under the Court Decision Enforcement Office in Khovd province doesn't have any visiting room, and this violates inmates' right to access to visit by family, private meeting with their advocates, and legal assistance.

...Visiting room of Pre-trial detention house under the Court Decision Enforcement Office in Govi-Altai province has small space and is located near the room of officer on duty, so there is not facility for inmates to have private meeting. Thus, increase the space of visiting rooms and create facilities for inmates to meet advocates in private.

(Excerpt of NHRCM Commissioner's Recommendations No. 1/15 of 2014 and No. 1/140 delivered to General Authority for Implementing Court Decision)

The state must ensure that a person detained can meet his advocate without delay, interference, and oversight of third party, and staff of pretrial detention facilities must respect confidentiality of communication and consulting between an advocate and the person detained. Right to private meeting with an advocate is relevant to every person, especially persons who were arrested, detained, and prosecuted due to criminal case.

Police and a pre-trial detention house are supposed to provide every person arrested and detained with possibility to have a private meeting with his advocate. This can be facilitated with procedure that can keep confidentiality of both oral and written communication between the person detained and his advocate.

2.8. Delay of trial due to absence of an advocate

Every person charged with crime is entitled to right to be tried within decent time without delaying trial. Court sessions must not be delayed without valid reason, and even though duration of criminal proceedings are determined based on complexity of a case, it is a duty of the State to undertake court proceedings within the shortest possible time when a person is accused, arrested, and detained for a crime.

As stated in Part 3 (c), Article 14 of International Covenant on Civil and Political Rights it must be guaranteed that in the determination of any criminal charge against him every person is to be tried in full equality without undue delay.

Undue delay of trial results in a circumstance where right of a person accused, arrested, and detained for a crime to be tried within the minimum scope of time.

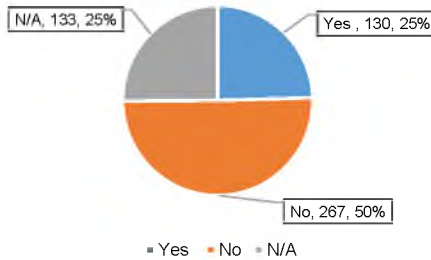
Report of “Observation of court sessions” study conducted by Open Society Forum in 2015 documented that there are common cases of delay of trials and other court sessions due to absence of advocates. For instance, court session were delayed due to appointment, short notice, or sick leave of advocates, other court sessions, request for expert or witness, and change of defendant’s advocate. Especially, it is common that court session of criminal court is postponed due to a state prosecutor and advocate.

It is possible to prevent from a trouble that could affect a court session and other participants of the case negatively by giving request to postpone the court session based on excusable reason. However, it has become a common practice that a request for delay is put forward to after a court session has commenced⁶¹.

When asked whether their trial sessions were postponed due to absence of their advocates, the participants of the study gave the following answers:

⁶¹ “Observation of court trials” unified study report, Open Society forum, UB, 2015.

Has your trial been postponed because your advocate was late?



When asked on what grounds the trial was postponed, 23.8 percent of total 130 inmates who answered, “yes” to the above question said, the advocate was on another trial, 13.8 percent said, “the advocate was ill,” 5 percent said, “the advocate was on appointment, and 2 percent said, “the advocate was late, so the trial was postponed.”



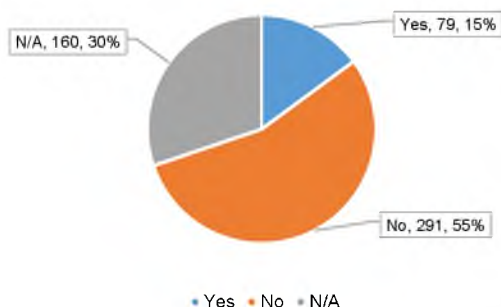
According to the study conducted by Judicial Research and Information Institute from 2 January to 30 September 2015 Criminal trial courts in Ulaanbaatar city scheduled 4378 sessions, 2001 sessions of which or 45.7 percent was delayed. In other words, every second session is postponed.

532 sessions out of the sessions postponed were postponed because advocates were on sick leave, 248

sessions were postponed because participants requested to get advocates, and 207 sessions were postponed because an advocate was attending another court session⁶².

When asked whether the restraint measures taken against them were changed to pre-trial detention due to absence of their advocates, the inmates gave the following answers:

Due to absence of your advocate at trial has the restraint measure taken against you changed into detention?



According to Part 3 of Article 9 of the International Covenant on Civil and Political Rights anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.

Thus, delay of court session without valid reason results in a circumstance where right of a person arrested and detained on a criminal charge to be tried within the minimum time. Especially, in case where a state prosecutor and advocate are working on various cases at the same time, it is important to create unified database of scheduling in order to prevent from coincidence of the date and time of court sessions of a state prosecutor and an advocate.

⁶² "Summary study on reasons and grounds the court sessions were postponed and cases were suspended" conducted by Information and Training Center under Judicial General Council, 2015

It is necessary that Judiciary put forward a suggestion to the Professional responsibility committee of Mongolian Bar Association to hold an advocate accountable for delay of court sessions due to his absence without valid reason.

When asked whether their advocates ensured their right to submit complaint to the court of appeal and court of supervisory instance, the participants of the study gave the following answers:



When asked the reasons, 33 percent of the inmates who answered, “No” said, ‘my advocate didn’t meet me, even though I wished to complaint to the court of appeal,’ 20 percent said, ‘I don’t know why my right to appeal was not fulfilled, 16 percent said, “I was advised not to appeal because my sentence could be aggravated,’ 13 percent said, ‘my advocate claimed I don’t need to appeal because I was imposed appropriate sentences, and 11 percent said, ‘my advocate didn’t allow me to complain to court of appeal by saying, ‘you don’t appeal because I know my work.’

Case:

Neither police nor court provides environment for advocates to read case files. Though we request for a room, they do not give any room. While we are reading the case file, the investigator examining the case sits there watching beside us. Thus, we take necessary notes from the case file sitting at a corner of the investigator's room. Even at the court we also need to read the criminal case files in the secretary's room or in the hall. Then when I call my client, they say, "You should see your client at your office. It is not appropriate you meet him here."

It is very difficult to understand with Takhar service officers. They just work for salary and protect court. When we try to talk, they say, "Be quiet. Why are you talking back to the judge? But, unless a part of our work isn't done in the court hall, then where should it be done? Even at the court of appeal situation is the same. In our province only the prosecutor's office has a separate room for advocates."

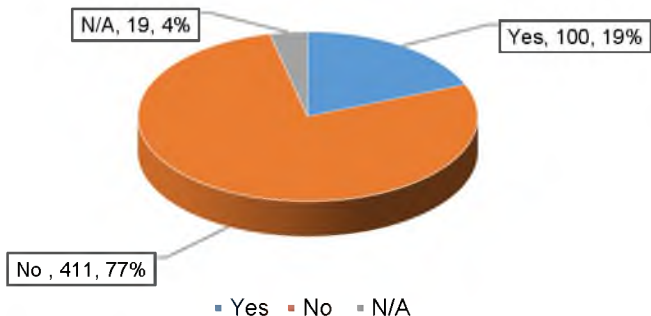
(From interview with advocates in Darkha-Uul province)

2.9. Cases and reasons inmates fire their advocates

Every person examined on with crime have right to defend himself against the criminal charge. According to the principle to represent oneself, an accused can decide to represent himself without getting an advocate at the stage of investigation and stage before court proceedings. The person's decision to renounce his right to presence of advocate at the interrogation and other processes must not be doubtable and shall be provided with appropriate guarantees. In addition, the person who renounced his right to legal representation can annul his previous decision.

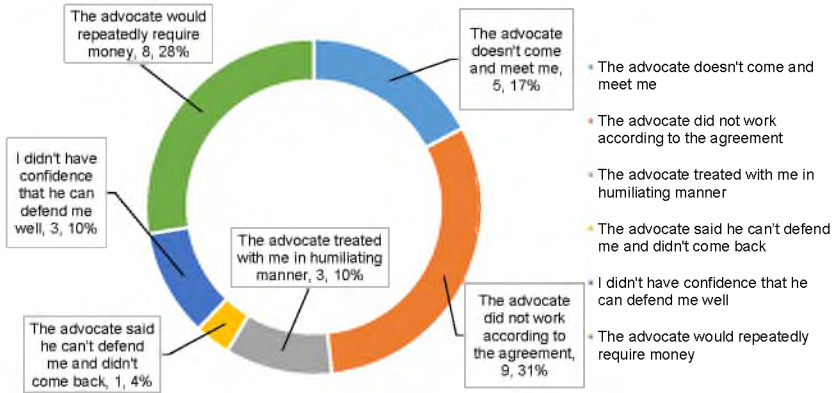
According to the study 19 percent of the inmates with advocates have somehow fired their advocates.

Have you ever fired your advocate?



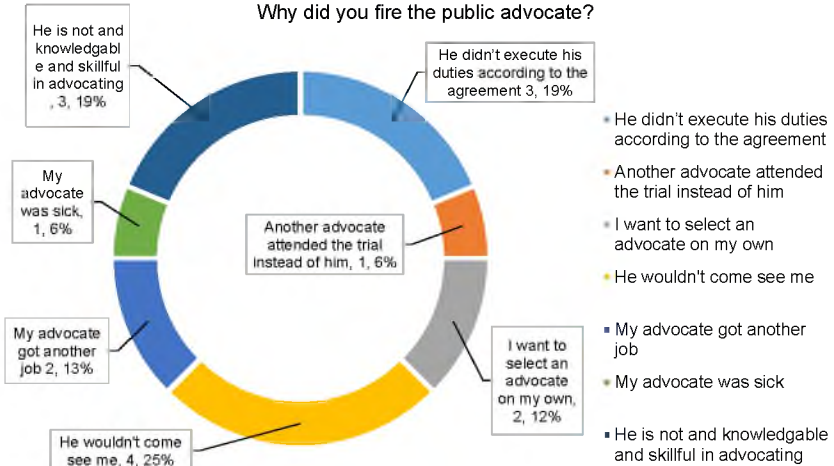
Among the inmates who fired advocate the number of inmates who fired private advocate is relatively high. When asked the reasons they fired their advocates, they gave the following answers.

Why did you fire private advocate?

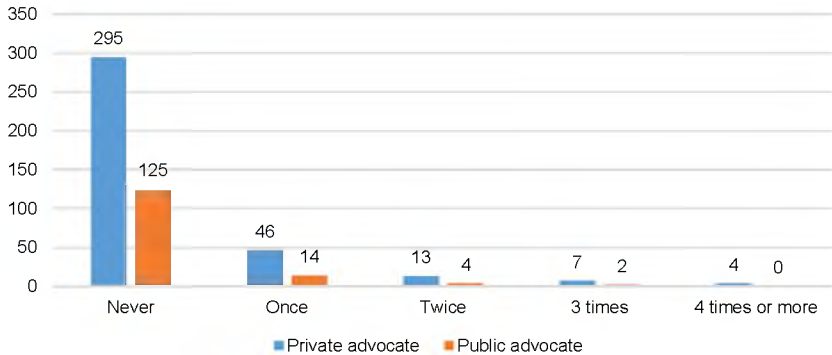


When asked the reason they fired their advocates, the inmates who have public advocates answered as follows:

Why did you fire the public advocate?

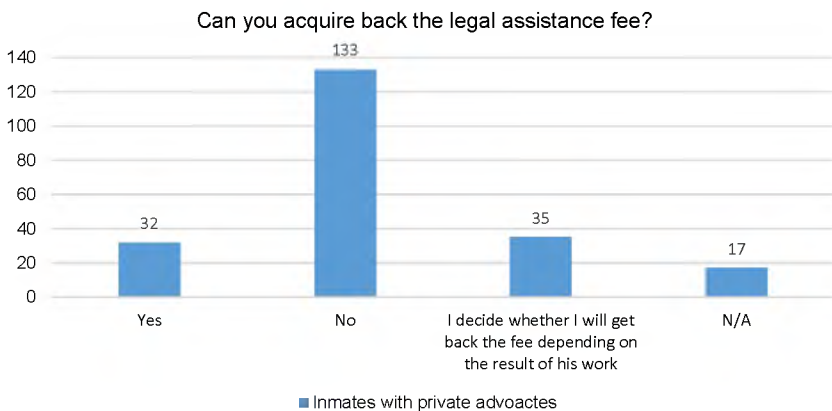


Certain number of inmates have switched their advocates. Below distinguishes the inmates by whether they have public advocates or private advocates:



As stated in Article 41 of Law on legal status of lawyers an advocate shall charge fee for providing legal assistance for his client, and the advocate and client shall negotiate and agree on the amount of the fee. According to civil law principle of freedom of agreement the parties have opportunities to assess the performance of the agreement and either increase or decrease the amount of the fee, and client can demand to refund the fee.

When asked whether they manage to be paid back the fee they paid for legal assistance when they change their advocates, the inmates who have private advocates answered as follows:

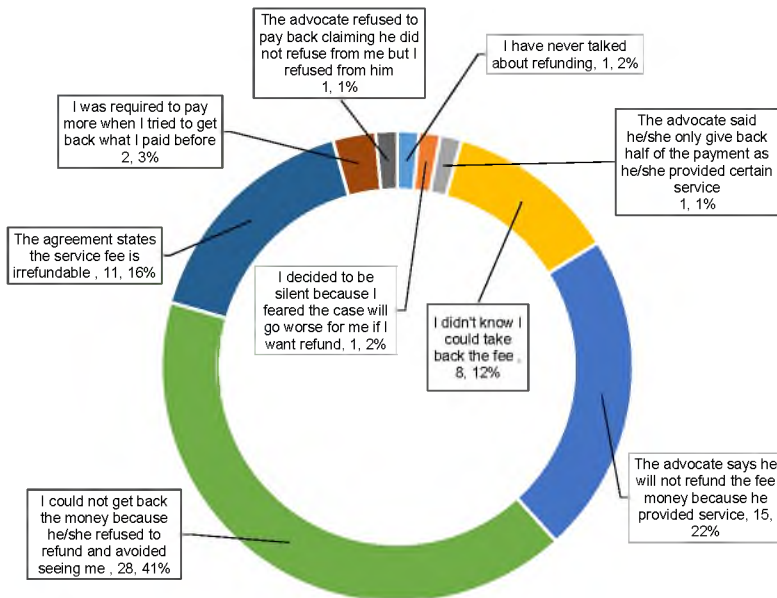


Case:

...It has been a year and four months since I hired an advocate, and I have paid over three millions tugriks for legal assistance. However, she has not seen me since I was detained and worked by corresponding with me through advocates of other inmates. I failed to write my petition of appeal because of my advocate. Whenever I raised an issue of replacing her with another advocate, she would make various explanations, give promises, and then disappear again. Then I was told that she was on maternity leave and stopped working. Thus, I have to hire another advocate...

(Interview with an inmate of the Pre-trial Detention Center 461)

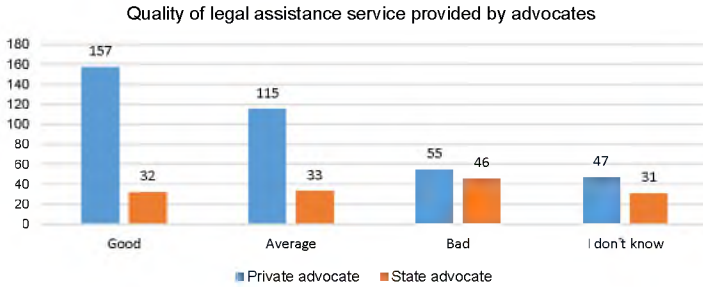
The reason they can not take back the legal assistance fee from the advocates



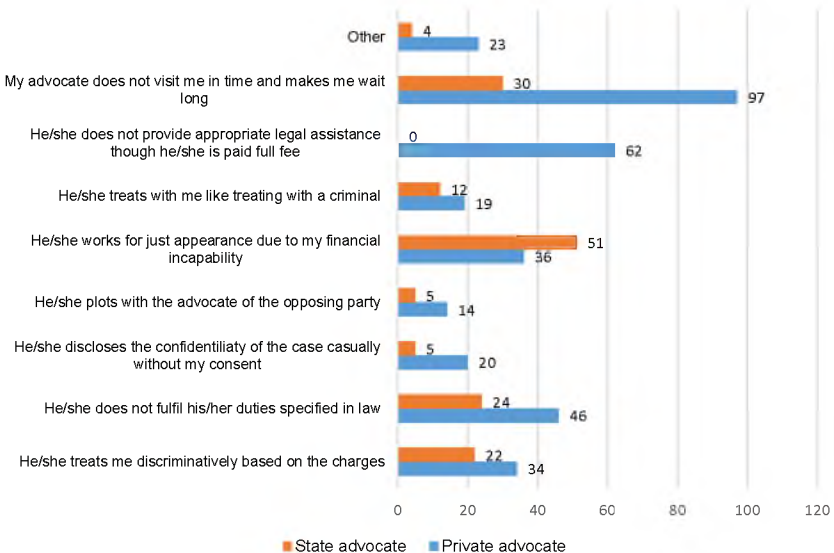
- I have never talked about refunding
- I decided to be silent because I feared the case will go worse for me if I want refund
- The advocate says he will give back only half of the fee because he has provided some service
- I didn't know I could take back the fee
- The advocate says he will not refund the fee money because he provided service
- I could not get back the money because he/she refused to refund and avoided seeing me
- The agreement states the service fee is irrefundable
- He/she even required more money when I demanded to be refunded
- The advocate refused to refund by claiming he didn't draw back, but I fired him

2.10. Content of the complaints on legal assistance

The participants of the study assessed the quality of legal assistance service provided by advocates as shown below.



The participants who assessed the quality of legal assistance by the advocates “average” and “bad” gave the below as reasons.



Under Law on legal status of lawyers disputes that arise between advocate and client are handled by Professional Responsibility Committee of Mongolian Bar Association⁶³.

⁶³ Clause 64.5.1, Law on legal status of lawyers

The Committee releases assessment on breaches of code of conduct, ethics, professional activity of lawyers at the request of Mongolian Bar association and handles disputes on breaches of the Law on legal status of lawyers and Lawyers' professional rules and doubts of Lawyers' professional and skills level according to complaints.

Professional responsibility committee received 330 complaints lodged by individuals and organisations with regard to advocates from 1 November 2014 to 2 November 2015, and refused to open disputes on 178 complaints and resolved 127 complaints by opening cases.

While 16 persons including suspects, accused, defendants, and prisoners lodged complaints on professional activity of advocates, other complaints were lodged by family members of suspects, accused, and defendants, other participants of criminal proceedings as well as organisations, business entities, judiciary, prosecutors, police, Independent Authority against Corruption, and third parties.

According to the context of complaints lodged in connection with advocates' activities, majority of the complaints concerns failure of advocates to provide their clients with appropriate service, verbal offences made by advocates, instances where an advocate required more money other than service fees, breaches internal rules of pre-trial detention houses, don't come to court sessions, made a ungrounded statements via media, and requests to get back service fee⁶⁴.

When asked whether they lodged complaints to other organisations on their right to select their advocates and to legal assistance, 51 participants or 11.2 percent out of 456 inmates who answered the question said "Yes." They lodged their

⁶⁴ Official letter 3/445 of Professional responsibility committee of Mongolian Bar Association dated 10 November 2015

complaints to Mongolian Advocates' Union, Legal Aid Center under Ministry of Justice, National Human Rights Commission of Mongolia, and Sub-committee on human rights of the State Great Khural.

Detaining a person for criminal investigation by depriving him of his inalienable rights and separating him from society is a last resort to use in absolute circumstance, which can be executable only when human rights and freedoms are substantively respected and ensured by legislation.

Participation of an advocate is an important factor which prevents from violation of rights of a suspect, accused, and defendant, threat to their right to personal liberty and safety, arrest, detention, and prosecution of an innocent person on false charge.

During the interview with the suspects, accused, and defendants involved in the study they put forward requests and proposals to ensure that advocates respect and understand their clients, protect their legitimate interests and rights staunchly, refuse to discriminate their clients based on types of crime and the amount of service fee, negotiate on methods and terms to estimate the service fees ambiguously, and abide their duties as appropriate. On the other hand, they complained that advocates make false promise and require service fees without conducting their legal assistance duties as appropriate, and do not show up at the trials.

Thus, it is necessary that relevant organisations take certain measures to stop advocates' acts such as irrespective treatment and discrimination against their clients, to prevent such acts in future, and to improve work responsibility and ethics of advocates.

Having summed the outcome of the study, the Commission concludes that it is necessary to address the following issues in order to ensure the right of detained suspects, accused, and defendants to legal aid and increase the rights and duties, responsibilities, and participation of defense counsels.

- Ensure that participants of criminal procedure specially focus on securing conditions where inmates enjoy the right to legal assistance from the moment they are first charged with criminal offence. Especially, prosecutor's organisation should improve its oversight on how inquirers, investigators, and prosecutors provide the accused persons with their right to legal assistance when it oversee inquiry and investigation;
- Ensure that financially incapable individuals' own choice of lawyers be regarded when they are provided public and private defense counsels through the Legal Aid Center and Mongolian Bar Association;
- Ensure that defense counsels always include details of counseling service fee and its estimation methods within the agreement and issue the receipt whenever the client pays the fee;
- Ensure that every case where a defense counsel is alleged to have failed to fulfill his duties to provide legal aid as appropriate and demanded unlawful fees from his client be definitely investigated, and if proven, the defense counsel be sanctioned with ethical accountability;
- Ensure that defense counsels always comply their duties stipulated in the agreements and have regular contact with his client by providing timely information;
- Undertake monitoring over whether the defense counsels provide their clients with legal aid according to the terms stated in the agreements;

- Ensure that relevant organisations promptly receive and handle the complaints on the defense counsels who works without professional ethics;
- Create unified registration database in order that the dates and times of trials will not coincide when defense counsel or prosecutor works on various cases at the same times;
- Ensure that the Court will put forward a proposal to the Committee of professional responsibility of the Mongolian Bar Association to impose disciplinary action against the defense counsel who failed to appear at the trial without excusable reason;
- Improve the quality of the training of the professional organisation and increase accountability of the members; Disclose to public the names of the defense counsels who made mistakes of professional ethics;

CHAPTER THREE

RIGHTS OF OLDER PERSONS

“Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”

(Article 22, The Universal Declaration of Human Rights)

“The citizens of Mongolia shall be guaranteed the...right to material and financial assistance in old age, disability, childbirth and child care and in other circumstances as provided by law.”

(Article 16.5 of the Constitution of Mongolia)

World population is ageing rapidly from 9% in 1994 to 12% in 2014 and it is projected to reach 21% by 2050⁶⁵. For Mongolia, 16% of the population will be aged by 2040 accounting for one in every four people moving up from one in every ten⁶⁶.

There is no particular international human rights treaty on the rights of older persons, but principles of dignity and non-discrimination for everyone including older persons are enshrined in existing international norms and standards. In addition, international community has been developing specific initiatives to promote and protect the rights of older persons. This includes 1982 Vienna International Plan of Action on Ageing, 1991 UN Guidelines on Ageing and 2002 Madrid International Plan of Action on Ageing. An open-ended working group on ageing with the task to study the need for a comprehensive separate international treaty on the rights of

⁶⁵ United Nations Department of Economics and Social Affairs (ST/ESA/SER.A/354) Concise report on the World Population Situation, 2014.

⁶⁶ “Situation Analysis of Older Women”, United Nations Population Fund, the Ministry of Population Development and Social Welfare, 2015

older persons was established by the UN General Assembly resolution A/RES/65/182 in 2010. For the first time in 2011, UN Secretary General reported to the General Assembly on the situation of human rights of older persons. In April 2012, UN High Commissioner for Human Rights mentioned in the report the need for strengthening the international mechanism for the protection of human rights of older persons. A Special Rapporteur on the Rights of Older Persons was appointed by the UN Human Rights Council resolution A/HRC/24/L.37/Rev.1 on 23 September 2013. In addition, national human rights institutions are working to protect and promote the rights of older persons and accumulating collective experience through GANHRI.

The Constitution of Mongolia guarantees the right to material and financial assistance in old age, disability, childbirth and child care and in other circumstances as provided by law (Article 16.5). In addition social welfare laws define social benefits related to unemployment, illness, disability, widowhood, old age and poverty.⁶⁷ Men over the age of 60 and women over the age of 55 are regarded as aged⁶⁸. Mongolia is among leaders in terms of pension coverage, social care and low poverty among old persons. It is listed 72 on Global Age Watch Index⁶⁹. However, it was reviewed to be doing not good in terms of access to public transport, security and discrimination at workplace.

According to “Situation analysis of Older Women” commissioned by the Ministry of Population Development and Social Welfare of Mongolia with the support of UNFPA, over the last decade Mongolian population grew by 16.1 percent, whereas the number of older persons grew by 21.9 percent.

⁶⁷ United Nations General Assembly resolution 217/A/III/ on 10 December, 1946. Universal Declaration of Human Rights (Article 25)

⁶⁸ Law on Social Protection of Senior Citizens (Article 3.3.1)

⁶⁹ More data and information available on <http://www.helpage.org/global-agewatch/> based on information from United Nations Department of Economics and Social Affairs, World Bank, World Health Organisation (WHO), International Labour organisation (ILO) and The United Nations Educational, Scientific and Cultural Organisation (UNESCO).

The Government of Mongolia adopted “National Strategy on Ageing” on 26 May 2009 subsequent to Madrid International Plan of Action on Ageing of 2002. National Population Committee was established by the Government on 16 March 2013 chaired by the Minister of Population Development and Social Welfare. National Plan of Action for 2014-2016 was approved by the National Population Committee to realize the National Strategy on Ageing.

Despite this legal and policy framework, research demonstrates difficulties in practice due to lack of inter-agency coordination and unavailability of research and data.⁷⁰ Therefore, the National Human Rights Commission assessed the current situation and is putting forward recommendations to improve the mechanisms for the protection of the rights of older persons.

3.1. International trend

International human rights norms such as the Universal Declaration of Human Rights and the Covenant on Economic, Social, and Cultural Rights prohibit discrimination⁷¹ and promote social rights of everyone including older persons. Regional human rights instruments such as American Convention on Human Rights (Article 17 of the Optional Protocol)⁷², [Charter of Fundamental Rights of the European Union](#) (Article 25)⁷³, [African](#)

⁷⁰ “Situation Analysis of Older Women”, United Nations Population Fund, the Ministry of Population Development and Social Welfare, 2015

⁷¹ Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

⁷² <http://www.oas.org/juridico/english/treaties/a-52.html>

Article 17

Protection of the Elderly

Everyone has the right to seek special protection in old age. With this in view the States Parties agree to take progressively the necessary steps to make this right a reality and, particularly, to:

- a. Provide suitable facilities, as well as food and specialized medical care, for elderly individuals who lack them and are unable to provide them for themselves;
- b. Undertake work programs specifically designed to give the elderly the opportunity to engage in a productive activity suited to their abilities and consistent with their vocations or desires;
- c. Foster the establishment of social organisations aimed at improving the quality of life for the elderly.

⁷³ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> Article 25. The rights of the elderly The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

[Charter on Human and Peoples' Rights](#) (Article 18)⁷⁴ have specific provision on the rights of older persons.

In addition, Vienna International Plan of Action⁷⁵ was adopted by the World Assembly on Ageing in 1982 which was later endorsed by the UN General Assembly. It includes 62 recommendations for action addressing research, data collection and analysis, training and education, as well as the following sectoral areas: health and nutrition, protection of elderly consumers, housing and environment, family, social welfare, income security and employment, and education which are directly related to the rights specified in the Covenant on Economic, Social and Cultural Rights. A decade later in 1992 the UN General Assembly adopted Proclamation on Ageing.⁷⁶ The year 1999 was proclaimed as year of older persons to acknowledge ageing globally.⁷⁷ The UN General Assembly adopted United Nations Principles for Older Persons⁷⁸ in 1991 which closely looks at autonomy, social participation, social care, dignity and self-actualization of older persons.

The Second World Assembly on Ageing took place in Madrid from 8 to 12 April 2002. The participating countries adopted two key documents: a Political Declaration and the Madrid International Plan of Action on Ageing, 2002. Both documents included commitments from Governments to devise and implement measures to address the challenges posed by ageing. The documents also put forward over 100 recommendations for action based on three priority themes: older persons and development; advancing health and well-being into old age; and ensuring enabling and supportive environments.⁷⁹

⁷⁴ <http://www.achpr.org/instruments/achpr/#a18>

Article 18.4.

The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

⁷⁵ <http://www.un.org/es/globalissues/ageing/docs/vipaa.pdf>

⁷⁶ <http://www.un.org/documents/qa/res/47/a47r005.htm>

⁷⁷ "Proclamation on Ageing" (A/RES/47/5). General Assembly, 16 October 1992

⁷⁸ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OlderPersons.aspx>

⁷⁹ <http://social.un.org/index/Ageing/MadridPlanofActionanditsImplementation/>

An open-ended working group on ageing was established by a resolution A/RES/65/182 at the 2010 General Assembly.⁸⁰ The OEWG has been given a wide mandate to examine the existing international framework in relation to the human rights of older people, and to identify possible gaps and how best to address them, including through considering the possibility of new human rights instruments. The General Assembly extended the OEWG's mandate to consider and report on what should go into a new international legal instrument on older people's rights in [Resolution 67/139, adopted in December 2012](#).⁸¹

After discussing the OEWG report on 29 July 2015⁸², the General Assembly requested the OEWG to prepare a draft international convention on the protection of the rights of older persons in near future. On 27 September 2013, the Human Rights Council adopted [resolution 24/20](#) by which it established, for a period of three years, the mandate of the Independent Expert on the enjoyment of all human rights by older persons.⁸³ However, countries vary in terms of their human rights and welfare policies directed at older persons.

3.2. Current situation of social protection for older persons

As of 2014, there are 345,800 persons receiving pensions from social insurance fund; of this 242,500 are older persons making 8.1% of the total population. Those who are under age of 64 make 51.4% of older persons receiving pensions whereas those aged 65-69 make 17.3% and over 70 make 31.3% respectively.

[RegionalImplementationStrategiesoftheMIPAA.aspx](#)

⁸⁰ <http://social.un.org/ageing-working-group/>(OEWG)

⁸¹ Resolution adopted by the United Nations General Assembly, 20 December 2012. "Towards a comprehensive and integral international legal instrument to promote and protect the rights and dignity of older persons" (A/RES/67/139) http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/139

⁸² <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N15/235/92/PDF/N1523592.pdf?OpenElement>

⁸³ Human Rights of Older Persons. The Human Rights council 24th session. A/HRC/24/L.37/Rev.1(2013), Paragraph 5 http://ap.ohchr.org/documents/alldocs.aspx?doc_id=22360
<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Pages/24RegularSession.aspx>

There are 108,100 persons with disabilities who make 4.1% of the total population. 12,500 of these people are aged making 11.6% of people with disabilities and 8.3% of the aged. Of 12,500 people, 47.4% are male and 52.6% are female. 90.3% have acquired and 9.7% have congenital disabilities. 40% have movement impairment, 24% have optical, 18% have hearing and speaking disabilities whereas 6.3% are mentally disabled. 37.4% of aged with disabilities live in the countryside.⁸⁴

According to a survey by Mongolian Association for Elderly People, 241,900 old people are receiving pension from social insurance fund, whereas 7,900 old people are receiving benefits from social welfare fund. Among this population, there are:

- 146,900 people who are under age of 70;
- 54,700 people aged between 71 and 80;
- 15,000 people aged between 81 and 90;
- 3100 people aged between 91 and 100; and
- 136 people aged over 100.

In general living is becoming more difficult for older people with 23.6 percent of them belonging to vulnerable part of the population (there are 26,800 older people whose income is below the poverty line, and 5,800 older people live alone with no caregivers, 13,600 older people are in permanent care of others, and 7,870 older people have disabilities).⁸⁵

3.2.1. Pension

Pension is a key source of living for older people and it is provided according to the Law on Pensions and Benefits from Social Insurance Fund which was adopted in 1994 and amended six times in 1996, 1997, 1999, 2000, 2012 and 2015. In addition, there is a Law on Pension Insurance Premium Accounts adopted

⁸⁴ "Situation Analysis of Older Women", United Nations Population Fund, the Ministry of Population Development and Social Welfare, 2015

⁸⁵ Letter (No.81) from the Mongolian Association for Elderly People NGO to the NHRCM. 12 October, 2015.

in 1999 and amended in 2015 which defines pension amount and procedures for those who are insured.

2015 amendment to the Law on Pensions and Benefits from Social Insurance Fund created some favorable conditions such as second option for selection of five years of income to determine average income as basis for pension estimation, use of standard sector wages as basis for pension estimation in case evidences of actual income are missing, 1.5% benefits for every year exceeding 20 years of pension insurance premium payment.

According to a study by the Mongolian Open Union of Elders, current amount of prorata pension equals 195,000 tugriks, minimum pension is 230,000 tugriks and average pension amount equals to 283,800 tugriks. Compared to 2004, prorata pension rose by 9.75 percent, minimum pension rose by 7.18 percent, and average pension rose by 8 percent. However, 95 percent of older people live on pension only and most of them have pension loan which is used to support their families.⁸⁶

A study by Mongolian Association for Elderly People concludes that 14.8 percent increase of minimum pension (or 20,000 tugriks) and 2 to 5 percent increase of pension in general over the last four years is not enough to meet up with ever-rising inflation. There are not a few families that exclusively depend on elderly pension. Approximately 97 percent of older people live on nominal pension which is not sufficient to cover their basic needs.⁸⁷

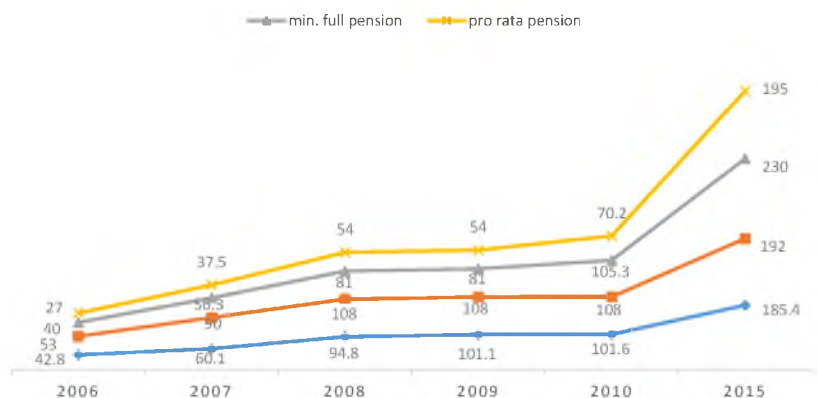
Although the government has been increasing the pension threshold over the years (by 25 percent in 2006, by 30 percent in 2007, by 20 percent in 2008, by 30 percent in 2010), pension insurance policy does not reach out to self-employed and those employed in informal sectors. Consequently, future of social

⁸⁶ Information provided by the Mongolian Open Union of Elders on 15 December, 2015

⁸⁷ Letter (N81) from the Mongolian Association for Elderly People NGO to the commission. 12 October, 2015.

security of this segment of population is at risk, and there is a gap between pension fund revenue and spending.⁸⁸

The graph below shows full and pro rata pension amounts (in thousand tugriks).



The table below demonstrates number of Social Insurance Fund pension recipients.⁸⁹

Indicators	2011	2012	2013	2014
Pension recipients (thousand persons)	332.3	334.6	336.9	345.8
Aged	219.6	224.7	230.3	242.5
Disability	67.0	65.8	64.5	65.4
Breadwinner loss	32.1	29.9	27.4	23.3
Army retirees	13.6	14.2	14.7	14.6
Pension paid (million tugriks)	458 206.0	734 130.6	837 486.3	1 011 858.0
Aged	328 724.0	516 542.0	593 268.5	724 779.1
Disability	70211.0	111 798.7	124 946.0	156 258.8
Breadwinner loss	30 677.6	47 147.6	50 364.2	54 852.4
Army retirees	28 593.4	58 642.3	68 907.6	75 967.7

⁸⁸ "Situation Analysis of Older Women", United Nations Population Fund, the Ministry of Population Development and Social Welfare, 2015

⁸⁹ Letter from the Ministry of Population Development and Social Welfare, 7 October 2015 (10 1/1962)

Mongolian Association of Elderly People highlighted that pension amount of some 64,500 retirees needs to be reviewed including early retirees such as mothers with multiple children and those who worked in dangerous environment because income basis to determine their pension amount was minimal. They consider that relevant laws including Law on Pensions and Benefits from Social Insurance Fund and Law on Social Welfare need to be changed so that discretion over additional pension benefits in direct link with inflation fluctuation is shifted from the Cabinet to the Parliament to decide by means of a separate law.⁹⁰

Case:

“Older people are discriminated – we want to get mortgage loan but we are not allowed as they consider us not able to pay the loan because we will soon die. With old age it is hard to prepare water and fuel for heating traditional dwelling. We prefer living in apartments because it is less troublesome.”

(Interview with older persons in Sukhbaatar province)

2012 Law on Reinstating of Unrecorded Employment Period and Unpaid Pension Premium allowed retrospective payment of social security premiums for the period between 1995 and 2000 for pension entitlement. In total, 587,200 people (45.6 percent male and 54.4 percent female) had reinstated their unrecorded employment period of 1 to 11 years. As a result, full pension entitlement opened for 135,600 people under age of 40, 284,400 people aged 40 to 55, and 60,000 people aged over 55.⁹¹

“State Policy on Pension Reform for 2015-2030” was adopted by the Parliament of Mongolia by its Resolution 53 on 16 June 2015 with following highlights:

- Change current one-tier pension system to three-tier system that is composed of basic pension and additional

⁹⁰ Information provided by the Mongolian Association for Elderly people, 12 October 2015.

⁹¹ Presentation by Amarsaikhan D, Head, Policy Implementation and Coordination Department, Ministry of Population development at National Forum on “Implementation of Reform Policy for Development and Protection of Older Persons”, 2015

benefits based on length of insurance premium payment and voluntary insurance benefits.

- Create a specific state-funded insurance policy for herders and informal sector employees and create legal regulation for additional private insurance.
- Change pension premium rates and minimum age for pension entitlement and improve pension estimation methodology.

Due to lack of pension insurance policy reaching out to self-employed and those employed in informal sectors, there is a social security risk for this segment of population. Therefore, it is important to carry out pension reform to change current one-tier pension system to three-tier system and review pension entitlement conditions and requirements.

The Parliament of Mongolia passed a new Law on Conjugal Pension Support on 3 December, 2015 which will get into force starting from 1 January 2017. This law opens up opportunity for officially married couples to receive at least 20 percent of deceased spouses pension based on certain conditions such as being officially married for minimum period of 15 years and both of couples having paid social insurance premium for at least 20 years and entitled to full pension. The law assigns the Cabinet to adopt detailed procedure including retrospective application, scope and conjugal pension ratio.

There is no country in the world that has specific law on pension loan, but, for instance in Australia, there is a practice of pension loan with no interest fees administered through commercial banks.⁹² Therefore, there is a need to study international good practices regarding pension loan in order to ease the current interest rates. Also there is a need to review pension amount in link to inflation rate, particularly there is a

⁹² "Research on pension loan policies of some countries", Parliament Secetariat, Research Bulletin, Volume 21, 2015

need to establish a new tier system which consists of basic pension and additional benefits based on length of insurance premium payment and voluntary insurance.

3.2.2. Social welfare benefits, allowances, and assistance for the aged

The Law on Social Welfare was passed by the Parliament in 1995, amended and revised in 1998, 2000, 2005, 2008, and 2012 respectively. This law defines social welfare as “acts providing pension, allowances and special care services by government to citizen with special needs who is in a poor state of health, lacking of family care and incapable of conducting normal life independently or without other’s help and to individual-member of household requiring social welfare assistance or care in order to meet his/her minimum needs” (Article 3.1.1.).

Principal change made to the Law on Social Welfare is to identify individuals who are in dire need for social welfare assistance by using “Income Substitution Estimation Method” developed and approved by the Ministry of Population Development and Social Welfare and the National Statistics Office with the purpose to create a database of such individuals for prevention of social security risks and assistance for covering basic needs. The Ministry of Population Development and Social Welfare commissioned living standard study covering over 90 percent of all households and ranked down data of 712,044 households. As a result, central living standard database was created with a possibility of accurate targeting of those who are in need of social welfare assistance.

The following table shows data of recipients of social welfare pension, assistance and allowances.⁹³

⁹³ Letter from the Ministry of Population Development and Social Welfare, 7 October 2015 (10 1/1962)

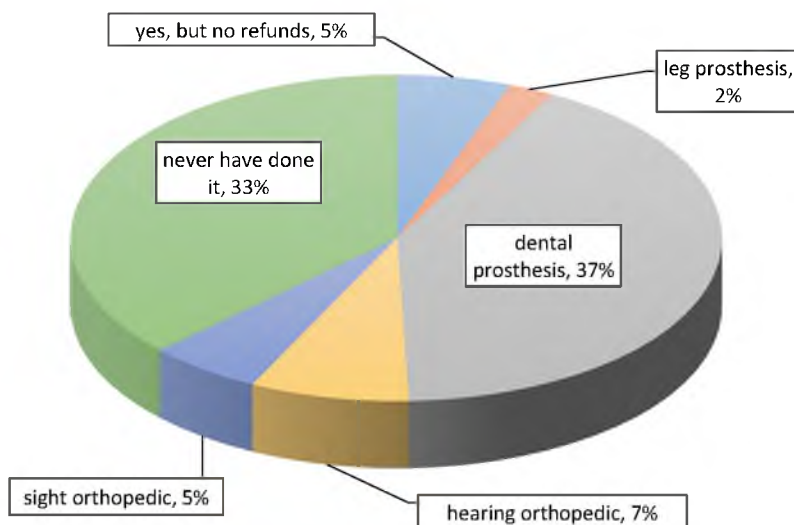
Recipients, types of assistance (in thousand)		2011	2012	2013	2014
Total		619.6	1 478.4	1 587.8	1 665.6
Social welfare pension		57.9	60.7	63.4	64.9
Conditional cash allowances		119.0	123.3	131.6	140.7
1	For pregnant and nursing mothers	87.2	91.4	94.9	98.6
2	For those caring for aged	15.1	14.8	16.7	20.0
3	For those caring for disabled	14.8	15.1	17.7	19.6
4	Other	1.9	2.0	2.3	2.5
Social welfare service and cash allowances		407.4	372.9	396.1	434.8
5	Social welfare service	42.9	21.9	24.1	32.4
6	Allowance for aged	118.7	112.1	126.0	140.0
7	Allowance for elderly honored mothers	204.3	205.0	202.5	208.1
8	Allowance for aged with "Honour Ranks"	5.0	4.1	4.8	4.9
9	Allowance for disabled	36.5	29.8	38.7	49.5

State Policy on Population Development approved by the Parliament on 23 April 2004 (Resolution No. 21) aims to support older persons for being active members of society, to improve quality of their living, to rehabilitate, to improve health services in terms of quality and accessibility, to support their employment, to enhance economic and social participation, to support healthy ageing. The policy emphasizes importance of cooperation with civil society organisations towards better assistance and services for older people.

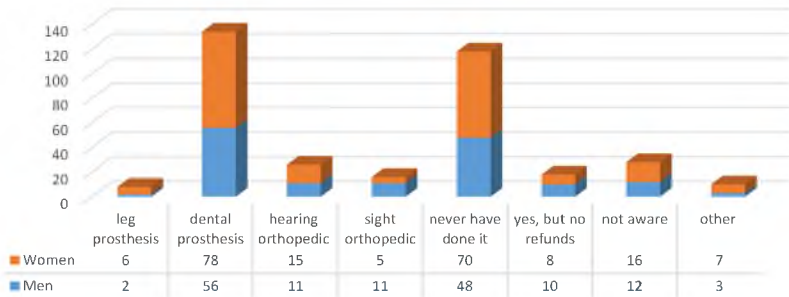
Law on Older Persons Assistance and Services was passed in 1996. Subsequently National Plan of Action for Health and Social Protection of Older Persons was approved in 1998. Later in 2005 Law on Social Protection of Older Persons was adopted and it was amended in 2007, 2008, 2009, and 2012 respectively.

National Human Rights Commission of Mongolia conducted a study among 360 older persons living in 18 provinces of Mongolia to find out whether social welfare assistance and benefits set out in the Law on Social Protection of Older Persons are realized fully in practice. The findings are summarized below.

According to the above law, older persons are entitled to refund of dental and legs, arms prosthesis production costs (other than precious metals), sight and hearing orthopedic instruments every five years. The study shows that 33 percent of respondents “have not any prosthesis and orthopedic instruments made”, whereas 5 percent had these made but could not get refunds, 8 percent replied they did not know there is such a possibility, and 37 percent of respondents had dental prosthesis made.



The respondents suggested making change to the regulation which sets undifferentiated five-year span for refund of all types of prosthesis and orthopedic instruments.

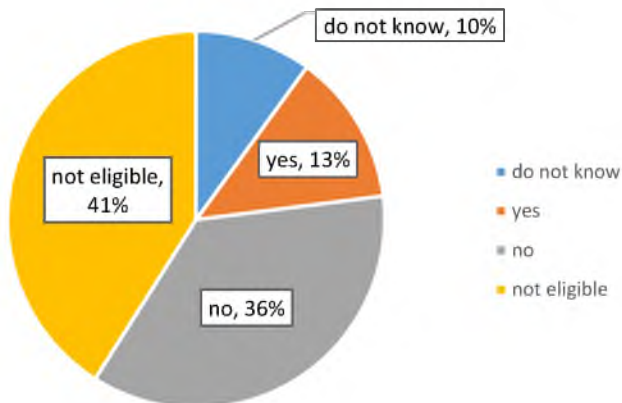


Case:

“We receive assistance from the government if we have illness related to eyes, arms, legs, ears, or teeth. But there is no assistance in more serious health conditions such as illnesses of internal organs or surgery”.

(Interview with older persons in Khovd province)

According to the Law on Social Protection of Older Persons (Article 5.1.3), one-time annual allowance is provided to those who have no guardians or if the guardians do not have possibility to provide assistance to cover utility costs or to buy fuel or heating materials for home. 41 percent of the respondents replied they do not meet the eligibility requirements for the allowance, 36 percent do not receive the allowance, 13 percent receive the allowance, and 10 percent replied they do not know about such program.



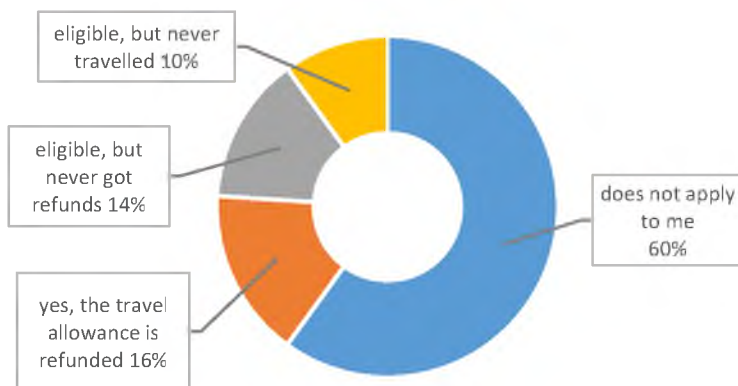
The law also provides free of charge access to public transport in the capital city and province centers (excluding taxi) without restriction of residential registration (Article 5.1.6). The survey asked about realization of this provision of the law: 5 out of 360 respondents did not answer the question. 26 percent of the remaining 355 respondents said “yes”, whereas 74 percent said “no”.

Case:

...Older persons coming from the countryside are not allowed to use public transport free of charge in Ulaanbaatar. It is not fair.

(Interview with older persons in Govisumber province)

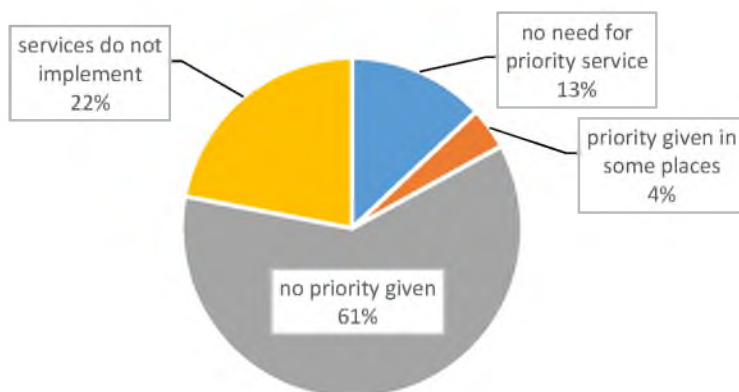
According to the law, older persons who are permanent residents of areas distanced 1000 and over km from the capital city are entitled to one-time one-way travel allowance a year for medical diagnosis and treatment in the capital city provided that it is advised by specialized doctors’ commission (Article 5.1.8). Regarding the implementation of this provision, 353 respondents replied as follows.



The National Human Rights Commission of Mongolia is of the opinion that such restriction based on distance of residence

to qualify for this allowance creates inequality, and this should be changed.

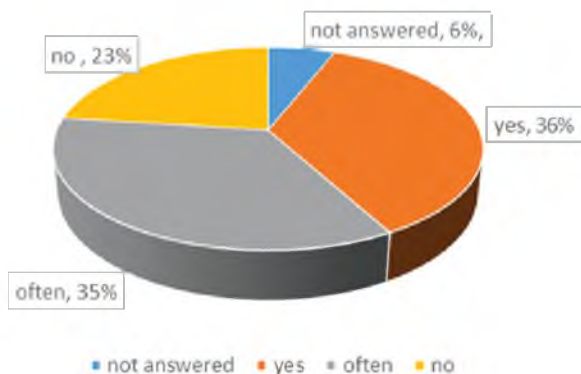
According to the law (Article 5.1.7), older persons must be provided priority access in places of shopping, transport, communications, medical services etc. 1.4 percent of the respondents did not answer to this question whereas 98.6 percent provided the following feedback.



Regarding primary health care, the respondents said they have access to necessary treatment but highlighted access to specialized doctors is harder perhaps due to amount of their work or negative attitude. They also criticized professional competence of doctors and their tendency to expect bribes.

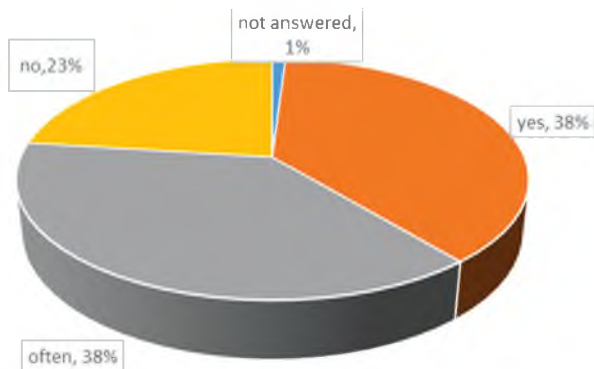
The respondents were asked if local governors at lowest level update records of older persons and provide necessary support such as issuing accurate documents required for pension and social welfare assistance entitlements: 2 percent of the respondents did not answer, 65 percent said “yes”, 21 percent said “sometimes” and 12 percent said “no”.

To question regarding regular and timely information regarding events and programs for older persons, the respondents replied as follows.

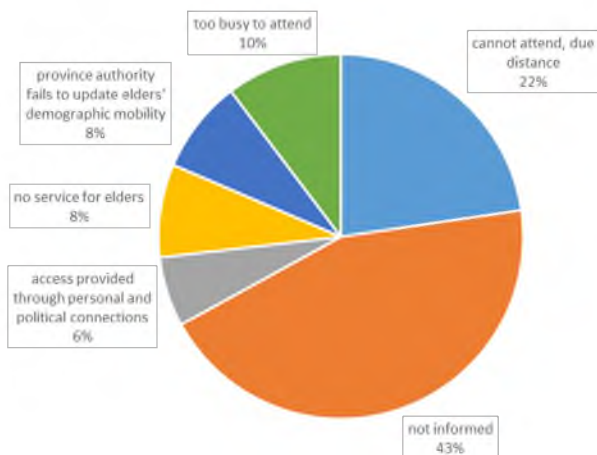


Regarding the source of information about government policies and programs for the elderly, those living in the center of provinces and soums pointed to local governors, social workers, neighbors and local media, whereas herders said they receive information from visitors, radio and TV or local officers.

Asked about whether older persons are fully covered by government policies, they responded as follows.



Following results were received from 220 respondents who replied either “sometimes” or “never”.



According to the Law on Social Protection of Older Persons (Article 8.3.4), local governors at all level have duty to create local centers for older persons and to budget the necessary resources on annual basis. The respondents were asked if there are such local centers in places of their residence: 56.7 percent said “yes”, 27.8 percent said “no”, 14.7 percent did not know about existence of such centers.

Since 2012 the Government has spent over 60 billion tugriks for population development and social welfare and 15 billion out of this has been used for improvement of older persons’ health and living conditions.⁹⁴ Due to the failure of local authorities to budget resources for older persons’ centers etc., they lack an environment for active living and self-actualization. There is a need to create such centers in every province and regional care and rehabilitation centers in order to improve equal and accessible services to older persons throughout the country.

⁹⁴ Letter from the Ministry of Population Development and Social Welfare, 7 October 2015 (10 1/1962)

According to the Law on Social Protection of Older Persons (Article 8.4), organisations and companies must provide assistance to their retired employees by giving additional pension, allowance, fuel/heating materials for home, employment and business opportunities, and housing assistance through establishment of “Fund for the Retired”. The Government adopted a procedure on administration of such funds by its Resolution 185 adopted on 30 May 2012. The respondents were asked if their former employers have created such funds: 51 percent said “no”, and 24 percent said they did not know. This shows that organisations and companies do not fully implement their duty under the Law on Social Protection of Older Persons.

Regarding existence of local units in charge of older persons, 5 percent of respondents did not answer, 51 percent said, “Older persons’ committee exists”, 28 percent said, “Older persons’ council exists”, 16 marked “other” including former employer’s committee for retired, national and associations of older persons.

Case:

“87 percent of older persons are not aware at all that the Law on Social Protection of Older Persons was adopted in 2005. This shows that public awareness raising and education of the law is seriously lacking.”

“Only 14 percent of older persons have access to life-long education such as computer, mobile phone skills, and social participation. 90 percent of older persons living in the countryside do not have such access. There is a need to diversify education programs for the elderly in order to raise their self-confidence and to update their social, cultural, and intellectual education.”

(Information from “Mongolian Open Union of Elders”)

To the question if membership elders’ organisations protect their interests, 42 percent of the respondents said “yes”, 30 percent said “no”, and 23 percent “do not know”.

Case:

“Never heard that province authorities provided support to older persons. But recently a private company donated a bus. Traveling concert was organized thanks to Bold Foundation in Darkhan province which provided a bus; mutual assistance programs were implemented in cooperation with Elders’ Council of Selenge province. We also assisted in preparation of parturition of livestock in spring.”

(Interview with older persons in Darkhan-Uul province)

Case:

Private companies such as “Dornod Trade” and “Dornod Onon” provide assistance in organizing chess contest and festivals for older persons.

(Interview with older persons in Dornod province)

Regarding the support from local authorities to older persons’ councils etc., 42 percent of respondents said “good”, and 58 percent said “not good”. 80 percent of those who gave negative response did not know about the reason of lack of such support, and 20 percent criticized political disintegration among non-governmental organisations working for older persons and failure to provide information on programs for older persons.

The Law on Social Protection of Older Persons (Article 9.2) says support may be provided to organisations and companies with older employees occupying over 70 percent of all employees. But this provision of the law is not implemented.

Above law (Article 4.2) says additional pension benefits may be provided to national heroes, merited employees or those with “Honour Ranks”, and former high-level officials. According to this provision, Law on Additional Pension Benefits to National Heroes and Honored Employees was passed in 2008 which states that level of additional pension benefits be raised in link with minimum wage increase.

In addition, the President issued decision (No.170) on 6 June 2008 that directed the Cabinet to establish monthly allowance, free housing or equivalent pecuniary assistance to war veterans. Accordingly, the Cabinet took the measures to realize this decision.⁹⁵

Current legal environment of social protection fails to cover self-actualization, employment and social participation possibilities of older persons. Moreover, due to economic constraints, centers and facilities for older persons cannot be built in local communities. The legislation also lacks clear accountability procedures for in compliance with legislation. These are the key reasons of poor enforcement of the laws.

There is a vital need to create new national legislation in compliance with international standards relating to protection of older persons' rights in order to prevent and stop violations such as failure of legal guardians or caregivers to support older persons particularly single, ill, bed-ridden ones due to lack of accountability mechanisms, physical and psychological violence, weakening their livelihood by exploiting property and pension not to the benefit of older persons and discriminatory regulations. There is also a need to improve current social protection legislation relating to older persons as to include self-actualization, employment and social participation opportunities, to ensure full implementation of existing social welfare assistance, to improve implementation oversight and quality of social welfare assistance.

“Children of Executed Political Victims”, NGO, approached the National Human Rights Commission of Mongolia several times with complaints about failure of government officials to respond to their petitions and reluctance to consult with them in developing policies and legislation affecting their interests. They demand for fair and adequate compensation for loss and pain they have had to bear throughout their lives including arbitrary detention and extrajudicial killing of their parents, poverty due to property confiscation, and discrimination in

⁹⁵ Letter from the Ministry of Population Development and Social Welfare, October 7 2015 (10 1/1962)

exercising social and political rights. They propose to revise the current Law on Exoneration of Political Victims and Compensation by making it compliant with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁹⁶, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and making current compensation fair and adequate.

This NGO proposed the following compensation scheme for children of political victims.⁹⁷ They requested the National Human Rights Commission of Mongolia to put forward this proposal to the Parliament, the Cabinet and the President for consideration and solution.⁹⁸

Compensation type	Estimate (in million tugriks)	Compensation amount		
		Family of executed	Family of political prisoners for up to 10 years	Family of political prisoners for up to 5 years
One. Primary loss				
1. a. Execution of innocent parent	70	70	-	-
6. Imprisonment of innocent parent for up to 10 years who was later exonerated	35	-	35	-
b. Imprisonment of innocent parent for up to five years	17,5	-	-	17,5
2. Life-time orphans with no guardian and no support	5	5	-	-
3. Unlawful confiscation of all cattle, property and homes	25 (12,5)	25	25	12,5
Two. Secondary loss				
1. Dignity and reputation	100%	100%	50%	25%
2. Discrimination in education, employment and psychological trauma	100%	100%	50%	25%

⁹⁶ Mongolia joined on November 2, 2000

⁹⁷ Letter from NGO "Children of Executed Political Victims" to the National Human Rights Commission dated 14 December, 2015.

⁹⁸ "Notes from the National Human Rights Commission's meeting with representatives of Children of Executed Political Victims, NGO, 27 November, 2015. Letter (N28) from Children of Executed Political Victims to the National Human Rights Commission. 14 December, 2015.

3.2.3. Institutional care

In 2014 the National Human Rights Commission of Mongolia conducted an inquiry in nine accredited⁹⁹ care centers for elderly to monitor implementation of relevant legislation. It was found out that older persons in those centers cannot exercise their legal rights fully due to lack of oversight. Rehabilitation, primary health care and nursing are the main services provided in these centers. But relevant national standards such as MNS 5823:2013 for elderly care and MNS 5798:2008 for disabled care are not adequately followed. For this reason, the National Human Rights Commission of Mongolia raised this matter in its previous report on Human Rights and Freedoms (2015) advising review of Accreditation and License Awarding Procedure for Institutional Care (approved by the Minister of Population Development and Social Welfare, No. A/97, 2013) in order to revise the qualification requirements, raise the budget of government-run care centers provide better support to private care centers, and improve oversight mechanisms to prevent human rights violations in these centers.¹⁰⁰

According to the Law on Social Welfare (Article 18), quality standards for community based day care, home care and institutional care for elderly and disabled people were approved by Decree A/63 of the Minister of Population Development and Social Welfare on 30 April 2016. It is important to ensure these services are delivered in an equal and accessible way, to revise institutional care standards, service types and scope, to strengthen oversight of license award system restricting it to only fully-qualified legal entities in accordance with relevant laws and standards.

⁹⁹ On July 2014, the Agency for Social Welfare and Social Services organized accreditation of care centers for elderly and disabled. Overall, 11 care centers met the requirements. The accreditation is valid till 2017.

¹⁰⁰ "Human rights issues in institutional care centers". 14th Status report on Human Rights and Freedoms in Mongolia. Ulaanbaatar, 2015.

3.2.4. Employment promotion

Employment opportunities are created for older persons as a result of “Employment Support of Elderly through Consultancy and Part-time Work” and establishment of national database of senior experts by joint decree (No. A/901/201, 28 August, 2014) of the Minister of Population Development and Social Welfare and the Minister of Labour.

Case:

“We cleaned areas around children playground. This is all we can do.”

(Interview with older persons in Arkhangai province)

“We are invited to schools to tell our stories and lessons learnt to children and young people.”

(Interview with older persons in Tuv province)

“I act as a secretary for Senior Teachers’ Association. We run training and clubs for children.”

(Interview with older persons in Darkhan-Uul province)

Statistics of the Ministry of Labour show that 24,662 older persons or 13.5 percent of 184,732 senior individuals over age 60 are currently employed.¹⁰¹ 50.2 percent of 576 respondents engaged in the Situation Analysis of Older Women commissioned by the Ministry of Population Development and Social Protection and UNFPA are either graduates of vocational schools or universities. However, only 12,700 older persons or 4.3 percent of all aged persons in Mongolia are employed, and 31.8 percent of them provide care for their grandchildren at home.¹⁰²

The Ministry of Labour invested 658 million tugriks for senior employment promotion in 2013. As a result, 639 seniors with expertise were engaged in this program. The figure rose in

¹⁰¹ Presentation by Bayarsaikhan G, Minister of Labour at National Forum on “Implementation of Reform Policy for Development and Protection of Older Persons”, 2015

¹⁰² “Situation Analysis of Older Women”, United Nations Population Fund, the Ministry of Population Development and Social Welfare, 2015

2014 to 3302 retired experts who were engaged in consultancy services administered by local employment departments costing 984.7 million tugruks funded by Employment Promotion Fund. In 2015, the Government invested 300 million tugriks for three programs namely “Skills development and employment retention”, “Supporting cooperatives and partnerships” and “Supporting young people and graduates of vocational training institutes” engaging 1500 senior experts through consultancy.¹⁰³

The survey conducted by the National Human Rights Commission of Mongolia shows that a few of older persons are employed as guards, local volunteers, and NGO leaders, whereas majority of them assist with family and household duties. According to the new Law on Child Care Services, seniors under 65 and with competency now have opportunity to generate income through delivering such services.

Case:

“95 percent of retired people would like to work, but only 5 percent are employed as demonstrated by 2014 survey. It is important to support and promote senior employment, create a database of highly skilled seniors, and provide opportunities for them to transfer their skills to younger generation.

“Our organisation led senior experts groups in eight districts and three provinces involving 630 older persons who earned 197 million tugruks under these projects”.

(Mongolian Association of Elderly People)

It is necessary to ensure that older persons are not discriminated based on their age, gender, education and other status and it is important to create legal environment to allow seniors to work for shortened hours and to ensure equal pay for equal work.

¹⁰³ Presentation by Bayarsaikhan G, Minister of Labour at National Forum on “Implementation of Reform Policy for Development and Protection of Older Persons”, 2015

3.2.5. Health Promotion

The Parliament revised the Law on Health Insurance in 2015 updating premium rates, target groups and introducing new electronic insurance card system, and broadening scope of services to be funded from the Health Insurance Fund. As a result, the insured now can receive medical services amounting up to 1.8 million tugriks paid by the Health Insurance Fund and if the services exceed 1.8 million tugriks, there is a new opportunity now to receive medical services under health insurance plan of one of the family members once a year with the permission of that person.

It is also possible to receive discount on 84 types of therapeutic and rehabilitation appliances including surgery and prosthesis based on joint decree of Minister of Health and Sports, Minister of Finance and Minister of Population Development and Social Protection (No. 245/161/88, 26 June 2015).

Eight out of every ten older persons have some sort of ailment with most recurrent as cardiovascular diseases, kidney or urinary tract diseases, eye and related diseases, respiratory diseases, mental and behavior disorder – one person suffers from 3-4 types of diseases at the same time.¹⁰⁴

Case:

“Due to the lack of good health care for the elderly, only 18 percent of those sick in bed receive services. There is tendency among physicians to generalize diagnosis as relating to “degeneration” and “old age attribute” and to avoid detailed examination and tests resulting in complications, incurability and early death especially among men.”

(Mongolian Open Union of Elders)

¹⁰⁴ “Situation Analysis of Older Women”, United Nations Population Fund, the Ministry of Population Development and Social Welfare, 2015

The Government of Mongolia approved “National Plan of Action on Healthy Ageing and Health of Seniors” on 14 December 2013 by its Resolution 416 with objectives to promote healthy ageing and to improve quality of living of elderly through comprehensive medical care based on their specific needs and prevention of illness. The Government has planned to invest approximately 15 billion tugrugs for the Plan of Action to be implemented until 2020. However, there is no funding for training and remuneration of volunteer care providers and advocacy activities.¹⁰⁵

Countries around the globe are paying increasing attention to gerontology and geriatrics.¹⁰⁶ First gerontology units were established in Mongolia in 1972 with two doctors and one nurse eventually changing to National Gerontology Center in 2005 by the decision of the Cabinet (Resolution 209, dated 29 September, 2005). This center has 22 geriatricians and 20 specialized nurses – with 7 geriatricians and 3 nurses working in Ulaanbaatar city. There is a need to develop gerontology and geriatrics up to a new stage, and particularly it is important to improve adequacy of services, to train specialists, to equip with necessary tools and facilities, and to improve coordination among governmental and non-governmental interventions.¹⁰⁷

¹⁰⁵ Ibid

¹⁰⁶ Gerontology- the scientific study of old age, the process of ageing, and the particular problems of old people.

¹⁰⁷ Presentation by Dulmaa T., Head of the Gerontology Society, at National Forum on “Implementation of Reform Policy for Development and Protection of Older Persons”, 2015,.

CHAPTER FOUR

RIGHT TO WORK (PENITENTIARY PERSONNEL)

“The citizens of Mongolia shall be guaranteed the...right to ... favourable conditions of work, remuneration, rest...”

(Article 16.4 of the Constitution of Mongolia)

This study into the right to work of penitentiary personnel was based on the Memorandum of Understanding concluded between the National Human Rights Commission of Mongolia and General Executive Agency of Court Decision in 2014. Terms of reference of the study in 2015 covered safety and occupational health, the right to free choice of employment, favorable conditions of work, remuneration, rest guaranteed by the Constitution of Mongolia and international human rights treaties which the country joined.

According to the last three year statistics, total number of employees in General Executive Agency of Court Decision slightly rose from 2,998 in 2,013, to 3,026 in 2014 and 3,045 in 2015. There are 2,052 male and 993 female employees aged 21 to 60.¹⁰⁸ The study engaged 646 employees working in prisons (401, 405, 407, 411, 415, 421, 425, 429, and 443), pre-trial detention center (461), compulsory treatment and work center for alcohol- and drug addicts, local offices of executive agency of court decision in Arkhangai, Bayankhongor, Dornod, Dornogovi, Govi-Altai provinces.

¹⁰⁸ General Executive Agency of Court Decision Letter (02/186)14 January, 2016

4.1 Working condition

Article 23.1 of the Universal Declaration of Human Rights¹⁰⁹ states, “everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment” and Article 7(b) of International Covenant on Economic, Social and Cultural Rights¹¹⁰ enumerates “the States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular ... safe and healthy working conditions. Mongolian Labour Code (Article 5.2) states, “an employer is obligated to provide his employees with work and reasonably comfortable working conditions, to compensate such employees for their labour, and to fulfil his or her obligations under the this law, contract of employment’s, and internal labour regulations”. The Civil Service Law (Article 27.1.2) states, “civil servants shall be ensured the following guarantees ... to be provided with working conditions essential for the exercise of their official powers”.

In addition, Clause 2.2 of “Procedure for construction utility” adopted by the Government resolution 72 of 2009, states, “Owner shall abide by article 20 of the Law on Construction and shall ensure the following requirement when utilizing a construction”: 1) “ensure safe and healthy work and living conditions”, 5) “implement requirements of rules on fire safety, hygiene and health”, 7) “inform specialized inspection authority for assessment and take necessary measures in cases of serious damage for construction design and structure”.

Conditions of arrest, pre-trial detention facilities and prisons have changed to better as a result of periodic inquiries by the National Human Rights Commission and subsequent

¹⁰⁹ United Nations General Assembly, resolution 217 (AIII) has encouraged all Member States to comply with its provisions.

¹¹⁰ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with article 27

recommendations addressed to relevant bodies to follow international and national standards. Yet, it was found out by this study that workplace conditions in some facilities are poor with mold, no ventilation and not enough lighting.

Building of local office of General Executive Agency for Court Decision in Arkhangai province has been in use since 1944. It was ordered by inspector of the General Agency of Specialized Inspection to shut down this building for breach of national laws and construction standards due to poor condition of rain and snow leak, weakened ceiling and walls, clays falling off, decomposed floor sleeper which makes it vulnerable to earthquake, heavy damp which may cause communicable diseases, lack of sewage system, and danger of fire because of poor electrical construction.¹¹¹ Nonetheless, the building continues to be used after general repair in 2007, 2008, and 2013 putting risk to lives and health of those work there.

Similarly, building of local office of executive agency of court decision in Dornogovi province is in bad condition with walls rocked, rain leak, and poor sewage system. It has not been repaired since it was first built in 2006. Requests for estimated 25,234,000 tugriks for the repair were sent to headquarter in 2014 and 2015 but to no avail.

Penitentiary facility in Bayankhongor province was built in 1992 with no architectural plan and it was concluded to be in violation of standards of safe and healthy working conditions because of cracks in the building foundation and masonry, small room space with per capita area less than 2.5 meters. General Executive Agency of Court Decision Headquarter is planning to budget resources in 2016 for construction of a new prison in this province.

¹¹¹ Conclusion (30/56/57) by inspector of the State Specialized Inspection Agency of Arkhangai province. 12 May, 2010

Building of Prison 411 in Ulaanbaatar is no better. It was built in 1960s, and construction solidity is at risk. It was recommended by Ulaanbaatar City Specialised Inspection Office to have damage assessment done by specialised institution and to reconstruct the building based on proper architectural plan.¹¹²

Building of Prison 433 in Khatgal village of Khuvsgul province was built in 1958 for the purpose of culture center of timber factory and reconstructed as a prison in 1998. It was built with no architectural plan, which caused 25 degree tilt gradually, and it was repaired in 2003. Despite the repair, it is also in bad condition with mold and cracks causing heat loss. The local office of General Executive Agency for Court Decision has requested resources from the headquarter on the basis of assessment report of the local specialised inspection authority and recommendations of the National Human Rights Commission of Mongolia to improve the condition.¹¹³

Building of Prison 429 where tuberculosis communicated inmates are incarcerated used to be temporary military compartment for Soviet troops. It is also in bad condition with cracks, rain leak, and decomposed floor.

This matter is raised to the attention of the General Executive Agency of Court Decision subsequent to regular inspection by the National Human Rights Commission of Mongolia to these facilities. Unfortunately, not much has been done due to budget constraints.

4.2 Working hours and wage

Article 23 of the Universal Declaration of Human Rights states, "Everyone, without any discrimination, has the right to equal pay for equal work... Everyone who works has the right

¹¹² Conclusion (07/339/1529) by inspector of the State Specialized Inspection Agency. 9 June 2010.

¹¹³ Information provided by penitentiary facility No.433 in Khuvsgul province, 2016

to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection”, Clause (a), Article 7, International Covenant on Economic, Social, and Cultural Rights, “Remuneration which provides all workers, as a minimum, with fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work, a decent living for themselves and their families in accordance with the provisions of the present Covenant ...”, Clause (c), “Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence”, and Clause (d), “Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.” Clause 47.1 of the Labour Code states, “Remuneration shall consist of the basic salary, additional pay, extra pay, awards and bonuses”, Clause 50.1, “In addition to the basic salary, additional pay may be paid to an employee with regard to performance results”, Clause 28.2.3 of the Law on Civil Service, “as for a public service officer, remuneration shall consist of the salary of the position, extra pays for special working condition, years served in public service, ranks, and doctorate and specialization degrees.”

According to Clause 137.2 of the Law on Court Decision Enforcement besides main salary employees of penitentiary institutions are paid extra pays for working with inmates, the years served in public service, special working condition, public special service, and military and public service ranks. Extra pay for working with inmates are paid with estimation of 6-8 percent calculated from main salary depending on the security class of the penitentiary institution under Resolution 217 by the Government Cabinet of Mongolia dated 23 October 2002, extra pay for special working condition is paid with estimation of 10-20

percent of main salary under Resolution 189 by the Government Cabinet of Mongolia dated 22 June 2011, and extra pay for the years served for public special service is paid with estimation of 5-27 percent of main salary depending on the number of years under Resolution 211 of the Government Cabinet of Mongolia dated 8 December 1999.

During the inquiries and study conducted by the NHRCM there was not any complaint or issues raised by penitentiary officers on additional wages.

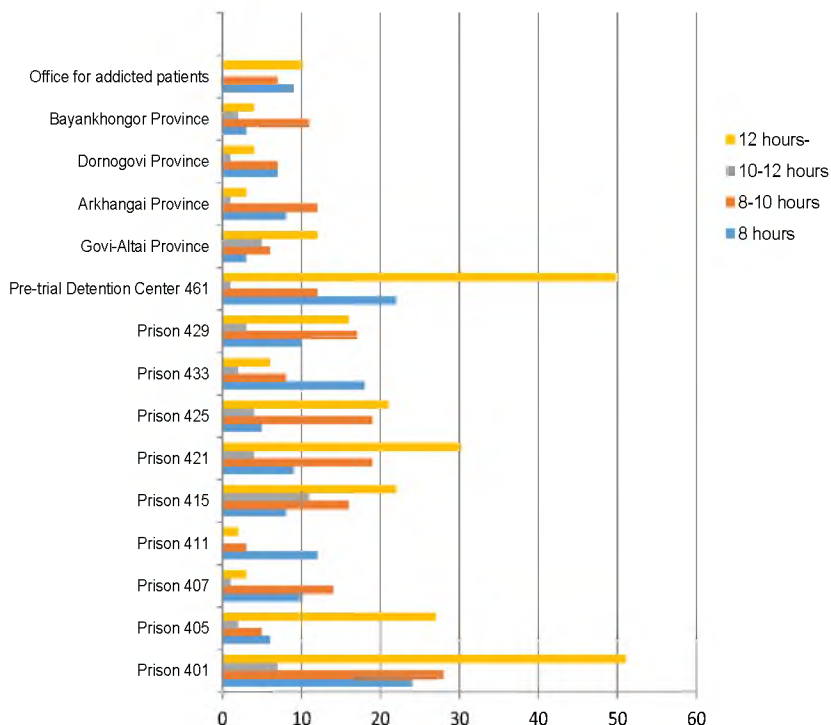
Clause 11.6 of the Law on Civil Service states, "Other issues connected with labour relation of public servant which are not regulated by this law shall be regulated by Labour Code", and Clause 70.1 of the Labour Code, "The hours of work per week shall not exceed 40 hours." Clause 70.2, "The length of a normal work day shall not exceed 8 hours.", and Clause 70.3, "The length of the uninterrupted rest period between two consecutive working days shall not be less than 12 hours."

Prisons, detention centers, and other institutions of the General Executive Agency of Court Decision follow the internal labour rules adopted as supplement to the Order A/82 by the Chief of the General Executive Agency of Court Decision dated 24 April 2013.

While administrative staff of the court decision enforcement agency work 8 hours a day and 40 hours a week, staff working by shifts such as chief officer on duty of the day, shift boss, guards at checkpoints, communication staff, nurses, outer perimeter protection officers, and CCTV officers perform 24 hour shift duties and take 2 rest days or work in 24/48 shifts. The work and rest times of these staff members working in shifts are not reflected in the aforementioned internal labour rules.

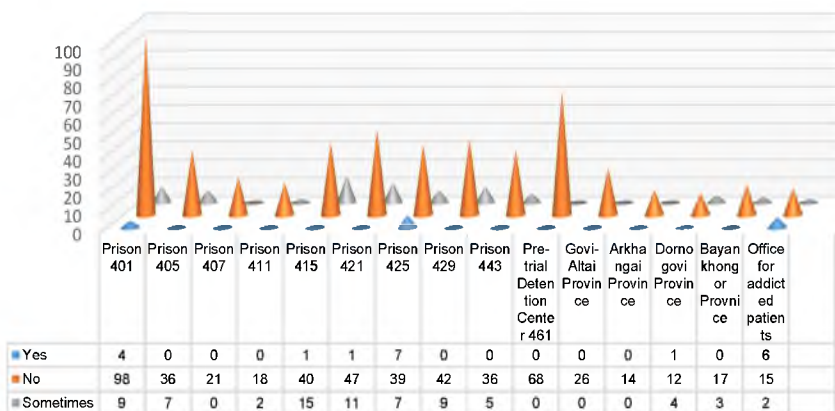
Court decision enforcement officers are supposed to work 160 hours a month and 1,920 hours a year as the Labour Code states, “The length of a normal work day shall not exceed 8 hours ...the hours of work per week shall not exceed 40 hours,” but officers in shifts who are supposed to do 24 hour on duty work 240 hours a month and 2,880 hours a year without the hours they worked such as emergency gathering, official readiness, and reinforced security.

When asked, “How many hours do you work a day?”, 22.5 percent out of total participants of the study answered, “up to 8 hours”, 28.4 percent, “8-10 hours”, and 49.1 percent, “10-12 hours and more.” This indicates majority of the employees involved in the study work overtime.

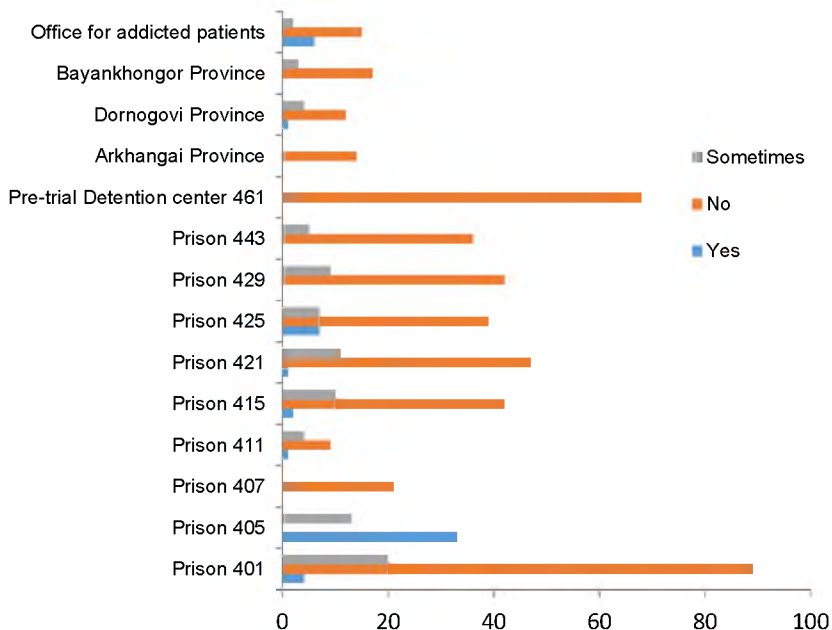


Clause 52.1 of Labour Code states, “If an employee has worked on public holidays and was not compensated with another rest day, he shall be paid double of his average remuneration”, and Clause 53.3 states, “If an employee who has worked overtime or on the week-ends has not been compensated with other rest days, he shall be paid one and half times or more of his average remuneration.”

When asked whether he/she can be paid one and half times or more of his/her average remuneration when he/she has worked overtime or on the week-ends week-ends has not been compensated with other rest days, out of total employees who were involved in the study, 2.9 percent answered, “Yes”, 70.7 percent, “No”, and 11.5 percent, “Sometimes”, while 14.9 percent did not answer.



In addition, when asked, “Are you paid double of your main salary when you have worked on public holidays and were not compensated with another rest day?” 9.8 percent answered, “Yes”, 56.1 percent, “No”, and 17 percent, “Sometimes,” while 17.1 percent did not give answer.



Therefore, not issuing the additional wages to the court decision enforcement officers for working overtime and on weekends and public holidays is violation of their right to labour.

Clause 103.1 of the Labour Code states, “Besides the rest, food and regular break, an additional break of two hours to feed and take care of a child shall be provided to a woman with a child under six months of age or to a woman with twins under one year of age; and a break of one hour to a woman with a child between the ages of six months and one year or to a woman with a child who has reached one year of age, but needs special care according to a medical conclusion,” but there are common breaches of this provision of law where the employer does not release relevant decisions.

Case:

... I work as a bailiff. I returned from maternity leave recently. Employer does not allow me to work for reduced work hours for feeding and taking care of my child and has never released a relevant order on this.

(Interview with an employee of Court Decision Implementing Agency)

Even though Clause 50.2 of Labour Code states, "... additional pay shall be calculated from the main salary and provided to an employee if the employee ... has been ... substituted for another absent employee, ... or has worked during the night or overtime...", employees of the law enforcement organisation are not paid these additional pays while they are simultaneously performing another job or position under order of their superiors.

Case:

Superiors released an order to make me simultaneously perform the job of my colleague who went on maternity leave. Thus, I am performing her job as well as my own, but I am not provided additional pay. My work load is excessive.

(Interview with an employee of Court Decision Implementing Agency)

In order to improve the employees' experience and professional skills and maintain balance of their work load, Chief of the General Executive Agency of Court Decision adopted Rules to "transfer a court decision enforcement officer to a different position" by his Order A/188 dated 18 October 2013. Clause 2.7, which states, "Decision of transfer to an alternative position shall be notified to the employee no less than 21 days in advance" was repealed by Order A/08 of Chief of the General Executive Agency of Court Decision dated 21 January 2015 on the pretext that this provision does not meet with the principles of operational readiness and rapid response.

Employees of the court decision enforcement organisation either have not been informed that the relevant provision of it was repealed, so the General Executive Agency of Court Decision issued a guidance to administrators of prisons and detention centers and chiefs of its branch offices and units through its official letter 2a/3039 dated 11 August 2015.

Clause 2.1 of the Rules states, “An employee of court decision enforcement organisation shall be transferred to a different position for up to 2-3 years under the following procedure”, and Clause 4.2, “Disobeying the decision released by Chief of the General Executive Agency of Court Decision to transfer an employee to a different position shall be a ground to take disciplinary measure against him.”

Transferring an employee of the court decision enforcement organisation to a different position without giving advanced notice is a breach of Clause 22.1 of the Law on Civil Service, which states, “based on the necessary and requirement of work, civil servant can be transferred from a government organisation to another government organisation to work in an alternative position on the basis of agreement with him.”

In addition, during private and focus group interviews with the employees involved in the study a number of complaints and requests were raised by the employees with regard to “Rules to transfer a court decision enforcement officer to a different position.”

Thus, “Rules to transfer a court decision enforcement officer to a different position,” which was adopted by Order A/188 of Chief of the General Executive Agency of Court Decision dated 18 October, should be amended to prohibit transferring an employee of the court decision enforcement organisation to an alternative position without giving him advanced notice unless

he/she is to be transferred in extraordinary situation such as unrest and disorder.

4.3 Uniform supply

Clause 15.1 of Law on Labour Safety and Hygiene states, “An employer shall have responsibility to provide employees by special garments and protective equipment which fit their working conditions and work performance nature at free of charge”, Clause 15.2, “An employer shall bear expenses related to testing, purchasing, storing, cleaning, repairing and disinfecting of special garments and protective equipment”, and Clause 135.2 of Law on Court Decision Enforcement, “An employee of court decision enforcement organisation shall have military rank and uniform.”

There are a number of employees wearing worn out, withered uniforms as uniform supply has not been sufficiently made in the prisons and offices involved in the study.

As clothes and gears of commissioned and non-commissioned officers are regulated in Annex 2 of the Government Resolution 279 dated 21 September 2011 on “Adopting the difference of norms, colour, and material of military uniforms and gear”, standard life time of service tunic and pants (with shoulder-straps and unit insignia), and service shirt (with long and short sleeves and shoulder-straps) are stipulated to be 2 years, that of half boots and winter boots to be 3 years, and that of summer boots to be a year. However, clothes supply is not made as stated in this provision.

Thus, if during the course of usage clothes of the employees get worn out and withered, they have to buy out of their own pockets.

Case:

While standard life time of our every day service uniforms expired, the uniform supply is not made in time. As the clothing and boots are made from very poor quality material, they are worn down and withered before their life time expires, so it always needs changing. Thus, we get new uniforms made by “Burte” military uniform dress factory with our salaries or buy them from Narantuul market.

(Interview with an employee of Court Decision Implementing Agency)

4.4 Special means

Paragprah 2 of UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials states, “Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms... For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.”

Article 139 of Law on Court Decision Enforcement states, “A bailiff shall use guns with rubber and plastic bullets and teargas.” However, bailiffs don’t have special means, and even though they were issued body cameras as supply in 2013, they were withdrawn because they didn’t fit the requirement of usage in 2014.

As stated in the aforementioned law officers of penitentiary institutions have right to use special means such as handcuffs, legcuffs, thumbcuffs, straitjackets, rubber and stunt batons, teargas, asphyxiant gas guns, and guns with rubber and plastic bullets an to bear issued firearms and special means only when they are on line of duty.

According to the study and inquiries conducted by the Commission, special means are not sufficient for per employee of court decision enforcement organisation, expired, and outdated. For example, the Court Decision Enforcement Office in Dornogovi province uses stunt batons issued for official use in 2010 for (bad quality and broken), hand cuffs issued in 2009 (bad quality and broken), and rubber batons

Case:

... We are working without any supply even though we are public special servants who took an oath for the state. We have no or very limited resource of special means which expired their lifetime. That's why it causes troubles when we conduct our duties.

(Focus group interview with employees)

As Clause 8.3 of Rules of security of penitentiary institutions and oversight of inmates adopted as an annex of Order 51 of the Minister of Justice and Home Affairs of Mongolia dated 22 February 2008 states, Chief officer on duty “shall receive and keep documents and maintains, firearms, and special means in special iron safe and bear its key,” a certain number of special means used in the penitentiary institutions and offices are kept in the security safe of the checkpoint.

As quality, accessibility, and maintenance of special means and rules of when and how to use them are not clarified, there is a situation where staff members of the penitentiary institution could be assaulted and special means can not be used to suppress emergency state when there a riot breaks out in the inmates' living and industry zone.

Withered, expired, and outdated state of special means of court decision enforcement officers and their insufficient number could pose risks for their life and health and cause negative impacts in their work, so it is necessary to take relevant

measures to provide every staff member with personal set of special means.

4.5 Health care issue

The paragraph 6 of the Article 16 of Mongolian Constitution states that every citizen of Mongolia has a “Right to the protection of health and to medical care. The procedure and conditions of free medical aid shall be defined by law”. Law of Mongolia on occupational safety and health states, “An employer shall arrange for employees to receive preliminary and scheduled medical check-up necessary for and related to their work performance in production, performance, and service in accordance with procedures promulgated by the state central administrative body on charge of health issues”.

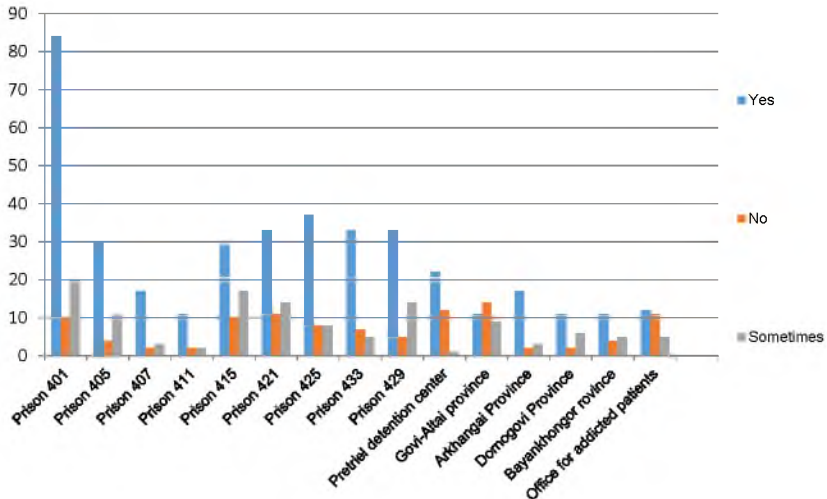
The budget of court decision enforcement office does not include the medical pre- and long-term check-up and diagnosis of its officials.

Case:

... There is no case when the stated officials were medically checked-up, diagnosed, or tested by the state budget. However, once a year and by officials initiative themselves, they ask the medical institutions to get the preventive medical check-up at discount cost.

(From monitoring and survey information of court decision enforcement unit)

The survey results to the question “Does your organisation include you in the annual preventive medical examination” states that 62 percent say “yes”, 16 percent say “no”, and 22 percent answered “sometimes”.



Although the survey results show that the majority of the participants answered that they get involved in the organisation managed preventive medical examination the individual and group interview survey shows that some province’s Court Decision Enforcement units sign contracts with medical units and get 20 to 35 thousand tugriks paid to undergo medical check-up.

The authorities explain this situation by absence of approved budget for medical examination and diagnosis of its officials.

4.6 Training

Clause 27.1.9 of Civil Service Law states “continuation of study, qualification enhancement by state budget and receiving the salary during that time”, the Annex of Order A/128 by Chief of the General Execution Agency for Court Decision dated 4 July 2013 approved the Human Resource guidance for Court Decision Enforcement stating, “the official must participate in the training session at least once every two year”. Although such legislation exists, there are plenty of violations where officials cannot take a time-off to study, to enhance their qualification, and

participate in training sessions, and officials cannot rest on their holiday in case they are studying.

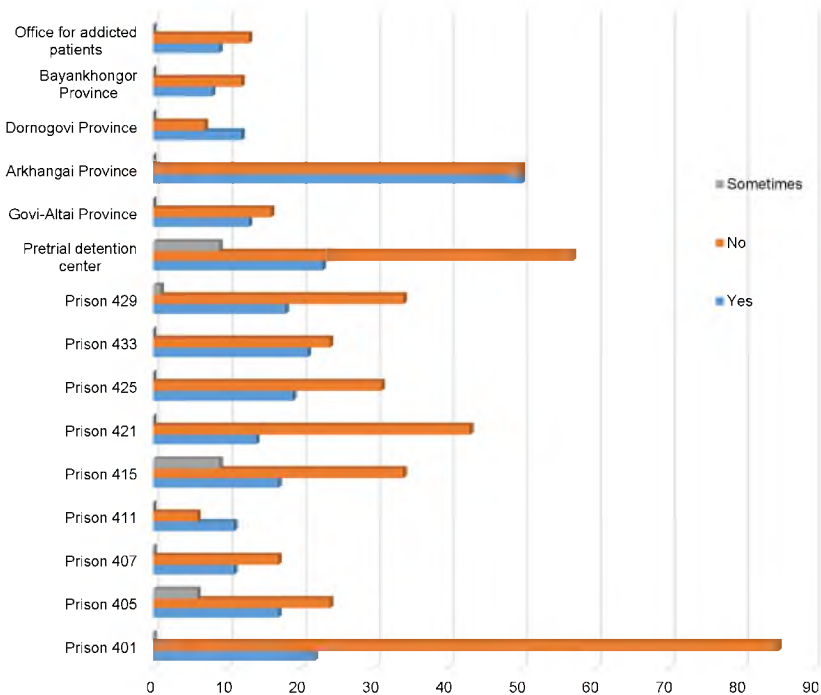
Case:

... I study in Law Enforcement University, and the superiors did not give an opportunity to rest on my 2015 holiday with the reason that I am studying. In general, the officials do not have an opportunity to take a time-off to study other than Law enforcement University.

(from interview with an official during the inquiry)

With the reason that officials are studying and not being able to have their annual leave violates the Labour Law Article 79 paragraph 79.1 where it states “An employee shall be entitled to an annual vacation. An employee who has not taken his or her annual vacation due to an unavoidable work need may be paid a monetary remuneration instead. The procedure for paying compensation shall be governed by the collective agreement or by employer’s decision in case there is no collective agreement”.

When asked, “Have you been involved in the qualification enhancement trainings in the last 3 years?” 35.8% of the participants answered “yes”, 58.9% said “no” and 5.7% stated “sometimes”. The questionnaire results shows that the majority of the officials do not take qualification enhancement courses that are related to their position.



Analysis the results of inquiry and research, the following recommendations are given the Court Decision Enforcement Organisation to ensure the labour rights of its officials.

- Approve the budget to improve the working conditions in some of court decision enforcement units (office rooms, prisons, detention centers, office of compulsory treatment and forced labour for alcohol and drug addicts);
- Approve the budget for additional salary for court decision enforcement organisation's officials in overtime, weekend and holiday work times;
- Supply the seasonal uniforms of court decision enforcement organisation's officials within the timeframe and improve the uniform and shoes' quality;

- Ensure the safety of court decision enforcement organisation's officials by providing each one of them with special means and renew the current ones;
- Include and approve the budget for annual medical examination and diagnosis costs for court decision enforcement organisation's officials
- The regulation that transfers an official of the court decision enforcement organisation to an alternative position without prior notice does not meet legitimate interests and violates national legislation. Therefore, include an amendment for the "Procedure on rotational working hours of court decision enforcement officials", which was approved by an order no.A/188 by the Chief of the General Execution Agency for Court Decision on 18 October 2013. The amendment should state, "In cases other than emergency situations such as unrest and disorder in prisons and detention facilities, it is prohibited to transfer an official of the court decision enforcement organisation to an alternative position".

PROPOSALS DELIVERED TO THE STATE GREAT KHURAL BY THE NATIONAL HUMAN RIGHTS COMMISSION OF MONGOLIA

One. The right to be free from torture:

- 1.1 Remove the “forced labour” from Law on administrative procedure for compulsory treatment and labour of alcohol and drug abuser, conform it to the convention no.105 Elimination of forced Labour, 29 convention on forced labour of International Labour Organisation, and transfer the administrative department for forced treatment and labour of alcohol and drug addicts from affiliation of General Execution Agency for Court Decision to the state central administrative body in charge of health issues.
- 1.2 Establish the nursing houses for mentally ill people within the year of 2016 that was respectively proposed and recommended by the Mongolia National Human Rights Commission’s Rights and Freedom of Mongolian citizen”’s 7th report 2008, 11th report 2012, 12th report 2013, 13th report 2014, 14 report 2015; in accordance with relevant legislation improve the living condition of mentally ill and impaired children’s orphanage in National Mental Health Center, and solve the financial resources required to provide them with their appropriate and special needs.
- 1.3 Make prompt decision on moving into building with relevant standard or build new shelters for victims of domestic violence condition that are affiliated to the Department for preventing domestic violence and crimes against children Metropolitan police.
- 1.4 Add “no record of human’s rights violation” in specification in the promotion and rank enhancement for Court Decision Enforcement Organisation’s officials.

- 1.5 Conform the prisoners labour, standards and salary evaluation to the convention, provide non-discriminatory and adequate wage for prisoners in line with procedure that was approved by Government Members in charge of legal affairs and labour issues;
- 1.6 Provide prisoners with medical security, help, and service disregarding place and regime of their imprisonment by supplying the prison medical facility with qualified human resource, medicine, equipment and tools;

Two. The right of suspects, accused, and defendants who are detained in pre-trial detention to legal assistance:

- 2.1 Increase competence of advocates in criminal proceedings and ensure that advocate be one of the equal parties of debate by integrating necessary regulations in new draft Criminal Procedure Code such as guaranteeing that an advocate shall be present whenever his client gives testimony and statement, present a new evidence at every stage of criminal proceedings, and have it included in the case file, be present at every interrogation or questioning, call a witness who is considered to be important for the case, and that an investigator, prosecutor, and judge shall examine and handle the requests of an advocate, and that evidences newly presented by advocate shall be assessed at court;
- 2.2 Integrate universal regulation on total period a defendant shall be detained in pre-trial detention in Criminal Procedure Code in compliance with international human rights norms and principles;
- 2.3 Study and decide the issues to increase the number of public advocates and their accessibilities, and especially current structure and activities of Legal Aid Centers;

- 2.4 Ensure that pre-trial detention houses under court decision enforcement organisation enable advocates to see their clients without disturbances and restriction within the scope of human rights norms and standards;

Three. Rights of older persons

- 3.1 Amend the current Law on Social Protection of Older Persons as to ensure participation of older persons in society, and to strengthen duties of their legal guardians;
- 3.2 Improve institutional care conditions according to relevant standards;
- 3.3 Develop gerontology and geriatrics up to a new stage: improve adequacy of services and train specialists in order to improve quality and accessibility of health services for older persons;
- 3.4. Revise the current Law on Exoneration of Political Victims and Compensation as to create better legal framework for compensation to their children.

Four. Occupational rights of the court decision enforcement organisation's officials:

- 4.1 In order to ensure the safety of court decision enforcement organisation's officials provide each one of them with full set of special means and renew the current ones;
- 4.2 Include and approve the annual medical examination and diagnosis cost of the court decision enforcement organisation's officials in the budget;

- 4.3 The regulation that transfers an official of the Court Decision Enforcement Organisation to an alternative position without prior notice does not meet legitimate interests and violates national legislation. Therefore, include an amendment for the “Procedure on rotational working hours of Court Decision Enforcement unit officials”, which was approved by an order no.A/188 by the Chief of the General Execution Agency for Court Decision on 18 October 2013. The amendment should state, “In cases other than emergency situations such as unrest and disorder in prisons and detention facilities, it is prohibited to transfer an official of the Court Decision Enforcement Organisation to an alternative position”.

