

# £MONGOLIA

## @Continuing legislative reform

### Introduction

Significant political changes in the then Mongolian People's Republic began in 1990. The recent fall of communist regimes in Eastern Europe inspired an upsurge of public political activity in Mongolia. Between December 1989 and April 1990 newly-formed opposition groups staged a series of peaceful demonstrations in the capital, Ulan Bator, calling for economic and political reform, including the introduction of a multi-party system. In March 1990 Mongolia's parliament, the People's Great Hural, abolished the constitutional guarantee of the leading role in society and the state of the Mongolian People's Revolutionary Party, which had held power as the sole legal political party since the proclamation of the People's Republic in 1924. In May 1990 the People's Great Hural approved a law on political parties and amendments to the electoral law which entrenched a multi-party political system. This was followed by elections in July 1990 to the People's Great Hural and to a newly created standing legislature, the Small Hural.

A new Constitution, Mongolia's fourth, entered into force on 12 February 1992. Further significant legislative revision has awaited the adoption of the new Constitution and the election at the end of June 1992 of a new People's Great Hural (the new Constitution abolished the Small Hural). Continuing legislative reform is expected to include adoption of a new criminal code, which is currently in preparation. The current criminal code dates from 1961 (as amended in 1986); the current code of criminal procedure entered into force in 1964.

In August 1991 Amnesty International submitted, at the invitation of the Mongolian Government, a memorandum to the Small Hural concerning human rights provisions in a draft of the Constitution which had recently been published in Mongolia for public comment. Representatives of Amnesty International travelled to Ulan Bator in September 1991 to participate in an international conference on the draft Constitution organized by the Mongolian Parliamentary Union. The final text of the Constitution, as adopted by the People's Great Hural in January 1992, incorporates provisions which include many of the principles contained in international standards, as advocated by Amnesty International and other participants in the international conference.

Amnesty International is a worldwide voluntary movement that works to protect certain fundamental human rights. It works for the release of all prisoners of conscience - those persons detained anywhere for their beliefs or because of their ethnic origin, sex, colour or language who have not used or advocated violence; fair and prompt trials for political prisoners; the abolition of the death penalty, torture and other cruel, inhuman or degrading treatment of prisoners; and an end to extrajudicial executions and "disappearances". Amnesty International

bases its work on the principal foundations of international human rights law - the Universal Declaration of Human Rights and other international standards which have developed from the provisions enshrined in the Universal Declaration, including, in particular, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture).

This paper details issues of concern about which Amnesty International continues to address the Mongolian authorities. It includes information provided to the Amnesty International delegation which visited Mongolia in September 1991 during meetings with Ministers and other senior government and judiciary officials. The paper also looks at a number of provisions in the final text of the new Constitution, and makes recommendations for the reform of subordinate legislation or for possible future amendment of the Constitution.

## **Amnesty International's outstanding concerns in Mongolia**

### ***The death penalty***

Under the 1961 penal code (as amended in 1986), Mongolia retains the death penalty for eight offences: treason; espionage; political murder; political murder of a representative of a foreign state; wrecking; premeditated murder under aggravating circumstances; rape by an especially dangerous recidivist resulting in loss of life or grievous bodily harm, or the rape of a minor; and attempted murder of a militia worker [police officer] or militia volunteer. These provisions would permit the death penalty in a number of cases where the offence did not involve loss of life. The death penalty is not applied to women, nor to men aged under 18 or aged 60 and over. Execution is by shooting.

At a meeting with the Amnesty International delegation which visited Mongolia in September 1991 the Justice Minister explained the process for hearing appeals against a death sentence and for considering clemency petitions. He stated that everyone sentenced to death has a right of appeal to a higher court. After a sentence has been imposed by a court of first instance (provincial, city or special courts<sup>1</sup>), the defendant has 10 days in which to appeal to the Supreme Court. If the sentence is upheld, the defendant then has 10 days in which to submit a petition for clemency to the President (prior to the election of Mongolia's first President in September 1990, following creation of this office by constitutional amendment, clemency petitions were considered by the Presidium of the People's Great Hural). Amnesty International considers that these periods are too short to permit the defendant effectively to prepare, in a

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<sup>1</sup> Special courts are defined under the 1978 Law on Judicial Procedure (Article 42) as courts set up in the army, border or internal troops or railways.

case where life is at stake, an appeal or a clemency petition. Death sentences may be commuted to 20 years' imprisonment (the maximum prison term). It is also possible for clemency to be granted by the President as part of general amnesties on special state occasions (the last such being the 70th anniversary of Mongolia's revolution in July 1991).

Detailed statistics for the use of the death penalty in Mongolia from 1980 to the end of June 1991 were made available to the Amnesty International delegation by the State General Procurator. These indicated that between 1980 and 1990, 171 people were sentenced to death, of whom 118 were executed. The number of executions peaked at 22 in 1985, declining to five in 1990. The State General Procurator informed Amnesty International in March 1992 that a total of 10 executions were carried out in the whole of 1991. This reversal of the downward trend of the previous five years was officially attributed to a sharply increased crime rate connected with serious problems in the national economic situation.

The new Constitution in Article 16(1) restricts the guarantee of the right to life by stating that "deprivation of human life shall be prohibited unless capital punishment is imposed by due judgment of a court for the most serious crimes constituted by Mongolian penal law". Amnesty International in its August 1991 memorandum urged that the new Mongolian Constitution include a declaration that the death penalty will never be allowed, and the organization continues to call upon the Mongolian authorities to abolish the death penalty by amendment to the Constitution, or by omitting capital penalties from the new criminal code which is due for adoption in 1992. It calls on the authorities to at least reduce the scope of the death penalty as a step towards total abolition, and to impose a moratorium on death sentences and executions pending a review of this punishment. If Mongolia is not yet ready to abolish the death penalty, it should ensure that all legal proceedings in which a death penalty could be imposed conform to international minimum standards including those set forth in the ICCPR, the United Nations Economic and Social Council (ECOSOC) Safeguards guaranteeing protection of the rights of those facing the death penalty, annexed to Resolution 1984/50 of 25 May 1984, and ECOSOC Resolution 1989/64 of 24 May 1989 implementing those Safeguards.

### ***Conscientious objection to military service***

Under Article 17(1)(4) of the Constitution it is the duty of citizens of Mongolia to serve in the armed forces "according to law". Under a new law on military service and the rights of servicemen adopted by the Small Hural in May 1992 compulsory military service in Mongolia is for one year (reduced from two years) for men between the ages of 18 and 25. Students at universities, colleges and vocational schools are exempted from compulsory military service, as are men who are bread-winners within their families or who have two or more children.

From the information about the new law currently available to Amnesty International it is not clear whether it makes legal provision for alternative civilian service for those who, for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical, political or similar motives, refuse to perform armed service or to participate directly or indirectly in wars or armed conflicts. Previously the penal code made evasion of regular call-up to military service a criminal offence with a sentence of up to five years' imprisonment. Government officials told Amnesty International in September 1991 that the draft of the law on military service allowed a conscript to refuse to serve on religious grounds, or by virtue of working as a herdsman, but he would then be obliged to pay (or his religious organization or employer on his behalf) one year's salary and expenses of a soldier. Payments could be spread over a period of up to 10 years. No provision was envisaged for civilian alternative service.

While Amnesty International takes no position on the right of states to call up their citizens to perform military service, it supports the right of citizens to conscientiously object to performing armed service and any other direct or indirect participation in wars or armed conflicts, on the grounds enumerated in the paragraph above. Conscientious objectors have the right to perform, instead of such service, an alternative service of a purely civilian character under civilian control, the length of which is not punitive in nature. Conscientious objection to military service is a legitimate exercise of the right to freedom of thought, conscience and religion as guaranteed under Article 18 of the ICCPR. Conscientious objection was recognized as a legitimate exercise of this wider right by the UN Commission on Human Rights in its Resolution 1989/59 (on Conscientious Objection to Military Service), which recommended to "States with a system of compulsory military service, where such provision has not already been made, that they introduce for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection and that they refrain from subjecting such persons to imprisonment". It emphasized that "such forms of alternative service should be in principle of a non-combatant or civilian character, in the public interest and not of a punitive nature".

Amnesty International believes that those who are detained or imprisoned for exercising their right to conscientious objection are prisoners of conscience and calls for their unconditional release. In letters to the Ministers of Defence and Justice in August 1991, in its memorandum

on the draft Constitution, and in meetings with officials during the organization's first visit to Mongolia, Amnesty International consistently urged the introduction of a civilian alternative service, of non-punitive length, for conscientious objectors to military service. The organization has no information about any person currently detained in Mongolia for refusing compulsory military service on grounds of conscience.

## **Human rights in the Constitution - a survey of selected articles**

The purpose of the memorandum submitted by Amnesty International to the Small Hural in August 1991 was to offer to those responsible for producing the final draft of the Constitution observations about certain proposed provisions which had implications for the protection of those rights and freedoms falling within Amnesty International's mandate, and to make recommendations on the basis of Amnesty International's experience in this field. Amnesty International welcomes the inclusion in the final text of the Constitution of human rights guarantees found in the principal human rights instruments. Based on a survey of the constitutional articles enshrining human rights, however, Amnesty International recommends that the additional safeguards outlined below should also be firmly entrenched in the Mongolian Criminal Code, the Code of Criminal Procedure or other legislation.

### ***Restrictions on, and derogations from, fundamental rights and freedoms***

In many national constitutions certain rights and freedoms are subject to limited restrictions prescribed by law. Some constitutions, however, give wide scope for subordinate legislation or executive organs of government to restrict the rights and freedoms they guarantee to an extent inconsistent with internationally recognized human rights standards. The ICCPR admits restrictions only with respect to certain specified rights and strictly limits such restrictions. Amnesty International considers that the rights enumerated in national constitutions should not be restricted except to the extent permissible under such international standards.

Article 25(1)(18) of the Mongolian Constitution provides for the introduction of a state of emergency in the whole or in part of the country. The circumstances in which emergency measures may be introduced are specified in Article 25(2) as (i) natural disaster or "other unforeseen dangers which have threatened or might threaten directly the life, health, well-being and security of the population"; or (ii) "state authorities are not able to settle within legal limits public upheaval caused by organized, violent, illegal activities of any organizations or a group of people threatening the order established by the Constitution [and] legal system, or the survival of society". Article 19(2) of the Constitution suggests that these emergency measures may suspend or derogate from fundamental rights and freedoms guaranteed by the Constitution and/or international human rights treaties to which Mongolia is a party.

In light of the seriousness of imposing emergency measures which may derogate from fundamental rights and freedoms which citizens would otherwise enjoy, Amnesty International considers that Mongolian legislation governing the introduction of emergency measures should expressly state the limits on the extent to which the emergency measures may derogate from such rights. Article 4 of the ICCPR is clear in stating that such derogations must be only "to the extent strictly required by the exigencies of the situation". The Human Rights Committee, the body of experts which monitors implementation of the ICCPR, has stated in General Comment 5(13) that the measures must be "of an exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened, and that in times of emergency the protection of human rights becomes all the more important, particularly those rights from which no derogations can be made". Furthermore, Amnesty International takes the view that the measures must be proportionate to, and strictly demanded by, the threat that is being faced. Article 4 of the ICCPR also provides that such measures must not be inconsistent with the State's other obligations under international law and must not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

### ***The prohibition against torture and cruel, inhuman or degrading treatment or punishment***

Amnesty International welcomes the explicit prohibition of torture and cruel, inhuman or degrading treatment contained in Article 16(13) of the Constitution. In order to eradicate torture and other forms of ill-treatment, however, it is not sufficient to prohibit such treatment. It is necessary to construct a machinery of control which provides durable and effective protection against such treatment. Amnesty International considers that the first step in this process is to provide strong legislative safeguards. Based on the provisions of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Amnesty International recommends that Mongolian legislation include the following minimum safeguards against torture and other forms of ill-treatment:

- ! prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture or other form of ill-treatment has been committed;
- ! criminal penalties for those responsible for acts of torture or other forms of ill-treatment, the offences being punishable by appropriate penalties which take into account their grave nature; and
- ! redress for the victims and an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible.

Furthermore, while welcoming the statement in Article 16(14) of the Constitution that "compulsion [of a Mongolian citizen] to testify against himself/herself shall be prohibited",

Amnesty International considers it essential that Mongolian legislation should provide, in conformity with Article 15 of the Convention against Torture, that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings (except against a person accused of using torture, as evidence that the statement had been made).

Amnesty International has urged the Government of Mongolia to consider as a matter of priority ratification or accession to the Convention against Torture. It also calls upon the Mongolian Government to make the declaration in Article 21 of the Convention recognizing the competence of the Committee against Torture to receive and consider complaints by one State Party against another concerning non-fulfilment of obligations under the Convention, and the declaration in Article 22 recognizing the competence of the Committee to receive and consider communications from or on behalf of individuals who claim to be victims of a violation of the provisions of the Convention.

### ***Safeguards for those deprived of their liberty***

In its memorandum of August 1991 Amnesty International urged that provisions in the new Constitution concerning persons deprived of their liberty should not provide less protection than those recognized in international standards, and that the Constitution should explicitly include the minimum safeguards recognized in Article 9 of the ICCPR.

Amnesty International welcomes the guarantee of the right to personal security in Article 16(13) of the new Constitution, and the statement that no one may be searched, arrested, detained, persecuted or deprived of their liberty "except in accordance with procedure and grounds defined by law". Amnesty International notes also Article 16(14), guaranteeing to a Mongolian citizen the right "to approach a court to protect his/her rights if he/she considers that rights or freedoms defined by Mongolian law or international treaty have been violated". Amnesty International considers it essential that these articles be interpreted by Mongolian courts as including all of the rights recognized in Article 9(3) and 9(4) of the ICCPR. These enshrine the principle of *habeas corpus*, which Amnesty International has found to be an essential protection against arbitrary detention.

Article 16(13) of the Constitution provides that "where a person is arrested for committing a crime he/she, his/her family and counsel shall be notified within a period of time established by law of reasons for and grounds of the arrest". Amnesty International recommends that where this is elaborated in the Mongolian Code of Criminal Procedure, the Code should be made consistent with Article 9(2) of the ICCPR, which requires that "anyone who is arrested shall be

informed, *at the time of arrest*, of the reasons for their arrest, and shall be informed promptly of any charges against them".<sup>2</sup>

Furthermore, Amnesty International considers that the Code of Criminal Procedure should provide that anyone who is arrested or detained on a criminal charge shall have the right promptly after arrest and in the course of detention to be visited by relatives, lawyers of their choice and doctors of their choice, and that all detainees should be informed of these rights (see Principles 15, 17, 18 19, 24 and 25 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>3</sup>; Rule 92 of the UN Standard Minimum Rules for the Treatment of Prisoners<sup>4</sup>; Principles 5 and 7 of the UN Basic Principles on the Role of Lawyers<sup>5</sup>). Ensuring that detainees are not held in incommunicado detention can be an important safeguard against abuses of human rights, including torture.

### ***Seeking redress for alleged violations of guaranteed rights***

In addition to rights of access to a court, Amnesty International continues to recommend that provision should be made in the Mongolian Constitution giving citizens who claim that their rights or freedoms granted by the Constitution or other legislation have been violated by state bodies the right to seek redress from an independent and competent authority according to procedures prescribed by law.

Some constitutions provide for the establishment of an Ombudsman who is independent of the government and whose method of appointment, powers and functions are outlined in the Constitution. The duties of the Ombudsman would normally include the power to investigate alleged or apparent instances of violations of fundamental rights and freedoms, abuse of power, unlawful, oppressive or unfair treatment of citizens by government officials, and to assist victims of such violations, abuse or unfair treatment to obtain redress. To ensure the protection of those detained or imprisoned, an Ombudsman should be empowered to gain access at any time, without prior notice, to any place of confinement. An Ombudsman should also have the power to take appropriate action to call for the remedying, correction and reversal of abuses including bringing proceedings in a competent court and making recommendations to the appropriate

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<sup>2</sup> Italics added

<sup>3</sup> Adopted by the UN General Assembly without a vote, Resolution 43/173, 9 December 1988.

<sup>4</sup> Adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1955, approved by ECOSOC resolutions 663 C (XXIV) and 2076 (LXII).

<sup>5</sup> Adopted by consensus by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders on 7 September 1990 and welcomed by the UN General Assembly on 14 December 1990.

authorities for the reform of legislation or existing practices. The advantage of providing for an independent Ombudsman or similar body under the Constitution rather than in subsidiary legislation is that it establishes, as a fundamental principle of law, that anyone may obtain assistance from an independent institution, in seeking restitution of fundamental rights and redress of grievances. A constitutional provision for an independent Ombudsman which also outlines his or her duties and powers would help to ensure that the Ombudsman is, and is seen to be, impartial and independent of the government responsible for his or her appointment.

### ***Legal status of aliens***

Aliens in Mongolia should have full equality before the courts and should enjoy protection of fundamental rights. Amnesty International is concerned about the implications for the rights of aliens of the statement in Article 14(1) of the Constitution that "all persons lawfully residing in Mongolia are equal before law and court". The ICCPR makes no distinction between persons on the ground of lawful or unlawful residence for most of the fundamental guarantees recognized in that treaty. For example, a person who is detained and found to be unlawfully in Mongolia should be guaranteed equal rights to challenge that detention, in accordance with Article 9(4) of the ICCPR, as well as the right to fair trial recognized in Article 14 of the ICCPR and a right to a fair hearing in expulsion proceedings.

Amnesty International is also concerned about the statement in Article 18(1) of the Constitution that the "rights and duties of aliens residing in Mongolia shall be regulated by Mongolian law and treaties concluded with the state of the person concerned". The rights enumerated in those treaties may fall short of the rights to which the person is entitled under international instruments, including the ICCPR. Furthermore, Article 18(5) of the Constitution grants to "foreigners and stateless persons residing in Mongolia" the basic rights and freedoms set out in Article 16 of the Constitution, but allows that where these are not "inalienable rights enshrined in the international conventions to which Mongolia is party" they may be subject to limitation by the State.

Amnesty International urges that Mongolian legislation should specify the limitations to which the rights of aliens in Mongolia may be subject. Those limitations should not extend beyond those recognized in international standards, and should be in accordance with the principles outlined in the Human Rights Committee's General Comment 15(27) on the position of aliens.

### ***The right to fair trial***

Amnesty International welcomes the provisions in Article 16(14) of the Constitution concerning the right to fair trial, and the reaffirmation in Article 55 of the right to a defence and to legal assistance. Amnesty International considers it essential that these provisions be interpreted consistently with relevant provisions of the ICCPR and other international standards.

Amnesty International also welcomes the statement in Article 54 of the Constitution that "proceedings in the courts shall be open to the public except in cases specifically prescribed by law". However, while it is important that trials are held *in camera* only when specifically authorized by legislation, it is equally important to note that trials should only be held *in camera* in exceptional and limited circumstances, because public trials are an important guarantee of fair and impartial trials. Such limited situations where the public may be excluded are defined in Article 14(1) of the ICCPR. Similar principles apply to court judgments, which Article 14(1) of the ICCPR states are required to be made public except where the interest of juvenile persons otherwise requires, or the proceedings concern matrimonial disputes or the guardianship of children.

### ***Freedom of expression***

Article 16(1) of the Constitution guarantees "free expression of opinion, speech and press". However, it goes on to state that "procedures for publication . . . shall be defined by law". Amnesty International urges that any restrictions placed on the exercise of these rights should go no further than those set out in Article 19(3) of the ICCPR. This states that restrictions on the right to freedom of expression may "only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others" or "(b) For the protection of national security or of public order, or of public health or morals".

### ***Freedom of assembly***

Article 16(16) of the Constitution provides the right to peaceful demonstration and meetings. However, it restricts that right by stating that "procedures for . . . demonstration and assembly shall be defined by law". Amnesty International urges that any restrictions on this right not exceed those permitted in Article 21 of the ICCPR, which states that restrictions may only be imposed "which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals and the protection of the rights and freedoms of others".

### ***Freedom of association***

While welcoming the statement in Article 16(10) of the right to form parties or other public organizations, Amnesty International is concerned about the scope of the provision in that article that "all parties [and] public organizations shall uphold public or state security". Amnesty International urges that nothing in Article 16(10) be interpreted inconsistently with Article 22(2) of the ICCPR, which states that no restrictions may be placed on the right to freedom of association "other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals and the protection of the rights and freedoms of others".

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## Appendix - The Constitution of Mongolia (extracts)<sup>6</sup>

### CHAPTER TWO Human rights and freedoms

#### Article 14

1. All persons lawfully residing in Mongolia are equal before law and court.
2. No person shall be discriminated against on the basis of ethnic origin, language, race, age, sex, social origin and status, property, occupation, title, religion, conviction, education. Everyone shall have the right to act as a legal person.

#### Article 15

1. The grounds and procedure for nationality, acquisition or loss of citizenship shall be defined only by law.
2. Deprivation of citizenship, expulsion and extradition of citizens of Mongolia shall be prohibited.

#### Article 16

The citizens of Mongolia shall be guaranteed to enjoy the following rights and freedoms:

1. Right to life. Deprivation of human life shall be prohibited unless capital punishment is imposed by due judgment of court for the most serious crimes constituted by Mongolian penal law.
2. Right to healthy, safe environment, right to be free from environmental pollution, ecological imbalance.
3. Right to fair acquisition, possession and inheritance of moveable or immoveable property. Illegal confiscation of private property of a citizen shall be prohibited. The State and its bodies may appropriate private property if needs of the society so require and they shall compensate it duly.
4. Right to work, rest, freely choose occupation, earn remuneration commensurate with the work performed, adequate labour conditions and running of individual business. No person shall be forced to work illegally.

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<sup>6</sup> From an unofficial translation produced in Mongolia and obtained by Amnesty International in May 1992.

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5. Right to material and monetary assistance in old age, in cases of disability, birth and care of child and in other circumstances provided by law.

6. Right to protection of health and medical care. The procedure and conditions of free medical aid shall be defined by law.

7. Right to education. The State shall provide basic general education free. Citizens may establish and run private schools if they meet the requirements of the State.

8. Right to engage in creative work in cultural, artistic and scientific fields and to benefit thereof. Copyright and patents shall be protected by law.

9. Right to participation in the conduct of State affairs directly or through representative bodies. Right to vote or to be elected to State bodies. Right to vote shall be enjoyed from the age of 18, and the age eligible for being elected shall be defined by law according to the requirements in respect of definite bodies or posts.

10. Right to form party or other public organizations and to unite voluntarily in associations according to social or personal interests, or conviction. All parties, public organizations shall uphold public or state security and abide by the law. Discrimination and persecution of a person for joining a party and other public organizations or being their member shall be prohibited. Party membership for some categories of state employees may be suspended.

11. Men and women shall be equal in political, economic, social, cultural fields and family affairs. Marriage shall be based on equality and mutual consent of men and women who have attained the age defined by law. The State shall protect interests of family, maternity and children.

12. Right to submit petitions, complaints to State bodies and officials. State bodies, officials shall be obliged to resolve petitions or complaints of citizens in conformity with the law.

13. Right to inviolability and freedom of the person. No person shall be searched, arrested, detained, persecuted or deprived of liberty save in accordance with procedure and grounds defined by law. No person shall be subjected to torture, inhuman, cruel or degrading treatment. Where a person is arrested for committing a crime he/she, his/her family and counsel shall be notified within a period of time established by law of reasons for and grounds of the arrest. Privacy of citizens, their family, correspondence, inviolability of the home shall be protected by law.

14. Rights to approach a court to protect his/her rights if he/she considers that rights or freedoms defined by Mongolian law or international treaty have been violated; to have

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compensated the damage illegally caused by others; not to testify against himself/herself, his/her family, or parents and children; to self-defence; to receive legal assistance; to examine evidence; to fair trial; to be tried in his/her presence; to appeal a court judgment; to seek pardon. Compulsion to testify against himself/herself shall be prohibited. Every person shall be presumed innocent until proved guilty by court according to law. Application of the charges of the convicted to members of his/her family and relatives shall be prohibited.

15. Freedom of worship and non-worship.

16. Freedom of conscience, free expression of opinion, speech, press, peaceful demonstration, meetings. Procedures for publication, demonstration and assembly shall be defined by law.

17. Right to seek and receive information except those relating to secrets which the State and its bodies shall protect according to law. In order to protect human rights, dignity and reputation of persons and defend the State, national security and public order secrets of the State, individuals, organizations which are not subject to disclosure shall be defined and protected by law.

18. Freedom of movement and the right to travel within the country and freedom to choose the place of one's residence, right to travel or reside abroad, to return to home country. The right to travel and reside abroad may be limited only by law in order to ensure the security of the nation and population and protect public order.

#### Article 17

1. Citizens of Mongolia while respecting justice and humanism shall strictly fulfil the following fundamental duties:

- 1) to respect and abide by the Constitution and other laws;
- 2) to respect dignity, reputation and legitimate rights and interests of others;
- 3) to pay taxes levied by law;
- 4) to defend the motherland and serve in the army according to law.

2. It shall be the sacred duty of every citizen to work, protect one's health, bring up and educate their children and protect nature and the environment.

#### Article 18

1. Rights and duties of aliens residing in Mongolia shall be regulated by the Mongolian law and treaties concluded with the state of the person concerned.

2. Mongolia shall adhere to the principle of reciprocity in defining rights and duties of aliens in keeping with international treaties.

3. Rights and duties of stateless persons within the territory of Mongolia shall be defined by Mongolian law.

4. Aliens or stateless persons persecuted for their conviction, political or other just activities may be granted asylum in Mongolia on the basis of their reasonable requests.

5. In allowing foreigners and stateless persons residing in Mongolia to exercise the basic rights and freedoms provided in Article 16 of the Constitution, in relation to other rights, except the inalienable rights enshrined in the international conventions to which Mongolia is a party, the State may establish certain limitations in consideration of ensuring national security and protection of social order.

#### Article 19

1. The State shall be responsible before citizens to create economic, social, legal and other guarantees for ensuring human rights and freedoms, to fight against violation of human rights and freedoms and to restore infringed rights.

2. Human rights and freedoms defined by the Constitution or other laws shall be subject to limitation in case of war or emergency only by law. Such a law shall not affect the rights to life, conscience, worship or non-worship, as well as the rights to be free from torture or inhuman treatment, and conviction.

3. In exercising his/her rights and freedoms one shall not infringe national security, the rights and freedoms of others and violate public order.

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## CHAPTER THREE

### State structure

#### IV. Judicial power

##### Article 47

1. Judicial power shall be vested only in courts.
2. Unlawful constitution of courts under any circumstances, exercise of judicial power by any other organization but courts, shall be prohibited.
3. Courts shall be constituted only under the Constitution and other laws.

##### Article 48

1. The judicial system shall consist of the Supreme Court, province [*aimag*] and capital city courts, district [*somon*], inter-district and capital city district courts. Special courts such as criminal, civil and administrative courts may be formed. The activities and decisions of special courts shall be under the supervision of the Supreme Court.
2. The structure of courts and the legal status of their activities shall be defined by law.
3. Courts shall be financed from the state budget. The State shall ensure economic guarantee for the courts' activities.

##### Article 49

1. The judiciary shall be independent and strictly guided by law.
2. Any person or any official be it the President, Prime Minister, member of the People's Great Hural or Government, official of a political party or public organization shall not interfere or intervene in the exercise by judges of their duties.
3. The General Council of Courts shall function in order to ensure the independence and integrity of courts and judges.
4. The General Council of Courts, without interfering in the activities of the courts or judges, shall deal with matters such as nomination of judges, protection of their interests and ensuring conditions necessary for the independence of courts.

5. The organization and order of the work of the General Council of Courts shall be defined by law.

#### Article 50

1. The Supreme Court shall be the highest judicial organ and shall exercise the following powers:

- 1) to review and take decisions on criminal cases and legal disputes assigned to it by law;
- 2) to examine decisions of lower-instance courts through appeal and review;
- 3) to examine and take decisions on matters relating to the protection of the law and human rights and freedoms therein which have been transferred to it by the Constitutional Court and the Procurator General;
- 4) to make official interpretations for correct application of all other laws except the Constitution;
- 5) to make judgments on all other matters assigned by law.

2. The decision made by the Supreme Court shall be a final judiciary decision and shall be binding upon all courts and other persons. If the decision made by the Supreme Court is incompatible with the laws, the Supreme Court itself will have to cancel it. If the interpretation made by the Supreme Court is incompatible with the law, the law shall have precedence.

3. The Supreme Court and other courts shall have no right to apply laws that are unconstitutional and not published in the official gazette.

#### Article 51

1. The Supreme Court shall comprise a Chief Justice and judges.

2. The President shall nominate judges to the Supreme Court with the approval of the People's Great Hural on the basis of proposals by the General Council of Courts, and judges to other courts on the basis of proposals by the General Council of Courts.

3. A Mongolian national with a high legal education and experience in judicial practice for not less than 10 years who has reached the age of 35 may be appointed as a judge of the Supreme Court, and a Mongolian national with high legal education and legal practice for not less than three years who has reached the age of 25 may be appointed to serve as a judge of the other courts.

4. Removal of a judge of a court of any instance shall be prohibited except in cases of relief or removal on grounds provided by the Constitution and decisions of courts in force, or relief on his/her request.

#### Article 52

1. Courts of all instances shall consider and make judgment in cases and disputes on the basis of a collective principle.

2. In making collective judgment on cases and disputes courts of first instance shall allow representatives of citizens to participate in the proceedings according to the principles prescribed by law.

3. Judges alone may take decisions on some cases which are specifically provided by law.

#### Article 53

1. The trial shall be conducted in Mongolian.

2. Persons who do not know the Mongolian language shall be acquainted with all the documents of the case through an interpreter and shall be entitled to use at trial his/her native language.

#### Article 54

Proceedings in the courts shall be open to the public except in cases specifically prescribed by law.

#### Article 55

1. The accused shall have a right to defence.

2. The accused shall be accorded legal assistance at his/her request or according to law.

Article 56

1. A procurator shall supervise registration of cases, investigation and punishment and participate in the court proceedings on behalf of the State.
2. The President shall nominate the General Procurator and his/her deputies with the consent of the People's Great Hural for a term of six years.
3. The system, structure and legal basis of the work of the procuracy shall be defined by law.