



## Country File MONGOLIA

**Last Updated: 18.12.2012**

<b>Region</b>	Europe and Central Asia
<b>Legal System</b>	Civil Law
<b>UNCAT Ratification, Accession (a), or Succession (d)</b>	24 January 2002
<b>Relevant Laws</b>  <ul style="list-style-type: none"> <li>▪ Stand-Alone Torture Law (Y/N)</li> </ul>	<ul style="list-style-type: none"> <li>- Constitution of Mongolia, 13 January 1992 (“Constitution”)</li> <li>- Criminal Code of Mongolia, 1 September 2002 (“Criminal Code”)</li> <li>- Criminal Procedure Law of Mongolia, 10 January, 2001 (“Criminal Procedure Law”)</li> </ul> <p>No</p>
<b>Relevant Articles</b>	
<b>Definition of Torture (General) (Article 1)</b>	
<b>Prohibition on Torture (Article 1)</b>	<ul style="list-style-type: none"> <li>- Article 16.13 of the Constitution</li> <li>- Article 19 of the Constitution (absolute prohibition)</li> <li>- Article 10.4 of the Criminal Procedure Law</li> </ul>
<b>Crime of Torture (Article 4)</b>  <ul style="list-style-type: none"> <li>▪ Definition</li> <li>▪ Statute of Limitations</li> <li>▪ Penalties</li> </ul>	<ul style="list-style-type: none"> <li>- Article 100.1 of the Criminal Code</li> </ul> <p>- Note: Article 100.1 is labeled “torture” but readers should note that it is a lesser crime than the related crimes of intentional infliction of a severe bodily injury (Article 96) and of a less severe bodily injury (Article 98). Also for these two crimes “torturing the victim” is an aggravating factor in sentencing.</p> <p>None.</p> <ul style="list-style-type: none"> <li>- Article 70 of the Criminal Code is an article of general application on prescription. It states in article 70.6 that periods of limitations do not apply to the crimes listed in Chapter 30 which includes article 299 and 302 listed below.</li> </ul> <ul style="list-style-type: none"> <li>- Article 100.1 of the Criminal Code</li> </ul>

<ul style="list-style-type: none"> <li>▪ Other</li> </ul>	<ul style="list-style-type: none"> <li>- Article 7.1 of the Criminal Code states that the punishment of a crime “may not have the purpose of inhumane, cruel treatment or degrading his/her honor and dignity.”</li> <li>- Article 251.1 of the Criminal Code (crime of forcing of testimony)</li> <li>- The Criminal Code includes an article of general application on attempt, article 32.</li> </ul>
<b>Universal Jurisdiction &amp; Cooperation (Articles 5, 9)</b>	
<b>Investigations, (Articles 12, 13)</b>	
<b>Remedies and Reparations (Article 14)</b>	See Comments
<b>Exclusion of Evidence (Article 15)</b>	<ul style="list-style-type: none"> <li>- Articles 81.2, 82.3 and 92.4 Criminal Procedure Law prohibit coercion in relation to testimony and collecting evidence. These articles do not discuss exclusion of evidence.</li> </ul>
<b>Legal and Procedural Safeguards (Articles 2, 11, 16)</b>	<ul style="list-style-type: none"> <li>- Articles 16.13 and 16.14 of the Constitution (notification to the family and counsel, legal assistance)</li> <li>- Articles 35.4, 36.3 and 61 of the Criminal Procedure Law (notification, access to lawyer)</li> </ul>
<b>Non-Refoulement, (Article 3)</b>	See Comments
<b>Other</b>	<ul style="list-style-type: none"> <li>▪ <b>Other International Crimes</b> <ul style="list-style-type: none"> <li>- Article 299 of the Criminal Code (conduct of war by prohibited means)</li> <li>- Article 302 of the Criminal Code (genocide)</li> </ul> </li> <li>▪ <b>Article 44.1 of the Criminal Code</b> stipulates that “Causing harm to the rights and interests protected by this Code in the course of fulfilling mandatory orders or decrees shall not constitute a crime.” Note the Committee against Torture has recommended repeal of this article, see below.</li> </ul>

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<p><b>Comments</b></p>	<p>The Committee against Torture reviewed Mongolia in November 2010 and issued a number of recommendations to Mongolia on its existing laws on torture including, but not restricted to, the definition of torture, fundamental safeguards, impunity for acts of torture, the principle of non-refoulement, redress and compensation, and statements made under torture.</p> <p><b>Definition and criminalization of torture</b></p> <p>“The State party should adopt a definition of torture with all the elements of article 1 of the Convention in its national criminal legislation. The State party should include torture as a separate crime in its legislation, in line with article 4 of the Convention, and should ensure that penalties for torture are appropriate for the gravity of this crime.” ¶ 7</p> <p><b>Fundamental legal safeguards</b></p> <p>“The State party should take prompt and effective measures to ensure that all detainees are afforded all fundamental legal safeguards from the very outset of their detention. These include the rights of detainees to be informed of the reasons of their arrest, to have prompt access to a lawyer and, when necessary, to legal aid. They should also have access to an independent medical examination, preferably by a doctor of their own choice, to notify a relative and to be brought promptly before a judge, and to have the lawfulness of their detention reviewed by a court, in accordance with international standards.” ¶ 8</p> <p><b>Impunity for acts of torture</b></p> <p>“The State party is urged to bring impunity to an end and ensure that torture and ill-treatment by public officials will not be tolerated and that all alleged perpetrators of acts of torture will be investigated and, if appropriate, prosecuted, convicted and punished with penalties appropriate to the gravity of the crime. The State party should ensure that efficient and independent investigative mechanisms be established against impunity regarding torture and ill-treatment. Article 44.1 of the Criminal Code, which stipulates that “causing harm to the rights and interests protected by this Code in the course of fulfilling mandatory orders or decrees shall not constitute a crime”, should be immediately repealed. The State party legislation should also clearly stipulate that a superior order may not be invoked as a justification for torture.” ¶ 9</p> <p><b>Non-refoulement obligations</b></p> <p>“The State party should take all legislative, judicial and administrative measures to comply with its obligations under article 3 of the Convention. When determining its non-refoulement obligation, the State party should assess the merits of each individual case. The State party should introduce amendments in its legislation that deal with forced deportations of foreign citizens. The State party should consider acceding to the 1951 Convention relating to the Status of Refugees (adopted by the General</p>
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	<p>Assembly on 28 July 1951) and its 1967 Protocol. The State party should provide training to all law enforcement and immigration officials in international refugee and human rights law, emphasizing the principle of non-refoulement, and ensure that appeals to courts against deportation orders have a suspensive effect.” ¶ 13</p> <p><b>Redress and compensation</b></p> <p>“The State party should ensure that victims of torture can obtain redress and have an enforceable right to fair and adequate compensation, and should enact comprehensive legislation which includes torture and ill-treatment as a basis for compensation and reparation.” ¶ 17</p> <p><b>Statements made under torture</b></p> <p>“The State party should ensure that no statement which is established to have been made as a result of torture shall be invoked as evidence in any proceedings. [...]The State party should ensure that any statement or confessions made by persons in custody ascertained to have been made as a result of torture or ill-treatment should not be admissible as evidence against the person who made the confession. Such statements and confessions should be invoked only as evidence in proceedings against the person accused of torture or ill-treatment.” ¶ 18</p> <p>To read more on the CAT recommendations for Mongolia please see <i>Concluding Observations of the Committee against Torture: Mongolia</i>, UN Doc. CAT/C/MNG/CO/1 (20 January 2011) at <a href="http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.MNG.CO.1_en.pdf">http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.MNG.CO.1_en.pdf</a></p>
<b>Languages Available</b>	English
<b>Links &amp; Sources</b>	<ul style="list-style-type: none"> <li>- Constitution of Mongolia, 13 January 1992 (WIPO website) <i>available at</i>: <a href="http://www.wipo.int/wipolex/en/details.jsp?id=3039">http://www.wipo.int/wipolex/en/details.jsp?id=3039</a></li> <li>- Criminal Code of Mongolia, 1 September 2002 (UNHCR website) <i>available at</i>: <a href="http://www.refworld.org/docid/3ed919fd4.html">http://www.refworld.org/docid/3ed919fd4.html</a></li> <li>- Criminal Procedure Law of Mongolia 10 January 2001 (Organization for Economic Co-operation and Development website) <a href="http://www.oecd.org/site/anti-corruptioninitiative/46816723.pdf">http://www.oecd.org/site/anti-corruptioninitiative/46816723.pdf</a></li> </ul>

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## Relevant Articles – MONGOLIA

- Constitution of Mongolia, 13 January 1992  
(English translation from WIPO website)

### Chapter II- Human Rights and freedom

#### Article 16

[...]

13) Right to personal liberty and safety. No person shall be searched, arrested, detained, persecuted or deprived of liberty save in accordance with procedures and grounds determined by law. No person shall be subjected to torture, inhuman, cruel or degrading treatment. Where a person is arrested he/she, his/her family and counsel shall be notified within a period of time established by law of the reasons for and grounds of the arrest. Privacy of citizens, their families, correspondence and residence shall be protected by law.

14) Right to appeal to the court to protect his/her right if he/she considers that the right of freedoms as spelt out by the Mongolian law or an international treaty have been violated; to be compensated for the damage illegally caused by other; not to testify against himself/herself, his/her family, or parents and children; to self-defense; to receive legal assistance; to have evidence examined; to a fair trial; to be tried in his/her presence; to appeal against a court judgment, to seek pardon. Compelling to testify against himself/herself shall be prohibited. Every person shall be presumed innocent until proved guilty by a court by due process of law. Application of charges of convicted to the members his/her family and relatives shall be prohibited.

#### Article 19

[...]

2. Human rights and freedoms as defined by the Constitution and other laws in case of a state of emergency or war shall be subject to limitation only by a law. Such a law shall not affect the right to life, the freedom of thought, conscience and religion, as well as the right not to be subjected to torture, inhuman and cruel treatment.

- Criminal Code of Mongolia, 1<sup>st</sup> September 2002  
(English translation from the UNHCR website)

### GENERAL PART

#### TITLE 1- GENERAL PROVISIONS

#### CHAPTER ONE- PURPOSE AND PRINCIPLES OF THE CRIMINAL CODE OF MONGOLIA

#### Article 7- Principle of Humanity

7.1. Punishment and measures of coercion to be imposed to a person who committed a crime may not have the purpose of inhumane, cruel treatment or degrading his/her honor and dignity.

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TITLE TWO - CRIME  
CHAPTER SIX- STAGES OF CRIME

**Article 32 - Attempt of a Crime**

32.1. An attempt of a crime shall be a deliberate action aimed directly at committing a crime if the crime was not accomplished for the reasons beyond control of the culprit [...]

CHAPTER EIGHT- CIRCUMSTANCES EXCLUDING SOCIAL DANGER OF THE  
CRIME

**Article 44 - Fulfilling orders and decrees**

44.1. Causing harm to the rights and interests protected by this Code in the course of fulfilling mandatory orders or decrees shall not constitute a crime. The person giving an illegal order or decree shall be subject to criminal liability for the harm caused.

44.2 A person causing harm to others' rights and interests protected by this Code fulfilling a knowingly illegal order or decree shall be subject to criminal liability. A person who fails to fulfill a knowingly illegal order or decree shall not be subject to criminal liability.

TITLE FOUR- RELEASE FROM CRIMINAL LIABILITY OR PENALTY  
CHAPTER TWELVE- REMISSION

**Article 70- Remission by Elapse of the Limitation Period**

70.1. A culprit who has committed a crime may not be subjected to criminal liability on elapse of the following periods:

- 70.1.1. one year from committing a minor crime;
- 70.1.2. five years from committing a less serious crime;
- 70.1.3. twenty years from committing a serious crime;
- 70.1.4. thirty years from committing a grave crime.

70.2. Criminal liability may be relieved in the cases where there is no ground specified in paragraph 1 above in the events specified in the Special Part of this Code.

70.3. The period of limitation shall be interrupted if, before the elapse of the term specified in the law the culprit commits a new crime; in this case the period of limitation shall be counted from the date of commission of the last gravest crime.

70.4. The counting of the period of limitation shall be interrupted if the person who committed crime flees during the pre-trial or trial stage from the date of such flight and the counting shall be restored from the date of his/her apprehension or surrendering.

70.5. The court shall decide on application of the period of limitation to a person who committed a crime that is punishable by the death penalty under this Code. If the court does not find it possible to apply the period of limitation, the death penalty may not be imposed and shall be replaced by imprisonment.

70.6. Period of limitation shall not apply to the cases of committing crimes against the security of mankind and peace specified in Chapter 30 of the Special Part of this Code.

## SPECIAL PART

### TITLE SIX

#### CHAPTER FIFTEEN- CRIMES AGAINST HUMAN LIFE AND HEALTH

##### **Article 96 - Intentional infliction of a severe bodily injury**

96.1. Intentional infliction of a severe injury that is, of a life-threatening injury or one which has entailed the loss of sight, hearing or any organ, or the loss by an organ of its functions, a mental illness or another detriment to health which has entailed or which has been expressed in irreversible disfiguration of the face or interruption of pregnancy, or which has caused a permanent loss of the working ability shall be punishable by imprisonment for a period of more than 5 to 7 years.

96.2. The same crime committed:

96.2.1. with hooliganist motives;

96. 2.2. by order;

96. 2.3. by a recidivist;

96.2.4. repeatedly;

96.2.5. in a group, by a group at an advanced agreement or by a criminal organization;

96. 2.6. in an especially brutal way;

96. 2.7. in a commonly dangerous way;

96. 2.8. by humiliating or torturing the victim;

96. 2.9. against a person knowingly unable to defend oneself;

96. 2.10. against two or more persons;

96. 2.11. in connection with the performance by the victim of his/her official or public duties shall be punishable by imprisonment for a term of more than 7 to 10 years.

##### **Article 98 - Intentional infliction of a less severe bodily injury**

98.1. Intentional infliction of a less severe bodily injury which has caused a long-term detriment of health or a loss of the working ability for not less than one third shall be punishable by 251 to 450 hours of forced labor or imprisonment for a term of up to 3 years.

98.2. The same crime committed repeatedly, in a group, by torturing the victim or by a recidivist shall be punishable by incarceration for a period of more than 3 to 6 months, or imprisonment for a term of more than 3 to 5 years.

##### **Article 100 - Torture**

100.1. Systematic battery or other actions having the nature of torture if they have not entailed the consequences specified in Articles 96 and 98 of this Code shall be

punishable by incarceration for a period of more than 3 to 6 months or by imprisonment for a term of up to 2 years.

TITLE NINE- CRIMES AGAINST ADMINISTRATIVE ORDER, ADMINISTRATION OF JUSTICE AND MALFEASANCE CRIMES

CHAPTER TWENTY-SEVEN- CRIMES AGAINST THE ADMINISTRATION OF JUSTICE

**Article 251 - Forcing of testimony**

251.1. Forcing of testimony by an inquirer or investigator by threat, violence, torture, humiliation, deception or other illegal methods shall be punishable by imprisonment for a term of up to 5 years with or without deprivation of the right to hold specified positions or engage in specified business for a term of up to 3 years.

251.2. The same crime if it has entailed a less serious or severe bodily injury or has caused damage in a large amount shall be punishable by imprisonment for a term of more than 5 to 10 years with or without deprivation of the right to hold specified positions or engage in specified business for a term of up to 5 years.

TITLE TEN

CHAPTER THIRTY- CRIMES AGAINST SECURITY OF THE MANKIND AND PEACE

**Article 299 - Conduct of war by prohibited means**

299.1. Cruel treatment of the captives and civilians, displacement of the population, looting of the historical and cultural values in the occupied territory or use of the means of warfare prohibited by an international treaty to which Mongolia is a party shall be punishable by imprisonment for a term of more than 10 to 15 years.

299.2. Use of the mass-destruction weapon prohibited by an international treaty to which Mongolia is a party shall be punishable by imprisonment for a term of more than 15 to 20 years.

**Article 302 - Genocide**

302. Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing of members of the group; causing grave bodily injuries to members of the group; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group or deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part shall be punishable by imprisonment for a term of 20 to 25 years or the death penalty.



- Criminal Procedure Law of Mongolia, 2002  
(English translation from The Organisation for Economic Co-operation and Development website)

PART I - GENERAL PROVISIONS

CHAPTER TWO- TASKS AND PRINCIPLES OF CRIMINAL PROCEEDING

**Article 10- Ensuring the right for inviolability of person**

10.4. It shall be prohibited to torture, to treat inhuman or cruel way any body and to insult his/her reputation.

**Article 35- Suspect**

35.2. The suspect shall have the following rights:

35.2.1. to know for what crime he is being suspected;

35.2.2. 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;

35.2.3. to present evidence and submit petition requiring examination of evidence;

35.2.4. to give a testimony or refuse to give a testimony;

35.2.5. to give a testimony in his/her own language or make use of a translator, interpreter;

35.2.6. to submit challenges with regard to inquiry officer, investigator, procurator, translator, interpreter and expert;

35.2.7. to make self-defense; to have an defense counsel as provided for in Article 39 of this Law;

35.2.8. to have individual meeting with his/her defense counsel;

35.2.9. to participate in criminal proceedings with the permission of inquiry officer or investigator;

35.2.10. to lodge complaint regarding the actions and decisions of the inquiry officer, investigator or procurator;

35.2.11. to require to be compensated for damages occurred due to activities of an inquiry officer, investigator, or procurator in violation of law [...]

35.4. An inquiry officer or investigator shall inform the suspect immediately and an adult member of family or defense counsel within 48 hours on what crime he/she is suspected.

**Article 36- The accused**

36.3. The accused shall have the following right:

36.3.1. to know for what offence he is accused of;

36.3.2. to be presented with decree to prosecute as the accused and with decree on measures of restraint have been taken;

- 36.3.3. to make self-defense; to have an defense counsel as provided for in Article 39 of this Law;
- 36.3.4. to have individual meeting with his/her defense counsel;
- 36.3.5. to give verbal or written explanation concerning the accusation presented to him;
- 36.3.6. to give testimony or refuse to give a testimony;
- 36.3.7. to present evidence, submit petition requiring an examination of evidence;
- 36.3.8. to get presented with materials of the case involving him/her;
- 36.3.9. to take part in the court session;
- 36.3.10. to submit challenges with regard to inquiry officer, investigator, procurator, translator, interpreter, expert, judge, a citizens' representative, or secretary of a judicial session;
- 36.3.11. to lodge complaints regarding actions of an inquiry officer, investigator, procurator, and court proceedings;
- 36.3.12. to get familiar with decrees on appointment of experts and with their conclusions;
- 36.3.13. to give testimony in his/her mother tongue or known language, to make use of a translator, interpreter;
- 36.3.14. with the permission of an inquiry officer or investigator to be present in investigative actions at his/her own or the defense counsel's request, and to get familiar minutes of the actions and to request changes in the minutes;
- 36.3.15. to present a final speech at court session;
- 36.3.16. to appeal the judgement;
- 36.3.17. to acquaint him/herself with the protests and appeals on court judgement lodged by other persons and to give explanation regarding them;
- 36.3.18. to require to be compensated for damages occurred due to activities of an inquiry officer, procurator, investigator or judge in violation of law [...]

#### **Article 61- Notification on arrest of a suspect**

61.1 An inquiry officer or investigator shall notify within 24 hours adult member of a suspect's family or relatives or defense counsel about arrest of the suspect, and his/her whereabouts or shall allow the person being arrested to notify himself/herself.

#### **Article 81- Testimony of suspect**

[...]

81.2. It is prohibited to coerce a suspect to give a testimony, or to subject him/her to inhuman or cruel treatment, or to insult his/her dignity.

### **Article 82- Testimony of accused**

[....]

82.3. It is prohibited to coerce an accused to give a testimony, or to subject him/her to inhuman or cruel treatment, or to insult his/her dignity [....]

### **Article 92- Collection of evidence**

[....]

92.4. In collecting evidence it shall be prohibited to execute activities dangerous to a citizen's life and health or degrading his/her dignity, and to use such illegal methods as treating inhumanly or cruel way, using threat, coercing in order to retrieve testimony, explanation or conclusion, and deceiving.