

MONGOLIAN RESPONSE TO THIRD STUDY COMMISSION

/ Mutual cooperation in the investigation of criminal cases and in the presentation of evidence /

1. Does your country have any legislation, or regulation, and / or court rules of procedure that are relevant to the topic of our focus this year-mutual cooperation in the investigation of criminal cases and in the presentation of evidence in a criminal proceeding at court. Please explain.

In Mongolia, mutual cooperation in the investigation of criminal cases and in the presentation of evidence in criminal proceedings in court is regulated by the following laws and regulations:

Article 10.3 of the Constitution of Mongolia regulates that “The international treaties to which Mongolia is a Party shall become effective as domestic legislation upon the entry into force of the laws on their ratification or accession.

Article 1.2-4 of the Criminal Code of Mongolia, entered into force on 1st July 2017, defined that definitions and norms specified in the laws of Mongolia and international treaties, which Mongolia has ratified in its laws and is party to, shall be adhered to in determination of terms and concepts of this law.

Article 6.3 of the Court Law regulates that the court adjudication of cases and disputes shall apply the Constitution of Mongolia, laws issued in accordance with it, and published officially, international treaties of Mongolia.

Article 6.4 of Court Law regulates that if a court deems that the law or international treaty of Mongolia used in court adjudication proceedings of the case or dispute is incompatible with or contrary to the Constitution of Mongolia, it shall suspend the adjudication proceedings of the case or dispute and submit its opinion regarding such law or the international treaty of Mongolia to the Supreme Court.

Article 42.1 of Court law regulates that when exercising judicial power, a judge shall be impartial of any person and shall be subject only to the Constitution of Mongolia, and other laws issued in accordance with it and officially published, and international treaties of Mongolia.

Article 3.1.1 of the Laws on international treaties defined that "International treaty of Mongolia" means international agreements specifying rights and obligations of the parties and concluded between Mongolia and/or the Government of Mongolia and one or more foreign countries, or their governments, or international organizations in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments regardless of their type or name, and whatever its particular designation.

Article 33.1 of the Laws on international treaties defined that the court of Mongolia shall apply the officially published international treaty of Mongolia in accordance with the procedure specified in the relevant laws and article 33.2 regulates that if necessary, the Supreme Court of Mongolia shall issue official interpretations related to the correct application of international treaties of Mongolia.

Resolution No.09 of the Supreme Court of Mongolia dated February 28, 2008 on the application of international treaties and generally accepted norms and principles of international law in judicial practice.

In conclusion, as of today Mongolia have concluded an international treaty contract with 19 countries in civil and criminal cases. And in court proceeding related to mutual cooperation in the investigation of criminal cases and in the presentation of evidence we apply above laws and regulations.

2. *In your country when a crime is being investigated does the judiciary have a role (a) in the request for information from a foreign state and/ or (b) in the provision of information to a foreign state?*

As specified in Mongolian laws and international treaties, judges do not have direct participation in any procedure related to foreign countries. As stated in the Criminal Procedure Code, all criminal evidence shall be collected in the investigation stage. All relevant evidences must be collected prior to the trial and delivered to court. As defined in Article 5 of the Court Law of Mongolia, judiciary exercises judicial power independently of any person, that means judiciary is prohibited to have a role in investigation and prosecution process.

If there is a request for reformation from foreign state or to a foreign state, the General Prosecutor's Office of Mongolia and the Ministry of Justice of Mongolia will implement the tasks with regard to the request in investigation.

3. *If your answer to either 2 (a) or 2 (b) is yes, what legislation, regulations or rules of procedure apply to the decision of judge involved at the investigation stage?*

There is no specific legislation about it.

4. *What is the legislation or court rules that relate to the taking of evidence from witness in foreign state, or the giving of evidence from a witness in your country to a foreign country? Please explain these including the role played by a judge in both scenarios.*

As mentioned before, judiciary shall exercise judicial power independently of any person, that means judiciary is prohibited to have a role in investigation and prosecution process. For judges, there is no specific role in relation to taking evidence from witness either in abroad or in within Mongolia.

5. *As a judge, if you receive a request for assistance from a foreign country, whether at the investigation stage or in the context of a court proceeding (a hearing or a trial) is a relevant to your determination of whether and how to assist the basic human rights, principles of natural justice, and/or rules of procedural fairness that exist in your country are respected? Please explain.*

According to the law, judges are prohibited to provide legal advice and assistance.

6. *Describe your own personal experience as a judge that are relevant to the topic of our focus this year, whether it be presiding over an extradition hearing (a request to extradite an accused person to another country in order to be prosecuted in that order country) or receiving evidence in court proceedings in your country from a witness who is testifying from another country and with the help of court officials in that other country, or helping to arrange for a witness in a court proceedings in another country to testify from a place in your own country, or responding to a request for assistance from an international court such as The Hague, or something else. These are just examples of things that you may have experienced; they are not meant to be exhaustive*

N/A

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