

南華大學社會科學院國際事務與企業學系公共政策研究碩士班

碩士論文

Master Program in Public Policy Studies

Department of International Affairs and Business

College of Social Sciences

Nanhua University

Master Thesis

蒙古國刑事訴訟程序中成為犯罪嫌疑人的人的條件與人權之
研究

A Study on Conditions and Human Rights of Becoming a Suspect
in Criminal Proceeding in Mongolia

瑚羅

Bolor-Erdene Bagakhuu

指導教授：彭安麗博士

Advisor: An-Li Peng, Ph.D.

中華民國 109 年 1 月

January 2020

南華大學

國際事務與企業學系公共政策研究碩士班

碩士學位論文

蒙古國刑事訴訟程序中成為犯罪嫌疑人的人的條件與人權
之研究

A Study on Conditions and Human Rights of Becoming a

Suspect in Criminal Proceeding in Mongolia

研究生： *Balorerdene B. Hu Lou* 王翹 羅維

經考試合格特此證明

口試委員： 郭松昌

陳希宜

彭安麗

指導教授： 彭安麗

系主任(所長)： 張正堂

口試日期：中華民國 109 年 1 月 3 日

ACKNOWLEDGEMENT

I studied the scholarship Master Program at Nanhua University within the framework of cooperation of Mongolia's South Gobi Province Governor's Office and the Nanhua University of Taiwan.

First of all, I would like to thank all the professors who have generously taught me at Nanhua University. I have learned a lot from them. Especially I would like to express sincere gratitude to my adviser An Li Ping Ph.D. for her great guidance, kindness, lessons, and support. Also, thanks to Nanhua University's administration and the whole staff to provide us comfortable study and living environment.

Great gratitude to the administration of South Gobi province and Mayor Naranbaatar Nanzad for giving me such wonderful opportunities to study in Taiwan.

Also, A very special thanks to my dear family who always support, encourage and love me. Thanks to all my classmates, friends, and everyone I know in Taiwan. I wish you the best regards to your future.

Finally, I intend to apply what I have learned here in my job which is the legal field of Mongolia.

Best regards.
Graduate student,
Bolor-Erdene Bagakhuu

摘要

依據刑事訴訟程序對犯罪嫌疑人進行審查和決定時，人權會受到嚴重侵犯，而《蒙古刑事訴訟法》並未包括涉嫌犯罪的嫌疑人的權利和責任，以及考慮他/她是犯罪嫌疑人的理由。因此，本研究主題是為消除這種因法律缺漏而對人權造成了侵害。

本研究首先強調考慮作為犯罪嫌疑人和犯罪嫌疑人證詞的理由，在執行刑事訴訟程序中是否具有證據的重要性；其次，證人提供的犯罪嫌疑人的證詞是否在刑事訴訟程序中有所遺漏，以及犯罪嫌疑人權利和義務是否侵犯人權。為了進行這項研究，根據其他國家以及蒙古根據國際條約提供的刑法、法律程序、法律規定和統計資料，對犯罪嫌疑人或證人的概念進行了質性研究。最後，本研究建議有必要將反映犯罪嫌疑人的權利和責任的法規納入《刑事訴訟法》，以消除目前法律的缺漏。

關鍵詞: 犯罪嫌疑人、刑事訴訟、嫌疑人證詞、證人證詞、人權



ABSTRACT

The human right is being violated seriously when the suspect is examined and settled in accordance with the criminal procedure while the Criminal Procedure Code of Mongolia does not include the right and responsibility of the suspect who was suspected in the crime as well as the justification for considering him/her as a suspect of crime. Therefore, the subject was chosen for the contribution of elimination this violation.

This work addresses if the grounds for considering as a suspect and testimony of suspects have the significance of evidence in executing criminal procedure or not, whether the testimony of suspect from a witness is an omission in criminal procedure or not, and whether contradiction of the suspect's rights and obligations are human right violation or not. To conduct this research, the concept of a suspect or witness studied qualitatively based on the other countries and Mongolia's sources of criminal law, legal proceedings, legal provisions and statistics according to the international treaties.

At last the research suggests that it is necessary to include the regulations reflecting the rights and responsibilities of a suspect in the Criminal Procedure Law, which will eliminate the gap of the law in the future.

Keywords: suspect, criminal process, suspect testimony, witness testimony, human rights

TABLE OF CONTENTS

ACKNOWLEDGEMENT	i
摘要.....	ii
ABSTRACT.....	iii
TABLE OF CONTENTS	iv
LIST OF TABLE	vi
LIST OF FIGURE.....	vii
CHAPTER 1. INTRODUCTION	1
1.1. Statement of the Problem.....	1
1.2. Research Purpose	3
1.3. Methodology and Propositions	3
1.4. Questions	4
1.5. Research Significance.....	4
1.6. Research keywords.....	4
1.7 Research structure	4
CHAPTER 2. LAW ENFORCEMENT AND HUMAN RIGHTS	6
2.1. Legal Status of Participants in Criminal Proceeding	6
2.2. Human rights in criminal proceeding.....	10
2.3. International treaties, laws and practice on criminal proceeding.....	12
CHAPTER 3. OMISSION IN CRIMINAL ROCEEDINGS USING THE EXAMPLES OF MONGOLIA.....	16
3.1. Criminal proceedings, its forms, legal relations and principles	16
3.2. Subject the suspect of criminal proceedings	24
3.3. Legal status of the suspect, its implementation and challenges	27
CHAPTER 4. RESEARCH METHODS	34
4.1. Research data.....	34
4.2. Research data processing	34
4.3. Outcomes of the research work:	45
CHAPTER 5. CONCLUSION.....	49
5.1. Conclusion.....	49
5.2. Suggestion for Solution	50
5.3. Suggestion for Future Research.....	51
REFERENCES	52
APPENDIX.....	54
Appendix I Modern models and forms of the criminal proceedings:	54
Appendix II Processes and movements of the criminal proceedings:	55

Appendix III Solutions and gateway of the criminal proceedings:.....56

Appendix IV Models and peculiarities of the criminal proceeding system:.....57

Appendix V Convicted by the court among the suspects58

Appendix VI Memo of witness interview (page 1)59

Appendix VII Memo of witness interview (page 2)60

Appendix VIII Resolution on changing the status of witness into the accused61

Appendix IX Memo of the interrogations of the accused and (page 1)62

Appendix X Memo of the interrogations of the accused and (page 2)63



LIST OF TABLE

Table 3.1 Classification of Legal Principles of Criminal Proceedings	21
Table 3.2 Suspect	28
Table 3.3 2002 Criminal Procedure Law of Mongolia Implementation/review/.....	29
Table 3.4 Peculiarities of procedural and proceedings systems	30
Table 4.1 Comparison of Criminal Procedure Law	35
Table 4.2 Comparison of the requirements for the statements of suspect	37
Table 4.3 Arresting a Suspect	38
Table 4.4 Comparison of the actions to recognize as a suspect and to take a testimony from the suspect.....	40
Table 4.5 Grounds to arrest and detain	43



LIST OF FIGURE

Figure 2.1 by Peculiarity of Legal Characteristics.....	6
Figure 2.2 Proceeding Phase	7
Figure 3.1 Objective of Criminal Proceedings	16
Figure 3.2 Research Framework	17
Figure 3.3 Criteria for the Legal Principle of Criminal Proceedings.....	20



CHAPTER 1. INTRODUCTION

1.1. Statement of the Problem

Respecting people and protecting human rights in the modern world are the fundamental principle of democracy and this principle is closely related to the system of law enforcement. Nations around the world accept this principle with their own legislations, and by joining to international treaties and conventions, as well as keep paying special attention on implementing it. However, legal mechanisms and regulations to protect human rights in the case of law enforcement are still insufficient or poorly developed to some extent. This depends on various factors, including respective nation's legal system, type of operations by law enforcement agencies authorities and gaps in laws and regulations etc.

Law enforcement operation lies within a wider conceptual framework, and in this research paper, the law enforcement operation covers a wide range of subject matters like “discovering crime, finding convict, investigating criminal cases, collecting and strengthening evidences, undertaking special operation, arresting, deterring, preventing, enforcing, settling the criminal case in court, sentencing convicts, rehabilitating and executing judicial decisions and resolutions” (Wikipedia, 2019).

Such relations are called criminal procedure and it begins with a formal criminal charge with the person on trial on one hand, and results in the conviction or acquittal of the defendant on the other hand.

In criminal procedure, law enforcers like inquirer, the investigator and prosecutor often question or restrict the rights and freedoms of a person who has been accused of a criminal offense for the purpose of securing criminal procedure goal, even though such person has not yet been found guilty by the court. In such cases, human rights and freedoms established by the national and international legal sources are rejected and violated to the extent that it simply exceeds those limitations given by law, according to the implementation of human rights treaties and conventions, as well as results of relevant studies (Narmandakh, 2016). This indicates that demands for protecting universality and inalienability of human rights at the criminal procedure level are growing fast. Furthermore, as legal environment for criminal procedure is renewed and law enforcement operations are undertaken properly, an effective system for protecting inalienable human rights should be developed. The government of Mongolia renewed the legal background for criminal procedure in 2017 and it marked the transition from a punitive system to the principle of resolution in terms of criminal procedure development. It is believed that such renewal was the change focused on ensuring

democracy and human rights, and laid the foundation for a more developed criminal law system that represented mechanism to extend and secure the rights and freedoms of those who are involved in criminal procedure, as well as to protect the rights and interests of victim and witness. However, what worries experts the most is the suspected person who is a subject involving in criminal procedure and his legal status.

Suspected person is someone who is under suspicion, often formally announced as being under investigation by law enforcement officials in accordance with applicable law of the respective country.

As for the term, suspected person is the one who has been accused or suspected of criminal offense, but not yet aware of the indictment, a criminal accusation that such person committing a crime. The grounds specified by law must be paid attention and it includes following:

- When such person is caught committing the crime or immediately after committing it;
- When the victim or an eyewitness has directly recognized the person who has committed the crime;
- When obvious traces of the crime are discovered on the suspect or on his body, clothing, property or in his dwelling;
- When such person is giving oneself up;
- When there are other facts allowing grounds to suspect a person in committing a crime.

Any person must be considered as a suspect only to the extent that circumstances and grounds stated above occurred and were verified. Other than these, no inquiry officer or investigator is able to deem any person as a suspect at their own discretion. Inquiry officer or investigator shall initiate a criminal case according to the grounds and rules provided by this law and shall deem persons as suspects with above-mentioned grounds.

In criminal procedure, any adjudication process other than such processes set forth by applicable law and other legal documents is prohibited; therefore, it represents the basic principles of ensuring inalienability of human rights. The suspect was legitimized as participant of criminal procedure in the 2017 criminal procedure code of Mongolia; however, it failed to legitimize the definition, testimony and rights and obligations of suspected persons. This incident was defined by Bayarsaikhan that legal omission is a failure to act any legal relations, which must be resolved according to the law (Bayarsaikhan, 2014).

1.2. Research Purpose

In the provision 1.13, article 1.4 of criminal procedure code of Mongolia, the suspect is considered to be participating in the criminal procedure and is a subject, who has been suspected of a potential criminal offense and has the right to defense of his legal rights and interests, and to legal assistance.

However, legal concepts like suspect's attorney and arrest of suspects involved in this code draw so much attention where there is no formulation of the suspect and definition of the rights and obligations of the suspect.

According to the revised code, any person who has been suspected of a criminal offense has to be summoned as a witness for testimony and warned not to give false testimony. But it is perceived that the suspect is not necessarily obligated not to give testimony against him/himself and to prove his involvement in a crime or other circumstances of a crime; that two different subjects with different rights and obligations in criminal procedure are mistaken for each other. In addition to that, such person who has been suspected of criminal offense could directly be summoned as a defendant after giving testimony as a witness in all cases other than arrest.

Since we believe that grounds for considering the person who is accused of involvement in a crime as a suspect are uncertain, and that rights of participants in criminal procedure are being violated directly, we set the objectives to compare the grounds for considering as a suspect and legal status of a suspect to legal statuses of other participants in criminal procedure; to explore differences between legal statuses of suspect and defendant by comparing adoptions of laws and regulations of a country taken as an example and of any other countries, as well as international treaties and conventions; to make sure the status of a suspect is proper and the implementation of human rights in law enforcement operations is secured, and to define circumstances required for such implementation.

1.3. Methodology and Propositions

Since the subject matter needs to be studied in multiple aspects based on empirical evidences concentrating on a single issue, the objectives of the study are defined in advance and explored in accordance with hypotheses developed and in an unstructured manner. As a result, the subject matter will be studied in multiple aspects and results will be put in place and applied in real life.

In order to secure objectives mentioned above, we will collect relevant data according to the research of criminal procedure law with logic and theoretical background criminal procedure law systems, types and principles of various countries, participants in criminal procedure and their rights and obligations, as well as implementation and specifics and then systems such data. We will collect

required statistics and other information based on the official sources and take aim to fulfill the role and aims of the survey.

1.4. Questions

We proposed to build up a research program in compliance with the intent and methodology of the survey. According to this planning, we will formulate law enforcement operations and implementation of human rights in it in a framework of criminal procedure and its types, legal relations, principles; rights and obligations of a subject for the criminal procedure, as well as implementation of criminal procedure; difficulties and concerns arising in relation to such implementation.

- If the grounds for considering as a suspect and testimony of suspects have the significance of evidence in executing criminal procedure?
- The testimony of a suspect from witness or vice versa is an omission in criminal procedure?
- Contradiction of the suspect's rights and obligations is a human rights violation? With an example

1.5. Research Significance

The criminal procedure system of Mongolia takes place within certain stages, administrations, operating variances and principles, and in its broadest sense, it has two main stages, namely pretrial and trial processes. We, the researchers, will explore implementation of the suspect's rights and obligations on the example of Mongolia only within a pretrial process, restricting trial process from the study rights and obligations of a suspect are subject to pretrial process, according to the plan and formulation of subject matter. Therefore, we believe that it will have practical significance to compare rights, obligations and legal status of a suspect engaging in criminal procedure two legal statuses of other participants in criminal procedure, find out legal omissions leading to human rights violations in law enforcement operations and define appropriate methods to eliminate and resolve such omissions upon conducting this research paper. This is, indeed, an expression of researcher's opinion regarding ensuring human rights in the case of law enforcement operations.

1.6. Research keywords

Suspect, criminal process, suspect testimony, witness testimony and human rights.

1.7 Research structure

This diploma work for the master's degree consists of 5 chapters, 20 sections, conclusion, references and appendix. Summary of the chapters:

Chapter 1 in brief esteeming the human beings and protection of the human rights are the values of democratic society and are the major factor to define the nature and content of the modern law enforcement. Objectives and goals of this research work shall be determined relying on the methods and hypothesis, recognized by the social science, in order to compare the implementation process of legal mechanisms for human rights protection and implementation of the concerned laws within the scope of the international treaties and conventions and the laws of Mongolia.

Chapter 2 in brief It shows the results of a research on the legal status of the implements and participant subjects of activities, phases and activities, its brief introductions, criminal process models which were created in the world, and the regulation of international treaties and conventions on human rights in the law enforcement.

Chapter 3 in brief Human rights standards, legal principles of criminal procedure, its criteria, classification, grounds to suspect for a crime, rights and obligations of a suspect for the criminal procedure, legal status, and the regulation for identification, investigation, evidence, arrest, detention, and pre-trial restrictions shall become the legal grounds to violate the restriction of human rights and this criminal process must be regulated under the applicable laws.

Chapter 4 in brief, if a research work satisfied the criteria to be reliable, in logical sequence, and relied on the research methods, quality of the research work ensures the reliability. Therefore, this chapter includes the research methods, the scope of the research work, research development, and results.

Chapter 5 in brief expected results and credibility shall be analyzed relying on the answers to the questions in logical sequence based on the research methods.

CHAPTER 2. LAW ENFORCEMENT AND HUMAN RIGHTS

2.1. Legal Status of Participants in Criminal Proceeding

Whether the criminal proceeding is in accordance with the appropriate normal procedures depends on the legal rights and obligations or legal status of a subject of that proceeding. This subject implies that the process itself is not only the implementer, but also the participant in that relationship.

The subject of criminal proceedings is a person who is responsible for the conduct and participating in implementation of criminal proceedings. It is an authorized person who has the power to detect, investigate, monitor and prosecute the criminal case and have the rights and obligations to participate in it. The subject shall satisfy the following criteria as the implementer of the criminal proceeding. It includes:

1. Having reached an age determined by the law;
2. Ability to be responsible for the conduct of criminal proceeding;
3. Having the legal status be specifically defined by the law;
4. The rights and obligations of the subject are legally enforceable. It considers by classifying legal criteria in order to distinguish them. It includes;

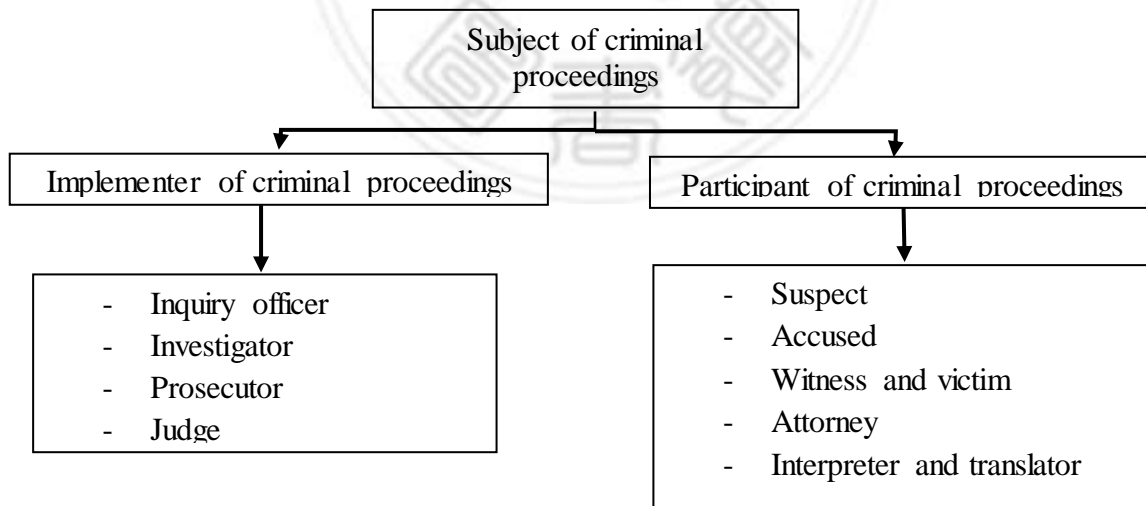


Figure 2.1 by Peculiarity of Legal Characteristics
Resource: The Research

Implementer of criminal proceedings and its characteristic:

- 1) Have the right to collect, underpin, investigate and examine the evidence;
- 2) Have the right to exercise coercion in criminal proceedings;
- 3) Conducting activities aimed at limiting human rights during criminal proceedings;
- 4) The key objective is focused on passing the criminal case to the court and judgement etc.

Participant of criminal proceedings and its characteristic:

- 1) Involved in criminal proceedings;
- 2) No participation in providing solution and resolving in criminal proceedings;
- 3) No connection of indirect relationship or interest in the will;
- 4) The rights are limited and the duties are high;
- 5) It is obliged to fulfill lawful requisitions by the implementer of the criminal proceedings.

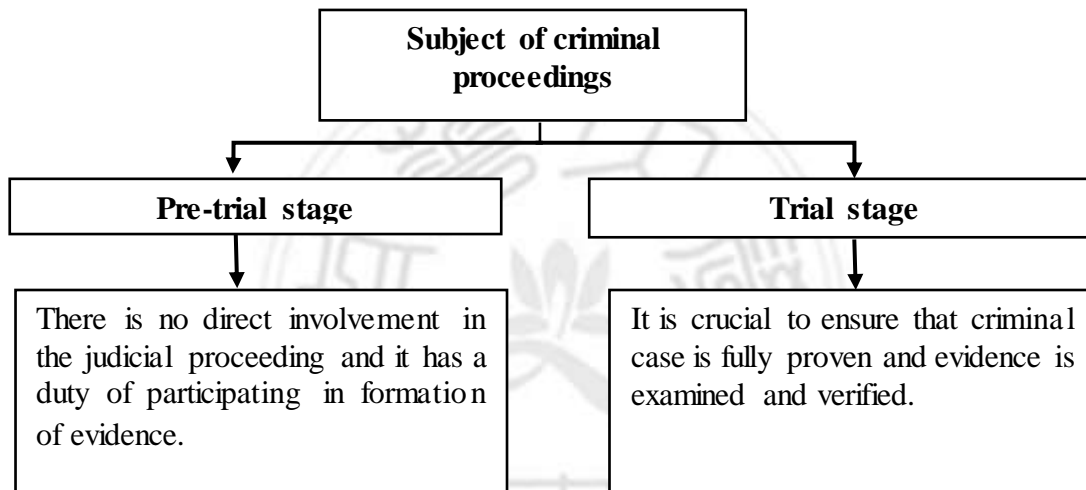


Figure 2.2 Proceeding Phase
Resource: The Research

Subjects of the above categories have the rights and obligations, respectively. Terms of legal status that is the position held by something or someone with regard to law and is a set of privileges, obligations, powers or restrictions that a person or thing has which are encompassed in or declared by legislation. It is separated by follows:

Legal status of implementer of criminal proceedings:

Inquiry officer one of the main subjects to exercise in criminal proceedings and a competent official who is authorized to conduct the inquiry. The inquiry officer shall carry out an inquiry into minor crimes only in accordance with the law. The inquiry is a process that aimed at allowing for quick and easy detection of minor crimes, simplified investigations, quicker checks of evidence and immediate transfer to the court.

Investigator not only one of the implements of the criminal proceedings but also plays a key role in the implementation of proving the criminal case in pre-trial stage. An investigator is an official authorized to carry out investigations into less serious, serious and grave crimes specified in the Criminal Code. Investigation is a process aimed at detecting, investigating and revealing all criminal cases, except minor, in full and substantially in accordance with the conditions, timelines and procedures provided by law.

Prosecutor exercises the criminal proceedings, also it is an authorized official to execute supervision over pre-trial inquiry and investigations. The prosecutor shall not review the day-to-day activities of inquiry or investigation and only supervise the post-inquiry and investigation pursuant to the Law. It includes:

- Whether receipt and investigation process of complaints and information on crimes delivered to the inquiry and investigation agencies are run in compliance with the law;
- Whether the inquiry or investigation is in compliance with the Criminal Procedure Law;
- Whether the measures of restraint and any other coercive measures are in compliance with applicable laws etc.

As a main executor of criminal proceedings, the Prosecutor shall ensure that the appropriate law is applied, human immunity is respected, the law is fulfilled, non-influence of others, justice is upheld, and is to be loyal to the law.

Judge- an authorized official in resolving the criminal proceedings. The Criminal Proceeding is referred to reveal the crime in operative and full manner and identify the person or legal subject who committed the crime, and impose on punishment, and no one who is innocent shall be considered as guilty of a crime, to protect the rights and legitimate interests and to restore the violated rights.

Legal status of participants in criminal proceedings

Suspect it is a suspected person when such person is caught committing the crime or immediately after committing it; when the victim or an eyewitness has directly indicated the person who has committed the crime; when obvious traces of the crime are discovered on the suspect or on his body, clothing, property or in his dwelling; when such person is giving oneself up; when there are other facts allowing grounds to suspect a person in committing a crime. It shall consider as a suspect only when suspicious condition and situation specified in the law is found and proved. An inquiry officer or investigator shall not establish suspicion on their favor and it shall root on the evidence only.

An accused is a person with respect to whom a decree to prosecute has been rendered by an inquiry officer or an investigator in accordance with the procedure established by the Criminal Procedure Law. An accused who is brought to trial shall be called a defendant, a defendant with respect to whom

a judgement of conviction has been rendered shall be called a convict. The state is obliged to provide the accused with the opportunity to enjoy the rights and duties stipulated in the law, and inquiry officer, investigator, prosecutor, court, and judge are obliged to ensure that the accused exercises his/her rights and duties. A defendant shall not be obliged to testify against himself, and no responsibility shall be imposed on this action. The use of force, intimidation, coercion and harassment are strictly prohibited.

Victim a person to whom moral, physical, or property harm is caused by a crime shall be deemed as a victim. A citizen shall be declared a victim by decree of an inquiry officer, an investigator, or a court, or by a ruling of the judge. Losses are damaging and harmful consequences of the offense as a result of criminal offenses or its related negative factors. If the victim refuses or avoids intentionally to give testimony or gives false testimony he/she shall be liable as provided by Criminal Law. Other participants involved with the victim are civil plaintiffs and civil defendants.

Witness a person who knows significant circumstances of a crime and not involved in the crime shall be deemed to be a witness. A witness is a person who is capable of verifying the actuality and accuracy of the criminal case. It is against the principles in the criminal proceedings that the involving a person who is not considered to be a witness, to consider the suspect or accused as a witness, or consider a person who gives false testimony, as a witness.

Advocate is a person who protects the rights and legal interests of the suspect, accused, defendant and victim, according to rules set by law and renders legal assistance. An advocate has the right to take part in criminal proceedings starting from the moment when someone is deemed as suspect in a crime. With the request of a victim, advocate started to participate in criminal proceedings. Article 13 of the on Basic Principles on the Role of Lawyers, the 1990 UN Convention highlighted that “The duties of lawyers towards their clients shall include: (a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients; (b) Assisting clients in every appropriate way, and taking legal action to protect their interests; (c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.”

Experts experts from the appropriate organizations, persons possessing special knowledge and without any personal interests in the case may be appointed as experts by decree of inquiry officer, investigator, procurator, and the court or by order of judge for purposes of carrying out examinations and delivering conclusions.

Translator or interpreter a person, which is appointed by the authorized official, capable of translating and interpreting as a translator or interpreter and shall present the criminal proceedings to him.

Another participant other subjects of participants involved in criminal proceedings. For example, a court secretary, etc.

2.2. Human rights in criminal proceeding

The criminal proceeding has been ensuring its objectives and executing its duties, but it still creates the consequences of violating human rights and distempering its values (Bayarsaikhan, 2014). Restricting of these negative factors and seeking the decent approach have been attracting the world's attention. There are common violations in many countries in the world and they have been combating to restrict these violations. Particularly, in the process of investigation of a crime, there are some violations such as considering as a suspect without reasonable grounds, detaining or arresting without court decision, conducting interrogation through torture, detaining for long term without evidence, misusing of laws in the course of examination, searching and coercion, inhuman or degrading treatment, disruption of witness and victim's rights and security, conducting a trial in non-debate principle and intentionally underestimating the evidence (Forum, 2015) etc. Briefly, the criminal proceedings is the sum of coercion and human rights protection.

In the history of humankind, torture was one of the main means of determining whether someone was committed or not committed a crime and a form of punishment (Tserendorj, The Question of Improving the Effectiveness of Legal Liability, 2014). Torture is considered to have originated from Romania dated back to the 2nd century BC, and it was widely used only in lower-class slaves. As well as, authorities from the ancient Catholic churches had used a torture as a means and a source for the confession in executing judicial activities. In order to take an interrogation, law enforcement bodies are still using some methods such as punishment, intimidation, pressure, physical and psychological torture. Law enforcers' forced torture such as taking interrogation by using force or threatening to use force, torturing, intimidation and humiliation are violations of imprescriptible human rights. The imprescriptible human rights in a general sense shall be expressed as "inviolability", "immunity", "privacy", "inviolability of individual life", "inviolability of the home" legal terms declared in The Universal Declaration of Human Rights and The International Covenant (Nation, 2019).

These negative attitudes and human rights violations have shown the need to establish a fundamental legal basis for human rights in the criminal proceeding, and these principles should be affirmed by the United Nations Conventions and Agreements as well as the Criminal Code and the

Constitution of the countries and the should be acknowledged and protected on the state policy (Ashworth, 2009).

Within the framework of the above-mentioned needs and demand for the protection of human rights in law enforcement, the most universal and common treaties and conventions adopted by the United Nations are as follows:

1. Rome Statute of the International Criminal Court, (1998);
2. Code of Conduct for Law Enforcement Officials (1979);
3. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1998);
4. UNMIK Regulation on the Extension of Periods of Pretrial Detention (1999);
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984);
6. Principles on the Role of Prosecutors (1990);
7. Law Model of World Criminal Process (2008);

These conventions and documents are significant in defining the basic principles and fundamentals of international common practice for overcoming the challenges in criminal proceedings.

Some basic principles of criminal proceedings are selected and summarized as below:

- Principle of respecting the rights and to be considered innocent under any circumstances when it was not proved in the court (Produce innocence);
- Principle of handling the case only at court (*Ratione temporis*);
- Principle in a case be decided at fair trial and a case be judged fairly;
- The principle of taking testimony apart from torture;
- The principle of applying for arrest and detention shall be based on a court deliberation by the judge's decree in special occasion;
- Principle of respecting human rights immunity investigating the case, searching and examining and police surveillance;

The aforementioned basic principles are directly reflected in UN conventions and conventions, as well as in the constitution of most countries. These legal documents also protect the inviolable of human rights in the course of criminal proceedings and obey the common norm of international law in criminal proceedings, as well as heighten the ethics, disciplines and accountability of the investigators, prosecutors, advocates, judges and police officers.

Principles on the Role of Prosecutors adopted by the UN in 1990 specified basic principles that the criminal proceedings should be impartial, independent, and fair. It also said that prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights of the suspect and the victim and shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded. The Code of Conduct for Law Enforcement Officials adopted by the UN in 1984 stated, "No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment".

An important document adopted by the United Nations in 2008 that described the international standards, values, and dignity of human rights and building a fair trial system for ensuring the human rights in criminal proceedings and fighting torture is a Law Model of World Criminal Process.

Section 2 of the Article 2 of the Law Model states that "...to ensure that the criminal proceedings are carried out promptly and effectively, to determine whether the suspect, the accused, the victim, the witness and others involved in the criminal proceedings are treated equally and fairly, to ensure the international human rights standards, to have a presence of the advocate when it interrogates the suspect and when it takes testimony from the suspect for obtaining information on the case, to be free from coercion, torture and illicit treatment, and meet witnesses who gives testimony against him/her, examine witness testimony, and re-interrogate the witness (Bayarsaikhan, 2014:19).

2.3. International treaties, laws and practice on criminal proceeding

Most countries in the world have their own constitution and national criminal code as the Criminal Code, Criminal Procedure Law, Court, Law, the Law on Legal Status of Judges, Law on Execution of the Court Ruling, and have a judicial practice and a unique legal culture that conforms to it. In addition to these national laws, it applies the criminal proceedings under the international treaties and conventions mentioned in the preceding sub-section. For example, it has made an effort to regulate an issue of violating and restricting the human rights and freedom for the purpose of ensuring the rights and interests of participants in criminal proceedings, creating a condition for a principle to be implemented on the basis of equitable debate with the defense counsel, the prohibition of the infringement and restriction of human rights without the judge's consent apart from grounds and procedures set out in the law.

International treaties and conventions joined by world countries are equally apply with domestic legal jurisdiction of a country and it is a system that has unique features (Oyunchimeg, 2016). International treaties and agreements prevail over domestic legislation. PASTA SUNT

SERVANDA is the same principle as mandated domestic law if joined the international treaties and conventions.

At present, there are countries where the fulfillment of the obligations is adequate and inadequate over the implementation of the international treaties and conventions mentioned in preceding sub-chapter. It is often related to the country's criminal justice system model.

So far, there have been built three models of the criminal proceeding in the world, and countries are subject to their criminal process models within the legal framework, national legislation and legal culture. For example:

1. Accusatory system(Accusatory process) - Trial with a debate. It is an open and free debate system. The results of the criminal proceedings directly depend on particular process of trial with a free debate and prosecution side-by-side. These include:

- To prove the case runs on the principle of mutual debate between the prosecuting party and acquittal party, and the fate of the case shall be determined by debaters but not by judges.
- The procedures, terms and conditions of the criminal proceeding are usually based on the principle of judicial precedent. It means that *Auctoritas re judicatae* (Latin) or a precedent judgment is a principle or rule established in a previous legal case that is either binding on or persuasive for a court when deciding subsequent cases with similar issues or facts.
- Due to the fact that the judicial process prevails, there are no detailed phases and boundaries between the court and the pre-trial proceedings.
- The evaluation process of evidence materials is made through testing and debating ways in the form of receipt and approval of judges.

The accusatory system that is commonly used in the English-American system, allows the suspect and the accused the possibility of admitting the guilty during the criminal proceeding and the judicial process, and negotiating the selection of punishment option. The procedure for punishment negotiation and confession is regulated apart from a variety of illicit tendencies such as torture and forcible coercion. In other words, the accusatory model allows prosecuting and defense counsel to participate in an action to prove the case as implementer so; it limits an evaluation of the evidence before the judging session. This system provides many important guarantees for ensuring the human rights, for justice (Bayarsaikhan, 2015).

2. Inquisitorial system (Investigation process) – Trial with investigation. It's a closed and non-debate system with restrictions. It is widely used in countries of Western Europe and continental states. The case is decided at the court through passing an investigation. In addition, its criminal

proceedings deny the procedure of free debate and simplified, sentence negotiation. It has the following features: It includes:

- The fate of the case is largely dependent on the result of the investigation and the trial session runs on the level of file materials sent by a prosecutor.
- The criminal proceeding has two phases: investigation process or the or the pre-trial stage and the judgement or judicial stage.
- The judge has a predominant key role in handling the case in court.
- The conditions, grounds and timing of criminal proceedings are governed in detail by the criminal procedure law and other relevant laws.
- The purpose of the criminal proceeding is to allow for a long period of time-to-follow check-in for any case in which a minor or bigger case and is directed at establishing the true truth of the case.

More than 120 countries implement the continental inquisitorial system. This system requires that an investigation be carried out irrespective of the class or case type, in order to fully verify the true nature of the case. Inquiry, Investigation and criminal proceedings are conducted within the accurate timeframe established by law and in most cases the time is extendable.

The key findings to prove the case are solved at the investigative stage, thus limiting to check whether the accuracy of the evidence through judicial review, and the fairness of judicial evaluations. Evidences are collected during the inquiry, investigation and criminal proceeding. If there is an error during the investigation, it is impossible to fix it at the trial stage as a process principle. In view of this it may lead to human rights violations (Bayarsaikhan, 2015).

3. Mixed system(Equivocacy and mixed process) – It is a recent emerging trend and it is a system that combines both a debate and a non-debate. Countries where this trend is applied are Japan, the Philippines, South Korea and some Scandinavian countries. It has following characteristic features. It includes:

- During criminal proceedings in pre-trial stage, the rights of the defendant and his/her defense counsel is somewhat limited.
- Relative balance is sought in evidence of prosecuting party and acquittal party during the pre-trial stage and trial session by aligning principle of establishing true truth with principles of justice and principle of ensuring the rights of participants.
- It avoids the suspect, the accused and the defendant to be considered guilty of a crime and it focuses on deciding the case by considering only evidence.

- The content of the evidence shall jointly be determined by the parties and the judges (Bayarsaikhan, 2015).

It can be concluded that the interdependence factor between the legal systems is increasing nowadays, and the implementation of international treaties and convention is directly dependent on the criminal model of a country and the effect of national law, the enforcement mechanism and the human rights protection mechanism. For example, human rights violations are common in countries with an Inquisitorial system of criminal proceedings. Although it is denied by the governments and law enforcement agencies of the countries, human rights activists still raise the issue based on factual facts and covenants.

Everyone has the right to life, liberty and security of person (Nation, 2019). According to the legal theory, international treaties and conventions on human rights and the Constitution of any sovereign state define "the inviolable rights" or "the right to privacy". From a legal point of view in criminal proceedings, law enforcers are allowed to take measures on detaining and restraining the suspect to prevent from escaping in order to reveal a crime and proving guilty. Due to this relation is not regulated to comfort with recognized international legal principles or this principle is violated, a person may be detained for a period of several months and years in pre-trial stage. There is a case that the detained time is not deducted from the sentence. Because of the incomplete regulation of criminal proceedings, the law enforcers often violate the inviolable rights of a person for the purpose of collecting evidence. For example, the inviolable rights of the physical body are considered to be the human rights immunity that no one is entitled to forcibly get information on cases under any circumstances, from any person who has been alleged or suspected of having been prosecuted or charged with any other evidence or footprint or other facts fingerprints, blood, vaginal discharge.

Under the umbrella of legal mechanism of protecting the human rights, law enforcement bodies combat with crimes and protect human rights violations caused due to crimes. When the State implements its duty to protect human rights through law enforcement, it grants the right to use force. There is a common international legal principle that the law enforcement authorities are always required to enforce human rights restrictions only under the law.

CHAPTER 3. OMISSION IN CRIMINAL ROCEEDINGS

USING THE EXAMPLES OF MONGOLIA

3.1. Criminal proceedings, its forms, legal relations and principles

Criminal proceeding is to ensure the prompt and complete detection of crimes and the identification of offenders, the imposition of a fair sentence for each person who has committed a crime, and the fact that no innocent one is found guilty of a crime. The parties involved in that relations are classified into implemented or enforcers in criminal proceedings and participants in criminal proceedings and their roles, rights and duties and implementations have been described in the previous chapter 2.

Objective of criminal proceedings covers all entire stages of the criminal process and procedure as a whole and it becomes the main adherence to determining the specific range of the relations, and the goals and directions of the institution (Bayarsaikhan, 2014:67).

The content of the common and fundamental objective of the criminal proceeding is expressed in following two directions (See Figure 3.1). It includes:

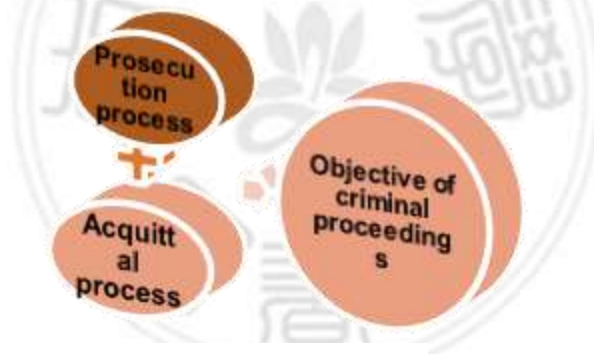


Figure 3.1 Objective of Criminal Proceedings
Resource: The Research

1. Reveal a criminal offense fully and promptly and to impose a fair sentence on every person who committed the crime to prosecute
2. Ensure that no innocent person is accused of committing a crime goal to ensure the acquittal process Stage of a criminal proceeding is a sum of the direction of periodical mode and the process with goal that differ sequence, timing and procedure, depending on the functions, rights and power, interaction and features of the operation of enforcer.

This stage contains the following features:

- Have a clear goal and direction;
- Have a well-organized by sequence;

- Processes, procedures and actions are interconnected and interdependent for the goal and principle;
- Each stage of the process and proceeding is to be independent and have a capacity to make decisions within its power and to be responsible for the consequences;
- Be determined by the procedure and time criteria established by law;
- To be continued

Criminal proceedings are divided into more specific hierarchical or more detailed stages for countries with a Continental or Inquisitorial system, and their relationship is regulated and legalized in a very specific procedures.

In view of a publicly accepted tendency, the investigation system consists of following two main steps: These include:

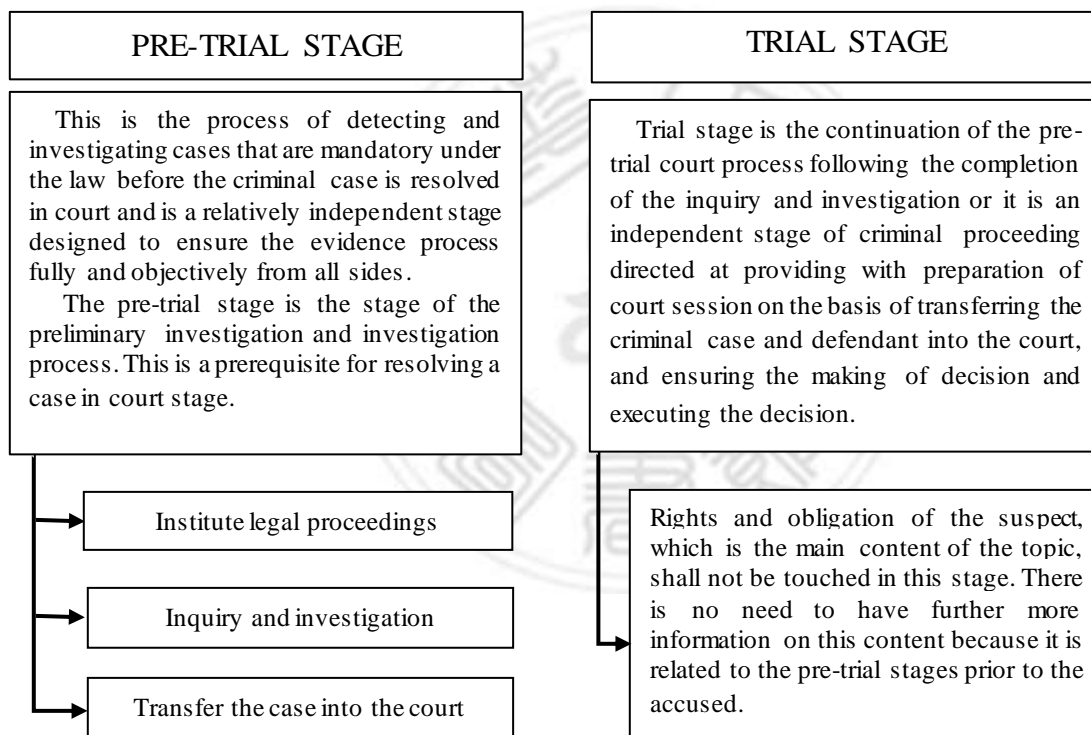


Figure 3.2 Research Framework
Resource: The Research

- **Institute criminal proceedings** from receiving and checking a complaint and information about a crime to instigating or declining criminal proceedings, and processes to ensure them or overseeing it
- **Inquiry and Investigation:** Commencing and conducting the proceedings, involving some subjects in this proceeding, summon a suspect and defendant, investigation, interrogation,

suspension, dismissal, applying and completing the restraining measure and put control over the proceedings of inquiry and investigation

- **Transferring the case to court:** The last stage before the court, notifying the completion of the inquiry and investigation, presenting the case material, transferring the case to the prosecutor, receiving and reviewing by the prosecutor, issuing a judgment of prosecution, procurator transfers the case to court

Forms of criminal proceedings

Criminal proceedings is a process that is shaped by its specifics and features. The form of the criminal proceedings requires the shaping and strengthening of the entire criminal proceedings (Bayarsaikhan, 2014: 67). For example:

1. Form of proceedings

Inquiry, investigation, prosecutor's supervision, judicial proceedings, inspection, examination, searching, testing, analysis, interrogation, court session etc.

2. Form of documentation

Ordinance by inquiry officer, investigator and prosecutor, a judge's order, a decision to institute the criminal case, the interrogation minutes of the suspect and defendant, a decision to bring as defendant, the indictment, the court order, etc.

3. A form of behavior

For example. Whenever the court composition enters the court hall and the court ruling is heard, everyone in the court stands up to honor the court, and the accused and the lawyer stand up to speak at the court

Apart from the fact that the form of criminal proceedings must have been legalized, it is a real expression of the legal coordination and shall satisfy the following conditions to get the form. It includes:

- Not prohibited by law or approved by law;
- Have grounds;
- Focused on ensuring evidences;
- Forms are interconnected;
- Legal anomaly and conflicts are restricted;
- Be clear and understandable to participants;
- Aim to ensure the objectives of criminal proceedings;
- Forming condition shall satisfy requirements of evidence materials

Legal relations of criminal proceedings

This is an independent type of legal process that is created when the Criminal Procedure Law is enacted. This relationship is a social relationship of the legal consequences of being provided with the opportunity, the opportunity for the rights and responsibilities of participants in criminal proceedings regulated by the laws of the sector, their provisions and norms.

The main features of this relationship are:

1. Established on the basis of criminal procedure law and its related legal norms;
2. With imperative regulation related to legal enforcement;
3. Established between legal subjects related to the establishment of the rights and obligations of participants in criminal proceedings and their implementation;
4. Established in connection with the detection and proceedings of crimes and cases and occurrences with criminal consequences;
5. Arising in connection with the implementation of the conditions and procedure for pre-trial stage and judicial proceedings;

It is a legal relationship with a relatively independent function.

Criminal proceedings relations are, on the one hand, relations between subjects of state power, and on the other hand, it appears in the process of interaction with participants such as inquiry officer, investigator, prosecutor, judge and suspect, the accused, witness and victim.

The basic structure of the relationship is:

1. Subject
2. Object
3. The subjective side
4. Legal obligation (Bayarsaikhan, 2014: 67).

The relationship is so wide-ranging in the multiple and continuous stages of the proceedings that it must be considered in separate.

Moreover, in this stage, it should separately consider legal relations concerned to use force and coercion in restraining and detention; the legal relations between the inquiry officer, investigator and the suspect, the defendant, witness and victims; the legal relations between the procurator and inquiry officer and investigators; the legal relations between the procurator and investigators and attorney.

Principles of criminal proceedings

It is a legal guideline to ensure the objective of criminal proceedings which is reflected in the Constitution of the countries, and is recognized within the frame of state policy, and is protected by international treaties and conventions.

Thanks to the legal principles, entire criminal proceedings fully express their legal content with enhancing their abilities and accessibility to influence the society.

In terms of the legal principle, essence, legitimacy and content of the criminal proceedings:

1. Legal orientation to ensure objectives, goals and functions of the criminal proceedings;
2. Countries' state policies and concepts on the development trends of criminal proceedings;
3. It is expressed on the level of legal and moral values, and standard understanding that is recognized internationally, nationally and socially.

Each country has its own principles of criminal proceedings, which reflect the development level of the country, the national culture and social characteristics. There are two main criteria for determining whether the legal principle of a country's criminal proceeding satisfies a common standard. It includes:

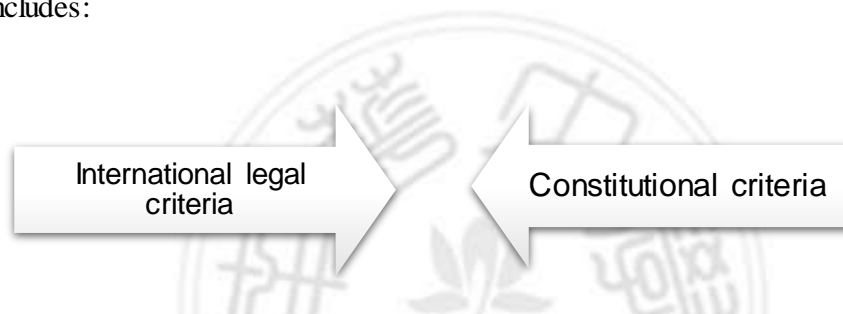


Figure 3.3 Criteria for the Legal Principle of Criminal Proceedings
Resource: The Research

International Legal Criteria: The legal principles governed and defined by the United Nations Convention and the acceding or ratifying international treaties of the country, are required to be legalized and implemented in national law.

Constitutional criteria: The fundamental principles and legal norms of the human rights and criminal proceedings proclaimed in the Constitution of the country are ensured by how it is implemented in the criminal proceedings.

International legal criteria and the Constitutional criteria are interacted and interconnected and their practice is considered to be example standard. The legal principle of the criminal proceedings covers all entire aspects of criminal proceedings, therefore, it is considered to distinguish it in both common and special scopes.

Table 3.1 Classification of Legal Principles of Criminal Proceedings

Fundamental principles	It refers to the common norms and general conditions of international law, the fundamental principles of the Constitution, and their interrelated and coordinated fundamental principles.
Special principles	Principles specifically designed for specific areas of criminal proceedings
By nature and characteristics:	
Natural principles	It should not be specifically regulated by the state by issuing laws, but it is conditioned by requirements of natural freedom inviolability. This is a worldwide recognized principle, including the principles of equality, justice, humanity and inviolability.
Deserved legal principles	These are the legal principles that are required, and regulated by the state by issuing laws. This is manifested in a special way that is regulated by the Constitution and the Criminal Procedure Law, which include: the principle of parties' debate, the exercise of judicial power only by the court, and the principle of conducting continuous criminal proceedings.

Resource: The Research

The basic principles of criminal proceedings and their features include:

Principle of equality before law and court: This principle is one of the fundamental principles of criminal proceedings, and its formal legal basis was first laid out in the 1948 Universal Declaration of Human Rights. Any person does not discriminate against race, language, age, gender, social origin, status, wealth, occupation, position, religion, opinion, education, or have equal rights, duties and responsibilities provided by laws. The conditions for everyone to be a legal subject shall be manifested through equal treatment.

Discrimination means that an attitude of a state body or official conducting criminal proceedings intentionally differentiate the participants of criminal proceedings from others, limiting their legal opportunities or establishing preferences.

All participants having different legal status, such as the suspect, the defendant to the witness, the victim, the expert and the translator shall enjoy equal rights under the law. Whilst, actions, manner and attitudes that inquiry officer, investigator prosecutor, attorney and judges unequally treat, disrespect and discriminate participants in criminal proceedings are considered the violation of the principle of equality.

Without ensuring and satisfying the principle of equality before the law and the court, it is impossible to conduct the criminal proceedings in normal, legality and fair basis.

Principle of obeying the law and observance of laws: Within the framework of criminal law, policy, this is one of the formal principles that is broadly recognized as the "Principle of Legality" and is originated from conceptions that "...It is permitted if it is not prohibited by law. It is prohibited if it is not permitted by law".

The nature of the legal principle in the criminal proceedings expresses the contents that no torture anyone outside the law, not to consider as a suspect, to detain no one outside the legal framework of the law, all actions of the criminal proceedings are carried out in accordance with the law, the participant is to obey the law in full, to respect the law, to perform any act not permitted by law, any solution or form of criminal proceedings are fully in conformity with the law; and the Constitution and the Criminal Procedure Law shall play a key role in regulation of such relations and it is possible to directly use the content without duplication, content shall be clear and unambiguous.

The principle of ensuring the right of inviolability of a person: Criminal proceedings has the consequence of not only restoring and protecting the human rights which are violated, but also of infringing and restricting the inviolability of human rights. The inviolability of human rights must be secured by the minimum assurances of the criminal procedure, which include:

1. To protect oneself in accordance with the grounds and procedures provided by law;
2. Have the right to protect the inviolability provided by law;
3. Ability to obtain legal assistance, defense and get an attorney in the event of a violation of the right and freedom;
4. To have provided with the rights and conditions to protect your rights and interests, and to file a lawsuit and to adjudicate in a fair trial.

Infringement of human rights and assault on their inviolability is often found on the stage of criminal proceeding, especially in exceptional cases where a person has committed a crime. If a person is involved in an offense or criminal case and is being investigated through a criminal proceeding, the case of restricting his or her inalienable rights and freedoms through torture, prosecution, accusation and the use of coercive force should only be manifested and exercised in accordance with the procedures provided for by law. Failure to do so will constitute a violation of human rights.

Principles of continuous criminal proceedings: This principle is an important principle that is directly relevant to the entire process, from beginning to end of criminal proceedings, the basic requirement of which is that a criminal proceeding should be carried out by criteria of a specific

period of time, with certain stages, aimed at achieving a specific purpose, to be prompt, quick and easy without delay and so on. Without proper application or failure of this principle, the pursuit of criminal proceedings would be a retribution.

The principle of fully and objective consideration of the case: This principle is to ensure that all actions, methods and forms of the criminal proceedings are adequate, fair and fully compliant with the law.

The status of a case is understood as a whole crime situation, the dependence of the suspects, the accused and the defendants on the guilty nature of the crime, constituent elements of offense, and all aspects of the evidence of the relation to the case. The legal content of this principle is to take all the measures provided by law from inquiry officer, investigator, procurator and the court in order to sufficiently prove the crime in terms of its condition, elements and guilt (Bayarsaikhan, 2014:102).

The case is investigated from all sides means that it makes an effort to determine and prove the case from all sides through studying and investigating the situation to acquit and prosecute the suspect, the defendant and the accused and aggravate and mitigate the liability that is imposed on them. Complete case identification means the ensuring the fullness of evidence's relevance, and determining the case with based on sufficient evidence without the omission of all circumstances of a crime.

In order to ensure these principles, it was prohibited to do illicit actions such as the use of force, torture, harassment, intimidation. In addition, it is also not allowed to make inappropriate attitudes, such as prediction, prosecution or acquittal unless the evidence is sufficiently proven in accurate ways.

The principle of securing the right to defense and to get defense: This was conditioned that the suspect, the accused and the defendant are provided with the right to get defense, and this principle relates to the implementation of defense actions at all stages of criminal proceedings (P.Tsagaan, 2012, p. 64). A defense, on the one hand, offers self-defense or protection, and on the other part, at the request and consent of the person, the competent attorney will provide professional legal assistance. It is a comprehensive system of legal assistance, services and protection aimed at safeguarding human dignity and inviolability serving for the benefit of the rights and interests of the person, and providing for the process of acquittal and eliminating the action of restricting human rights (Institute, 2011, p. 470).

3.2. Subject the suspect of criminal proceedings

Whether the criminal proceeding is in accordance with the appropriate normal procedures depends on the legal rights and obligations or legal status of a subject of that proceeding (P.Tsagaan, 2012, p. 14). This subject implies that the process itself is not only the implementer, but also the participant in that relationship and their legal status is described in Chapter Two.

The subject of criminal proceedings is a legal subject who is responsible for the conduct and participating in implementation of criminal proceedings. The subject shall satisfy the following criteria as the implementer of the criminal proceeding. It includes:

- ✓ Having reached an age determined by the law;
- ✓ Ability to be responsible for the conduct of criminal proceedings;
- ✓ Having the legal status be specifically defined by the law;
- ✓ The rights and obligations of the subject are legally enforceable (Bayarsaikhan, 2014, p. 109).

Let us briefly outline one of the participants of the criminal proceedings, Suspect's legal status, the model of the system for investigating the status and how they are incorporated into the laws of the countries in the world.

The suspect is a suspicious subject that a criminal case was initiated against him/her, a decision was issued as a suspect and who complies with the conditions and requirements specified in the criminal procedure law of the country.

For the formulation, a person who is suspected of being arrested or called for a crime under the law, and who has not been acquainted with a resolution to prosecute and convict, is understood to be a suspect. It should be noted that the terms set forth in the law are:

- When such person is caught committing the crime or immediately after committing it;
- When the victim or an eyewitness has directly indicated the person who has committed the crime;
- When obvious traces of the crime are discovered on the suspect or on his body, clothing, property or in his dwelling;
- When such person is giving oneself up;
- When there are other facts allowing grounds to suspect a person in committing a crime.

A suspect must be considered as a suspect only when a suspicious circumstance established by law is detected and proven. Unless otherwise stated, inquiry officer or investigator may not establish a suspicion in his sole discretion. Only criminal evidence should be guided by the principles of the criminal proceedings.

In countries that have a model of investigation and debate in criminal proceedings, depending on the legal characteristics of its country, the rights and duties of the suspect under the Constitution and the Criminal Procedure Law have the following rights and obligations: For instance:

- To know for what crime he is being suspected;
- To be presented with a decree on initiation of a case against him/her, on his/her arrest, and on taking measures of restraints against him/her;
- To present evidence and submit the petition requiring examination of evidence;
- To give a testimony or refuse to give a testimony;
- To make self-defense; to have a defense counsel as provided by law;
- To require to be compensated for damages occurred due to the activities of an inquiry officer, investigator, or procurator in violation of law. To lodge complaint regarding the actions and decisions of the inquiry officer, investigator or procurator;
- To have individual meetings with his/her defense counsel;
- To submit challenges with regard to inquiry officer, investigator, procurator, translator, interpreter and expert;
- To demand that the Crime Investigation is honest and fair;
- Be silent before the interrogation, Do not answer questions that aggravate your situation, Know that each word can be used against you in court. For example: *Miranda v. Arizona*, 384 U.S. 436 (1966), was a landmark decision of the U.S. Supreme Court in which the Court ruled that the Fifth Amendment to the U.S. Constitution prevents prosecutors from using a person's statements made in response to interrogation in police custody as evidence at their trial unless they can show that the person was informed of the right to consult with an attorney before and during questioning, and of the right against self-incrimination before police questioning, and that the defendant not only understood these rights, but voluntarily waived them.
- To demand, examining the testimony of the witness against his/her interests;
- To make a request to settle the case expeditiously;
- To make a request on plea bargaining on the basis of the confession of its guilt;
- To not give a testimony against himself or his family, and doesn't consider himself as guilty;
- To give testimony in his/her mother tongue or known language, to make use of a translator, interpreter;
- To participate in the criminal proceedings with the consent of the inquiry officer and investigator;
- To arrive at the time set by inquiry officer or investigator;

- To fulfill a resolution issued by inquiry officer and an investigator for examination and investigation;
- Comply with the Criminal Procedure Law and other laws;

The suspect is a participant with the rights and duties provided by laws, therefore, he/she must be treated with understanding the peculiarities of his legal status. A suspect is a person who is arrested or summoned on a legal basis and who has not introduced with the resolution on conviction. The suspect shall not be obliged to testify against himself, as well as to prove his/her innocence or any other circumstances of the case known to him.

That is why there is a principle that if not proven, then no one can be found guilty of a crime until proven guilty in court according to the law. These principles also apply to The International Bill of Human Rights and the international treaties and conventions (Nation, 2019).

Depending on the model of the criminal proceedings and the stage and nature of the investigation, one of the potential rights of the suspect is "plea bargaining" that is pursued in the United States (Bayarsaikhan, 2015: 79).

Prior to the pleading guilty and entering into a negotiation of plea bargaining, the suspect (accused) shall base solely on his own conscience and voluntary decisions and it is prohibited to intimidate, threaten or harass by the procurator attorney in any way. A recent study found that 95% of all crimes in the United States are decided by the plea bargaining and only 5% of cases are settled by court session (Joel, 2014).

In criminal proceedings, practice in the United States, preliminary negotiation on plea bargaining is made on the basis of defendant pleads guilty. It is common that defendant hopes the expectation of lesser charge at the court session (Brunham, 2006).

In other words, plea bargains are an agreement in a criminal case between the procurator and the defendant that usually involves the defendant pleading guilty in order to receive a lesser offense or sentence. They are often just considered as a way of establishing a "mutual acknowledgment" of the case's strengths and weaknesses, and don't necessarily reflect a traditional sense of "justice." In addition, the court session shall not be held therefore, the case shall not be exposed to the public and it is beneficial for the defendant that whose privacy and private interests shall not be disclosed.

This system of plea bargaining is widely criticized by law scholars. Namely: German professor B. Schunenman says "Plea bargaining is a contrary to the principle of legal state... On the one hand, as if it were a sentence reduction, but on the other hand, the burden of aggravating his or her sentence will come naturally from the law enforcement officer if he or she wants to exercise

procedural rights to dispute the amount and terms of a conviction. Also, this plea bargaining violates the principle of fair punishment that the reality of what he did." (Schünemann, 2010)

Plea bargains are extraordinarily common in the American legal system, and the U.S. generally recognizes three types:

1. Charge Bargaining: the most common form of plea bargaining, the defendant agrees to plead guilty to a lesser charge provided that greater charges will be dismissed;
2. Sentence Bargaining: far less common and more tightly controlled than charge bargaining, sentence bargaining is when a defendant agrees to plead guilty to the stated charge in return for a lighter sentence;
3. Fact Bargaining: this is the least common form of plea bargaining, and it occurs when a defendant agrees to stipulate to certain facts in order to prevent other facts from being introduced into evidence (Bayarsaikhan, 2015: 80).

The objective of the criminal proceedings is to ensure that each person who has committed a crime is fairly punished and to ensure that no innocent one is found guilty of a crime. Implementation of principles of innocence should ensure that no adherence to one side during the inquiry and criminal proceedings, the rejection of the worship of evidence of predetermined truth, and no event of bringing others to unreasonable suspicion.

Moreover, taking into account the circumstances of improving the legal status of the suspect, acquittal of the suspect or considering the mitigating possible convictions with the criminal case component are aimed at satisfying the objective of criminal proceedings.

3.3. Legal status of the suspect, its implementation, and challenges

There must be a suspect in each case of the offense. Detection and investigation of the crime is executed by inquiry officer and investigator with a power to use coercion and force on behalf of the state, and their proceedings are supervised by the prosecutor, and the corresponding punishment is exercised by the court. In short, the above process is a criminal proceeding and the objective of the proceedings, the legal status of its enforcer and participants, the relationship between them in criminal proceedings, its form and adhering principles are described in preceding chapters.

Relations of criminal proceedings are aimed, on the one hand, at restraining of the rights of a person involved in a crime and violating the human rights, and on the other hand, at protecting and restoring the rights of a person who has been hurt due to the crimes, therefore, it is crucial that the relationships of the above criminal proceedings, its form and principle are strictly pursued.

In criminal proceedings, the suspect participates in all stages including the conduct of investigation to detect the crime, searching, confiscating, taking testimonies, confrontation

interrogation, making analysis, collecting evidence, protection of witness and victims, settling requests and complaints in relation with criminal proceedings, establishing evidence materials for the prosecution or acquittal and taking restraining measures etc.

Because of each of the above stages has its own peculiarities and interactions with a logical sequence of actions, and failure to keep the principles of criminal proceedings and infringement of legal relations, norms of criminal proceedings make considerable change and influence to the fate of the suspect. That is why the legal status of the suspect is so important in the criminal proceedings. It is shown in Table 3.2

Table 3.2 Suspect

<p>The suspect is a participant with the rights and duties provided by laws, therefore, he/she must be treated with understanding the peculiarities of his, her legal status.</p> <ol style="list-style-type: none">1. A suspect is a person who is arrested or2. Summoned on a legal basis3. Who has not introduced with the resolution on conviction?4. The suspect shall not be obliged to testify against himself, as well as to prove his/her innocence or any other circumstances of the case known to him.
--

Resource: The Research

Let's look at the legal status of the suspect mentioned in the table above by making an analysis of the Criminal Procedure Law of Mongolia and its implementation status.

For the state structure, Mongolia has an integrated and democratic system. In terms of the legal system, the country has a system of Roman-German law. In criminal proceedings, it has a system of investigation. The relevant criminal proceedings legislation is as follows:

1. The Constitution (1992);
2. The Criminal Code (2015);
3. The Criminal Procedure Law (2017);
4. The Law of Court (2015);
5. Law on the Legal Status of Judges (2013);
6. The Law on Police (2017);
7. The Law on Procurator (2017);
8. The Law on Victim and Witness Protection (2013);
9. The Law on Arrest and Detention of Suspect and Accused (1999);
10. The Law on Legal assistance for insolvent offenders (2013).

Summarizing the legislation on criminal proceedings over the last 20 years:

- ❖ 2002-2016 the Criminal Procedure Law;
- ❖ Since 2017, the revised Criminal Procedure Law has been in force.

Researchers consider that the country's system of criminal process was the system of criminal proceedings from 2002 to 2016, and it was changed to a criminal procedural system in 2017, it becomes a reform of the system of investigation proceedings.

Table 3.3 2002 Criminal Procedure Law of Mongolia Implementation/review/

No	POSITIVE	NEGATIVE
1	It has fulfilled its historic role in detecting and restricting the crimes.	At the pre-trial stage, detention measures were predominantly taken with an unclear ground for “potential escape”.
2	Expanded the rights of the suspect and the accused.	Participants' rights have been violated due to limited right of attorney.
3	It has shifted to a new procedure that it receives court approval for arrest and detention measures.	Procedure on how to take measures in detaining and arresting and its release condition were too general and were not regulated in detail. This situation led to arise a complication.
4	Increased responsibility for the executor of criminal proceedings.	The duplicated rights and duties of the inquiry officer and the investigator and it could not be distinguished.
5	There have established some new regulations that have not been implemented before For example: make a request, detention of suspects, legal assistance etc.	Due to the excessive privilege of supervision by the procurator in criminal proceedings, there were difficulties in investigating the case.
6	The debate was legalized and recognized as a principle of criminal proceedings.	The court session did not satisfy the principle of debate.
7	It has legalized the conditions and opportunities for obtaining a lawyer in pre-trial stage.	Time for an investigation under detention and criminal proceedings have been delayed too long and damages have been expanded.

8	Torture and inhuman treatment of humiliation was prohibited by law during the interrogation and criminal proceedings.	Torture was not completely eliminated due to that the interrogation procedure was too general.
---	---	--

Resource: The Research retrieved from NUM (2015)

Table 3.4 Peculiarities of procedural and proceedings systems

№	PROCEDURAL SYSTEM	PROCEEDINGS SYSTEM
1	Prosecution based process activity	Evidence-based decision-making, relationships
2	All kinds of crimes are under investigation. Slow progress through inquiry and investigation	The process of transferring some extreme grave or grave cases to the court
3	The widespread use of detention measure of suspects and defendants whose guilt is not yet found;	In exceptional cases, detention may be applied only on certain grounds, which intentionally obstructed the law process.
4	The trial shall be carried out on the level of case file materials established by inquiry officer and investigator, and the debate shall not be implemented	The trial will be based on a debate with a preliminary examination of the evidence.
5	The procurator shall supervise the inquiry and investigation.	Investigation and proceedings shall be supervised by the competent court.
6	It is common for a decision of primary court is repeatedly changed, returned for re- investigation.	In most cases, the decision of the primary court is the final one.

Resource: The Research

The 2017 Criminal Procedure Code is considered that it has made the progress in saving time and expenses and protecting the rights of participants in criminal proceedings, but the new law did not legalize the rights of the Suspect, which is a matter of debate for researchers (Legalinfo, 2019).

The structure of the new law includes: 9 parts, 46 chapters, 385 articles, and Part II of this law has legalized the enforcer and participants of the criminal proceedings. For instance:

- **Part 3:** Court criminal proceedings is settled in court, conducting a court session open and court composition to handle the criminal proceedings
- **Part 4:** Procurator Court, Prosecutor's powers, duties and supervisions and inspections

- **Part 5:** Attorney rights and obligations of an attorney, selection of an attorney, participation of an attorney, guarantee of legal action
- **Part 6:** Organizations and officers conducting the investigation. The powers of the investigator and head of the investigation department.
- **Part 7:** The defendant: Prohibition of preliminary determination of the defendant's guilt, knowing for what crime he is being accused, refusing to give a testimony, communication with his attorney, filing a complaint, the role of the defendant in court session
- **Part 8:** Victim, civil plaintiff, civil defendant, victim, victim's rights and information, security, civil plaintiff, civil defence
- **Part 9:** Other participant: expert, expert's rights, duties, specialist, translator, interpreter, legal representative, witness, external witness.

In connection with the above legal regulation, the suspect is so-called or nicknamed as 'participant of non participant' of criminal proceedings (Unurmaa, Comparative Study of the German Code of Criminal Procedure (StPO) for Legal Regulations of the Status of a Participant of Non Participant or "Suspect" in the Criminal Procedure, 2019).

In the Criminal Procedure Code of Mongolia, a "suspect" is defined as a participant in a criminal proceeding as specified in paragraph 1.13 of Article 1.4 of this law. This is a person who is suspected on the grounds provided by law to commit a crime and has the right to protect its legitimate rights and interests and to seek legal assistance. But, rights and duties of the suspect has not been legalized. This is not only raises the question of the legal status of the suspect and its implementation, but also it creates a legal gap (Minister, 2010).

The suspect has been legalized as a participant in the criminal proceedings. However, the rights and duties of the defendant were legalized in Chapter 7 of this law, but it missed to indicate the methods and procedures on how to enjoy and exercise his rights and duties /indicated in Table 2.

A suspect is a person who is arrested or summoned on a legal basis and who has not introduced with the resolution on conviction. The suspect shall not be obliged to testify against himself, as well as to prove his/her innocence or any other circumstances of the case known to him.

In addition, the suspect has the right:

- To know for what crime he is being suspected;
- To be presented with a decree on initiation of a case against him/her, on his/her arrest, and on taking measures of restraints against him or her;
- To give a testimony or refuse to give a testimony;

While the suspect a legal subject having the necessary rights and duties during the criminal proceedings, but this relation has not been legalized, therefore, it is understandable that it will be difficult to enforce it. This could have a negative effect on the objective and goal of criminal proceedings and its relations, rights and duties of the participants and principles (Unurmaa, 2019).

For example: From the moment a person is suspected to commit a crime, and even before issuing a resolution to call for as defendant and institute the criminal case, how to take a testimony from a person involved in the crime is incomprehensible for both criminal proceedings and the subject.

Article 16 of the Constitution of Mongolia guarantees the inviolability of a person and the fundamental right to not testify against himself. However, current law does not regulate the process of suspecting or taking a testimony from the suspect. Taking a witness testimony from a person who is suspected to commit crime is a serious violation of his or her fundamental rights. It has legalized the rights of other participants in the criminal proceedings and but it has not identified the status and rights of the "suspect", and this violates the Constitution.

Furthermore, the suspect is a subject who is suspected of a crime under suspicion of committing a crime and has the right to protect the legitimate rights and interests and get legal assistance.

Suspected on grounds provided by law is the "reasonable suspicion" referred to in paragraph 1.23 of Article 1.4 of the Law that means information on crimes that have resulted in certain conditions of conduct of a specific operation or which may be committed, as well as the inner faith of a detective, procurator and judge based on the circumstances of the case.

The inner faith of a judge, procurator and investigator is neither a psychological attitude toward an individual's problem, nor a personal belief and it correctly identified the source of the document's significance in resolving any case or dispute and belief that they are proven based on professionalism and their beliefs are ensured by decisions made in accordance with the law. When a competent official establishes grounds or rights to suspect others of a criminal offense, and affords him opportunities and conditions for violating human rights, on the other hand, the right or opportunity of self-defense to the person suspected should be established.

Except for arrest, the rights and opportunities provided to the suspect were not provided by the 2017 Criminal Procedure Code and there is a situation that he or she may be directly convicted of giving a witness testimony.

Based on research methodology in the next chapter of the thesis, an evidence based analysis and conclusions will be made on how this legal anomaly, not regulated by the Criminal Procedure Law, is being implemented at the stage of an inquiry officer, investigator and prosecutor. The analysis

will also be carried out in the grounds for suspecting and exercising the rights of suspects that have become an enemy of criminal proceedings or a pressing issue of criminal proceedings and they are causing human rights violations.



CHAPTER 4. RESEARCH METHODS

4.1. Research data

The research shall be conducted relying on the qualitative and quantitative data. All types of printed sources shall be collected, questions for the questionnaire shall be selected from the criminal files, statistics shall be taken from official sources, and legal provisions shall be collected and comparative analysis shall be made during the qualitative research.

Scope of the research work:

1. Ground to recognize as a suspect and whether the suspect's testimony has the significance of evidence to implement the criminal process?
2. Whether taking a testimony from the witness as a suspect or a testimony from the suspect as a witness is the omission of criminal process?
3. Within the scope of the research questionnaire that asks Whether the violation of the suspect's rights is the violation of human rights? Take a clear example, particular cases shall be studied for the grounds to recognize an individual as a suspect, significance of the statement's evidence of the suspect, the criminal proceeding coercion or arrest of the suspect, and detention of a suspect in accordance with the legal standards of the countries and the standards legal rights, behavior, attitude, and circumstances to be observed by inquiry officers, investigators, prosecutors, and judges who implement the laws and criminal processes of Mongolia.

4.2. Research data processing

The legal system of Mongolia is included in the Roman-German legal system and this section apply to the Examining Court Model EX office, doctrine which focuses on proving the legal breaches and disputes (Batzorig, 2016:54). This model states that "Judges, prosecutors, and investigators should collect the evidences for both accuse, acquittal, aggravation and mitigation and resolve any case based on the realistic evaluation principle.

Evidences and process to prove are more crucial for determining or investigating whether a crime has been committed or a person suspected of a crime is guilty. It is impossible to imagine criminal proceedings without any proof or evidence. The legislators are entitled to take compulsion measures for a suspect who causes or may cause obstruction to the evidence collection and investigation.

The above is detailed into the following three contents:

1. Ground to recognize as a suspect

2. Evidence

3. Compulsion for a suspect. Let's discuss each content in brief and make a research data processing.

A.Content

1. Ground to recognize as a suspect the suspect is a person who has been suspected and arrested or called on the grounds specified in the law and has not been acquainted with an ordinance to recognize as a suspect. When the grounds to recognize as a suspect were compared to the grounds stated in the Criminal Procedure Law of Mongolia (see Table 4.1):

Table 4.1 Comparison of Criminal Procedure Law

Country	Ground to recognize as a suspect	Grounds stated in the laws
Mongolia	Recognize as a suspect with the grounds stated in the applicable law.	<ul style="list-style-type: none"> • Reasonable suspicion that set forth in part 1.23 of the Clause 1.4 of the Article 1 of the Criminal Procedure Law means the creation of circumstances to conduct particular operations or the report made by investigators, prosecutor, or judges based on the information or circumstance of a crime which may be committed.
Other countries	Recognize as a suspect with the grounds stated in the applicable law.	<ul style="list-style-type: none"> • Arrested the suspect on the spot or immediately after committing a crime; • The criminal was directly identified by the witness or the person who had seen him or her; • Trace of the crime was clearly identified and found from the suspect's body, clothing, items, and accommodation; • If the person revealed his or her crime; • There are other documents with grounds to be suspected of a crime.

Resource: The Research

2. Evidence:

Evidence is a set of all the information and its documentary sources that were identified and reviewed by a way of comprehending approving or contradicting with the criminal proceeding means

in accordance with the criminal standards to identify whether the facts with legal consequences were a crime (Bayarsaikhan, 2014:137).

Cause 6.1 of the Article 6 of the Criminal Procedure Law of Mongolia states that “Facts and information, with respect to the circumstances of a crime, obtained in accordance with the grounds and rules set by this Law shall be deemed to be evidence”.

According to the above provision, in terms of Mongolia, evidence should meet the following features and characteristics:

- ✓ Facts and information about the circumstances of a crime;
- ✓ Obtained in accordance with the grounds and rules set by the law;
- ✓ Obtained under the procedure specified in the law

Requirements for evidence:

1. Have the grounds and conditions specified in the law;
2. Obtained in accordance with the law or by means which are not prohibited by the law;
3. Not to violate the immunity of human rights;
4. Be free from torture³;
5. Intends to comprehensively and substantially determine both conviction and acquittal documents.

In terms of the type of evidence (Bayarsaikhan, 2014:137), part 2 of the Clause 16.1 of the Article 16 of the Criminal Procedure Law states that “Documental evidence must be described in detail in conclusions, material evidence, and documents by a witness, victim, civil claimant, civil defendant, suspect, convict, and accused, video and photographs, video and video-audio records, forms taken from traces, minute of the investigations, complaints and information by an individual, legal body, and officials, and other documents stated in this law”.

In the context of the above provision and subject formula, testimony of a suspect and witness is related to the type of evidence.

Testimony of a suspect is the ground of measures taken to recognize as a suspect and pre-trial restrictions as well as spoken information provided by a suspect or a measure of restraint, as well as oral information about the case. The suspect's testimony shall not be made in force and must be only the suspect's statement. Furthermore, the testimony of the suspect who confessed his/her guilt shall not be the ground to consider him/her as committed a crime and to condemn. Besides, the suspect is not charged with responsibility because the suspect's testimony is not compulsory to be true and correct. If the suspect was made to give a testimony by violating the procedures stated in the law, the testimony shall not be deemed as having sufficient evidence.

Testimony of a witness is the information which was discovered and confirmed in accordance with the Criminal Procedure Law and oral testimony about the clear facts of the crime circumstances. A witness is obliged to prove the source of his or her testimony by a particular facts, to be present at the court and prosecutor's office, and to give true and correct testimony on the criminal case. If a witness avoided to give a testimony by purpose or gave a false statement, charge shall be borne in accordance with the Criminal Procedure Law.

Comparison of the requirements for the statements of a suspect and witness:

Table 4.2 Comparison of the requirements for the statements of suspect

Type of statement	Legal status	Whether obliged to state the source of the statement	Whether the testimony is true and correct and to bear a legal responsibility
Testimony of a witness	Called with the ground of being aware of the crime circumstances	Yes	Yes
Testimony of a suspect	Arrested because of the ground of suspicion as committed a crime.	No	No

Resource: The Research

The above table shows that the suspect and witness are two different subjects in terms of the criminal proceeding goals and participation.

3. Coercive measures:

The criminal proceeding is inseparably linked with the process of coercion and is an activity which directs towards enforcement of the laws and coercion measures. On the other hand, it is an activity focused on ensuring the criminal process. For instance, the following requirements are put to truce illegal activities of a suspect and other participants during the process of getting on to a crime and of resolving the case and to promptly identify the nature of the case:

- Escaped or attempted to escape from the crime scene and investigation;
- Deliberate and false testimony was revealed and identified during the investigation;
- Intentionally hid or eliminated the traces and evidences of a crime;
- Caused obvious obstacles to and disrupted normal operations of the investigation;
- Participated in a serious crime in a group and it was compulsory to intercept the crime consequences.

The above terms must viably be formulated with direct meaning. If the grounds for applying the coercion were unclear and too general, the coercion shall not be conducted legally and immunity of human rights is violated spontaneously.

The coercive measures of the criminal proceeding have the following features:

- Used only when a criminal case was instituted and under the existence of legal grounds;
- Implemented through the particular procedural means in accordance with the principles and procedures specified in the law;
- Special measures to be taken by the officials (inquiry officers, investigators, prosecutors) set forth in the law;
- Coercive measures are taken under the prosecutor's monitoring-consent and the court award;
- Consequences restricting human rights are created;
- Compulsory to use or directly perform capacity.

In terms of criminal proceeding goals and principles:

1. Preventive measures
2. Suppression measures
3. Measures aimed at setting protection
4. Measures aimed at restricting the rights

In terms of legal sanction purpose and content:

- 1) Arresting a suspect
- 2) Pretrial restrictions
- 3) Other coercive measures

Arresting a suspect shall apply to the person who was recognized as a suspect. The part 1 of Clause 34.1 of the Article 34 of the Criminal Procedure Law mentions the grounds to arrest a suspect under the court approval and procurator's control. The grounds to arrest a suspect without taking the court approval are mentioned in Clause 31.5 of the Article 31 of the same law.

Table 4.3 Arresting a Suspect

No	Grounds to arrest a suspect with court approval	Grounds to arrest a suspect without court approval	Post-arrest actions or Rights of the arrested suspect
1	If a suspect was not present at the summoned place without any excuse or refused to receive the notification;	Arrested in the act of committing a crime or immediately after committing a crime	Suspected for what crime

2	Escaped or there is a ground to escape when summoned by a notification;	In case of the urgent circumstance state in this law	To be entitled to have legal assistance
3	If there is a ground that the investigator, procurator, victim, and witness may jointly oppress, threaten, and affect the life and health of the person who committed a crime;	Directly stated by a witness and victim as committed a crime	Warn that his/her actions and testimony will be evidence in court against him/her
4	If there is sufficient ground to consider as committed a crime and repeat the crime or end to the crime;		Warn him to apply the coercion 5 as stated in the relevant law if he failed to comply with the legal requirements
5	If there is a ground to eliminate, modify, and forge the evidence, or to illegally affect the witness, victim, and the person who was involved in the crime	Traces of a crime were identified in the identified person's clothing, body, accommodation, items, and vehicle	Actions shall be taken to identify the personal status of a suspect and take a testimony within 6 hours since arresting the suspect
6			The investigator shall inform of the suspect's family member aged above 18 or a lawyer within 6 hours since arresting the suspect or if the suspect was a foreigner, the investigator shall inform of the relevant country's diplomatic representative board.

Resource: The Research

B. Research data processing:

Research question-1: Whether the grounds recognize as a suspect and the suspect's testimony have the evidential significance to implement the criminal process?

In the criminal law, a person who was suspected of a crime is deemed as a suspect who is in the criminal case proceedings since taking a testimony with sufficient grounds under the procurator and investigator's internal faith as have committed a crime. Accused is a suspect for whom a criminal case was filed and a resolution has been to summon as an accused and the accused shall be called as an inductee.

The suspected person is not a participant of the criminal procedure. Therefore, there is no regulation of the relevant subject in the law. There is no decision to recognize and determine as a suspect and the rights and obligations of a suspect are directly explained in order to take a testimony.

Testimony of a suspect is of great importance since the testimony is included in the type of the criminal process evidence in terms of the investigation system and it is impossible to implement the criminal process goals without taking the suspect's testimony and determining the guilt.

Therefore, the provisions of German and Mongolian criminal processes were compared for the grounds to recognize as a suspect and activity to take a testimony from the suspect. Both these two countries have the investigation systems in terms of the legal and criminal case proceeding.

Table 4.4 Comparison of the actions to recognize as a suspect and to take a testimony from the suspect

No	Grounds to recognize as a suspect and take a testimony from the suspect	Germany	Mongolia
1	Whether the action to take a testimony from a suspect has been legalized?	Yes	No
2	The investigator and prosecutor are obliged to clearly explain the case for which the suspect has been investigated in order to explain about the relevant case and should not express the explanation in unclear or roughness manner.	Regulated in detail in the Article 136 of the Criminal Procedure Law of Mongolia.	There is no this type of regulation in the Criminal Procedure Law of Mongolia.
3	Explain that you have the right to not make a statement about the case being accused or that you have a right to counsel before your chosen counsel before giving voluntarily a testimony or testimony. The suspect is explained not to give any testimony for the accused case or give a testimony voluntarily or to take advice from his/her advocate.		
4	The suspect is entitled to make a request to get inspected each evidence to repudiate the ground of accusation.		

5	<p>In case of accepting to give a testimony, the suspect is explained to give a written testimony like a victim. The suspect is reminded to be given a commuted penalty if he/she gave a true testimony, not to conceal and delude the crime, however, he/she is entitled to tell lies in order to prove his/her innocence /Vortäuschung einer Straftat § 145d StGB/, not to slander others to a crime or not to create false suspicion /die falsche Verdächtigung (§ 164 StGB), not to slander others/ Beleidigungsdelikt §§ 185 ff. StGB / and is explained that it is a crime stated in the Criminal Law.</p>		
---	--	--	--

Resource: The Research

Research question-2: Whether taking a testimony from witness or taking a testimony from suspect is the omission of criminal process?

According to the Content part stated in the Article 4.2 of the research methods or research text, witness is a person who is aware of the circumstances that are significant for the criminal case procedure. The witness is obliged to truly and correctly state the facts about the crime. If the witness precluded the criminal case procedure or deliberately refused from giving a testimony or gave a false testimony, the witness shall be charged with the responsibility set forth in the Criminal Law of Mongolia.

According to the logical sequence of the research work and the questionnaire 1, the action to take a testimony from the suspect was not legally regulated under the Criminal Procedure Law of Mongolia. Therefore, how to take a testimony from the suspect is unclear for the inquiry officers, investigators, and procurators and is difficult to implement it.

The suspect "witness" is not obliged to give any testimony against himself and to prove his innocence, but is obliged to give true and correct testimony in the case of being a witness. In case if the case related to the relevant suspect was proved and the "witness" suspect was proved as giving a false testimony, an issue shall be arisen whether to charge him/her with legal responsibility.

Clause 31.6 of the Article 36 of the Criminal Procedure Law is regulated to explain the rights of only arrested suspect, but it does not apply to other persons who have been suspected of committing a crime.

Research question-3: Whether the breach of the suspect's rights and obligations is the violation of human rights? Take a particular example

According to the logical sequence, taking a witness testimony from the suspect whose rights and obligations were not determined, leads to violating the rights and obligations of a suspect on the basis of being suspected of a crime:

- Be informed of what crime he has been suspected;
- Get acquainted with the grounds and resolutions on instigating legal proceeding, arresting, and pretrial restrictions;
- Submit documents and make a request to get inspected the evidences;
- Give a testimony and refuse to give a testimony;
- Advocate himself or herself and have a lawyer as required by the law;
- Not to give a testimony against himself or herself and against your family and not consider himself or herself as guilty;
- The suspect's right to take part in the criminal case proceeding as approved by the inquiry officer and investigator was limited to be implemented during the criminal case proceeding.

The suspect is a person who has been arrested or summoned based on the grounds stated in the law and who has not yet got acquainted with the resolution on summoning as an accused.

The arrest of a suspect by an inquiry officer and investigator based on the grounds specified by the law is a coercive measure. The coercive measure leads to violating the human rights depending on what extent and how it has been used as allowed by the law, although it expresses the content and purpose of crime interception and prevention and is implemented by directly and indirectly getting through the inviolability of human rights.

As shown in the international research (Bayarsaikhan, 2016), breaches such as treating a suspect in inhuman manner, violating human rights without court award and consent, putting into custody for a long time by suspecting without any evidence, and misusing the laws to take pre-trial restrictions during the use of process coercions including arrest, detention, examination, confiscation, and restriction of travel right have been common in many countries including Mongolia in accordance with the UN treaty institutions.

Grounds to arrest, accuse, and take pre-trial restrictions for a suspect have been compared with the legal regulation of criminal proceedings in Germany, France, and South Korea.

Table 4.5 Grounds to arrest and detain

No	Countries	Legal grounds	Term	Description
1	Germany	If the accused, in the course of an investigation, attempted to cause obvious obstacles to the purpose of investigation, to destroy the evidence, to influence witnesses and experts, or to give false evidence, the suspect shall be arrested /detention/ as stated in Articles 112-113 of the Criminal Procedure Law. Prior to taking this measure, the court makes an award for the term of sentence based on the preliminary examination.	According to Article 121 of the Criminal Procedure Law, measures to be taken under detention shall only be valid for up to six months based on the grounds specified by the law and the period shall be set by the court.	The major outcome of the investigation process depends on the execution of emergency investigation, required works, and taking a testimony from the witness.
2	France	Grounds for arrest are deemed to prove the suspicion with particular documents by taking into the real conditions which focus on preventing escape and interception.	In case of arresting for 4-24 hours, the issue shall be resolved by the procurator`s consent and for up to 48 hours, the issue shall be resolved by the judge`s resolution.	An officer such as Police officer and commissioner is authorized to carry out an investigation required to identify the person suspected of a criminal case and to verify the accuracy of identity information.
3	South Korea	Authorized to directly arrest the person red handed, committing a crime and detains the suspect on the following grounds:	For the period of 24 hours to 30 days	In the criminal process, the person being suspected is called a suspect prior to transferring to the court

		<ul style="list-style-type: none"> - No specific residential address and attempted to escape. - Intentionally attempted to give a false testimony or gave a false testimony. - Eliminated the evidence or attempted to eliminate the evidence 		<p>and then called an accused after transferring to the court.</p>
--	--	--	--	--

Resource: The Research



4.3. Outcomes of the research work:

Outcomes of the research work were listed in the table as giving answers to each research question in accordance with the logical sequence of the research work.

Research question-1: Whether the grounds recognize as a suspect and testimony of the suspect are significant for implementation of the criminal process?

Answer:

1. "Reasonable suspect" stated in part 1.23 of the Article 1.4 of the Criminal Procedure Law of Mongolia means the information about the circumstances created to conduct certain activities or the crimes which may be committed and the internal reports by investigators, procurators, and judges based on the case circumstances.
2. In terms of the types of evidences, part 2 of Clause 16.1 of the Article 16 of the Criminal Procedure Law states that "Factual information shall include testimonies, material evidences, and documents of witness, victim, civil claimant, respondent, suspect, accused, and indictee, expert's conclusion and testimony, investigator`s examination, video records and photographs, audio-audio-video records saved as stated in this law, forms taken from the traces, investigation... Note, and complaints and information by individuals, legal entities, and officials, and other facts specified in this law. If the above clause was discussed in the context of legal content and topic format, testimonies of a suspect and witness apply to the type of evidence. Evidence is an important component of the criminal proceedings and purpose of the proceeding shall not be ensured without evidence and activity to prove.

Description and outcome:

1. There is no definition about a suspect in the Criminal Procedure of Mongolia.
2. Relations to take a testimony was also not regulated.

Research question-2: Whether taking a testimony from witness or taking a testimony from suspect is the omission of criminal process?

Answer:

1. The research Question-1, set in accordance with the logical sequence of the research work, states that taking a testimony from a suspect is not regulated by the Criminal Procedure Law. Therefore, inquiry officers, investigators, and procurators face difficulties to implement it.
2. The suspect "witness" is not obliged to give any testimony against himself and to prove his innocence, but is obliged to give true and correct testimony in the case of being a witness. In

case if the case related to the relevant suspect was proved and the “witness” suspect was proved as giving a false testimony, an issue shall be arisen whether to charge him/her with legal responsibility as a witness.

3. Clause 31.6 of the Article 36 of the Criminal Procedure Law is regulated to explain the rights of only arrested suspect, but it does not apply to other suspects who have been suspected of committing a crime.

Description and outcome:

1. A dispute to define the legal status of a “suspect” who the major participant in the criminal proceeding, but his rights and obligations are uncertain is not a process issue on whether an investigator or procurator determines as a suspect or issue a resolution to determine as a suspect but the suspect`s pending action to prove his/her innocence by giving a testimony as the main participant in the above proceeding. It conflicts with the section 4 of the Article 1.7 of the Criminal Procedure Law, which states that “Inquiry officer, investigator, procurator and the court shall not have the right to demand the suspect, accused or defendant to prove their innocence themselves”
2. The Criminal Procedure Law legalizes the suspect as a participant in the criminal proceedings, but it does not regulate the activity to take a testimony. Taking a witness testimony seriously violates the suspect`s fundamental rights and conflicts with the Constitution because of not specifying the suspect`s status, rights and obligations.
3. During the year of 2017 in which the revised edition of the Criminal Procedure Law became effective, the number of total suspects and concerned with crimes reached 18.1 thousand in Mongolia. In addition, 4314 or 23.8% of them were sentenced (NSOM, 2017) (see Appendix VI).
4. Witness testimonies were taken from the 4314 suspects by warning not to give any false testimony as stated in the law. The suspects were summoned as defendants on the same ground and were subsequently transferred to the court upon adjudgment. As an example, please refer the file of a suspect who was defined by the court whether he is guilty with the following documents:
 - Testimony given as the witness (September 18, 2017)
 - Decree to summon as accused (October 30 2017)
 - Testimony given as a defendant (October 31, 2017)

Research question-3: Whether the breach of the suspect's rights and obligations is the violation of human rights? Take a particular example

Answer:

1. According to the logical sequence, taking a witness testimony from the suspect whose rights and obligations were not determined, leads to violating the rights and obligations of a suspect on the basis of being suspected of a crime.

The suspect is a person who has been arrested or summoned based on the grounds stated in the law and who has not yet got acquainted with the resolution on summoning as an accused. The arrest of a suspect by an inquiry officer and investigator based on the grounds specified by the law is a coercive measure. The coercive measure leads to violating the human rights depending on what extent and how it has been used as allowed by the law, although it expresses the content and purpose of crime interception and prevention and is implemented by directly and indirectly getting through the inviolability of human rights.

2. The above circumstance was described by a specific example or within the framework of the suspect's arrest and detention.

Description and outcome:

1. Reports of the National Human Rights Commission of Mongolia and the recommendations and remarks issued by the UN human rights organizations had repeatedly emphasized that in Mongolia, the suspects and accused who did not commit felony crimes are commonly detained with the ground of being possible to escape (44.5% in 2017 and 42.3% in 2018), prolonging the period of their stay in detainment centers repeatedly without any evidence or actual reasons, and transferring them to different detainment centers, and evidence collection activities such as investigations based on the legal status of the suspect whose rights have been restricted created a factor of the non-torture form and the executive and investigative methods are commonly used in the criminal proceedings (NHRC, Human Rights Magazine, 2018).
2. Furthermore, the suspect has no chance of being aware of the case for which he/she has been suspected prior to getting arrested and his or her right to take a lawyer is violated during the arrest and detainment. Whoever blamed for a crime is entitled to have a lawyer, be considered innocent at an open trial, to be advocated, and communicate with the selected advocate (Nation, 2019).
3. According to the survey by the National Human Rights Commission, 294 or 55% of 529 convicted were reminded of their rights to take lawyers, defend themselves, lodge

complaints to the court, and not to give a testimony against them. However, there is no document which proves the reminder of the above rights of 205 or 38%, so it may be deemed not reminded (NHRC, Right to Take Legal Assistance by the Detained Suspects, Defendants, and Indictes, 2017)



CHAPTER 5. CONCLUSION

5.1. Conclusion

Mongolia has been paying attention to the reform of its criminal law system since it has selected the democratic development way in 1990. As a result, the Criminal Code, Criminal Procedure Law, the Law on Prosecutor's Office, and the Law on Police were amended respectively, and one of which was the Criminal Procedure Law approved in 2017.

The legislators highlighted that this law shall play a special role in improving the responsibility system of Mongolia, ensuring the human rights and freedom that are the values of democratic society, and strengthening the justice system, as well as in developing the conviction systems other than detention in the criminal case proceedings and changing the relations with suspects and defendants but one of the pressing issues to use this law in practice is the legal status of the suspect, which is the subject of the criminal proceedings, has not been legalized or omitted. This research aims to show the distortions in the principle to comprehend and fully ensure the inviolability of human rights and the major principles to ensure the rights to advocate and to be defended, and the violation of human rights during the legislative process.

The criminal procedure focused on combating crimes is created within the scope of legal system meeting the peculiarities of each country and is implemented in its investigative style and framework.

The rights and obligations of the participants in the criminal proceedings are regulated by the law and its uncertainty leads to create a legal gap and to violate human rights. The revised Criminal Procedure Law legalizes the rights and obligations of other participants in the criminal proceeding but does not legalize the action to take a testimony from a suspect who is one of the participants in the criminal procedure and this issue raises a dispute. It has been incomprehensible for either process or subject wise on how to take a testimony from a person who has been involved in a crime since suspecting of a crime and prior to issuing a resolution of instigating legal proceedings and summoning as the accused.

It is prohibited in the criminal proceedings to take any step except the standards set by the law and its legalized reports. Therefore, the law enforcement officers violate the immunity of human and fundamental rights not to give any testimony against himself, stated in the Article 16 of the Constitution of Mongolia, by reminding the concerned law, taking a witness testimony, and issuing a resolution to summon as the accused from the person who is involved in a crime and is suspected on the legal basis within the scope of legal regulation in force.

Furthermore, it creates possibilities and conditions to encroach human rights when an authorized official confirmed the ground or right of suspecting others of committing a crime and on the other hand the suspect's right or possibility to defend himself is restricted directly.

For instance: In the international criminal proceeding law, a suspect is a person who is suspected and arrested or summoned based on the grounds set forth in the law and has not gotten acquainted with the resolution to summon as accused. The suspect is not obliged to give a testimony against himself, to confirm his innocence, and other circumstances of the criminal case. The suspect a special subject who bears compulsory rights and obligations to be aware of the criminal case for which he has been suspected, to familiarize with the grounds and resolutions to instigate the criminal case, to arrest or to take pre-trial restrictions against him, give a testimony, refuse to give a testimony etc during the criminal proceeding. However, failure to legalize those issues is a serious violation of the suspect's fundamental rights.

Another gap of this law is that the suspect's rights and obligations apply only to the arrested suspect and there is no regulation on the rights and obligations of a person who has been suspected based on the grounds stated in the law and is directly summoned as accused after giving witness testimonies repeatedly.

The law enforcement officers, in the criminal proceeding, are entitled to arrest, detain, and take coercive measures, but it is a process operation which must be done very carefully with the proposal of inquiry officers and investigators in the case of compulsory and urgent situation under the procurator's supervision and with the court consent because it leads to directly or indirectly encroach and restrict human rights. Researchers, however, consider that the suspect is entitled to exercise his rights only after being arrested on top of the failure in determining the suspect's rights and obligations and it is a step-back from the legal and human rights perspective.

5.2. Suggestion for Solution

Reflecting the legal regulations for determining the legal status of the "suspect" whose rights and obligations are uncertain, however, he is the major participant in the criminal procedure, for instance, removing the gap of the law in order to let the suspect prove his innocence by giving a testimony as the major participant of the above proceeding or taking a testimony from the suspect, including particular provisions in the law to present the suspect's rights and obligations, and directly explaining the grounds of being suspected, rights and obligations to the person who was summoned due to a crime or is giving a testimony except being arrested shall an important step for Mongolia in fulfilling its constitutional principle of ensuring the human rights and its obligations under international treaties and conventions.

5.3. Suggestion for Future Research

The criminal procedure system of Mongolia takes place within certain stages, administrations, operating variances and principles, and in its broadest sense, it has two main stages, namely pretrial and trial processes.

In this research, the plan and formulas of the selected topic to limited the stage of the court from the content of the study. Since the rights and obligations of the suspect belongs to the stage before the accused. Explored into the implementation of suspect's rights and obligations only in the pre-trial stage on the example of Mongolia

Trial stage is the continuation of the pre-trial court process following the completion of the inquiry and investigation or it is an independent stage of criminal proceeding directed at providing with preparation of court session on the basis of transferring the criminal case and defendant into the court, and ensuring the making of decision and executing the decision.

The rights and obligations of the suspect don't touch in this stage, which is the main content of the topic. Because it relates to the pre-trial stages before the accused. Thus this content has been restricted from this research. If you look into this topic in the future, making suggests that further investigate the rights and obligations of defendants in the trial stage.

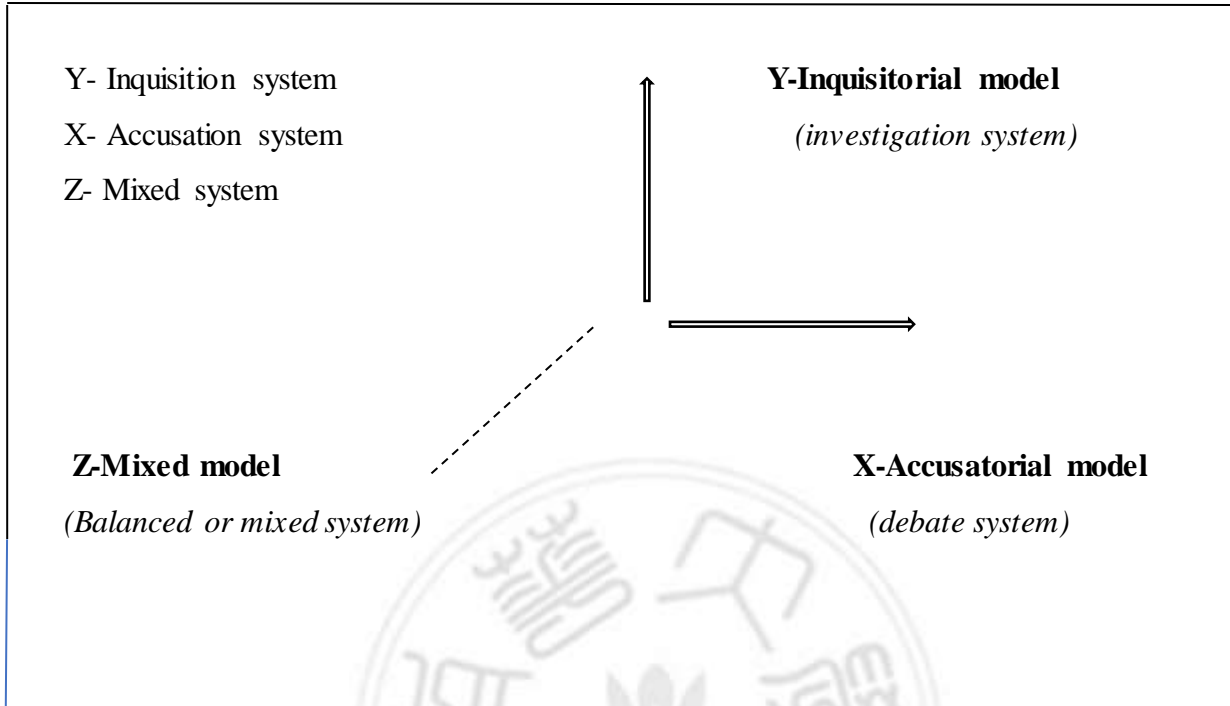
REFERENCES

- Ashworth, A. (2009). *Criminal Proceeding After the Human Rights*.
- Batzorig, B. (2016). *Theory of Evidence*. Ulaanbaatar: Soyombo Print.
- Bayarsaikhan. (2014). *Criminal Law and Criminal Procedure*. Ulaanbaatar: Selenge Press.
- Bayarsaikhan, D. “. (2014). *Criminal law and criminal procedure*. Ulaanbaatar: Selenge Press.
- Bayarsaikhan, D. (2015). *Criminal Procedure in Foreign Countries*. Ulaanbaatar: Ulaanbaatar Print.
- Bayarsaikhan, D. (2016). Law enforcement operations: Theoretical and Practical issues. *International Scientific Conference*, (p. 3). Ulaanbaatar. Bayarsaikhan, D. (2014). *Criminal Procedure Law*. Ulaanbaatar: Selenge Press.
- Brunham, W. (2006). *Introduction of the Law and Legal System of the United States*. Moscow: West.
- Commission. (2019). (National Human Rights Commission of Mongolia) Retrieved from National Human Rights Commission of Mongolia: <http://www.nhrcm.gov.mn/> (Review date: 08/07/2019/
- Council. (2014). (The Judicial General Council of Mongolia) Retrieved from The Judicial General Council of Mongolia: <http://www.judcouncil.mn/> (Review date: 09/10/2019/
- Court. (2015). (Supreme Court of Mongolia) Retrieved from Supreme Court of Mongolia: www.supremecourt.mn (Review date: 11/10/2019/
- Database. (2019). (National Legislative Center) Retrieved from Legal Integrated Information Data System: www.legalinfo.mn (Review date: 08/03/2019/
- EDLR. (2019). (Electronic Database of Legislative Research) Retrieved from Electronic Database of Legislative Research: www.legaldata.mn (Review date: 08/03/2019/
- Forum, A. F. (2015). *Asia Pacific Forum, National Commission for Human Rights, International Legal Sources Against Torture* . Ulaanbaatar: Asia Pacific Forum.
- Institute, J. (2011). *Advocacy Studies* (Vol. 1). Ulaanbaatar: Judgement Institute.
- Institute. (2019). Retrieved from National Legal Institute: <http://nli.gov.mn/?lang=en> (Review date: 10/11/2019/
- Joel, S. (2014). *Criminal Procedure*. Belmont: Cengage Learning, Inc.
- Legalinfo. (2019) Retrieved from Legal Info: www.legalinfo.mn <https://www.legalinfo.mn/law/details/12694?lawid=12694> (Review date: 06/09 /2019/
- Minister. (2010). *Methodology of Elimination of Statutory Conflict, Gap and Ambiguity of Legal Acts*”. Minister of Justice and Home Affairs, Ulaanbaatar.

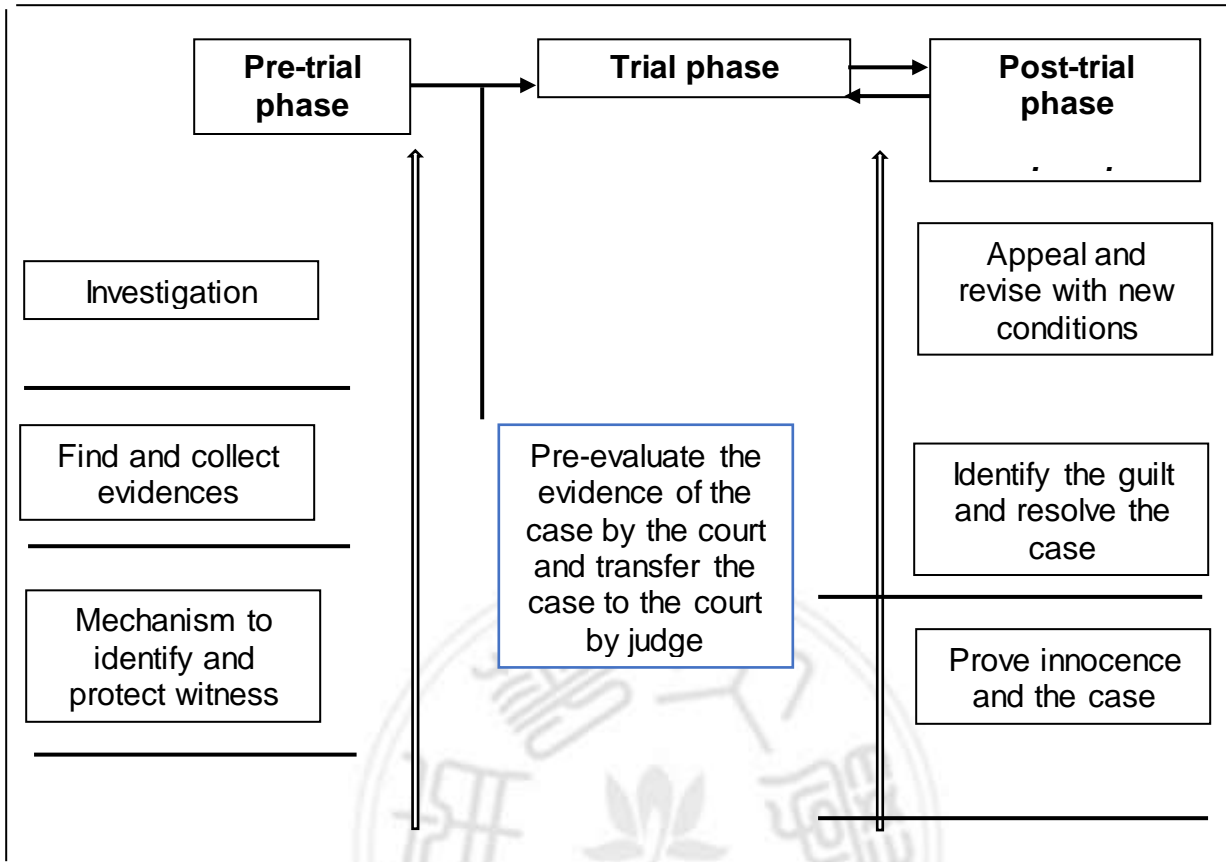
- Narmandakh, B. (2016). Law enforcement operations and human rights. *Law enforcement operations: Theoretical and practical issues* (p. 2). Ulaanbaatar: International Scientific Conference.
- Nation, U. (2019, 10 11). Retrieved 10 11, 2019, from United Nation: <https://www.un.org/en/universal-declaration-human-rights/> (Review date: 08/12/2019/
- NHRC. (2017). *Right to Take Legal Assistance by the Detained Suspects, Defendants, and Indictees*. Ulaanbaatar: National Human Rights Commission of Mongolia.
- NHRC. (2018). *Human Rights Magazine*. Ulaanbaatar: The National Human Rights Commission.
- NSOM. (2017). *Crime-2017 statistics*. Ulaanbaatar: National Statistical Office of Mongolia.
- NUM. (2015). *Implementation of the 2002 Criminal Procedure Law of Mongolia (Review)*. NUM. Ulaanbaatar. 2015. National University, School of Law. Ulaanbaatar: National University.
- Oyunchimeg, L. (2016). Protection of the Human rights in Criminal Procedure. International Treaties, Laws and Practice .
- Prosecutor. (2017). Retrieved from General Prosecutor's Office of Mongolia : <http://www.prokuror.mn/?locale=en> (Review date: 05/10/2019/
- Schünemann, B. (2010). Can the American Criminal Procedure Prevails in the World? *The Critical Issues of Legal Education and Science*, 45.
- Sengedorj, T. (2014). *Jurisprudence - Research Methodology*. Ulaanbaatar: Khukh Sudar Print.
- Tsagaan, P. (2012). *English-Mongolia-Latin Legal Dictionary*. Ulaanbaatar: Soyombo Print.
- Tserendorj, S. (2014). *The Question of Improving the Effectiveness of Legal Liability*. Ulaanbaatar.
- Tserendorj, S. (2014). *The Question of Improving the Effectiveness of Legal Liability*. Ulaanbaatar: Ulaanbaatar Print.
- Ublawyer. (2019). (UB Lawyer LLP) Retrieved from UB Lawyer LLP: <https://www.ublawyers.mn/> (Review date: 11/12/2019/
- Unurmaa, P. (2019). Comparative Study of the German Code of Criminal Procedure (StPO) for Legal Regulations of the Status of a Participant of Non Participant or “Suspect” in the Criminal Procedure.
- Unurmaa, P. (2019). Comparative Study of the German Code of Criminal Procedure (StPO) for Legal Regulations of the Status of a Participant of Non Participant or “Suspect” in the Criminal Procedure.
- Wikipedia. (2019). Retrieved 08 18, 2019, from Wikipedia: https://en.wikipedia.org/wiki/Law_enforcement (Review date: 08/18/2019/

APPENDIX

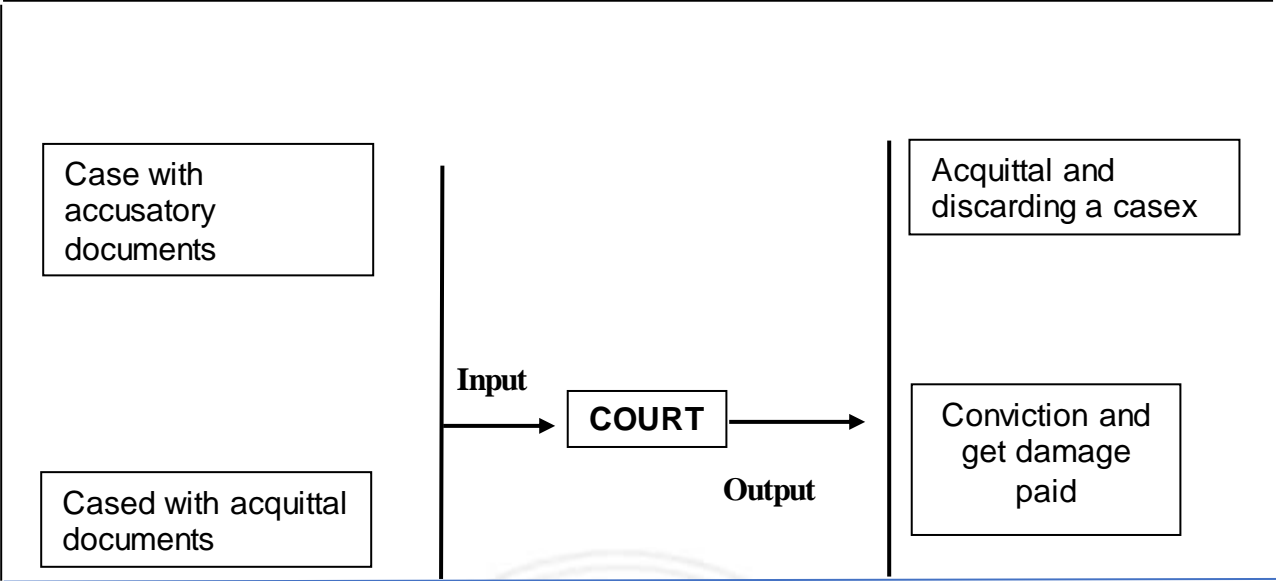
Appendix I Modern models and forms of the criminal proceedings:



Appendix II Processes and movements of the criminal proceedings:



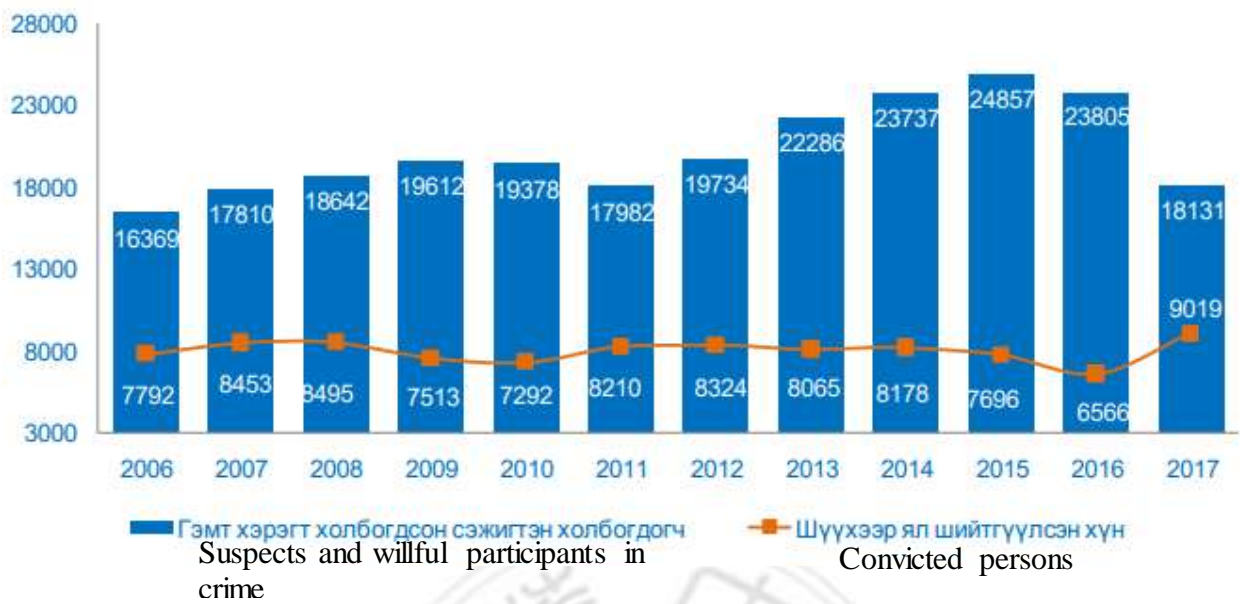
Appendix III Solutions and gateway of the criminal proceedings:



Appendix IV Models and peculiarities of the criminal proceeding system:

No	Inquisition model - investigation system <i>Crime control</i>	Accusation model – Judicial system of debate <i>Due process</i>
1	Aims at defining the reality of the case.	The court aims at fairly judging the case.
2	Judge plays active and major roles to prove the case.	Judge plays inactive and neutral roles and the Parties are obliged to resolve the case.
3	Judge goes through the case file prior to the judging session.	Judge goes not go through the case file prior to the judging session.
4	The investigation shall be done for each criminal case and get each case resolved by the court.	In case of accepting the non-enormous crime, guilt, and damage, the case shall not be transferred to the court and be resolved in a simplified way.
5	Advocate`s rights are limited and investigators and procurators have priorities.	Suspects and accused re entitled to submit evidence on a wide-range and advocate are allowed to take part in the activity to provide evidences.
6	A judicial session shall be held in non-judicial way and the case investigation and discussion shall be done to the extent of the file collected by the investigator.	Case investigation and discussion of the court shall be done based on the debate between the Parties. Onus broadband shall be borne by the Parties.

Appendix V Convicted by the court among the suspects
In 2007-2017



Appendix VI Memo of witness interview (page 1)

ГЭРЧЭЭС МЭДҮҮЛЭГ АВСАН ТЭМДЭГЛЭЛ

2017 оны 09 дугаар сарын 18-ны өдөр 013

Дугаар _____ Улаанбаатар хот

Баянзүрх дүүрэг Цагдаагийн 3-р хэлтэс МБТ-ийн мөрдөгч цагдаагийн ахмад шонхой Б.Чинбат би, 2017 оны _____ сарын _____-ны өдөр Монгол Улсын Эрүүгийн хуулийн тусгай ангийн дугаар зүйлийн _____ дахь хэсгээр эрүүгийн хэрэг үүсгэж, яллагдагчаар татагдсан овогтой _____-д холбогдох эрүүгийн _____ дугаартаа хэрэгт Монгол Улсын Эрүүгийн хэрэг хянан шийдвэрлэх тухай хуулийн 25.1 дугаар зүйл, 9.6 дугаар зүйлийн 2 дахь хэсгийг тус тус удирдлага болгон дор дурдсан хүнээс гэрчийн мэдүүлэг авав.

Гэрчид хэргийн бодит үнэнг тогтоох зорилгоор мэдүүлэг авахаар Баянзүрх дүүрэг прокурорын газрын _____ прокурор _____-ны шийдвэрээр дуудаж ирүүлсэн талаар мэдэгдэв.

Дууныг, эсхүл дүрсний, эсхүл дуу-дүрсний бичлэгээр бэхжүүлэх бол гэрчид урьдчилан мэдэгдэнэ!

Мэдүүлгийг ЦХ-ийн 402 тоот байцаалтын өрөөнд 11 цаг 00 минутанд эхлүүлэв.

1. Гэрчийн овог, эцэг/эх/ болон өөрийн нэр: Бэрсүд овгийн Халзан овогтой Сумъяла
2. Төрсөн он, сар, өдөр, нас, хүйс: 1983.09.19 Баянхонгор аймгийн Ноён-Өндөр суманд төрсөн.
3. Боловсрол, мэргэжил: Бүрэн дунд . Мэргэжилгүй
4. Эрхэлсэн ажил, хөдөлмөр: Хувилараа Худалдагч ажилтай
5. Оршин суух хаяг: БЗДүүрэг 09-р хороо Ээж хайрханы 1-ын 67 тоотод оршин суудаг.
6. Сэжигтэн, яллагдагч, хохирогчтой ямар харилцаатай болох: Хамт ажилдаг
7. Регистр болон биед яваа бусад баримт бичгийн дугаар: ВД 83091912
8. Холбоо барих утасны дугаар: 99335971 , 95695956.

Гэрчид хуульд заасан дараах эрх, үүргийг тайлбарлан өгөв.

Эрүүгийн хэрэг хянан шийдвэрлэх тухай хуулийн 9.6 дугаар зүйл.

2. Гэрч нь шүүх, прокурор, мөрдөгчийн дуудсанаар хүрэлцэн ирж хэргийн талаар өөрийн мэдэх зүйлийг үнэн зөв мэдүүлэх үүрэгтэй бөгөөд өөрийн болон гэр бүлийн гишүүд эцэг эх, үр хүүхэд, төрөл садангийн хүний эсрэг мэдүүлэг өгөхөөс татгалзах эрхтэй.
3. Гэрч нь дуудсан цагт хүндэтгэн үзэх шалтгаангүйгээр ирээгүй бол түүнийг шүүхийн шийдвэрээр албадан ирүүлнэ.
5. Гэрч өөрийн болон гэр бүлийн гишүүд, эцэг эх, үр хүүхдийнхээ эсрэг мэдүүлэг өгөхгүй байх эрхтэй.
6. Гэрч өөрийнх нь эсрэг, түүнийг гэмт хэрэг үйлдсэн, гэм буруутай байдлаар мэдүүлэг давч байна гэж үзвэл энэ тухай тэмдэглэлд тусгуулан мэдүүлэг өгөхөөс татгалзаж, өмгөөлөгчтэй мэдүүлэг өгөх эрхтэй.

Сумъяла

7. Гэрч мэдүүлэг өгөхөөр дуудагдан ирсэн зардлаа төлүүлэх, энэ хуульд заагааг дагуу аюулгүй байдлаа хамгаалуулах эрхтэй.

Эрүүгийн хуулийн 21.2 дугаар зүйл.

1. Гэрч, хохирогч мөрдөн шалгах ажиллагааны үед, шүүхэд үнэн зөв мэдүүлэг өгсөн бол гурван жил хоёр жил хүртэл хугацаагаар эрх хасаж дөрвөн зуун тавин нэгжээс таван мянга дөрвөн зуун нэгжтэй тэнцэх хэмжээний төгрөгөөр торгох, эсхүл хоёр зуун дөчин цагаас таван жил хүртэл хугацаагаар зорчих эрхийг хязгаарлах ял шийтгэнэ.

2. Гэрч, хохирогч бусдыг гэмт хэрэг үйлдсэн гэж мөрдөн шалгах ажиллагааны үед, шүүхэд зориуд худал мэдүүлсэн, гүтгэсэн бол таван мянга дөрвөн зуун нэгжээс хориан долоон мянган нэгжтэй тэнцэх хэмжээний төгрөгөөр торгох, эсхүл нэг жилээс таван жил хүртэл хугацаагаар зорчих эрхийг хязгаарлах, эсхүл нэг жилээс таван жил хүртэл хугацаагаар хорих ял шийтгэнэ, гэх хуулийн заалтыг сануулав.

ТАНИЛЦСАН ГЭРЧ, *Сумъяа* (Х.Сумъяа)
(гарын үсэг) (нэр)

Гэрчээс мэдүүлсэн нь: Надад тайлбарлан өгсөн хуулийг ойлгосон.

Асуулт: Та болсон хэргийн талаар ярина уу?

Хариулт: 2017 оны 07 сарын 30 ны өдөр Баянзүрх дүүрэг 9-р хорооны нутаг дэвсгэрт "Хүслэн" худалдааны төв лангуун дээрээ зогсоож байхад өөдөөс харсан лангууны хуулийн М.Отгонбилэг хүн муу явахгүй байна хаая гээд 19 цаг өнгөрөөгөөд хэлсэн тэгэхээр нь би 21 цагтаа хаая гэсэн чинь чи муу хүний лангуун дээр боол хийж байж чи юугаа мэддэг юм бэ? гуйлагчид минь гэж хэлсэн тэгэхээр нь чи муу битгий хуцаад байгаарай минь гээд өөрийн хэрэглэж байсан 5 литрийн хуванцар савтай усыг аваад шидсэн чинь нүүрний хацар орчимд оносон. Тэгээд маргааш нь М.Отгонбилэг цагдаад өргөдөл өгсөн байсан.

Асуулт: Хэрэг болох үед ямар хүмүүс харж байсан бэ?

Хариулт: Лангуун дээр сууж байсан хүмүүс явсан байсан. Гурилын лангуун дээрээс би эхнэр Нарангэрэл, Ногооны лангуунаас М.Отгонбилэг үлдсэн байсан өөр хүн байгаагүй.

Асуулт: Та эмчиллэгээний зардал гэж мөнгө төгрөг өгсөн үү?

Хариулт: Намайг М.Отгонбилэг 120.000 мянган төгрөг өгчих тэгээд гомдолгүй савтай гэхээр нь би 120.000 мянган төгрөг өгсөн.

Асуулт: Та урьд өмнө М.Отгонбилэгтэй маргаж муудаж байсан уу? Хэрэв маргаж муудаж байсан бол юунээс болж байсан бэ?

Хариулт: Урьд өмнө М.Отгонбилэгтэй тоглож наргиж байхад үг даахгүй хэрэгтэй муудаж байсан.

Асуулт: Танд өөр ямар нэгэн ярих зүйл байна уу?

Хариулт: Надад өөр ярих зүйл байхгүй. Миний ярьсан бүхэн үнэн гэснээр мэдүүлэх ажиллагааг 11 цаг 28 минутанд дуусгаж, тэмдэглэл үйлдэв.


МЭДҮҮЛЭГ ӨГСӨН: ГЭРЧ *Сумъяа* (Х.Сумъяа)

МЭДҮҮЛЭГ АВСАН:

МӨРДӨГЧ, АХМАД ЦОЛТОЙ: (Б.ЧИНБАТ)

Appendix VIII Resolution on changing the status of witness into the accused

0099075


НИЙСЛЭЛИЙН БАЯНЗҮРХ ДҮҮРГИЙН
ПРОКУРОРЫН ТАГААР
ПРОКУРОРЫН ТОГТООЛ

2017 оны 10 сарын 30 өдөр
Цахим 1706007940176

Эрүүгийн хэрэг үүсгэж, яллагдагчаар
татах тухай

Нийслэлийн Баянзүрх дүүргийн прокурорын газрын хяналтын прокурор Б.Эрдэнэбаатар би, Баянзүрх дүүрэг дэх Цагдаагийн 3 дугаар хэлтсийн мөрдөгч, цагдаагийн ахмад Б.Чинбат эрүүгийн 170600794 дугаартай хэрэгт хэрэг бүртгэлт явуулж, 2017 оны 08 дугаар сарын 05-ны өдөр эрүүгийн хэрэг үүсгэж, яллагдагчаар татах санал гарган, хэргийг прокурорт ирүүлснийг 2017 оны 10 дугаар сарын 25-ны өдөр хүлээн авч хянаад

ОЛСОН нь:

Бэсүд овгийн Халзангийн Сумъяа нь 2017 оны 07 дугаар сарын 30-ны өдөр Баянзүрх дүүргийн 9 дүгээр хорооны нутаг дэвсгэрт байрлах Хүслэн худалдааны төвийн худалдагч ажилтай М.Отгонбилэгтэй маргаж түүн рүү усны сав шидсэний улмаас толгойн тус газар нь онож эрүүл мэндэд нь хөнгөн хохирол учруулсан гэмт хэргийг үйлдсэн болох нь гэрч Н.Нарангэрэл, Б.Баттулга, хохирогч М.Отгонбилэг нарын мэдүүлэг, 2017 оны 08 дугаар сарын 03-ны өдрийн 9724 дугаартай шинжээчийн дүгнэлт зэрэг бичгийн нотлох баримтуудаар тогтоогджээ.

Иймд Монгол Улсын Эрүүгийн хэрэг хянан шийдвэрлэх тухай хуулийн 30.15 дугаар зүйлийн 2 дахь хэсгийн 2.2 дахь заалт, 30.17 дугаар зүйлийн 1 дэх хэсгийг тус тус удирдлага болгон

ТОГТООХ нь:

1. Эрүүгийн 170600794 дугаартай хэрэгт ВД 83091912 регистрийн дугаартай Халзан овогтой Сумъяаг 2017 оны 07 дугаар сарын 30-ны өдөр Баянзүрх дүүргийн 9 дүгээр хорооны нутаг дэвсгэрт байрлах Хүслэн худалдааны төвийн худалдагч ажилтай М.Отгонбилэгтэй маргаж түүн рүү усны сав шидсэний улмаас толгойн тус газар нь онож эрүүл мэндэд нь хөнгөн хохирол учруулсан гэж үйлдэлд нь "хүний эрүүл мэндэд хөнгөн хохирол учруулах" гэмт хэргийг үйлдсэн гэж үзэх үндэслэлтэй байх тул Эрүүгийн хуулийн тусгай ангийн 11.6 дугаар зүйлийн 1 дэх хэсэгт зааснаар эрүүгийн хэрэг үүсгэж, яллагдагчаар татсугай.

С:\Ажил\ТОГТООЛ.docx
016531

0000027

ЯЛЛАГДАГЧААС МЭДҮҮЛЭГ АВСАН ТЭМДЭГЛЭЛ

2017 оны 10 дугаар Сарын 31 -ны өдөр Дугаар Улаанбаатар хот

Баянзүрх дүүрэг дэх цагдаагийн гуравдугаар хэлтэс мөрдөн байцаах тасгийн мөрдөгч цагдаагийн ахмад Б.Чинбат би 2017 оны 10 сарын 30 -ны өдөр Монгол Улсын Эрүүгийн хуулийн тусгай ангийн 11.6 дугаар зүйлийн 1 дэх хэсгээр эрүүгийн хэрэг үүсгэж, яллагдагчаар татсан Халзан овогтой Сумьяа -д холбогдох эрүүгийн 1706007940176 дугаартай хэрэгт Монгол Улсын Эрүүгийн хэрэг хянан шийдвэрлэх тухай хуулийн 25.1 дүгээр зүйл, 7.4 дүгээр зүйлийг тус тус удирдлага болгон дөр дурдсан яллагдагчаас мэдүүлэг аваа.

Яллагдагчид Х. Сумьяа-д мэдүүлэг авахаар БЗД-ийн прокурорын газрын хяналтын прокурор Б.Эрдэнэбаатарын шийдвэрээр дуудаж ирүүлсэн талаар мэдэгдэв.

Дууны, эсхүл дүрсний, эсхүл дуу-дүрсний бичлэгээр бэхжүүлэх бол яллагдагчид урьдчилан мэдэгдэнэ!

Мэдүүлгийг Албаны 210 байцаалтын өрөөнд -д 09 цаг, 00 минутанд эхлүүлэв.

1. Овог, эцгийн болон өөрийн нэр: Бэрсүд, овогтой Халзан овогтой Сумьяа
2. Төрсөн он, сар, өдөр, нас, хүйс: 1983.09.19 нд Баянхонгор аймгийн Баян-Өнгөр суманд төрсөн
3. Боловсрол, мэргэжил: Бүрэн дунд, Мэргэжилгүй
4. Ажил эрхлэлт: Хүслэн төвд худалдагч
5. Оршин суух хаяг: БЗД-ийн 9-р хороо Шархад 21-3816 тоот
6. Ял шийтгүүлж байсан эсэх Үгүй Утас: 99335971,95695956
7. Регистр болон биед яваа бусад баримт бичгийн дугаар: ВД:83091912

Яллагдагч -нд хуульд заасан дараахь эрхийг тайлбарлан өгөв.

Эрүүгийн хэрэг хянан шийдвэрлэх тухай хуулийн 7.4 дүгээр зүйл.

1. Яллагдагч Халзан овогтой Сумьяа-д эх хэлээрээ болон өөрийн сайн мэдэх хэлээрээ мэдүүлэг өгөх, орчуулагч, хэлмэрч авах, мэдүүлэг өгөхөөс татгалзах эрхтэй.
2. Яллагдагч өөрийн эсрэг мэдүүлэг өгөх, гэмт хэрэг үйлдсэн гэм буруугүйг, эсхүл хэргийн байдлыг нотлох үүрэг хүлээхгүй.

Эрүүгийн хэрэг хянан шийдвэрлэх тухай хуулийн 7.5 дугаар зүйл.

1. Яллагдагч эрүүгийн хэрэг хянан шийдвэрлэх ажиллагааны талаар шүүх, прокурор, мөрдөгчөөс энэ хуульд заасны дагуу өгөхийг зөвшөөрсөн мэдээллийг авах эрхтэй.
2. Яллагдагч монгол хэл, бичиг мэдэхгүй бол өөрийн эх хэл, эсхүл мэдэх хэл, бичгээр, хараа, сонсгол, хэл ярианы бэрхшээлтэй бол дохио зангаа, тусгай тэмдэгт ашиглан орчуулагч, хэлмэрчийн тусламжтайгаар энэ зүйлийн 1 дэх хэсэгт заасан мэдээллийг авах эрхтэй.
3. Яллагдагч өөрийнх нь хүсэлтээр хийгдэж байгаа мөрдөн шалгах ажиллагаанд оролцох, уг ажиллагааны тэмдэглэлтэй танилцах, түүнд засвар оруулах хүсэлт гаргах эрхтэй.

ТАНИЛЦСАН ЯЛЛАГДАГЧ: Сумьяа (Х.Сумьяа) (нэр)
(гарын үсэг)

Асуулт: Та яллагдагчийн эрх үүрэгтэйгээ танилцсан уу? Эрх үүргээсээ тодруулж асуух зүйл байна уу? Яллагдагч нь өмгөөлөгч авах өмгөөлөгчгүйгээр байцаалт өгөхгүй байх эрхтэй та өмгөөлөгчгүйгээр байцаалт өгөх үү?

Хариулт: Яллагдагчийн эрх үүргээ уншиж танилцлаа. Эрх үүргээсээ асууж тодруулах зүйл байхгүй. Би өмгөөлөгчгүйгээр байцаалт өгнө. Би уншиж бичиж чадна.

0000028

Асуулт: Таныг Монгол Улсын Эрүүгийн Хуулийн тусгай ангийн 11.6 дугаар зүйлийн 1 дэх хэсэгт заасан гэмт хэрэгт 2017 оны 10 сарын 30 ны өдөр Баянзүрх дүүргийн прокурорын газрын хяналтын прокурор Б.Эрдэнэбаатар 1706007940176 дугаартай эрүүгийн хэрэг үүсгэж, яллагдагчаар татах тогтоол гаргаж, яллагдагчаар татсан байна. Хуулийн холбогдох хэсэгтэй уншиж танилцав уу? Хүлээн зөвшөөрч байна уу?

Хариулт: 2017 оны 10 дугаар сарын 30-ний өдрийн 1706007940176 дугаартай Баянзүрх дүүргийн прокурорын газрын хяналтын прокурор Б.Эрдэнэбатараас гаргасан эрүүгийн хэрэг үүсгэж, яллагдагчаар татах тогтоолтой танилцлаа. Хүлээн зөвшөөрч байна.

Асуулт: Та үйлдэгдсэн хэргийн талаар ярина уу?

Хариулт: Би 2017 оны 07 дугаар сарын 30-ны өдөр БЗД-ийн 9-р хорооны нутаг дэвсгэрт байрлах " Хүслэн " худалдааны төвийн худалдагч ажилтай М.Отгонбилэгтэй маргаж түүн рүү усны сав шидсэний улмаас толгойн тус газарт нь онож эрүүл мэндэд нь хөнгөн хохирол учруулсан. Би ийм хэрэг хийсэнээ хүлээн зөвшөөрч байна. Дахин ийм хэрэг хийхгүй. Ийм хэрэг хийсэндээ гэмшиж байна.

Асуулт: Танд нэмж шалгуулах зүйл байна уу?

Хариулт: Би урьд өгсөн мэдүүлэгтээ хэргийн талаар үнэн зөвөөр мэдүүлсэн байгаа. Нэмж шалгуулах зүйл байхгүй.

Асуулт: Танд өөр нэмж ярих зүйл байна уу? Ярьсан зүйл үнэн үү?

Хариулт: Ярьсан зүйлс үнэн. Нэмж ярих зүйл байхгүй *Чинбат* гэснээр дуусгав.

МЭДҮҮЛЭГ ӨГСӨН..... *Х.Сумъяа* / Х.СУМЪЯА /

МЭДҮҮЛЭГ АВСАН:..... *Б.Чинбат* Б.ЧИНБАТ