

2020 MONITORING REPORT



CONTEXT OF DOMESTIC VIOLENCE RESTRAINING ORDER





**National Center Against
Violence**



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MONITORING REPORT

Ulaanbaatar city
2020

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ABBREVIATIONS

NPA – National Policy Agency
NCAV – National Center against Violence
EPO – Emergency Protective Order
CPC – Criminal Procedure Code
DV – Domestic violence
LCDV – Law to Combat Domestic Violence
NHRCM – National Human Rights Commission of Mongolia
GEACD – General Executive Agency of Court Decision
KII – Key Informant Interview
FGD – Focus Group Discussion
GSPO – State General Prosecutor’s Office

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ONE. RATIONALE AND METHODOLOGY OF MONITORING

1.1. Rationale

Adopted in 2016, the revised version of the Law to Combat Domestic Violence (LCDV) was closely linked to other laws in the field of criminal justice reform. The Criminal Procedure Code (CPC), namely, sets forth in depth the protection of victims.

The CPC provides for the right to equality before the law and a fair trial in criminal proceedings in accordance with international standards. To prevent the accused from re-offending, for example, the Article 14.5 of the CPC restricts the accused from leaving the designated area, prohibits him/her from visiting certain places, assigns the accused to travel only on designated roads, and imposes restrictive measures on the basis of the prosecutor's proposal. This is an important regulation to protect the lives, health and safety of victims of domestic violence (DV) from the repeated exposure to violence or offenses. The LCDV and the CPC have been in force for more than three years. However, the "Emergency Protective Order for Restraining" provision, which is essential to ensure the safety of victims, is not evident in the practice of resolving DV cases. Drawing attention to the fact that victims have repeatedly failed to receive this legal protection, this monitoring was conducted to assess the actual implementation of Article 14.5 of the CPC, to identify challenges and barriers in the implementation process, to define the most feasible options for further appropriate and effective implementation and to develop future recommendations. The monitoring team adhered to the "Legislation Implementation Assessment Methodology" approved by the Annex 6 of the GoM Resolution No. 59 of 2016 and the Monitoring Guidelines approved by the NCAV project team.

1.2. Aim of the monitoring

The monitoring aims to assess the actual context and impact of the implementation of the EPO for restrictive measures as set forth in Article 14.5 of the CPC, to identify conditions and opportunities, and to seek opportunities and methods to improve them.

1.3. Scope of the monitoring

The data collection of the monitoring covered Darkhan-Uul, Dundgovi, Khentii, Tuv, Bayankhongor, and Uvurkhangai aimags and Bayanzurkh, Bagakhangai,

Songinokhairkhan, Chingeltei and Sukhbaatar districts of the capital city. Within the framework of the monitoring, key informant interviews and focus group discussions were held with a total of 90 individuals, including victims of DV crimes, members of the Association of Mongolian (Bar) Advocates, judges from the local courts secretariat, divisions, judges in charge of emergency protective measures at the Criminal Courts of First Instance, monitoring prosecutors from the GSPO, as well as police, family and child crime prevention departments and investigators.

Photo 1. Participants of KIIs and FGDs



- Court decisions on restrictive measures were collected and evaluated.
- Data collection procedures included observations on victims' requests for restrictive measures via their attorney and the practices of the courts handling their requests.
- Information was provided by the Witness and Victim Protection Department of the NPA on the security measures taken for witnesses and victims of crime.
- Relevant information was collected from the GSPO, the Judicial Research and Information Training Center, and the NPA.

Table 1. The scope and sampling of the study

Nº	Actions	Resources	Sampling
1.	Data and statistics collection	Annex 1 Questionnaire sheet	Sampling data on the DV context, including crime rates, from police, prosecutors, and court statistics
2.	Analysis on EPO for restraining	Annex 2	Court order

3.	Conduct research from relevant subjects	Annex 3	-The Judicial Research and Information Training Center -The State General Prosecutor's Office -Witness and Victim Protection Department of the NPA
4.	KIIs with police, prosecutors and advocates	Annex 4 KII and FGDs	- A total of 27, including judges, prosecutors and investigators of 6 aimags and 3 districts
5.	Evidence analysis	Annex 5	- Procedure, guideline and plan for implementation of the EPO for restraining order - Study on the implementation of the EPO

1.4. Methodology of monitoring

1. Data and evidence collection;
2. Conduct of study from relevant subjects (coordination, context, challenges and impact of the implementation of the EPO);
3. KIIs with relevant parties (victims, advocates, police, prosecutors and judges);
4. Conduct of evidence analysis.

Data and statistics collection: In accordance with the assessment objective to identify the extent of and the implementation status of the target legislation, evidence analysis, review of research reports and statistical data collection were performed.

Survey from related parties: The survey was conducted in accordance with a special questionnaire developed by the Judicial Research and Information Center, the GSPO and the Witness and Victim Protection Department of the NPA.

KIIs with parties: A total of 90 individuals, including investigators, prosecutors, judges, attorneys, and victims, were involved in KIIs and FGDs based on the pre-developed questionnaires to identify issues in the implementation of the EPO for restraining order.

Evidence analysis:

Analysis was performed on the international legal documents related to the protection of witnesses and victims and the EPO for restraining order as set forth in the CPC, its implementation procedures, guidelines and plan as well as other research materials on the implementation of the EPO.

TWO. CONTEXT OF THE PRACTICE ON AN EMERGENCY PROTECTIVE ORDER

2.1. Legal environment

The article 6 of the "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power" calls for the nations to ensure the safety of victims in a convenient manner¹.

The article 13 of the "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" obligates the member states to undertake measures to ensure that the complainant/victims and witnesses are protected against all ill-treatment or intimidation as a consequence of his/her complaint or any evidence given.²

The Constitution of Mongolia³ states that it provides for "the right to life, personal liberty and safety and appeal to the court for protection if one considers the rights or freedoms have been violated", "the State is responsible to the citizens to ensure their human rights and freedoms, to prevent from violations of human rights and freedoms, and restoration of infringed rights"⁴, and "it is prohibited to restrict the freedom of anyone arbitrarily outside the grounds and procedures provided by law".

The Government of Mongolia has declared in its Action Plan for 2016-2020 that it will abide by "the principles of protecting victims of violence and strengthening a just, human human rights-sensitive governance under which laws are mandatory."

Chapter 14 of the CPC regulates the restraining measures. Article 14.1 of the same law stipulates that one type of restraining order against an accused or defendant shall be an imposition of a "restraining order".⁵ Under this measure,

1 As adopted by the UN General Assembly Resolution No. 40/34 of 1985

2 UN Convention of 1984

3 Article 16, Constitution of Mongolia

4 Article 19 (1), Constitution of Mongolia

5 Article 14.1 (1.3) of the CPC

provided that an investigation is conducted and an accused is found to have committed a crime, the investigator may prosecute him/her as a defendant and impose an EPO either alone or in combination with another EPOs.

2.2. The context of domestic violence

Police: Nationwide, 1286 crimes in 2017 related to DV were registered, and 1066 crimes in 2018 and 985 crimes in 2019.⁶ In 2019, 93.6 percent of domestic violence crimes were considered minor and 6.4 percent were considered serious. 50.2 percent of total DV crimes were committed in Ulaanbaatar and 49.8 percent in rural areas.⁷ In 2019, 894 people were victims of DV, of which 89 percent were women and 7.7 percent were children. More than 90 percent of perpetrators were men. More than 80 percent of these crimes were related to physical violence⁸. Eight victims lost their lives and 732 victims experienced injuries.⁹ As of the initial 8 months of 2020, the crime rate for DV and offences has risen by 1.4% and 36.8%, respectively. 89.4 percent of victims were women and girls and 7.8 percent were children.¹⁰

Court: In 2018, the number of DV cases decided by the courts increased by 56 cases or 94.9 percent compared to the previous year, and the number of DV convictions increased by 2.2 times as compared to previously.¹¹ In 2019, the number of DV cases prosecuted increased by 82.6 percent.¹²

2.3. The court practice on imposing EPOs

The EPOs set forth in article 14.5 of the CPC are not to interfere with criminal proceedings, to prevent re-offending by accused or defendants and to protect victims.

Emergency protective orders are mandatory measures that restrict the constitutional rights and freedoms of an accused for a certain period of time

6 Statistics by NPA. <https://www.police.gov.mn>

7 NPA, Interview on “Domestic violence is investigated and responded in an early stage”, Lieutenant Colonel of Police, B. Tsengelbayar, 2020-3-10

8 NPA, Interview on “Domestic violence is investigated and responded in an early stage”, Lieutenant Colonel of Police, B. Tsengelbayar, 2020-3-10

9 NPA, Interview on “Domestic violence is investigated and responded in an early stage”, Lieutenant Colonel of Police, B. Tsengelbayar, 2020-3-10

10 Updates by the Department to Combat Domestic Violence, NPA, 2020

11 Annual Trial Report 2018 of the Supreme Court of Mongolia, the Judicial General Council of Mongolia, Judicial Research and Information Training Center, and the NPA. judinstisute.mn

12 Annual Trial Report 2019 of the Supreme Court of Mongolia, the Judicial General Council of Mongolia

after the prosecutor initiates a criminal case and prosecutes him/her on the basis of sufficient evidence that he/she has committed a crime. The EPOs shall be in the form of:

- Restricting movement out from designated areas;
- Restricting crossing the border of Mongolia;
- Prohibiting entry to certain areas;
- Preventing meeting certain individuals;
- Assigning to travel only on a designated route and it shall be subject to the court to decide whether to take restraining measures against the accused based on the prosecutor’s proposal¹³.

Under the article 14.5 of the CPC, the court in Mongolia has imposed restrictive measures on 999 accused in 2017-2019¹⁴.

Table 2. The statistics of EPOs imposed by the court

Nº	Types of EPOs as restrictive measures	2017	2018	2019
1	Restriction of movement out from a designated area	5	3	6
2	Restriction of movement out from a designated territory	5	7	3
3	Restriction of crossing the border of Mongolia	187	377	341
4	Restriction of entry to a certain areas	0	3	5
5	Restriction of meeting certain individuals	2	20	35
6	Assignment to travel on a designated route	199	0	0
7	Total	9	410	390
8	Making changes to EPOs as restrictive measures	9	3	11
9	Annuling EPOs as restrictive measures	20	42	53

The number of people subject to EPOs by a court increased from 199 in 2017 to 390 in 2019, up by 191 persons, or nearly 50 percent. Meanwhile, the courts issued 23 EPOs and 115 decisions annulling restraining orders. Screening from the trial report, among the types of restraining measures, the

1 Article 14.5 (1), CPC

2 Annual Trial Report 2017, 2018, and 2019 of the Supreme Court of Mongolia, the Judicial General Council of Mongolia, Judicial Research and Information Training Center. judinstisute.mn

“Restriction of Crossing the Border of Mongolia” was most commonly imposed on suspects, convicts, and defendants, while the “Assignment to travel on a designated route” was never used in practice.

2.4. The context of EPOs imposed on convicts of domestic violence in target areas

According to the target local Police statistics, a total of 357 cases were registered between July 1, 2017 and the first quarter of 2020, under article 11.7 of the Criminal Code (domestic violence).

Table 3. DV crimes registered in the target local Polic

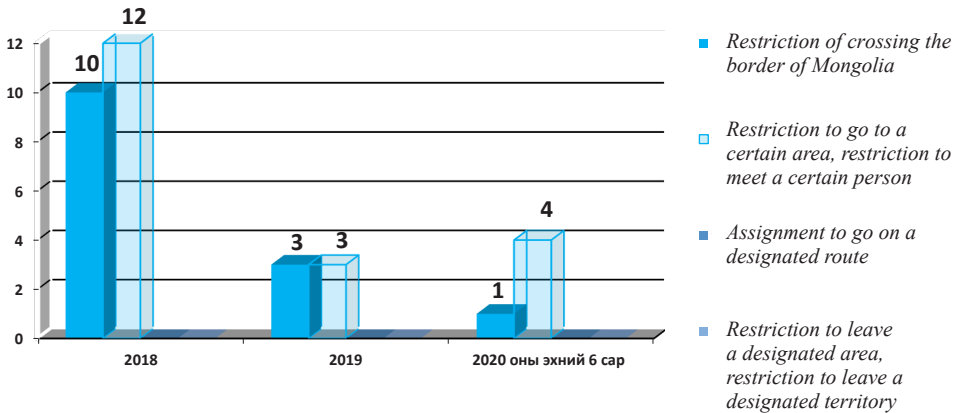
№	Aimags/ districts	From 2017.7.1 to 2017.12.31	2018	2019	1Q, 2020	Local statistics
1	Dundgobi	5	1	2	1	9
2	Uvurkhangai	9	16	6	4	35
3	Bayankhongor		3	1	1	5
4	Khentii		8	11	1	20
5	Bagakhangai	1	2	2	1	6
6	Darkhan-Uul	4	6	5	2	17
7	Tuw	2	10	5	2	19
8	Bayanzurkh	14	26	82	2	124
9	Songinokhairkhan	38	26	19	8	91
10	Bayangol	17	10	2	2	31
11	Total	90	108	135	24	357

The practice of EPOs as restrictive measures related to DV was studied in the context of the following articles of the Criminal Code:

- Intentional murder through domestic violence - article 10.1 (2.8);
- Major physical injuries through domestic violence - article 11.1 (2.1);
- Serious health damages through domestic violence –article 11.4 (2.1);
- Deliberate minor health damages through domestic violence-article 11.6 (2);
- Committing domestic violence – article 11.7;
- Sexual abuse of a person with family relationship- article 12.1 (2.3).

As of 1Q, 2020 since 2018, a total of 33 convictions in domestic violence cases were subject to “EPOs for restrictions” under article 14.5 of the CPC¹⁵.

Table 2. The statistics of EPOs imposed by the court



Restrictions of crossing the border of Mongolia

As of the first half of 2018-2020, a total of 14 convicts and defendants were imposed with the Mongolian border crossing restriction EPO. Considering the cases of this type of restraint by the nature of the legal provisions:

- Article 11.4 (2.1) (committing a domestic violence with intended major health damages) -1;
- Article 11.6 (2) (committing a domestic violence with intended minor health damages) -3;
- Article 11.7 (committing a domestic violence) -2;
- Article 12.1 (2.3) (sexually abuse a person with family relations) -8.

Restrictions of reaching a designated area or meet a certain person

Since 2018, a total of 19 people has been subjected to the restrictive measures and considering the cases by the nature of legal provisions:

- Article 11.6 (2) (Deliberate minor health damages through domestic violence) -4,
- Article 11.7 (domestic violence)- 14,
- Article 12.1 (2.3) (sexually abuse a person with family relations) -1.

¹⁵ Research from target aimag and district courts, NCAV, 2020

Restrictions on leaving a designated area or designated territory

No cases of domestic violence have been subjected to this measure between 2018 and the end of the first quarter of 2020.

Assignment to go on a designated route

According to the report between 2018 and the end of the first quarter of 2020, no cases of domestic violence have been subjected to this measure. Among the court practices on applying EPOs, the convicted/accused of domestic violence were mostly (14 cases) subjected to the restriction on reaching a designated place or meeting a certain person,¹⁶ whereas the restriction on crossing the border of Mongolia was imposed to those convicted of sexual abuse (8 cases) to the persons with family relations.

With regards to the reasons for not imposing restrictions on leaving a designated area or designated territory and assignment to go on a designated route, it is the unavailability of legal environment for overseeing the implementation of EPOs, uncertainty of process on who and how the oversight should take place and inadequate legal knowledge and awareness of citizens.

2.5. The context of claiming for EPOs as restrictive measures via investigators

Victims of domestic violence were more likely to encounter potential risks of harassment, life, health and security upon contacting the legal bodies against perpetrators. In this regard, the EPO as restrictive measures is a part of regulations on the LCDV and CPC related to the protection of victims. The EPO for "personal guarantee" is the only measure the accused can be subjected to independently throughout the investigation.¹⁷ However, if a restraining order is required, a request should be submitted to the prosecutor who would further propose to the court.¹⁸

There were ten cases in which inquiry officers and investigators requested the prosecutor to impose an EPO on the accused. Of these, five cases were submitted to the prosecutor to restrict the defendants' crossing of the Mongolian border and five cases were submitted to impose a measure of restraint from visiting certain places and meeting certain people. The court granted five requests to restrict the crossing of the Mongolian border, and

16 Article 11.7 of Criminal Code

17 Article 14.1 (2) of CPC

18 CPC ..

granted three of the five requests for restraining orders against visiting certain places and meeting certain people, two of which were changed to pre-trial detention.

It is clear for the restriction measures that are for crossing the border. A request is submitted to the Immigration Authority and Border Protection Authority for issuance.

However, nothing is impossible if one comes in with a proposal from a prosecutor. At present, it is not feasible to apply measures to restrict visits to certain places and meetings with certain people in rural areas. If the victim says that this measure of restraint has been violated, it can be replaced by another measure.

Records of the KII with a judge

Investigator cannot immediately seek for EPO. Based on the request submitted by a claimant, the investigator can do so according to the procedure. Moreover, the restriction measures are not applicable at the local level, except to the restriction to cross the border of Mongolia.

It is difficult to implement because there are no technical surveillance devices, and even if there are, there are no procedures on who and how to control. And because there are so many steps, we often get a personal guarantee and signature as a defendant that he will not influence witnesses or victims and will not commit another crime/re-offend. In a few cases, decisions have been made to protect witnesses and victims. Eventually, it will be us who conduct control. Contacts over the phone are made, asking defendants to be present, and clarifications are made from victims. In case of violation of the EPO, detention measure is replaced.

Records of the FGD with an inquiry officer and investigator

2.6. Prosecutor's proposal for EPO- as restraining order against the accused

Under the CPC, prosecutors have a key role in obtaining restraining orders for defendants. For example, a prosecutor may initiate, modify, revoke, or extend a restraining order against a defendant on his or her own initiative, or submit it to a court within 24 hours¹⁹ of receiving the investigator's request, or revoke the restraining order.²⁰ Prosecutors and investigators are obliged²¹ to

19 Annex to the GSPO Resolution No. A/96 of 22 August 2017 (Methodological guidance on prosecutor's oversight of investigation)

20 Article 14.13 (1), CPC

21 Article 14.13 (2), CPC

immediately notify the supervisory authority of the court’s decision. Within the scope of this monitoring, the GSPO was asked to provide statistics on the extent to which prosecutors had proposed restraining orders for domestic violence offenses, but “a detailed quantitative survey was not possible due to the lack of an e-registration system update.”

57 percent of the 14 prosecutors surveyed filed their proposals seeking restraining orders for defendants. This had a positive effect on establishing a court precedence where the prosecutors had restraining orders imposed on defendants on their own initiative.

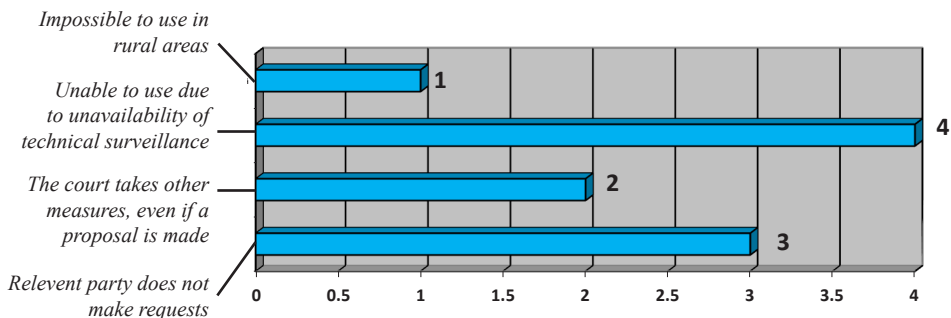
The prosecutors who did not propose a restraining order justified that they did not do so because the current legal environment did not allow the use of surveillance equipment.

This is due to the regulation where it states in 6 of Article 6.6 of the “Methodological guidance on prosecutor’s oversight of investigation”²² that “If the surveillance device is not procured, the prosecutor may refuse to propose the application of restrictive measures”.

Restrictive measures cannot be applicable at the local level. Due to unavailability of technical surveillance, so who, how and how to control a person at the foot of a mountain. Therefore, even if a proposal is made, the court instantly take the EPO for detention without applying restraining measures.

Records of the KII with a prosecutor

Graph 3. Reasons of not proposing EPOs for prosecutors



22 Annex to the GSPO resolution No. A/96 of 22 August 2017

Some prosecutors believe that it is not possible to obtain an EPO on their own initiative unless a proposal is made by a party to the case. This context contradicts the prosecutor's role set forth in Article 14.13 (1) of the CPC. In other words, the fact that in any stages of the criminal procedures, the exercising of a prosecutor's power to propose a restraining order for the defendant should not be prevented with the failure of a party to the case in submitting his/her request for EPOs. On the other hand, the use of EPOs as restrictive measures by investigators and prosecutors was observed to be confused with the protection of witnesses and victims set forth in Chapter 13 of the CPC.

Article 13.1 (1) of the CPC provides that if a witness, victim, attorney or investigator submits a request at the inquiry, investigation or trial, the prosecutor or judge shall make a decision relevant to the protection of the safety of witnesses and victims under the Law on Protection of Witnesses. In adhering to this regulation, there is a misconception that the prosecutor must base his/her request for restraint on the request of the victim and his or attorney in order to propose to the court.

2.7. The context of the victim and his/her attorney requesting for a restraining order and modifications to the restraining order

During KIIs and FGDs with parties and attorneys to cases, four attorneys requested that investigators and prosecutors impose restraining measures on suspects and defendants.

Even though the prosecutor accepted the request of an attorney and victim and proposed a restraining order, the court replaced the prosecutor's proposal with a detention measure.

- In response to my client, "My case is under the police investigation for the physical abuse of my husband. Over the phone, I am constantly pressured to withdraw my case. After the tracing, recently by force he took me to his car outside my workplace and took me home. I was beaten and forced to have sex. I informed the investigator and there is no way as expert analysis is still pending. While husband avoids to be present at the police, he threatens my mom and dad over the phone that I will not be alive any longer", I submitted a proposal to the prosecutor. When the prosecutor filed a proposal for an EPO, the court modified the proposal for a detention on the ground that defendant "may escape".

Records of the KII with an attorney

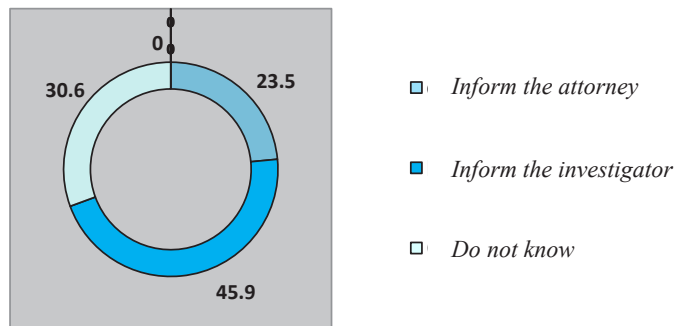
21 Law to combat domestic violence (2016) 11

22 Law to combat domestic violence (2016) 44.2

There have been no cases of requests filed to modify the EPO.

According to the LCDV, an official legally obliged for reviewing and resolving complaints and information on DV crimes and offences is responsible for ensuring the safety of victims and other family members, undertaking immediate measures to isolate, informing and explaining to the victim the time, course, circumstances of the criminal procedures and the measures imposed on the perpetrator.²³

From the FGD with victims, 55% responded as yes when questioned if there was a risk to lives or the health of them and other family members during the criminal investigation. In response to a question, "What would you do in this case?" 45.9% said they would immediately inform their investigators, and 30.6% said they did not know. This reveals the inadequacy of the aforementioned legal regulation of the LCDV.



Due to the poor awareness of victims' rights during the criminal procedures, victims often feel weak in protecting their safety under the law.

2.8. Monitoring on the implementation of the EPOs as restrictive measures

No clear provisions are stipulated in the CPC on who shall oversee the implementation of the EPO for restrictions.

From the review of the article 14.5 of the CPC set forth as in (2) "Prosecutors and investigators shall immediately notify the supervisory authority of the court's decision to impose or revoke the EPO," (3) of the same law "The court decision shall instruct the competent authority to monitor the place of

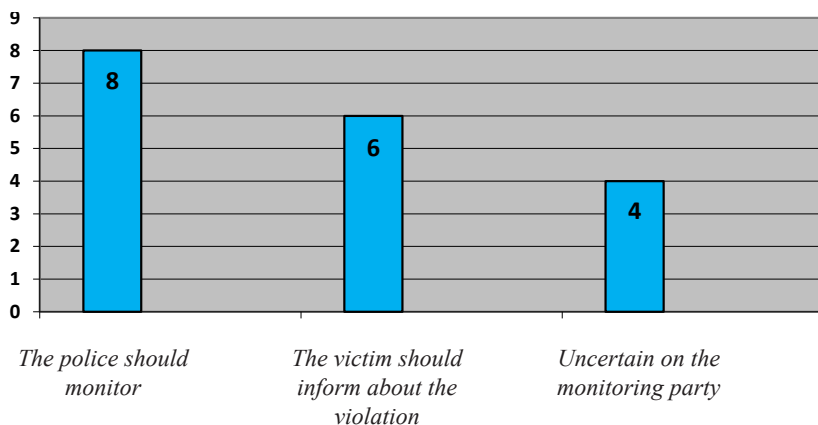
²³ Article 8 of LCDV

residence and work, restricting to reach a certain designated area, and to not meet or communicate with a specific person,” (4) of the same law “If specified in the court decision, the body authorized to monitor the implementation of restrictive measures shall monitor the accused using surveillance equipment;” it shall be perceived to be separate bodies from prosecutors and investigators who should be responsible for overseeing the implementation of the EPO.

5.5 of the chapter 5 of the procedure on Ensuring the Safety of Domestic Violence Victims, “An officer shall personally notify and supervise the police officer in charge of the bagh or khoroo if a suspect, accused or defendant for a domestic violence has been subjected to measures of restraint or other mandatory measures other than detention during the criminal proceedings.”²⁴ This suggests that the police officer in charge of the bagh or khoroo where the accused resides may monitor the implementation of the EPO. Otherwise, no specific procedures for monitoring the implementation of the EPOs are existent.

It should be denoted that the uncertainty of the regulations on restrictive measures of the CPC make it difficult to implement this measure in practice. Due to the ambiguity of the law, judges do not specify in their orders who should monitor the implementation of restraining measures.

In response to a question “Who is responsible for overseeing restrictive measures during monitoring?”, the prosecutors responded as follows.



²⁴ Approved by the GSPO and Minister of MJIA Resolutions No. A/22 and A/31 of 9 February 2017

According to an explanation by a judge, “at present, it is not possible to implement measures to restrict visits to certain places and meetings with certain people in rural areas. Suppose the victim is said to have violated the measure of restraint, it could be replaced by another measure.”²⁵ Of all EPOs, the restriction on crossing the border of Mongolia is simpler and more viable. A request can be filed to the respective bodies, Immigration Authority and Border Protection Authority for approval.²⁶

The preceding CPC of Mongolia did not contain any restrictive measures based on technical surveillance. Given the novelty of the EPO, a specific procedure needs to be in place for effective implementation.

2.9. Possibility to implement EPOs as restrictive measures

It has been three years since the CPC has become in force in Mongolia. Under the law, the range of measures to defendants and accused are expanded, including the restrictive measures as part of mandatory measures. Courts do have practices of applying restrictive measures except for the measure of “assigning to go on a designated route.” Yet, no technical surveillance practice or cases are evident in the implementation of the court orders for restrictive measures.

As of today, several provisions of the Law on Enforcement of the Court Order that provide for the technical surveillance/monitoring are relevant to the enforcement of the court decisions/orders on restricting the right to travel²⁷, imposition of mandatory obligations, restrictive and mandatory measures (167, 168, 169, 170, 171 of the Law on Enforcement of the Court Order)²⁸.

The restriction on the right to travel includes the prohibition of a person who has committed a crime to leave his/her place of residence, the prohibition to travel to a certain place, the obligation to travel in a direction determined by a court, the prohibition to communicate with a certain person or others, etc. The Criminal Code²⁹ also introduces a new type of mandatory measures that can be applied without parole or in addition to the sentence imposed on the perpetrator/convict. It is a mandatory measure of obligation and restriction. The type of measure includes mandatory measures such as “restricting access to a specific place and contact with a specific person.”

25 Records of the KII with a judge, 2020

26 Records of the KII with a judge, 2020

27 Article 5.5 of the general provision, Criminal Code

28 “Law Enforcement” Journal, Vol. 02 (18), 2016, page 80

29 Article 7.2 of the general provision, Criminal Code

The penalties and mandatory measures in the Criminal Code overlap with the types of restraints imposed by Article 14.5 of the CPC, for example, “prohibiting the accused to leave a designated place or territory, to visit a specific place, to meet a certain person, and to travel on a designated road,” etc.

Upon the frequent delays by the legislature in connection with the use of digital surveillance devices, the Cabinet decided to issue a resolution on January 1, 2021 and began their respective actions.³⁰

Within the framework of enforcing the penalties in the Criminal Code, the e-surveillance center is considered to be located at the General Executive Agency for Court Decisions. Further actions target the construction of the facility to build the unified surveillance center.

FTE officers in charge of enforcing the penalty are supposed to work at the surveillance centre in UB and rural branches of our agency.

If the enforcement of the restriction on the right to travel is effective, the surveillance can be applicable for such measures. Certain amendments are required to a specific law.

Interview, D. Damdintseren, Colonel and Deputy Head of the General Executive Agency for Court Decisions, 2020, <https://mojha.gov.mn/newmojha/?p=4172>

The General Executive Agency for Court Decisions enforces certain types of court orders, such as arrest warrants and custody orders.³¹ It is concluded, therefore, that it is feasible to include the implementation of restrictive measures in the unified monitoring system by amending the CPC and the Law on Enforcement of Court Decisions.

³¹ Article 6 (6.5), Law on Enforcement of Court Decisions

CONCLUSION

Despite the fact that the Criminal Procedure Code has been in force for three years, the emergency protective orders for restrictive measures set forth in Article 14.5 of the law are not widely practiced for the following reasons:

1. There are no diligent legal regulations on who and how to implement the emergency protective order.
2. Due to the uncertainty of which body and officials will implement the emergency protective order, who will monitor its implementation and how it will be implemented, the courts remain challenged to apply this measure. The terms "overseeing body" and "authority" specified in the CPC are ambiguous.
3. Although it is legally regulated to monitor the implementation of some restrictive measures using monitoring equipment, the practice is inadequate due to the lack of such equipment, and trained human resources.
4. Lawyers are inadequately aware of the purpose, significance, and practical application of the EPO. They often fail to differentiate the practice of EPOs from the measures to ensure the safety of witnesses and victims.

RECOMMENDATIONS

In consideration of the monitoring fundings, the recommendations are developed as follows:

1. To assign the General Executive Agency of Court Decision to be responsible for overseeing the implementation of the EPO for restraining orders through including amendments to the CPC and the Law on Enforcement of Court Decision;
2. To ensure human resources and monitoring equipment and technique required for the implementation of the restraining orders in practice, and to allocate budget and funding accordingly;
3. The restrictive measures set forth in Article 14.5 of the CPC are a new type of EPO; thus, training and information efforts should be in place for judges, investigators and prosecutors.