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Mongolia Judicial Reform Program
(JRP)

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Mongolia Judicial Reform Program (JRP) – Annual Report – Year 2 Executive Summary

The Mongolia Judicial Reform Program (JRP), administered by the National Center for State Courts (NCSC) under a five-year, \$10 million Cooperative Agreement with USAID completed its second year. Building on the Strategic Plan for the Justice System of Mongolia developed in 1999-2000 through extensive consultations with Mongolian stakeholders, the JRP's goals, addressing key impediment to judicial sector reform, are to:

- Develop systematic mechanisms to ensure adequate access to resources for the judicial sector
- Develop sustainable approaches to maintain efficient judicial sector operations conducted by qualified judges, prosecutors and other judicial sector staff
- Promote judicial sector independence
- Increase transparency and accountability throughout the judicial sector.

Using a strategic approach to focus on implementing Priority Tasks that were chosen by the main stakeholders the JRP completed the activities and achieved the accomplishments outlined below:

Priority Task 1. Develop and strengthen court management and administration at the national and local court level. —The objective of this task is to develop an effective and functional national-level court administrative office by enhancing the operations of the General Council of Courts (GCC). The JRP had great success working with the GCC in several key areas:

- Strengthening the capacity of the staff to provide the information and administration support needed by the courts
- Establishing a sustainable case tracking and management system that increased monitoring of court performance and also enhanced transparency and accountability
- Analyzing the court system's information technology needs to develop sustainable mechanisms for all courts throughout Mongolia
- Developing reliable court data for budgeting, management, and public information purposes
- Reviewing the composition of the membership and structure of the GCC to enhance its ability to advance the development of well functioning courts and increase judicial independence.

Priority Task 2. Strengthen local case management systems and access to justice. —The objective here is to assist the Ministry of Justice and Home Affairs (MoJAH), GCC and local-level courts in developing a sustainable case management system that increases the courts' efficiency, accountability and transparency. The JRP made significant strides working with 5 pilot courts and, ahead of schedule, began to expand these efforts to others courts interested in making changes:

- New case management procedures were established
- Case records automated
- Public access terminals created
- More efficient records management processes are being tested

Priority Task 3. Re-examine the jurisdiction of all courts and related justice system components.—The objective is to review of the organization, structure, jurisdiction, and responsibilities of courts and other justice system components. The JRP provided assistance to all Mongolian stakeholders

during this time of significant legislative activity to introduce important legal reforms. This included in particular:

- Comments on the Criminal Procedures Code that strengthened human rights protections for arrestees
- Provision of information and assistance for the development of the new Law on the Courts and comments on the draft law that strengthened judicial independence
- Provision of information and assistance for the development of the new Law on Prosecutors to enhance the organization of the prosecutor's office, strengthened its independence and, provided support for the establishment of a separate investigation division for justice sector corruption.

Priority Task 4. Develop a continuing education system for all legal professionals.—The objective is to assist the Mongolian government to develop a comprehensive Continuing Legal Education (CLE) system. In close cooperation with other donors as well as the Mongolian stakeholders, the JRP implemented the following:

- Trained all judges and other legal professionals in the new criminal code, criminal procedures code, and introductory advocacy and ethics modules.
- Provided a general concept and assistance for the development of a sustainable CLE system for all legal professionals, in particular through establishment of the National Legal Research and Training Center (NLRTC), to provide a common basis for discussion and CLE development by all stakeholders
- Began the process of developing CLE capacities that can be sustained through train-the-trainer development, special training modules and training material that can be transferred to other courses
- Engaged the public in a discussion and education process to increase their understanding of their rights, the judicial sector, and the importance of judicial independence

Priority Task 5. Develop an effective Mongolian system to qualify lawyers.—The objective here is the establishment of a Bar Qualification System for Mongolian Legal Professionals. In order to continue to advance this Priority Task NCSC provided recommendations to the current draft legislation

Priority Task 6. Enhance adherence to professional ethics among legal professionals.—The objective of this task was to assist in the Advancement of Ethics for the Legal Professions. During the reporting period the JRP has promoted professional ethics in Mongolia by:

- Assisting with the development of a new Judicial Code of Ethics
- Developing a basic training module on the Judicial Code of Ethics and providing related training to judges and prosecutors
- Providing information for the development of other system wide mechanisms to increase justice system integrity.

Throughout Year 2, JRP has maintained its focus on assisting Mongolian stakeholders to resolve the priority problems that challenge justice sector reform. Maximizing the application of its own resources and collaborating strategically with stakeholders and other donors to leverage other resources, JRP's integrated assistance services have stimulated significant improvements in the justice sector's legislative and regulatory framework, institutions, and practitioners. Key results include:

- Multiple measures to increase accountability, transparency and combat corruption, as a result of various aspects of changes to the procedural codes, automated case management, public access terminals in the courts, and a draft Judicial Ethics Code
- Increased case management efficiency and effectiveness
- Greater appreciation for and use of reliable court data for budgeting, management, and public information
- New provisions in laws that strengthen human rights protections, independence of the judiciary, and investigation of judicial sector corruption
- An institutional blueprint to support further development of the GCC
- A concept for the development of a sustainable CLE system
- Pioneering public education initiatives that inform and mobilize citizens in support of justice system reform
- Successful models for donor and stakeholder collaboration

These results, achieved relatively quickly, demonstrate JRP's effectiveness in working with Mongolia's justice sector to achieve its reform goals. The Year 3 work plan builds on these results to advance the reform agenda.

**MONGOLIA JUDICIAL REFORM PROGRAM (JRP)
ANNUAL REPORT – YEAR 2**

PROGRAMMATIC BACKGROUND AND FRAMEWORK

In January 2001, USAID awarded the National Center for State Courts (NCSC) a five-year, \$10 million Cooperative Agreement to implement the Mongolia Judicial Reform Program (JRP). This program builds on the Strategic Plan for the Justice System of Mongolia developed in 1999-2000 through extensive consultations with Mongolian stakeholders in the judicial system. The Strategic Plan was adopted by the Parliament in May 2000 and was endorsed by the new government following the June 2000 elections, a tribute to its broad-based political support.

The goals set for the JRP address the key impediments the judicial sector faces in its efforts to be compatible with a democratic society and free market economy, i.e., chronic under funding, lack of qualified human resources, lack of democratic structures, inefficient, outdated, and obscure processes and practices, lack of accountability and transparency, and lack of public trust and confidence.

The JRP goals are to:

- Develop systematic mechanisms to ensure adequate access to resources for the judicial sector
- Develop sustainable approaches to maintain efficient judicial sector operations conducted by qualified judges, prosecutors and other judicial sector staff
- Promote judicial sector independence
- Increase transparency and accountability throughout the judicial sector.

These goals are still consistent with the original results framework established by USAID.¹ Considering the many areas that need improvement within the judicial sector and other agencies that directly impact its operations the JRP used a strategic approach to focus its efforts on implementing targeted Priority Tasks that were chosen by the main stakeholders and are reflected in the Mongolian Strategic Plan for the Justice System and the accompanying Action Plan:

Priority Task 1. Develop and strengthen court management and administration at the national and local court level.

Priority Task 2. Strengthen local case management systems and access to justice.

Priority Task 3. Re-examine the jurisdiction of all courts and related justice system components.

Priority Task 4. Develop a continuing education system for all legal professionals.

Priority Task 5. Develop an effective Mongolian System to qualify lawyers.

Priority Task 6. Enhance adherence to professional ethics among legal professionals.

¹ The original framework envisioned the following Intermediate Results (IR):

IR 1: Court administration and case management capacity strengthened.

IR 2: A legal training center, providing continuing education for legal professionals, designed, developed and made operational.

IR 3: An effective standardized qualifying system (which all lawyers will be required to pass before they are permitted to practice law) developed and made operational.

IR 4: Revised ethical standards for legal professionals developed, adopted, and enforced.

IR 5: Access to the Mongolian justice system broadened and improved.

IR 6: Law school standards raised.

IR 7: Independence of the judiciary strengthened

Emphasis continued to be placed on donor coordination and close cooperation with stakeholders in order to achieve sustainable changes. Given the number of donors and lenders in Mongolia involved in the judicial sector and the need to leverage resources, avoid duplication, and provide coherent advice and technical assistance coordination is essential.

At the end of the second year of the JRP's operations many positive changes have occurred but the main problems still persist. Considering that the goals set for this project and envisioned for the Mongolian justice system by those who supported the Strategic Plan are ambitious and aimed at significant systemic changes and fundamental adjustments in behaviors and attitudes it is not surprising that these changes will require time.

The following describes JRP's activities and accomplishments, by priority task, during the reporting period.

PRIORITY TASK 1: DEVELOP AND STRENGTHEN COURT ADMINISTRATION AT THE NATIONAL AND LOCAL LEVELS OF COURTS

Objective: Develop an effective and functional national-level court administrative office by enhancing the operations of the General Council of Courts (GCC).*

The General Council of Courts (GCC) is key to developing and providing a solid management and governance structure for the courts and advance judicial independence. Its members develop policies for the judiciary and the courts. It serves as the governing entity of the judicial sector, and the staff of the GCC is responsible for implementing the policies set by the GCC and providing administrative support to the courts. The existence of a well functioning national-level agency charged with supporting the operations of the courts is essential to ensure that all courts have equal access to support, that court operations throughout Mongolia are standardized, and that judicial policy is based on solid information. Such a national-level agency is key in promoting independent judicial branch governance and has to function as a support mechanism that enhances local court administration capacities, complementing local administrative structures but not duplicating them.

Priority Task 1 Highlights

The JRP has had great success working with the GCC in several key areas:

- Strengthening the capacity of the staff to provide the information and administration support needed by the courts
- Establishing a sustainable case tracking and management system that increased monitoring of court performance and also enhanced transparency and accountability
- Analyzing the court system's information technology needs to develop sustainable mechanisms for all courts throughout Mongolia
- Developing reliable court data for budgeting, management, and public information purposes
- Reviewing the composition of the membership and structure of the GCC to enhance its ability to advance the development of well functioning courts and increase judicial independence.

* Based on the Strategic Plan's Strategic Principle 3.4, Task 3.4.1.

Assistance for GCC Organizational Reform

Early in 2002, the JRP printed 475 copies of its report, *Structure and Functionality of the General Council of Courts*, for distribution to members of the judiciary, Parliament and the Cabinet to assist in the decision making processes related to the legal framework for the GCC. Many of the recommendations are designed to enhance the administrative capacity of the GCC support staff to provide assistance to the courts. The report compares the Mongolian system with those in selected European countries, providing insights on how restructuring could enhance the GCC's policy-making capabilities. Descriptions of the systems in California and Utah provide insights into how Judicial Councils function from a policy and administrative perspective. (See Appendix A)

JRP further sponsored a study tour to the U.S. from May 25 to June 8 for 10 members and one staff member of the GCC. The purpose was to enable participants to review the operations of judicial councils and state court administrative offices and other entities of all three branches relevant to the governance and administration of the courts in Utah and Colorado. In preparation for the study tour, JRP conducted an orientation with available GCC members. The orientation introduced the court system in the U.S. and the two states as well as the roles and responsibilities of the institutions to be visited. It also illustrated an action planning methodology for implementing post-tour reform steps. JRP made all logistical arrangements for the trip and translated relevant documents into Mongolian. (See participant list, agendas for the preparation workshop and study tour, and action planning materials in Appendices B1-B4).

A key component of the study tour was daily assessment of the information gained to identify its value and feasibility for the Mongolian justice system. The Project Director accompanied the study group and guided the daily discussions that ultimately culminated in targeted action planning sessions. At the end of the tour, participants developed an initial plan of action to follow up on the ideas and mutually agreed upon priorities for potential implementation. A working group was established and tasked with developing a final action plan for the GCC.

At a subsequent meeting of the GCC, there were questions about the applicability and appropriateness of some elements of the action plan within the Mongolian context. A group was formed to review the plan's wording and content in this light. Also, no actions were to occur until after passage of the Law on the Courts. Appendix C, *GCC Study Tour Follow-up Action Plan* shows the action plan. Several of the ideas developed during the Study Tour are reflected in the new Law on the Courts that came into effect September 1, 2002. This includes changes to the composition of the GCC to include more representatives of the judiciary, the transfer of the location and chairmanship from the Executive Branch to the Judiciary, the structure and composition of the new disciplinary and professional committees, and the broadening of the decision making power of Judicial Council in judicial selection and other policy decisions. Similarly, some of the organizational changes introduced in the Prosecutor General's Office, particularly the creation of a separate division to investigate justice sector corruption, were influenced by the information gained during the study tour. Other issues discussed, such as the rationalization of appellate courts and the creation of victims' support funds continue to be pursued by the members of the GCC. Not sure I understand "issue discussed." Are these the "ideas developed during the study tour?" If so, maybe we should say so.

Subsequent changes in the composition of the GCC, particularly in the chairmanship, have delayed further work and progress on the action plan. JRP's communications with study tour members remaining on the GCC indicate their continuing strong support for implementing the plan.

Other changes and improvements to the GCC's organizational capacities were introduced through equipment provided by the JRP. This allowed its staff to automate and streamline many of their functions, such as preparing inventory lists and financial reports and carrying out other administrative tasks. It also allowed the GCC to communicate with the pilot courts via e-mail to send and receive administrative reports. This not only speeds-up the information exchange process but also provides for new levels of interaction among the GCC and the courts it serves. It not only enhances access to relevant information but can also increase accountability.

Conduct court administration seminars and develop reference materials

GTZ and JRP co-hosted a training seminar in Ulaanbaatar on March 5-8, 2002, for 23 local court administrators, focused on court administration practices. Content included the new Ministry of Finance's budget and finance procedures and a general overview of personnel practices and administration in Mongolia. JRP supported the transportation costs. The trainee group then traveled to Dundgovi, one of the JRP pilot court sites, for a demonstration of the GTZ *Judge 2001* and *Prosecutor 2001* software in use in the pilot courts and prosecutors' offices. GCC staff described the advantages of interconnectivity between the pilot court and GCC in terms of transferring and disseminating information. Trainees also observed how the public access terminal technology makes a court more accountable, open, and transparent by providing citizen access to information. (See the training agenda and evaluation in Appendix D.)

On May 27-31, 2002, GTZ in conjunction with JRP conducted a training seminar for court and prosecutor system administrators from the four pilot courts and prosecutors' offices. The training focused on technical support issues and systems administration of Local Area Networks (LANs). GTZ provided the instructors and paid the travel costs for the attendees. JRP facilitated the temporary installation of eight computers and a LAN in the Judicial Retraining Center for this seminar. The participants learned how to maintain and troubleshoot *Judge 2001* and system network software in a live environment. At the conclusion of the seminar, the equipment was installed at the Capital City Prosecutor's Office.

Over the summer, JRP staff began collaborating with a GCC working committee on developing a court administration manual for use by court administrators. The first meeting resulted in an action plan for compilation and distribution. The manual will incorporate all Resolutions from the GCC and MoJHA that involve the administration of the courts. It will be in loose-leaf form, allowing for easy updates. It will include sections on budgeting, finance and auditing, personnel management, statistical reporting requirements, procurement, hiring practices, and ethics.

The completion of the Court Administration manual is scheduled to coincide with the publishing of the Judge's Benchbook being developed by IDLI. Both documents will include numerous rules and regulations directly related to the new laws. Because the Supreme Court has not yet promulgated all of the rules and regulations, the publications are somewhat delayed. The Court Administration manual will be made available to IDLI so that the Judge's Benchbook can include sections on court administration.

Assist with the improvement of data collection for the courts and Prosecutor's Office

The Supreme Court, GCC, Cabinet and Parliament need accurate, timely and useful information on court activities and cases. The court system in Mongolia, like many court systems around the world, collects large volumes of information used by only a few individuals and organizations. The Supreme Court's current collection of aggregate statistics is not adequate to support and respond to the demands made by the public and other governmental agencies.

The ultimate worth of any statistical reporting system is its ability to enhance the accountability of the court system. The system must be able to inform the public, Parliament and other government agencies about court performance. Timely and accurate information sharing provides a cohesive and integrated justice system.

JRP provided initial recommendations for enhancing the data collection scope and methods to the GCC and Supreme Court's Research Center as well as the Prosecutor General's Office. However, the changes in the key laws effective September 1, 2002 require significant adjustment to the data collection scheme. Changing how the courts report data to the Supreme Court will be a challenge. The development of a new system will be a long-term effort and require a commitment of time and resources and diligent work among the lower courts, the Supreme Court and the JRP in order to achieve success.

Since the Supreme Court's Research Center current summary statistical reporting system does not provide the Supreme Court, the GCC, the Cabinet, and Parliament with the accurately, timely, and useful information needed, the JRP staff met several times with Supreme Court Research Center staff to discuss reporting objectives and develop an outline for Mongolia's first statistical annual report. These consultations resulted in agreement on a general report outline (see Appendix E). Given the requirements of new laws and changes in leadership at the Supreme Court Research Center, work on the annual statistical report will continue in 2003.

A related effort in which the JRP was engaged during Year Two was the development of a workload study for the judicial sector, i.e. courts and prosecution. The availability and publication of solid workload information is essential to develop well-grounded justifications for budget requests that promote resource allocation based on needs and objective information, as opposed to political preferences. Such information is further essential for managing staff and related resource allocations, and to support and justify increases in resources and funding. As such, solid workload data promote accountability and transparency.

In April 2002, the JRP Project Director met with the Workload Study Working Group, composed of representatives from the courts, prosecutors, GCC, and the Supreme Court Research Center. This group was developed as a mechanism to follow up on the results of a seminar conducted in 2001 on weighted caseload statistics. The April meeting involved defining the minimum data elements of a more comprehensive reporting system that can be used effectively in workload and personnel projections. The meeting also involved discussions on data collection methodologies. It was agreed that JRP would provide a summary guide to data collection for the workload study in late May/early June. Since most working group members are also responsible for data collection within their own agencies, JRP was also asked to assist in reviewing their current data collection processes for efficiency and usefulness. (JRP provided the GPO with initial recommendations to begin caseload data collection.) Working group participants were eager to improve the quality of data collected, but made it clear that a full-fledged workload study was impossible in 2002. With the support of designated JRP staff, the Working Group continued the development of data collection instruments and made arrangements for peer review of the instruments.

In October and November, the Project Director and JRP staff conducted further meetings with the working group. By this point, draft data collection instruments had been developed, ready for vetting by representatives of the judges and prosecutors operating at different court levels and locations. With JRP guidance, the GPO working group representative facilitated a workshop at the Prosecutor General's office, attended by prosecutors from Ulaanbaatar, Darhan, and Selenge. Workshop input enabled finalization of the data collection instrument so that it captures all

activities that prosecutors undertake and is, at the same time, user-friendly. A similar workshop at the Capital City Court, facilitated by a GCC staff member, engaged a representative group of judges from Ulaanbaatar, Tov, Darhan, and Selenge Aimags to discuss next steps in carrying out the workload study. Using sample instruments provided by the JRP, the working group undertook to develop instructions for completing the data collection instruments and to prepare an instruction manual.

Considering a range of new data collection and justification requirements introduced by the Public Management and Finance Law that came into effect September 1, 2002, the completion of the workload study has taken on a new urgency. The information developed through this study will be essential for the next budget requests from the courts and Prosecutor's Office. As a result, the actual data collection has to be completed by the end of June 2003.

Provision of Guidance on Using Case Management Practices to Combat Corruption

Integrity is key to ensuring the justice system can uphold the rule of law and has the support of the public. In addition to several special efforts conducted under other priority tasks, the JRP introduced and highlighted several measures to strengthen judicial sector integrity and combat corruption as part of its court administration and case management enhancement efforts. Specifically, the JRP prepared a memorandum for the Deputy Ministry of Justice and Home Affairs on how certain case management functions contribute to combating corruption and on other procedures that could be implemented to further judicial integrity on the local level. Relevant strengths of the piloted (mostly automated) case management system introduced include:

- Computer-generated random assignment of cases to judges. This feature of the software currently applied in the pilot courts eliminates opportunities to pressure the Chief Judge to assign case to judges one of the parties considers to be more "favorable" to their case. This is an important feature to eliminate one of the many opportunities within the system to influence who would make the decision in a case and therefore eliminates one opportunity for corruption. At least one of the Chief Judges of the pilot courts expressed that this feature allowed her to avoid comprising situations and, as a result, significantly reduced the number of private "petitioners" trying to get a special judge assigned to their case.
- Justification of case reassignment from one judge to another in the case record, with copies of the order filed with the GCC. This is another feature that provides transparency of decisions and therefore reduces, if not eliminates, opportunities for corruption.
- Capability to identify any case that exceeds the time limit for adjudication. This is not merely a mechanism to "track efficient handling of cases". It assures that cases cannot be "lost" in the system due to inefficiencies or manipulation.
- Public access terminals (like the one in the Songinokhairkhan District Court) which make case-related information, including judge assignment available to the public and the litigants. This not only makes the visit to the court easier to the users, but also provides another mechanism for transparency and accountability.

Other procedures that could be introduced include:

- Requiring filing of annual financial disclosures by judges
- Eliminating *ex parte* conversations
- Random audit checks of case files handled by a particular judge and a periodic questionnaire sent to all parties in a case

- Aggressively informing the public about how to file a complaint against a judge

These concepts are reflected in the JRP paper on corruption discussed under Priority Task 6.

PRIORITY TASK 2: STRENGTHENING AND DEVELOPMENT OF A CASE MANAGEMENT SYSTEM.

Objective: Assist the MoJHA, GCC and local-level courts in developing a sustainable case management system that supports efficient case processing and provides greater accountability and transparency.

On the local and appellate court levels, improved case management translates into efficient and transparent processes to handle cases, provide access to and distribute case related information to the court's "clients," as well manage the caseload in an efficient and accountable manner. Using relatively low key technology, the JRP worked in close cooperation with the GTZ and the Mongolian counterparts to test a sustainable case management system in pilot courts that not only increases efficiency but also enhances access to the courts, transparency, and accountability.

Priority Task 2 Highlights

The JRP made significant strides on the local level working with 5 pilot courts and beginning to expand these efforts to others courts interested in making changes:

- New case management procedures were established
- Case records automated
- Public access terminals created
- More efficient records management processes are being tested

Enhancing courts' and prosecutors' offices operations through technology

During the second quarter, the JRP procured and installed equipment in all four pilot courts and prosecutor offices while the GTZ installed and trained the users on the software, *Judge 2001* and *Prosecutor 2001*. The JRP staff also trained the users in three of the courts in general computer concepts and network administration. The close cooperation between the JRP and GTZ has not only resulted in significant time and cost savings for each of our projects but also provided the Mongolian stakeholders with the best possible system in very short period of time.

In May, the JRP and GTZ staff facilitated a transfer of older equipment from the Songinokhairkhan court to the Dalandzadgad Aimag Court in Umnugovi. While the residual value of this old equipment is only approximately \$1,000, its use in Umnugovi not only provided a manual court operation with the beginnings of automation; it also essentially created a fifth pilot court at minimal additional cost.

One key element is the newly introduced public access terminals installed in all four pilot courts. In order to enhance the effectiveness of these terminals, the JRP encourages the pilot court administrators to share experiences so that public access and transparency reach the same high levels in all four courts.

Further, all four pilot courts and prosecutors' offices are connected to the Internet, and staff have been trained on the general concepts of using e-mail with their respective administrative offices. It

is envisioned that e-mail communications among the various justice system agencies in Mongolia will eventually gain the same efficiencies and cost saving results as in other countries. The JRP staff will continually monitor the Internet usage and applicability in fostering better communications among and between the various courts and related agencies.

JRP distributed a survey questionnaire on automation to each user in the four pilot courts and prosecutors' offices (see compilation of responses in Appendices F 1 and F 2). The findings indicate that the introduction of automation has positively affected many justice system operations, though further enhancements are needed. The overwhelming majority of court respondents (85%) said that automation had reduced their workload and increased their access to legal databases. Over 70% were satisfied with the operation and functionality of the case management software (*Judge 2001*). In contrast, *Prosecutor 2001* is not functioning as well as expected, and has limited use in the pilot prosecutors' offices. GTZ will evaluate the problems and report back to the prosecutors. Another problem is a lack of technical support from the GPO. With respect to Internet usage, telephone rate charges in rural areas have constrained access, so there has been little Internet utilization in these areas for communication with other offices.

In April 2002, JRP organized a visit by two representatives from USAID/Mongolia and USAID/Manila to one pilot court (Songinohairhan District Court) and a rural non-pilot court in Tov Aimag. The comparison between these courts demonstrated the effectiveness of automation in increasing efficiency as well as accessibility and transparency. These benefits were again highlighted during visits by the President of Mongolia to two pilot courts in May 2002. Both Chief Justices informed the President that the equipment and new administration practices introduced by JRP had greatly reduced the judges' workloads and made their courts more open and accessible to the public, advocates, and other legal professionals. The President subsequently cited these courts publicly as exemplary of the openness and fairness that should be established in all courts in Mongolia.

In order to enhance the likelihood that the automation enhancements funded by the JRP are sustainable, a sample Automation Agreement was developed which will serve as a contract between the JRP and the courts that are recipients of JRP funded equipment. The JRP will prepare a complementary agreement for the GCC.

Since the operations in the pilot courts were so promising and advanced ahead of schedule, the JRP requested to begin expansion of the automation process to other courts in Ulaanbaator and Tov Aimag already in Year 2. These courts were chosen because they are the most affected by the increased workload resulting from changes in the Criminal Procedure and Civil Procedure Codes. Capital City Court technical staff will work with the JRP Computer Specialist to configure each server and network, and will provide ongoing technical support for these courts. Consistent with the Automation Agreement, each court will establish a public access terminal area.

Improving Case Management and Records Management in the Capital City Court (CCC)

The CCC is the largest court in Mongolia and hears 50 percent of all appellate cases in the country as well as major felony cases in the first instance. Records and case management had been hampered by poor, even hazardous physical facilities, multiple manual procedures, and inefficient indexing and register systems.

In December 2001, the JRP provided a variety of equipment; including computer workstations, metal shelving, and case file jackets to enhance the CCC's recordkeeping and case management procedures. Using these resources, CCC staff has worked diligently to improve procedures. There

are significant benefits in terms of reducing workload as well as redundant registries, increasing data availability and accountability, and enhancing efficiency and transparency. Examples include:

- Easy computerized searches by party name, case number, Aimag name, and judge name
- Elimination of multiple registers, enabling quick determination of case status
- Increased judge efficiency as a result of using computers to prepare decisions, rulings, resolutions, judgments, and replies to citizen complaints; write reports, recommendations, and information reviews; conduct studies; and issue notices for trials
- Better organized archives, resulting in faster services and more access to information for citizens, organizations, and businesses
- Elimination of many manual tasks, enabling judges and other legal professionals to devote more time to legal analysis and deliberation
- Use of standardized computer templates, eliminating the need for letters to be reviewed by management
- Increased efficiency in terms of entering registry data and preparing the required 23 monthly, quarterly, and annual reports

Testing Electronic Recording of Court Proceedings

Following suggestions from Mongolian stakeholders, the JRP is assisting Mongolia's courts in finding ways to eliminate the many problems resulting from manual transcription of court proceedings. Examples of problems include disagreement among the parties as to the accuracy of the transcription, time and other resources expended on transcription, and increased opportunities for corruption. In addition, because of poor record quality, most cases are tried *de novo* on appeal, thus extending the delay in enforcement.

JRP has located one local provider for Sony recording equipment and ordered it for three pilot courts to test its usefulness for different types of cases, i.e. at the Capital City Court (appellate cases), Songinohairhan District Court (criminal cases), and Tov Aimag Court (civil cases). Delivery is expected for early 2003. The JRP has also begun developing a training syllabus and materials for training court staff in operating the equipment, based on products provided for a similar NCSC project in Nigeria. JRP staff are in the process of developing electrical requirements for courtroom wiring to support the use of electronic recorders.

Priority Task 3: Re-examine the jurisdiction of all courts and related justice system components

Objective: Review of the organization, structure, jurisdiction, and responsibilities of courts and other justice system components.

When the JRP began its operations, several major laws were under review not only to advance democratic and justice sector reforms in Mongolia but also to eliminate contradictory statutes and clarify authorities (i.e. police, prosecutor, court responsibilities related to investigations and detention decisions). Major laws such as the criminal and civil codes, the criminal and civil procedures code, the law on the courts and the law on prosecutors were discussed in parliament during the first half of the project period and finally passed in September 2002.

JRP had the unexpected opportunity to comment on the Criminal Procedure Code in late 2001 as it was being considered in Parliament and provided even more detailed review and recommendations to the law on the courts and the law on the prosecutors. From the point of view of narrow legal reform, this activity has been a significant success, with close cooperation from the Ministry of Justice and Home Affairs, the Office of the Prosecutor General, the GCC and the Ikh Hural. The real challenge starts, however, now. The implementation is essential to affect perceptions and behavior in Mongolian society. It is clear that significant training and other long term assistance will be necessary for the courts, prosecutors and advocates to implement these new responsibilities.

Priority Task 3 Highlights

The JRP provided significant assistance to all Mongolian stakeholders during this time of significant legislative activity to introduce important legal reforms. This included in particular:

- Comments on the Criminal Procedures Code that strengthened human rights protections for arrestees
- Provision of information and assistance for the development of the new Law on the Courts and comments on the draft law that strengthened judicial independence
- Provision of information and assistance for the development of the new Law on Prosecutors and comments on the draft law that enhance the organization of the prosecutor's office, strengthened its independence and, in particular, provided support for the establishment of a separate investigation division for justice sector corruption.

Assistance for the Development of a new Criminal Procedures Code

By providing recommendations on the draft Criminal Procedure Code, JRP was instrumental in ensuring that Article 57, which establishes the standard for arrest, provides adequate protection of human rights. The Prosecutor General and other key stakeholders confirmed that the JRP recommendations caused the drafters to look closely at this code section and understand the importance of human rights protection. In addition, the JRP provided comments to enhance the transparency of processes, such as ensuring that the random assignment of cases is possible. The Code was passed in January 2002 and became effective September 1, incorporating several JRP recommendations.

Assistance for the Development of a new Law on the Courts

JRP's involvement in drafting this law began early. At MoJHA's request, JRP commented on a draft Law on the Courts. This is a very positive development compared to the last minute request by Parliament for assistance on the draft Criminal Procedure Code. JRP's comments on the Law on the Courts included many suggestions for improving the independence of the judiciary, promoting the efficient management of the courts, and requiring transparency. Where appropriate, JRP suggested new sections and offered specific language. The commentary included references to the experience of other countries.

The Supreme Court and the GPO both sought JRP's comments on the resulting draft. There were many improvements in the draft that the Ministry presented to the Cabinet and Parliament, but several politically contentious issues remain, and there are still areas for improvement. JRP's recommendations were provided to the Supreme Court, Prosecutor General, GCC, and Legal Standing Committee of Parliament. JRP's input focused on the goals of judicial independence and

creating accountability and transparency through court administration. Key recommendations (see Appendix G) include:

- Freeing the judiciary from the dominance of the executive branch, including eliminating the Minister of Justice and Home Affairs as *ex officio* chair of the GCC
- Developing procedures to better inform GCC members on issues so that they can participate more actively in policy-making rather than surrendering that role to the chair
- Changing the frequency of the General Meeting of all judges in Mongolia from every three years to annually
- Ending the practice of “Professional Guidance” that allows higher court judges to reverse or amend the decision of lower court judges on their own initiative, without an appeal
- Transferring control of the Disciplinary Committee and Research Center staff from the Supreme Court to the Disciplinary Committee
- Reducing the power of the Chief Justice of the Supreme Court to make discretionary decisions related to court policies and vesting that power with either the whole Supreme Court or the GCC to make such decisions more democratic and accountable
- Changes to ensure the adoption of random case assignment, make staff allocations subject to workload studies, make budgeting more rational, and increase the accountability of provisions for pensions

In early June, the COP met with the Chief Justice of the Supreme Court to discuss JRP’s recommendations. Key points reviewed were designation of the *ex officio* Chair of the GCC and the implications of regular testing of judges in the absence of complaints about their performance. Near the end of the spring session of Parliament, the COP and Court Administration Specialist met with the Head of the Legal Standing Committee to discuss aspects of the draft law, especially judge testing (Article 30.9). This provision was subsequently removed from the draft.

At the meeting with the committee, JRP staff learned that Parliament proposed to reduce the number of Supreme Court Justices. Upon request, JRP provided the committee with information about the number of Supreme Court Justices in a number of countries. At the Supreme Court’s request, JRP provided the Chief Justice with information about the practices used in other countries to reduce the number of Supreme Court and other justices.

Parliament passed the Law on the Courts, effective September 1, 2002, reducing the number of Supreme Court Justices from 16 (plus a Chief Justice) to 10 (plus a Chief Justice). This was a contentious issue, finally vetoed by the President, as was the method of choosing new justices for the court. JRP provided a variety of technical assistance and advisory services as the issue played out. At the request of the Deputy Minister of Justice and Home Affairs, JRP supplied the GCC with information on organizing fair and transparent testing procedures to select the Supreme Court. JRP provided the recommendations given on judicial selection in September 2001 and a form for announcing the “vacancies.” In response to the Chief Justice’s request for further research on international experience in reducing the number of Supreme Court Justices, JRP provided a broader research paper on the methods for determining the optimal size of the Supreme Court, the experience of European and transitional countries in reorganizing their judiciaries, and the relevant experience of common law countries such as the U.S. and Australia. (Appendix H).

In late August, the Parliament met in special sessions and overrode the President’s veto of the provision reducing the number of Supreme Court Justices. It also passed a resolution delaying the reduction until October 15th and calling on the GCC to effect the reduction by a “Selection Procedure.”

All Mongolian stakeholders agreed that the new members of the GCC had to be selected according to the new selection procedures contained in the law. While the grounds for this radical change are not entirely clear, it appears that the old Law on the Courts must have been repealed rather than amended, making the old structures no longer valid. The "Judicial Council" consisting of all Supreme Court Justices and Chief Judges of the Aimag and Capital City Courts met on September 5 and elected the members of the GCC who would represent the judiciary. Only one of the former members who represented the judiciary was retained. In addition the President's appointee to the GCC was changed.

The Supreme Court issued an "interpretation" that any method that considered anyone but sitting Supreme Court Justices for the reduced Supreme Court was unconstitutional. Only the Tssets has the right to interpret the Constitution, so the Supreme Court's action is subject to question. The GCC voted 7 to 2 in favor of only selecting from among the current Supreme Court Justices. The GCC reviewed and adopted new guidelines and procedures for the qualification and selection of justices for the Supreme Court. They also voted to exclude any non-sitting justice for consideration for the new 11 Supreme Court members. In summary, there would be no open qualification and selection process from the legal profession in Mongolia for the 11 positions on the new Supreme Court.

It seems ironic that the Ih Hural adopted the JRP's recommendation to eliminate periodic testing of all judges, but by failing to specify the procedures and grounds for reducing the number of Supreme Court justices, allowed testing of them in a process that satisfies no one. These results indicate that actions that in the United States and other countries would be regarded as significant threats to judicial independence are still seen by many Mongolian legislators and even judges as administrative matters to be handled by the GCC. The view of judges as just ordinary public servants, and indeed, servants of the state remains strong. This process suggests that, in the future, JRP needs to focus on building an appreciation for judicial independence and on stimulating more public awareness on the issue.

Assistance for the new Law on the Prosecutor's Office

The GPO requested JRP's comments on the draft law. This law is vital to implementing the many reforms contained in the new Criminal Procedure Code, especially the prosecutor's oversight of police investigations which have been a major source of human rights abuse complaints and allegations of corruption. JRP's comments (see complete text in Appendix I) emphasized the need for prosecutorial independence, limiting and clarifying the prosecutor's role in investigation, and improved administration of the prosecutor's office. Direct observation and information received on the GCC study tour about how U.S. prosecutor's offices represent government agencies in civil cases to which they are parties supported provisions for similar representation in Mongolia. The Minister of Justice and Home Affairs then requested JRP's assistance in incorporating these comments into the draft, and many were adopted in the draft law presented to the Cabinet and Parliament.

Comments made by the JRP regarding specific portions of the draft law on the independence of the Prosecutor's Office and the status of the Investigation Unit within the Prosecutor's, clarifying the supervisory role of the prosecutors office, the different role in criminal and civil proceedings, the proper grounds for suspension of enforcement of judgments under appeal, the grounds for orders to government bodies to cease unlawful activity, prosecutor's use of public transportation were used by the drafters. These and several comments eliminating duplicative or confusing language were incorporated in the final law. The new law strengthens the GPO and defines its role

more clearly, moving it away from the socialist model of an office representing the state with few constraints on its ability to intervene in the justice system. Enormous challenges remain to implementing this new role. JRP is committed to providing training in investigation and prosecution of corruption, but more equipment and funding are also needed.

Review of sentencing practices

There are numerous anecdotal accounts of sentencing variations in Mongolia, attributed variously to corruption or to lack of understanding of or reliance on the Criminal Code. JRP had originally proposed an initial assessment of sentencing variations to see if a large-scale cross-sectional evaluation was warranted. However, JRP learned that the GPO was already conducting a study of sentencing variations and subsequently translated and evaluated a GPO study on variations in sentencing for the crime of fraud. While this study does not reveal the causes of variations, it did demonstrate that Mongolian institutions are aware of the problem and conducting studies to assess it. This obviated the need for JRP to conduct a preliminary study as a demonstration project. Considering the many procedural changes introduced by the new laws a more comprehensive study of sentencing practices to determine causes of these variations is currently not feasible.

GTZ purchased a series of 10-minute TV spots for public education issues and asked JRP to prepare the material and provide the speakers. JRP recruited two Supreme Court Justices, a judge of the Capital City Court, and an LRC trainer. Topics covered included changes in the Judicial Code of Ethics and judicial disciplinary mechanisms, including methods for lodging of public complaints, and the concept of adversarial process and its implementation in Mongolia.

Priority Task 4: Develop a continuing education system for all legal professionals

Objective: Assist the Mongolian government to develop a comprehensive Continuing Legal Education (CLE) system.

An independent, well-qualified judiciary and legal profession are essential to rule of law. Only an efficient, reliable justice system that implements rule of law can support a free market economy and encourage it to flourish. The Government of Mongolia wants to upgrade the quality of its judiciary and lawyers through continuing legal education (CLE). Through various mechanisms, the JRP is assisting the relevant Mongolian stakeholders in building a foundation for a sustainable CLE system carried out by qualified trainers and a provider organization staffed by knowledgeable CLE administrators.

Priority Task 4 Highlights

In close cooperation with other donors, particularly the GTZ, as well as the Mongolian stakeholders, the JRP implemented the following:

- Trained all judges and other legal professionals in the new criminal code, criminal procedures code, and introductory advocacy and ethics modules.
- Provided a general concept and assistance for the development of a sustainable CLE system for all legal professionals, in particular through establishment of the National Legal Research and Training Center (NLRTC), that serve a common basis for discussion and development by all stakeholders

- Began the process of developing needed CLE capacities that can be sustained through train-the-trainer development and special training modules and training material that can be transferred to other courses
- Engaged the public in a discussion and education process to increase their understanding of their rights, the judicial sector, and the importance of judicial independence

Establish a Foundation for CLE

The primary barrier to developing a comprehensive CLE system in Mongolia has been the lack of capacity within the organizations that are or could be responsible for training, including the MoJHA, the courts, the GPO, and the Advocates Association. Each organization has a training officer, but there is no capacity to develop training that provides information and also enhances skills. Concepts of interactive training, curriculum development, and skills training are not well understood.

To remedy this situation, JRP developed and distributed a concept paper on CLE that provides the key stakeholders with a basis to discuss and develop sustainable CLE mechanisms. (See Appendix J). The JRP has further begun to develop a group of insiders in these agencies who are interested in training, expose them to modern training techniques, provide experience in how to use these techniques, and promote an understanding of the results that modern training can achieve. In particular JRP staff developed close ties with the newly appointed director of the new NLRTC that began its initial operations in January 2003.

Training of Trainers

When the MoJHA requested that the JRP train all judges and other lawyers on the changes to the Criminal Code and Criminal Procedure Code (in coordination with GTZ's training on the changes to the Civil and Civil Procedure Codes), JRP recognized an opportunity to develop trainers who could become core advocates for CLE among the judges, prosecutors, and advocates. Thus, the nationwide training program described below had dual purposes: to educate legal professionals in important changes to these new laws and to develop trainers who will advocate within their professions for the creation of comprehensive CLE and become partners to work with JRP on developing it.

Following the GTZ model, the JRP selected nine trainers and four assistant trainers to teach the criminal codes and skills training portions of the coordinated training program. Assistant Instructor positions will build the training abilities of talented but younger members of the various branches, provide for "vetting" instructor hopefuls, and create an avenue for bringing in talented Aimag judges and lawyers as they are identified in the field. The JRP used a number of methods to advertise the opportunities broadly. After reviewing applicant resumes and interviewing those with the minimum qualifications, JRP selected 14 candidates and advised the candidates that final selections for eight Instructor and four to six Assistant Instructor positions would be made at the end of the first Train the Trainers (TOT) course.

The first TOT took place in late January 2002 in the JRC classroom facility. The use of Mongolian teachers to train on teaching techniques was low cost and created capacities, thereby promoting sustainability. The training included presentations by four of the main Code drafters. This promoted participants' understanding of the new legislation and provided insight for preparing training materials. The drafters had been invited to speak because of their ability to explain the purpose of the many new sections.

The drafters' aim had been to bring Mongolian laws and procedures more in line with the requirements of their Constitution and with modern international practices. While the changes were made with the best of intentions, it was not always clear how some code sections should be interpreted and applied. The Supreme Court will have to provide comments and interpretation over time.

Following this TOT, JRP training staff selected nine instructors (including five judges, one prosecutor, and three advocates or lawyer/law instructors) and four assistant instructors (one judge, two prosecutors, and one MoJHA lawyer involved in drafting the Criminal Code). Of the 13 selectees, nine are men and four are women.

The second TOT, held March 13-15, focused more on the substantive issues to be taught. It included the drafters of the Criminal and Criminal Procedure Codes to help interpret areas of ambiguity by explaining the drafters' intent. On the second day of the workshop, the trainers prepared their oral presentations. Appendices K 1 and K 2 contain the agendas and evaluations of the TOT workshops.

Advanced Training of Trainers

On June 27-28, JRP held an advanced TOT workshop on adult learning theory, learning objectives, audio visual aids, course materials, and proactive planning. The sessions explained the underlying theories that make interactive teaching methods the most effective for an adult audience. Exposure to these theories encouraged the trainers to take even more time to develop audio-visual materials and interactive exercises for their future teaching assignments. This course was tremendously popular. Instead of the 20 participants originally anticipated, over 50 trainers from the donor organizations (primarily JRP, GTZ, and LRC) signed up. (See the training agenda and evaluation in Appendices L 1 and L 2).

The TOT class was divided into four inter-organizational discussion groups, each of which generated a recommended organizational structure for the new NLRTC. Two conceived of a structure including representation by the various segments of the profession (judges, prosecutors, and advocates) at the top in the governing board, and one conceived of lower-level representation at the operations level. JRP subsequently prepared a memorandum on the governing structure of the NLRTC and circulated it, along with the groups' organization charts, to selected stakeholders, including the Deputy Minister of Justice and Home Affairs, the World Bank project coordinator, and the new NLRTC director (see Appendix M). JRP followed up with a concise memo recommending training department subcommittees from each branch of the legal profession (see Appendix N). Subsequently, the NLRTC incorporated many of the workshop and JRP recommendations into its organizational structure.

Training on the New Criminal Code, Criminal Procedure Code, Ethics, and Advocacy

Passage of several major laws, i.e. the new Criminal Code, Criminal Procedure Code, Civil Code, Civil Procedure Code, Law on the Courts, Law on the Prosecutor's Office and Law on Enforcement of Judgments represents a huge task in training the judiciary. Application of new laws correctly by the courts is critical to giving meaning to the promises of reform, but represents a huge challenge.

JRP and GTZ responded well to the many challenges in coordinating a nationwide training program. The original understanding was that regional training would be conducted in 8-12 areas,

but the MoJHA ultimately requested that training be conducted nationwide. JRP and GTZ accommodated this request.

Also, the original plan called for GTZ to handle the training on Civil Code, Civil Procedure Code, and Law on Enforcement of Judgments, while JRP would conduct all Criminal Code and Criminal Procedure Code training. However, the prior GTZ legal director in Mongolia had entered into a written agreement some years earlier with the GPO to train prosecutors on the new criminal code when it was passed. The Prosecutor General invoked this agreement, and GTZ headquarters in Germany wanted to comply. As a result, GTZ designed a training program for prosecutors, using one of the JRP trainers, some additional trainers from the prosecutor's office, and a retired German judge, while JRP trained judges and advocates. This arrangement ended up working very well, since the prosecutors could be co-trained with the police, which current USAID restrictions would not allow for JRP. Both groups remained small enough to allow a high degree of participation. From the trainees' viewpoint, there was a single coordinated training program, with GTZ providing a week of civil law training followed by a week of criminal law training by JRP for one group and by GTZ for the other. In addition, the Soros-sponsored Judicial Retraining Center presented the portion of the training on the Administrative Code, and this portion was also smoothly integrated into the program.

The Criminal Code training has two parts, conceptual changes and substantive changes to the law. Most of the training deals with substantive changes and focuses on the major additions or modifications in the Code (classification of crimes, sentencing, calculating custody time, amount of fines, imposition of probation, victim's rights, "stages of the crime," complicity, and circumstances that affect liability, such as self-defense and necessity). Similarly, the Criminal Procedure Code training focuses on major changes to the Code (see outline in Appendix O).

JRP also introduced an ethics module. Ethics have never before been considered a subject for CLE. JRP used ethics training as a vehicle to present the new Judicial Code of Ethics (see outline in Appendix P). In addition, JRP included an advocacy skills module (see outline in Appendix Q). This module explains aspects of the adversarial process that have existed in the Mongolian Codes of Procedure since 1994, most of which were never fully understood or implemented. The JRP training provides judges, advocates, and prosecutors with the skills essential to applying these provisions.

The training uses a variety of modern teaching methodologies, including hypothetical problems, small group discussions and problem solving, questions and answers, team teaching, and a mock trial proceeding. It also uses a variety of visual aids, including white board, overhead projector, flip charts, and props for the mock trial exercise. The Mongolian audiences adapted to these interactive training methods immediately and enthusiastically. This maximizes prospects for sustainability of CLE without donor funding because the audiences genuinely enjoy, and will demand, the educational experience.

Training of judges proceeded in Ulaanbaatar with three groups in late March -- early April. Each course was four days long with an average attendance of 31, totaling 93 judges. Next, four training teams provided Aimag training. The first team of four trainers accompanied by JRP staff provided training in Uvs and then moved on to Bayan-Ulgii and to Hovd for a week each. A second team of trainers went to Bayanhongor, Uvurhangai, and Arhangai. A third team went to Dundgovi, Umnugovi, and Dornogovi. At the close of the fourth quarter, a fourth team went to Suhebaatar, Dornod, and Hentii. Subsequently, a break in the training schedule provided opportunities to review the training concepts and material. Training for the remaining Aimags resumed in July after the Naadam holiday. All trainings in the aimags were four days long. JRP

staff went to almost every one of the 21 aimags to monitor the courses. (See statistics on Aimag training in Appendix R.)

The training concluded with five consecutive four-day training sessions in Ulaanbaatar, beginning November 5 and ending December 5. They consisted of two simultaneous tracks, one for prosecutors and one for advocates. Each session was for 30 prosecutors or 30 advocates. A total of 150 prosecutors and 150 advocates were trained. The sessions were held in the Advocates Association office and the GPO's training rooms.

The program has been successful in building an *esprit de corps* among the trainers and excited them about the possibility of continuing this kind of training. Discussions have also begun on the need to form organizing committees within the judiciary, procuracy, and Advocates Association to promote ongoing training. The new National Center for Legal Research and Training has already adopted this subcommittee structure recommended by JRP. The more involved and vested the branches are, the more likely the new Center can be sustained. Moreover, one of the JRP trainers is the new President of the Advocates Association. A firm believer in training, he has vowed to make it a priority activity of the association.

Evaluation of Training

JRP always requests participants to complete course evaluation surveys during or at the end of training, using a 5-point rating scale. As shown in Appendix S, average scores for the course overall and for each component were consistent and high (well over 4). Ulaanbaatar respondents rated the course slightly higher than their Aimag counterparts in terms of enhancing ability to apply the training to work. (See Appendix T for the evaluation report.)

Of particular interest were the frequent comments from participants recommending a longer course and requesting additional training on all four topics (Criminal Code, Ethics, Criminal Procedure Code, and Advocacy Skills). Written comments verified that the interactive training methods introduced by JRP, such as hypothetical problems and the mock trial, were the most effective parts of the courses.

Prior to design of the training program, GTZ had briefed JRP on its assessment of judicial training in prior years. GTZ had collected and analyzed 167 civil cases decided in 1999 and 2000 as a baseline to establish the level of legal quality before training. This analysis of the written records in these cases revealed that, from the record, it was impossible to say that any of them had been correctly decided. Poor or absent legal reasoning in the decision was the most common problem. While JRP's post-training case analysis has only begun, the research so far points to a very low baseline and a huge need for training.

In cooperation with GTZ, JRP is conducting a written post-course evaluation of the 2002 criminal code and criminal procedures training. In addition to soliciting input on retrospective reaction to training, the survey will seek feedback about changes in the job performance of other branches of the legal profession. For example, it will ask judges whether they have noticed any change in the job performance in court by prosecutors and advocates who have undergone training. Anecdotal information from judges, lawyers, and academicians indicates positive changes in the conduct of trials by all segments of the legal profession who attended the 2002 trainings. The formal survey will provide more detailed documentation and help generate ideas for future CLE topics.

In addition, JRP is revising the standard course evaluation form in anticipation of 2003 training. The enhanced form will enable automatic tabulation of average scores and contain additional

questions on success in reaching course objectives, future CLE topic needs, and faculty performance.

Development of Training and Other Educational Materials

JRP's experience in 2002 with materials development illustrates the need to build capacity among the various branches of the Mongolian legal profession to draft, edit, and publish their own law-related publications. It also illustrates that there is a small but solid local market for such publications.

Material for the training on the new codes— JRP prepared training materials for the nationwide training on the Criminal Code, Criminal Procedure Code, Ethics, and Advocacy skills. After reviewing the new laws and meeting with legislative drafters, JRP established a writing team, including JRP instructors, to write material for each segment. The ethics materials were prepared in conjunction with the JRP workshop on the draft Judicial Code of Ethics (also see Priority Task 6). Trainers who had taught JRP's advocacy skills training in 2001 prepared the advocacy materials. Both documents were well reviewed and used in trainings conducted to date. Experiences from the first round of training contributed to enhancing these sections.

Creating training materials for the Criminal Code and Criminal Procedure Code was challenging. After meeting with the drafters, the trainers assigned to train on the respective codes prepared draft materials. There was some delay in completing these products, which were then distributed to the drafters for comments. The drafters responded with numerous, sometimes-conflicting comments. The MoJHA also suggested that the materials should emphasize the quality of the new laws, not point out ambiguities and variation from international practice. Because of these differing visions, it was not possible to use the materials for the trainings before summer. A subsequent meeting with the legislative drafters provided a forum for resolving the conflicts. Another meeting between the trainers and legislative drafters focused on incorporating experiences from the first training round and the drafters' suggestions into improved materials for use in the second round. An internal discussion is also underway about the structure of the training manuals and the quality of their content.

In the last round of trainings before the July break, JRP assembled a group of experts to review the materials prepared by the trainers. This group raised conflicting concerns relating to the material on the Criminal Procedure Code. One view was that the materials should help the trainers understand the conceptual issues that motivated changes to the code, while another was that the materials should focus more on pragmatic issues associated with application. Comments concerning specific text errors were addressed quickly. The tension between a conceptual approach and a pragmatic one was resolved when a member of the Code drafting group developed a section on the conceptual background that was incorporated into the training materials. JRP distributed the corrected manuals, including the replacement concept chapter, at the last nine Aimag trainings.

Publication of five new codes – JRP, GTZ, Hanns-Seidel Foundation, and MoJHA co-sponsored the publication of the Civil Code, Civil Procedure Code, Criminal Code, Criminal Procedure Code, and Law on Enforcement of Judgments in a loose-leaf binder format that will allow for continual updating. Copies were distributed to all judges and prosecutors in Mongolia, ensuring that these legal professionals have copies of these critical laws as personal reference materials. Previously, legal professionals lacked access to current legislation materials. JRP and GTZ distributed the codes before or at the Aimag trainings so that they could serve as training materials.

Comparison of the old and new Criminal and Criminal Procedure Codes – JRP received numerous requests for copies of its comparison document, which was disseminated in the training sessions. JRP reprinted 1,000 copies to accommodate all requests and keep the unit price as low as possible.

Publication of Supreme Court interpretations – In Fall 2001, JRP and the Judicial Retraining Center cooperated on publication of Supreme Court Interpretations Volume II. This resulted in distribution of 500 free copies to judges in all levels of courts and to other relevant legal and training institutions and sales of 411 to law school and others by the end of February 2002. Zuni Medee, the official government newspaper, published an article about the interpretations on December 14, 2001. JRC held the revenue from these sales in a Publishing Fund, which will be used to produce Volume III. When JRC was terminated, this Fund, along with JRC's resources, was turned over the Research and Training Department of the Supreme Court.

Commentaries on the Criminal Procedure Code—Commentaries are especially important in civil law countries to explain how laws are to be understood and implemented. JRP has cooperated with other donors in preparing comments on new codes enacted. It has assembled a working group to write a Commentary on the Criminal Procedure Code (see participants in Appendix U). This group will work closely with the GTZ-sponsored drafting committee for the Commentaries on the Civil and Civil Procedure Code to ensure consistency in format. Hanns-Seidel Foundation is cooperating with JRP, paying the honorarium for one of the drafters as well as the printing costs for at least 800 copies for distribution to judges, prosecutors, libraries, and universities in early 2003.

GTZ has already made great progress in preparing commentaries on the Civil Code, and JRP anticipates assisting with publication costs to ensure that these documents reach the widest possible audience.

Sample manuals on *Company Law* and *Contract Law* – JRP published and distributed 300 copies of these manuals, written by two teams of Mongolian experts to reflect changes in the Civil Code. JRP has provided *gratis* copies to a cross-section of legal professionals and law school libraries, and in return the recipients will critique the publications after using them for six months. JRP and the authors will then edit and finalize the manuals for mass dissemination. There is high demand for such materials, particularly by the law schools.

Management Training

JRP has begun developing a management training course to improve the management capacity of Mongolian justice sector institutions. The significant change in the laws and in the responsibilities of the justice sector agencies has made adapting to change one of the highest priorities. All Mongolia's judicial institutions suffer from top-down "Soviet style" management that is a tremendous obstacle to effectively changing these institutions and increasing their effectiveness and transparency. While changes in technology and procedures have an important role, changing minds through training that emphasizes direct experience is essential. The management training course responds to this priority.

The initial course developed has three modules. The first focuses on change management and reengineering. It has three goals: (1) to develop participant understanding of change; (2) to introduce techniques for dealing with and managing change; and (3) to provide participants with an understanding of how change impacts others and the work in their office. The second module focuses on teambuilding and managing conflict in the participant's organization. It has four goals:

(1) to introduce the meaning of teams and teamwork; (2) to highlight differences between skills-based teams, temporary task teams, and "high performance" teams; (3) to promote understanding of the key elements of team performance; and (4) to illustrate the benefits of team collaboration, particularly to overcome conflict. The third module focuses on ethics for managers. Its goals are to provide participants with opportunities to explore (1) ethics considerations and how they impact their performance as managers and (2) how individual manager's choices regarding integrity, honesty, and ethics support personnel, professional, and organizational performance.

JRP conducted a pilot training for GPO senior management in November 2002. The course was a success, and the materials are being incorporated into the internal training of GPO, thus contributing to the important goal of institutional capacity building. (See pilot training evaluation in Appendix V.)

JRP is planning to adjust and present the management training course to all court administrators at the meeting planned for September 2003, and GCC has also requested training for its members. These activities will also contribute to Priority Tasks 1 and 3 by improving the ability of justice sector institutions to fulfill their jurisdictional responsibilities.

Developing Domestic Violence Training

Domestic violence is a serious problem in Mongolia. JRP has helped establish a positive beginning for work in this field by sponsoring a workshop on March 5-7, 2002, for 24 prosecutors and judges. The goals were both to address the existing laws and practice, and to raise the awareness of domestic violence as a problem requiring new approaches under existing laws and consideration of new laws or amendments. (See workshop agenda in Appendix W.) JRP will follow up with a training video in 2003.

Instructors included prosecutors, judges, representatives of Mongolian NGOs, and a U.S. expert in the field who is a prosecutor from the San Diego District Attorney's office. Representatives of the National Center Against Violence (NCVA) and the Women Lawyers Association (WLA), two very active Mongolian NGOs working to combat domestic violence, addressed the psychology of domestic violence and the work of NCAV with domestic violence victims. A WLA member spoke about the domestic violence law and about the draft code that WLA is elaborating.

English Language training

JRP's English Language training efforts have increased the number of legal professionals in the agencies with which JRP works who can understand English and read at least some written material in English. The MoJHA has moved to a recruitment policy whereby only candidates with foreign language ability are considered for legal professional positions. Given the small size of the Mongolian population and the scarcity of legal literature in the language, foreign language skills will be essential to Mongolia's legal transition. The JRP has played a role in providing basic skills.

The first six-month, JRP-supported English language training ended on February 28, 2002, with 36 students passing (scoring at least 70% on their mid-term and final examinations), 8 failing, and 3 dropping out (mostly as a result of work requirements). JRP informed the employing agencies of each student's performance to facilitate selections for the second six months of training beginning in March.

In the second round, students were classified into five language skill levels, dropping the introductory level. This group included 8 prosecutors, 1 Supreme Court Justice, 2 Supreme Court staff, 4 GCC staff, 8 judges, and 19 MoJHA staff. A Legal English class began in April for the 12 most advanced students, including legislative drafters. The COP delivered a lecture to this class on the American legal system. This class has helped improve the quality of legislation, as students can now read and understand a much broader range of model legislation from other countries. Levels 2 through 6 finished in October. Of 51 students, 28 received a high pass, 13 passed, 8 dropped out (primarily because of conflicting work responsibilities), and 1 failed to take the examination. Level 7, which started late, finished in December.

Discussions with the MoJHA indicate that there is little more demand for general English language training, so JRP will no longer support it.

Assistance for the Development of the National Legal Research and Training Center

The NLRTC will be the cornerstone of a sustainable, comprehensive CLE system, laid on the foundation of CLE donor activities. It will build on the past activities of JRP, GTZ, LRC, and other donors, and will be the beneficiary of JRP's future CLE courses, curriculum development, and teacher training. One of the challenges is coordinating various CLE donors and providers, and JRP and GTZ have already made considerable progress in integrating their training efforts.

In early September 2002, JRP sent a Mongolian translation of the CLE section of the original JRP concept paper to various stakeholders from the MoJHA, GCC, the courts, GPO, Parliament, training institutions, donors, professional organizations, NGOs, and other relevant institutions and invited the stakeholders to participate in a forum on the future of CLE in Mongolia, at which they could discuss the concept paper, share their own CLE plans, and make suggestions about future JRP activities. JRP also sent the concept paper to 14 law schools, inviting written comments and recommendations.

The forum took place on September 25, 2002, attended by 18 representatives of CLE providers and Mongolian stakeholders (see organization list in Appendix X). The future NLRTC Director explained the concept of the organization, and the MoJHA Project Coordinator of the World Bank loan provided an update on the current status of the Center and establishment of administrative courts. Various stakeholder representatives shared their program plans and suggestions for the Center, and there was consensus for participation of all branches of the legal profession in curriculum development. The forum provided for extensive discussion of immediate and post-course evaluation. Over half of the attendees remained after official closure of the meeting to exchange information and views on CLE. This forum generated not only valuable recommendations about the new Center, but also greater dialogue among the various CLE donors and stakeholders which will ultimately improve coordination.

On September 27, 2002, MoJHA formerly appointed the Director of LRC and a member of the Constitutional (Tsets) Court as the Director of NLRTC. The JRP Project Director and Legal Training Specialist met with the Director in September to discuss the development of the Center. The JRP's suggestion to have all branches of the legal profession participate in curriculum development was well accepted. In addition to a General Training Committee, NLRTC will have branch subcommittees. The JRP further supplied the NLRTC with the names of recommended JRP trainers and other background information about JRP training sessions. In November, the JRP Project Director and Legal Training Specialist briefed the NLRTC Director on some activities JRP has planned for 2003 in response to the Center's request for assistance. Although groundbreaking for the World Bank-supported building is delayed due to a dispute over ownership

of the land Parliament allocated, the Director is proceeding to hire staff and begin training activities.

Public Education Campaign

Crucial to achieving the rule of law in Mongolia is increasing public awareness of and attitudes toward the justice system. Changes in the courts themselves, the result of other JRP initiatives, will have no effect without a change in the public's mindset toward the courts. Public knowledge of and demand for rights will reinforce reform. Public pressure is also a major factor in ensuring that other branches honor the Constitutional and legal protections for judicial independence. Therefore, public education is a major aspect of JRP's work.

NCSC's partner, PACT, contracted with a local public relations firm (Arigu) for four public education activities. Arigu developed media products in collaboration with a board of experts selected in consultation with the COP. The activities are as follows:

Press Awareness – Through PACT, JRP sponsored and arranged two press conferences, the first to announce the public education program and the second to kick it off. The purposes were to (1) make the media a partner in engaging the public in the debate on the courts and (2) assist the media in playing the watchdog role essential to maintaining the integrity of the judicial system and protecting it from political interference. The U.S. Ambassador addressed the second press conference and reinforced these objectives. Press packets and copies of the new laws were supplied to reporters. The press conferences resulted in several press articles, and all Mongolian TV stations covered the both conferences.

Public Service Announcements (PSAs) – Arigu developed six PSAs designed to heighten awareness of the new laws that would be effective September 1, 2002 and to attract viewers to the TV program described below. The PSAs featured trusted Mongolian archetypes (e.g., a grandmother, herders) as well as average citizens. Each focused on one aspect of court reform (e.g., equal justice under the law, new rights under the Criminal Procedure Code, changing roles under the new codes).

Television Program – Broadcast on August 31, 2001, the day before the new laws became effective, the TV program had two parts. The first was an "expose" that asked questions about how well the courts functioned and got "person in the street" reactions. The message was that citizens, if they want the courts to operate well, must inform themselves of their rights and about how the courts are supposed to operate. This segment explained how cases proceed through the courts under the new laws. The second part of the program was a discussion in a courtroom among experts, judges, advocates, MoJHA offices, and ordinary citizens. A popular news presenter asked a series of questions. While the experts could provide more detailed answers, they were not treated differently from regular citizens. This conveyed the important message that the courts are not an area just for expert concern, but that everyone should be involved.

In addition, GTZ purchased a series of 10-minute TV spots for public education issues and asked JRP to prepare the material and provide the speakers. JRP recruited two Supreme Court Justices, a judge of the Capital City Court, and an LRC trainer. Topics covered included changes in the Judicial Code of Ethics and judicial disciplinary mechanisms, including methods for lodging of public complaints, and the concept of adversarial process and its implementation in Mongolia.

Posters – Arigu developed four posters. Two diagram the progress of a case through the justice system, one criminal and one civil. The third contains contact information for government offices

and NGOs that can provide detailed information on the justice system. The fourth responds to frequently asked questions about the courts and the justice system.

Public Discussions-- In addition, PACT contracted with two leading NGOs, the Women Lawyers Association (WLA) and the Lawyers' Center to Support Legal Reform, to serve as information resource clearinghouses for citizens. Arigu and these NGOs distributed posters and copies of the new codes to libraries, post offices, and other NGOs throughout Mongolia. Between September 15 and November 1, 2002, WLA organized moderated public community discussions around the campaign and its contents, with at least three in Ulaanbaatar and at least one in each Aimag. These discussions were designed to answer the public's questions about the court system and to generate feedback for JRP about the impact of the public education program.

Contributions to professional publications: JRP also provided information on the pilot courts to Rural Business News, the most widely distributed paper in Mongolia and a project of the Gobi Initiative. An article on court automation, particularly public access terminals, appeared in a December issue.

Priority Task 5: Develop an effective Mongolian System to qualify lawyers

Objective: Establishment of a Bar Qualification System for Mongolian Legal Professionals

Creation of a "Bar system" to qualify legal professionals is essential to set a standard for professional quality. Assisting the Mongolian government in this effort is a straightforward, if intensive objective. However, the development of the legislative basis for such a system has understandably taken a lower priority behind legislative efforts to revise many of the key justice sector laws. While the political will remains to achieve this priority task, progress has been delayed in 2002.

Priority Task 5 Highlights

In order to continue to advance this Priority Task despite all delays NCSC provided recommendations to the current draft legislation

Assist in the development of relevant draft legislation

Building on last year's efforts, the JRP forwarded a memorandum to the Deputy Ministry of Justice and Home Affairs regarding the current draft of the Law on Qualifications Procedures of Legal Professionals (see Appendix Y). Highlights included the need to make the grading and qualification review more independent and transparent to avoid the impression that the process is politically controlled. JRP also pointed to an apparent gap in the law, which does not seem to cover law school graduates who offer advice on civil matters. The Deputy Minister generally endorsed the memo's contents. At his suggestion, the COP met with a principle MoJHA drafter of this law, who committed to incorporate the changes after discussing them with the other drafters.

Priority Task 6: Enhance adherence to professional ethics among legal professionals

Objective: Assist in the Advancement of Ethics for the Legal Professions

Ethical behavior of legal professionals is a cornerstone of a fair and democratic justice system that has the trust of the general public. Particularly judicial Corruption has become a more prominent issue recently as cases have been decided which have raised suspicions of improper influence and rumors have circulated of high-level corruption in the judicial system. Corruption has been a policy priority, not just with the United States, but the World Bank, Asian Development Bank and various organs of the United Nations. Some steps have been made by the judiciary and the Prosecutor General's office to increase ethical behavior of judges and prosecutors but much still needs to be done. Work on the ethics code for the judiciary and prosecutors was a small step. Corruption is a complex problem with no simple or quick solutions. Overall improvement of ethical conduct of legal professionals requires a framework of interrelated set of institutions that both reward ethical behavior and detects and punishes unethical behavior. This framework will only be established and accomplish its goals if the political will exists to combat corruption and the institutions have the capacity to carry out their functions.

Priority Task 6 Highlights

The JRP has promoted professional ethics by:

- Assisting with the development of a new Judicial Code of Ethics
- Developing a basic training module on the Judicial Code of Ethics and providing related training to judges and prosecutors
- Providing information for the development of system wide mechanisms to increase justice system integrity

Assistance for the development of a new Code of Ethics for the Judiciary and others

In 2001, the JRP provided comments and recommendations for a new draft Judicial Code of Ethics. At its February 2002 meeting, the GCC referred the draft Judicial Code of Ethics, virtually identical to the draft developed by JRP a year earlier, to a working group to develop consensus behind it. It was clear at the time that some provisions were not understood, and that some judges did not understand the need for a code of judicial ethics that held them to a higher standard than civil servants.

To increase understanding, the GCC asked JRP to prepare and lead a one-day workshop for judges at the Supreme Court on the proposed changes to the code. This workshop took place in March and included several GGC members and judges from various courts in Ulaanbataar and the Aimags. JRP's presentation first focused on the concept that public support for the judiciary was key to guaranteeing judicial independence, and that maintaining ethical standards that avoided even the appearance of impropriety was essential to winning this support. This concept was new to most participants. JRP circulated excerpts from its public opinion survey to demonstrate the depth of public distrust for the judiciary. The workshop proceeded to discuss the draft code, paragraph by paragraph. Participants accepted most of the provisions, with the significant exception of prohibiting or limiting *ex parte* conversations.

After the workshop, the COP met with the ethics code drafting group. The members preferred to move most of JRP's comments on the code into specific rules, except the restrictions on *ex parte* conversations. The new, much more specific code was approved at the May GCC meeting. JRP's recommended concepts and provisions incorporated into the code include:

- Violation of the code would cause disciplinary action under the law.

- Judicial misconduct undermines public confidence in the judiciary and reduces respect for the law.
- Discipline cannot be applied to undermine judicial independence.
- There is a duty to avoid the appearance of impropriety, with the phrase clearly defined.
- Judges cannot provide character testimony.
- Personal communication that might create an appearance of impropriety is discouraged, but not outright banned.
- Judges must treat those who come before them with dignity.
- Judges cannot comment on pending cases outside of court.
- Judges' outside activities are restricted.
- Judges cannot receive gifts from those who appear before the court.
- Judges cannot participate actively in party politics.

As mentioned under Priority Task 4, after the approval of the new code, the JRP arranged for two Supreme Court justices to participate in a ten-minute TV program purchased by the GTZ to inform the public about the new code as well as the changes to the disciplinary enforcement mechanism contemplated in the draft Law on the Courts. Also, the timing of the approval of the new code enabled incorporation of the code's provisions in the ethics training described in Priority Task 4.

In addition, the GPO used the model of the Judicial Ethics Code to develop its own Code of Ethics for Prosecutors.

Developing an ethics training module and providing ethics training to judges and prosecutors

As outlined under Priority Task 4, the JRP included in its nationwide training on the new laws an ethics module that can be expanded and adopted for other courses. The JRP also included an ethics module in the training for GPO managers. Considering the importance of ethics for the justice sector and the still limited understanding of many in the system, the JRP encourages the inclusion of ethics modules in all relevant training.

Providing Information and Assistance for the Development of System Wide Mechanisms to Enhance Justice Sector Integrity

The existence of an ethical code alone is insufficient to eliminate corruption. The justice system environment itself must offer few opportunities for corruption. There must also be a credible threat of prosecution and loss of reputation, profession, and liberty to those who fail to follow the code. The small number of corruption convictions in the recent past suggests that the threat has not been credible. The new Law on the Prosecutor's Office gave the new Investigation Unit under the Prosecutor General the power to investigate crimes committed by judges, prosecutors, and the police. Prosecutions of justice sector officials have been rare, and the new unit has been created in an attempt to combat corruption in the sector. The challenge is to implement this power and transform the unit into an effective deterrent.

To assess the difficulties of tackling judicial corruption, JRP conducted interviews with investigators and prosecutors to formulate a paper on what measures could be taken. None of the respondents denied that justice sector corruption is a serious crime, but there were various explanations for the lack of prosecution. The resulting paper, entitled *Some Means of Addressing Judicial Corruption in Mongolia* (see Appendix Z), assesses what is currently known about judicial corruption and identifies some measures that could be taken to combat it. (Many of the simple administrative procedures already introduced by JRP provide greater transparency and

therefore contribute to combating corruption.) The recommended measures include, among others:

- Mandatory random case assignment
- Mandatory regular analysis of case reassignment
- Public access terminals in all automated courts
- Expansion of automation with public access terminals to all courts
- Mandatory special financial disclosure forms for judges
- Penalties in the Judicial Code of Ethics
- Random audits by the Disciplinary Committee
- Prohibition on *ex parte* discussions in the Judicial Code of Ethics
- Training and equipment for the Judicial Disciplinary Committee, provided it is adequately staffed and funded
- Training and equipment for the new justice sector crime and corruption Investigation Unit, provided it is adequately staffed and funded

The JRP has begun working with the new investigative unit to enhance its capacities. JRP has provided computer and peripheral equipment as well as suggestions for immediate steps the unit can take to enhance its operation on its own. A JRP consultant will assess the unit's needs and initiate training. JRP is also costing recording equipment as a preliminary step to assist the unit in its investigations.

In addition, JRP translated anti-corruption training material provided by the UN Office of Drug Control and Crime Prevention. UNDP has agreed to publish the material and fund its distribution it to the Prosecutor's Office and the Police Academy. UNDP is also leading an effort to establish a chapter of Transparency International (TI) in Mongolia, and JRP is translating relevant sections of the TI Sourcebook and adapting them for Mongolia.

JRP also started providing assistance to the newly established Judicial Disciplinary Committee that now includes judges and members of the general public. In addition to reviewing its equipment needs, JRP is developing comments on its newly developed procedures.

Other Project Activities

In addition to and in support of work related to the Priority Tasks, the JRP engaged in related activities, in particular donor coordination and performance monitoring. JRP has also been proactive in identifying other opportunities to strengthen its relations with the Mongolian stakeholders through continuous informal interaction and by participating in activities, meetings, and events organized by various Mongolian agencies and organizations. The JRP further assisted USAID and the US Embassy when requested with advice or by coordinating with other contractors, such as IDLI (See Task 1).

Donor Coordination

The JRP has pursued a strategy of information sharing and consultation to promote donor coordination in the rule of law field in Mongolia. The extent of donor cooperation varied tremendously, dependant chiefly on the flexibility of the programs and their desire to work together. Still, significant synergies have been achieved. This effort is worth continuing because

it both maximizes the outputs desired by the donors and creates a more coherent reform framework for Mongolia.

Donor Coordination Highlights

Many of JRP's Year 2 activities involved early and successful cooperation with other donors. Particular successes include:

- Coordination with GTZ and Soros in the nationwide training on the new codes
- Ongoing coordination with GTZ in the automation of the courts and prosecutor's offices
- Ongoing communication and coordination with GTZ on legal reform efforts
- Cooperation with GTZ and the Hanns-Seidel Foundation for the publication of the new laws
- Coordination with all foreign donors that support training to legal professionals for the development of a sustainable CLE system.
- Development and distribution of a newsletter that serves as a mechanism for all foreign donors and Mongolian stakeholders to share information about planned and ongoing activities

Project Specific Coordination with other donors

As outlined in detail under Task 4, 2002 saw JRP, GTZ, and Soros Foundation create the first integrated nationwide training program, while GTZ and JRP continued their cooperation in court automation (see Tasks 1 and 2). JRP and GTZ staff and consultants communicate regularly about draft legislation in which both programs are involved. In the same vein, several of the GTZ and Hanns-Seidel Foundation consultants keep in contact with JRP staff in Mongolia and the US to exchange information about draft legislation, such as the Law on Qualification Procedures of Legal Professionals (See Priority Task 5).

The joint publication by JRP, GTZ, Hanns-Siedel Foundation, and the Ministry of Justice and Home Affairs of a loose-leaf volume of the new Civil Codes, which for the first time ensured that a set of codes was on every judge's desk, is an excellent example of getting more out of a joint program than would have resulted from the sum of individual efforts. (See Priority Task 4). As outlined under Task 6, JRP coordinated with UNDP on anti-corruption strategies for Mongolia.

Consultation and Information Exchange with other donors

In addition to the very intensive and ongoing consultation process developed with the GTZ and Soros (with the COP serving on the Soros Mongolian Board of Legal Experts), the JRP regularly seeks and provides opportunities to engage with other donors in a consultative process. For example, in 2002, JRP provided feedback to the Japanese International Cooperation Agency (JICA) on the role it might play in the legal reform sector. JICA was particularly interested in identifying areas where other donors were not already involved and Japan has a something unique to offer. JRP's recommendation was to focus on community policing, an area where Japan has a reputation for best practices and other donors, such as Soros, either do not focus on or lack the resources to expand. The JRP also pointed to the need to assist in the development of a fully functional Bar Association.

JRP and GTZ met with the World Bank team for the Justice Sector to discuss coordination on the implementation of the World Bank project, particularly concerning the National Legal Research and Training Center.

JRP's monthly Rule of Law newsletter has proven helpful in keeping all donors and stakeholders up-to-date on the various activities planned and conducted in the justice sector. Such diverse recipients as Aimag judges and the Japanese Ministry of Justice have confirmed that the newsletter currently is the only way for them to find out about other activities in the justice sector. The Municipal Library requested to put the JRP Newsletter on its website along with the mailing and Internet addresses of all the legal institutions and donor organizations operating in this sector.

Program Monitoring

The JRP continuously monitors and evaluates its own activities as well as the progress made toward achieving the overall justice system goals.

Program monitoring highlights

- Publicizing the public opinion survey results
- Ongoing collection of monitoring data on the program and activity level

Publicizing the public opinion survey results

Late in 2001, the JRP conducted a public opinion survey on the courts, the results of which became available this year. This provided a timely opportunity to advance the public discussion of the performance of the courts. The survey results were publicized during a public meeting with all major stakeholders and media representatives. Since the survey instrument employed was adapted from a US survey, it provided for comparative interpretation of the results. The comparative aspect provided a context for better explaining and interpreting the results. The survey showed an overall negative disposition of the public towards the courts as well as wide-spread concerns over judicial corruption – facts that were widely covered by the media.

Ongoing collection of monitoring data on the program and activity level

In addition to the measures established in the Performance Monitoring Plan (PMP), JRP implements activity-specific assessments, such as training evaluation and surveys of the users of automation provided. (See Tasks 2 and 4). The following results summary and the separately submitted PMP report provide more details on the information collected and results achieved to date.

RESULTS SUMMARY AND OUTLOOK

During this reporting period significant steps were made toward implementing the Strategic Plan for the Justice System of Mongolia and the goal of enhancing the rule of law in Mongolia. The main achievements were:

Improved Structures to Strengthen Judicial Independence. —The changes introduced with the new Law on the Courts have contributed greatly to creating mechanisms to strengthen judicial independence in Mongolia. The leadership and location of the GCC, the main policy setting body for the judiciary and the national entity to guide the administration of the courts throughout Mongolia has been shifted from the Ministry of Justice to the Supreme Court. The number of judicial representatives on the GCC was increased. The selection of the judicial members of the GCC was placed in the hands of the Judicial Council, thereby broadening the participation of

judges throughout Mongolia in this process. The committee structure supporting the GCC decisionmaking process with a new Professional Committee and a new Disciplinary Committee that, largely following US models, provide for input from non-judicial members, including representatives of the general public. These changes provide a good basis and signal a commitment to improving the quality of the judiciary, strengthening its integrity, and broadening judicial leadership.

The Mongolian stakeholders accepted many of the JRP's recommendations for changes to the GCC and the Law on the Courts. In addition, the Study Tour for the members of the GCC resulted in better informed decisions on the new Law on the Courts and on other laws. The transfer of the GCC from the Executive to the Judicial Branch emphasized the importance of a competent and transparent court administration agency. The work of the JRP assisted the GCC in making the transition with its knowledge base and staff intact.

The challenge now is to implement the very positive changes the new laws provide for. In addition to capacity building progress towards an independent judiciary and the rule of law will increasingly depend on changing the way people think, both within the judiciary and in society at large. Training and public education will move further into the spotlight as the successes in automation begin to yield their maximum expected contribution.

Enhanced court administration to increase efficiencies and foster accountability, transparency and access to justice. —The administration of justice in Mongolia has seen significant progress with the adoption of the Law on the Courts, the procedural codes and the successful automation of 5 pilot courts. On the national level new procedures and automation have allowed the GCC to manage resources and establish new levels of accountability. On the local court level outcomes in terms of better court administration other than increased efficiency are sometimes difficult to measure, but nonetheless real to those looking to the courts to provide access to justice in a transparent and predictable manner. The instant availability of and access to case related information to the public not only increases their confidence in the courts but reduces the likelihood that cases are “lost” in the system and that court decisions are scheduled and made without the parties’ receiving this information. Features, such as random assignment of cases, reduce opportunities to “choose” a more favorable judge thereby eliminating one opportunity for corruption. The improvements in transparency and accountability seen in the pilot courts have led to the formulation of a plan for automation of most courts in Mongolia that is supported by the GCC. It requires not only the establishment of support structures to sustain the equipment but most importantly the implementation of public access terminals in every court. These changes have brought Mongolia to the point where procedures and practices promoting transparency and effective administration of justice are or will be in place in the very near future. Local Court administrators also received training so that the capacity to efficiently and effectively manage the courts and caseloads will eventually extend to every individual court.

The automation efforts, including changes to the Capital City Court’s archive, significantly reduced the time judges spend on administrative matters. While it is too early to see an impact in this area it is expected that having more time for legal analysis and deliberation rather than administrative reports will increase the quality of judicial decisions.

The introduction of new equipment, laws, regulations, and processes have been relatively easy, if somewhat costly. Because of the relatively small number of people involved and the openness to new ideas, progress has been very visible in strengthening court administration. Still, capacities develop slowly and this will remain an area of work for many years. Fully implementing the new system, including new mechanism to report and track case data, and to assess resources and

staffing needs will require a commitment of time and resources. More importantly the key to will be the human factor. Technology changes rapidly whereas people are reluctant to change at all. It is important to involve judges, court staff and other users in the decision making process by allowing them to assist in problem solving and by building organizational consensus. Communication and education at all levels of the court system must occur and judicial leadership on all levels needs to increase.

In addition, the biggest impediment is the under funding of the courts generally. This makes the best efforts at administration frustrating and undermines the capacity of the GCC because it cannot pay salaries to recruit or retain highly qualified staff, barely has the resources to keep the courts operating at an efficient level. Adequate funding will remain a key test of the Mongolian Government's commitment to the rule of law.

New laws that streamline responsibilities, jurisdiction, and strengthen human rights.—The new laws have clarified and rationalized the responsibilities of justice system agencies and introduced processes that bring Mongolia up to international standards in protecting human rights. This includes in particular the introduction of judicial review of arrest and detention decisions, the clarification of the prosecutors' role in supervising police investigations, the elimination of the "supervisory" review of lower court cases by higher courts without an appeals process, and the elimination of one level of appeal placing greater responsibility and accountability particularly on the lower court levels. These changes also strengthened the GPO as an independent office and more clearly defined its role, moving it away from the socialist model of an office representing the state with few constraints on its ability to intervene in the justice system. The GPO now has a clearly defined role in civil cases where state agencies are parties. Its power to tackle corruption and other crimes by justice sector officials is greatly strengthened. The JRP provided a range of substantive recommendations that were accepted and resulted in improved legislation. The legislative changes have been significant. While fine tuning through amendments and ancillary legislation and regulations remain tasks for the future, increasingly, making the laws "work" will be the challenge and the focus of the project.

Developing training capacities and a concept for sustainable CLE.—Respectable progress towards the goal of creating the capacity to develop a sustainable CLE system in Mongolia was made in 2002. Initial anecdotal information indicates that the nation-wide training on the new codes, coordinated by JRP, GTZ, and Soros, resulted in positive changes in the conduct of trials since judges, prosecutors, and advocates participated in the courses. The nation-wide training also led to the creation of an extremely competent group of instructors. Furthermore, the NLRTC was incorporated and has begun the task of institutionalizing the experience of JRP, GTZ and other training institutions and donors. NCSC's concept for the development of a CLE system was largely accepted by the key stakeholders. All significant donors are committed to bringing their programs under the wing of the NLRTC and coordinating the many scattered training programs that currently exist. This is a good start toward building its capacity to provide training designed by and for the different branches of the legal profession in a comprehensive and sustainable manner.

Increasing public discussion and education about the judicial sector.—Strides were made to increase the public's understanding of the role of the judicial sector in protecting their rights and to increase public discussion to enhance the performance of the judiciary. JRP's public opinion survey as well as surveys conducted by other organizations indicate low levels of public satisfaction and trust in the courts. The results also indicate little confidence in the rule of law in general. JRP's public education efforts in combination with similar activities supported by other donors and the Mongolian government are first steps in increasing an understanding for what the

public can demand from the courts and how to engage in these processes. Considering the still quite fundamental lack of understanding increasing public knowledge and engagement is beyond the capacity of one program and can only be achieved in close coordination with others and needs to reach beyond the justice sector, particularly involving the media, the business community, and the educational sector. In addition, engaging the courts and other justice sector agencies in a process to reach out to their communities and taking responsibility for education the public is essential. This will be another area for the JRP to focus on in the future.

Enhancing justice system integrity.—The new laws introduced processes that increase accountability and transparency. A new judicial ethics code was adopted in 2002 based largely on advice from the JRP. Its content was the basis for a similar ethics code for prosecutors. With the passage of the new Law on the Courts, a new disciplinary mechanism was created for judges, the Disciplinary Committee, which generally follows the model members of the GCC observed in Utah during their study tour. Likewise, with the passage of the new Law on the Prosecutors' Office, a unit to investigate crimes by justice system members has been created.

2002 saw the creation of a basic foundations, upon which a framework of improved processes, education and new enforcement mechanisms can build a judicial system with greater integrity. This goal can only be accomplished if the political will exists to combat corruption and the institutions have the capacity to carry out their functions. Political will has been building and a number of donors and diplomatic missions have added their voices. The JRP will concentrate on assisting the various institutions with developing the capacity to carry out their roles in promoting and enforcing justice system integrity.

Increased and Systematized Donor Coordination. —Using a strategy of information sharing and consultation donor coordination in the rule of law field in Mongolia increased significantly during the reporting period. JRP and GTZ have developed a particularly close working relationship, communicating on all project activities, and engaging in early planning efforts, coordinating their training and court automation efforts, and newsletters. Overall coordination among donors is increasing and beginning to develop in a more systemic way at earlier stages.

These considerable improvements have taken place despite significant funding limitations and against a backdrop of increasing concern about centralization of power and corruption. Public confidence in the judicial system is low with troubling implications for investor confidence, economic growth and the rule of law generally. The successes of 2002 need to be built on in 2003 and beyond. The greater transparency and accountability achieved in the pilot courts needs to be spread to the rest of the courts in Mongolia. The new laws need to be implemented which will require training, and the quality of training achieved nationwide in 2002 needs to be transferred to the NLRTC so that it can be sustained and provided on an ongoing basis to all legal professionals to raise their skills to the levels that a free market and democratic society require. The new Judicial Code of Ethics needs to be the subject of training and enforcement by the Judicial Disciplinary Committee. The new unit to investigate crimes by justice sector officials needs to have the training and resources to create a credible threat of prosecution to discourage corruption. Further public education is essential to enable the public and press to act as a watchdog for judicial sector propriety and the public to demand it. The JRP is committed to a holistic approach to advancing the rule of law to Mongolia and will assist Mongolian stakeholders to address these issues in the coming years.

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Mongolia Judicial Reform Program

**The Structure and Functionality
of the General Council of Courts:
Report and Recommendations**

November 2001

**Cooperative Agreement
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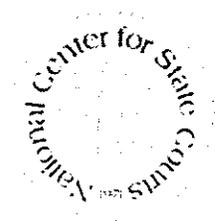


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1. Background and Review of Judicial Councils in the United States¹

Early in the 20th Century concerns were voiced over the administration of justice in the United States. There was a general dissatisfaction with how the courts operated and the lack of efficiency in the administration of justice. Many U.S. court systems still employed antiquated legal and administrative procedures that dated back to the 19th century. In 1913 Wisconsin was the first state to address these problems by creating a judicial council. It required more than 35 years for the total number of judicial councils to grow to 37 across the United States. Their overall purpose was to set direction and provide leadership for improving the administration of justice. Although the intentions and missions of these early councils were lofty and worthwhile, there were inherent and systemic problems associated with the accomplishment of their goals to improve the administration of justice.

It was not until the late 1950s that judicial reform began to have any tangible effects. The courts throughout the United States in the 1950s were faced with a judiciary that was inadequately compensated, under-trained with little or no continuing legal education programs, and little accountability to the public for disciplinary actions. Many of the early judicial councils recognized the problems the courts were facing and solutions to remedy these problems were sought. Unfortunately, many of these councils saw their primary roles as only advisory in nature and concentrated on reviewing pending legislation and making general recommendations for the improvement of the courts. The judges themselves were frequently opposed to the intrusions of these councils because they viewed their work as interfering with judicial independence and self-government.

In addition, other factors contributed to the lack of success in changing the court system through these judicial councils. Most of the early judicial councils had little legal authority to affect change in how the courts operated. Some of the judicial councils only met once or twice a year for a half-day meeting. It is difficult, if not impossible, for a part-time group of individuals with varying backgrounds and expertise to address the needs and requirements of the courts. The issues facing the courts are too complex and involved to effectively develop policies for changing the judiciary as a whole. In many states the judicial councils proposed and recommended important and innovative changes for their respective court systems. Although these changes were needed and well thought out, there was little or no staff available to implement these changes in the courts. It was not until the late 1950s and early 1960s that judicial reform began to take place in the United States. The emergence of the modern court administrator and his/her staff has enhanced the roles of judicial councils and the modernization of court systems in the United States. The majority of the states now have adequate central staff to support and implement the policies promulgated by their respective judicial councils.²

¹ The authors of this report are Charles Ferrell, Heike Gramckow, Ph.D., and Kim Mahling Clark. This report was developed by the National Center for State Courts with USAID funds under Cooperative Agreement #492-A-00-01-00001; Mongolian Judicial Reform Project. The opinions presented in this report are those of the authors and do not represent an official USAID position.

² See generally, Robin W. Tobin, *Creating the Judicial Branch: The Unfinished Reform*. National Center for State Courts: Williamsburg, Virginia, 1999.

The purposes and composition of judicial councils in the United States vary greatly, as demonstrated in “Judicial Councils and Conferences: Composition and Function”³ (Appendix 1). The majority of the judicial councils in the United States is constituted by statute and meet annually or semi-annually. Although all U.S. states have some type of judicial council or conference, the overall responsibilities of these entities has not changed much from the original councils created in the mid-20th century. The purposes of these councils for the most part are unchanged from earlier times (1940-50s) in that they serve in an advisory role to recommend improvements for the court system. There are only few states that have a judicial council with a direct involvement in the administration of the courts in their respective states. Two of these states are California and Utah. Other than California and Utah the purposes of the other councils are to study, advise, review, and recommend. Only in Utah and California are there specific and well-defined Constitutional and statutory provisions that give the authority and power to develop, adopt, and implement policies and procedures to improve the operation and administration of the courts.

The following sections provide a short overview of the composition and responsibilities of the Judicial Councils in California and Utah. More emphasis is placed on the California system since it more closely approximates the role of the Mongolian General Council of Courts structure and mission. The experience of the Utah system is also of interest since that state mirrors more closely the needs of a less-populated, more rural country like Mongolia.

California Judicial Council

The California Judicial Council was created by Constitutional Amendment to serve as the chief administrative body of the court system. To assist the council in the fulfillment of its duties, the Administrative Director of the Courts is responsible for setting the direction and providing staff support and leadership for carrying out council policies. The Administrative Director is tasked with improving the quality of justice and promoting the independence and accessibility of the courts. The council is headed by the Chief Justice of the California Supreme Court. The other council members include 15 judges, 4 lawyers, 2 legislators, 4 court administrators, 1 court commissioner and 1 appellate court clerk. The council meets at least seven times per year.

The California Judicial Council is responsible for the following:

- Developing rules for the administration of the courts, their practices and procedures;
- Reviewing and approving the budgets for the California judicial branch;
- Reviewing and commenting on Legislation that affects the judicial branch of government and approving any reports provided to the Legislature;
- Providing guidance and direction for the improvement of the court system;
- Responding to information requests and implementing appropriate mandates from the Legislature.

In order for the California Judicial Council to perform its duties and responsibilities, the Administrative Office of the Courts provides staff support to the council in fulfilling its mandate

³ U.S. Department of Justice, Bureau of Justice Statistics, *State Court Organization 1998*. Washington, DC

to improve the administration of the courts. The Council has standing committees and has the capability to appoint ad hoc committees as required. The Executive Committee oversees the strategic planning process and budgetary issues. The Policy Committee reviews and takes position on legislation affecting the court system and also proposes a legislative agenda for the improvement of the court system. The Rules and Projects Committee establishes and maintains the rule-making process and assists in developing and reviewing all rules of court administration. Finally, Advisory Committees (ad hoc) are created for special projects to build on the collective wisdom and experience of its members to review and recommend policy changes for the administration of the courts. To assist the council in fulfilling its responsibilities and duties, the Administrative Director of the Courts and his staff are charged with providing staff support to the Council to fulfill its goals and objectives. The staff is charged with the duty of ensuring that the goals established by the Council are addressed.

Utah Judicial Council

The Utah Judicial Council was created by Constitutional Amendment and has the authority to adopt policies and rules for the administration of the court system in Utah. The Utah Judicial Council is composed of 14 members and is chaired by the Chief Justice of the Utah Supreme Court. There is one member who is the state bar representative and the other 12 members are judges from each court level in Utah. The Council has established a Board of Judges for each court level that adopts administrative rules for its court level and implement the Council's policies. These Boards also serve as liaison between the different court levels and the Council. The Utah Council holds monthly meetings across the state that are open to the public.

The Utah system was selected for a review in addition to California because its overall charter is to develop and adopt rules and procedures for the administration of the courts. The Utah Council has the support of a strong and well-developed Administrative Office, much like the California system. Both are chaired by the Chief Justice of the Supreme Court. The primary differences between the California and Utah systems are their population and size and the composition of the respective councils, with the Utah council consisting primarily of judges (13 of 14 members).

The responsibilities of the Utah Judicial Council are:

- Adopt uniform rules for administration of the courts;
- Develop standards for judicial performance;
- Develop standards for court facilities;
- Establish judicial and non-judicial staffing levels.

2. Responsibilities of the Administrative Offices in California and Utah

Both Utah and California have well-developed and staffed Administrative Offices of the Courts (AOC) to support the infrastructure of the court system as well as to serve as secretariat to their respective judicial councils. It is the responsibility of these offices to implement the policies and procedures established by the judicial councils, provide the courts with day-to-day management support, and ensure that the courts are adequately funded and staffed. The policies and

procedures adopted by the judicial councils could not be implemented without the staff support from the AOCs.

The AOCs in both states are responsible for providing staff assistance to judicial committees, budgeting, revenue accounting, personnel management and financial auditing. These offices also draft legislation and provide testimony and research on legislation affecting the judicial system. The AOCs are expected to produce statistical information on the activities of the courts to support judicial resource increases and identify backlogs in particular courts where resources can be moved to reduce caseloads. The importance of an adequately staffed AOC to serve the courts statewide is extremely important for the functioning of the court system.

3. Review of Select European Judicial Councils

The tables provided at the end of this paper (Appendix 2) reflect the distribution of responsibilities for judicial governance and court administration in select Western and Eastern European countries. These countries have similar judicial responsibilities and governance structures as Mongolia. The selected countries used in this report are not exhaustive but are a representative sample for discussion purposes.

To enable a comparison of the structures and functions established in each country the tables show by subject area (task) which entity is responsibility for each task: the Judicial Branch, another Agency, or the Executive Branch. The countries selected for review are Poland, Hungary, Lithuania, Estonia, Netherlands, Germany, and Bulgaria.

The selected European countries, like Mongolia, all have a judicial governance structure that is largely under the auspices of the Ministry of Justice, which is a cabinet level department under the executive branch of government. By contrast, there are no judicial councils in the United States governed by an executive branch agency or department. The judicial governance structures established in the selected countries, like the Mongolian GCC, all have some policy-making powers. Unlike Mongolia, however, they are guided by strong judicial leadership for policy setting. At the same time it is important to recognize, that other European countries, particularly Spain and Portugal, while following a civil law system, established judicial governance structures that are independent from the executive branch.

A review of the tables for each of the selected European countries reflects an involvement by a judicial council and/or the Ministry of Justice in the processes of judicial selection and discipline. These two issues will not be discussed within the context of this report because they deserve a more detailed analysis that will be prepared as separate reports.

A review of the judicial responsibilities and governance structures in these European countries indicate that organizationally, they are not much different from Mongolia's judicial governance structure. The most apparent issue that confronts several of the European countries and Mongolia is the lack of a national-level support staff to provide administrative support to the courts and carry out the policies set by an independent judiciary. The structures established in these European countries also appear to present the problem that the court system, at least organizationally, is treated by the Legislative branch, as well the Executive branch, as an agency

within the Ministry of Justice. It is important to point out that the current structures of judicial governance in Germany (and other European countries) are subject of significant debates and that changes to the current structures that give the judiciary more responsibilities for policy setting, judicial governance (including court administration), have been proposed and are likely to come into effect in the coming years. It is also important to recognize that the significant control over court policies that the German state-level Ministries of Justice were introduced in the mid-1930s by the Nazi government in an effort to control the third branch.⁴

To enhance judicial control over judicial policies and court operations, the Netherlands recently enacted legislation that moved much of the administrative and budgetary responsibilities of the courts from the Ministry of Justice and to the Council for the Administration of the Courts. As of 1 January 2002, the Dutch Council for the Administration of Justice will be responsible for the supervision of the courts and for supporting their general business operations. The Council is to be responsible for preparing the courts' budgets and supervising their implementation. At the same time, individual court boards will be given management responsibilities. This will mean a change in the relationship between the Minister of Justice and the judiciary. The Minister will be further removed from the way in which the administration of justice is actually carried out.⁵

Recognizing the importance of a fully independent judiciary, the Hungarian Parliament undertook similar reforms in 1997 when it amended the Constitution and established the Hungarian Judicial Council. The Council proposes the judiciary's budget, deals with disciplinary offenses of judges, makes appointments to the appellate and county courts, and appoints the chief justice of the Supreme Court. The 15-member Council is composed of nine judges elected from different courts by the judges of these courts. The other six members are the Minister of Justice, the Chief Public Prosecutor, the President of the National Chamber of Advocates, the Presidents of the Parliamentary Constitutional and Budgetary Committees. The Chief Justice of the Supreme Court presides over the Council.⁶

4. The General Council of Courts in Mongolia

Article 49 of the Constitution of Mongolia creates the General Council of Courts (GCC) of Mongolia to ensure the independence of the courts and guarantee conditions for the independence of the judiciary. Laws and internal GCC resolutions further define the duties and responsibilities of the GCC.

The GCC is composed of twelve (12) members. According to the Mongolian Law on the Courts Article 33, the members are: The Chief Justice of the Supreme Court; the State General Prosecutor; the Minister of Justice and Home Affairs who also shall serve as the chairperson; two members nominated by the State Great Hural (Parliament); two members nominated by the President; 2 members from the courts of each instance (six total) whose candidacies are submitted in accordance to Supreme Court Rules; and the General Secretary of the Council.

⁴ Weist 1968

⁵ Netherlands Ministry of Justice 2001

⁶ "Hungary" Constitution Watch. *East European Constitutional Review*. Volume 6, Number 2&3, 1997.

The GCC has broad powers established by the Law on Courts of Mongolia for the administration of the courts of Mongolia. The GCC has adopted internal resolutions for their operation that provides more defined procedures for the administration of the courts. These resolutions include procedures and policies for budgetary matters, human resources, judicial discipline, court administration at the local trial level and, internal GCC operations. To assist the GCC in implementing its policies and procedures the Office of General Secretary, who is nominated by the Minister of Justice and Home Affairs, was established. The General Secretary has a small staff to carry out these duties.

On first reading it appears that the GCC has the legal power to set policy and direction for the court system of Mongolia. However, several laws and Internal Rules of the GCC have been enacted that move much of this power to the Minister of Justice. Some examples of this transfer include: (1) the Chair of the GCC also heads the law enforcement agency of State-government (i.e. the Minister of Justice and Home Affairs); (2) the staff of the General Secretary are employees of the Ministry of Justice and Home Affairs (MOJHA), the General Secretary is nominated by the Minister of Justice and Home Affairs; (3) the GCC must cooperate with the MOJHA and its subsidiary agencies and institutions within the framework of the legal reform program; (4) in order to submit proposals or comments to the Cabinet, the GCC must submit them through the Minister of Justice and Home Affairs; (5) the Chair of the GCC (i.e. the Minister of Justice and Home Affairs) must coordinate the development and implementation of judicial sector programs and projects supported by foreign organizations, and the opinions of the relevant organizations must be taken into account. These are a few examples where the power of the GCC to act independently to advance judicial reform and improvement has effectively been transferred to the MOJHA.

The GCC in Mongolia is facing what so many of the Judicial Councils faced in the United States, in that the Council is only empowered to advise, recommend and propose policies on court administration and budgetary matters and has no real authority to implement such policies without the approval of the Minister of Justice.

In order fulfill its responsibilities in accordance with the constitution and the Law on the Courts, the GCC's primary purpose should be to set the direction and provide leadership for the improvement of the court system. The GCC should develop policies for the advancement of a consistent, independent, accessible and transparent system of justice. The GCC should establish the direction for the improvement of the court system; develop rules for the administration of the courts; approve all budgets for the judicial branch of government and submit such budgets directly to the Parliament; review, develop and comment on all legislation that has a positive or negative impact on the court system; and respond to appropriate requests from the Parliament to discuss the operations of the courts.

The General Secretary of the Council should be charged with the responsibilities to accomplish the GCC's stated goals and objectives. Consistent with these responsibilities the General Secretary should be responsible for assigning staff, allocating financial and other resources to achieve the goals identified by the GCC. The GCC staff should be responsible for the development of reports and other work products as requested by the GCC. In order for the General Secretary's office to be responsive to the requests of the GCC sufficient staff that is well

trained and has access to adequate resources is needed. The current staffing level of the GCC is insufficient to accomplish the dual tasks of serving as a true secretariat for the GCC and implementing the directions given by the GCC. At least five new professional staff positions should be created to enable the GCC to fulfill its responsibilities. The additional staff would be assigned as follows: 2 in finance, 1 in human resources, 1 in technology support, and 1 in statistical analysis. The current staff is too small to adequately support the GCC and the local courts in a meaningful manner.

5. Functional Comparison

To facilitate the discussion of the GCC's governance and administration responsibilities, each area will be discussed in comparison to the United States. Comparisons to European countries are made where relevant. This will provide a frame of reference for each area of responsibility.

Council Composition

Seven of the 12 members of the GCC are judges, a ratio that is comparable to judicial councils in the United States and Europe. The European Union (EU) has set out a charter stipulating judicial sector standards that countries must meet in order to join the EU. Among their recommendations, a judicial council involved in selection and discipline should be comprised of at least half judges, with the ultimate goal being 100 percent judicial membership.⁷

In several European countries, such as Hungary and Spain, the Chief Justice of the Supreme Court is designated to chair the judicial council. The same is true in other national judicial councils. In some cases, such as Poland, the members of the council elect the chair of the judicial council. In Bulgaria, the Minister of Justice presides over the meetings but has no voting rights.

Judicial Selection

The GCC is responsible for the creation of the Judicial Professional Committee (JPC) and the approval of the committee's rules of operation. The committee is composed of nine judges and lawyers that are appointed by the GCC but cannot be members of the GCC. The committee is responsible for the screening and qualification of all judicial applicants. The GCC's Office of the General Secretary provides staff and administrative support to the JPC. The JPC submits a list of qualified applicants to the GCC, which selects and nominates applicants for the President of Mongolia to appoint to fill a given judicial vacancy.⁸

The judicial selection and qualification process in most U.S. states is not much different. The selection is the responsibility of a statutorily created commission that consists of representatives of the judiciary and other legal professions and is independent from any branch or agency of government. In many U.S. states the Administrative Office of the Courts provides staff and

⁷ European Charter on the Statute for Judges and Explanatory Memorandum. Strasbourg, 8-10 July 1998.

⁸ Separately the National Center for State Courts has prepared an analysis of and recommendations for judicial selection and discipline in Mongolia.

logistical support for the selection and qualifications commissions, as does the GCC. The difference is that the selection of the JPC is dependent upon the GCC and the JPC's decision must be approved by the GCC. As a result, different from judicial selection and qualification commissions in the United States, the entire process is under the control of the GCC, instead of an independent commission. As mentioned above, a separate paper is dealing with judicial selection issues that will also address the composition, structure, and governance of such a commission.

Judicial Discipline

In Mongolia, Judicial Disciplinary Committees (JDCs) are created by law at each court level to review and decide whether disciplinary action is warranted for complaints filed against a judge. Each committee is composed of 3 to 5 judges from each court level within each judicial district. The JDCs review two general types of complaints: ethical violations and complaints that a judge made a professional mistake in applying the law. Depending on the severity of the ethical violation, the JDC issues sanctions locally, or if warranted, submits the complaint directly to the GCC for action. The JDC findings concerning professional errors are submitted to the JPC for review and possible sanction. If the JPC decides that a complaint has merit, it is presented to the GCC with a disciplinary recommendation.

Judicial discipline in most U.S. states is handled by a special judicial discipline commission, and in some states a special court is set up for these purposes. These commissions are created by statute to determine whether a judge has committed an ethical, moral or criminal violation. The complaints are investigated by a special investigator who determines whether there are sufficient grounds to proceed in filing charges against the judge. While in Mongolia a disciplinary committee is created at each court level, only one commission decides judicial disciplinary actions against judges on all court levels in a particular U.S. state. It is important to point out that judicial disciplinary commissions in the United States, whether at the federal or state level, do not decide upon erroneous court decisions, since the appellate process in the United States corrects those types of errors and omissions. Though it is rare, judges may be disciplined for committing frequent errors in applying the law but this process does not impact the decisions in the cases involved. Overall, formal disciplinary procedures for ethical or moral violations against American judges that result in removal from the bench are rare. Various intermediate reactions, such as reprimands, mediation, and fines, will have the desired effect as judges with frequent disciplinary citations are either not reelected and more likely to resign from the bench than to wait for another disciplinary action. Of course, allegations of criminal violations are a different matter. If the initial investigation leads to sufficient evidence, the disciplinary commission will turn the evidence over to the appropriate enforcement agency for prosecution.

Judicial Training

The GCC has responsibility for the training of judges and currently has a limited curriculum established. There is, however, little coordination of training efforts from a centralized viewpoint that ensures the systematic training of judges nor is there a Continuing Legal Education (CLE) requirement for any of the legal professionals in Mongolia. Training for administrative support staff is provided through the General Secretary's office.

Judicial training for judges in the United States is provided by the State Bar Associations and the Administrative Offices of the Courts. Most states have a mandatory Continuing Legal Education (CLE) requirement for attorneys, including judges. In addition to special courses offered for newly elected/appointed judges, these CLE courses can cover the entire range of applied legal courses to courses on judicial decisions making, legal writing, ethics, judicial leadership and management, and other topics of value to judges. Frequently individual courts offer in-house workshops and seminars conducted by one of their members to share special expertise and experience. While standard training requirements do not exist for most court staff, training for the various professions that support the courts, court administrators, clerks, secretaries, court reporters, and interpreters are offered by the AOC, by the various professional associations, and, again, by the courts themselves in form of in-house training.

Judicial Budget

In Mongolia the Ministry of Finance drafts the State Budget, which includes the courts' budget. The Ministry of Finance solicits no input for the courts' budget from the GCC or the staff when compiling the State Budget. The Ministry informs the GCC, through a letter, of the amounts and percentages of increases or decreases that were included in the courts' budget segment of the Mongolian State Budget. These mandates are provided by the Ministry well in advance of the time the budget is due to be submitted to the Parliament. Although the GCC staff is informed and aware of the actions of the Ministry of Finance, the staff continues to develop the draft courts' budget using expense and budget data collected from all the courts in Mongolia to provide the GCC with actual budget information to justify expenditures later.⁹

The GCC staff uses its version of the budget to lobby the Parliament for increases to the judicial budget filed by the Ministry of Finance. The actual budget figures compiled by the GCC staff also provide the government with information on how much debt the courts have incurred in their operations so that if there are funds available the government can resolve all or part of this debt. The draft of the State Budget, prepared by the Ministry of Finance, does not include the GCC-approved budget amounts, and instead uses the figures established by the Ministry of Finance.

The U.S. Constitution and all State Constitutions clearly delineate the doctrine of separation of powers by creating three separate but equal branches of government. In the majority of states the judicial budget process is a cooperative effort among the judicial, executive and legislative branches of government. In some states the executive branch may provide a format for the courts to submit their budget requests, and in other states the judicial branch submits its budget directly to the legislature. But independent of who submits the budget, the determination of the budget amount and justification presented lies with the judiciary.

Similarly, in 1997, the Hungarian Parliament authorized formation of the National Council of the Judiciary whose functions include preparation and submission of the judiciary's annual budget to the Parliament, and supervision, execution, and enforcement of the budget approved by

⁹ For more information, see "The Budget Process of the Mongolian Judicial System." National Center for State Courts, September 2001.

Parliament. Moreover, if the Parliament fails to approve the Council's recommended budget, it has to include a justification. The Bureau of the Judicial Council, a state agency that is a part of the judiciary, has on staff a number of economists, accountants, and other experienced professionals who assist the Council in monitoring and executing the judiciary's budget.¹⁰

Judicial Policies/Legislation

The GCC has broad powers to establish policies and procedures for the administration of the courts. These procedures can be implemented either by the GCC or the Minister of Justice. The GCC usually adopts the more formal rules and procedures such as the rules for the Judicial Professional Committee whereas the Minister of Justice issues Resolutions with regard to the administration of the courts or other court processes. Seldom is the GCC or the General Secretary's Office asked to provide an impact statement or analysis of pending legislation affecting the courts. The Legal Standing Committee of Parliament does ask for testimony by the GCC staff on certain budgetary matters pending review by the Committee.

In most U.S. states it is the responsibility of the Administrative Offices of the Courts to prepare fiscal impact statements on pending legislation. In some states the AOC does not get involved in commenting on or proposing substantive changes to the law, but leaves it to Bar Association special committees to work with legislative committees. The AOC's level of involvement in legislative matters varies from state to state. The AOC may either work directly on a legislative matter that may impact the work of the courts, inform appropriate Bar Association committees of its opinion, or abstain from influencing the legislature completely. The issue of judicial independence makes judges generally wary of influencing the legislative process.

Court Statistics

The Supreme Court in Mongolia is currently responsible for the collection and compilation of court statistics. The Supreme Court's Research Center collects data from the Aimag and Capital City Courts semi-annually. At the end of the calendar year the Research Center compiles a report on the aggregate caseloads for civil and criminal cases. The Research Center does not publish an Annual Report of the Judiciary on the workload and activities of the courts in Mongolia, as is done in many other countries.

In the majority of U.S. states, AOCs are usually responsible for collecting court caseload statistics. The level of detail collected and reported varies according to the level of automation in the local courts and the specific reporting requirements mandated by the AOCs. States like Utah and California use caseload statistics in support of budget justifications and human resource allocation, as well as for supporting the development of new policies or new programs to address the needs of court users. Strategic planning, based in part on these court statistics, helps keep the judiciary forward looking and focused on finding ways of better serving the community in which it operates.

¹⁰ Commercial Law Center Foundation. "Structural and Administrative Reform in the Polish Judiciary: Report And Recommendations." <http://www.prawo.org.pl/clcf/commentary/reforms.html>.

Human Resources Management

In Mongolia, all court personnel records are maintained by the General Secretary's office. The GCC has the power and authority to assign administrative staff and judges to any court in Mongolia. The GCC also approves all court administrator positions, assistant judges and permanent transfers of judges to other court locations within the country. If the GCC has approved a full time equivalent position for a particular court but without an authorization for funding from the GCC, then the local court administrator may seek funding from the local government.

There are only a few US states that have a statewide responsibility for all court administrative staff, judicial staff and judges. In many states local court staff are paid from local funds and the judges and their staffs from state funds. The management of human resources in the court systems across the United States varies according to the overall judicial structure in each state. Increasingly, US state courts are conducting comprehensive workload assessments to determine the appropriate number of judges and court staff to assure the functionality of the courts and use these numbers to justify requests for increases in positions.¹¹

6. Assessment of the Functionality of the GCC

Overall, the structure of the GCC is similar to that of the California Judicial Council in its composition. Members of both entities include judges, prosecutors and legislators. The GCC's authority by Constitution is broad-based and the responsibilities are delineated in more detail by statute. Whereas the California Judicial Council has the specific responsibility for the administration of the courts, approval of budgetary matters, and review of legislation affecting the judiciary, the GCC does not have the same direct responsibility for these matters. Most of these responsibilities have been delegated by law to the Minister of Justice except in the area of finance where the Minister of Finance has broad discretion in the creation and approval of the courts' budget.

The GCC, as constituted at this time, has little direct control over the administration of the courts. Either by law or resolution, many of the duties and responsibilities inherent in the administration of the courts have been delegated to the Ministry of Justice. The GCC is more involved in the areas of judicial selection, discipline and personnel matters. The majority of the GCC meeting agendas are dedicated to the discipline and transfer of judges and approval of routine personnel matters. Still, these meetings are, to a large extent, controlled by the Chair of the GCC, the Minister of Justice.

As mentioned above, the support staff provided by the Office of the General Secretary of the GCC is too small to effectively carry out an expanded policy agenda and implementation plan as in California. Many of the administrative details that appear on the GCC's agenda should be handled by the support staff and not require formal GCC action. Some examples of these administrative tasks are: hiring approval of local court administrators, approval of major purchases for an individual court (automobile, repairs to facilities), and the assignment of an

¹¹ H. Gramckow, Estimating Staffing Needs for the Justice Sector, National Center for State Courts, Arlington, VA, 22201.

assistant judge to a specific court. Instead, the GCC would approve the overall plan for such undertakings, but not be involved in their individual implementation.

The development of a “Model Court Governance System” for Mongolia must take into consideration the current and future legal, economic, and political constraints associated with the administration of the courts. These constraints should not be viewed as negatives but as reality for the next several years, as challenges that need to be addressed and overcome. Before major changes to the location of the GCC are considered it is more important to begin the process of establishing a policy directed General Council of Courts with adequate support staff to enhance and expand the administration of the courts and foster the independence of the judiciary.

7. A Model for the General Council of Courts

The effectiveness of any judicial council is always contingent upon the legal authority under which it operates, the political environment, and the degree of recognition of the courts’ independence by the executive and legislative branches of government. It is also of paramount importance that the membership of a judicial council, such as the GCC, assumes a systemic approach to setting policy for the administration of the courts. Judicial council members cannot be concerned with individual agendas or projects but must concentrate on the systemic needs and requirements of the court system.

The structure of the GCC and its composition encompass a wide range of disciplines within the judicial branch of government as well as representation from the legislative branch. The chairperson, the Minister of Justice, represents the executive branch. The GCC does not have any representation from the private sector in its current membership.

The following recommendations are overall considerations for the improvement of the functionality of the GCC and the improvement of the administration of the courts.

Recommendation 1: Expand the membership of the GCC

The GCC’s membership should be expanded to include representation from the other key parts of the executive branch of government and the Advocates’ Association. Examples for possible inclusion of the membership would be a member from the Ministry of Finance, a law professor from Mongolian University, or a private sector lawyer. Given the Ministry of Finance’s dominant role in the developing and monitoring budgets for the government, having someone from that Ministry on the council would increase information sharing and understanding of the judiciary’s specific needs.

Recommendation 2: The GCC support staff should be enlarged

The GCC support staff should be expanded by five positions: two in finance, one in human resources, one in technology support and, one in statistical analysis. The current support staff of five professionals is insufficient to support over 925 court personnel and manage the finances of the nation’s courts. In addition, the advance of technology in the courts and the development of a court strategic plan require the expertise of a technology specialist and statistical analyst.

Recommendation 3: The GCC should concentrate on system-wide court administration policy and issues

The GCC should concentrate on those issues that affect the judicial branch of government as a system, such as changes and amendments to the civil and criminal procedure codes, law on the courts and, any other legislation or policies that affect the judicial sector. The Parliament should require the GCC to provide an impact statement on all legislation affecting the judicial branch of government. The Parliament's Legal Standing Committee should not consider any legislation that could impact the judicial sector and is filed without such impact statements from the GCC.

Recommendation 4: The GCC should develop a strategic plan for the courts

Building on the statistical data that the Supreme Court collects on court workload and caseload through the judicial system, the GCC should use this information to develop a detailed strategic plan for the courts that is directly tied to the budget and contains measurable milestones for monitoring progress of the implementation of this strategic plan. This plan should be disseminated beyond the judicial sector to the public, Parliament and the press to demonstrate the needs and requirements of the court system.

Recommendation 5: The GCC should develop the basic elements needed to improve the infrastructure of the court system

The GCC should focus on establishing the basic requirements and needs to improve the infrastructure of the judiciary and on gaining the needed resources. At a minimum, these would include judicial salaries, operating expenses, legal research materials, technology, and court facilities. GCC staff should develop well-justified budgets, based on solid statistics, workload and resources assessments that the GCC's members, not its staff, can then present and defend. There are numerous studies available from developing countries where the judicial infrastructure was neglected and as a result the progress towards a free market economy was directly affected. An investment in the judicial sector is an investment in the economic and social stability of a country.

Recommendation 6: Review chairmanship of the GCC

The GCC is a key component of the judicial sector and as such a reflection of the level of independence of the judicial branch. As a result, the trend around the world is to provide the judiciary with significant control over the functions of Judicial Councils such as the GCC. While the location of the GCC within the Ministry of Justice and Home Affairs itself is not a detriment to judicial independence, the permanent chairmanship of the Minister can be an obstacle if the chair has full voting rights and the decision-making process within the GCC is hierarchical. In order to diminish the potential of too much control from the executive branch other democratic options, such as electing the chairman for limited time periods or rotating the chairmanship among the different members of the GCC should be explored.

8. Summary

In Mongolia, policy decisions concerning the judicial sector reside with the General Council of Courts. In this capacity the GCC is responsible for defining the administrative structure of the courts and how the courts are governed. The basic legal structure and authority for the administration of the courts in Mongolia is in place, but what is lacking is

- a) An adequate budget to support basic needs and adequate support staff at the national level to administer and support the court system; and
- b) A data-based, democratic policy-making structure that provides the GCC with solid information to develop policies that reflect the needs all courts throughout Mongolia.

The GCC should strive to work more constructively with the Parliament and other executive branch agencies, especially with the Ministry of Finance. The GCC should not hesitate to speak out and defend the judicial system and its needs. Although the GCC should be assertive, it must also be willing to be more accountable to the government and the people. The GCC and the courts should develop information and communication networks, and work cooperatively with the other branches of government, the media, and the public to better inform them about the role of the courts and the needs of the judiciary.

Appendix 1

Judicial Governance and Court Administration in Mongolia and Select European Countries				
	Task	Judicial Branch	Other Agency	Executive Branch
Mongolia	Judicial selection	Supreme Court selects its own chief justice	GCC establishes a Judicial Professional Committee of 9 members. It reports on the skills and qualifications of judicial applicants. The GCC proposes candidates for all courts, and all chief judges, except the Supreme Court Chief Justice. The GCC fixes rules and criteria for selecting judges.	The President appoints those proposed by the GCC. If he refuses, other persons shall be nominated (contradicts Article 42). He also appoints the chairmen of the civil and criminal chambers in the Supreme Court.
	Judicial discipline	Judicial Disciplinary Committees are established in the Aimag, CCC, and SC (3-5 members). Decisions taken by majority vote. A judge can appeal a decision to the SC.	The JPC then reviews and can accept or change the JDC decision.	The President shall remove judges on the recommendation of the GCC, if the judge has repeated disciplinary action in 1 year, or if the judge is convicted of a felony.
	Judicial training	The Supreme Court operates a donor-funded Judicial Retraining Center.	The GCC is in charge of training of judges.	
	Judicial budget	Supreme Court creates and administers its own budget, submitted along with outer court budgets.	GCC collects information from the different courts from which they create budget submissions: for the courts and themselves. SC court budget is part of the package.	Though not prescribed by law, the MOF can reduce the requested and approved budgets.
	Judicial policies/ Legislation			
	Court statistics	The Supreme Court collects statistics from all courts.		
	Human resources management		Staff appointed with GCC consensus.	
	Management of other resources	The chief judges monitor case disposition rates and provide management and leadership in their courts.	The GCC Secretary manages and coordinates all court administration offices. The heads of the administrative offices report to the GCC.	Support the judiciary by providing working premises, vehicles and equipment, housing, and staff. Day-to-day management rests with MOJ.
	Court staff training			MOJ is responsible for court staff training. Very little if any takes place.

Judicial Governance and Court Administration in Mongolia and Select European Countries

	Task	Judicial Branch	Other Agency	Executive Branch
Poland	Judicial selection	First President of the Supreme Court is appointed by the Sejm from among sitting SC judges (Art. 29, SC Law).	National Council of the Judiciary forwards judicial nominations to the President. NCJ reviews files to decide whether to give them life appointments. NCJ is constitutionally guaranteed.	President officially appoints judges upon a motion from the NCJ. Has the power to block, but has rarely used it and cannot appoint someone not nominated by the NCJ. Justice Minister heads commission that administers judges' exam. Based on results, the Minister may appoint trainees to lower courts for up to 2 years.
	Judicial discipline	Disciplinary Court must consent to criminal proceedings against a judge and handles disciplinary matters. It hears cases in panels of three, and may order a rebuke, reprimand, disqualification, or removal if an infraction is found. Decisions may be appealed to the High Disciplinary Court.	NCJ determines if a judge may be transferred, decides the number of disciplinary judges, and comments on ethical issues. NCJ decides if a judge's retirement age can be extended.	MOJ is responsible for executing decisions of the Disciplinary Court.
	Judicial training	Iustitia, the national assoc. of judges, regularly organizes workshops and seminars throughout the country. Appellate courts provide some training. Trainees are paid by the courts if they are on permanent status, attend 1 lecture/week, and work for 4 days/week supervised by a judge mentor or court administrator.	NCJ comments on training, but there is no central training facility or program.	Judgeships are 1 of 5 specialties in Polish legal education, ending with a state judicial examination. MOJ provides some training for judges and judicial candidates.
	Judicial budget	Only SC, Constitutional Court, and Supreme Administrative Court have independent budgetary authority, and submit budget request directly to the legislature. Individual courts generate requirements, submitted to regional court presidents, which are consolidated and submitted to the MOJ. Presidents of courts of appeals submit respective budgets to the MOJ.	NCJ is not involved in budgetary preparation.	MOJ presents and justifies judicial branch budget to the legislature, as well as budget for the Ministry, the Prosecutor's Office, and the Prisons, presenting a possible conflict of interest because it is forced to choose between competing demands within the judicial sector.
	Judicial policies/ Legislation		NCJ comments on legislation affecting the courts.	

Judicial Governance and Court Administration in Mongolia and Select European Countries

Task	Judicial Branch	Other Agency	Executive Branch
Court statistics			May 2000 legislation established a national Penal Register, a database concerning personal identity, criminal offences, trials, and related court decisions. Managed by MOJ unit with a special budgetary allocation (EU 2000).
Human resources management		Relevant provisions for state civil servants apply to employees of the office of the Constitutional Tribunal.	
Management of other resources	SC, as the highest court, supervises adjudication in all other courts. Individual court presidents manage their own courts. Presidents of the courts of appeal exercise administrative supervision over district and provincial courts in their region.	NCJ lacks sufficient administrative support to help it adequately fulfill its responsibilities (Commercial Law Center Foundation, CLCF). CLCF recommends creating an administrative bureau under the supervision and direction of the NCJ Chairman, responsibilities currently handled by the MOJ.	MOJ supervises court administration. Minister responsible for establishing courts and providing them with adequate resources. MOJ has not provided modern computer equipment, and many courts lack typewriters. Automation, case management or financial, is limited and in development in a few courts outside of Warsaw.
Court staff training			

Relevant laws: 1997 Law on the General Courts, 1997 Constitutional Tribunal Act, Supreme Court Law.

Judicial Governance and Court Administration in Mongolia and Select European Countries

	Task	Judicial Branch	Other Agency	Executive Branch
Hungary	Judicial selection	SC President heads NJC.	National Judicial Council nominates the President of the SC, and appoints the presidents of the appellate and county courts	President appoints judges after being proposed by the MOJ with the consent of the NJC.
	Judicial discipline		Disciplinary council investigates and decides judicial misconduct	Judges are not subject to criminal proceedings unless authorized by the President.
	Judicial training		NJC organizes judicial training. National Training Institute for Judges is to be established in 2001.	
	Judicial budget*	Judiciary is financially independent from the executive. The president of the County Court of Budapest has the sole authority to apportion the budget for the county and 6 local courts.	NJC prepares and submits judicial budget to Parliament. Supervises, executes, and enforces approved budget. Parliament must justify any budgetary reduction. Sets standards for budgetary apportionment.	
	Judicial policies/ Legislation	Promotions and salaries determined by law.	NJC authorized by law to give its opinion on draft laws relating to courts and judges.	
	Court statistics	On his own initiative, a judge developed a four-PC network that runs a defendant name-based criminal case indexing program that includes case disposition information.		MOJ technical staff adapted indexing program to make it available in other courts, but the courts generally have PCs too old to run modern case management programs.
	Human resources management	The new law on legal assistants (Sep 2000) aims to reduce judges' workload.	NJC guides personnel policy.	MOJ determines how many judges are needed in each court, based on raw number of cases filed without differentiating between simple and complex cases. Ratio used to determine number of support staff.
	Management of other resources		NJC responsible for administrative activity of the court presidents. Bureau of the Judicial Council handles administrative tasks, recruited many staff from unit in MOJ that had previously handled those tasks.	
Court staff training				

Law XXXVIII of 1990 on the Promotion and Remuneration of Judges, 1997 Law on the Organization and Administration of Courts. Judicial salary scale determined by law. Judges are paid according to their level and time of service.

Judicial Governance and Court Administration in Mongolia and Select European Countries

	Task	Judicial Branch	Other Agency	Executive Branch
Lithuania	Judicial selection		Council of Judges advises on lower court judicial nominations. Appellate judges advise higher court nominations.	MOJ proposes judges, from Council advice. President appoints. For appellate judges, President proposes, and Seimas appoints.
	Judicial discipline	Only the Seimas can only remove SC and Court of Appeals judges. Only the SC president initiates case against SC judge.		MOJ, with SC president, initiates cases against judges. Law provides four foundations (seen as too wide): negligence, transgression causing harm to court reputation, behavior bringing disgrace, and administrative law violations.
	Judicial training		The Judicial Training Centre has been established and intensive training began in January 2000, covering various aspects of the EC law. The center has acquired an important role in training (EU 2000).	A department within the MOJ addresses training issues.
	Judicial budget	SC president determines extra-judicial salary for SC judges		Judicial salary determined by law. Government determines extra-judicial salaries for SC president. MOJ determines extra-judicial salary for non-SC judges
	Judicial policies/ Legislation			Following 1999 legislation calling for greater transparency, the MOJ now publishes on the internet all county and appeal court decisions and judgments of public interest (EU 2000).
	Court statistics			
	Human resources management			
	Management of other resources	In December 1999, the Constitutional Court ruled that certain MOJ powers in the administering of justice contradicted the principle of judicial independence (EU 2000).		
Court staff training				

Relevant laws: 1994 law on the Courts of the Republic of Lithuania, 1995 Statute of the Supreme Court of Lithuania.

Judicial Governance and Court Administration in Mongolia and Select European Countries

	Task	Judicial Branch	Other Agency	Executive Branch
Estonia	Judicial selection (all 3 branches involved)	See below.	Judges Examination Committee administers judges exam (Council of Europe).	See below.
	Judicial discipline	SC chief judges initiates disciplinary proceedings against judges. SC <i>en banc</i> initiates disciplinary proceedings against the SC chief judge. Disciplinary offenses tried by Judges Disciplinary Tribunal (9 members, 3 from each instance court) SC <i>en banc</i> can remove a judge for a disciplinary transgression (CE).		By law, the President or legislature must consent on criminal charges against judges. The Legal Chancellor must consent for legal charges against SC judges, with majority approval from the legislature. MOJ may commence proceedings against 1 st instance and circuit court judges.
	Judicial training	The SC has an institute providing professional training for judicial candidates. Training continues for up to 2 years in the courts or the MOJ, and concludes with a judges' exam (CE).	Since 1995, the nonprofit Estonian Law Center has conducted judicial training.	The government approved a bill in 1998 that provided for obligatory refresher training for judges. The five-year program was initiated in 1999.
	Judicial budget	Judges at the highest levels are paid independent of the Ministry.		Lower levels of courts are linked financially to the MOJ. Judicial salaries are linked to public sector salaries, and the SC chief judges earns the same as the Prime Minister.
	Judicial policies/ Legislation	By law, the SC approves all MOJ proposals concerning the number of other courts, their jurisdiction and location, and the number of judges in these courts.		By law, MOJ determines court rules for all but the Supreme Court. MOJ proposes, with SC approval, the number of city, county, administrative, and circuit courts, and the National Assembly determines. MOJ determines, with SC approval, jurisdiction, location, and number of judges in these courts.
	Court statistics			By law, courts must submit reports on case progression twice per year to the MOJ, which establishes policies on how statistics are calculated.
	Human resources management	By law, the CJ is responsible for hiring and firing of employees in his court. The law provides for security guards and clerks, reporting to the CJ.		

Judicial Governance and Court Administration in Mongolia and Select European Countries

	Task	Judicial Branch	Other Agency	Executive Branch
	Management of other resources			
	Court staff training			

Estonia Courts Act indicates the following selection procedures:

- Supreme Court proposes city, county, administrative and circuit judges. President appoints.
- MOJ appoints and releases assistant judges for city and county courts, considering the opinion of the corresponding chief judge.
- MOJ appoints chief judges for city, county, and administrative courts, with Supreme Court approval.
- MOJ proposes chief judges for circuit courts, with Supreme Court approval. National Assembly appoints.
- President proposes chief judge for Supreme Court. National Assembly appoints.
- Supreme Court chief judge proposes Supreme Court judges. National Assembly appoints.
- Supreme Court *en banc* elects members to its 4 chambers. Chief judge chairs Constitutional Review Chamber, while Supreme Court *en banc* elects chairs of 3 other chambers (Civil, Criminal, and Administrative).

Judicial Governance and Court Administration in Mongolia and Select European Countries

	Task	Judicial Branch	Other Agency	Executive Branch
Netherlands	Judicial selection	Appeals courts recruit their own judges, placing advertisements in the paper to announce contests. Normally an accomplished lawyer is chosen. The National Assembly nominates candidates for the Supreme Court, based on a list of 6 candidates submitted by the SC. The National Assembly narrows it to three.	Judges are recruited at junior and senior levels. New college-graduated candidates go through a competition. The top 100 are interviewed by a Selection Commission, assisted by the information Council for the Administration of Justice (CAJ). Candidates with at least 6 years experience who are practicing lawyers or professors or otherwise employed in the legal profession are evaluated and ranked by a Selection Commission.	The MOJ determines the number of vacancies and slots to be filled. The MOJ names the top-ranked junior candidates as assistant judges in training. The MOJ selects SC judges from the National Assembly's final list of 3.
	Judicial discipline	SC handles disciplinary matters		
	Judicial training		Young recruits go through 6 years of training. The first three years include theoretical courses in the Center for Judicial Studies and Training and practical internships in the courts. At the end of the 3 years, they chose to become either a procurator (prosecutor ?) or a judge. Practical training continues. Senior recruits also have 1-2 years of training. An independent body created in 1960, the Center for Judicial Studies and Training handles permanent training.	The MOJ partially finances the Center for Judicial Studies and Training.
	Judicial budget	Individual court management boards will prepare and administer their courts budget. SC will not under CAJ authority.	CAJ to have budgetary authority for the courts, and will allocate budgets to individual courts.	MOJ still involved in budget preparation, in consultation with the CAJ. Previously, individual court presidents did not have the authority to move money between line items.
	Judicial policies/ Legislation			
	Court statistics			
	Human resources management	Individual court management boards will have authority over personnel in their courts.	CAJ to establish personnel policy.	MOJ has a Department of the Courts, and all its personnel are being transferred to the new CAJ (already functioning, pending final passage of legislation this fall). Government personnel policies will apply to court personnel.

Judicial Governance and Court Administration in Mongolia and Select European Countries

Task	Judicial Branch	Other Agency	Executive Branch
Management of other resources	New legislation establishes a management board of judges and one non-judge (court manager) for each court. Assumes responsibility for the court management and administration. District courts to manage subdistrict courts. Proposed to modernize and make the courts more efficient, to be implemented as of Jan 2002.	CAJ to have operational authority over courts, and will recommend members of management boards. CAJ will be given a staff of about 100 employees, mostly from the MOJ. CAJ to be responsible for judicial cooperation, standards policy, research policy, external affairs, public services and advising the Minister of Justice, as well as developing policy guidelines for housing, security, computerization, administrative organization and public information.	MOJ currently has administrative authority over court staff. Under the new legislation, courts will no longer answer to the MOJ, just the CAJ, though the MOJ will remain politically responsible for the satisfactory function of the judicial organization as a whole. The MOJ will have the authority to demand information from the CAJ and give the CAJ general operational instructions.
Court staff training			

Judicial Governance and Court Administration in Mongolia and Select European Countries

	Task	Judicial Branch	Other Agency	Executive Branch
Bulgaria	Judicial selection		Judicial Service Commission recruits and proposes judges to Supreme Court of Cassation (SCC) and Supreme Administrative Court (SAC) presidents, and the Prosecutor General. MOJ-appointed commission (with SC, Prosecution, Barrister Council and MOJ representatives) administers theoretical and practical exam.	President can reject a candidate only once, and is bound by the Council proposal if repeated. Judicial candidates must have graduated from law school and passed a state exam. There is a one-year probationary period.
	Judicial discipline	Proceedings are instituted against judges 3+ years on the bench by court presidents one level above them (except for SAC judges, which are initiated by SAC president). Disciplinary cases heard by three-member Disciplinary Panel of the SCC. Panel empowered to acquit, impose sanctions (reprimand, denial of promotion), or recommend dismissal or demotion to JSC, whose decision can be appealed to a five-member Disciplinary Panel.	JSC promoted demotes, moves, and dismisses judges, prosecutors, and investigators. Judges with 0-3 years of service can be dismissed for disciplinary offenses and or professional inadequacies. JSC empowered to pass judgment, which can be appealed to SAC. Judges are irremovable after 3 years. JSC decides on investing of the immunity of judges, prosecutors, and investigators in cases provided by the law. JSC, on request of the Prosecutor General, may divest judges of their immunity.	MOJ may propose disciplinary proceedings, but only against regional and district court judges.
	Judicial training	Young lawyers may sit in panels with senior judges in the district court prior to being sent to regional courts on their own.	Non-governmental Legal Institute for Training and Development. Established to provide CLE for judges and other members of the Judiciary.	MOJ has primary responsibility. It holds seminars on an irregular basis that are not especially relevant to new judges. Prior to appointment, nominees must complete a MOJ-endorsed training program.
	Judicial budget		JSC submits draft budget to Council of Ministers and controls its execution. Determines salary levels within budgetary and legal framework.	
	Judicial policies/ Legislation		JSC determines number and location of court regions (except SCC and SAC), number of judges, prosecutors, and investigators.	MOJ proposes number and location of court regions (except SCC and SAC), number of judges, prosecutors, and investigators.
	Court statistics			
	Human resources management			
	Management of other resources			
Court staff training				

Relevant laws: 1994 Judicial Systems Act

Appendix 2

United States Judicial Councils and Conferences: Composition and Function

References and Resources

Annual Report of the Federal Judicial Center, 2000. Washington, DC

Commercial Law Center Foundation. *Structural and Administrative Reform in the Polish Judiciary: Report And Recommendations*. www.prawo.org.pl/clcf/commentary/reforms.html.
Warsaw, Poland. Undated.

The Constitution of Mongolia. 1992.

“European Charter on the Statute for Judges and Explanatory Memorandum.” Strasbourg, 8-10 July 1998. <http://www.richterverein.de/j2000/eurstat1.htm#.htm>

General Council of Courts. “Rules for the Administration of the Courts.” Resolution # 47, May 2000.

Government of Mongolia. Ministry of Finance and Economics. Letter, “Budget Limitation Statement” July 9, 2001.

Gramckow, H. Estimating Staffing Needs for the Justice Sector, National Center for State Courts, Arlington, VA, 2001.

Guide to the California Courts. <http://www.courtinfo.ca.gov>.

“Hungary” Constitution Watch. *East European Constitutional Review*. Volume 6, Number 2&3, 1997

“Internal Rules of the General Council of Courts.” Attachment to Order #88 of 1999, from the Minister of Justice of Mongolia.

Law on the Courts of Mongolia, 1993 (as amended).

National Center for State Courts. “The Budget Process of the Mongolian Judicial System.” September 2001.

Netherlands Ministry of Justice, Justice Budget 2002: Expansion and re-organization of the judiciary system, 18.09.01 http://www.minjust.nl:8080/c_actual/persber/pb0765.htm

Tobin, Robert W., 1999, *Creating the Judicial Branch – The Unfinished Reform*, National Center for State Courts, Williamsburg, Virginia

U.S. Department of Justice, Bureau of Justice Statistics, *State Court Organization 1998*; Washington, D.C <http://www.ojp.usdoj.gov/bjs/abstract/sco98.htm>

Utah State Courts, www.utcourts.gov

Weist, G. 1968. "Die Entwicklung der Dienstaufsicht über Richter". Deutsche Richterzeitung, Pp. 223 ff. <http://www.gewaltenteilung.de/weist.htm>

World Bank. *Global Conference on Comprehensive Legal and Judicial Development*, June 2000. Compilation of papers.

**NATIONAL CENTER FOR STATE COURTS
INTERNATIONAL PROGRAMS DIVISION**

**COURT ADMINISTRATION/JUDICIAL GOVERNANCE STUDY TOUR FOR
MONGOLIA
May 25 to June 7, 2002**

PARTICIPANT LIST

Mr. NYAMDORJ Tsend, Minister of Justice and Home Affairs, Chairman of the GCC

Mr. Nyamdorj was born in 1956 in Uvs Aimag. After graduating as a lawyer from Leningrad University, Russia in 1981, he worked in the State Prosecutor's Office until 1988. He served as first Deputy Chief of the Military General Prosecutor's Office from 1988 to 1990 and from 1990 to 1992 was First Deputy Minister of Justice. He was elected to Parliament from the Mongolian People's Revolutionary Party (MPRP) in 1992 and re-elected in 1996 and 2000. In August 2000, he became Minister of Justice and Home Affairs

With the increase in the Ministry's responsibilities, Mr. Nyamdorj has become one of the most influential ministers. He has named his priorities as 1) creating a legal environment conducive to doing business, 2) implementing human rights legislation to comply with international obligations, and 3) training and educating legal professionals.

Mr. ALTANHUYAG Mongol, Prosecutor General of Mongolia and ex officio member of the GCC

Mr. Altanhuyag was born in 1955. He graduated from the Mongolian National University as a lawyer and Master in Law. He worked as a judge from 1978 to 1979, as an Investigator and Deputy Prosecutor of the Border Troops Prosecutor's Office from 1980 to 1989, as a Prosecutor of the Umnugovi Aimag Prosecutor's Office from 1989 to 1990, as Deputy Prosecutor of the State General Prosecutor's Office from 1990 to 1993, as an advocate (private lawyer) from 1993 to 1999 and as the Prosecutor General of Mongolia from 1999 to the present.

Mr. SHARAVDORJ Tserenhuu, Member of Parliament and Chairman of the Legal Standing Committee and a member of the GCC

Mr. Sharavdorj was born in 1954 in Dornogovi Aimag. He graduated from the State University in Irkutsk, Russia in 1979 as a lawyer. He worked in several Aimags as a Judge, Deputy Chief Judge and Chief Judge from 1979 to 1989, after which he served as the Supreme Court's Court Session Secretary and Member of the Supreme Court from 1989 to 1992. Mr. Sharavdorj has been a Member of Parliament since 1992 and became Chairman of the Legal Standing Committee in July 2000. This Committee reviews all draft laws for complaints and coordination with existing laws and is responsible for draft legislation on all legal and law enforcement issues, including the Judicial Reform Strategy. Mr. Sharavdorj was appointed to the GCC by the President of Mongolia.

Mr. OYUNBAATAR Tserendash, Member of the State Ih Hural (Parliament) and a member of the GCC

Mr. Oyunbaatar was born in 1956. He graduated from the Law College of Mongolia in 1977; Ivanov University, Russia in 1984 as a lawyer, received a Master of International Business Management from the Moscow Academy of People's Economy in 1994 and was as associate professor and Candidate for Doctor's degree. He worked as a prosecutor at the

Dornogovi Aimag Prosecutor's Office from 1977 to 1979, as Deputy Prosecutor General of the Zavhan Prosecutor's Office from 1984 to 1986, as Prosecutor General of Zavhan Aimag from 1986 to 1990, as Head of the Department of the State General Prosecutor's Office from 1990 to 1992, as a lecturer at the Academy of Management from 1992 to present, as the General Director of the "Talh Chiher" Joint Stock Company from 1999 to 2000, and as a member of Parliament from 2000 to the present. Mr. Oyunbaatar was appointed by the State Ih Hural (Parliament) to serve on the GCC.

Mr. DAMIRANSUREN Munhnasan, Justice of the Supreme Court and a member of the GCC

Mr. Damiransuren was born in 1944 in Hovd Aimag. He graduated from the Mongolian Pedagogical Institute as a teacher in 1964 and from the Mongolian National University as a lawyer in 1979. He worked as a teacher in Hovd Aimag Tsetseg and Bulgan Soum (first level of administrative units) from 1964 to 1967; as Secretary of the Bulgan Soum Administration Office from 1967 to 1969; as Prosecutor of the Hovd Aimag Prosecutor's Office from 1969 to 1972; as Deputy Prosecutor of Hovd Aimag from 1972 to 1979; as a Legal Advisor at the Ministry of Defense from 1979 to 1984; as Deputy Head of the Legal Department and Head of the Monitoring Department of the Ministry of Defense from 1984 to 1985; as a Member of the Supreme Court from 1985 to 1988; as Chairman of the Special Military Tribunal from 1988 to 1993; and as a Justice of the Supreme Court of Mongolia from 1993 to the present. Mr. Damiransuren serves on the GCC as one of two judges selected from the supervisory level.

Mr. MYAGMARJAV Daram, Chief Judge of the Darhan-Uul Aimag Court and a member of the GCC

Mr. Myagmarjav was born in 1961. He graduated from the Mongolian National University in 1984 as a lawyer. He worked as a judge of the First Instance Court of Darhan city from 1984 to 1985, as Arbitrator and judge of Darhan City Court (appellate court) from 1985 to 1987, as an Instructor at the Darhan city Committee of the Mongolian People's Revolutionary Party from 1987 to 1990; as Judge and Deputy Head of the Darhan City First Instance Court from 1990 to 1993, as Judge of the Darhan City Court from 1993 to 1994, and as Chief Judge of the Darhan-Uul Aimag Court from 1994 to the present. Mr. Myagmarjav serves on the GCC as one of two judges selected from the appellate court level.

Mr. BATDELGER Sodnomdarjaa, Chief Judge of the Capital City Court of Ulaanbaatar and a member of the GCC

Mr. Batdelger was born in 1964. He graduated from the Mongolian National University in 1987 as a lawyer. He worked as a judge in the First Instance Court of Erdenet city from 1987 to 1989, as a District Court judge in Ulaanbaatar Octyabr from 1989 to 1993, as a judge in the Capital City Court from 1993 to 1999, and as Chief Judge of the Capital City Court from 1999 to the present. Mr. Batdelger serves on the GCC as one of two judges selected from the appellate level.

Ms. URANTSETSEG Togto, Chief Judge of the Ulaanbaatar Songinohairhan District Court and a member of the GCC

Ms. Urantsetseg was born in 1957. She graduated from the Irkutsk University, Russia in 1981 as a lawyer. She worked as a judge in the Suhebaatar District Court from 1981 to 1982, as an Instructor at the Supreme Court of Mongolia from 1982 to 1983, as a judge in the Capital City Court from 1983 to 1988, as Chief Judge of the Ulaanbaatar Ajilchin District Court from 1988 to 1990, as a Member (Justice) of the Supreme Court from 1990 to 1993, as Chief Judge of the Ulaanbaatar Suhebaatar District Court from 1993 to 2000, and as Chief Judge of the Ulaanbaatar Songinohairhan District Court from 2000 to the present. Ms. Urantsetseg serves on the GCC as one of two judges selected from the first instance courts.

Ms. MUNHTUYA Jambal, Chief Judge of the Tuv Aimag Inter-Soum Court and a member of the GCC

Ms. Munhtuya was born in 1961. She graduated from the Mongolian National University in 1985 as a lawyer. She worked as a prosecutor at the Dundgovi Aimag Prosecutor's Office from 1985 to 1988, as Officer in Charge for human resources at the Transportation Management Department of Tuv Aimag from 1990 to 1991, as a judge of the Tuv Aimag Inter-Soum Court from 1991 to 1999 and as Chief Judge of the Tuv Aimag Inter-Soum Court from 1999 to the present. Ms. Munhtuya serves as one of two judges selected from the first instance courts.

Mr. GANBAYAR Nanzad, Member and Secretary of the GCC

Mr. Ganbayar was born in 1953. He graduated from Irkutsk University, Russia in 1976 as a lawyer. He worked as an Instructor, Head of Division, Head of Department at the Supreme Court of Mongolia from 1976 to 1984, served as Head (Chief Judge) and General Arbitrator of the Capital City Court from 1984 to 1987, as Senior Instructor at the Central Committee of the Mongolian People's Revolutionary Party from 1987 to 1990, as Member and Chairman of the Legal Standing Committee at the State Baga Hural (Parliament) from 1990 to 1992, as the First Deputy Minister of the Ministry of Culture from 1992 to 1993, as Prosecutor General of Mongolia from 1993 to 1999, as advisor to the Minister of Justice from October 1999 to December 1999, and as the Secretary of the GCC from 2000 to the present.

Ms. Otgontsetseg Avirmed, Senior Officer of the GCC

Ms. Otgontsetseg was born in 1965. She graduated from the Mongolian National University Law Faculty in 1988 as a lawyer. She worked as a judge at the Dundgobi Aimag Court from 1988 to 1991, as a legal advisor at the National Center for Children from 1991 to 1997 and as a senior officer of the GCC from July 1997 to the present.

Facilitator:

Dr. Heike GRAMCKOW, Project Director, Mongolia Judicial Reform Program

Escort:

Ms. SUHEEMAA Dugersuren, staff member, Mongolia Judicial Reform Program

Interpreters:

Mr. Lkhagvadorj (George) Tumur
Ms. Erdenechimeg Erdene-Ochir

**MONGOLIA JUDICIAL REFORM PROGRAM
PREPARATION WORKSHOP FOR THE PARTICIPANTS OF
THE GENERAL COUNCIL OF COURTS STUDY TOUR TO THE US
MAY 25 – JUNE 8, 2002**

AGENDA

Wednesday April 24

09:00 Welcoming remarks – Robert La Mont, Chief of Party, Judicial Reform Program

09:15 – 10:00 Introduction to the goals and objectives of the study tour – Dr. Heike Gramckow, Project Director, Judicial Reform Program

During this session the participants will learn about the main goals of the study tour: 1) To introduce the members of the GCC to the US system of judicial sector governance and administration, 2) To explore how any of the information gained during the study tour can be applied to judicial sector reform in Mongolia, particularly for enhancing the structure, function and operations for the GCC. In order to set the stage for later identifying if information gained learned during the study tour can be applied to the Mongolia, situation the participants will address the following questions:

- What are the goals for the judicial system in Mongolia?
- What do these goals and the Strategic Plan mean for the GCC?

10:00 – 11:00 The US Federal and State Court System – Heike Gramckow

The purpose of this session is to provide the participants with an initial understanding of the US judicial system and the relevance of the information gained for the GCC and the judicial sector in Mongolia. During this session Dr. Gramckow will explore with the participants the following questions:

- What are the basic differences of between the Federal and state court systems?
- What are the implications of these differences for judicial governance and court administration?
- What are the benefits and draw backs of each system?
- How does this compare to court systems in other countries?
- How do we find out what applies to the Mongolia situation?

15 minute break

11:15 – 12:00 Why Utah and Colorado? – Heike Gramckow

This session will provide the participants with opportunities to develop an initial understanding of the relevance of the various entities and agencies that will be visited in Utah and Colorado. The main questions raised will be:

- Who and what are we going to see and why?
- What are the differences between the two states?

12:00 – 13:00 Expectations - Everybody

During this session ALL participants, including Dr. Gramckow, will clarify their expectations for the study tour. This session will also provide an opportunity to ask questions about the trip and logistics. The main issues to be addressed will be:

- What does all of this mean for the GCC and for me?
- What is Action Planning?
- Are we going to have any fun?
- What is going to happen next?
- Other questions
- Again, now that you know more about the study tour, what do you want to learn? (*Please complete the questionnaire provided in this package*)

13:00 Closing remarks – *Robert La Mont*

NATIONAL CENTER FOR STATE COURTS The Action Planning Process

Why Action Planning?

An action plan is a way to make sure an idea or goal is transferred into concrete steps. An action plan describes the way a group will use certain strategies to meet a goal. A number one cause for ideas and newly learned approaches not being implemented is lack of clearly defined goals and strategies. Developing an action plan is key to implementing changes.

What is Action Planning?

An action plan outlines a number of actions or changes to be brought about by a group. Setting goals and developing action plans chart where you want to go as a group or individual.

Throughout this study tour you will define one or more problem the GCC is dealing with, discuss problem causes, learn about different approaches to address these problems, generated some alternative solutions, and begin evaluating some of those alternatives.

As a group you are now ready to move into the arena of goal setting and action planning.

What does Action Planning involve?

Action Planning requires first that a problem is selected that the plan will target. It also requires that a goal to target this problem is agreed upon. This is then followed by some evaluation of what steps are need to be accomplished to achieve the a goal and some agreement about the approach that should be choosen.

An action plan should contain the following information:

- **WHY** is this action being carried out? List the goal statement as the first item on the action plan worksheet. Clearly defined goals help communicate with other group members why certain steps are being undertaken and what the group hopes to accomplish after the steps are completed.
- **WHAT** actions or critical steps (objectives) will occur? Outlining each critical step or task breaks the goal down into individual components. When the goal is broken into smaller steps, the goal becomes easier to manage. Detailing the critical steps also helps the group to plan for obstacles or barriers that might arise during each action step.
- **WHO** will carry out these steps or actions? Who will be responsible for carrying out which step? This section also refers to who should be included and who is responsible for making decisions if any decisions are required.

- WHEN will these actions take place and for how long? Groups, and people in general, tend to work more efficiently when they are given a timeframe. Placing a timeframe also helps the group to better strategize each sequence of steps to reach the completed target date.
- WHAT RESOURCES are needed to carry out the steps? Resources can include money, time, people, locations, events, etc. Resources also refer to both internal to the group and external-those resources not a part of the group but that may be required or helpful for carrying out the action step.
- WHAT OBSTACLES HAVE TO BE OVERCOME? It is important to identify what potential obstacles may hinder the implementation of each step. Steps to overcome these obstacles may have to be defined as part of the action plan to accomplish the goal selected by the group.

Developing a realistic Action Plan

Identifying what obstacles may have to be overcome is just one of the essential requirements in developing action plans that can realistically be implemented. Overall it is essential to develop a plan that is doable. The following checklist assist in identifying if a plan is doable – or, in other words, if it is “SMART”

S = Specific
M = Measurable
A = Applicable
R = Realistic
T = Time-framed

Using these indicators and considering the obstacles to check if each step is actually doable will help in developing a plan that can become reality and not just a wish.

What will happen later?

Action plans should be followed up on a regular basis. If a group wants to be accountable and get things done, following up to check progress helps keep members motivated to complete their assigned tasks. Depending on your goals, timeframes, and resources, your action plan may need some adjustment over time. It may also need to new plans.

After you agreed about a realistic action plan NCSC will follow up with you to identify how far you are progressing and if you need assistance with adjusting and implementing the steps you outlined.

ACTION PLANNING WORKSHEET

Major Goal/Objective/Outcome: _____

	TASKS/ ACTIVITIES	RESPONSIBILITY	MILESTONE/ DUE DATE	WHOM TO INVOLVE/CONTACT	BUDGET/COST CONSIDERATIONS	OBSTACLES

**GCC STUDY TOUR FOLLOW-UP
ACTION PLAN**

GOAL: The Action Plan was developed with the purpose to compare the information obtained during the study tour in US with the experiences of other countries, specificities and the legislative regulations in Mongolia, and to use this information in exploring ways, solutions accommodating the implementation of the judicial reform in Mongolia.

OBJECTIVES: In order to meet the goal 6 objectives were set based on the 3 priority issues identified during the study tour. The following are the activities planned to implement the objectives.

No	TASKS/ACTIVITIES	RESPONSIBILITY	MILESTONE/ DUE DATE	WHOM TO INVOLVE/ CONTACT	BUDGET/COST CONSIDERATIONS	OBSTACLES
Objective 1. To provide optimal, balanced workload in order to ensure the independent decision making of judges by improving the structure and organization of the court system through amendments to the relevant laws						
1.	To explore the issue of balancing the workload of first instance courts by increasing the number of judges as a result of reduced number of appellate courts (establishing of regional appellate courts)	GCC, Supreme Court	2004			
2.	To explore the issue of amending the respective laws to increase the number of cases to be heard by a single judge panel	MoJHA	2003	Supreme Court, GCC		
3.	To develop a unified information software/network for exchange of information among legal institutions	GCC, Supreme Court		MoJHA, prosecution, advocacy and police		
Objective 2. To improve the court administration by expanding the structure and organization of the administrative office and enhancing the capacity of its personnel						
1.	To review the GCC rules and procedures in order to provide a mechanism to reflect the opinions of judges in the GCC resolutions, decisions and to inform them about the decisions	GCC staff	2002			
2.	To train the GCC staff and court administrators on court administration and to include this training in the judicial training programs	GCC	starting 2002	in cooperation with JRP		
3.	To establish a department within the court administration office in charge of information, monitoring and software development and to develop job descriptions for its personnel	GCC	starting 2003	in cooperation with JRP		
4.	To review the GCC affiliation and the issue of its	MoJHA	2002			

	chair and provide accurate reflection in the legislation				
Objective 3. To establish a judicious mechanism for improved job performance evaluation techniques of judges and court personnel and improved selection process, to determine the training and staffing needs based on the evaluation, and to create an independent oversight mechanism for judicial ethics					
1.	To study and determine the current workload of judges, court personnel and to carry out the reorganization in order to balance the workload of the urban and rural courts (provide staffing justification)	GCC	2003-2004	Supreme Court, JRP	JRP assistance
2.	To create a unit within the court administration office in charge of judicial performance evaluation, to develop new evaluation procedures and train the personnel	GCC	2003	Supreme Court, JRP	
3.	To explore statutory regulations for the coordination of the selection processes for judges and other legal professionals	MoJHA	2003	GCC, Supreme Court	
4.	To review the structure and organization of the Judicial Ethics and Disciplinary Committees, to explore the issue of transforming it into an independent body that includes representatives from government agencies and the public. To provide relevant statutory provisions.	MoJHA, GCC	2002-2003	GCC, Supreme Court	JRP assistance
Objective 4. To make the judicial training a continuous training program that reflects the constantly changing legal environment, and to coordinate the judicial training with the training programs of other legal professionals					
1.	To provide statutory provisions for the mandatory hours for judges training	MoJHA	2002	GCC, Supreme Court	
2.	To define the activities (e.g. lecturing, writing, publishing, etc.) for continuous improvement of judge's professional competence and skills, to develop the relevant evaluation methods and to provide the conditions	GCC	2003	Supreme Court	JRP assistance
3.	To develop training programs for the citizen's representatives and court staff	GCC	2002	Supreme Court	Projects assistance
4.	To improve the coordination of existing retraining programs	MoJHA	2002-2004	GCC, Supreme Court	Projects assistance
Objective 5. Court budget and improvement of the working conditions and resources					
1.	To explore the issue of submitting the court budget to the legislature and the executive concurrently and providing statutory regulations for separate	MoJHA, GCC	2003	Supreme Court	

	consideration of the court budget					
Objective 6. Implementation of some practices observed during the study tour						
1.	To explore the introduction of the US PO's practice to defend and counsel government agencies	GPO	starting 2003	MoJHA		
2.	To conduct a comprehensive research on protection of victims of crime and compensation of damages, and to provide respective statutory regulations. To explore the establishing of a victim's compensation fund and the issue of its funding	MoJHA	starting 2003	CDEA	JRP assistance	
3.	To explore the issue of developing new procedures and reviewing the Law on Court Archives	MoJHA	starting 2002	GCC, Supreme Court		

ACTION PLANNING REPORT – RESULTS OF THE STUDY TOUR FOR THE MEMBERS OF THE GCC TO THE US¹

From May 25 – June 7, 2002, NCSC, as part of the Judicial Reform Program funded by USAID, conducted a study tour for the members of the General Council of Courts (GCC). The purpose was to expose the members of the GCC to the processes, policies and issues related to judicial governance and court administration in the US and to the roles each of the three branches of government play in supporting judicial independence and the functionality of the courts. The study tour brought the members to Utah and Colorado where they had the opportunity to observe the meeting of a judicial council, met with their representative counterparts from the judiciary, court administration, prosecution, executive and legislature, had opportunities to visit different level court buildings and observe a court hearing. The various visits and meetings provided ample opportunities for inquiries and discussions with the US counterparts and among the study tour members.

In addition to providing the members of the GCC with an opportunity to gain new ideas and discuss implications for judicial sector reform in Mongolia, a main goal for the study tour was to capture the information gained and transfer the new ideas into an action plan that the group members, possibly with assistance from others, could pursue further after their return to Mongolia. Throughout the study tour GCC members had opportunities to define issues and problems the GCC and the Mongolian judicial sector in general is dealing with, discuss problem causes, learn about different approaches to address these problems, generated some alternative solutions, and begin evaluating some of those alternatives. Developing an action plan at the end of this study tour is key to ensure that the ideas gained can be transferred into concrete steps. A number one cause for ideas and newly learned approaches not being implemented is lack of clearly defined goals and strategies. Developing an action plan is key to implementing changes. Setting goals and developing action plans charts a way to reform.

Action Planning Session 1: Suggested topics for action planning

The first Action Planning session was held at the end of the first week of the study tour. The purpose was to review the information gained during the various visits and meetings and identify which topics each member of the group considered important and relevant for the Mongolian judicial sector reform process. Emphasis was placed on focusing on topics that appear to be priority topics for reform and can also realistically be achieved in the near future. The recommendations below show the topics each member of the study group deemed a priority.

Topic Recommendations: Set 1. (Ts. Oyunbaatar)

1. Structure and Organization of a Judicial Council – GCC
2. CLE system
3. Selection of judges
4. Review of prosecutor's office structure

¹ The author of this report is Dr. Heike Gramckow. The issues raised and statements made are those of the author and do not reflect an official position of USAID.

5. Establishment of a Public Defender's Office
6. Use of private attorneys as part-time prosecutors, judges, public defenders
7. Enhanced communication with legislature

Topic Recommendations: Set 2. (J. Munhtuya)

1. Changing the process for selection of judges for 1st instance court
2. Establishment of regional appeals courts
3. Budget planning on all court levels and change of budget process to submit directly to legislature
4. Communications about the budget with the other branches during budget year

Topic Recommendations: Set 3. (T. Urantsetseg)

1. Increased involvement of lower level courts in GCC
2. Review process for selection of Chief Supreme Court Judge (president vs. other judges)
3. Appointment of lower court Chief Judges by GCC
4. Fines for victims fund

Topic Recommendations: Set 4. (A. Otgontsetseg)

1. Review Utah Judicial Council and AOC structures and processes to enhance the interaction between the GCC (Judicial Council) and other courts, support and input from special divisions (i.e. management and policy, technology, legislative liaison, etc.) *to study the structure and composition of the committees and sub-committees of the Judicial Council*
2. Review selection and qualification criteria for judges *to review the structure, composition, legal status of the body conducting the judicial selection*
3. Enhancing court building security and access to the courts *security of courts opposed to the openness and transparency of courts*
4. Review performance evaluations for judges *judicial performance evaluation provided by an outside entity*
5. Enhance IT development *to study the information and software development divisions of the AOC*
6. Establish independent judicial conduct commissions (i.e., Utah) *composition of an independent ethics commission*
7. Establish AOC/GCC contact with legislature
8. Establish victims fund
9. Develop information databases
10. Decentralize management of the courts *inter-relation of all the levels of courts, decentralized management.*

Topic Recommendations: Set 5. (N. Ganbayar)

1. Enhance GCC's policy development capacities and guidance for the courts
2. IT for court administration
3. More lawyers to support court administration/GCC
4. IT for courts
5. Review court budget process

6. Review judicial selection
7. Enhance accountability of the judges to the public *More public involvement and enhanced accountability mechanisms*
8. More hardware for the courts

Topic Recommendations: Set 6. (M. Damiransuren)

1. *Include representatives of advocacy in the GCC*
2. *Education policy, coordination of trainings and mandatory training for judges*
3. Enhance public accountability of judges. Establish judicial conduct commissions a la Utah to replace judicial conduct committee. *Investigation of disciplinary cases should be conducted by staff not by members of the committee.*
4. Develop training/review selection, management of citizen representatives
5. Increase single judge panel use for misdemeanors
6. Enhance working conditions for judges – support staff
7. Establish regional appellate courts
8. Increase judicial salaries
9. Ensure financial security for retired judges

Topic Recommendations: Set 7. (D. Myagmarjav)

1. Change judicial selection process – 1st term appointment followed by election for lifetime, except for Supreme Court justices.
2. Increase support staff for judges instead of number of judges
3. Increase use of one judge bench for misdemeanor, use multiple judges' bench for felonies
4. Establish regional courts – specialized judges
5. Supreme Court Chief Judges appointed by President

Topic Recommendations: Set 8. (Ts. Sharavdorj)

1. Change court budget process to direct submission to legislature
2. Establish GCC under the President's Office
3. Change Chair of GCC to be an outside member (not jud., exec., legis.) or rotation
4. Make prosecutors part of executive branch
5. Reestablish public education through judges, prosecutors going to schools etc.

Topic Recommendations: Set 9. (M. Altanhuyag)

1. Establish continuous screening of judges
2. Establish probation period (3 years) before lifetime appointment of judges
3. Establish criminal and civil jurisdiction for prosecutors' office

Topic Recommendations: Set 10. (S. Batdelger)

1. Establish regional appeals courts
2. Enhance the efficiency of AOC/GCC and staff support for judges

3. Develop *rules/procedures and/or* draft law to allow for sending court files to state archive after certain number of years (i.e., 10 years)
4. Enhance court security
5. Establish victims fund

Topic Recommendations: Set 11. (Ts. Nyamdorj)

1. *Review the composition of GCC*
2. Review procedures of the GCC, include issuance of opinions on law
3. GCC comments to the draft Law on Courts
4. Establish victims fund
5. Enhance relations between courts and public
6. Establish judicial conduct commission a la Utah *consisting only of judges*
7. Reestablish a form of the “peoples court” – small claims court

Action Planning Session 2: Setting Priorities

The second action planning session was devoted to reviewing the topics and ideas suggested for further GCC activities during the first session and to narrowing the list down to those issues that were identified as a priority topic most frequently. The purpose of this exercise was to provide a focus to develop next steps to pursue these topics upon return of the group to Mongolia. The following topics were identified most frequently:

- Review of the structure and operations of the GCC – 9 study tour members mentioned this as a priority topic
- Establishment of an independent Judicial Conduct Committee, possibly along the lines of the model applied in Utah - 8 study tour members mentioned this as a priority topic
- Exploring the possibilities of establishing regional appellate courts - 5 study tour members mentioned this as a priority topic
- Review of the judicial selection process - 5 study tour members mentioned this as a priority topic
- Review of the court budgeting process - 2 study tour members mentioned this as a priority topic
- Exploring the possibilities of increasing the number of judges and particular support staff in first instance courts by establishing regional appellate courts - 2 study tour members mentioned this as a priority topic

The following topics were mentioned once:

- Establishment of small claims courts
- Increasing the types of cases to be considered by a single judge panel
- Establishment of more accountability mechanisms in the courts
- Review of the draft law on the courts to reflect new ideas gained during the study tour

Action Planning Results

After narrowing down the initial list of issues the GCC may want to engage in, and after learning more about the various processes established in the US, the final session was devoted to establishing a realistic, doable, and measurable action plan.

Recognizing the need to address a host of issues related to judicial sector reform that require long term commitment, the study tour members decided to develop a mechanism that would allow them, in coordination with the JRP and possibly other donors and Mongolian stakeholders, to develop short-term and long term strategies for developing approaches to address the identified issues that fit the Mongolian situation. As a result, the following initial actions were proposed:

- Establish a Task Force to develop and implement the needed reform strategies over time, possibly including the establishment of sub task forces each of which would focus on certain activities. Development of a study tour report to summarize the observations and discussions to guide the development of an Action Plan to address the various issues identified during the study tour.
- Development of an Action Plan to follow-up on the study tour issues. This action plan will address, among others:
 - Court administration
 - The law on the courts
 - The law on prosecutors
 - Court archives
 - Justice courts
 - Victims fund
 - Administrative code
 - Regional courts
 - Budget process
 - Collection of information on the development of functional Bar associations

With regard to the establishment of a Task Force the following has been agreed upon:

- All GCC members support the issuance of a GCC ordinance to authorize the work of the Task Force.
- This ordinance has been drafted and will be ready to be signed next week. The initial first proposal of the task force to begin the action plan follow-up and implementation is are expected to be issued around June 20th
- The proposed members of the initial task force to steer the proposed activities are: Damiransuren, Batdelger, Ganbayar, Otgontsegtseg, and Suheemaa.
- No additional resources are needed
- No problems impeding the establishment of the task force are envisioned.

With regard to the development of the study tour report the following is proposed:

- Ganbayar will draft the study tour report
- The draft report is scheduled to be submitted to all GCC members by June 20th

- All GCC members will provide comments to the report by June 25th
- No additional resources are needed – if additional information is required, the JRP will be contacted for assistance
- No problems impeding the drafting and finalization of the report are envisioned.

With regard to the development of the Action Plan the following is proposed:

- Ganbayar will suggest an initial action plan reflecting the issues outlined in the study tour report
- The draft action plan is scheduled to be submitted to all GCC members by June 20th
- All GCC members will provide comments to the action plan by June 25th
- No additional resources are needed – if additional information is required, the JRP will be contacted for assistance
- No problems impeding the drafting and finalization of the action plan are envisioned.

Conclusion

The action planning activities of the study tour members resulted in a realistic, very thoughtful and comprehensive initial set of actions to pursue the many very important issues the group considers important to judicial sector reform in Mongolia. The group members recognized that many topics could only be addressed in the long run, and step by step. Establishing a realistic plan to address the range of topics over time is the primary goal for the work of the task force and the members of the GCC.

Agenda of the Aimag and Capital City Court Administrators' Workshop

*** Denotes evaluation form question**

5 March 2002, Tuesday

- 9.30 – 9.40 Welcoming Ceremony
- 9.40 – 10.00 Main results and future goals of the Court Administration's activities
A.Otgontsetseg, senior expert of the GCC
- 10.00 – 10.30 Present status of the staffing levels
B.Hajidmaa, senior expert of the GCC
- 10.30 – 10.45 Break
- *10.45 – 12.00 Judiciary budget and associated problems
A.Baasanjav, expert of the GCC
- 12.00 – 14.00 Lunchtime
- *14.00 – 15.00 Judiciary budget expenditure, deficit and other problems
B.Enhtuya and B. Enhbaatar experts of the GCC
- *15.00 – 15.30 Training curriculum and relations with foreign donors
H.Batsuren, expert of the GCC
- 15.30 – 16.00 Main results of the GCC activities and its future goals
N.Ganbayar, expert of the GCC
- 16.00 – 16.30 Meeting with the Chairman of the GCC Mr. Ts.Nyamdorj

6 March 2002, Wednesday

- 9.00 Leave from MOJ to Dundgovi aimag
- 13.00 Lunch (On road)
- 16.00 – 18.00 Tour to Dundgovi aimag court –Sh.Tumurbaatar, Chief Judge, Ts.Ganbat,
Court Administration.

7 March 2002, Thursday

- 8.30 – 8.40 Breakfast
- *9.00 – 13.00 Court administration and case management—pilot demonstration
F. Charlie – Court Administration Expert, Judiciary Reform Program
Zaya, GTZ—Expert Court Technology

13.00 – 14.00	Lunchtime
*14.30 – 16.30	Open discussion on court administration and technology issues
16.30 – 17.00	Closing ceremony

8 March 2002, Friday

8.00	Breakfast
9:00	Leave to UB

**The Results of the Evaluation of Dundgovi Workshop
5-7 March 2002**

30 participants responded to the following questions: The scale used is 1 to 5

1 = Poor 2 = Fair 3 = Average 4 = Good 5 = Excellent
Not at all A little Some Regularly Extensively

General reactions to conference?	1	2	3	4	5
Overall, I thought the course was:				18 60%	12 40%
The usefulness of the written materials during the course was:			2 6.7%	14 46.7%	13 43.3%
To what extent were the course objectives met?		1 3.3%		11 36.7%	17 56.7%
To what extent will you be able to apply what you learned to your work?	2 6.7%	4 13.3%	9 30%	10 33.3%	5 16.7%
To what extent did the course meet your expectations?				12 40%	16 53.3%

Reactions to Sessions (N/A = No Answer)

Judicial budget and associated problems?	N/A	1	2	3	4	5
Overall, I thought the course was:	4 13.3%	1 3.3%		2 6.7%	7 23.3%	16 53.3%
The usefulness of the written materials during the course was:	2 6.7%	1 3.3%			16 53.3%	11 36.7%
To what extent were the course objectives met?	1 3.3%	1 3.3%		2 6.7%	16 53.3%	10 33.3%
To what extent will you be able to apply what you learned to your work?		2 6.7%	7 23.3%	9 30%	7 23.3%	5 16.7%
To what extent did the course meet your expectations?	2 6.7%	1 3.3%		1 3.3%	14 46.7%	12 40%
The manner of the trainer's presentation was:	1 3.3%	1 3.3%		1 3.3%	18 60%	9 30%
The content of the trainer's presentation was:	1 3.3%	1 3.3%	1 3.3%	1 3.3%	15 50%	11 36.7%

Judicial investment and budget supplement	N/A	1	2	3	4	5
Overall, I thought the course was:	4 13.3%		1 3.3%		14 46.7%	11 36.7%
The usefulness of the written materials during the course was:	2 6.7%		2 6.7%	1 3.3%	10 33.3%	16 53.3%
To what extent were the course objectives met?	2 6.7%			1 3.3%	15 50%	12 40%
To what extent will you be able to apply what you learned to your work?	2 6.7%	2 6.7%	6 20%	7 23.3%	10 33.3%	3 10%
To what extent did the course meet your expectations?	2 6.7%	1 3.3%			11 36.7%	16 53.3%
The manner of the trainer's presentation was:	3 10%	1 3.3%			16 53.3%	10 33.3%
The content of the trainer's presentation was:	2 6.7%	1 3.3%		1 3.3%	12 40%	14 46.7%

Budget expenditure, deficit, and other issues	N/A	1	2	3	4	5
Overall, I thought the course was:	3 3.3%	1 3.3%			16 53.3%	10 33.3%
The usefulness of the written materials during the course was:	6 13.3%	1 3.3%		2 6.7%	13 33.3%	8 20.0%
To what extent were the course objectives met?	1 3.3%	1 3.3%			16 53.3%	12 40%
To what extent will you be able to apply what you learned to your work?	1 3.3%	1 3.3%	4 13.3%	8 26.7%	11 36.7%	5 16.7%
To what extent did the course meet your expectations?	2 6.7%	1 3.3%		1 3.3%	15 50%	11 36.7%
The manner of the trainer's presentation was:	2 6.7%	1 3.3%		1 3.3%	16 53.3%	10 33.3%
The content of the trainer's presentation was:	2 6.7%	1 3.3%			15 50%	12 40%

Training curriculum and relations with foreign donors by the GCC	N/A	1	2	3	4	5
Overall, I thought the course was:	4 13.3%	1 3.3%			12 40%	13 43.3%
The usefulness of the written materials during the course was:	4 13.3%	1 3.3%		2 6.7%	10 33.3%	13 43.3%
To what extent were the course objectives met?	1 3.3%	1 3.3%	1 3.3%		14 46.7%	13 43.3%
To what extent will you be able to apply what you learned to your work?	1 3.3%	2 6.7%	4 13.3%	7 23.3%	9 30%	7 23.3%
To what extent did the course meet your expectations?	2 6.7%			3 10%	15 50%	10 33.3%
The manner of the trainer's presentation was:	3 10%			1 3.3%	14 46.7%	12 40%
The content of the trainer's presentation was:	3 10%			1 3.3%	12 40%	14 46.7%

Court administration and case management training discussion	N/A	1	2	3	4	5
Overall, I thought the course was:	2 6.7%				13 43.3%	15 50%
The usefulness of the written materials during the course was:	2 6.7%			2 6.7%	10 33.3%	16 53.3%
To what extent were the course objectives met?	2 6.7%			1 3.3%	13 43.3%	14 46.7%
To what extent will you be able to apply what you learned to your work?	2 6.7%		5 16.7%	8 26.7%	11 36.7%	4 13.3%
To what extent did the course meet your expectations?	2 6.7%				16 53.3%	12 40%
The manner of the trainer's presentation was:	2 6.7%				15 50%	13 43.3%
The content of the trainer's presentation was:	2 6.7%				13 43.3%	15 50%

Pilot program demonstration and training in Dundgovi on court administration and technology	N/A	1	2	3	4	5
Overall, I thought the course was:	3 10%				11 36.7%	16 53.3%
The usefulness of the written materials during the course was:	4 13.3%			1 3.3%	10 33.3%	15 50%
To what extent were the course objectives met?	2 6.7%			1 3.3%	15 50%	12 40%
To what extent will you be able to apply what you learned to your work?	1 3.3%		5 16.7%	7 23.3%	11 36.7%	6 20%
To what extent did the course meet your expectations?	2 6.7%				10 33.3%	18 60%
The manner of the trainer's presentation was:		1 3.3%		1 3.3%	12 53.3%	16 40%
The content of the trainer's presentation was:	3 10%				10 33.3%	17 56.7%

Specific Reactions

What was the most useful part of the program? Why?

- Materials distributed during the workshop.
- Need of training for personal manager: how to choose employees and etc.
- That all aimags will eventually be connected to computer network
- Software Judge-2002 and open discussion
- Computer network at Dundgovi courts
- Useful workshop that show how a rural court should look
- Computer network
- Software and open discussion
- See with my own eyes technology at work

What was the least useful part of the program? Why?

- Nothing
- No non-useful part
- Software trainers at Prosecutor office were weak

Will you use this knowledge and skills you gained from this program in your work? If so, how?

- Will use in organization of training for Court administrators.
- Will prepare everything to join the project
- Undertake preparation steps to implement what has been learned
- Would implement but no financial resource
- Will ensure all preparation work to accept system
- Will prepare my office and staff
- Will prepare but facing financial troubles

What would you change to improve this course?

- Increase the availability of handouts.
- Increase the participation of trainees
- Limited time
- Organize such training annually in other aimags
- Limited time, increase the duration
- The workshop would be more efficient if 5 laws were taught
- Improve the discipline of participants
- Organization can be improved

Would you recommend this course to others?

- Yes
- Yes, to lecturers of high school and universities
- Yes to assistant judges and accountants
- Yes and will promote the workshop
- To assistant judges and to trial secretaries
- To my staff

The answers on all of the reasons why you attended this course are given in priority list:

1. Related to my job
2. Professional development
3. Faculty
4. Time of year
5. Location
6. Other

On question: How did you learn about this course? Most participants answered that they learned from their Supervisor and the GCC.

*** Please note that the format for the training evaluation was provided for translation and all topic areas were not included in the handout.

Suggestion for the Establishment of the National Scientific Research Training Information and Promotional Center.

The "Rule" or Charter of the Center does not indicate how the training department will be organized to develop curriculum for the various branches of the legal profession in Mongolia. This is a critical omission, because each branch has different training needs, and in fact, each branch has different existing training facilities.

To remedy this, it is suggested that a "General Training Committee" be included in the Charter with three sub-committees. The sub-committees would be 1) a sub-committee of judges, consisting of three judges elected by the General Council of the Courts from among judges. The committee would also include one nominee of the Supreme Court elected by the all members of the court; 2) a sub-committee of the procuracy, with four members nominated by the prosecutor general; and 3) a sub-committee of advocates of four members elected by the Advocates Association members. All members would have to have training experience or higher legal degrees. The Director of the National Center would be an ex officio member of each sub-committee and the Chair of the "General Training Committee."

Meeting as sub-committees, the separate sub-committees would have complete responsibility and power to set the curriculum for their respective branch of the legal profession. They would also have the power to set any training requirements applicable to all members of their respective profession.

Meeting jointly as the "General Training Committee", they would have the power to coordinate all the training under the Training Department. It would select trainers to conduct the training decided upon by the sub-committees. It would report to the other branches of the National Center on research and publication that was needed for training. It would allocate the budget for training of the National Center and solicit contributions from donors and coordinate donor technical assistance.

Donors who contribute to legal training would be invited to send observers to all meetings of the General Training Committee and sub-committees.

Respectfully submitted,

Robert C. La Mont
Chief of Party
Judicial Reform Project

Computer User Evaluation Questionnaire – Courts

The purpose of this survey was to evaluate computer usage in the pilot courts and prosecutor offices of the same jurisdictions. The survey consisted of several parts: computer, Internet, software usage, public access, and statistics.

The questionnaire was distributed to the pilot courts: Capital City Appellate Court, Songinohairkhan District Court, Dundgovi Aimag Court, Darhan Aimag Court, Omnigovi Aimag Court and to the General Council of Courts. The questionnaire was given to the prosecutor offices of the same jurisdiction, excluding Omnigovi. The JRP received and processed 79 responses from the courts and 43 from the prosecutor offices.

PART ONE

I. Computer usage in courts

The majority or 51.9% of the respondents have been working with the computers less than four months and 48.1% for more than four months. Becoming comfortable with the computer required one or two weeks for 50.6% of the respondents; three weeks for 27.8% and more than three weeks for 17.7% of the users. Within the first two weeks the majority of the users felt comfortable with the computers and 67.0% answered that they use the computers on a constant basis. Word is used by 92.4% of the respondents and 40.5% use Excel.

The computers are used for the following tasks:

- | | |
|---|--------|
| ○ Prepare correspondence | 60.7% |
| ○ Keeping track of deadlines | 43.03% |
| ○ Write judgments on individual cases | 39.2% |
| ○ Issue decision enforcement orders | 34.2% |
| ○ Prepare minutes of hearings, trials | 24.0% |
| ○ Preparing financial and written reports | 20.2% |

According to the responses, it required 20 minutes to issue a judge's order without the computer and much less time with the computer. Having computers in the courts has contributed to the speed, efficiency and accuracy of judicial decision-making as well as increase accountability, transparency, quality, effectiveness, productivity of justice.

The overwhelming majority or 84.8% of the respondents consider that the automation has reduced the workload in the court by providing access to the updated legal data and saving time. The system allows the judges and staff to monitor deadlines, improve correspondence and provide better service to the public. Overall support by the JRP for network and Internet service has been good.

- 87.3% said that the computer allowed them to work faster
- 83.5 % said that the computer improved their job performance
- 91.1 % said that the computer was useful in their job
- 63.3 % believe that computers have improved how the court is administered

II. Internet usage in courts

The 27.8% of the respondents used the Internet for limited hours and 29.1% did not use the Internet at anytime. The reasons provided for the low usage of the Internet were: the phone bill

cost in Aimags; lack of financial resources and, no time to access the Internet because judge was busy meeting with the litigants. When the respondents did log on the Internet they spent a maximum 3 hours and minimum 30 minutes. They accessed sites for professional and legal information and exchanged emails.

The Internet connection has not been widely used for communication with the GCC, Courts, and prosecutors' offices. The only 36.7% of respondents considered the Internet as useful for fulfilling job.

III. Software *JUDGE 2001*

Overall, the judicial staff is satisfied with the software *Judge 2001*.

72.1% of the respondents considered that the software is simple to use,
 73.4% believe the software to be effective in completing their work,
 72.1% found that it was easy to find the information when needed,
 73.4% agreed that the organization of information on the system screens was clear,
 60.8% thought that the system has all the functions and capabilities they expected,
 73.4% of the respondents are satisfied with the system.
 87.3% said that the court network allows them to find similar decisions of the cases previously issued.

IV. Public access in Courts

48.1% believe that the public access terminal improves court transparency and openness. The public access service in the court has had a positive affect on the judges' job and working condition.

There were several suggestions on what else the courts could do to become an open, transparent and client oriented public institution.

- Organize free legal training for public and increase mentality
- Replace all judges at all levels
- Improve the software *Judge 2001*
- Improve the relationship of the judicial staff and the public
- Have a public access terminal in all courts
- Eliminate bureaucracy in courts
- Improve public relations in courts

V. Statistics of the Courts

The occupations of the respondents were: 40.5% judges, 10.1% assistant judges, 26.6% secretaries, and 20.2% other. Respondents were 68.4% female and 31.4% male. This gender mix is the typical breakdown in gender in public institutions of Mongolia.

The age ranges of respondents:

18-24	6.3%
25-34	27.8%
35-44	41.8%
45-54	12.7%
55-65	2.5%

Computer User Evaluation Questionnaire -- Prosecutors

1. When your court was computerized? In March 2002.
2. How many months have you been working with the computer? (Please circle one)
- | | | | | |
|------|------|-------|-------|-------|
| One | Two | Three | Four | More |
| 6.7% | 1.7% | 5.0% | 11.7% | 75.0% |
3. How many weeks did it require you to become comfortable with the computer?
- | | | | |
|-------|-------|-------|-------|
| One | Two | Three | More |
| 20.0% | 20.0% | 25.0% | 35.0% |
4. How often are you using the computer for own work?
- | | | |
|------------|--------------|--------|
| Constantly | Occasionally | Rarely |
| 38.3% | 45.0% | 5.0% |
5. Which computer features do you use most frequently?
- | | |
|---------------------------------------|-------|
| <input type="radio"/> Word processing | 98.3% |
| <input type="radio"/> Excel | 28.3% |
| <input type="radio"/> E-mail | 20.0% |
| <input type="radio"/> Others | 15.0% |
6. How do you use computer and office software?
- | | |
|---|-------|
| <input type="radio"/> Write judgments on individual cases | 56.7% |
| <input type="radio"/> Issue decision enforcement orders | 43.3% |
| <input type="radio"/> Prepare correspondence | 83.3% |
| <input type="radio"/> Preparing financial and written reports | 16.7% |
| <input type="radio"/> Keeping track of deadlines | 26.7% |
7. Are you using GTZ Prosecutor 2001 software?
- | | | |
|-------|-------|-------------|
| Yes | No | Do not know |
| 18.3% | 58.3% | 16.7% |
8. Having computers in your office has contributed to the day to day work in your office?
- | | | |
|-------|----|------|
| Yes | No | N/A |
| 98.3% | 0 | 1.7% |
9. Has automation reduced your workload in the office?
- | | | |
|-------|-------|------|
| Yes | No | N/A |
| 80.0% | 10.0% | 8.3% |
10. Have you received adequate support from the General Prosecutor Office in addressing computer or Internet problems?
- | | | | |
|--------------|--------------|--------|-------|
| All the time | Occasionally | Rarely | No |
| 23.3% | 16.7% | 25.0% | 30.0% |

II. Internet usage

1. How often do you log on to Internet?

Certain day	Limited hours	Any time
13.3%	41.7%	16.7%

2. a) How much time do you spend online when you log on? 1-3 hours

b) In case of the limited hours, why?

Due to limited hours can not use it fully, Internet is not connected to network, it is separate room, therefore there is limited access, due to phone line no full time connection available.

3. What type of information are you getting through Internet? Please prioritize:

Legal and professional information, updates,

4. Is Internet useful for fulfilling your job?

Yes	No	N/A
83.3%	6.7%	16.7%

5. Does your office network allow you to do find similar decisions of the cases previously issued?

Yes	No	N/A
56.7%	26.7%	6.7%

V. Statistics

1. Please describe your position at the prosecutor office (Please circle one)

- Deputy Prosecutor 5.0%
- Senior Prosecutor 8.3%
- Supervisory Prosecutor 51.7%
- Assistant Prosecutors 10.0%
- Typist 8.3%
- Others 16.7%

2. Gender:

Male	Female
48.3%	51.7%

3. Age: 18-24

6.7%

25-34 45.0%

35-44 31.7%

45-54 13.3%

55-65 3.3%

**JRP Comments on the
Draft Law on the Courts of Mongolia**

Based on the revised draft

Below are the comments of the Mongolia Judicial Reform Project on individual sections of the draft law on the Courts. The provision of the draft code is in black and the JRP's comments are in bold red.

6.2. Administrative departments of courts shall annually choose the representatives of citizens from the names included in the electoral list according to the schedule established by the Judicial Conference.

Comments: Procedures for choosing the citizens representatives should be specified to avoid favoritism and different methods of choosing in different courts.

6.4. Rights and duties of citizens' representatives shall be defined by law.

Comments: The law should require and provide for the training of citizen representatives to perform their functions adequately and ethically.

9.1. The defendant and any persons whose rights are protected by the court shall enjoy the right to defend themselves and to

Comments: In order to avoid any misunderstanding and to ensure that the rights of every individual are protected this statute should read: The defendant and any persons whose rights are protected by the LAW shall enjoy the right to defend themselves and to

15.4. The function of providing professional guidance shall be in the forms of issuing interpretations of laws, conducting training, studying the judicial practice and writing recommendations.

Comments: There should be a strong statement that professional guidance must not apply to individual judge's decisions in individual cases. Although 16.3.3 states that this procedure shall not apply to particular cases, if a higher court judge "interprets a law" for a particular case before it is appealed, this is a form of supervision that is a violation of the independence of the lower court judge.

15.6.5 Issue official interpretations on correct application of laws except for the Constitution.

Comments: Again, it should be specified that this does not apply to individual cases.

16.4. The Capital City Court may have chambers charged with the functions of hearing different types of cases and providing professional guidance of the judges of district courts. Chambers shall be established by the Supreme Court's decision.

Comments: Once again a statement that professional guidance should not apply to individual cases should be included. The Chambers should be established by a decision of the judges of the Capital City Court.

19.4. The General budget governor shall submit to the State Great Hural the proposed next year's budget without reducing it together with the report on spending of the previous year's budget by the external auditor's conclusion.

Comments: In order to reduce the Ministry of Finance's burden to submit a balanced budget while having to submit a court budget without changes it could be alternatively considered that the courts submit their budget simultaneously to the Ministry of Finance and the Ih Hural. In either case, it should be the courts' responsibility, through the General Council of Courts, to defend their budget in the Ih Hural.

23.6 Individuals, officials, businesses and organizations within the territory of Mongolia shall comply with interpretations of the laws.

Comments: In western Civil Law traditions, such interpretations are not mandatory precedent, because they would thereby be indistinguishable from legislation and infringe on the separation of powers and the rights of legislature. In Common law countries, Supreme Court interpretations are binding, but interpretations are only made where necessary to decide actual cases, thus, such interpretations are within the powers of the courts and do not violate the separation of powers.

23.7. In case a Supreme Court interpretation contradicts to the law, the law shall prevail.

Comments: This provision does not specify who would have the power to determine if an interpretation contradicted a law. There are neither legal nor Constitutional mechanisms for making such a determination. While it is true as a theoretical matter, it creates great dangers as a practical matter. No other court has the power to determine that the Supreme Court is wrong in its interpretation of a law. No other branch of government has the power to interpret legislation. If this clause were understood by individual judges, prosecutors, advocates and even citizens as giving them the power to decide if a Supreme Court interpretation contradicted the law, and ignore it if they thought it did, legal chaos would ensue. If the Ih Hural believes that the Supreme Court's interpretation of a law is contrary to what it intended, the Ih Hural has the power to amend the law to nullify the language that the Supreme Court misinterpreted and to make the meaning clearer. For these reasons, the section should be deleted or a procedure for determining how it is determined that an interpretation contradicts the law needs to be adopted.

Article 29. Nomination of candidates to the position of a chief judge of the first and appeal instance courts

29.2. Chief Justice of the Supreme Court, Chief Judges of the Aimag and Capital City Courts may nominate candidates to the position of a chief judge of the Aimag, Capital City, Soum or Inter-soum and District courts.

Comments: The JRP had recommended that this practice be abolished since it "appears" that the nomination process is favored for those nominees put forth by the Chief Justice or Chief Judge(s). It violates the transparency of the selection process.

30.9. Qualification level and professional ability of all judges shall be assessed once per five years.

Comments: This provision should be deleted. While it is important for the qualification of new judges to be assessed, it is expensive and detrimental to judicial independence for judges already in office to be assessed at regular intervals. The law does not specify why the judges should be assessed. If they can be transferred, demoted

or fired as a result of these evaluations, they give the evaluators significant power to influence judges. Such evaluation should only come as the result of a complaint about a judge's behavior, and with the safeguards envisioned in the section on discipline. The requirement for continuing legal education every year (Article 41), combined with a well functioning disciplinary system are a far better means of ensuring the qualification of sitting judges without threatening judicial independence.

32.3. Chief Judges of the Aimag, Capital City, Soum, Inter-Soum, District and special courts shall be appointed by the President of Mongolia for a 6- year term from amongst its judges with the consent of the Chief Judge of the respective higher-level court and upon the proposal of the General Council of the Courts.

Comments: Providing for consent of the Chief Justice to the appointment of all Capital City and Aimag chief judge nominees consent, the respective higher court Chief Judge to the appointment of the remaining lower level judges diminishes the idea of merit based selection and democratic spirit of this process. Instead, the selection of Chief Judges should rest with the qualification committee of the General Council. It would be more merit based and less political than giving the power of consent to higher level judges.

35.1. The Chief Justice of the Supreme Court shall exercise the following powers in addition to those of judge:

35.1.4. nominate candidates for judges of courts of all levels;
See 29.2 comments, this provision should be deleted.

35.1.5. fill vacancies of members of the General Council and Disciplinary Committee appointed by the judges between the General Meetings of Judges;
Comments: Since the Conference only meets every three years, the Chief Justice would actually appoint all replacements. It would be more equitable to make the power of nomination subject to the approval of the General Council.

35.1.6. nominate candidates for a member of the Qualification Committee;
Comments: The power to nominate candidates for the committee should rest with all members of the General Council; the Chief Justice should not have a separate power to nominate and influence.

35.1.8. appoint and release the Head of the Judicial Research Center;
Comments: To ensure a democratic and merit based process the appointment and release should be based on qualification criteria and in concert with other Supreme Court judges.

35.2. The Chief Justice of the Supreme Court shall have a staff. The Chief Justice of the Supreme Court shall himself determine the structure and composition of its staff.

Comments: This provision should be adjusted to read: "The Chief Justice of the Supreme Court shall have a staff. The Chief Justice of the Supreme Court shall determine the structure and composition of its staff BASED ON WORKLOAD."

35.3. The Chief Justice of the Supreme Court shall render rulings on the matters pertaining to his competence.

Comments: The whole Supreme Court should be empowered to rule on its competence by majority vote, subject to law, including the competence of the Chief Justice. One person alone should not have the sole power to define his own power.

37.1. Chief Judge of the Aimag and Capital City Courts shall exercise the following powers in addition to the powers of judge:

37.1.4. request assessment of the qualification level and professional ability of a judge to the Qualification Committee;

Comments: The grounds should be specified to prevent the Chief Judge from using this power to influence individual judges under him.

Suggest adding:

37.1.6 Assign cases to individual judges and panels by a random assignment method, using procedures and equipment as defined by resolution of the General Council;

Comments: Such a provision is essential to ensuring good case management that is not only efficient but more transparent and reduces the opportunities to unduly influence the assignment process. Random assignment is a mechanism to assist Chief Judges in managing the court and reducing opportunities for corruption.

Article 38. Powers of the Chairman of the Chamber of the Capital City Court

38.1.2 Organize professional guidance of the courts and judges in the areas of adjudication of the Chamber.

Comments: Again, this provision should include a half-sentence stating that professional guidance cannot be specific to individual cases.

Article 39. Powers of the Chief Judge of the Soum, Inter-Soum and District Court

39.1. Chief Judges of the Soum, Inter-Soum, and District Courts shall exercise the following powers in addition to those of judge:

Suggest adding:

39.1.4 assign cases to individual judges and panels by a random assignment method, using procedures and equipment as defined by resolution of the General Council

Article 41. Judicial Retraining

41.1. Judges of courts of all levels shall be obligated to take a minimum of 14 days of continuing education and re-training annually.

Comments: It should be made clear that the judges will not be required to pay for their training.

Article 42. Rotation of Judges

42.1. Judges of the Aimag, Capital City, Soum or Inter-Soum and District courts may be rotated between the courts of the same level at their consent for the purposes of

acquiring experience in case adjudication, learning from others' experience, balancing the workload and optimal allocation of judges.

Comments: Some fair standard for rotation should be included. Also, if the consent of the judges is required, is it a true rotation system or just a system for voluntary transfer. If part of the reason for transfer is to keep the judges from becoming too much a part of the rural communities where they serve and thus subject to bias, a number of years should be set for their rotation out of a rural community.

Article 44. Prohibited Activities of Judges

44.1.4 receive gifts, monetary awards, illegal remuneration, loans and free or discounted services and enjoy other illegal privileges from other organizations, business entities and individuals.

Comments: In order to make this a realistic provision judges can actually comply with it has to be specified in more detail when gifts, monetary awards loans etc. can be accepted. Judges, like other individuals will receive gifts from family members and friends and should be able to get much needed loans. A clear distinction has to be made what is acceptable; possible a reporting requirement should be implemented rather than establishing an unreasonable non-acceptance standard.

Article 46. Judicial Disciplinary Committee

46.8. The Disciplinary Committee shall have its staff. The staff shall be in the structure of the Administrative Department of the Supreme Court.

Comments: It needs to be made clear that the staff is hired, fired and given work assignments by the Disciplinary Committee and not by the Supreme Court; otherwise the court could have undue influence on the disciplinary proceedings. This could be especially dangerous if the disciplinary committee has a case against a member of the Supreme Court.

Article 48. Powers of the Office of the Judicial Disciplinary Committee

48.1. The Office of the Disciplinary Committee shall have the following powers and responsibilities:

48.1.1. accept and register complaints and requests, return those that do not pertain to its jurisdiction upon reporting to the members.

Comments: It is recommended to add: "in returning a case it may recommend the appropriate action to pursue a complaint that is not within its jurisdiction";

We recommend adding:

"48.1.4 The Office of the Judicial Disciplinary Committee shall maintain a Post Office Box, a phone number with a recording, a website and an e-mail address to receive complaints. A poster explaining to the public how to make a complaint shall be posted in the public entry area of every court in Mongolia."

Article 59. Grounds for Removal of Judges

59.1 The President shall remove judges for the following reasons:

59.1.3 It has been proved that the judge has committed a criminal offence and a court judgment with respect to him/her has become final.

Comments: Only serious crimes or repeat lower level crimes should provide sufficient reason to remove a judge permanently.

61.4. The member of Government in charge of justice matters shall be Chairman of the General Council.

Comments: The Minister of Justice should not be the Chairman of the General Council because he is a member of the executive branch and his chairmanship threatens the independence of the judicial branch. It would be better if the Chairman were elected by secret ballot from among the members, or if the Chairman was chosen by rotation among all the members, possibly based on seniority.

61.6. In cases where it has been proved that a member of the General Council has committed a criminal offence and a court judgment with respect to him/her has become final, he/she has failed to adequately perform the member's duties, or has become incapable to perform them for a valid reason, the appointing body in case of appointed members, in case of judges of all levels- the General meeting of judges or between its meetings- the Chief Justice Supreme Court shall respectively decide the matter or relieving or removing them before the term.

Comments: If it has been proven that a member committed a serious criminal offense, removal should be automatic, not subject to a decision.

Article 62. Powers of the General Council

62.1. The General Council shall exercise the following powers:

62.1.3 develop the budget of the courts and deliver it to the general budget governor;

Comment: In order to enhance judicial independence and reduce the burden of the Ministry of Finance to present a balanced budget, the court budget should be submitted by the GCC directly to the Ih Hural either exclusively or parallel to submission to the Ministry of Finance.

Article 65. Powers of a Member of the General Council

65.1. Members of the General Council shall exercise the following powers:

We recommend adding:

"65.1.4 have the right to have the agenda of every meeting of the General Council one week in advance; and have the right to have the Supreme Court, the Ministry of Justice and the Office of the General Prosecutor present all statistics or information that they have that relate to any issue being considered by the General Council.

66.2. A Mongolian national with high legal education, having at least 10 years of professional experience, with judicial experience, with no criminal record shall be appointed Executive Secretary of the General Council at the Chairman's proposal.

Comment: This provision is in direct conflict with Article 62.1.10. Neither the Chairman nor the Chief Judge of the Supreme Court should have this power. It should

be solely a matter for majority vote by the General Council, and any member should be free to nominate anyone with the required experience.

67.2. General Meeting of Judges shall be held once each three years with the participation of all judges of Mongolia. The Chief Justice of the Supreme Court shall be Chairman of the General Meeting of Judges.

Comment: It is impossible to function as a “management body” if the Conference only meets once every three years. If the Conference is to serve in this capacity then there should be annual meetings. Overall, the purpose, roles and responsibilities of the General Meeting of Judges and the Judicial Conference (Article 68) versus that of the General Council of Courts need to be clarified.

67.3. General Meeting of Judges shall exercise the following powers:

67.3.6. make proposals to improve the legislation; [suggest adding] “and resolutions of the GCC.”

67.3.7. such other powers as afforded by the legislation.

Suggest adding:

The General Meeting has the power to question the GCC on the budget and auditor’s report.

Article 70. Powers of the Head of the Administrative Department of the Supreme Court

70.1. The Head of the Administrative Department of the Supreme Court shall exercise the following powers:

We suggest adding:

70.1.4 supervise Supreme Court support staff

70.3.5. The Chief Justice or Judges of the Supreme Court shall not replace the Head of the Administrative Department.

Comments: While it is important to ensure that the judges cannot replace the head of the administrative department for political reasons, so mechanism for replacement for non-performance have to be in place.

Article 73. Office of the Disciplinary Committee

73.1. Office of the Disciplinary Committee shall organizationally be in the structure of the Administrative Department of the Supreme Court.

Comments: It should be clarified that the Supreme Court does not vote on disciplinary matters or controls the staffing of the Disciplinary Committee.

Article 77. Establishing pension to judges

77.4. For the purpose of creating the fund equal to 80% of the salary specified in paragraph 1 above the premium to be paid by the employer shall be paid monthly from the court budget in the amount commensurate with the above percentage. The General Council shall establish the rules for creating the fund.

Comment: Creating and funding retirement accounts is an extremely complicated area. Misadministration can hurt many of people and discredit the government. Creation of such a fund should be with the assistance of financial advisors, possibly from Mongol Bank or the Ministry of Finance.

Article 79. Political Rights of Judge

79.5. A judge shall be released from his office if he/she becomes a candidate for any political office.

Comment: While it is important that acting judges are neither campaigning for election nor in political office, opinion about allowing the to resume judicial after loosing an election are divided. In many countries, the right to express ones political opinion through running for a political office is considered a fundamental right that should not be restricted by exposing potential candidates to the risk of loosing their chosen occupation in the long run.

**Concept paper:
The new provisions in the Law of the Courts related to the reduced number of Supreme Court judges¹**

The new Law on the Courts establishes that the number of Supreme Court judges should be 11, a reduction by 5 from the previous 16. This provision has raised a number of questions from various bodies. The main issues are:

1. How to objectively establish the adequate number of judges for the Supreme Court; and
2. How to reduce the number of judges for the Supreme Court
3. How to select judges for a restructured court

This concept paper provides a short assessment of the current Mongolian laws regulating these questions and international standards and experiences that could be considered in this process.

1. How to objectively establish the adequate number of judges for the Supreme Court

According to the recent Law of on the Courts applicable until September 1, 2002, Art. 5.1 the State Ikh Hural is responsible for establishing, modifying, and dissolving courts based on recommendations of the General Council of Courts (GCC) made upon consultation with the Supreme Court. If courts lower than the Supreme Court are impacted, the Aimag and Capital City Governors would have to be consulted, too. Art. 44.1.1 of the recent Law on the Courts provides the GCC with the authority to submit to the State Ikh Hural proposals on the location, establishing, modifying and dissolving courts, except the Supreme Court, upon consultation with the officials of relevant organizations.

Therefore, the Ikh Hural has the power to adjust the number of Supreme Court judges using recommendations of the GCC and in consultation with the Supreme Court. As in any other country the legislature has the right to re-structuring the court system when it considers that it is in the public interest to do so. The law does not explicitly state what the basis is for establishing or adjusting the number of judges in any court. Art. 1.1 of the recent Law on the Courts only states that the purpose of this law is to establish the basic principles of judicial structure and organization and to regulate the interactions ensuring the independence of the judiciary. Judicial independence therefore is one of these basic principles that need to guide decisions related to the structure and organization of the courts. While not explicitly mentioned, functionality of the courts and cost-effectiveness are other basic principles (Art. 48.1 the State ensures economic guarantees of the courts' activities).

The ability of a court to function well is in part driven by how well it is staffed with judges and support staff. The ability to of a judge to work effectively is driven by the amount of work that needs to be done. That is, the number of cases, the time it takes to appropriately handle these cases, the amount of other work to be done by the judges and the time it takes to handle this other work has to be taken into consideration. The caseload alone is not a good indicator for estimating the number of judges needed in a particular court. Different types of cases require different amount of time to process and other work (i.e., interpretation of laws) needs to be considered, too. In order to identify how many judges are needed for a court, information about caseload, processing time by case types, other workload and time requirements need to be collected and analyzed. Such workload studies are the basis for deciding how many judges are needed in many countries, such as the US and Germany. The JRP is currently working with the GCC and the Supreme Court to develop the capacity to collect and analyze such information.

¹ The authors of this paper are Dr. Heike Gramckow and Robert LaMont. The paper was developed under the USAID funded Mongolia Judicial Reform Project. The statements are those of the authors and do not represent an official opinion of USAID.

Based on the caseload data provided by the Supreme Court, reports by independent observers of Supreme Court activities, and in comparison to other countries, it appears as if a reduction in the number of judges on the Supreme Court would be cost-effective without impeding the Supreme Courts ability to function. The question of how many judges are appropriate should be based on a more solid assessment of the overall workload.

2. How to reduced number of judges for the Supreme Court

Judges' entitlement to hold judicial office until they reach retirement or are removed in conformity with the relevant constitutional other legal provisions does not preclude the legislature from re-structuring the court system when it considers that it is in the public interest to do so. The freedom of a legislature lawfully to put in place an improved or more effective court system should not be impaired. Still the question remains how a reduction of the number of judges on the Supreme Court can be accomplished in compliance with the Constitution and other laws without damaging Judicial Independence.

Mongolia is not the first country to deal with this difficult issue. Court structures have to be reorganized to establish a more effective court system as society's demands on the court system change and as the financial situation of a country requires. Twice in the history of the United States the Congress has reduced the number of Supreme Court Justices² under its power to reorganize the judiciary. Since Congress has no power to remove individual judges, the only method available to decrease the number of judges was through attrition; that is waiting for the death or retirement of incumbent judges and not replacing them.

Similarly, higher-level courts in Great Britain and Australia have been abolished and replaced by new structures. No doubt, when a court re-structuring takes place there is an understandable desire on the part of the executive to appoint to the new court judges of the highest caliber. Politicians naturally seek to ensure that the new court will be well received and there is a legitimate public interest in appointing to it judges of the highest caliber. There is therefore a tension between that public interest and the public interest in protecting judicial independence (Mason 1997).

International practice has been that that tension is resolved in favor of judicial independence. For example, a comparable situation was faced in Australia in 1976 when the Federal Court of Australia was established. A somewhat different approach than the one chosen in the US was used. The new court took over the jurisdiction of the Australian Industrial Court and the Federal Court of Bankruptcy. The statute authorizing the restructuring provided that the old courts would be abolished upon a specified day "being a day on which no person holds office as a judge of" that court. Although only some of the judges of the Australian Industrial Court were appointed to the Federal Court, all of the judges of the two old courts retained judicial office with the title, rank and entitlements of that office. This approach to the re-structuring problem was consistent with reasonable respect for judicial independence. The judges of the old courts were appointed to the new court or, if not, they continued in their existing judicial office, retaining their rank, title and other entitlements (Mason 1977).

From this we see that in Common Law countries there is a precedent for a practice in the reorganization of courts. The practice is (1) that the judge of the old court would be appointed to a new court created to replace the old court or to a court of the same status; and (2) that if such an appointment were not available, the old court would not be abolished until its judges cease to hold office and in the meantime the judges would be entitled to the emoluments and entitlements of the old office, notwithstanding that the jurisdiction of the old court is transferred to the new court.

² The Judiciary Act of 1801, 2 Stat. 89 and the Reorganization of the Judicial Circuits, 14 Stat. 209.

The Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region supports this assessment. Article 29 provides —

"The abolition of the court of which a judge is a member must not be accepted as a reason or an occasion for the removal of a judge. Where a court is abolished or re-structured, all existing members of the court must be re-appointed to its replacement or appointed to another judicial office of equivalent status or tenure. Members of the court for whom no alternative position can be found must be fully compensated."

3. How to select judges for a restructured court

While the Australian approach mentioned above provides a solution to reducing the number of judges on a court quickly, it is costly and raises another question: How can the judges for the restructured court be selected without impeding judicial independence or violating other constitutional rights and legal provisions. Using the re-structuring of a court as an occasion for sidelining a judges based on reservations about their capacity and performance, is inconsistent with the protection of judicial independence and with the purposes sought to be achieved by the terms of judicial appointment (Mason 1997).

Based on their own experiences with abolishing and restructuring courts, and in an effort to protect judicial independence, the Australian legislature developed and adopted a set of rules for this process:

- The abolition or restructuring of a court should not be used to remove the holder of a judicial office unless the removal procedures applying to that office are followed;
- Legislation to change the structure and jurisdiction of a court should, if possible, refrain from abolishing the court;
- When a court is abolished and re-structured, all existing members of the court should be re-appointed to its replacement; and
- When a court is abolished and not replaced, compensation should be paid to the members who have lost their positions and for whom no alternative position can be found (see Mason 1997).

These rules were, however, developed for replacing tribunals, the lowest level of courts, not a high level court like the Mongolian Supreme Court.

The constitutions of the major European countries even forbid the transfer of a judge to another position. For example, Article 97(2) of the German Basic Law (Constitution) forbids interference with judicial independence, which is in practical effect equivalent to dismissal. Thus, it is a violation of Art. 97(2) to exclude a judge, who is considered to be unsatisfactory, from judicial work. If the judge is considered to be unsuitable, the only procedure that can be taken against him is that provided for in the German Judicial Statute.

Among transitional countries, Georgia has gone furthest in reorganizing its judiciary. There, after the passage of a new Civil and Criminal Code, all judges were tested on the new codes, *except Supreme Court Justices*, and only those who passed were reappointed to office. The Supreme Court was specifically exempted from the requirement to be tested.

What all this means is that there is no international standard that would support the removal of the current Supreme Court judges to allow for restructuring unless an alternative judicial position of equal rank can be found or compensation made. Attrition is clearly the method that provides the most protection to judicial independence.

If the decision is nevertheless made that the lower number of Supreme Court judges has to be achieved faster than by attrition through retirement and death any judges not selected should still remain at their current rank and be entitled to the same privileges and salary as their remaining colleagues.

In developing a process to restructure the Supreme Court in Mongolia it is highly important to recognize, that unless the independence of the judiciary is preserved, a significant risk exists that interference with the independence of judges will eventually contribute to the erosion of the concept of judicial independence and further impede the trust of the public in the courts and other government institutions.

In any procedure to reduce the number of Justice of the Supreme Court it is critical that the methods be open and transparent so that the judiciary and the public are confident that political interference and favoritism played no role. The reduction of the number of Justices poses a significant danger to Judicial Independence by itself. Unless conducted with absolute fairness in a process where nothing is hidden, the damage to Judicial Independence could be far greater than any advantage achieved in efficiency.

For further reading:

Kutler, Stanley I. "Congress and the Supreme Court: The Game of Numbers and Circuits." In *Judicial Power and Reconstruction Politics*. (Chicago: The University of Chicago Press, 1968), 48-63.

Sir Anthony Mason. The Appointment and Removal of Judges. In: *Fragile Bastion. Judicial Independence in the Nineties*. Judicial Commission of New South Wales. 1997.

Michael Kirby. Ronald Wilson Lecture 1994 "Abolition of Courts and Non-Reappointment of Judicial Officers", delivered on 28 November 1994, published in (1995) 12 *Australian Bar Review* 181

Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region, 19 August 1995, art 30 published in (1996) 70 *Australian Law Journal*, 299 at 301-302.

NATIONAL CENTER FOR STATE COURTS

Comments on the
DRAFT LAW ON THE PROSECUTOR'S OFFICE OF MONGOLIA¹

Submitted by the Mongolia Judicial Reform Program²
April 5, 2002

General Comments: The revisions of a number of major Mongolian laws, namely the criminal law, the criminal procedures law, the civil law and the civil procedures law, and the administrative law require that the law of the Prosecutor's Office of Mongolia be adjusted accordingly. At the same time, the law on the courts of Mongolia has to undergo similar adjustments which will also impact the operations of the prosecutor's office. As a result all the changes and proposed adjustments to the Law of the Prosecutor's should be viewed in concert with the changes introduced and proposed.

The quite substantial changes to the substantive laws that have been passed by the Ih Hural in the fall of 2001 introduce many new legal concepts and require significant organizational and operational changes in the prosecutor's office. These changes are a big challenge and require changes in resource allocations. At the same time they also provide an opportunity to review the current organization, operations and policies of the prosecutor's office and identify areas where improvements can be made that should be reflected in the Law on the Prosecutor's office.

Overall, the Law on the Prosecutor's office should be guided by the following basic principles:

- Ensuring and supporting the independence of the office
- Being in compliance with international standards
- Procedures and decisions support the rule of law
- Office operations are efficient and cost effective
- Operations and decisions are ethical and professional

These principles are reflected in the comments provided for this draft law. If accepted they also need to be reflected in office policies and procedures, and training. It is recommended that the Prosecutor General considers establishing a guiding mission and operational objectives for the office that support efficient and democratic operations.

The following section provides recommendations and comments for the current Draft Law of the Court. The provided Draft Provisions are presented in bold. Articles for which no recommendations or comments are provided are not listed. Comments and recommendations are shown in italics.

¹ It is important to note that these comments are based on an unofficial translation of one of the drafts prepared for the Ih Hural. The difficulties inherent to translation the very specific legal terminology can contribute to occasional misinterpretations.

² The Mongolia Judicial Reform Program is a program administered by the National Center for State Courts, funded under a cooperative agreement with USAID. The opinions expressed within this document are those of the author and do not reflect official statement by USAID.

CHAPTER 1 GENERAL PROVISIONS

Article 2. Prosecutor's office

The prosecutor's office is an authority that acts on behalf of the State with the purpose of ensuring the implementation of the criminal legislation and participates in the administration of justice in the territory of Mongolia.

Comments: Art. 2, as stated in this draft, does not reflect the scope of responsibilities of the office nor does it reflect the independent nature of the office. The article should be amended to reflect all responsibilities of the office in accordance with the recently changed criminal and civil procedures law. In order to reflect the independent nature of the office this article could be amended to state: "The prosecutor's office is an independent authority..." or even more strongly: "The prosecutor's office is an independent authority that acts on behalf of the people ...".

Article 4. Basic principles of organization and activities of the prosecutor's office

The organization and activities of the prosecutor's office shall be based upon the principles of centralized administration, impartiality and uniform implementation of law.

Comments: Again, this article should reflect the independent nature of the office. A statement that the office activities are in compliance with the rule of law is further recommended. In addition, it may be considered to provide for limited variation in prosecution policies to reflect regional differences. The latter would allow the office to consider differences in the local legal culture (i.e., local judges do or do not follow prosecutorial recommendations for punishment) and societal variations in acceptance of punishment levels (i.e. acceptance of non-prison alternatives, perception of severity of non-violent crimes).

A revised Art. 4 could read: "The organization and activities of the prosecutor's office shall support the independent nature of the office and shall be based on the principles of centralized administration, impartiality, uniform implementation of the

Article 5. Centralized administration

1. The principle of centralized administration shall be realized by means of the following:

- 1) Decisions of the higher-level prosecutors shall be binding on the prosecutors at the lower levels. The decisions of the former shall be in conformity with law;

Comments: In order to ensure that prosecutor' decisions throughout Mongolia are applied uniformly, possibly with some limited discretion to allow for local difference it is recommended that the second sentence of Art. 5(1)(1) is adjusted as follows: "The decisions of the former shall be in conformity with the law and office policies."

- 3) unless otherwise provided for in law, the higher- level prosecutors may delegate some of their powers to those of the lower- level;

Comments: *Again, in order to support uniform decision making, Art. 5(1)(3) should be adjusted to read "Unless otherwise provided for in law or in office policies, the higher- level prosecutors may delegate some of their powers to those of the lower- level."*

- 4) higher- level prosecutors may revoke, alter or withdraw unlawful or unfounded decisions of the lower- level prosecutors;

Comments: *Article 5(1)(4) should only apply to non-trial situations. Decisions made by prosecutors during the trial establish a court record that, in compliance with international standards and the Mongolian criminal and civil procedures code, can only be appealed but not changed. More importantly, the appeals process to correct faulty prosecutorial decisions is an open process the involved parties and the public can participate in and follow. Assuring that court records are reliable and changes to the decision's made in court follow the rules established by law is essential to the rule of law and to ensuring that all parties and the public understand the process. The current practice of supervisory review of decisions made in court should only result in appeals procedures. The current practice of supervisory revocation is not in compliance with international standards or the rule of law and undermines the trust of the public in the process. (The same is true for the supervisory review of court decisions by higher courts)*

- 5) higher-level prosecutors shall dispose complaints on actions and decisions of the lower- level prosecutors.

Comments: *Considering the significant implications of such actions it should be clearly stated that such actions have to follow established policies and rules.*

2. The provisions of paragraph 1 above shall not apply to the evaluation of the evidence of a particular case by prosecutors by their conscience.

Comment: *The translated version of Art. 5(2) does not assure that these decisions, too, are made in compliance with the law and office policies.*

Article 6. Impartiality

1. While performing their powers prosecutors shall act impartially and be guided exclusively by law, decisions of the Prosecutor-General issued in conformity therewith and ethical norms of prosecutors.

Comments: *The proposed addition of the term "ethical norms of prosecutors" to Art. 6(1) is essential to professional, ethical prosecutorial operations throughout Mongolia and should be accepted as proposed in this draft.*

2. Organs, organizations, and citizens may not interfere in the actions of prosecutors or exert pressure on them.

Comments: *This statute is essential to ensure the independence of the prosecutor's office and key to enhancing the public's trust in court operations. At the same time it should also be made clear that this regulation does not relate to interventions that are legally possible. It is recommended that the terminology in this article is further strengthened to read "No organ, organization, or citizen shall interfere with the actions of the prosecutor's office in any form that impedes prosecutorial operations or influences prosecutorial decisions, unless authorized by law."*

Article 7. Uniform implementation of law

While performing their powers prosecutors shall, irrespective of the local, institutional or branch partialities ensure the uniform implementation of the law within their powers.

Comments: *The content of Art. 7 are already covered in Art. 4 and could be handled as a subsection there. As mentioned there, it should be considered to allow for local variation in prosecutorial functions and discretion according to policies established by the Prosecutor General and the relevant Aimag Prosecutor.*

Article 8. System of the prosecutor's office

1. The prosecutor's office shall consist of:
 - 1) the Prosecutor -General's Office;
 - 2) the aimag and Capital city prosecutor's offices; and
 - 3) soum, inter-soum, and district prosecutor's offices.
2. The State Ih Hural shall establish prosecutor's offices taking into consideration the work needs, size of population and territory. A specialized prosecutor's office may be established according to the special character of supervision upon the request of the Prosecutor-General.
3. The prosecutor's offices shall be divided into organizational units and offices according to particular areas of activities.

Comments: *Any and all decisions about staffing and the establishment of operational units of general and special jurisdiction should not only be based on the need for expertise but based on workload and decided in a manner to assure access to justice and cost effective operations.*

4. **There shall be counsels with advisory status under the Prosecutor-General, the Capital city, aimag, district and specialized prosecutor's offices to advice on the matters pertaining to their competence.**

Comments: *The addition of this position to the various prosecutorial units is very laudable but the current draft regulation does not clearly state what the authorities and scope of work of these counsels will be. Most importantly it needs to be clarified a) that these counsels need to follow established policies b) it needs to be established how the recommendations of the counsel has to be*

followed, if it is binding or which hierarchy of interpretation of the law, policies and procedures is established.

Article 8(a)(new). Investigation Office under the Prosecutor -General's Office

1. The Investigation Office shall be established and its head appointed by the Prosecutor -General's decision.
2. The Investigation Office shall consist of the head, senior investigator(s) and investigators.
3. The Prosecutor-General shall approve the Regulations of the Investigation Office.
4. The Investigation Office shall investigate cases according to the jurisdiction determined by the Code of Criminal Procedure.
5. The Investigation Office shall be independent in terms of administrative management, business affairs, finances and personnel.

Comments: *Art. 8a(5), in the translation, reads as if the investigation office would be independent instead of separate form the other office operations. This office should be separate, meaning its staff should operate separately from the rest of the office to ensure the integrity of their work and to avoid conflicts of interest. At the same time, the staff of this office needs to follow the overall rules and regulations established for the office. The wording of this Art. does not implicate if only investigate personnel is assigned to this office or of prosecutors will be part of the team. The latter would be the recommended constellation. Independent of the decisions if prosecutors are part of the Investigation Office or not, clear regulations have to be established for the assignment of cases developed by the Investigation office and the interaction between investigators and prosecutors.*

Article 9. The Prosecutor-General and his deputies

- 4) In case the Prosecutor-General or his deputy is being prosecuted for a criminal offense the President may suspend his powers on the basis of an opinion or decision of a competent authority.

Comment: *It should be clearly stated that this decision follow previously established rules that take the circumstance and severity of the violation in account.*

5. The powers of the Prosecutor-General and of his deputy may be terminated by the President's decision before the end of the term in the following cases:

- 1) the health condition or another good reason prevents him/her from performing his/her powers;
- 2) he/she is appointed or elected to another job at his/her own consent;
- 3) he/she has applied to resign;
- 4) it has been proved that he/she has committed a criminal offense in which respect a court judgment has become final.

Comment: *It should be clarified that Art. 9(5)(1) only applies if the condition/other reason continues for a certain period of time. In relation to Art.*

9(5)(4) policies should be established that outline alternatives to termination in cases of one-time minor violations (i.e. traffic violations).

CHAPTER 2 POWERS OF PROSECUTORS

Comment: *This entire section should be reviewed to combine related regulation into the relevant Articles. The Articles currently presented in this draft include too much duplication. This duplication can not only be confusing to the prosecutors who have to apply these regulations but can lead to misinterpretations and conflicting applications.*

Article 10. Prosecutor's supervision over inquiry in the criminal cases

Prosecutor shall supervise the following proceedings:

- 1) whether the procedures of accepting and reviewing complaints and reports about crimes received by the inquiry authorities are in compliance with the law;
- 2) whether inquiry is conducted in compliance with the grounds and procedures determined in the Code of Criminal Procedure;
- 3) whether the criminal law is applied correctly in inquiry in criminal cases.

Comments: *Art. 10 should establish at which point in the proceedings the prosecutor should provide these supervisory functions (i.e. retrospective review, review at a certain stage, after a certain amount of time has passed). This is particularly important in view of the consequences that result from this supervision. These consequences also have to be clarified.*

Article 10(b) (new). Supervision over administrative inquiry

Prosecutor shall supervise the following proceedings:

- 1) whether administrative inquiry conducted by the competent administrative agencies is in compliance with the law;
- 2) whether the administrative restraint, custody and temporary apprehension procedures are carried out in compliance with the law.

Comment: *The translation of the proposed new Art. 10 b is unclear as to which proceedings it refers to. It is unclear if this particular article refers to search, seizure, arrest, detention and other measures needed to secure evidence and apprehend violators in criminal matters, in administrative matters or if this is related to commitment procedures for those deemed in need of supervision as a result of incompetence. If procedures that involve detention in any form are included here, the supervisory decision would also be subject to judicial review. Clarification is needed before recommendations can be made.*

Article 11. Supervision over investigation in criminal cases

Prosecutor shall supervise:

- 1) whether the procedures of accepting and reviewing complaints and reports about serious and grave crimes and those specifically mentioned in the law received by the investigation agencies are in compliance with the law;
- 2) whether investigation is conducted in the grounds and procedures determined in the Code of Criminal Procedure;
- 3) whether the criminal law is applied correctly.

Comment: Again, it is essential that it is clarified at which point in the process the prosecutor conducts these activities, how he/she relates to the police officer conducting the investigation and what the consequences are of approval/disapproval of investigative activities.

Article 11(b) (new). Supervision over intelligence actions

1. Prosecutor shall give authorizations to conduct intelligence actions.
2. Prosecutor shall exercise supervision over receiving, registering, processing, reviewing and evaluating information by way of intelligence actions.
3. Prosecutor's powers with respect to supervision over intelligence actions shall be determined by law.

Comment: The translation is unclear as to which activities would be defined as intelligence actions versus inquiries or investigations.

Article 12. Supervision over the service of punishment

Prosecutor shall supervise the following:

- 1) whether service of imprisonment, incarceration and other types of punishment is executed on the grounds and procedures determined in the law;
- 2) whether service of imprisonment and incarceration is executed in accordance with the conditions and regiment determined in the law;
- 3) whether other measures of criminal liability are applied in the grounds and procedures determined in the law;
- 4) whether the legitimate rights of convicts are observed;
- 5) whether detention of the convicts sentenced to death and execution of the death penalty are carried out as provided by the especially established conditions and procedures in the law.

Comment: Art. 12 should state clearly when prosecutors should conduct these activities and how they should be conducted.

Art. 12 (2) should be amended to read "whether other measures of criminal liability are applied in the grounds and procedures determined in the law and international standards provided by treaties to which Mongolia has subscribed."

Art. 12(5) If Mongolia wants to adhere to international human right standards the death penalty should no longer be implemented. Considering that the death penalty

is a cruel and unusual punishment that is deemed a human rights violation by the international community and the fact that the threat of the death penalty has no scientifically proven impact on rates of crime and violence in any country the abolition of the death penalty would be an important step in democratizing the justice system in Mongolia.

Article 12. Supervision over actions to implement the decisions to sober-up, arrest and take into custody

Prosecutor shall supervise the following:

- 1) Whether the legitimate rights and freedoms of the persons concerned are observed in the course of implementing the decisions to sober-up, arrest in the administrative procedure and to temporarily apprehend;
- 2) Whether the actions to implement the decisions to sober-up, arrest in the administrative procedure and to temporarily apprehend are in compliance with the conditions and procedures determined in law.

Comment: *As already state under Art. 10, both regulations should be combined into one.*

Article 13. Participation in court proceedings

1. Prosecutor shall participate in court proceedings as the public accuser on behalf of the State.

Public accuser shall, being guided by his/her conscience and based on sufficient evidence of the case, perform the task of proving the defendant's guilt before the court.

Comments: *Art. 13 may be more accurately titled "Participation in criminal court proceedings". In order to stress the independence of the office and its adherence to the law it is recommended that Article 13(1) be reworded to state: "Prosecutors shall participate in criminal court proceedings to seek justice on behalf of the people." It is also insufficient to base the prosecutors' decisions upon their conscience; they have to be in compliance with the law and office policies.*

2. Where the public accuser deems that the defendant's guilt has not been proved in the course of trial, he/she shall withdraw accusation.

Comment: *If the recommendation under Art. 13(1) is followed the term public accuser should be replaced with prosecutor in Art. 13(2). It should be clearly stated that the withdrawal of this decision has to be based upon the law and follow established procedures.*

3. Prosecutor shall file an appeal protest on the first instance court judgments. In the instance where prosecutor deems the first instance court made a serious violation of the criminal procedure law or incorrectly applied the criminal law, the prosecutor shall file a protest with the revision instance court.

If the prosecutor deems the judge in his/her ruling to return the case to investigation or the second instance court made a serious violation of the criminal procedure law or incorrectly applied the criminal law in the course of considering the case, he/she shall file a protest with the revision instance court.

Comment: The decision to file an appeal or revision request has to be based on the grounds and procedures established in the relevant procedural code. In addition, these decisions should follow office policies (i.e. the Prosecutor General may establish a policy that low level violations of certain types of crimes should not be appealed unless specific circumstance are present) and, in cases where a law applied is deemed unconstitutional proceedings for Constitutional Court review should be followed.

4. Prosecutor shall give an opinion to the court on the grounds determined in the Code of Criminal Procedure.

Comment: The translation of Art. 13(4) is unclear about the timing, content and purpose of this opinion.

Article 13(b)(new). Participation of prosecutor in court hearings in the civil cases

1. Prosecutor shall participate as a party in the court hearings in the civil cases at the request of the government organs.

Comment: The translation of Art. 13b(1) is not clear. This article should state that "Prosecutors participate as a party in civil cases according to the civil procedure law. This can involve civil and administrative cases in which the government has the right to be a party." Otherwise it would mean that the government could request the involvement of the prosecutor in any civil cases that do not involve the government as a party.

2. The government organ that has requested prosecutor's participation as a party in the court hearings in a civil case shall be responsible for fully furnishing the evidence required for considering the case.

3. Prosecutor shall have the power to require and obtain the evidence from the concerned organ for the purpose of participation in the court hearings.

4. In case of prosecutor's participation as a party in the court hearings in a civil case at the request of a government organ no power of attorney of the plaintiff or defendant shall be required.

5. If the requesting organ fails to furnish the evidence in the civil case or the prosecutor deems the request as having no valid legal ground he/she may refuse to participate in the court hearings.

Comment: All of these proceedings should follow detailed proceedings and policies established by the Prosecutor General and disseminated to the relevant agencies to avoid misunderstanding. This is particularly important in relation to Art. 13(5) where it cannot be up to the discretion of the individual prosecutor to decide if representation in the case should be refused.

Article 14. Prosecutor's powers

Comments: These regulations should be reviewed and, where possible, combined with Art. 10, 11, and 13. All of the procedures conducted by prosecutors according to Art. 14 require more detailed policies that guide the decisions of each prosecutor.

1. Prosecutor shall exercise the following powers with respect to the supervision over inquiry and investigation:

1) to supervise whether the procedures of accepting and reviewing complaints and reports about crimes and institution of the criminal cases are in compliance with the law;

Comment: The same is already state in Art. 10(1).

2) where deemed necessary, to participate in person in the inquiry and investigation actions, acquaint himself/herself with the criminal case record, write commissions to review the case or to perform certain actions;

3) to give approvals to seize items of importance in the case, perform search, arrest property, arrest and seize items sent by post and telegraph, perform examination thereof, perform exhumation, refer to the psychiatric hospital the suspect or accused who has not been detained, provide public information on records of the case, suspend performance of one's official duties, restrict the right to dispose property;

4) to review the legal ground of the measures of restraint and other measures of procedural coercion;

5) in cases of serious violation of law in the course of inquiry or investigation or personal interest in the case, as well as of incapability to properly conduct inquiry or investigation, to dispose the requests to disqualify the inquirer or investigator and transfer the case to another inquirer or investigator;

6) to revoke or alter unlawful or unfounded decisions of inquiries and investigators, file protests on the orders and decrees of the management of the inquiry or investigation agency;

7) to obtain without compensation from any organ and official the information, data and documents which are essential for the inquiry, investigation or supervision, explanations and statements from the officials and individuals, summon them;

8) in cases of revealing the signs of a crime in the course of supervision, to institute a criminal case and refer it according to the jurisdiction;

9) to determine the jurisdiction of the criminal cases;

10) to review inquiry and investigation proceedings, to take steps to eliminate the violations revealed in the course of reviewing cases and materials;

11) to dispose complaints made with respect to the actions and decisions of inquiries and investigators;

12) to enter freely the arrest and detention centers at any time, to meet individually with the detainees and release immediately the illegally detained persons or those being detained longer than the term specified in the law or the court decision;

13) to extend the term of the cases under inquiry and investigation;

14) to present suggestions to revoke or modify the term of detention or investigation under detention of the suspects, to arrest and to revoke decisions to this effect to the court;

15) to refuse to institute, dismiss, suspend and re- institute the criminal cases, refer the cases to the court.

2. In cases where the prosecutor deems the victim's, witness' testimony or opinion of an expert witness doubtful, or the inquiry or investigation has not been conducted in the grounds and procedures established by law, he/she shall perform review actions.

3. The procedures for exercise of the powers specified in paragraphs 1 and 2 above shall be determined by the Code of Criminal Procedure and other acts of legislation.

4. With respect to the supervision over the service of punishment, prosecutor shall exercise the following powers:

1) to require from the court to deliver the sentencing judgment within the period set in the Code of Criminal Procedure;

2) to enter freely the places of imprisonment, arrest and the service of punishment, acquaint himself/herself with the decrees, decisions and documents that served as the basis for the service of punishment, meet in person with the convicts, and where necessary, obtain explanations, take statements;

3) to inspect and review the state of the service of punishment, take steps to eliminate the violations revealed, give tasks;

4) in the cases specifically mentioned in the law on execution of the court decisions to render conclusions, appoint expert witnesses;

5) to review the conditions and regiment of arrest and service of sentence, immediately release the illegally confined or convicted;

6) to review the conformity with the law of the decrees and decisions of the competent authorities concerning the execution of punishments conforms to the law, and to file protests against unlawful decrees and decisions.

5. Prosecutor's powers with respect to the participation in court proceedings and the procedures for exercise thereof shall be established by law.

Article 14(b)(new). Prosecutor's duties

Prosecutors shall have the following duties:

- 1. fulfill the duties assigned by the law in connection with the exercise of the functions of supervision over inquiry, investigation, service of punishment and participation in the court trial on behalf of the state;**
- 2. obey the orders, instructions and regulations issued by the Prosecutor-General in conformity with law;**
- 3. observe the ethical norms of civil servants and prosecutors;**
- 4. respect rights, freedoms, honor and dignity, legitimate rights and interests of individuals;**
- 5. preserve the secrets of the state, organization or private secrets of individuals learnt in connection with his/her official duties and those entrusted to him/her;**
- 6. fulfill the duties assigned by the law on crime prevention and other laws and acts of legislation.**

Article 15. Powers of the Prosecutor-General

- 5) write opinions to the full session of the Supreme Court if he/she deems the decision in the case considered in the revision stage of the Supreme Court is not consistent with law;**
- 6) participate in hearings of the Supreme Court on behalf of the State;**
- 7) distribute the budget approved by the State Ih Hural and establish in accordance with the organizational structure and staff number of the prosecutor's offices;**
- 8) submit to the President suggestions concerning the appointment and relief of his/her deputies;**
- 9) appoint, release, reward, and dismiss the subordinated prosecutors;**

Comments: *Decisions related to Art. 15(8) and (9) should follow established criteria and issued with explanations that are subject to review of the parties involved.*

- 12) review the regulations and instructions of the inquiry, investigation and service of punishment agencies that restrict individual rights and freedoms against their conformity with the law, give approvals on them. Approvals shall be given in the form of signing on the reviewed regulation.**

Article 16. Relationship with the State Ih Hural

2. The Prosecutor-General may request the State Ih Hural to interpret the Constitution on the matters pertaining to the powers of the prosecutor's office.

Comment: Constitutional interpretations are generally the responsibility of the Constitutional Court. In order to maintain the separation of power, Art. 16(2) should be reworded to reflect the authority of the Constitutional Court. In addition, a sentence could be added to authorize the Prosecutor General to request clarification from the State Ih Hural regarding the intent and meaning of legislation passed according to the drafters and the legislators as a whole.

Article 20. Transfer of issues to the Supreme Court

In cases where violations of law or of the rights and freedoms of individuals are established in the course of performance of his/her duties, the Prosecutor-General shall transfer them to the Supreme Court.

Comments: These proceedings need to be clarified in more detailed guidelines.

CHAPTER 3 LEGAL MEANS OF PROSECUTOR SUPERVISION

Article 22. Prosecutor's protest

1. Prosecutor shall file protests to the respective or the higher-level official to revoke or correct the unlawful decisions of the inquiry, investigation and service of punishment agencies concerning their respective activities. The decision against which the protest is filed shall be suspended until the final decision with respect to the protest is rendered.

Comment: The translation of Art. 22(1) implies that the decision against which a protest is filed is suspended until a decision about the protest is made. While it is essential that the protested decision be suspended in some instances (i.e. punishment related decisions) it is not very practical with regard to other decisions that would fall under this category, such as seizure of evidence. It should be considered to reword Art. 22(1) to allow for some flexibility as requested by the prosecutor filing the protest to request either temporary suspension of the decision or temporary suspension of the effect of the decisions. The request of the prosecutor should be guided by clear office policies.

2. A prosecutor's protest shall be disposed within 14 days from its receipt. In case the official who receives the protest refuses to comply with it, the prosecutor shall seek its revocation in a court.

Comment: In order to assure that the prosecutors protest results in timely responses from the official the protest has been directed at this Art. should be amended to require immediate filing of the request for revocation in court.

3. The court shall consider and decide on a prosecutor's request according to the rules established by the procedural law; the prosecutor shall be exempt from the trial expenses.

Comment: *Again, in order to assure that this statute is effective it is essential that a time limit is set for the court decision.*

Article 23. Prosecutor's demands

1. Prosecutors shall, within their competence, make demands to cease unlawful actions and to eliminate its causes and circumstances affecting them.
2. Organizations and officials who receive the prosecutor's demand shall take measures to eliminate the violations, their reasons and circumstances within the fixed period of time and give an official response.

Comment: *The way Art. 23 is currently worded, according to the translation, does not outline the circumstance under that would require a response under Art. 23(1). The translation of Art. 23(1) currently reads as if prosecutors should require seizing unlawful actions from agencies instead of filing complaints or criminal actions. Clarification needs to be provided as to which type of situations this Article would apply.*

Article 24. Prosecutor's resolution

While supervising the inquiry, investigation and service of punishment and exercising the powers afforded to them by law, prosecutors shall issue resolutions in order to decide particular matters within their competence.

Comment: *This Article, too, should be revised to include more specific language to provide guidance to prosecutors as to the purpose and type of resolutions to be issued. Without more specificity this article is almost meaningless, does not provide guidance to prosecutors and could be eliminated.*

Article 25. Prosecutor's commission

Prosecutors shall give to the inquirers and investigators written commissions regarding the observance and correct application of law in the course of inquiry and investigation and the measures for conducting it completely and timely. The rules for appeal to the higher-level prosecutor in case of non-acceptance of the commission shall be established by the procedural law.

Comment: *In the translation this Article is unclear since it appears as if there is no appeal to a higher-level prosecutor in the criminal procedures code.*

Article 26. Prosecutor's approval

1. Prosecutors shall give written **approvals to carry out** actions affecting the rights and freedoms of the individuals, privacy of citizens and their families and the inviolability of house and property.
2. **Approvals** shall be given in the form of signing on the decisions of the officials carrying out actions specified in paragraph 1 above.

Comments: *This Article has to be revised to state more clearly in which type of procedures this approval is required (criminal, civil, administrative). More importantly, this Article should include a mandatory time limit for requesting the prosecutor's approval and for the provision of this approval by the prosecutor, and, it should be laid that what the consequences are if the prosecutor does not give approval.*

Article 27. Prosecutor's suit

Prosecutors shall file suits in court on behalf of the State.

Comments: *Again, as stated previously, the prosecutor, as an employee of an independent agency within a democratic system acts as the representative of the people in criminal cases, and as the representative of the state in administrative and civil cases where the state is a party to the case. This Article should be revised accordingly.*

Article 28. Fulfilling the prosecutor's decisions

1. Decisions of prosecutors rendered on the grounds and rules established by law are binding on the organizations, officials and citizens.

Comments: *Following the doctrine of separation of powers no decision by a prosecutor can be ultimately binding on courts or the legislature. This Article has to be more detailed to outline when a prosecutor's decision is binding. It appears that any decision issued by a prosecutor is cause to judicial/constitutional review and this Article should be revised accordingly.*

2. Complaints concerning a prosecutor's decision shall be made with the respective higher- level prosecutor; however, failure to fulfill it for the reasons not specified in the law shall serve as the ground for liability.

Comment: *The translation of Art. 28(2) is unclear as to the power of the higher-level prosecutor and the process to involve him/her. In addition, the second part of Art. 28(2) is completely unclear in this translation.*

Article 28 (b)(new). Reviewing the prosecutor's decisions by a higher- level prosecutor

1. Review of the decisions by the lower-level prosecutors rendered in line with exercise of their powers shall be obligatory in the following cases:

- 1) a request by an inquirer, investigator or a defense counsel;
- 2) a request or complaint of an organization or an individual;
- 3) prosecutor has decided to dismiss or suspend a case in a serious or grave crime;
- 4) cases in which prosecutor has conducted a review action;
- 5) a decision in the case in which the higher-level prosecutor has given a commission;
- 6) prosecutor's conclusions concerning release of the convict ahead of the term of the sentence and release from the sentence due to illness;
- 7) the ground for withdrawal of the accusation by the prosecutor in the trial;

- 8) the basis of charging an accused with respect to whom the court has rendered an acquittal judgment;
- 9) at own initiative if he/she deems it necessary.

Comments: In the current translation it is unclear what the consequences of the review of a higher level prosecutor are. This is particularly important in relation to no. 7 and 8 since here actions that have happened during a trial are reviewed. If the review finds the decision faulty and a change in the outcome of the trial is thought, it should be assured that the revision of the court decision is thought only according to the established appeals process. It may also be helpful to establish, for all review decisions, at what time the review should occur. In addition, random reviews of prosecutorial decisions on all levels should be conducted on a regular basis to ensure that decisions are in line with office policies and to identify if diversions from office policies and guidelines that are less than marginal are a result of misunderstanding and that additional clarification of the policies and guidelines or additional training are required.

2. The higher-level prosecutors shall have the power to revoke and alter the lower-level prosecutor's groundless decisions; withdraw his/her demands and protests.

Comments: It is essential to clarify the conditions under which decisions of higher-level prosecutors change decisions of lower-level prosecutors and how these interactions are documented.

CHAPTER 4 GUARANTEES OF PROSECUTOR'S ACTIVITIES

Article 29. Political guarantees

1. It shall be prohibited for political parties, unions, coalitions and movements to operate within the prosecutor's offices.
2. Prosecutors shall enjoy the right to join professional and other organizations for the purposes of protecting their legitimate interests and enhancing their qualification.
3. While enjoying freedom of opinion, speech, association, press, conscience and religion, prosecutors shall respect their office.
4. In case a prosecutor becomes a candidate in political elections his/her position shall be suspended.

Article 30. Economic and social guarantees

1. Expenses of the prosecutor's office shall be financed from the state budget and the State shall ensure economic guarantees of its activities.
2. The State Ih Hural shall establish the budget of the prosecutor's office at the Prosecutor-General's suggestion and include it specifically in the state annual budget. Budget of the prosecutor's office should meet the requirements of conducting its activities independently.

Comments: *It may be considered to establish that the budget request be based on a needs assessment that outlines the budget requirements to cover standard operations of the office, budget requirements for capital improvement and special equipment purchases, and budget requirements for special initiatives, such as new training development or the establishment of new operations.*

3. Unless otherwise provided in law, it shall be prohibited to release, dismiss or transfer prosecutors to another position or job without their consent.

Comment: *In order to provide for some flexibility to address staffing needs in certain areas it should be considered to allow for temporary transfers to provide back-up support when a staff shortage in a certain area cannot be filled immediately.*

4. **Prosecutor's salary shall consist of the position salary, extra pays for the length of service, special conditions of the service, ranks and for scientific degree. The State Ih Hural shall establish the amounts of the position salary and extra pays.**

Comment: *It may be helpful to establish a basis for the establishment of salaries and extra pay levels by the Ih Hural, such as comparison to other government employees in similar ranks.*

5. State administrative bodies shall assist the prosecutor's offices by all means in creating conditions to operate independently by providing them with buildings, necessary equipment, transport, technical facilities and accommodation for the employees.

6. In cases of a temporarily loss of the working ability or disability of a prosecutor in the course of performing his/her duties, the State shall pay the difference between the salary and disability pension or a sick leave allowance, and in cases where an orthopedic is required, for the relevant expenses.

7. In case a prosecutor loses his/her life while performing his/her official duties or in connection with their performance, his/her family shall be paid a gratuity in the amount of 3 years salary.

8. Pensions, expenses, and gratuity specified in paragraphs 6 and 7 above shall be paid from the State budget and the damage shall be indemnified by the persons responsible in the cases specified in the law.

9. **Prosecutors shall enjoy the guarantees, compensation, benefits and rewards of the civil servants granted by the Civil Service Law.**

10. **Females who have worked as prosecutor for at least 25 years and males who have worked as prosecutor for at least 30 years shall be entitled to a retirement pension irrespective of their age.**

Comment: *It is unclear why a difference between man and women is made regarding the time of service to qualify for this entitlement. In order to avoid the creation of a*

discriminating statute it may be considered to establish the same period of service for both male and female employees but providing for a reduction of the service time requirement for child rearing or other reasons.

11. Prosecutors shall be paid a lump-sum allowance equal to up to 36 amounts of monthly salary at the time of retirement, based on the length of service, working conditions, performance and professional skills. The Prosecutor-General shall establish the rules for paying the allowance.

12. Basic annual vacation of prosecutors shall be 21 working days. Every 5 years of working as prosecutor shall entitle to 3 days of additional vacation.

13. The respective local administrative body shall provide a prosecutor with a separate housing within 6 months out of turn, or provide funds to purchase such in the first instance to be reimbursed from the state budget.

Comments: The request for government housing is based on a significant need and the limited salary levels of prosecutors. However, it appears in this translation as if those who would receive funds to purchase housing would become the owners of the property which would provide them with significantly greater benefits than those who would only have access to government housing. Such a significant benefit does not appear to be justified, particularly considering the significant financial burden this would place on the government. The provision of housing, rent support, as well as government collateral to purchase housing that would have to be repaid to some extent appear more reasonable.

14. Prosecutors shall enjoy a 50% relieve from the personal income tax and receive salary free from the health and social insurance premiums.

15. When performing their official duties Prosecutors shall use the public transport (except for taxi) for free.

Comments: In order to ensure that this privilege is not abused for private purposes a system to control the use for official duties should be established. Such a system could consist of a range of mechanisms depending on the type of public transportation involved. For example, for less frequent plane rides prosecutors may be required to present a letter of authorization with the specific data and destination, or all purchases of any public transportation ticket could be handled by the office.

Article 31. Legal guarantees

1. Prosecutors may not be apprehended, detained, arrested or their houses, means of transport, offices or persons searched or violated without the permission of the Prosecutor-General; with respect to the deputies to Prosecutor-General- without permission of the President respectively, with the exception of the cases of arresting them in act or at the crime scene with the evidence.

Article 32. Other guarantees

1. Prosecutors may not simultaneously have other occupations or hold other positions which do not pertain to their duties assigned by law. However, they may engage in the teaching and research works.
2. Prosecutors shall be entitled to use means of self-defense in order to avert a threat of encroachment upon their life, health and property.
3. Prosecutors shall be exempt from mobilizations and the military service.

Article 33. Liability for disrespect for prosecutors

Disrespect for prosecutors shall be punishable as provided in the law.

Comments: This Art., as translated needs more clarification. It should be made clear that this regulation only applies to the times when the prosecutor is conducting his work. The law referred to here should be specified.

CHAPTER 5 PERSONNEL OF THE PROSECUTOR'S OFFICE

Article 34. Prosecutor

1. Citizens of Mongolia who have high legal education, attained 23 years of age, passed the selection procedure and have no criminal record shall be appointed prosecutors. Persons to be appointed shall have worked as a prosecutor's assistant for 2 years.
2. A citizen of Mongolia who has at least 10 years experience in the legal profession and has attained 35 years of age shall be appointed as the Prosecutor-General or his deputy.
3. Citizens of Mongolia who has at least 5 years experience in legal profession shall be appointed as the aimag or capital city prosecutors.

Article 34. Prosecutor's oath

1. When being appointed prosecutors shall take the following oath:

"I swear to highly respect and abide by the Constitution and other laws of Mongolia, respect human rights and freedoms, deeply respect the principles of centralized administration of the prosecutor's office, impartiality, uniform application of law, truly and fairly perform the functions of the civil service, observe the prosecutor's ethics and uphold its reputation. In case of breaking the oath I shall be subject to the liability provided in law."

2. The President of Mongolia shall establish the ceremonial procedure for taking the prosecutor's oath.

Article 35. Prosecutor's positions

1. There shall be the Prosecutor-General, Deputies and Assistants to the Prosecutor-General and prosecutors in the Prosecutor-General's Office. Assistant Prosecutor-General may head organizational units and offices.

2. There shall be the Aimag and Capital city Prosecutor, Deputy and Prosecutors in the aimag and capital city prosecutor's offices. **The composition of the prosecutor's positions of the specialized shall be same as that of the aimag and capital city prosecutor's offices.**

Article 37. Examination of the prosecutors' qualification and performance

1. A non-staff qualification council headed by the Prosecutor-General Prosecutors shall give examination of the prosecutors' performance and professional level.

2. The President shall approve the composition and rules of procedure of the qualification council.

Comments: *The translation is unclear weather this examination is conducted only for hiring prosecutors or also for promoting prosecutors. It is recommended that for both decisions a combination of examination results and prior performance be applied.*

Article 39. Disciplinary sanctions

1. The following disciplinary sanctions shall be imposed on the prosecutors who have breached the law or internal regulations of the prosecutor's office or failed to fulfill their official duties, by the decree of the Prosecutor-General Prosecutors according to the character and gravity of the breach:

- 1) reprimand;
- 2) demotion;
- 3) dismissal.

4. Revocation or altering of the prosecutor's decision at his/her fault shall serve as the ground for a disciplinary sanction.

5. The President shall approve the disciplinary rules of prosecutors.

6. If a prosecutor deems the decision to impose a disciplinary sanction not valid, he/she shall appeal within 1 month since learning about the respective decision to:

1) in case of the sanction imposed by an aimag or the Capital city prosecutors- to the Prosecutor-General;

2) in case of the sanction imposed by the Prosecutor-General - to the court respectively.

Comments: *The translation implies that the needed detail for implementing this Article is provided in disciplinary rules. It is assumed that these rules are reviewed to reflect the changes included in this law. In particular these rules should provide for mechanism to allow for rectification of honest*

mistakes without disciplinary actions, require that prosecutors are sufficiently trained to act according to the rules.

Article 40. Training of the Prosecutor personnel

The Government shall handle the matters of the training and re- training of prosecutors.

Comments: Considering the independent nature of the prosecutors' office, the responsibility for training and re-training prosecutors should rest with the prosecutors office. Adequate funding for training should be provided out of the state budget.

Article 41. Personnel of the prosecutor's office

1. There shall be assisting personnel in the Prosecutor-General's Office, aimag, Capital city, district and specialized prosecutor's offices to assist in performing the prosecutor's functions.

2. The Prosecutor-General shall establish the regulation on employment of the assisting personnel.

3. There shall be administrative and technical personnel in the Prosecutor's Office to ensure its normal functioning.

Article 41. International relations of the prosecutor's office

1. The Prosecutor-General's Office within the scope of its functions shall have international relations, such as direct communication with the similar organs of other countries and international professional organizations, entering into agreements on legal assistance or on combat of crime, participating in developing of the international or inter-governmental agreements.

Comment: The ability of the Prosecutor's Office to engage with international counterparts is essential to enhance the offices operations in accordance with international standards and to fulfill requirements resulting from international treaties. Entering into agreements with other countries regarding legal assistance and to combat crime appears, however, outside the legal authority of the office. Such acts are usually the responsibility and domain of the Ministry of Foreign affairs.

**CHAPTER 6
MISCELLANEOUS**

Article 44. Archive of criminal cases

1. There shall be a national archive of criminal cases at the Prosecutor-General's Office, and its branches in the prosecutor's offices other than the soum or inter-soum prosecutor's offices.

2. Archive of criminal cases shall work as provided in the archives legislation and the regulations established by the Prosecutor-General.

MONGOLIA JUDICIAL REFORM PROGRAM
NATIONAL CENTER FOR STATE COURTS

ESTABLISHING A CONTINUING EDUCATION PROGRAM
FOR LEGAL PROFESSIONALS IN MONGOLIA¹

1. Executive Summary

The quality of justice in any nation ultimately depends on the quality of its judges and other legal professionals. Maintaining professional competence requires ongoing education of judges, prosecutors, and other lawyers in the application of the law, democratic legal principles, and the art of judging, prosecuting, and advocacy.

Continuing Legal Education (CLE) is key making the courts and other judicial sector agencies more effective and respected providers of justice. To achieve such change, CLE must go beyond the traditional boundaries of providing information, teaching only legal rules. It must be concerned with the personal development of judges, prosecutors, and other lawyers, as well as institutional reform.

This concept paper presents a framework for building a successful CLE model for Mongolian judges, prosecutors, and advocates. The model includes the basic elements of CLE as well as approaches to organizing, managing, and administering a CLE system. The framework reflects three fundamental principles:

1. *The educational model must be practical and realistic.* Given current and projected political and economic realities, the model must have a reasonable chance of being supported and implemented by the key Mongolian stakeholders. These include the Ministry of Justice and Home Affairs (MoJHA), the General Council of Courts (GCC), the courts, the Prosecutor General's Office (PGO), and advocates organizations.
2. *The educational model must support and encourage the development of legal institutions which themselves support a democratic form of government and free market economy.* This means an independent judiciary and prosecution free of influences from the executive branch. It means an Advocates Bar whose members recognize that their first allegiance is to the rule of law, including the ethics of their profession, and their second to the protection of their clients' rights and interests.
3. *The educational model must be sustainable.* The relevant Mongolian institutions must be able to support at least a basic CLE infrastructure without outside support. It is neither cost-effective nor financially responsible to develop and implement a complicated and expensive model that may provide training to the legal profession for a few years but will ultimately collapse without substantial, continuous donor support.

This concept paper reflects international best practices and outlines principles and options for establishing CLE in Mongolia. In developing the model and a strategy for implementation, the Mongolia Judicial Reform Project (JRP) assessed the current status of CLE in Mongolia, what the

¹ The authors of this report are Heike P. Gramckow, Ph.D. and Charles Ericksen. This report was funded by USAID under the Mongolia Judicial Reform Program. The opinions expressed here those of the authors and do not reflect an official opinion of USAID.

needs and challenges are, and alternatives to meet them. The assessment was based on a series of formal and informal surveys and interviews with representatives of all legal professions, providers of training for judges and other lawyers, and donor organizations.² Overall, the assessment indicated that CLE in Mongolia is currently in its infancy. There is a range of decent training programs offered to legal professionals, primarily supported by foreign donors. However, a systematic approach to CLE is lacking. As a result, access to quality CLE varies significantly by profession and region.³ Even those who received training often lack basic skills for handling the types of cases with which they are confronted.⁴ Related issues are the absence of a standard qualification test and the lack of regulation of participation in CLE, leaving legal institutions with no mechanism to gauge the quality of candidates for various positions, and providing practicing lawyers with few incentives to remain up-to-date and advance their legal knowledge and skills. Yet another issue is sustainability of the current donor-supported training.

The JRP also reviewed experiences in other countries to identify helpful insights in developing a good CLE model for Mongolia. This review shows that:

- The international trend is towards establishing more structured, increasingly mandatory CLE.
- Only a few countries employ a mandatory system for CLE for all legal professionals.
- To date, no country has developed a well-structured, centralized CLE system for all legal professionals.

Mongolia will benefit from establishing a solid CLE system for all legal professionals, but the development of such a system is an ambitious undertaking requiring careful planning and coordination among all stakeholders. This concept paper outlines the six elements of a CLE model and suggests planning and implementation strategies. The six elements are:

- A conceptual education design, including the structural framework
- A specific curriculum for each professional group, reflecting different roles and responsibilities at various career stages and in different regions, as well as the need for groups to co-function in the same system
- A faculty development and retention plan
- Adult teaching methods, technologies, and practical teaching materials that address the needs of legal professionals throughout Mongolia
- Administrative structures and resources that support the efficient and effective provision of CLE to all legal professionals
- Sustainable funding mechanisms that provide access by all legal professionals at least to basic CLE

The principal recommendations include:

1. Establish a CLE Commission, comprised of representatives of all key legal institutions and other relevant stakeholders, to establish a vision, overall goals, guiding principles, and

² The results of the formal survey the JRP conducted in May 2001 with a representative sample of judges, prosecutors, and other legal professionals are reported in: *Judicial Sector Baseline and Needs Assessment: Survey Findings*.

³ For example, the survey results indicated that over 90% of all judges participated in CLE type courses over the past year but only x % of all prosecutors had the chance to benefit from such training.

⁴ X % of all judges and x% of all prosecutors surveyed indicated that they were lacking the skills to handle the cases that had come before them in the past year.

governance for CLE in Mongolia. Establish CLE Commission sub-committees for each legal professional branch and define sub-committee roles and responsibilities.

2. The CLE Commission, in concert with other stakeholders, should ensure that the overall concept and design for CLE in Mongolia include centralized and decentralized training, specialized and general training, the establishment of mandatory minimum requirements, and links between CLE and a merit career and promotion system.
3. Identify trainers for all CLE blocks, focus training resources on developing an ongoing train-the-trainers capacity and comprehensive materials, and establish a system of incentives to retain good trainers.
4. Establish CLE Commission sub-committees for each legal professional branch to develop curricula that offer basic, intermediate, and advanced level courses, including interdisciplinary training, and mechanisms to administer this training.
4. Coordinate with international donors to create sustainable in-house training capacity for courses for new judges, prosecutors, and other lawyers; develop strategies to transfer funding responsibilities for basic courses for all legal professionals to the relevant Mongolian authorities; identify priorities for focusing donor activities on capacity building and special topic courses; and develop annual training plans based on funding availability.

2. Developing a CLE Model for Mongolia

Establishing a CLE model includes developing six key elements:

1. A conceptual education program design, including the structural framework
2. A specific curriculum for each professional group, reflecting different roles and responsibilities at various career stages and in different regions, as well as the need for groups to co-function in the same system
3. A faculty development and retention plan
4. Adult teaching methods, technologies, and practical teaching materials that reflect the needs of legal professionals throughout Mongolia
5. Administrative structures and resources that support the efficient and effective provision of CLE to all legal professionals throughout Mongolia
6. Sustainable funding mechanisms that ensure access by all legal professionals to at least basic CLE requirements

Clearly, the administration of such a model can only benefit from the support of a central facility, such as the one currently planned in Mongolia with support of the World Bank. This facility can serve as a clearinghouse for training information exchange, to coordinate training efforts among various entities and professions, and to share resources and reduce administrative responsibilities. However, the proposed CLE model is not dependent on a central facility. It can be created and implemented effectively using existing resources, including classrooms and administrative offices. Chapter 3 addresses issues associated with the role of the planned central facility in Mongolia's CLE program.

The following sections outline how the six elements can be developed, considering both the current and projected situation in Mongolia. They reflect the need not only for greater financial sustainability, but also for sustainable training capacity within the courts and other legal institutions.

2.1 Element One: Developing the conceptual education program design and structural framework for all legal professions

This element establishes the overall parameters that guide a CLE program. It requires:

- Establishing a vision, overall goals, and guiding principles for CLE in Mongolia
- Defining an overall structure and determining who should be responsible for the continuing education of the various legal professions
- Assessing the knowledge and skills entry-level lawyers bring to the job and what they need to learn at the beginning of their careers
- Identifying the legal knowledge and skills needed for various positions as lawyers advance through their careers
- Considering what type of qualification system needs to be developed

This section provides guidance for meeting these requirements by analyzing four key issues:

1. Considerations in defining the concept and structure
2. Entry-level qualifications of legal professionals
3. Practical training to become a judge or prosecutor
4. Considerations in defining the CLE framework

2.1.1 Considerations in defining the CLE concept and structure

Vision, goals, and principles

The first step in developing a CLE program is to define what the program should accomplish in the long run. Envisioning the ultimate result, setting the goals, and establishing the underlying principles for CLE set the parameters for planning and developing a functional model. For example, if the ultimate vision is a CLE system that supports a democratic society, the goals, objectives, and ultimately the training courses will look quite different from those associated with a more limited vision of a CLE system that simply enables legal professionals to handle cases efficiently.

Similarly, if the vision is an educational model that supports democratic values, a corresponding goal would be that lawyers uphold those democratic values. This means that Mongolia's judges and prosecutors have to be trained to act and make decisions that reflect the basic values and principles of a democratic judicial system. Education for practicing lawyers needs to include courses that teach practical skills in applying the law according to these values.

In a democratic free market society that is committed to judicial sector independence, each legal profession enjoys various degrees of autonomy that reflect relative roles and the balance of power. These autonomies not only carry with them certain privileges and rights guaranteed by the Constitution and other laws, but also translate into responsibilities. For example, the independence of the judicial sector (which in some countries, including Mongolia, includes not only the courts but the PGO)⁵ is essential to balance the power of the executive and legislative

⁵ It may appear that the Constitutionally guaranteed independence of the PGO is a remnant of its previous role in the Soviet-style legal system. It is, however, actually structured in the tradition of southern European civil law systems, particularly those of Portugal and Spain, where an independent national level

branches. To avoid undue influence from the other branches, this independence translates into the privilege to determine CLE requirements and conditions for the judicial branch. This privilege, however, brings with it the responsibility of this branch to carry some of the burden of designing, planning, maintaining a CLE program.

Similarly, as in other democratic countries, Mongolia's Constitutional rights to free choice of profession and private enterprise (Art. 14, no. 4) provide private lawyers and their representative organizations with both autonomies and responsibilities related to CLE. While the government has the right to establish qualification requirements for all legal professions, these requirements cannot be so restrictive or burdensome that they pose undue barriers to fulfilling the requirements or unduly interfere with private enterprise. At the same time, the freedom of the private sector from government interference comes at a price. Even if government-imposed CLE requirements for private attorneys are low, the funding of CLE courses may be primarily the responsibility of the private sector. Generally, the higher the government's requirements, the more responsibility the government takes for funding CLE.

These kinds of issues require an inclusive process for establishing the vision, goals, and principles, and for developing and maintaining the CLE program. The establishment of a functional, systematic CLE program for all legal professionals requires a certain level of agreement among the affected professions about the main purpose of CLE and its core requirements. Stakeholders participate in developing the vision, goals, and guiding principles and, in various ways, in developing and implementing a CLE model. This is a process of balance and negotiation.

Governance structure

The design and implementation of a CLE model are generally guided by a multi-disciplinary commission or council. The establishment of a CLE Commission (similar to the one proposed in the joint GTZ and JRP concept paper for a qualifying exam) that involves its members in planning and subsequent implementation will allow the judiciary, the PGO, and the Mongolian advocacy to be proactive in developing a systematic and sustainable legal education system. Their early involvement in developing the concept will help generate a solid understanding of the CLE principles and facilitate system-wide communication and teamwork.

Different models exist for the organization, structure, membership, and authorities of CLE commissions, depending on the type of CLE model to be developed. In general, the key representatives of each legal profession involved identify the Commission's authority, membership, terms of service, selection process, bylaws, and policies (National Association of State Judicial Educators 1988).

Recommendation 1: Establish a CLE Commission, comprised of representatives of all key legal institutions and other relevant stakeholders, to establish a vision, overall goals, guiding principles, and governance for CLE in Mongolia.

Responsibilities

International practice is to establish sub-committees for each profession. A CLE Commission with branch-specific subcommittees is consistent with the concept of Mongolia's draft

prosecution office was established to represent the law, not merely the state, as another counter balance to the executive and the judiciary, and to guarantee the rule of law since the 14th century.

qualification law for legal professionals. It also ensures that each profession is in control of setting the goals and objectives of CLE and of determining CLE branch curricula for its members. This structure is an inexpensive, effective mechanism for each legal branch to assume the responsibility for CLE for its members. Each sub-committee ultimately divides further into topic-specific groups that establish the curricula for civil, criminal, and special topic courses. Each group's educational committee identifies its particular educational interests and learning needs, and then designs a program to meet them. Each group can evaluate its own program, primarily through trainee satisfaction measurements rather than formal tests.

International practice regarding institutional arrangements also supports branch responsibility for CLE. In nearly every common law country, judicial CLE training institutions are under the judicial branch, and are separate from the institutions for public prosecutors or attorneys. In the U.S., nearly every state judicial education organization is under its respective State Supreme Court. All use primarily active judges as faculty. None combine judges' education with education for prosecutors or attorneys. In many jurisdictions in the U.S., it is also the Board of the Supreme Court that oversees the practice of law, admittance to the Bar, and the rules and regulations for maintaining status as a licensed attorney for the state.

In the U.S., even the separation of judges' schools from the Administrative Office of the Courts (AOC), the equivalent to the GCC, has been deemed important. Most of the larger educational entities in California, Michigan, Texas, Mississippi, and Georgia operate somewhat independently from the AOC. In the remaining states, an educational department within the AOC provides judicial education. Such separation can strengthen the judiciary's commitment to judicial education. It creates a professional staff dedicated solely to judicial education and avoids diversion of limited energy and resources. More importantly, separation insulates judicial education from politics.

In Australia, Canada, and England, the educational institutions for judges are national public entities, with independent boards of directors chaired usually by the chief justice or a designee. Judges' education is separate from that for prosecutors and attorneys. Similarly, in an effort to strengthen the judicial organization in the Netherlands, a Council for the Administration of Justice will be set up, responsible for managing the judiciary alone. This means that the management of facilities for the judiciary and public prosecutors, currently undertaken by one body, will be separated, including responsibilities for training.

CLE in the U.S. also illustrates the level of responsibility the individual legal branches take to provide their members with the continuing education they need. For example, the Appellate Judges Conference of the American Bar Association's (ABA's) Judicial Division offers up to six programs annually around the country as part of an Appellate Judges Seminar Series. The ABA Judicial Division, the National Conference of State Trial Judges, the National Conference of Special Court Judges, and the National Conference of Administrative Law Judges all provide educational programs for their members at regular annual and midyear meetings, as well as in special seminars. The National District Attorney's Association and the National College of District Attorneys provide CLE training for prosecutors throughout the U.S. The ABA offers a broad range of courses for advocates. Following the lead of the national CLE programs, most states have developed local programs for each profession through state judicial colleges, state Coordinating Councils of District Attorneys, and state Bar Associations.

Recommendation 2: Establish CLE Commission sub-committees for each legal professional branch and define sub-committee roles and responsibilities.

2.1.3 *Entry-level qualifications for legal professionals*

In Mongolia, like in most civil law countries, young lawyers are recruited to the bench and into prosecutor's office. In contrast, in the U.S. and most other common law countries, only experienced lawyers are eligible to become members of the judiciary. While prosecutors can be selected from those with limited practical experience, this rarely happens in the U.S. In the Netherlands and France, the trend is that more experienced lawyers join the ranks of the judiciary. In Germany, recent reform discussions also consider a shift to hiring more experienced lawyers to the bench.⁶ These developments reflect the fact that judges and prosecutors carry significant responsibilities that impact the lives of individuals. To the general public, their decisions are a mirror of the competence of the state. More experienced lawyers are better equipped to handle these challenges. There is less concern about young lawyers joining the ranks of private lawyers with little practical experience. The assumption is that free market competition will limit their opportunity to take on cases they are not equipped to handle.⁷

Overall, young Mongolian lawyers eligible to be hired as judges or prosecutors are considerably less prepared for the demands of these positions than their U.S. and Western European counterparts:

- Law school education in Mongolia is not standardized and regulated as it is in Western Europe or the U.S. The law curriculum varies widely from school to school, as do the quality of instruction and graduation standards. As a result, the legal knowledge of new Mongolian lawyers varies, and their practical experience and ability to apply the law in the legal setting are generally non-existent.
- There are no qualifying exams, parallel to those in the U.S. and Europe, that would establish entry level standards for those who seek to practice law in court. In Mongolia, certain tests are currently conducted to screen candidates for judicial positions, but there is no standard mechanism to ensure that individuals who enter the legal profession possess a basic understanding of the core legal subjects. In contrast, before young lawyers in European countries, such as France, Germany, the Netherlands, and Sweden, pass a qualifying exam, they must participate in several months of clerkships or internships in courts, prosecutors' offices, and law firms, and in seminars and working groups, to learn about the requirements of practicing law and to gain practical experience.

Initiatives toward qualification standards

The MoJHA's plans to establish a standard law school exam and a standard qualifying exam for lawyers will contribute significantly to increasing the legal knowledge and skills of those who enter the legal profession. It is essential that the development and implementation of these exams be guided by the overall principles for CLE in Mongolia and involve all stakeholders. The qualification requirements for legal professionals in all Western democracies were developed in concert with each key profession. The draft law envisions the establishment of a qualifying council. Consideration should be given to including some members of the CLE Commission on

⁶ Hiring more experienced lawyers to serve as judges and prosecutors is only feasible if the remuneration for these positions is sufficiently attractive to experienced lawyers. If the annual salaries are as low as they currently are for Mongolian judges, few experienced attorneys are likely to seek a judgeship.

⁷ That the regulatory function of the free market economy does not always work is indicated by increasing concerns in the U.S. about young, relatively inexperienced lawyers handling low priority, court-assigned cases, such as child support and neglect cases.

this council. Coordination between these two entities will ensure that entry level requirements and CLE standards complement each other.

The entire qualification process has to be fair and transparent, and all who fulfill the requirements for participation should have access to it. In addition, they must have access to information and preparation courses. While the government is not necessarily obliged to carry the costs of preparation material and courses, the constitutional right to choose a profession requires that the average applicant can afford to pay for them. The government has to further ensure that material and courses are available throughout the country, and that they adhere to official quality standards. As a result, it is recommended that the government develop standard preparation material and make it available at cost to all applicants. The qualification council should assess the feasibility, benefits, and drawbacks of conducting preparatory courses through governmental versus non-governmental entities.

Recommendation 3: Engage all relevant stakeholders in developing standards for law school education and establishing a universal qualifying exam for entry level lawyers, including the development of appropriate preparatory material and courses.⁸

2.1.3 Practical training to become a judge or prosecutor

Generally, civil law and common law countries use different approaches to provide lawyers with practical professional skills. The civil law countries of Europe traditionally confine their training to pre-service instruction of new lawyers. Such training is usually the same for all legal professions since it occurs before the qualifying exam is taken.

Pre-service education in many civil law countries typically involves a mandatory program, ranging from 6–31 months, to prepare young law school graduates to assume entry level positions as judges, prosecutors, and other lawyers.⁹ The curriculum and teaching methods used are very much like those of law schools outside the U.S., with academic lectures by law professors and some practitioners, frequently accompanied by practical internships. Special judges' schools have been established, such as France's Ecole Nationale de la Magistrature (organized in 1971) and Spain's Centro de Estudios Judiciales (organized in 1955 under the Ministry of Justice, with independent bylaws adopted in 1986). These schools have a full-time professional faculty, including experienced judges detached from their courts for this purpose, and a general legal curriculum equally applicable to judges, prosecutors, and other government and private attorneys. Graduates may choose between becoming judges or prosecutors and may change their decision in the first few years of their careers.

One problem related to government-funded pre-service training is the cost. For example, in Germany, the government is faced with considerable costs to provide all law school graduates with pre-service positions and to support the mandatory training seminars and learning groups. It may sound intriguing to hire law school graduates as law clerks, as legal secretaries, and for other legal support positions so that they get the practical experience needed to practice law in court.

⁸ For more detailed recommendations regarding selection of new judges and the development of a qualifying exam, see the documents and comments previously submitted by the JRP in cooperation with the GTZ.

⁹ France has increasingly turned to the common law practice of appointing experienced lawyers to the bench. These new judges must take a qualifying exam for lower or upper court judgeships and only a three-month new judges' orientation program plus a three-month judicial apprenticeship, instead of the normal 27-month training program.

But such a system, as it is applied in Germany and other European countries, is not a low-cost alternative to in-service training. To the contrary, it is expensive for three reasons:

1. Law school graduates have some basic knowledge of the law but generally lack the skills required for law clerk or legal secretary positions. Those hired into these positions need to be trained, requiring time—generally a few months—and other resources. Those who enter these positions just to fulfill the requirement for the qualification exam are frequently not committed to the position and will leave it quickly after they pass the qualifying exam. The continuous turnover requires continuous training of new hires. This results in high costs and low productivity.
2. Some private attorneys and companies have little interest in hiring law school graduates for pre-service positions, and some even refuse to do so. The government alone cannot absorb all law school graduates, so waiting times for government positions have increased. This became such an obstacle to becoming a practicing lawyer in Germany that the courts ruled that the waiting period limited access to the profession and is a violation of the individual's constitutional right to choose a profession. As a result, the government is now obliged to provide sufficient pre-service positions within reasonable time limits, either by creating more positions within government institutions or by funding positions in the private sector, both of which are costly.
3. A pre-service practice program requires an expensive administrative apparatus to assign applicants to available positions, monitor that these positions adequately meet the needs of pre-service practice, and verify that applicants actually complete the practice requirements.

In common law countries like Australia, Canada, England, and the U.S., there is no pre-service training for new judges and other lawyers. In the U.S., individuals hired as prosecutors receive little or no introductory training other than what the office provides. Generally, new hires are required to learn on the job.¹⁰ To a lesser extent the same is true of the judiciary. Newly appointed or elected judges generally receive an orientation lasting from a week to a month. However, in contrast to the young age of new judges in civil law countries, new U.S. judges normally have 10-15 years of experience as lawyers.

Mongolia currently has no pre-service training for young lawyers and no structured introductory training for those who are newly hired. Since even the best law schools – in Mongolia and elsewhere – focus their education on imparting the knowledge of the law and legal principles, these young lawyers generally lack the practical skills required to apply the law as a judge, prosecutor, or advocate. This represents a serious problem for the legal institutions in which these young lawyers serve, particularly for the courts. A young judge who is inexperienced in judicial fact finding, decision making, and writing is not only prone to making mistakes but also inspires little confidence among those who are seeking justice in the courts. This can contribute to the public's mistrust of the judicial system. Inexperienced judges are also a serious threat to judicial independence. They are more prone to let the prosecution dominate court proceedings and are likely to yield their own judgment to the opinion of the Chief Judge or a higher court.

Initiatives toward qualification standards

¹⁰ However, young prosecutors are frequently recruited from the ranks of law clerks and judge's assistants or have had internships in the prosecutor's office and therefore have some background in the workings of the courts.

Mongolia's draft qualification law requires at least 2 years of experience in various legal support positions as a prerequisite for participating in the qualification exam. Advanced legal education abroad can substitute for this requirement. While the draft law does not envision that the Mongolian government pays for the pre-service education, it is quite similar to the pre-service education employed in most Western European countries and may pose similar problems. The draft law has potentially significant resource implications and organizational requirements. Also, the practical experience gained in legal support positions does not develop several key skills needed. These positions do not prepare a young lawyer for the independent judicial decisionmaking process, nor do they provide the advocacy skills prosecutors and advocates need. Thus, with or without pre-service experience, new judges, prosecutors, and advocates will need some entry-level training.

Recommendation 4: Assess the feasibility of the proposed practical experience requirement for the qualifying exam and develop a concept for entry level training that includes relevant pre-service practical experience in the legal sector.

2.1.4 Considerations in defining the CLE framework

A Dutch five-country study of judiciary recruitment and training systems (in France, Germany, Sweden, the Netherlands, and the U.S.) provides helpful insights for developing a CLE model for Mongolia. The study identified several social and technical developments common to all nations:

- The increasing awareness of the public of its rights and increasing demands for services.
- The expansion of technical and specialist legislation.
- The accelerated rate of societal changes.

These developments have implications for the design of CLE programs that prepare legal professionals to respond to the demands of modern democratic societies like Mongolia.

Scope of CLE training: Training needs to increase the ability of judges, prosecutors, and other lawyers to be responsive to the public, be aware of the needs of various communities, take advantage of new information and communication technologies, and handle cases that require specialist knowledge. In addition to standard CLE courses that deal with purely legal topics, others need to focus on developing social, communication, or management skills, and some need to be inter-disciplinary. CLE curricula serve new, mid-career, and advanced-career professionals; cover procedural and philosophical topics; broaden knowledge and increase skills; and are related to professional and personal development to enhance performance on the job.¹¹

Centralized v. decentralized CLE courses: Generally, the decision to offer CLE training in one location or throughout the country depends on need and cost-effectiveness. In all five countries in the Dutch study, CLE is given at a centralized level, generally separately for each profession, and, with the exception of the Netherlands (a relatively small country), also at a decentralized level. The decentralized courses sometimes focus on specific regional topics or cover specialized topics that go beyond the in-house training capacity of the courts and prosecutors' offices. In a

¹¹ The JRP conducted an initial assessment of the types of courses currently offered in Mongolia through the major training programs. Attachment A shows the types of courses offered and target audiences. It indicates that many core courses are offered, but many others still have to be developed and provided in a much more systematic fashion to address the needs of Mongolian lawyers at various stages of their careers.

country like Mongolia, core CLE courses need to be decentralized, and bringing trainers into the countryside and creating training capabilities outside of Ulaanbaatar are cost-effective. However, the need to train judges, prosecutors, and other lawyers on specialty topics is likely to vary among different regions. Not every professional will need training to address cases that may only rarely occur outside of Ulaanbaatar. The best approach is training a few dedicated judges, prosecutors, and advocates in various regions who can assist their local colleagues when specialty cases arise.

CLE and career development: In all five countries studied, there is a link between CLE and career development. There are special courses for judges and prosecutors who are assigned new duties such as management tasks, or who switch to another sector. In most countries, taking part in such courses is strongly encouraged for those seeking a new assignment. However, only in France, where the judiciary has a clear career structure, can non-participation have a direct impact on possible promotion opportunities. Linking CLE requirements to the career path for judges, prosecutors, and other government attorneys is good practice to assure that legal professionals are well prepared for their tasks. It is also a strong incentive to advance one's knowledge and skills.

Mandatory CLE requirements: In France, Sweden, and the U.S., participation in CLE is compulsory or otherwise encouraged, or the culture within the judiciary and other legal professions is such that almost everyone feels committed to participate in CLE. Only in the Netherlands and Germany is participation in CLE voluntary and less common. The current dialogue in Germany suggests that this may change, at least for new judges. Internationally, the trend is towards establishing at least basic mandatory CLE requirements. In countries with mandatory CLE requirements, non-compliance can lead to the loss of the license to practice law in the courts.

In the U.S., all states have mandatory CLE requirements for all legal professions. Forty-two states have special mandatory CLE requirements for judges.

Unfortunately, mandatory CLE requirements are often regarded as maximums rather than minimums. Incentives to encourage participation in CLE courses beyond the minimum requirement include allowing judges, prosecutors, and other attorneys to take additional time off for training. Some states have adopted policy guidelines that encourage participation in CLE beyond the mandatory minimum. For example, a California standard¹² provides that:

- All judges should consider participation in judicial education activities to be an official duty.
- New judges should receive a minimum of 15 court days of orientation during their first year.
- All judges should be given at least eight court days each year for continuing education.
- Additional leave for faculty service should be given when a judge's services are requested for educational purposes.
- Judges' travel and subsistence expenses should be reimbursed by their courts.
- Approved attendance at judicial education programs is not deemed vacation time.

Initiatives toward qualification standards

Mongolia's draft law for qualifying legal professionals envisions the establishment of some mandatory CLE participation in combination with a mandatory testing scheme that is repeated

¹² Judicial Council Recommended Standard of Judicial Education, Section 25.

every 4 years. In order to ensure that mandatory CLE requirements achieve the goal of developing a competent legal profession, all the elements that comprise the CLE model have to be in place. An additional mandatory testing requirement for practicing lawyers does not appear feasible and is not supported by international standards. Mandatory tests are expensive and burdensome to the government and all lawyers and will do little to truly ensure that competent lawyers dominate the legal field in Mongolia. The resources are better spent on developing a functioning CLE system that is linked to career development and promotions.

Recommendation 5: The CLE Commission, in concert with other key stakeholders, should ensure that the overall concept and design for CLE in Mongolia include centralized and decentralized training, specialized and general training, the establishment of mandatory minimum requirements, and links between CLE and a merit career and promotion system.

2.2 Element Two: Developing a specific curriculum for each professional group

The target professional groups are judges, prosecutors, and government and private lawyers. Each curriculum needs to reflect the overall CLE principles and to address the special needs of each profession. While all legal professions need to keep up-to-date with recent changes to the law, other training needs differ. For example, judges need special skills in evaluating the evidence brought before them, making a decision according to the law, and writing a judgment. Prosecutors need special skills in assessing the evidence brought to them by the police, guiding investigative activities, interviewing victims and witnesses, making charging decisions, and presenting their case in court. Advocates need similar advocacy skills in court, although from a different perspective. More importantly, however, private attorneys need the knowledge and skills to advise their clients in legal matters, including civil law issues related to contracts and family law matters that never reach the courts.

Basic Courses for New Legal Professionals

Basic courses need to be conducted early in the careers of new legal professionals when their ethical frameworks and professional outlooks, attitudes, and habits are first being formed. These courses provide new lawyers with fundamental competence to conduct their assignments fairly, correctly, and efficiently. Basic training gives all trainees some understanding of the unique role each professional plays in Mongolia's developing legal system. In particular, it educates them about their responsibilities in the areas of legal ethics and protection of human rights. Basic courses cover the application of civil, criminal, and administrative law in addition to Constitutional issues. They can last 3-4 weeks and can be structured into topics or "blocks."

These courses instruct new lawyers on the substantive law and procedures governing courtroom proceedings; highlight common problems likely to be encountered in handling cases; and tutor them on the successful and unsuccessful methods used by experienced lawyers. They also educate new lawyers about their responsibilities toward their clients, provide some introduction to office management, and develop skills in negotiation and advocacy. For new judges, basic training also involves discussions about the meaning of judicial independence and provides information on the basic elements of opinion writing and legal analysis. For new prosecutors, these courses provide a basic understanding of the structure of the Prosecutor's Office as well as the fundamental differences between the prosecutor's role in criminal and in civil cases. They also cover the ethical responsibilities of a prosecutor and the responsibility to defend the Constitution and the human rights of both the victims and the accused. In addition, they introduce new prosecutors to important skills, such as legal writing and oral advocacy.

The frequency of course offerings depends on how often new judges and prosecutors are hired and how many new advocates begin their career every year. It is reasonable to assume the need for basic training for each profession once a year in Ulaanbaatar. The need for and cost-effectiveness of conducting such training in other regions has to be determined.

Intermediate and advanced courses

Intermediate courses help maintain the competence of practicing legal professionals by keeping them up-to-date on recent law changes; encourage each profession to work together to explore new methods of handling cases and operational matters; and promote uniformity among the legal professions. These courses should always include ethics education and some skills training.

Advanced courses broaden the competence and stimulate the growth of experienced professionals. They prepare them to undertake new assignments or brush up their skills, resolve unusual problems, and explore alternative approaches that have worked for other experienced lawyers. They also inform them about scientific research in new areas of law and social concern that affect how they conduct their work. Advanced courses may focus on management and leadership.

Course frequency depends on the need. Naturally, if laws change, the need increases rapidly and dramatically. The current draft qualification law requires some form of participation in CLE every two years. Based on experiences in other countries and considering the high need for informed legal professionals in Mongolia, this does not seem sufficient. At least once a year, all practicing attorneys should be required to attend a CLE course that covers the latest changes in criminal, civil, and administrative law and procedure.

Special Topic Training

Not every lawyer needs to be an expert on every area of the law. Still, the CLE program should include some specialized training courses aimed at creating experts in narrow areas of the law. For example, in certain specialty areas, such as Patent and Trademark Law, just a few judges, prosecutors, and lawyers who know the field well should suffice.

As another example, certain types of crimes, such as financial crimes, organized crime, major drug cases, and tax evasion, require special knowledge among prosecutors, judges, and advocates. This expertise has to be available in the courts and prosecutors' offices, but it is not cost-effective to train all lawyers to master the special knowledge and skills. Instead, the courts and the PGO need to have specialists who can be assigned to handle such cases. Even domestic violence and child abuse cases that require special knowledge and skills from prosecutors and judges may be better handled by a limited group of specially designated attorneys. These specialists can be assigned the cases that occur in these areas, or even assigned to handle all cases resulting from an Aimag or region. They can serve as information resources within the court or prosecutor's office for other attorneys. They can be trained to teach courses to other prosecutors and judges in their specialty area.

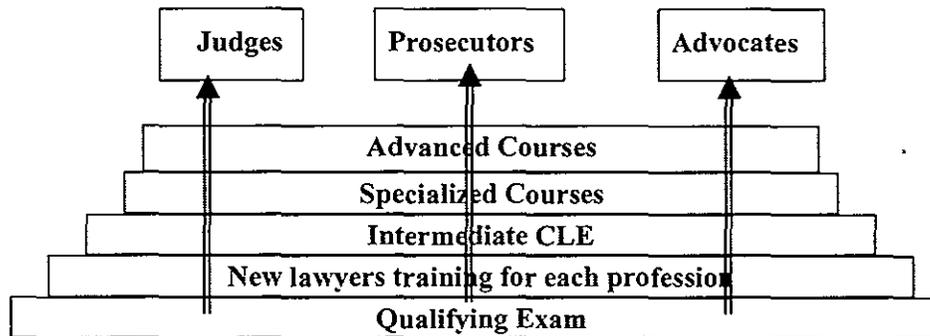
Interdisciplinary training

Interdisciplinary training promotes better understanding, communication, and cooperation among judges, prosecutors, and advocates. Particularly for certain specialty areas of the law or in procedural matters where two or more professions interact, interdisciplinary training is a cost-

effective approach to providing judges and other attorneys with in-depth reviews of substantive and procedural law areas.

Possible CLE model for Mongolia

Together, the basic, intermediate, advanced, special topic, and interdisciplinary courses represent a curriculum of career-long education, growth, and development. When the major components of such training are combined, the model for CLE in Mongolia could look as follows:



Starting at the bottom, each level of training needs to address the main subject matters (civil and criminal law and procedures) as well as specialty law areas (including constitutional and administrative law) and related skills training.

This model can support the development of training plans. The CLE Commission branch sub-committees need to determine what type of training should be offered each year, based on the types of cases each profession in different regions handles and on projections of future needs. Since resources are limited, priorities need to be set for each block to ensure that at least basic courses are available. The sub-committees should coordinate closely with each other in developing each curriculum to identify opportunities for multi-disciplinary training and resource sharing. For sub-committee consideration, Attachment B illustrates a generic training schematic for Criminal Law and Procedure, Civil Law and Procedure, Constitutional Law, and Administrative Law. These annual plans should be based on realistic assessments of the availability of funding as outlined under section 2.6.

Recommendation 6: CLE Commission sub-committees for each legal professional branch should develop curricula that offer basic, intermediate, and advanced level courses, including interdisciplinary training, to provide for career development for practicing lawyers in each profession.

2.3 Element Three: Faculty development and retention

A successful CLE program depends on the capacity to train legal professionals in the major subject areas. This requires a system to identify, train, and retain qualified instructors.

Legal instructional models

Instruction for the legal profession is generally based on the the peer group model or the law school model. The peer group model emphasizes “law in action” and the law school model “law in theory.” For example, teaching contract law under the law school model typically consists of

explaining the applicable law. The peer group model focuses on practical negotiating and contract drafting for attorneys and, for judges, on adjudicating contracts and drafting judgments. The law school model is predominantly used in civil law countries. Overall, it is more academic, theoretical, focused on educating on abstract principles of the law and legal interpretation, and interspersed with practical internships.

In contrast, common law countries generally use the peer group model. This model focuses on enhancing the ability of practicing lawyers to apply the law and advance the legal profession. It uses mainly small-group, participatory methods where the teacher is part of the group and functions more as a facilitator. Standard, practice-oriented training material is available but used only as a reference or resource. Most importantly, the peer group model enables participants to critically evaluate their own learning experiences without being tested. The evaluation becomes another learning opportunity. In the U.S. and other common law countries, this model has proven very successful in educating practicing lawyers.

The special features of the peer group educational model are:

- (1) The inclusion of both legal knowledge and the practical skills, techniques, and values of legal professionals;
- (2) Alignment of curricula with professional assignments and generally recognized legal specialties, rather than with the findings of traditional needs assessments;
- (3) Basic, intermediate, and advanced courses structured into a career-long professional curriculum;
- (4) The use primarily of active lawyers as faculty;
- (5) Faculty training in the use of modern participatory learning methods; and
- (6) Reliance on lawyers' committees to plan, present, and evaluate education programs.

Faculty development

While law professors are experts in the law, many do not know how attorneys and judges apply the law in everyday work. For this reason, they are less preferred as teachers for CLE. The best-rated teachers for CLE are generally the professionals who know the law and the skills, techniques, and values needed to implement that law. The majority of CLE instructors should be judges, prosecutors, and other practicing lawyers specially trained in modern participatory learning methods and materials. Intermediate and advanced CLE often cover issues that are not of a purely legal nature, such as court management, personnel management, or scientific evidence, and require other experts as trainers.

Good trainers and resources are scarce in Mongolia. Therefore, cross training, developing in-house training capacities, and a strong emphasis on train-the-trainers courses are essential. For example, the GTZ has trained a number of judges to teach special topics that are part of the Civil Code, such as Contracts Law and Company Law. These instructors are well equipped (with some assistance to adjust their courses) to conduct similar training for a multi-disciplinary class of prosecutors and judges. More importantly, they could train other judges, prosecutors, and advocates as trainers. This tiered train-the-trainers system is the most cost-effective approach to developing qualified trainers.

Faculty retention

The most cost-effective choice for retaining good trainers is to develop in-house trainers for the courts and prosecutor's offices. However, good trainers are often good lawyers whose skills are

sought by the private sector. Private law firms and other companies may offer better salaries and other incentives that entice good trainers to leave the institution that invested in developing them. In a free market society, that is what supply and demand is all about. In order to assure that those who have been well trained continue to serve as CLE trainers, some mechanisms have to be established to retain them over time. One strategy is for training centers, courts, and prosecutor's offices to contractually require the trainers they develop to serve for a designated period of time. However, incentives are needed to retain trainers beyond the contractual period. Options include offering reasonable honoraria, a tax deduction for the lawyers who train CLE courses or for their law firm, and crediting the courses taught towards fulfilling any CLE requirements established.

Recommendation 7: Identify trainers for all CLE blocks, focus training resources on the development of an ongoing train-the-trainers capacity, and establish a system of incentives to retain good trainers.

2.4 Element Four: Adult learning methods, technologies, and practical teaching materials that address the needs of legal professionals

Adult learning methods

Adult learners are self-directed. Their primary learning objective is to be able to do something, not just to know. The participatory learning approach recognizes the various objectives of each legal profession when handling cases. For example, a judge's objective is to be able to handle a particular court proceeding fairly, correctly, and efficiently; accordingly, the training facilitates sharing the pertinent knowledge and working tools needed to attain that objective. The role of the faculty is to coordinate and facilitate that shared learning.

Other effective methods include:

- Videotaping the trainees while performing mock exercises, such as conducting victim interviews and presenting evidence in court, is an effective adult learning technique, with experienced trainers reviewing the videotapes and giving advice for improvement.
- Use of visual aids, such as overhead projectors that project the speaker's topical outline and key points onto a screen, allowing the speaker to focus the audience's attention on each point as it is covered. The audience can visualize how the points and topics relate to one another.
- Participatory problem-solving, with the material presented in the form of case problems just as judges and other lawyers would encounter them in their daily work. Trainees discuss the common difficulties they will likely encounter and successful techniques to resolve them.

Training materials

Good materials complement adult learning methodologies. Training material for standard CLE courses should include at least two manuals. The first is a trainee's manual that accompanies the presentation. This manual outlines the training scope, goals, and learning objectives. It also provides detailed background material, sample case scenarios, scripts, forms, checklists, and tests. It can serve as a daily reference resource and a self-training refresher. The second is a trainer's manual. This manual outlines the course material as well as information about training goals, objectives, and target audience. It also provides accompanying hand-outs and other presentation

material, sample exercises and other training aids, and information for course preparation. Such comprehensive material reduces preparation time for trainers, increases consistency, and makes it easier for new trainers to conduct quality training.

Modern CLE material also includes how-to-do-it benchbooks that provide judges and prosecutors with immediate answers to a broad range of common problems they encounter in their work, audiotapes and CD-ROMs that allow legal professionals to study at their own pace and at convenient times, and videotapes that can be used in moot court and courtroom demonstration situations for self-critique or practice.

There are some resources in Mongolia on which CLE materials can build. For example, the USAID-sponsored "Judges' Benchbook" is a basic manual for new judge training, and the GTZ-sponsored "Prosecutors Handbook" contains the basic training materials for a new prosecutors' course. Continually updated and augmented, both could support CLE and serve as regular reference materials. Ultimately, such guides could also provide links to other reference material related to the treatment of various legal problems likely to be encountered, such as commentaries and Supreme Court Decisions.

Use of technology

As available, technology can support the CLE training process and increase access to training. For example, benchbooks, audiotapes, videotapes, and CD-ROMs could be made available on a website, providing a searchable, instant reference source. Similarly, training courses held in various regions can be complemented with presentations broadcast (live or recorded) via television, radio, or webcast. These educational delivery systems emphasize independent and distance learning concepts that have proved most successful in CLE and are cost-effective, sustainable alternatives once they are created.

Recommendation 8: Focus training resources on developing comprehensive training material for the core CLE courses, including self-training and distance learning material that applies adult learning methodologies.

2.5 Element Five: Administrative structures and resources

Building and maintaining a sustainable CLE program that fulfills the continuing educational needs of legal professionals requires administrative structural support. Such structures need to be low-cost and to facilitate the independent governance of CLE by each legal branch. The most significant need is support for implementing CLE training. Administrative staff support the selection of trainers, arrange for and track the development of appropriate training material, make the logistical arrangements for all training efforts, ensure that the right training participants are selected and invited in time, and manage the training review process. Other support is needed for the operations of the CLE Commission and its sub-committees and for tracking CLE compliance.

There is no need for a large administrative staff, nor is there a need to establish a CLE bureaucracy, particularly since some of the administrative functions can be handled by each legal branch. Overall, it could require one or two administrative support staff per branch, possibly located within each branch (e.g., at the Supreme Court, the PGO, and, for advocates, possibly at the Legal Retraining Center). The staff could also be combined into a single CLE unit, possibly located at the GCC, or later at the National Legal Training Center. The decision regarding co-location is both political and economic.

The draft law on legal qualification envisions that CLE administration will be located under the MoJHA. No other country combines CLE for all legal professions. While establishing one CLE unit for all branches may be the most economical approach, it has political implications in terms of endangering the independent control over training by each legal branch. Establishing such an administrative unit under the GCC is an alternative for the judiciary and possibly even for the prosecution branch, if the GCC truly functions as an independent council for the courts. The CLE Commission will have to decide if co-location of administrative staff is an acceptable alternative for CLE for private attorneys. In the long run, establishing one administrative CLE unit within the National Legal Training Center may be an acceptable compromise as long as the governance of CLE is controlled by each branch through the CLE Commission and its sub-committees and as long as each branch is heavily involved in selecting trainers, developing material, and conducting the training.

Ensuring CLE Compliance

A mandatory CLE system requires establishing compliance criteria and tracking compliance. Setting CLE compliance criteria is an issue for the CLE Commission, with input from the sub-committees, and may best be regulated by statute.¹³ Criteria have to be established for courses that count toward the minimum CLE requirement. Rules need to be established on the minimum hours of certain types of CLE courses attorneys need to attend in order to continue practicing. The consequences of non-compliance have to be established along with regulations for notifying those who did not comply, opportunities to compensate for missing courses at a later time, and alternatives that count against the CLE minimum, such as teaching CLE courses or participating in education abroad. In many states, one facet of maintaining a license to practice law is to comply with court rules on attendance and reporting of accredited CLE courses. (See Attachment C for the minimum CLE requirements established in the various U.S. states.) The rules also have to specify who reports participation in CLE (i.e., the participants, the course administrator) and what evidence of participation has to be submitted.¹⁴

After establishing the CLE rules and compliance tracking requirements, the CLE Commission can define the administrative requirements. With a tracking system, a competent database manager could manage CLE reporting. Individuals not in compliance with CLE reporting could be automatically notified. Such a database could also be combined with a database to track trainer availability and course offerings in various regions.

The current draft law establishes the responsibility for compliance tracking with the MoJHA. While it may seem like an intrusion on each branch's independence, the choice of the MoJHA reduces the likelihood that branch members can influence the compliance process. If a separate CLE unit is created, within the GCC or the National Legal Training Center, this may be a more appropriate location for a tracking database.

Quality assurance of CLE courses

¹³ Each sub-committee may establish standards higher than the minimum CLE requirements for its members.

¹⁴ In the U.S., the Board of the Supreme Court is responsible for accrediting courses that meet the defined standards of the rules for CLE. These standards can be as vague as requiring the course work to enhance the skills, abilities, and knowledge of the attorney or as complex as defining a specific amount of course work in a specific substantive area (i.e. ethics, family law, or diversity training). Generally, the organization conducting a course must seek accreditation from the Board, and the attending attorney must submit attendance records and an affidavit of compliance meeting the reporting requirements of the Court Rule.

It is essential to ensure that CLE courses provide the quality training envisioned. Most U.S. states set certain standards for certifying CLE courses, while also making some allowance for in-house training and self-study courses. Other countries vary in terms of the method and extent of CLE monitoring. Most countries have regulations only for training course content, but a few set certain quality criteria to evaluate course outlines submitted for course certification. However, no country systematically controls the quality of CLE.

Ensuring Access to CLE

Particularly if CLE is mandatory, the government and each legal branch must ensure that legal professionals have access to CLE courses. This means that a sufficient number of CLE courses (including in-house and self-study courses) have to be available in the various regions of Mongolia. Lawyers from outlying Aimags cannot be expected pay for their travel to Ulaanbaatar to fulfill minimum requirements. Also, while legal professionals, particularly those operating in the private sector, can be expected to cover some costs for their continuing education, the cost must be affordable to the average lawyer. In addition, courses need to be offered at reasonable times and in time blocks that the average attorney can attend without interfering with practice. Courts, prosecutor's offices, and private law firms have to be required to set aside time for their lawyers to attend courses.

Recommendation 9: Establish minimum administrative support for each legal branch to conduct CLE training; establish CLE requirements and monitor CLE compliance.

2.6 Element Six: Development of sustainable funding mechanisms

As all countries undergoing significant transitions have experienced, the need for quality and systematic CLE is even greater when the new legal system applies fundamentally different concepts and when previous law school education and CLE have been lacking in quality instruction. However, increasing the scope of CLE, particularly if it is mandatory, has resource implications. Given limited resources in Mongolia, CLE needs to be justified on economic as well as quality of justice grounds.

It is important to recognize that the additional costs for CLE result in savings elsewhere in the justice system. Potential savings from effective CLE may include:

- Reduced trial costs resulting from more effective case management
- A lower rate of appeals through avoidance of error in the conduct of trials
- Reduced pre-trial detention time and costs due to better case preparation
- Increased lawyer productivity resulting in more cases being processed throughout the system in a shorter period of time

Such savings may be difficult to measure, but they are real, and they allow the justice system to function more efficiently with limited funds.

Who is responsible for funding CLE?

It is internationally accepted that funding for CLE for judges, prosecutors, and other government lawyers has to be part of the government's annual budget. During the 2000 Annual Conference of the Judicial Training Centers from Central and Eastern European countries, their directors and other representatives from around the world met in Chisinau, Republic of Moldova. The conference participants discussed "Implications of Financial Sustainability and Independence for

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Judicial Training Institutions” and agreed on the Chisinau Declaration (see Appendix D), which clearly confirms the responsibility of the government to fund judicial training. The same applies to funding for training of other government lawyers.

However, the efficient *use* of government funds for CLE training is the responsibility of the judiciary, prosecutorial branch, and other legal branches representing government lawyers.¹⁵ That is one reason why CLE programs should focus strongly on creating cost-effective training mechanisms, such as in-house training, interdisciplinary training, and resource sharing among the legal branches. It is also one reason why the judiciary and the prosecutor’s office, as well as each individual judge, prosecutor, and other government lawyer, should carry some responsibility for paying certain expenses for courses that cover more than the basic requirements.

CLE in common law countries is rarely based on the use of full-time professional faculty. Instead, only a small administrative staff runs the program, and practicing judges and prosecutors serve part-time as the faculty. No campus facility has to be maintained. The educational programs are often held in government buildings, often in the evenings and weekends when the buildings are not used and to avoid interrupting court operations.

In all five countries included in the Dutch study, the courts provide the bulk of training in practice, sometimes under the supervision of, or advised by, a (central) training institute. The Dutch training for experienced lawyers is unique in several respects. The training is financed from the general resources of the courts allocated by the Ministry of Justice. However, the Minister has no influence on the training.

Overall, the experience in most countries, like the experience of the JRC and LRC in Mongolia, shows that maintaining training centers with full-time staff and permanent trainers is resource intensive. While such centers and other larger donor-supported training programs are essential to providing access to quality CLE, their resources are still limited and should be used primarily to develop further training capacities, not to provide widespread basic training for each profession. CLE for new judges and prosecutors is handled most cost-effectively by the courts and prosecutors’ offices in the various regions. If a few experienced judges and prosecutors in each region are trained to provide the entry-level information to the new judges and prosecutors joining their courts and offices, other training resources can focus on developing and conducting more advanced courses. As for the government sector lawyers, the assistance of international donors to support the development process for CLE continues to be essential in Mongolia today and in the foreseeable future. Still, every effort has to be made to develop the capacity to support CLE that is less donor-dependent.

While the governments in most civil law countries support at least the pre-service education of young lawyers, governments only occasionally finance CLE for practicing private attorneys. Such funding is always targeted only on a particular problem and geared to provide one-time support to develop the capacity of the private legal sector to provide the needed training in the future (i.e. support for trainer and material development). Generally, the government’s duty to fund CLE does not extend to private attorneys.

Therefore, creating a CLE program for Mongolia’s private lawyers represents perhaps the biggest challenge. If the legal system is to function effectively, the advocate organizations themselves must understand and accept the responsibility for training their members. They must build their capacity to create and administer training programs and raise the funds to run them. These funds

¹⁵ And the responsibility of the private sector lawyers if they receive government funding.

can come from membership fees as well as fees for the courses offered. This may be a good strategy to sustain existing courses. However, with limited quality training currently available to private lawyers, there is a need to find additional funds to develop trainers and course material.

What Level of CLE is Sustainable in Mongolia?

Currently, the vast majority of training for practicing lawyers in Mongolia is funded by international donors and focuses mostly on the judiciary. There has been regular funding for judicial education at least since 1995, and every international donor involved in reforming the justice sector has provided some funding for judicial training. This training has been unsystematic and uncoordinated, and, despite the fact that training has been provided to the majority of judges, complaints about knowledge and skills deficits abound.

The government limits its contribution to CLE largely to providing rooms to hold training in Ulaanbaatar. It also makes court facilities and other government buildings in the various Aimags available for training events. Funding for trainers, equipment, material development, and travel for training participants is largely paid by foreign donors. Considering that the budgets for the courts and prosecutor's offices do not even cover many of their basic needs for supplies, facility maintenance, and salaries, it is unrealistic to expect that the Mongolian government can sustain a comprehensive CLE program with its own funds.

Still, ways have to be found to establish some sustainable capabilities to provide all legal professionals with access to at least basic CLE courses. International donors will not continue to fund training for the legal profession if the Mongolian government makes few attempts to assume reasonable responsibility itself. Coordinating the current international donor activities with efforts of the various legal professions to develop a basic CLE model appears to be the most promising approach.

In developing a more comprehensive CLE model for all practicing attorneys, the objective is integration of the various donor efforts in a way that allows them to continue their good work, and enables Mongolia's legal system to use donor funding more effectively. At the same time, the relevant Mongolian institutions need to be brought into the process so they can take over and run at least the basic CLE courses with little or no foreign sponsorship. The three legal branch programs should run parallel to each other but seek ways to share information and teaching resources. To ensure sustainability of each training program, the focus also has to be on train-the-trainers courses and material development, on creating regional training capacities, and on developing a shared administrative structure to coordinate training efforts. The current configuration of judicial and other legal branch training activities provides opportunities to move in this direction.

1. Judicial training

Most training for the judiciary is currently supported by international donors, particularly the GTZ, Soros, the ADB, and to a lesser extent the Hanns-Seidel Foundation (HSF).

GTZ Training

The GTZ created an extremely successful judge training program that focuses mainly on the Mongolian Civil Code but also includes some skills training in the area of opinion writing. The instructors are Mongolian judges who have been trained in adult learning techniques and are very knowledgeable in the subject matter. The GTZ model applies a relatively cost-effective approach

to reaching judges outside of Ulaanbaatar. The trainers travel to the regions. The only significant additional expenses are for trainer travel, food, and lodging. For courses needed by most judges, prosecutors, and other legal professionals, this model is more cost-effective and sustainable than training solely based in Ulaanbaatar.

The well qualified GTZ trainers represent a tremendous resource. They could train other judges in modern teaching methodology and its application to teaching the civil code substance matter. This would create an expanded pool of qualified trainers, particularly in the Aimags, to conduct the basic Civil Code training for the judiciary in their region. GTZ's involvement would be limited to ongoing train-the-trainers courses and supplying quality training material. The GTZ training funds could then be used to develop training capacities for judges in other areas of the law.

Another possibility is including prosecutors and advocates (who are few in number in most Aimags) in relevant existing judges' courses. While some skills needs differ for each profession, much of the substantive law training applies to all professions. The only additional costs would be for participant training materials. The JRP-supported training on the new Criminal Code and Criminal Procedures Code in the Aimags will run parallel to the GTZ courses and test this interdisciplinary model.

Such a coordinated effort is currently the most efficient way to reach the majority of judges and prosecutors quickly and train them in the new laws that go into effect September 1, 2002. It is also more cost-effective to hold the training throughout the country. Still, the sustainability question remains. A low-cost approach to sustain training in the Aimags is to use trainers who are judges, prosecutors, and other government lawyers on leave with full pay on temporary assignment, and to conduct the training in courts and other government facilities. Even more cost-effective is the development of a cadre of such trainers in each Aimag to provide the training for the region.

Judicial Retraining Center (JRC)

The Soros-sponsored JRC program uses a different training model. All training is conducted in Ulaanbaatar in the Supreme Court Building classrooms. The JRC pays for participant transportation as well as lodging and meals during the training period. Most course instructors are not judges and have received no instruction on modern teaching methods. The curriculum is less focused than the GTZ program. The JRC program's effectiveness has received very mixed reviews from participants.

Still, the JRC has become a valuable instructional institution for the judiciary and represents an effort by the judiciary itself to take on the responsibility of training judges. In fact, it could exercise the bulk of the responsibility for organizing and administering all judicial training programs under the proposed CLE model. If structured appropriately, it could support the CLE sub-committee for the judicial branch and function as the administrative unit for judicial branch CLE. It has a full-time Training Director as well as other staff and administrative offices. Its training facilities could be used for basic training for the judiciary and possibly prosecutors who work in Ulaanbaatar as well as for the more specialized courses offered only at this central location.

This approach would not disregard the supervisory responsibility granted the GCC by the Mongolian Law on the Courts. While the JRC would be responsible for developing and

conducting training programs for judges, the programs would be subject to approval of the GCC which, in the future, may house the CLE judicial branch sub-committee.

Two initiatives would increase the sustainability of JRC operations. One is to streamline the current administrative and training management functions to increase efficiency. The other is to increase the efficiency and cost-effectiveness of the training concepts. If the current courses become more applied and geared more toward teaching adult learners, they would reach their educational goals more efficiently and help create additional trainer resources. Also, if the training is less centered on bringing everybody to Ulaanbaatar, resources may be freed up for the JRC to coordinate with other funders to develop trainers and material for other quality CLE courses. The current plans for the JRP-funded criminal law courses for judges from Ulaanbaatar to be conducted at the JRC are one step in this direction.

Similarly, the JRC should explore ways to work with HSF and the World Bank on the Administrative Law training efforts discussed below. Like the GTZ Civil Code series, HSF and World Bank support for training on Administrative Law are not likely to be available in the long run. The JRC, as the most likely provider for judicial training in the long run, should be prepared to take over these responsibilities.

The result would be a judicial CLE block will covering Civil, Criminal, and possibly Administrative Law components that can ultimately be organized and managed by the JRC either in its current location or, in the future, as part of the National Legal Training Center. The question remains, however, whether the government will be able to sustain the resources developed at the JRC or later at the National Legal Training Center. In order to maximize the potential for sustainability, the trainers have to be primarily practicing judges (and possibly prosecutors and other government lawyers) who will be given leave with full salary to serve as temporary or part-time trainers. The courses have to focus on training other judges and government lawyers to conduct training outside of Ulaanbaatar, basic courses for judges working in Ulaanbaatar, and special topic courses for a limited number of judges handling those cases.

Legal Retraining Center (LRC)

Like the JRC, the ADB-sponsored LRC is an Ulaanbaatar-based training program. Like the GTZ program, it uses instructors who are trained in modern teaching techniques. While originally envisioned as a training facility for advocates, it currently provides training for all branches of the legal profession. The training lasts 45 days. The quality of LRC instruction has been widely praised. However, the curriculum is very broad and is not focused on any specific legal branch. Building training capacities in the Aimags, focusing resources on capacity building in form of train-the-trainers courses and material development, and coordinating training and development efforts with other funders will increase the sustainability of LRC training.

Additional Training Efforts

HSF and World Bank: The HSF, which has played a very active role in Mongolian legal reform, plans to conduct judicial training in Administrative Law, as does the World Bank. Since the Mongolian Administrative Law Code closely mirrors the German law, the HSF's interest in establishing a judicial training program covering the new Administrative Law is welcome and appropriate. The World Bank's commitment to provide funds for Administrative Law training is important, particularly since the HSF resources for this effort may be limited. The concept of Administrative Law and the operations of administrative courts are new to Mongolia, and training is essential. At present, it appears that administrative court functions will be limited and

predominantly focused on Ulaanbaatar. As a result, this training would be needed in Ulaanbaatar only for those judges and prosecutors assigned to handle administrative cases.

Ad hoc training: Various donor organizations often provide one-time courses that focus on specialty topics. This should not be generally discouraged even if such a course does not fit neatly into the CLE schematic. The training schematic should always be flexible enough to accommodate and take advantage of smaller donor training efforts. However, donor organizations should be encouraged to consult with each branch's sub-committee before offering a specialty training course. This will ensure that the branches keep some measure of control over CLE training. It will also help reduce overlap and redundancy in the overall training effort. Such specialized training for the judiciary may best be organized and administered in coordination with the JRC or its future equivalent within the National Legal Training Center. Using practicing judges and other government lawyers, together with focusing on train-the-trainers courses and material development, increases the sustainability of these new initiatives.

In-house training: Several Mongolian courts have recognized the need for and benefit of in-house judicial education. These courts organize regular get-togethers where judges discuss interpretation of the law, practical resolutions to legal issues, and judicial policy. These meetings are an important mechanism for judges to learn, exchange ideas, and advance their profession. They are an expression of the willingness of the judiciary to take charge of its own advancement. They also provide opportunities to build up largely unexplored education mechanisms that can be enhanced through access to information resources and formal training opportunities replicable on the local court level. In-house training is still the most cost-effective education mechanism. While the special expertise to teach in depth courses in various legal matters is often not available at the individual court level and too time consuming to be conducted at each court, introductory training for new judges is a prime candidate for in-house training. If good training material is available for these courses, a senior judge at each court could conduct this introduction. Alternatively, such courses could be held for several soum courts together or at the Aimag level.

2. Prosecutor Training

CLE for prosecutors in Mongolia is significantly more limited and less evolved than it is for judges. There are many reasons, but the fact that international donor funds are almost exclusively focused on judicial training is a major factor.

Beginning in late 1999, the PGO established its first small training effort with its own funds. In 2000, foreign donors began supporting prosecutor training for the first time. The courses offered by the LRC were opened to prosecutors, and the GTZ and JRP have begun to support the creation of training capacities for the PGO. These efforts are quite limited in comparison to what is afforded to the judiciary, but also much more sustainable. Without substantial donor funding, the PGO has to develop in-house training capacities, coordinate with ongoing judicial training, and develop trainers and training material that will be available over the long run. The PGO has the opportunity to make the most of the limited outside funding available to develop sustainable CLE mechanisms for prosecutors throughout Mongolia.

Considering the very immediate needs for training prosecutors, their participation in judges' training conducted in and outside of Ulaanbaatar is probably the most efficient approach. This does not incur significant additional costs, and when it comes to training in the substance of the law and its application in court, the issues are largely similar for judges and prosecutors. Still, prosecutors need skills training that is quite different from what judges or advocates need. The most cost-effective way to provide this type of training is to develop in-house training and to

coordinate with the other legal branches to share resources and build on - or even participate in - their special skills and topics training.

The most effective strategy for CLE prosecutor training outside of Ulaanbaatar is to create these capabilities in the Aimags, similar to the strategy outlined for judges. The focus has to be on training prosecutors to serve as trainers for their colleagues, on developing quality training material, and on bringing the training into the Aimags. Inter-disciplinary training is one way to build substantive knowledge quickly. Using judges to develop prosecutors as trainers is another cost-effective method, but has its limits when it comes to skills training that is special to prosecutors and to substantive areas of the law that judges do not handle.

Training to handle specialty cases should be limited to a few prosecutors designated to handle such cases in Ulaanbaatar and the Aimags. The number of specialists for each topic and region will depend on the number of cases arising.¹⁶

3. Training for advocates and other lawyers

Since the government has only limited responsibilities for private attorney CLE, a functioning, democratic, and independent Advocates Association has to be ready to take on this challenge. At present, the Mongolian Advocates Association has limited capabilities to do so. With practically no institution currently available to support the development of advocates' CLE and provide an administrative structure, perhaps the best short-term solution is use of the LRC. Its trainers are lawyers. The curriculum includes a wide variety of legal topics relevant to many areas of legal practice in Mongolia. It even includes a course on advocacy skills. Private lawyers have been a focus of this training for some time, though not exclusively. The LRC should be encouraged to consider making some changes in the structure of its classes and the length of its training programs to make it easier for private practicing lawyers to attend (at their own cost). The LRC should encourage the participation of attorney associations in the LRC's curriculum selection and capacity building efforts. In this way, the associations will also gain experience that will help them create and manage their own training programs in the future.

Like the judges and prosecutors, the advocates have to find a way to bring the training to their colleagues in the countryside. Once again, a model that follows the pattern of the GTZ training and ultimately establishes training capacities in the Aimags is the most cost-effective. While the private sector institutions have more opportunities to finance their courses through fees, the fee structure has to be reasonable and may not cover the often significant development costs.

4. Establishing CLE Training Budgets

In order to develop realistic budgets for CLE training on an annual basis, the CLE Commission should use the annual training plans, as outlined under section 2.2, and assess what funding is available for which level of training for each year. This information should be used to support budget requests to the government as well as to provide a basis to coordinate international donor funding. As mentioned above, government funding to cover in-house training on the basic CLE requirements for the judiciary, court staff, and prosecutors should be made available. In order to ensure that international donor funding is used effectively for specialty training and other

¹⁶ Experience in the U.S. indicates that just one individual, committed to the protection of a certain type of victim or the prosecution of certain class of criminal, can greatly enhance the investigation and prosecution of such crimes.

capacity building efforts representatives of donor agencies should be involved in the planning process. Ideally, the CLE Commission will develop a clear plan based on a realistic budget several months before each training year begins.

Recommendation 10: Coordinate with international donors to create sustainable in-house training capacities for courses for new judges, prosecutors, and other lawyers; develop strategies to transfer funding responsibilities for basic courses for all legal professions to the relevant Mongolian authorities; identify priorities for focusing donor activities on capacity building and special topic courses; and develop annual training plans based on funding availability.

3. Establishment of a National Legal Training Center

With the support of a World Bank loan, the Mongolian government will likely begin building a central training facility in Ulaanbaatar soon. The CLE model would greatly benefit from the support of such a facility. The center can provide classrooms, computer equipment, and research facilities that all legal branches can use. It can provide office space for the CLE Commission as well as its sub-committees and their administrative staff, and it can help coordinate record maintenance and joint training efforts. It can be an efficient mechanism to share resources and experiences without limiting individual branch autonomy.

Defining the precise role of a National Legal Training Center is critical. When Australia considered the establishment of a special judicial college, the following key questions were raised, and they are relevant to the Mongolian situation:

Should the Center:

- Set standards for CLE, oversee, and /or coordinate CLE and be a clearinghouse of information? or
- Be a resource center, designing and developing educational programs and possibly publications which can be used by others, particularly individual courts and prosecutor's offices either at the center's initiative and as "commissioned" by others? or
- Design and provide a comprehensive and coherent program of CLE?

There are different models for such centers. For example, the IJS in New Zealand works with Education Committees located at each Court of Appeal, High Court, District Court, and other specialty courts that are responsible for developing and managing CLE for each court. The IJS serves as educational advisor and assists the courts in developing and administering the courses needed.

In contrast, the Judicial Studies Board of England and Wales conducts an extensive range of seminars, courses, and conferences. Most of the planning and arrangements are carried out by committees (Civil and Family, Criminal, Magisterial and Tribunals, and Equal Treatment), which are comprised primarily of judges.

The national judges' schools in the U.S. are generally independent public entities affiliated with a national judicial organization. Training for the federal judiciary is provided by the Federal Judicial Center and for the trial court judges by the National Judicial College in Reno, Nevada. Still, these centers provide perhaps less than 20 percent of the educational programs for the nation's 28,000 judges, with the state judges' schools providing the rest. While some of the judicial education institutions in the U.S. have their own teaching faculty, others operate like CLE

providers that deliver the course, design material, and manage the program with the actual teaching done by practicing judges, usually on a voluntary basis.

Since the breakup of the former Soviet Union, many of the new governments, generally with foreign donor support, established training institutions for the judiciary and other lawyers. For example, the Judicial Training Center of the Republic of Moldova was established in 1996 and has the status of a legal person under the Ministry of Justice. The Center's activities are supervised by a Council which consists of representatives of all important legal institutions of the Republic of Moldova. Several international organizations serve on the Council as non-voting members. There is an executive director and a small staff. The Center has a strategic plan and conducts training and workshops for judges, prosecutors, advocates, and staff members of the Ministry of Justice. In cooperation with the various donor organizations, the Center organized seminars on various legal topics both in Chisinau and in the regions.

Such a center can be a catalyst for the evolution of the legal profession in Mongolia. As the founders of the newly established Judicial Institute for New York State explained, their center not only provides education to the legal profession but is a forum for:

- Identifying new and emerging legal, technological, social, criminal, and administrative trends affecting the courts;
- Advanced study of how interdisciplinary influences, such as technology, medicine, ethics, and the social sciences, affect the law and the judicial process;
- Participation in cooperative education programs involving other branches of government, as well as other state and federal judicial systems.

Much of the governance and administration of the National Legal Training Center should be guided by the CLE Commission and its sub-committees. The sub-committees would assist in designing the CLE programs as well as developing quality training material.

The Center's facility design has to accommodate the main purposes of CLE in Mongolia and the functions of each branch. It needs classrooms suitable for adult education; an auditorium for larger interdisciplinary events; at least one computer room for computer training classes; preparation rooms for trainers; a technology center; a library; a research center if the Center's ultimate purpose is to advance the legal professions; and administrative staff offices and meeting rooms. Because the Center will likely run training courses that last several days, the economies of including a kitchen and areas to serve refreshments deserve consideration.

4. NEXT STEPS

The proposed CLE model represents a strategy to create a realistic, democratic, and sustainable CLE program for all Mongolian legal professionals. Ultimately, the Mongolian legal profession will have to stand on its own and operate with little or no outside assistance. To function effectively, its members will have to continually master new legal concepts and acquire new skills. Establishing a CLE system is the foundation for achieving this goal.

The model is only an outline. Many elements need to be filled in, and many adjustments need to be made to reflect current and projected training needs. The elements outlined here do not have to be constructed in any particular order and are not mutually exclusive. What is essential is that

all key stakeholders agree upon a basic CLE structure and some strategic concept to develop the needed capacities. It is one of the JRP's fundamental goals to assist in this process.

The JRP is ready to assist in establishing a CLE Commission and in preparing a strategic plan for developing a CLE system in Mongolia. The plan should be specific enough to be translated into authorizing legislation. It should guide decisions about budgeting and other resource allocation, developing a comprehensive curriculum plan for each profession, establishing mandatory education requirements and monitoring systems, and assessing the implementation process. The result will be a model that defines the six basic elements of CLE for judges, prosecutors, and attorneys in Mongolia.

Ideally, all the organizations and individuals involved in CLE in Mongolia would adapt the scheme from the beginning, but it is probably unreasonable to expect that every organization can and will follow suit. Nevertheless, it is essential to start with a strategic planning effort that establishes mutual agreement about the goals, guiding principles, and responsibilities for CLE for each profession. The model does not require absolute agreement or absolute coordination to function effectively. Most current donor efforts fit into it. If a CLE schematic is developed and the currently available training is identified within this schematic, the gaps will be clearly visible. This allows the government to work toward filling those gaps and identifying areas where the courts or the PGO can take over donor-supported training, thus freeing up donor funds to develop other areas of needed training.

In assessing the challenge in Mongolia, it is important to remember that, even in the U.S., judicial education is a relatively new field. Of the 69 national and state organizations actively engaged in continuing judicial education, almost none existed 35 years ago. A national training facility for non-Federal prosecutors first became a reality in the U.S. in 1998. The establishment of a solid CLE program requires time. The first step is a model that outlines all the elements that need to be in place. That is the task facing Mongolian stakeholders today.

REFERENCES AND RESOURCE MATERIAL

Baas, N.J. 2000. Rekrutering en (permanente) educatie van de rechtsprekende macht in vijf landen; een internationale verkenning, Onderzoeksnotities, no. 2000/8, Den Haag, Netherlands. *The Dutch version of this study contains detailed assessments plus information material from several other countries, that, due to time constraint, was not analyzed and included in this publication. These countries are Belgium, Canada, Denmark, England, Italy, Portugal and Spain. The material available in English is only a summary of this work and can be downloaded at http://www.minjust.nl:8080/b_organ/wodc/summaries/ond2000-8s.htm*

Roper, C. 1999. Proposed Australian Judicial College. Discussion Paper prepared for the Australian Institute of Judicial Administration and the Australian Judicial Conference. *The discussion paper provides background information, particularly international examples, for the key decisionmakers to consider for the establishment of the Judicial College, including issues such as: The need for such a college, Basic principles to guide the college's operations; extent of the college's role; scope of programs offered; governance and operations of the center. The entire document can be downloaded at http://www.law.newcastle.edu.au/jca/judicial_college.pdf*

Judicial Training Center of Moldavia. *The website provide a good overview of the Center's activities.*
<http://www.jtc.md/>

Judicial Education Reference, Information and Technical Transfer (JERITT). Principles and Standards of Judicial Education. *This publication outlines the principles and standards adopted for judicial education by the National Association of State Judicial Educators in the U.S. The standards address issues, such as The Need for CLE, Organization and Resources, Use of Adult Education, and Faculty and Resource Material Development.*
<http://jeritt.msu.edu/pdf/Standardsforweb2.pdf>

Judicial Education Reference, Information and Technical Transfer (JERITT). Adult Education Perspectives for Judicial Education. *This publication provides many helpful insights for developing a curriculum and trainers that apply adult education principles to judicial education.*
<http://jeritt.msu.edu/documents/JEAEPManualonline.htm>

The JERRIT website <http://jeritt.msu.edu/> is a portal for a range of valuable resources related to CLE

National Association of State Judicial Educators. *Survey of State Judicial Education Organizations.* 1988.

ATTACHMENT A: Matrix of major training programs offered in Mongolia in 2001

Name of training program and sponsoring agency	Training topic	Training goals	Target participants by profession and experience level	Content	Training method	Type of training material used	Number of trainers	Number of courses held; frequency offered	Number of participants trained by profession and region	Course evaluation results	Date course developed and last update
Legal Retraining Center, Asian Development Bank	Commercial Law	To provide continuing legal education for mid-career Mongolian lawyers in the application of market economy-based legal principles in recently enacted commercial laws and regulations. To provide training in legal analysis, drafting, and negotiating. To meet the demands of the key participating legal institutions the Retraining Program will also include specialized training for judges and prosecutors.	Judges, prosecutors, legal advisors, advocates, police officers, officers for execution of court decision (advanced)	Course curriculum is organized around several distinct subjects or teaching modules. Substantive subjects include Comparative Law, International Trade Law, Banking Law, Taxation Law, Commercial Contract Law, Partnership and Company Law, Labor Law, Intellectual Property Law, Securities law, Economic Crimes. Skills training covers Advocacy and Negotiation Skills	Lecture, case study, solving hypothetical problems, break out groups, role play, giving assignments to write essays, testing.	Teachers use outlines, lecture summaries, compilation of cases and hypothetical problems, and compilation of legal sources by certain topics. A few instructors give students handouts	7	10 courses (each 45 days)	215 lawyers from Ulaanbaatar city and all aimags were retrained	Course evaluation results were good	The first training course commenced on February 13, 2001. Last updated - September 2001.
Judicial Retraining Center, Soros Foundation	Legal Protection of Human Rights	To train 360 judges in 70 hour long training program. Provide judges knowledge in the theory and practice of new laws	Judges (beginners and advanced)	The 6 main topics are International Law, Human Rights, Role of the Judge in The Democratic Society, Immovable Property Law, Land Law.	lecture, discussion	A compilation of lectures was handed out to the last one third of participants.	No permanent trainers. 30 guest lecturers, including 6 part-time judges	16 courses (each course 14 days in duration)	320 judges	Course evaluation results good. Participants felt that the training needed to be more specialized.	The first training course commenced on April 17, 2000. Last updated - June 2001.
"Legal Reform in Mongolia's Economy" Project, GTZ	Civil Law	To train and retrain all judges in Civil Law and new concepts of Civil Code and Code of Civil Procedure, to assist them in drafting court decisions. Long term goals are to develop a permanent training system on the given subject.	Judges and assistants judges in all level of courts including the Supreme Court (beginners and advanced)	Civil Law, Civil Procedure Code and Methodology of Drafting Court Decision	Lecture, seminar, solving the hypothetical problem, test before and after training.	Special materials including outlines, cases and problems were handed out in the first round of training. None were handed out in the second round.	12 permanent Mongolian judges-trainers and 10 German guest lecturers	1st training Oct. 1996 - Sept. 2000; 2nd - Sept. 2000 - Oct. 2001. Number of courses held = 51; (1 or 2 weeks each);	All judges and assistants judges in all level of courts were covered twice. Over 100 prosecutors, advocates and other lawyers participated in the training at their request.	course evaluation results are good	The 1st round training commenced in Oct. 1996. Last update - Sept. 2000.
Legal Education Academy, Hanns-Seidel Foundation of Germany	Public Law and Criminal Law	To train and retrain officers of state administrative bodies and law enforcement authorities, enhance citizens legal knowledge	Civil servants of state administrative bodies, officers of law enforcement	Main topics are Constitutional Law and Procedure, Administrative Law and Procedure, Criminal Law and Procedure, Local Governance, and Office Management	Lecture, case study, role play, distant training, seminar.	None	Number of permanent trainers - 2; guest lecturers - 30.	8 training courses (3 days)	176 lawyers and other professionals, 4 regions (including UB city)	According to survey good	Training commenced in June 2001

Attachment B: Illustrative Training Schematic

Criminal Law & Procedure Civil Law & Procedure Constitutional Law Administrative Law		Specialty Topics		Skills Training	
New lawyers training	Application of the law	New lawyers training	Ethics Human rights	New lawyers training	Opinion writing Legal writing Advocacy skills Computer skills
Intermediate Courses	Law Updates Appeals procedures New Supreme Court decisions	Intermediate Courses	Crime scene investigation Scientific evidence Interview techniques Behavioral sciences	Intermediate Courses	Office management English language skills Technology application skills
Advanced Courses	Special crimes and civil cases	Advanced Courses	Community outreach Criminology Special victim issues Organization and management Personnel issues Budget development	Advanced Courses	Management and leadership skills

ATTACHMENT C

CLE requirements established in all US states

The following 40 U.S. states require lawyers to take mandatory continuing legal education (MCLE) courses in order to practice law within that particular jurisdiction:

- Alabama:** 12 hrs. per calendar year. Reporting date: December 31.
- Arizona:** 15 hrs. Per calendar year including 3 hrs. ethics/prof. responsibility, professionalism, substance abuse, or ADR. Reporting date: September 15.
- Arkansas:** 12 hrs. Per year including 1 hour of legal ethics. Reporting date: June 30.
- California:** 36 hrs. over 3-year period including 8 hrs. of legal ethics/law practice management of which 4 hrs. must be legal ethics; 1 hr. substance abuse/emotional distress and 1 hr. elimination of bias in the profession. Reporting date: January 31.
- Colorado:** 45 hrs. over 3-year period including 7 hrs. legal ethics, professionalism. Reporting date: anytime within 3 year period.
- Delaware:** 30 hrs. over 2-year period including 3 hrs. Enhanced Ethics, professionalism, with exceptions for Senior Attorneys, newly admitted attorneys, and attorneys resuming active practice. Comity for Out-Of-State Attorneys primarily practicing in other MCLE states. Fundamentals of Law series required for Recently Admitted Attorneys within 4 years of admission consisting of 3 full-day programs. Reporting date: July 31.
- Florida:** 30 hrs. over 3-year period including 5hrs. legal ethics, basic skills course for newly admitted attorneys. Reporting date: assigned month every 3 years.
- Georgia:** 12 hrs. per year including 1 hr. legal ethics, professionalism, basic skills within 1st 2 yrs., ADR 3 hrs. one time only. Reporting date: January 31.
- Idaho:** 30 hrs. over 3-year period including 2 hrs. legal ethics, basic skills course for new admittees. Reporting date: every 3rd year depending on year of admission.
- Indiana:** 36 hrs. over 3 calendar year period with 6 hr. minimum per year including 3 hrs. legal ethics. Reporting date: December 31.
- Iowa:** 15 hrs. per calendar year including 2 hrs. legal ethics every 2 years. Reporting date: March 1.
- Kansas:** 12 hrs. per year including 2 hrs. legal ethics. Reporting date: 30 days after program.
- Kentucky:** 12.50 hrs. per year including 2 hrs. legal ethics, new lawyer skills training within 12 mos. of admission. Reporting date: June 30.
- Louisiana:** 15 hrs. per year including 1 hr. legal ethics, professionalism -1 hr./year. Reporting date: January 31.
- Maine:** 11 hours per year 1 hour ethics/professional responsibility. Reporting date: Annually in connection with filing of registration statement required by Maine Bar Rule 6(a).
- Minnesota:** 45 hrs. over 3-year period, 3 hrs. legal ethics required in each seminar, 2 hrs. bias. Reporting date: August 30.
- Mississippi:** 12 hrs. per year including 1 hr. legal ethics, prof. responsibility, or malpractice prevention each year. Reporting date: July 31.
- Missouri:** 15 hours per year including 3 hrs. ethics every 3 years, new admittees 3 hrs. professionalism, legal/judicial ethics within 12 mos. Reporting date: July 31.
- Montana:** 15 hrs. per year. Reporting date: March 1.
- Nevada:** 12 hrs. per year of which 2 must be in ethics. Reporting date: March 1.
- New Hampshire:** 12 hrs. per year/at least 6 must come from out of the office live programs, including 2 hrs legal ethics/professionalism, or substance abuse. Reporting date: August 1.
- New Mexico:** 15 hrs. per year including 1 hr. ethics. Reporting date: Prior to March 1 annually.
- New York:** Newly Admitted Attorneys: Admitted after 10/97. Newly admitted attorneys must complete 32 credit hours of accredited "transitional" education within the first two years of admission to the Bar. "Transitional" courses help the newly admitted attorney develop a foundation in practical skills, techniques and procedures essential to the practice of law. Sixteen credit hours must be completed in each of the first two years of admission to the Bar as follows: Three (3) hours of ethics and professionalism; Six (6) hours of practical skills; and Seven (7) hours of practice management and areas of professional practice. Reporting period: every 2 years from the time admitted to the Bar.

Experienced Attorneys: Admitted before 10/97. Experienced Attorneys must complete 24 credit hours of accredited continuing legal education during each biennial reporting cycle. Four (4) hours of ethics and professionalism; the remaining 20 hours can be a combination of ethics and professionalism, skills, practice management, and/or areas of professional practice. Reporting period: every 2 years from the time admitted to the Bar.

North Carolina: 12 hrs. per year including 2 hrs. ethics, 9 of the 12 hrs. in practical skills during first 3 yrs. of admission, and 1 hr. substance abuse or debilitating mental conditions every 3 yrs. Reporting date: February 28.

North Dakota: 45 hrs. over 3-year period, 3 hrs. ethics every 3 yrs. Reporting date: June 30.

Ohio: 24 hrs. every 2 years including 2 hrs. ethics and including 30 mins. instruction on substance abuse. Reporting date: every 2 yrs on January 31.

Oklahoma: 12 hrs. per year including 1 hr. ethics. Reporting date: February 15.

Oregon: 45 hrs. over 3-year period including 6 hrs. ethics, new admittees-15 hrs. of which 10 must be in practical skills and 2 hrs. in ethics. Reporting date: every 3 years.

Pennsylvania: 12 hrs. per year for all 3 compliance groups. 1 hr. ethics, professionalism, or substance abuse and a minimum of 11 hrs. of substantive law, practice and procedure, CLE crs. for ethics, professionalism, or substance abuse may be applied to any substantive law, practice and procedure requirement, no more than two times the current annual CLE requirement may be carried forward into the two succeeding years. Reporting date: 30 days after program.

Rhode Island: 10 hrs. per year including 2 hrs. ethics. Reporting date: July 1-June 30 annually.

South Carolina: 14 hrs. per year including 2 hrs. ethics/professional responsibility each reporting period. Reporting date: January 15.

Tennessee: 15 hrs. per year. Including 3 hrs. ethics/professionalism. Reporting date: March 1.

Texas: 15 hrs. per year including 3 hrs. legal ethics. 1 hr. of the 3 hrs. of legal ethics may be completed through self-study. 5 hrs. of the total 15 hrs. may be completed through self-study. Reporting date: last day of birth month each year.

Utah: 27 hrs. every 2-years including 3 hrs. ethics each reporting period. Reporting date: end of second year compliance period.

Vermont: 20 hrs. over 2-yrs. including 2 hrs. ethics each reporting period. Reporting date: July 15.

Virginia: 12 hrs. per year including 2 hrs. ethics each reporting period. Reporting date: December 15.

Washington: 45 hrs. over 3 yrs. including 6 hrs. ethics, professional responsibility, professionalism, bias and diversity. Reporting date: January 31.

West Virginia: 24 hrs. over 2-yrs. including 3 hrs. ethics or office management or substance abuse per cycle. Reporting date: June 30 every 2 yrs.

Wisconsin: 30 hrs. over 2-yrs. including 3 hrs. ethics and professional responsibility. Reporting date: December 31st every other year.

Wyoming: 15 hrs. per year including 1 hr. ethics. Reporting date: January 30.

ATTACHMENT D

Cisineau Declaration

CONSIDERING:

- That the concept of the RULE OF LAW is a prerequisite for a democratic society;
- That one of the cornerstones of the RULE OF LAW concept is an independent Judiciary,
- That in this respect the training of members of the Judiciary should be arranged in an independent way by an independent body of the Judiciary itself.

During the Conference the participants agreed on the following conclusions taken from the discussion:

1. All participants recognize the importance of training of the members of the Judiciary;
2. Training of the members of the Judiciary is the primary responsibility of the State;
3. The way in which the training of the members of the Judiciary is organized depends on the judicial culture and the national situation in the country;
4. The organization of the judicial training should meet international minimum standards as provided by the various international bodies,
5. Financing of judicial training is the responsibility of the State;
6. In the transition phase in which many of the countries involved are at the moment, other than public financing can be accepted, provided that the independent position of the JTC's and their independence in policy-making is guaranteed and respected;
7. In order to further enhance their cooperation in the field of their activities, to increase the possibilities of joint actions, and to exchange knowledge and information, the participants will look for cooperation in the framework of a network of JTC's;
8. In the necessary making of short and long term planning and strategy, the JTC's have to take the above mentioned principles into account.

BEARING IN MIND these conclusions, the representatives of the JTC's agree that these principles can only be met if the State is convinced of the necessity of an independent Judiciary for a well - functioning democracy. It is therefore necessary to maintain the quality of the Judiciary, including the quality of its training.

This result conviction can only be obtained when there is a strong judicial organization that is respected by the society.

Training 2002
Train the Trainers Phase 1
Agenda
January 17, 2002 Draft

Day 1

09:00-11:00	Program Introduction
11:00-11:15	<i>Break</i>
11:15-1:00	Criminal Code Changes (Batsaikhan, Bayasgalan)
1:00-2:30	<i>Lunch</i>
2:30-3:30	Criminal Code Q & A
3:30-3:45	<i>Break</i>
3:45-6:00	Teaching Techniques Part I

Day 2

09:00-10:45	Criminal Procedure Code Changes (Altanhuyag, Batdelger)
10:45-11:00	<i>Break</i>
11:00-1:00	Crim Pro Code Q & A
1:00-2:30	<i>Lunch</i>

Project Expectations

2:30-4:00	Ethics and Criminal Code Changes
4:00-4:15	<i>Break</i>
4:15-6:00	Advocacy Skills and Crim Pro Code Changes

Day 3

09:00-10:30	Teaching Techniques Part II
10:30-10:45	<i>Break</i>
10:45-1:00	Teaching Technique - Exercise
1:00-2:30	<i>Lunch</i>
2:30-4:00	Training Manual Creation
4:00-4:30	Closing Remarks

**Training 2002
Train the Trainers Phase 2
Agenda**

Day 1

9:00-9:30 Introductory Remarks (Herbert Bowman, JRP Training Advisor)
9:30-10:30 Criminal Code Drafters Q & A (Batsaikhan, Supreme Court Justice; Dembereltseren, former Supreme Court Chief Justice)
10:30-10:45 *Break*
10:45-11:45 Criminal Code Drafter Q & A
11:45-12:30 Topic Overviews (B. Otgonbayar, Enkhbat)
12:30-2:00 *Lunch*
2:00-3:15 Criminal Code Drafters Q & A (Batdelger, Chief Capital City Court; Bayasgalan, Legal Advisor to the President)
3:15-3:30 *Break*
3:30-5:00 Criminal Procedure Code Drafters Q & A
5:00-6:00 Teaching Exercise Preparation

Day 2

9:00-11:00 Criminal Code Presentations
11:00-1:00 GTZ Training visit
1:00-2:30 *Lunch*
2:30-4:30 Ethics Presentation
4:30-4:45 *Break*
4:45-6:00 Critique

Day 3

9:00-11:00 Criminal Procedure Code Presentations
11:00-11:15 *Break*
11:15-1:15 Advocacy Skills Presentations
1:15-2:30 *Lunch*
2:30-3:30 Presentation Critique
3:30-3:45 *Break*
3:45-5:00 Discussion Regarding Manuals
5:00-5:30 Organizational Skills and Requirements (Herbert Bowman)

**Codes and TOT Training
Program Evaluation Summary
January 30 - February 1, 2002
Ulaanbaatar, Mongolia**

1. Participant Information:

a. Judges 5 b. Prosecutors 3 c. Advocates 2 d. Lecturers 2 e. Others 1

Total of 13 participants filled the evaluation form.

2. What was the most effective part of the program? Why?

Teaching techniques, as the participants had no previous teaching experience - 8

Practical exercises, discussion- 4 Criminal code changes- 1

The program on overall was effective- 2

Topics included in the program, the written material and lectures were essential. The parts taught by the Program coordinators were interesting.

3. What was the least effective part of the program? Why?

There was no such - 4

The Criminal Code changes- 5: the time allocated was not enough

The Codes changes- 2: the presenters defended their own opinion rather than focused on the application matters .

Ethics- 1: no sufficient information was given as the topic is not sufficiently researched yet.

4. Please give your honest assessment of the presentations given and the exercises you participated in during the program. Please include comments in the following areas: the effectiveness of the instructor in presenting the topic, the helpfulness of the written material (if provided), the need for or lack of need for training in the topic by Mongolian legal professionals.

Program Introduction

Excellent- I Good- 11

Satisfactory- 1

Criminal Code changes- drafters

Good- 8

Satisfactory- 5

Not enough time was allocated. Members of the drafting group were not sufficiently prepared.

Was less effective due to the time constraint and because the final version was not out yet.

Criminal Procedure Code changes- drafters

Good- 4

Satisfactory- 5 Satisfactory- 5

Unsatisfactory- 4

No all the necessary issues were covered. Not enough information was given on the adversarial process *inter alia*. Critical approach prevailed. It is a shame there was almost no questions/answers session. Was not effective enough due to the lack of system, time, constraint and because the final version was not out yet.

Teaching techniques I

Excellent-2 Good- 8
Satisfactory- 3

Ethics and Criminal Code changes

Good- 6
Satisfactory- 4
Unsatisfactory- 1 Did not attend- 1 Did not rate- I

Advocacy Skills and Criminal Procedure Code changes

Good- 7
Satisfactory- 3
Did not attend- 1 did not rate- 2

Teaching techniques II

Excellent- 1 Good- 6
Satisfactory- 5 did not rate- 1

Exercises

Good- 6 Satisfactory- 4 did not rate- 3

**ADVANCED TRAINING OF THE TRAINERS
AGENDA**

June 27-28, 2002

DAY ONE

9 am – 9:30 Welcome & Introductions (Mr. La Mont)

9:30 – 10:30 Adult Learning Theory (Ms. Edwards):
Adult Learner Characteristics (Break Out Groups)
Break Out Group Reports
Styles of Learning
Kolb's Learning Circle

10:30 – 10:45 Break

10:45 – 11:15 Trainer Type Test (Ms. Edwards):
Take Trainer Type Test

11:15 – 1:00 Trainer Type Test (Ms. Edwards):
Self Score
Discuss Results
Trainer Type Exercise (Break Out Groups)

1:00 – 2:00 Lunch

2:00 – 2:15 Report on Trainer Type Exercise

2:15 – 3:30 Bloom's Theory and Developing Learning Objectives (Ms. Edwards)

3:30 – 3:45 Break

3:45 – 4:30 Develop learning objectives for what you teach (Personal Exercise)

4:30 – 5:00 Comments on GTZ (Mr. Zaya)

DAY TWO

9:00 – 9:45 The Learning Pyramid and Development of Audio Visual Aids (Ms. Edwards)
Preparing Course Materials (Ms. Edwards):

Binders
Handouts

- 9:45 – 10:15 Develop Audio Visual Aids and Course Materials (Personal Exercise):
Design a new audio visual aid or revise an old audio visual aid for a segment of what you teach
Draft or revise an outline for what you would include in course materials for a one-hour session of what you teach
- 10:15 – 10:30 Break
- 10:30 – 1:00 Report on your plans for new learning objectives, audio visual aids, and course materials
- 1:00 – 2:00 Lunch
- 2:00- 2:15 Structures of Foreign CLE Organizations (Ms. Edwards, Mr. La Mont)
- 2:15 – 2:45 Future of CLE in Mongolia (Dr. Amarsanaa)
- 2:45 – 3:30 Future and Structure of CLE in Mongolia:
(Brainstorming in Break Out Groups)
- 3:30 – 3:45 Break
- 3:45 – 4:45 Group Reports and Discussion (Dr. Amarsanaa)
- 4:45 – 5:00 Summing Up (Dr. Amarsanaa, Ms. Edwards, and Mr. La Mont)

**National Center for State Courts (NCSC)
Mongolia Judicial Reform Program (JRP)**
A USAID-funded project

Title: **Advanced Training of the Trainers**
Location: **Ulaanbaatar, Mongolia**
Date: **June 27-28, 2002**

Program Evaluation Summary

1. Participant information:

- a. Trainers-Judges 13
- b. Trainers-Prosecutors 6
- c. Trainers-Advocates 4
- d. Trainers 9

Total number of trainers: 32

INSTRUCTIONS: Please complete this form and return it to the JRP representative before leaving. The information you give will help us improve this course and plan subsequent courses. Please be candid; written comments are particularly helpful. Where numbers are given, circle the number that best describes your response using the following scale:

1	2	3	4	5
Poor	Fair	Average	Good	Excellent
Not at all	A little	Some	Regularly	Extensively

2. General Reactions

1. Overall, I thought the course was:	1	2	3	4	5
2. The usefulness of the written materials during the course was:	1	2	3	4	5
3. To what extent were the course objectives met?	1	2	3	4	5
4. To what extent will you be able to apply what you learned to your work?	1	2	3	4	5
5. To what extent did the course meet your expectations?	1	2	3	4	5

Answers:

- Question 1: 5-10; 4-19; 3-2; 2-0; 1-0. No answer-1.
- Question 2: 5-15; 4-13; 3-1; 2-1; 1-2.
- Question 3: 5-16; 4-12; 3-3; 2-1, 1-0.
- Question 4: 5-4; 4-26; 3-1; 2-1; 1-0.
- Question 5: 5-12; 4-17; 3-2; 2-1; 1-0.

3. Questions

a. What was the most effective part of the program? Why?

In general, participants responded that the program overall was effective. Most of the participants noted that the practical exercises were the most effective part of the program. Many trainers assessed the session with Ms. Edwards on the Adult Learning Theory, including Kolb's Learning Circle, Bloom's Theory and Developing Learning Objectives positively. Some trainers commented that the session of the Trainer Type Test, including the Self-Score, Discussion of Results and Trainer Type Exercises, was the most interesting part of the program. Many participants observed that "The Learning Pyramid and Development of Audio Visual Aids" presentation by Ms. Edwards was especially helpful for trainers. Other participants evaluated the session by Ms. Edwards on the Structures of Foreign CLE Organizations and Dr. Amarsanaa on the Future CLE in Mongolia and follow-up Group Reports and Discussions as effective and helpful.

b. What was the least effective part of the program? Why?

Most of the participants answered that there was no such a part.

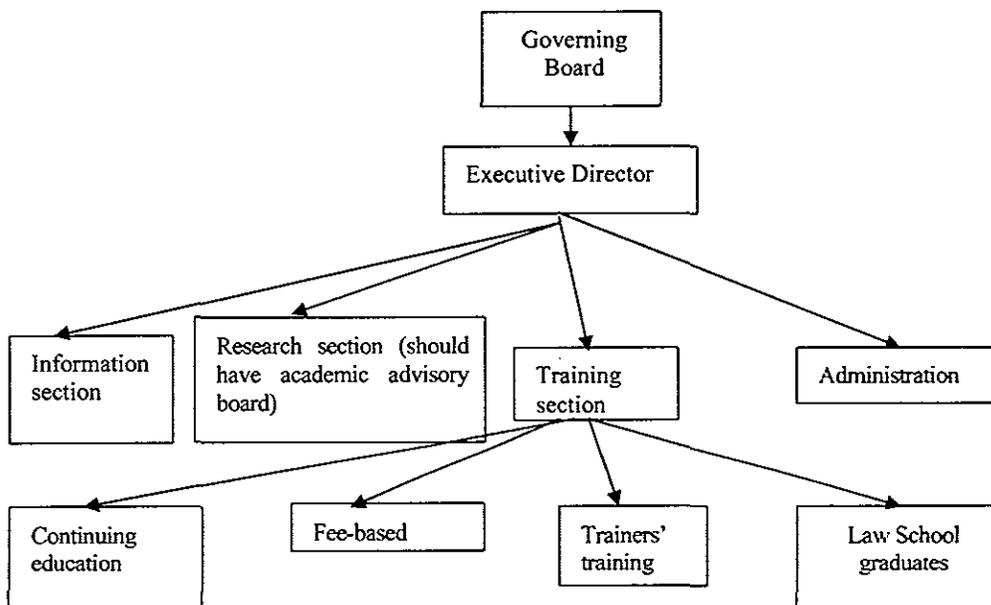
c. What suggestions do you have to make this program better in the future?

A number of the participants suggested that duration of the program be increased. Some of them also proposed that written materials on Structures of Foreign CLE Organizations be developed and distributed to the participants. One participant noted that a teaching technique video could be used during the training. Another suggested conducting such training with participation of less than 30 people. A few participants suggested that trainers with good teaching techniques and experiences be invited to share their experiences.

Memo

FROM: B.Enkhbat
 TO: Otgon, Robert La Mont, Mary Frances Edwards, and Herb Bowman
 RE: Structure of future national training center
 DATE: July 8, 2002

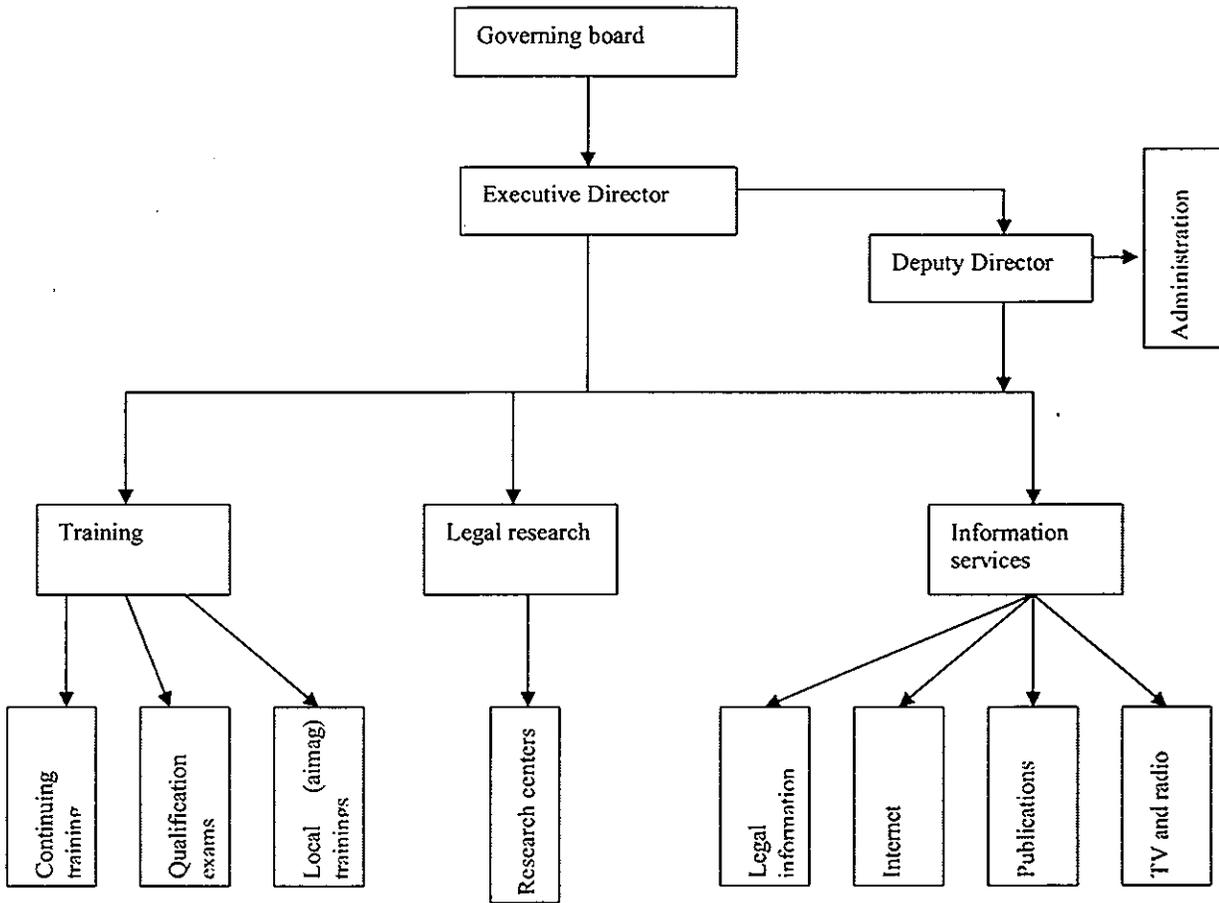
On June 21, 2002, legal instructors of Judicial Reform Project (JRP), Legal Retraining Centre (LRC) and German Technical Cooperation Society (GTZ) had a group brainstorming session over possible structure and organization of the future national legal training and research center. The event was coincided with the advanced trainers' training for the adult instructors who teach judges and lawyers select legal subjects in different training programs. There were ... mixed groups of 6-7 instructors. Then, each group was asked to present their ideas on flip charts to other groups. The exercise was facilitated by Otgon and Mary Frances. **This memo is to briefly summarize (replicate) the ideas presented by groups on possible organizational structure of the National Legal Center**

Group #1:**Notes:**

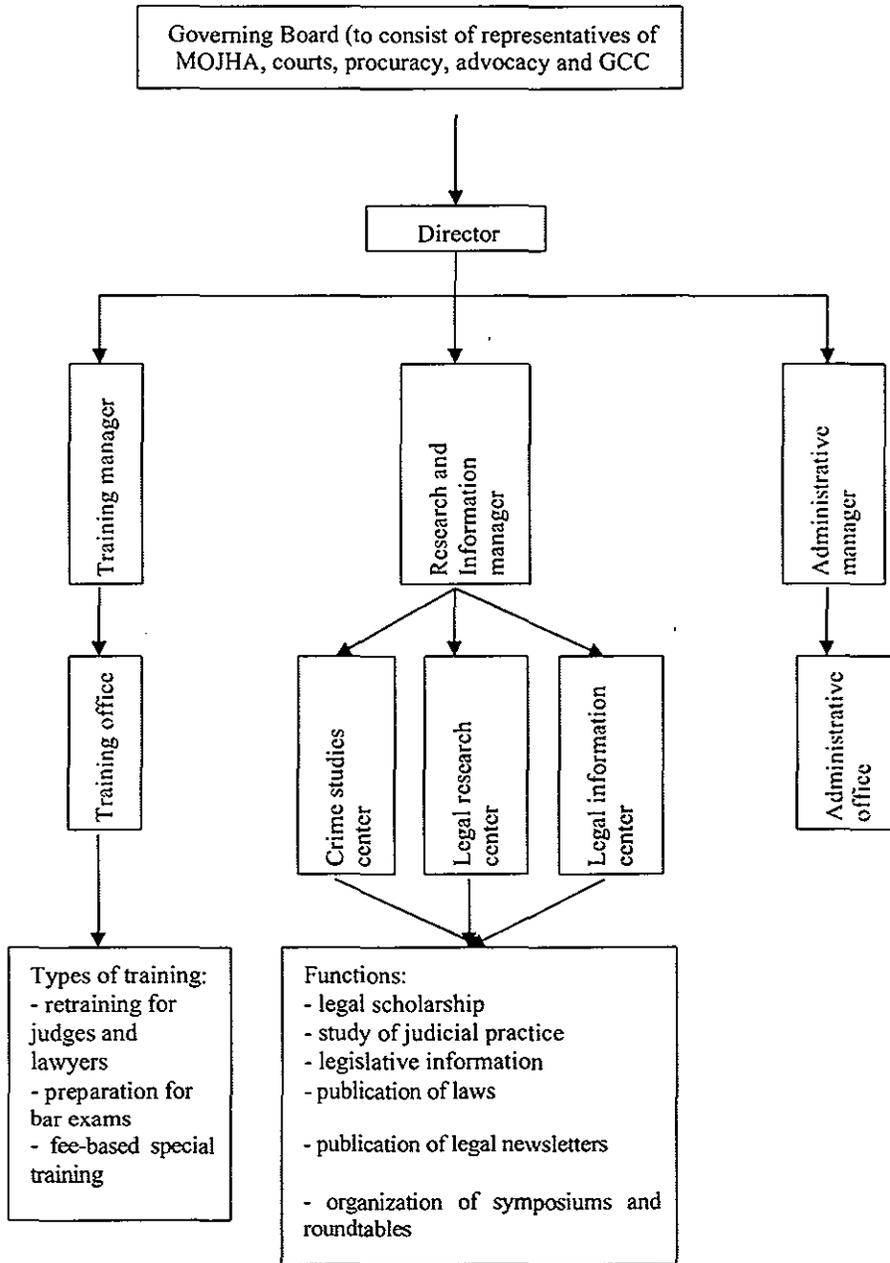
The Governing Board is to consist of:

- A representative of law schools
- A representative of judges' association
- A representative of prosecutors' association
- A representative of advocates' association
- A representative of Ministry of Education (Higher Education Department)

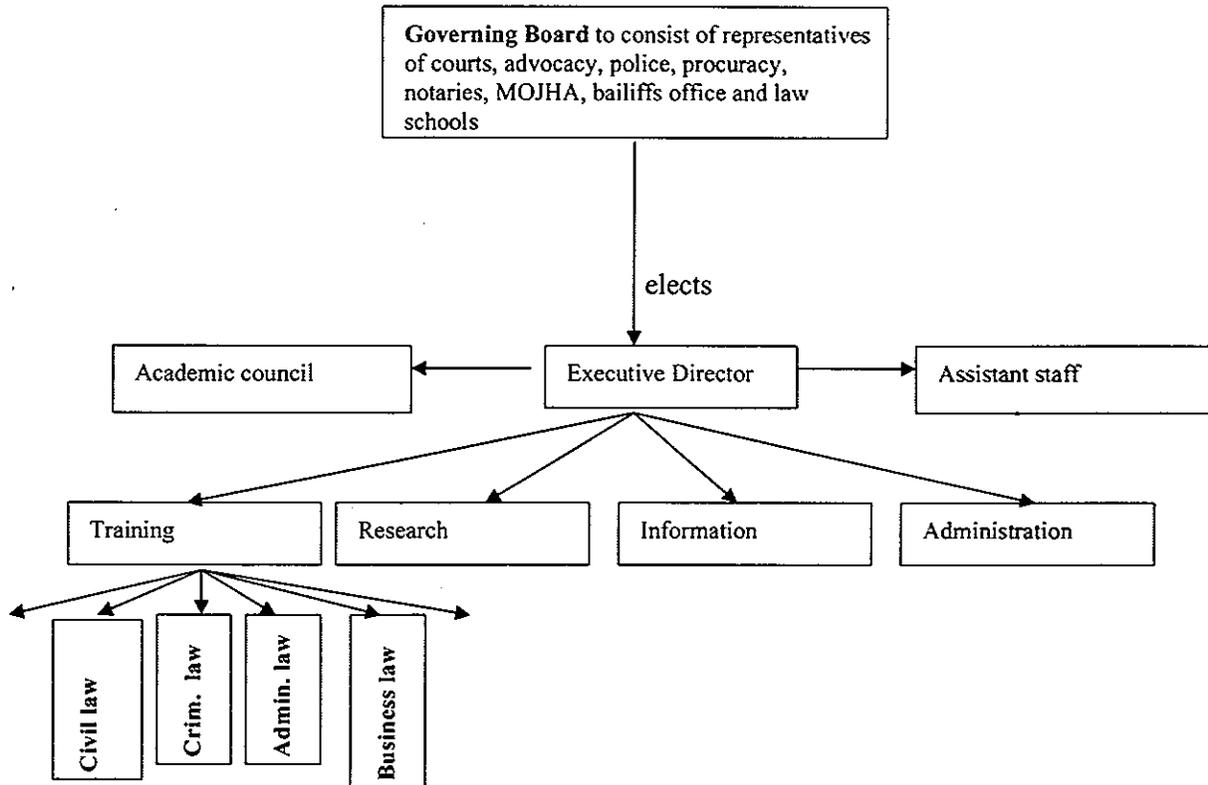
Group #2:



Group #3:



Group #4:



Notes:

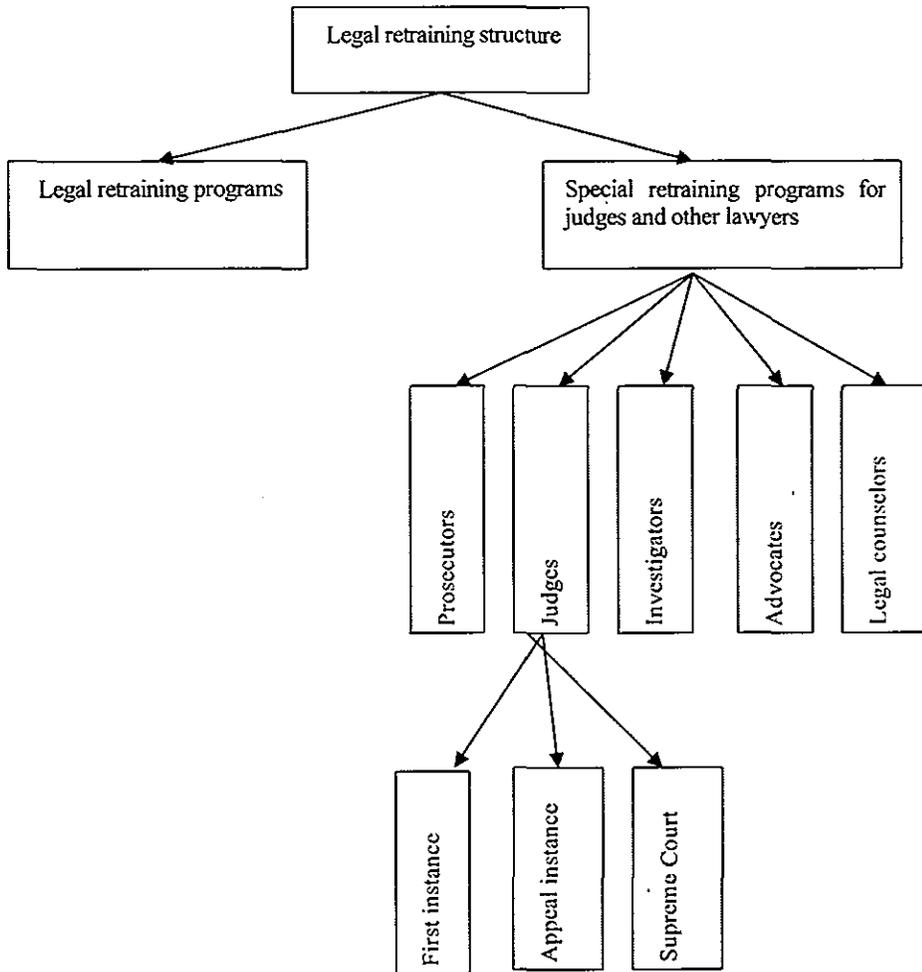
- The Center is to have status of non-governmental organization

Among the possible sources of funding, the groups named the following:

- Government budget
- Donor support
- Donations
- Income (of sale of publications, fee trainings)
- Project implementation
- Legal counseling

Proposal by Justice B.Tsognyam, Supreme Court:

Structure and organization of training
of legal professionals



Suggestion for the Establishment of the National Scientific Research Training Information and Promotional Center.

The "Rule" or Charter of the Center does not indicate how the training department will be organized to develop curriculum for the various branches of the legal profession in Mongolia. This is a critical omission, because each branch has different training needs, and in fact, each branch has different existing training facilities.

To remedy this, it is suggested that a "General Training Committee" be included in the Charter with three sub-committees. The sub-committees would be 1) a sub-committee of judges, consisting of three judges elected by the General Council of the Courts from among judges. The committee would also include one nominee of the Supreme Court elected by the all members of the court; 2) a sub-committee of the procuracy, with four members nominated by the prosecutor general; and 3) a sub-committee of advocates of four members elected by the Advocates Association members. All members would have to have training experience or higher legal degrees. The Director of the National Center would be an ex officio member of each sub-committee and the Chair of the "General Training Committee."

Meeting as sub-committees, the separate sub-committees would have complete responsibility and power to set the curriculum for their respective branch of the legal profession. They would also have the power to set any training requirements applicable to all members of their respective profession.

Meeting jointly as the "General Training Committee", they would have the power to coordinate all the training under the Training Department. It would select trainers to conduct the training decided upon by the sub-committees. It would report to the other branches of the National Center on research and publication that was needed for training. It would allocate the budget for training of the National Center and solicit contributions from donors and coordinate donor technical assistance.

Donors who contribute to legal training would be invited to send observers to all meetings of the General Training Committee and sub-committees.

Respectfully submitted,

Robert C. La Mont
Chief of Party
Judicial Reform Project

Outline of Criminal Procedure Code Training

- A. Overview of the major changes to the code.
- B. Application of Measures of Restraint - the law of arrest and detention (where the application of the new standard for arrest is discussed).
- C. Practical problems on applying standards of arrest and detention.
- D. General procedural requirements, such as lodging requests and complaints, the civil suit in criminal proceedings and the consolidation and separation of criminal cases.
- E. Investigation and initiation of the criminal case, and changes to the procedure.
- F. Appellate procedure.
- G. Practical exercise requiring the participants to identify and discuss the most problematic aspects of the new code.

Outline of Ethics Training

- A. General discussion of the definition of ethics and its importance to the legal profession.
- B. Introduction of some comparative information relating to professional ethics.
- C. Overview of Mongolian disciplinary system.
- D. Professional mistakes versus ethical misconduct.
- E. Discussion of new Judicial Code of Ethics.
- F. Problem solving exercises.

Outline of Advocacy Skills Training

- A. Current state of Mongolian procedural law regarding advocacy and adversarial process.
- B. History and development of adversarial process.
- C. Theory of the case.
- D. Questioning witnesses.
- E. Closing argument.
- F. Mock trial exercise.

Statistics on Aimag Training

No	Aimags	Judge	Advocate	Prosecutor	Legal advisor	Others	Total
1	Uvs	11	5	1		9	26
2	Bayan-Ulgii	9	2			10	21
3	Hovd	13	5			5	23
4	Dundgovi	17	4		3		24
5	Umnugovi	9	4	1	2	9	25
6	Dornogovi	14	5	1	3	4	27
7	Bayanhongor	11	4	2		5	21
8	Uvurhangai	15	5		3	2	25
9	Arhangai	11	4		3	7	25
10	Suhebaatar	10	5	2	1	7	25
11	Dornod	17	4	1	1	6	29
12	Hentii	15	7	1	2	4	29
13	Darhan	14	9		3	6	29
14	Selenge	19	13	1		7	40
15	Tuv	18	5		3	7	33
16	Govisumber	9	4		2	1	16
17	Huvsgul	13	7		2	6	28
18	Bulgan	11	5	2		9	25
19	Erdenet	7	10	1		11	29
20	Zavhan	13	3		3	5	24
21	Govi-Altai	9	5		3	6	23
	Total	265	115	13	34	126	547

The basic five evaluation questions:

Overall, I thought the course was:
The usefulness of the written materials during the course was:
To what extent were the course objectives met?
To what extent will you be able to apply what you learned to your work?
To what extent did the course meet your expectations?

Average Aimag scores for the course overall and each component:

	Overall Score	Course Materials	Course Objectives Met	Able to Apply to Work	Expectations Met
Overall	4.62	4.79	4.57	4.28	4.61
Criminal	4.61	4.75	4.41	4.59	4.62
Ethics	4.61	4.72	4.45	4.67	4.68
Crim. Pro	4.62	4.75	4.43	4.67	4.66
Adversarial	4.7	4.73	4.46	4.73	4.73

Average scores for Ulaanbaatar trainings:**Prosecutors:**

	Overall Score	Course Materials	Course Objectives Met	Able to Apply to Work	Expectations Met
Overall	4.52	4.78	4.48	4.45	4.52
Criminal	4.64	4.71	4.47	4.62	4.59
Ethics	4.5	4.62	4.5	4.55	4.58
Crim. Pro.	4.64	4.72	4.59	4.69	4.64
Adversarial	4.69	4.68	4.57	4.69	4.7

Advocates:

	Overall Score	Course Materials	Course Objectives Met	Able to Apply to Work	Expectations Met
Overall	4.64	4.71	4.62	4.43	4.64
Criminal	4.62	4.7	4.47	4.55	4.58
Ethics	4.69	4.68	4.52	4.67	4.68
Crim. Pro.	4.67	4.72	4.57	4.67	4.67
Adversarial	4.75	4.79	4.61	4.75	4.77

**Mongolia Judicial
Reform Project**

Memo

To: Robert La Mont
From: Mary Frances Edwards
CC: Heike Gramckow
 Jan Cook
 Enkhbat
 Otgonbayar
Date:
Re: 2002 Criminal and Criminal Procedure Codes Program Evaluation Summary

Method of evaluation

During summer 2002, the Mongolia Judicial Reform Project presented trainings for judges and advocates on the Criminal and Criminal Procedure Codes, ethics, and advocacy in 21 aimags. There were also courses in Ulaanbaatar for five weeks in November and December for prosecutors and advocates. At each course, the audience was asked to fill out a written course evaluation form. The form (sample in **Attachment A**) asked for some anonymous demographic information, for general reaction to the course as a whole and for specific reactions to course segments and suggestions on how to improve them. Reaction responses were numerical on an ascending 5-point scale ranging from "poor" or "not at all" to "excellent" or "extensively."

1	2	3	4	5
Poor	Fair	Average	Good	Excellent
Not at all	A little	Some	Regularly	Extensively

Having joined the project only 1 August as the aimag trainings were finishing, I am objective about the evaluation results. These are the finest collection of evaluations for a series of courses I have ever seen, even within the context that foreign continuing legal education audiences are often grateful and "just happy to be here." Average numerical scores do not indicate the quality of every session of a course, nor are the any evidence of the long-term effect. However, the scores do give a rough indication of the initial reactions on various key issues. The scores also provide a way to correct or fine tune future course that will take place before an intense post-course evaluation can happen. The accompanying prose comments reveal what is good or less than ideal about a course and provide constructive suggestions for the future.

All the scores for the aimag trainings are listed by location in **Attachment B**. High scores are in blue, low in red.

Of particular interest are the questions about the participants' overall reaction to the course:

Overall, I thought the course was:
The usefulness of the written materials during the course was:
To what extent were the course objectives met?
To what extent will you be able to apply what you learned to your work?
To what extent did the course meet your expectations?

Overall course?

The overall score ranged from a low of 4.12 in Sukhbaatar to a phenomenal high of 4.90 in Gobi-Altai. The average score among the 20 courses was 4.62. This is particularly impressive in the context of a blossoming CLE project with a new corps of trainers mounting their first massive educational effort all over a large country. The close range of most of the scores shows a remarkable consistency in quality among 19 of the 21 aimags. Even the 4.12 and 4.18 are acceptably in the "Good" to "excellent" category, although at the lower end.

Usefulness of written materials during the course?

The JRP staff wrote this question in a very focused, sophisticated manner. It asks solely how useful the materials were during the course; it does not ask the participant to predict how useful the materials will be as a permanent reference, which is a topic for the post-course evaluation. The course materials were extremely well received everywhere. The scores ranged from a low of 4.45 in Arkhangai to a perfect 5 in Gobi-Altai, with an average score of 4.79. In Sukhbaatar, where the course received only a 4.12, the reaction to the course materials was 4.56. In all but three aimags, the course materials were even more popular than the course. This was the only question that elicited an even more favorable average than the overall course score average.

To what extent were the course objectives met?

Participants thought the course objectives were well met, with an average of 4.57, almost in the middle between "Regularly" and "Extensively." The only problem seemed to be in Orkhon, where meeting the course objectives scored only 3.97, the only score below four. However, the other course objective scores were high, rising all the way up to 4.8 in Darkhan-Uul.

To what extent will you be able to apply what you learned to your work?

The only deficiency in the overall course reactions is a dramatic drop in reaction to this question. The responses range from a low of 4.04 up to only 4.5, with an average of 4.28. That is still above "Regularly," but it is .3 below the average scores on the overall a course, meeting of course objectives and meeting of expectations, which were in a very tight, consistent range: 4.63, 4.57, and 4.61. As noted above, the course materials were even more very highly rated. Oddly, this overall score is less than the sum of its parts. The average applicability to work scores for the Criminal Code, Ethics, Criminal Procedure Code, and Adversarial Skills were 4.59, 4.67, 4.67, and 4.73, respectively. Court personnel attended all the sessions but for each individual, some sessions would apply to their work and some sessions would not, giving an average result that is lower than the result for the particular sessions that might have been directly related to any given individual's work responsibility.

The scores on this question were higher at courses taught by Bat-Erdene, Purevnyam, Suikhantsetseg, Zumberellkham, Puntsag, and Arriunbold. The visible drop between this response and the others suggests that some other faculty need to include even more practical information and skills training in any future courses on this or other topics and make the connection between the law and practice. The faculty should adopt the teaching techniques of the trainers who scored higher on this issue.

To what extent did the course meet your expectations?

The final question received a positive response, ranging from a low of 4.12 to a high of 4.9, averaging 4.61. This is particularly encouraging since the CLE program is new and no formal needs assessment was conducted before the course.

Other Issues

Length of course – In an amazing 19 out of 20 evaluations, participants suggested that the courses be lengthened or that additional cases and examples be discussed in class, which would also lengthen the time needed.

Lack of responses – In six aimags, a significant number of participants failed to answer some questions of the questions. We have no way of knowing if they were unhappy, in a hurry to leave, or whether or their pencils broke. There seems to be no pattern between lack of responses and lower scores from the responders. Experience indicates that people with complaints are more likely to fill-in evaluations and make comments than those who are satisfied with the experience.

Reaction to trainers – All the trainers were well received.

Suggested enhancement of courses – The participants loved the "how -to-do" parts of the program the best, such as the mock trial, the case studies, and the practical assignments, and they want more training delivered through those methods. This validates the interactive teaching methods JRP has taught and encouraged in its Training of Trainers workshops. These recurring comments also tie in with the lower response to the question on ability to apply what they learned to their work; the more practical the teaching method, the easier it is for the audience to apply what they learn to their work.

Other Variables – JRP staff noticed two almost consistent variables. The more rural a course was, the higher it was rated, possibly because the more rural, the more likely this was the participant's first CLE experience and she was therefore even more positive than urban participants with points of comparison. Secondly, the courses that JRP staff attended and monitored tended to be rated higher, possibly because the trainers did even better with on-site staff feedback.

Course 1 – Criminal Code

Overall course?

The Criminal Code sessions in the aimags received an average overall score of 4.61, only .01 less than the courses overall. The Criminal Code sessions were better received in that their lowest overall score anywhere was 4.4 in Dornogobi, better than the low overall rating of the training there, which was 4.12. Half of the aimags, the participants thought that every part of this section was effective.

Usefulness of written materials during the course?

As usual the written materials were very well received, ranging from a low of 4.52 in Darkhan-Uul to 4.95 in Gobi-Altai, an even better evaluation than of the course materials over, which were the 4.12 to 4.9.

To what extent were the course objectives met?

In the aimags, the range of scores for meeting the course objectives was closer on this subject than on the overall course. The lowest Criminal Code score was 4.2 in Umgobi, compared to the overall 3.97 in Orkhon. The highest score was 4.62 in both Bayan-Ulgii and Gobi-Altai, compared to a score of 4.8 in Darkhan-Uul for the overall course meeting its objectives.

To what extent will you be able to apply what you learned to your work?

On average, participants found the Criminal Code section more applicable to their work than the course overall. The average applicability score was 4.59 on this subject, compared to only 4.28 for the course overall. The bottom of the range was identical to the overall course, 4.0, but the top of the range was much higher on this subject, reaching a 4.9 in Bayan-Ulgii.

To what extent did the course meet your expectations?

The average evaluation of expectations met on this subject was 4.62, just .01 above that for the overall course. The range was almost identical as well: 4.08 to 4.85 on this subject, compared to 4.12 to 4.9 on the overall course.

Other Issues

Length of course – At 18 of 21 courses, the participants wrote that that the course would be longer or have additional case studies.

Reaction to trainers – Participants generally commented favorably on the faculty and their interactive teaching techniques, such as case studies and practical exercises. They also found the comparison of the old and new Criminal Codes to be very helpful.

Suggested enhancement of courses – Many participants wanted more training after September 1, 2002, or in 2003.

Course 2 – Ethics

Overall course?

The reaction overall to the ethics section slightly higher than the entire course overall, ranging from 4.2 to 4.95, as compared to 4.12 to 4.9. The average score among the aimags was 4.61 compared to 4.62 for the entire course. The case studies were a very popular, effective teaching device.

Usefulness of written materials during the course?

Similarly, the average reaction to the ethics course materials was 4.72, compared to 4.79 for the course as a whole. The tops and bottom of the range were very close: 4.52 to 4.92 for ethics compared to 4.48 to 5.

To what extent were the course objectives met?

The worst evaluation of meeting the ethics course objectives was a 4, only a tiny bit higher than the worst such evaluation for the course overall. The best was 4.76, only slightly worse than 4.8 for the course overall.

To what extent will you be able to apply what you learned to your work?

The participants were much more positive about the ability to apply the ethics segment to their work than they were about the course as a whole. The ethics section average 4.67 compared to 4.28 for the entire course. The ethics range was 4.16 to a stunningly perfect 5 in Bayan-Ulgii. Even Gobi-Altai, probably on the whole the most successful location, received only a 4.5 on this question for the ethics section.

To what extent did the course meet your expectations?

Again, there is amazing consistency between the course overall and the ethics section's success on meeting the participants' expectations. The average score overall was 4.61; ethics was slightly higher at 4.68. The low on the whole course was 4.12; the ethics low was somewhat higher at 4.31. The high on the entire course was 4.9; the highest expectations score on ethics was a perfect 5 in Bayan-Ulgii.

Other Issues

Length of course - In several aimags, the participants thought that this section should be longer or have more case studies, but in most of them it seemed to be the appropriate length.

Reaction to trainers – Only in a couple of aimags was there any negative reaction to a trainer. There was one person who felt very strongly that only a judge should teach other judges about judicial ethics.

Suggested enhancement of courses – In three quarters of the aimags, the participants commented that virtually none of the ethics section had been ineffective. However, they did have some constructive comments for the future: add more realistic case studies and include more comparisons to foreign legal/judicial ethics codes.

Course 3 – Criminal Procedure Code

Overall course?

The average overall score was identical to the overall score of the entire course. The range on this topic was slightly higher, 4.27 to 4.95, compared to 4.12 to 4.9. In their comments, in three quarters of the aimags the participants thought there was no ineffective part of this section. The participants enjoyed the group discussions and case studies and the comparison of old and new laws.

Usefulness of written materials during the course?

The reception of the Criminal Procedure Code written materials was only slightly less enthusiastic than the materials for the course as a whole, 4.31 to 4.92 compared to 4.48 to a perfect 5. The average score for these topic's materials was 4.75 compared to 4.79.

To what extent were the course objectives met?

This response was a little less positive than to the course as a whole. The average was 4.3, and the range went up only to 4.71. However, the lowest score was 4.05.

To what extent will you be able to apply what you learned to your work?

The response to this was better than to the overall course. The average score was 4.67, much better than the overall 4.28. The range was 4.19 in Orkhon to 4.87 in Khovd, also better than the overall range of 4 to 4.5.

To what extent did the course meet your expectations?

Although the average response was only slightly higher than the meeting of expectations of the overall course, 4.66 compared to 4.61, the lower end of the range was higher. The lowest score was 4.31 in Orkhon, quite a bit above the 4.12 the course as a whole received

Other Issues

Length of course - In more than half of the aimags, participants suggested that this section be longer.

Suggested enhancement of courses -In several aimags there were comments that the audio-visual aids for this section could be improved.

Course 4 – Adversarial Skills

Overall course?

The overall reaction to the adversarial skills section was even higher than to the course as a whole, but the variations were small: An average of 4.7 and top score of 4.96 for this section compared to 4.62 and a top of 4.9 on the entire course. The only significant difference is that the lowest score for adversarial skills was significantly higher than for the overall course: 4.41 in Dundgobi compared to 4.12 in Dornogobi. The vast majority of participants thought all parts of this section were effective. In particular, they liked the mock trial and practical assignments.

Usefulness of written materials during the course?

The response to these materials was almost identical to the course as a whole.

To what extent were the course objectives met?

Although the top scores on this section were the same as for this question about the course as a whole, 4.8, the bottom score was much higher, a 4.19 compared to a 3.97 for the overall course. However, the average score for meeting course objectives on the course as a whole came out higher at 4.57; the average adversarial skills score on this question was only 4.46.

To what extent will you be able to apply what you learned to your work?

This question elicited a much more positive response on adversarial skills than the course as a whole had. The average score was 4.73, much higher than the overall 4.28. The range was also significantly higher, 4.36 to 4.92, compared to 4 to 4.5.

To what extent did the course meet your expectations?

This section also met the expectations of the participants better than the course as a whole. The average here was 4.73 compared to 4.61, and the range was 4.41 to a perfect 5 in Bayan-Ulgii, compared to 4.12 to 4.9.

Other Issues

Length of course - In three quarters of the aimags there were comments that this section of the course should be lengthened.

Suggested enhancement of courses – Many participants indicated an interest in foreign adversary systems. They also wanted even more course materials and inclusion of all legal professionals in the class. In three quarters of the aimags, they wanted this section lengthened.

Ulaanbaatar Trainings

JRP presented simultaneous four-day training sessions five weeks in a row for 150 prosecutors and 150 advocates during this quarter. Due to the bifurcated nature of the audience, there were actually ten courses.

The series of five trainings started on November 4 and ended on December 5, 2002. The sessions were held in the training room at Advocates Association offices and in the training center at General Prosecutors Office with an average of 30 at each course. The course structure was the same as the summer trainings for advocates and judges: major changes to Criminal and Criminal Procedure Code, professional ethics of judges and lawyers, and advocacy skills. In general, the scores and comments were remarkably consistent internally and with the summer training sessions for judges and advocates. However, because the composition of the audience was different, the Ulaanbaatar sessions are averaged separately by branch of the legal profession.

All the scores and averages are listed by date and by prosecutor or advocate course in **Appendix C**; high scores are in blue, low in red.

Overall course?

The average score for the overall course was 4.52 by prosecutors and 4.62 by advocates, compared to 4.62 for the summer aimags.

Usefulness of written materials during the course?

Once again, the course materials were well received, earning a 4.78 from prosecutors and 4.7 from advocates, compared to an average 4.79 in the summer.

To what extent were the course objectives met?

The average on meeting the overall course objectives was an almost identical 4.48 from prosecutors and 4.47 from advocates.

To what extent will you be able to apply what you learned to your work?

Interestingly, these trial lawyers saw the course overall more applicable to their work than the judges, advocates and court personnel in the summer trainings, who had given this question a relatively low average score of 4.28. The prosecutors scored this question an average of 4.45 and advocates 4.55, both a considerable amount above the summer overall course average of 4.28. This may be because the trainers were aware of that anomaly and consciously tried to make these ten sessions more applicable.

To what extent did the course meet your expectations?

The overall course was also fairly consistent in meeting expectations, 4.52 for prosecutors and 4.58 for advocates, compared to 4.61 in the summer.

Other Issues

Lack of responses – The Ulaanbaatar course evaluation forms had an even higher response rate than the summer trainings.

The responses to questions by topic are so similar and consistent that to comment on each score individually would be redundant

Course 1 – Criminal Code

The comparison of the old and new criminal codes was immensely popular with both prosecutors and advocates. Virtually no one found any part of this session ineffective. They all appreciated the use of audio-visual aids, case studies, and interactive teaching methods

Other Issues

Length of course – Almost universally, both prosecutors and advocates recommended that this session be repeated in the future and made longer.

Suggested enhancement of courses – Most of the audience members wanted even more case studies and more participation by other branches of the legal profession, particularly judges. Many also requested more comparison with foreign trial systems.

Course 2 – Ethics

The ethics sessions show some variation worth discussing in detail. The advocates' average scores were virtually identical to the summer averages. The overall score was 4.61 during the summer and 4.69 from the advocates. The prosecutors rated it slightly lower at 4.5. The written comments for this and the other ethics questions are all similar,

so the variation is hard to determine. Although both Ulaanbaatar audiences liked the discussion of cases as a teaching method, they suggested using a more realistic case.

The Ulaanbaatar participants, particularly the advocates, rated the ethics course materials slightly lower than the summer participants: 4.62 by the advocates, 4.68 by the prosecutors, compared to 4.72 during the summer, although the material was the same. All the scores on meeting the course objectives were within a .07 range.

The advocates and summer participants averaged the same score, 4.67, on applicability of this session to their work, but the prosecutors for some reason found it slightly less applicable to their work, a 4.55. Almost the same variation occurred on meeting expectations. The advocates averaged the same score on ethics as the summer participants, 4.68, but the prosecutors were somewhat lower at 4.58

Many participants in the Ulaanbaatar training wanted more ethics courses and wanted them longer

Course 3 – Criminal Procedure Code

Reaction by both prosecutors and advocates to this Ulaanbaatar session was almost identical to participants' reaction to the summer trainings. The only variation was that on average the Ulaanbaatar participants thought the course objectives had been better met, scoring a 4.57 from advocates and 4.59 from prosecutors, compared to 4.43 from the summer trainings. The practical exercises and interactive training methods were very successful.

Course 4 – Adversarial Skills

This topic overall was rated an average 4.75 by advocates and 4.69 by prosecutors, compared to 4.7 by the summer audiences. The other numbers were consistent; advocates rate the course slightly higher than the summer audience and prosecutors slightly lower, but all were within a small range

Only in the area of course objectives was there a divergence. Both advocates and prosecutors scored the session higher than the summer participants: 4.61 by advocates and 4.57 by prosecutors, compared to only 4.46 in the summer by advocates and judges combined.

All the audience segments, fall and summer, found this session applicable to their work: 4.75 by advocates, 4.69 by prosecutors, and 4.73 by the summer audience. This is interesting because the summer course overall was slightly weak in the area of applicability although strong on this topic, which seems to have had universal practicality among judges, advocates, and prosecutors.

The practical exercises, particularly the mock trial, were the highlight of this session for almost all participants during the fall. However, several participants at all the sessions recommended that the case study be more realistic. They were eager for more training on this topic with longer sessions.

Summary

The consistently high quality among the aimag and Ulaanbaatar trainings is remarkable. Although the curriculum and course materials were the same in all location, there were a variety of trainers and diversity of audience members and geography. Despite that, the average scores were all good to excellent. The only disappointing average score during the summer, a 4.28 on the overall course applicability to work, rose to an overall applicability to work of 4.45 from prosecutors and 4.43 from advocates in November-

December. This was partly due to the trainers' determination to make the trainings more practical.

In January 2003, JRP and GTZ will conduct a joint post-course evaluation of their summer 2002 training sessions. In addition to surveying retention of information and long term reactions, the post-course evaluation will ask about change in job performance. JRP has received subjective feedback from some judges and lawyers that they have observed a positive improvement in the way their colleagues conduct trials since judges, prosecutors and advocates attended JRP and GTZ course in summer 2002. The post-course evaluation will attempt to verify this.

Attachmnet A

**National Center for State Courts (NCSC)
Mongolia Judicial Reform Program (JRP)
A USAID-funded project**

**Title: Criminal and Criminal Procedure Codes
Ulaanbaatar (Advocates)
2002.11.11-11.14**

Evaluation Sheet

Participant information:

Judges Prosecutors Advocates Others (Head of the Court Personnel
Offices, secretaries and lawyers at the Aimag Governor's office)
 Male Female

Instructions: Please complete this form and return it to the JRP representative before leaving. The information you give will help us improve this course and plan subsequent courses. Please be candid; written comments are particularly helpful. Where numbers are given, circle the number that best describes your response using the following scale:

1	2	3	4	5
Poor	Fair	Average	Good	Excellent
Not at all	A little	Some	Regularly	Extensively

General Reactions

Overall, I thought the course was:	1	2	3	4	5
The usefulness of the written materials during the course was:	1	2	3	4	5
To what extent were the course objectives met?	1	2	3	4	5
To what extent will you be able to apply what you learned to your work?	1	2	3	4	5
To what extent did the course meet your expectations?	1	2	3	4	5

Changes made to the Criminal Code Trainer: B. Purevnyam- President of Mongolian Advocates' Union. Assistant trainer: B. Batchimeg- Monitoring Prosecutor at the Office of the Prosecutor General

Overall, I thought the course was:	1	2	3	4	5
The usefulness of the written materials during the course was:	1	2	3	4	5
To what extent were the course objectives met?	1	2	3	4	5
To what extent will you be able to apply what you learned to your work?	1	2	3	4	5
To what extent did the course meet your expectations?	1	2	3	4	5

a. What was the most effective part of the program? Why?

b. What was the least effective part of the program? Why?

c. What suggestions do you have to make this program better in the future?

Ethics, Trainer: Dr. Prof. B. Bat-Erdene- Vice-director of the Police Academy

Overall, I thought the course was:	1	2	3	4	5
The usefulness of the written materials during the course was:	1	2	3	4	5
To what extent were the course objectives met?	1	2	3	4	5
To what extent will you be able to apply what you learned to your work?	1	2	3	4	5
To what extent did the course meet your expectations?	1	2	3	4	5

a. What was the most effective part of the program? Why

b. What was the least effective part of the program? Why?

c. What suggestions do you have to make this program better in the future?

Changes to the Criminal Procedure Code, Trainer: Dr. Prof. B. Bat-Erdene- Vice-director of the Police Academy

Overall, I thought the course was:	1	2	3	4	5
The usefulness of the written materials during the course	1	2	3	4	5

was:					
To what extent were the course objectives met?	1	2	3	4	5
To what extent will you be able to apply what you learned to your work?	1	2	3	4	5
To what extent did the course meet your expectations?	1	2	3	4	5

a. What was the most effective part of the program? Why?

b. What was the least effective part of the program? Why?

c. What suggestions do you have to make this program better in the future?

Adversarial skills, Trainer: B. Purevnyam- President of Mongolian Advocates' Union

Overall, I thought the course was:	1	2	3	4	5
The usefulness of the written materials during the course was:	1	2	3	4	5
To what extent were the course objectives met?	1	2	3	4	5
To what extent will you be able to apply what you learned to your work?	1	2	3	4	5
To what extent did the course meet your expectations?	1	2	3	4	5

a. What was the most effective part of the program? Why?

b. What was the least effective part of the program? Why?

c. What suggestions do you have to make this program better in the future?

[Attachments B and C of this report are in Appendix M of the 2002 Annual Report, above]

Criminal Procedure Code Commentary Working Group Members

1. D. Dembereltseren Member of Parliament
2. Ts. Ouynbaatar Member of Parliament
3. G. Bayasgalan Legal Advisor to the President
4. N. Turbat Supreme Court Justice
5. S. Batdelger Capital City Court Chief Judge
6. J. Byambaa Chairman of the Criminal and Criminal
Procedure Law Chamber of the NUM Law School,
(PhD)
7. B. Bat-Erdene Deputy Director, Police Academy, (PhD)
8. D. Zumberellham Trainer of the Legal Retraining Center,
(PhD)
9. E. Sagsai Supervisory Prosecutor of the Capital City
Prosecutor's Office
10. S. Jantsan Professor, Intelligence School (PhD)

**Training Evaluation Form
Pilot Management Training for Prosecutors
November 20-21, 2002**

Dear training participant!

We hope you enjoyed this training. In order for us to assure that this training meets the needs of the participants and to make adjustments for future events we need your assistance. Please complete this form and submit it to one of our staff before you leave.

1. What is your current title?

1. Deputy Prosecutor General
2. Head of the Secretariat (Admin. Dept)
3. Assistant to the Prosecutor General, Head of the Policy, Planning & Foreign Relations Department
4. Assistant to the Prosecutor General, Head of the Department for Supervision of Inquiry
5. Assistant to the Prosecutor General, Head of the Department for Supervision of Sentencing
6. Capital City Prosecutor
7. Assistant to the Prosecutor General, Head of the Department for Representing State in Court
8. Assistant to the Prosecutor General, Head of the Department for Supervision of Investigation

2. What were your expectations for this training?

- Systematized information on team building
- Management techniques
- Inclusive understanding on management
- New knowledge and information
- Role of a manager in implementing changes
- Useful information
- Learn about management
- Learn about management skills and techniques, upgrade own knowledge and skills

3. How many staff do you supervise?

- 38
- 3
- 4
- 400
- 10
- 126
- 6
- 7

4. The main goal for this training was to provide an introduction to different methods for managing staff. In your opinion, did this workshop meet its goal?

I agree 8	I somewhat Agree	I somewhat disagree	I disagree
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5. The information provided during this training is relevant to my work

I agree 8	I somewhat Agree	I somewhat disagree	I disagree
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6. The information provided during this training will be helpful in the future

I agree 8 I somewhat Agree I somewhat disagree I disagree

7. The presentations were clear and easy to understand

I agree 8 I somewhat Agree I somewhat disagree I disagree

8. The PowerPoint presentation and handouts were clear and easy to understand

I agree 8 I somewhat Agree I somewhat disagree I disagree

9. The training material provided is helpful

I agree 8 I somewhat Agree I somewhat disagree I disagree

10. Which part of the training did you find most interesting?

- All, particularly exercises
- All, particularly managing changes, team building
- All, particularly managing changes, team building
- All, particularly exercises
- All
- All
- All, particularly team discussions
- All, particularly team building, confronting conflict

11. Which part of the training did you find the least interesting.

- No such part

12. Have you ever participated in a conference, training or workshop on the topic of management?

4 Yes 4 No

If you answered yes, please explain what type of event you participated in:

1. Public Management Training, Management Academy
2. Public Management Training, Management Academy
3. 3-day training at the Management Academy
4. 4-day training at the Management Academy

3. No doubt that there are more topics related to management, training on those topics is needed
4. -
5. Short term training courses in countries with developed management systems (e.g. US, Japan)
6. -
7. Thank you
8. Policy and methodology on conflict solving; data collection, evaluation, information dissemination; job performance evaluation; stimulation and promotion.

Thank you! Please submit this form to one of our staff before you leave.

**DOMESTIC VIOLENCE SEMINAR FOR
MONGOLIAN PROSECUTORS AND JUDGES
March 5-7, 2002**

DAY 1

Introductory Comments

9:00-9:15 JRP Training Organizer (Herbert Bowman, JRP Training Specialist)
(Ichinkhorloo, General Prosecutor's Office)

Domestic Violence and Human Rights

9:15-9:45 Mongolian National Human Rights Commission Officer-
Oyunchimeg

DV- Understanding: the Problem/Developing: an Approach

9:45-10:30 Breakout Session- Problem Identification

In this session, the participants will break into small discussion groups.
Each group will be asked to create a list of the ten major problems a Mongolian
prosecutor faces prosecuting DV cases in Mongolia.

10:30-11:00 Presentation to Group

Each group will present its list to the entire training group. This will be
followed by general discussion.

11:00-11:15 *Break*

11:15-12:30 Public Understanding of DV in Mongolia (NCA V- Baasanbat)

12:30-2:00 *Lunch*

2:00- 3:00 U.S. Perspective

1. The Problem- Facts & Figures
2. The "San Diego Model" (Overview)

The Police Response

3:00-3:45 The Mongolian Reality (Batchimeg, General Prosecutor's Office)

3:45-4:00 *Break*

4:00- 4:45 Changing Police Attitudes and Approaches (US expert)

- Educating the officers
- Developing Special D. V. Investigative Units
- The "SART" Medical Exam

4:45-6:00 DV Scenarios. Presentation and Discussion

In this session, the teaching staff will present scenarios that involve frequently
occurring problems in DV prosecutions. The group will be asked to discuss
possible solutions to these problems.

DAY 2

The Prosecution Approach

9:00-9:45 Current Mongolian Approach (Ichinkhorloo, GPO; Ganbat, CCPO)

9:45- 10:30 Establishing a New DV Prosecution Method (U.S. Expert) ~

10:30-11:00 Question and Answer 11:00-11:15 *Break*

11:15-12:00 Domestic Violence Homicides- Problems and Case Studies (U.S. Expert) Will discuss some of the unique problems a U.S. prosecutor encounters in prosecuting DV homicides. Will use a case example that highlights problems unique to DV related homicide cases.

12:00-12:45 Panel of three Mongolian Prosecutors and Judges- Case Study Present for discussion an example of a Mongolian DV homicide that includes some of the problems discussed so far.

12:45-2:00 *Lunch*

Victim Support and Counseling

2:00-2:45 Giving More Support (U.S. Expert)

- Prosecution sponsored Victim/Witness programs
- Nongovernmental support groups
- Court generated assistance

2:45-3:15 The DV Victim in Mongolia (NCA V- Enkhjargal)

3:15-3:30 *Break*

3:30-4:30 Breakout- How do we protect and support the victim?

4:30-5:30 Presentation of Ideas

4:45-6:00 DV Scenarios. Presentation and Discussion

In this session, the teaching staff will present scenarios that involve frequently occurring problems in DV prosecutions. The group will be asked to discuss possible solutions to these problems.

DAY 3

Perpetrator Treatment and Oversight

9:00-9:45 Current state of Mongolian Law and Practice (Supreme Court Justice Tsetsgee; Capitol City Court Judge Sarantuya)

9:45-10:15 Offender Counseling in Mongolia (NCA V- Enkhjargal)

10:15-10:30 *Break*

10:30-11:15 The California Experience (U.S. Expert)

11:15-12:00 Break Out- Ideas for Mongolian Offender Treatment/Oversight

12:00-12:30 Presentation of Offender Treatment

12:30-2:00 *Lunch*

Domestic Violence Legislation

2:00-2:45 Mongolian DV Legislation (MWLA- Oyuntsetseg)

2:45-3:30 Making New Law (U.S. Expert)

Will give examples of legislation passed in U.S. specifically to deal with domestic violence issues.

3:30--3:45 *Break*

3:45-4:30 Panel Q & A, Suggestions and Recommendations.

4:30- 5:00 Course evaluation and critique.

Institutions Represented at the CLE Forum

General Council of Courts
Supreme Court
General Prosecutor's Office
Mongolia Advocates Association
Foreign Trade Arbitration Court of the Mongolian National Chamber of Commerce and Industry
Legal Retraining Center
Judicial Retraining Center
World Bank
GTZ
Soros Foundation
UNDP
UNDP Human Rights Project
Human Rights and Development Center
National Human Rights Commission

Memorandum

To: Deputy Minister Munh-Orgil
From: Robert La Mont
Date:
Re: Computers and law on Advocates

I have reviewed a translation of what I think is the current draft of the law on qualification of legal professionals. It does not seem to cover people who graduate from Law School and then practice law privately, advising individuals and companies on civil matters and appearing in court only in civil matters. As you know, such lawyers are the majority in America, but I think in Mongolia, people tend to think only of those paid by the state, judges, prosecutors and advocates as lawyers. As far as I know, such private lawyers do not have an organization to represent their interests.

The bar exam is a good way to make sure that those people who hold themselves out as lawyers are qualified to advice private persons. While anyone can appear in court under Mongolian law, those who call themselves lawyers should have some minimum qualifications, especially given the uneven quality of law schools.

Another aspect of the law which is troubling is the amount of responsibility given to the MoJHA. A Council is created for the examinations, but most of the responsibility is still given to the MoJHA. Unless the MoJHA wants to be blamed by everyone who fails the exam, it would be better to make the Council responsible, and perhaps have the MoJHA implement its instructions. Otherwise, I think the MoJHA will be besieged by people who want special treatment and everyone who fails will blame "political" prejudice within the MoJHA. Giving responsibility to the Council would create a greater impression of independence.

Let me know if you would like to discuss this.

July 29, 2003

Robert La Mont
August 1, 2002

Some Means of Addressing Judicial Corruption in Mongolia¹

Introduction:

Corruption has come to be recognized as a serious threat to economic development and democratization in many developing and transitional countries. There can be no doubt that Mongolia suffers from corruption. Its importance was recently emphasized by the 2002 Consultative Group Meeting (July 8-10, 2002 in Ulaanbaatar) where the US Ambassador said: "Rule of law² is weak, corruption is a nagging problem. The level of bureaucracy is too high, and there is a lack of transparency in making and enforcing rules."

The focus of the Mongolia Judicial Reform Project (JRP) is judicial reform. Therefore this paper focuses only on judicial corruption, however it is difficult to separate the corruption of judges from other corruption in the wider justice sector (police, prosecutors, bailiffs who enforce judgments, etc.), since they all frustrate the goal of achieving the Rule of Law. Corruption in the Justice sector is a keystone to corruption throughout society. Without an honest criminal justice system, the wealthy, including the corrupt, can avoid the consequences of their crimes. Such impunity reduces the perceived cost of corruption. The risk that corrupt activity will result in imprisonment and accompanying public humiliation is minimal. The gains from corruption are thus not discounted and there is little reason beyond personal integrity not to engage in corrupt acts. That this may be the case in Mongolia can be seen from the fact that there have been no convictions for judicial corruption in Mongolia since the transition began in 1991, and indeed only two corruption convictions, (involving MPs) in the last ten years.³ Reducing corruption in the justice sector would make it more likely that corrupt individuals in other sectors would be prosecuted and punished. This would raise the cost of corruption and discount the rewards. High profile convictions could alter the internal calculus of all Mongolian officials who are tempted to engage in corrupt activities. Thus, taking steps

¹ This paper does not represent USAID policy. The author is solely responsible for its content.

² Rule of Law is a broad concept that includes freedom from political influence, cronyism and nepotism in the legal system as well as freedom from corruption.

³ There have been 456 criminal investigations of abuse of authority in the 2 years prior to 2002, of which 250 were taken to court and the rest dismissed. (Source: Interview with T. Sukhbaatar, Associate Prosecutor General, Head of Supervision of the Investigation Department, June 6, 2002.) Abuse of authority may involve corrupt acts, but does not require proof of bribery. Likewise, within the court system, there have been disciplinary actions against judges for "professional mistakes", which include decisions that are so obviously contrary to law that they may be the result of corruption. In 2000 and 2001, 37 judges had disciplinary cases filed against them: 9 resulted in a reduction of salary, 17 resulted in a warning, 3 resulted in a warning before other judges, and 8 were dismissed from their position. (Information from Damiransuren, Justice of the Supreme Court.)

against corruption in the justice system should be a first step in dealing with corruption in society as a whole.

Measurement of corruption

As a criminal activity, corruption is difficult to measure. The participants always hide their activity and will rarely admit to it, even in anonymous surveys. Anecdotal evidence is common in Mongolia, but suffers from the unreliability of hearsay. In all litigation there is a disappointed party who is often too sure of his own position, and likely to assume that the other side's victory must have been a result of bribery.

Public opinion surveys are often used to measure the public perception of corruption. The most famous surveys of corruption, published by Transparency International ("TI"), rank countries by the perception of corruption.⁴ TI's recent surveys have not included Mongolia, but Mongolia ranked 43 out of 99 in its 1999 survey⁵. This put Mongolia above Poland, but several criticisms of the methodology mean that too much should not be made of small differences in the rankings.

In Mongolia, surveys on corruption have been undertaken repeatedly. In 1994 a survey was published by the Academy of Sciences and the Konrad Adenauer Foundation.⁶ The Mongolian Chamber of Commerce and Industry conducted surveys of corruption in 2000 and 2002⁷, and the JRP conducted a public opinion poll that included questions on judicial corruption in 2001. These surveys confirm a widespread public perception of corruption, especially in the judiciary. The courts were ranked the second most corrupt institution at the Soum level in the 1994 Academy of Science survey. In the 2000 Chamber of Commerce and Industry Survey Judicial Institutions were ranked the second most corrupt (after Customs) with 41.6% of respondents naming it the "most corrupt."⁸ Fifty percent of respondents rated legal institutions as "poor" or "very poor" in their attitude toward combating corruption in the 2002 Chamber of Commerce and Industry survey. In JRP's survey, 56% of respondents had "little" or "no" confidence in their local courts.⁹ It must be remembered that these surveys ask the public for their feelings about corruption, not hard evidence of it. These different surveys asked different questions, and may be capturing both bribery and improper influence by public officials on the courts.

Another problem with surveys is that they are based on the public's exposure to the institution. Thus, the public will have a higher perception of corruption in institutions that they deal with frequently, which are corrupt, than those to which they have little exposure. The Supreme Court was rated least corrupt of courts in the JRP survey¹⁰, but

⁴ See <http://www.transparency.org>

⁵ See <http://www.transparency.org/cpi/1999/cpi1999.html>

⁶ Cited as "Tumur-Ochiryn Erdenebilig, Public Opinion on Corruption in Mongolia" by Jon S.T. Quah, Phd. In "National Anti-Corruption Plan for Mongolia" prepared for UNDP.

⁷ Attached as Exhibits __ and __.

⁸ Mongolian Chamber of Commerce and Industry 2000 survey, Annex 4, question 11.

⁹ Question 17: "How much confidence do you have in each institution?"

¹⁰ JRP survey question __.

this may have to do with the greater public exposure to corruption in the lower level courts than with true comparative levels of corruption.

For all of their difficulties, public opinion surveys of corruption do show important danger signs for a justice system. The public perception of corruption itself is a very significant part of the mechanism by which corruption undermines the Rule of Law and economic development. If the public perceives the courts to be corrupt, they will be less likely to take their complaints there for resolution. Even if the courts are not corrupt, if the public will not take cases of human rights abuse to the courts, or election fraud to the courts, the effect is the same, the Rule of Law is frustrated. If the public perceives the courts to be corrupt, they will be less likely to invest in instruments that rely on court enforcement as their ultimate guarantee. Thus, “cash and carry” transactions, and construction for personal uses, particularly homes and user occupied commercial buildings, can thrive. Long term investments, such as securities and lending, (except secured lending that does not require court enforcement, such as pawn) become too risky to attract investors, either foreign or domestic. Such long term investments are necessary to create better paid jobs and sustained economic growth. Since Mongolia’s current economic development suffers from the lack of exactly these kinds of long-term investments, it is fair to say that the public perception of corruption is impacting the Mongolian economy.

Assessment of how and why judicial corruption takes place.

Judicial corruption may be facilitated by a number of factors that make its detection difficult. Transparency to public inquiry is among the best weapons against corruption; while opacity allows it to flourish. Incentives for corrupt activity exist for those who can be tempted; but disincentives can be created.

Judicial discipline has in the past been initiated by chief judges and decided by fellow judges in the same court. This system, with its bias against punishing colleagues has been replaced under the new Law on the Courts. Under the old system, most punishments were for drunkenness and absence from the job, not issues related to corruption. The new system includes public participation in the disciplinary process and may promote transparency if properly implemented.

The inquisitorial procedures and attitudes of the judiciary mean that the judges involve themselves in cases more proactively than is customary in common law jurisdictions. As a result, judges have frequent *ex parte* meetings with parties and witnesses. These meetings provide an opportunity for offering or soliciting bribes and the transfer of payments. In discussions of the new Judicial Code of Ethics, judges overwhelmingly objected to provisions that would prohibit or limit *ex parte* conversations. The most frequently cited reason was that the judges needed them to get the real story. This may reflect continuing conflict over the role of the adversarial system and the inquisitorial system in Mongolia. The Code, as it was finally adopted contained no such prohibition or limitation. While, by the nature of illegal activity, it is difficult to document that *ex parte* conversations provide the venue for corruption, it is clear that they provide an

opportunity for willing buyers and sellers of judicial integrity to meet unobserved. Some judges suggested that meetings with parties be held with other court employees present, it has also been suggested that a second judge be present during such conversations. These suggestions were not adopted. They would be an improvement, if imperfect solution to the problems created by *ex parte* conversations. In the small communities in which most Soum, Inter-soum and Aimag courts exist, a prohibition on *ex parte* conversations cannot be expected to eliminate the opportunities for corrupt conversations, however, the universal use of such conversations in the justice system creates at least the appearance of impropriety. Taking some steps to limit them would send a useful message that judicial propriety is a societal value to be safeguarded.

Salary levels are a contentious issues with respect to corruption. It is clear that raising salaries by itself will not make dishonest judges honest. Yet, it is hard to dispute the proposition that salaries that do not allow a judge to meet the needs of his/her family will either drive honest judges out of the profession or tempt them to accept payoffs. An examination of TI's ranking of countries on the perception of honesty makes it clear that in general those with high perceptions of integrity also have high judicial salaries and those with low salaries tend to have perceptions of dishonesty. The correlation may not be equal direct causation, however, because economic development correlates with high judicial salaries as well as with middle class demands for integrity, a free press ready to expose abuses. These results of development may be the direct causal factors for judicial integrity. In Mongolia Judicial Salaries start from 108,429 to 165,553 tugregs a month and are supplemented by seniority increases and awards.¹¹ Whether this is "low" or not depends on what it is compared to. Compared to salaries available in most rural areas, these salaries are certainly as good or better than other salaries locally available. In Ulaanbaatar, such salaries are comparable to other government salaries, but below compensation available to well educated Mongolians in the private sector and in NGOs, diplomatic missions or international organizations. With the arrival of the free market economy, the salaries are miniscule compared to the amounts at stake in some civil cases in Ulaanbaatar. With respect to criminal cases, at least some Mongolians have achieved wealth that would allow them to place a price on their freedom from prison that would be significantly higher than judicial salaries. Thus, it is hard to evaluate the impact of salaries as a contribution to judicial corruption. Mongolians frequently site low salaries as a cause of corruption, especially when comparing corruption now to socialist times.¹² Not only were salaries and benefits sufficient to cover living expenses then, but because of greater equality and the inability to buy "conspicuous consumption status," there was less incentive to accumulate money. The Mongolian government seems eager to increase government salaries, and will undoubtedly do so as quickly as its finances allow. So there may be little in the way of donor recommendation that can or needs to be done with respect to this factor.

¹¹ Basic salaries for judges are established by Parliament Resolution No. 80, November 8, 2001 Judicial rank supplements are established in the "Rules On Mongolian Judicial Rank", approved by Parliament Resolution No. 48, June 7, 2001. Supplements for public service are established by Government Resolution No. 96, 1995.

¹² Interview with Sarav Ganbold, Head of Division for Combating corruption and economic crime, Criminal Police, June 6, 2002.

A cost/benefit analysis of judicial corruption, from the point of view of a judge subject to temptation, would weigh the benefits in terms of illicit income received against the cost of being caught and punished, discounted by the likelihood of being caught and punished. Since there have been no prosecutions for judicial corruption, the discounted "cost" of corruption must be close to zero. The disincentive for corruption is virtually not existent for a susceptible judge.

The failure to prosecute judicial corruption has been attributed to several causes. In 1993, responsibility for investigating corruption was transferred from the prosecutors office to the police.¹³ The police are both thought to be more corrupt¹⁴ and are a branch of the Ministry of Justice and Home Affairs, therefore possibly susceptible to political pressure, both to protect individuals and responsive to a lack of political will to deal with corruption. The Law on the Prosecutors Office coming into effect on September 1, 2002 returns responsibility for investigation of crimes (including corruption) in the judicial sector (judges, prosecutors and police) to the Procuracy. This office enjoys some independence, with the Prosecutor General appointed for a fixed term, but is troubled by public perceptions of corruption¹⁵ as well as a lack of training and resources.

Judicial corruption prosecutions in the United States have typically relied on measures such as recruiting corrupt attorneys to provide evidence by promising to suspend or reduce their sentences, and having them wear recording devices in conversations with judges where bribes are accepted. The "Greyford" investigation of the Cook County Illinois Courts (Chicago) is but the largest example of such an investigation of judges. Currently the use of such devices is allowed if investigators request it and the prosecutors office approves it. But the old Criminal Procedure Code limited the ability to treat the bribe giver more leniently than the bribe taker. This limitation seems to have been eliminated in the new code.

The police currently complain that their methodology for detecting corruption has not changed since Socialist times and are not suited to a market economy.¹⁶ When investigation responsibilities are transferred to the Prosecutors Office, this mismatch in methodology will be even more of a stumbling block, except that, perhaps, with new investigators, interest in adopting change will be greater.

Public acceptance of corruption is said to be a key to corruption. While surveys indicate that most citizens do understand that corruption destroys economic development and

¹³ Until 1993, the prosecutors office was responsible for investigating economic and official crime. The Law on Amendments to the Criminal Procedure Code (June 7, 1993) transferred the power to instigate and dismiss such cases was transferred to the Police.

¹⁴ In the 2002 Chamber of Commerce survey, 54% of respondents rated the police bad or very bad. p.6.

¹⁵ In the 2002 Chamber of Commerce survey 49.9% of respondents rated the procuracy as bad or very bad in dealing with corruption.

¹⁶ Interview with Sarav Ganbold, Head of Division for Combating corruption and economic crime, Criminal Police, June 6, 2002.

weakens the state,¹⁷ commentators report that honest police are berated by their wives for not taking bribes,¹⁸ and it is widely reported that people think that the best way to get things done in the courts is to pay a bribe.¹⁹

Possible solutions

Transparency is the best preventative for corruption. Court procedures and practices can do a great deal to either make the operations of the court transparent, or alternatively to keep the public from discovering how cases are handled, or mishandled. The Court Administration Specialist at the JRP has worked to introduce a number of procedural changes that enhance transparency.

Automation has the capacity to limit discretion and abuse of discretion in the courts. The assignment of cases to certain judges is a prime example. The power to assign a certain case to a judge who is known to be susceptible to a bribe, or who favors one of the parties is often a prime source of corrupt rents in the court system. The software installed on the computers that JRP has given to pilot courts allows for the random assignment of cases. While one Chief Judge embraced this feature, the other pilot courts have found different reasons not to use it. The legislation is not clear, with different formulas in the civil procedure code, criminal procedure code and law on the courts. A resolution of the General Council of the Courts could require random assignment of cases, or if necessary, amendments to make the different codes consistent. **Specific Step: require random assignment of cases.**

Chief Judges retain the power to reassign cases for pragmatic reasons such as the illness or over work of a particular judge. However, the new software allows the GCC to monitor such reassignments and identify those Chief Judges who routinely reassign cases to a particular judge. This would expose to inquiry the reason for such reassignments, and the possibility of inquiry alone should discourage abuse of this power. **Specific Step: Require regular analysis of case reassignment.**

The pilot courts have been required to dedicate one terminal as a public access terminal. This allows the public, the media, litigants and lawyers to find out what has happened in cases and what the schedule for hearings and deadlines is. This makes it much more difficult for a corrupt judge to "hide" a case until the time for appeal has run. This is particularly important in Mongolia where notice requirements are not strictly observed.²⁰ The pilot courts with public access terminals monitor their use and show promising

¹⁷ Chamber of Commerce 2002 survey: "Twelve. Corruption and Economic Growth", "81.4% of respondents believe that corruption has decreased economic growth, 31.7% responded that corruption has greatly slowed down economic growth. p.7.

¹⁸ Interview with Sarav Ganbold, Head of Division for Combating corruption and economic crime, Criminal Police, June 6, 2002.

¹⁹ Need citation for public acceptance of bribery.

²⁰ Ag Bank, a leading Mongolian Bank has learned of some cases against it (which it had lost) only when it received notice that the Supreme Court had affirmed the judgment against it. (Interview with Peter Morrow, President of Ag Bank).

results.²¹ Once again, a resolution of the GCC could require all courts that receive automation to maintain and staff a public access terminal. **Specific Step: Require Public Access terminals for all automated courts.**

Specific Step: Expansion of basic automation with these features to all courts in Mongolia could significantly contribute to transparency and accountability and discourage corruption.

Every judge should be required to file annual financial disclosure forms. While these forms are required of some officials under current law, there is no penalty for failure to file them. For judges the forms should be open to the public, to allow discovery of conflicts of interest. Failure to file and erroneous filing should be grounds for dismissal. This could be accomplished through amendment to the Judicial Ethics Code by the Meeting of Chief Judges. **Specific Step: Special requirements for financial disclosure forms for judges and penalties in Judicial Ethics Code and random audits by GCC Ethics Committee.**

Ex parte conversations should be eliminated. This could be accomplished by amendment to the Judicial Ethics Code. Given the opposition of most judges, such a change would require education and pressure from domestic anti-corruption groups and foreign donors. **Specific Step: prohibiting *ex parte* conversations in the Judicial Ethics Code.**

The new Judicial Disciplinary Committee needs to be adequately staffed and funded. There are a great number of procedures it can undertake to combat corruption in the courts. Random audit checks of case files handled by a particular judge and questionnaires sent to all parties in a case should be conducted on a periodic basis. Any case file discrepancies or disparaging results from the party questionnaire should be investigated. The procedure for filing complaints against judges should be required to be prominently posted in the public area of every courthouse. Protection for the identity of the complainant should be provided. Training and procedures should be in place for the efficient investigation of every complaint, with written standards for dismissal of complaints, and the requirement that the reason for dismissal be explained to the complainant. **Specific Step: Train and provide equipment to Judicial Disciplinary Committee, on condition that it is adequately staffed and funded.**

The Prosecutor General plans to create a new department with a staff of 40 to handle the new responsibilities for investigation of justice sector crime, including corruption. This unit needs training and equipment to undertake “sting” operations of the type that proved successful in the “Greylord” investigations in Chicago and elsewhere. Codes of ethics are vital so as not to abuse this kind of investigatory power. Training and equipment could be offered by JRP and other donors to make this office effective. Individual Prosecutors responsible for corruption site training as the greatest need in their office.²²

²¹ Both the Capital City Court and Songinohairkhan District Court report daily averages of 25 to 30 inquires. (Interview with Dagva, Capital City Court Administrator.)

²² Interview with T. Sukhbaatar, Associate Prosecutor General, Head of Supervision of the Investigation Department, June 6, 2002.

Specific Step: Provide training and equipment to the Prosecutors corruption investigation unit on condition that it is adequately staffed and funded.

An Independent Anti-Corruption office has been proposed for Mongolia in the past. The study of these agencies in Hong Kong and Singapore was a major proposal of the 1998 "National Anti-Corruption Plan for Mongolia" designed by Professor Jon S. T. Quah for UNDP. While a great deal of discussion has centered on this idea, opposition from the Office of the Prosecutor General, and powerful MPs have made this a political non-starter in Mongolia. While the idea may have merit, it seems useless to revive it. It would be more pragmatic to see if the Investigation office in the General Prosecutors' Office could be made to resemble the best aspects of such an independent office.

Conclusions

Mongolia faces serious problems with respect to Judicial Corruption. It stands in the way of the countries ambition to establish the rule of law and a prosperous market economy. However, there are a number of concrete steps that can be taken to reduce the opportunities for judicial corruption and increase the chances of its exposure and prosecution. Successful prosecutions need not be numerous to have a wonderful exemplary effect. Seemingly small, but meaningful steps in court administration outlined above can make corruption easier to detect and prosecute. Changing the psychological factors in society that allow corruption will take time, it will also take time to raise judicial salaries to levels where all judges feel financially secure to a point that it would be irrational to risk that security for the sake of a bribe. Yet, real and measurable changes should be possible by following the steps that can be enacted immediately.