NATIONAL CENTER FOR STATE COURTS
International Programs Division
2425 Wilson Boulevard, Suite 350
Arlington, VA 22203
www.ncsconline.org

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A. EXECUTIVE SUMMARY

In 2006, the JRP again made considerable progress in achieving its objectives and those of USAID with the strong, continuous support from Mongolian stakeholders. The activities in 2006 reflect the declining importance of assisting with new legislation and the need to deepen implementation of existing laws and improve the structure and function of institutions. During the reporting period, JRP operated on several no-cost extensions and was granted a cost extension in June to operate until June 30, 2008.

The JRP had several successes during 2006 highlighted by improved access to and transparency in the courts, improved processes for the selection of lawyers to government positions, the first management improvement action plan developed by the General Prosecutor's Office (GPO), an assessment of the strategic plan for the Justice sector, and a highly effective public education programs. The highlights for 2006 include:

Increased Judicial Sector Access and Transparency

A number of JRP activities have led to better access to and increased transparency in the judicial sector:

Redesign of courtrooms and media access to ensure equality of parties and transparency: JRP's recommendations and implementation assistance for changing the courtroom design resulted in the GCC issuing a new Resolution that provides for more equality of parties and openness of hearings through reconfiguration of courtrooms. Furthermore, the JRP raised the issue of media access to court hearings to ensure the openness of courts. The GCC agreed to revoke an earlier regulation limiting journalists' access to courts. Before, the media had to receive written permission from the Chief Judge of a given court. The new GCC Resolution allows the media unrestricted/free access to hearings. Only verbal permission from the given judicial panel needs to be obtained if pictures of court proceedings will be taken.

Strengthening information management: JRP has been a part of the creation of the Unified Information System (UIS) (www.legalinfo.mn) implemented by the World Bank (WB) Judicial and Legal Reform Project (JLRP) by assisting the courts in creating the Unified Judicial System (www.judgeinfo.mn). The "judgeinfo" site contains information about the Mongolian courts and their operations including court decisions. This site will not only allow judges to search for similar cases and court decisions thereby creating a more consistent application of laws but also increases the transparency of the judiciary and the information exchange with the other institutions that will ensure a more integrated and efficient system of justice.

Creation of a Judicial Sector Press Center: Building on the JRP's efforts to enhance the capabilities of the courts and prosecutors' offices (POs) for improved communication with the public and the media, the newly appointed Chief Justice of the Supreme Court and the Prosecutor General agreed to establish a Judicial Sector Press Center at the Supreme Court. The Press Center began operation on January 6, 2006 and is being used to provide timely and accurate information about the activities of courts and POs.

Strengthening qualifications of lawyers by improving the Non-Staff Committee's procedures and communication: The 2006 bar examination policies and procedures incorporated most of the JRP recommendations. The latest changes resulted in improved implementation of security measures and in stricter monitoring processes that have reduced cheating and opportunities for manipulation.

Grading of the essay portion was improved with the use of grading guides and the Non-Staff Committee will next develop pre-approved answers for the essay portion to make the grading more objective. Further, the multiple choice section of the exam will be improved to focus more on problem solving skills than just testing knowledge of the codes.

Management Improvement Plan of the General Prosecutor's Office (GPO)

The Prosecutors for the first time have a plan for creating a more responsive, transparent and public service oriented institution. Following a study tour for the GPO management team to Australia, the office created an action plan and begun implementing several of the 18 action tasks, including developing a manual on how to communicate with crime victims, drafting a law on the protection of victim's rights and drafting procedures for a board of ethics. The GPO has even begun moving forward with the implementation of ethical standards and procedures for measuring performance of prosecutors to further their professionalism. Draft rules and procedures of the new Prosecutor's Ethics Council were submitted to the Ministry of Justice and Home Affairs (MoJHA) and the President's Office for approval. A new procedure for the annual performance evaluation of prosecutors was also approved in August.

Strategic Plan for Justice System Reform Assessment

The JRP was designed to assist in the implementation of priority elements of the Strategic Plan for the Justice System of Mongolia approved by the State Ikh Khural in 2000. To identifying progress in implementing the Plan, the JRP hired one of Mongolia's most respected legal experts, to conduct an evaluation of the implementation status and provide critical review and comments for further reform work. The JRP established a group of representatives from the judiciary, prosecution, advocacy and MoJHA led by the JRP's consultant, to conduct the assessment and identify future goals and objectives. A summary of the report was provided to the Legal Standing Committee which will review the Assessment in connection with the Government decision to review the progress of the ten year Government Program for Legal Reform which is designed to conclude in 2008. Hopefully it will prompt Parliament to allocate greater resources to the justice sector and reaffirm the objectives of justice sector reform.

Public Education

The JRP continued its public education activities highlighted by a television program and two radio programs. The television program "Legal Hour" was rated number one in its category that included around 300 programs. The radio program "Who is Guilty" was rated 18th out of 70 programs and the radio program "Victims" was rated the 17th most popular show out of 70 programs on Mongol Radio. Additionally, "Who is guilty" was awarded the "Certificate of the Best Radio Drama" and was included in the Golden Archive of the Mongolian Radio so the broadcast can be repeated at a later date. Three successive surveys have shown that the public's belief that they understand court proceedings has increased.

B. TASK-SPECIFIC PROJECT ACTIVITIES

Over the years, the JRP and other donors assisted the Mongolian government in continuously improving the legislative framework for justice system operations in Mongolia. While some adjustments are still needed, the primary focus of assistance shifted to supporting the implementation of the new laws. In earlier years the JRP focused on creating a sustainable infrastructure to support modern court and justice sector institutions and developing skills and fundamental understanding of what is needed to modernize the justice sector, promote the rule of law and good governance. Building on these foundations, the focus in 2006 was particularly on creating the management structures and capacities to implement the many changes required, creating a more ethical and professional corps of justice sector employees and lawyers and further developing the public's understanding of its rights and the role of the justice system in protecting these rights.

OBJECTIVE 1: STRENGTHENING THE INDEPENDENCE OF JUSTICE SECTOR INSTITUTIONS THROUGH IMPROVED MANAGEMENT STRUCTURE

To achieve the first objective in 2006, the JRP implemented nine activities targeting the main stakeholder organizations, the courts and judiciary and the prosecutors' offices, as well as supporting agencies and organizations, including the NLC, the MOJHA, the SIU and the MAA. The focus was on:

- *Better integrated management of the key justice sector agencies*
- *Enhanced analytical input into decision-making*
- *Improved human resources management within the judiciary*
- *More efficient caseflow management*
- *More effective information management*
- *Solid court budgeting and supply and support services*
- *Greater court efficiency through structural and procedural optimization*
- *Enhanced strategic planning at the local court level*
- *Upgrading priority elements of the substantive legal environment*

The below sections outline the JRP progress and results related to objective 1.

Activity 1.1: Strengthening capacity for integrated management of the key justice sector agencies

The goal of this activity was to increase justice sector personnel's understanding of their agencies' mandates as part of a system and improve their ability to carry them out. The basis was laid in 2005, when the JRP focused on introducing the principles of a new Concept for Court Administration and Management and the principles of good management and organizational structures to the GPO. In 2006, the JRP worked to consolidate the progress achieved in 2005, focusing on concrete changes in the management strategies of key institutions. As a result, the General Council on Courts (GCC), the Special Investigative Unit (SIU) and the General Prosecutor's Office (GPO) demonstrated significant progress in planning for and starting to implement important management and organizational changes. Court administration and management have become more open, transparent and customer friendly; the GPO for the first time has created an action plan to improve efficiency, responsiveness and public service; and the SIU has improved its investigative capacity while raising public awareness of its activities.

Assistance to the GCC: The automation of the courts and adoption of the new concept on court management requires new thinking from judges and court staff. In response, the JRP, in collaboration with the Supreme Court/GCC, developed a training course on Change Management, which was delivered to all Chief Judges and judges of the Administrative Courts. The training stressed the importance of being proactive instead of reactive to the changes occurring in the courts. All Aimag courts also received a copy of the training materials.

Further, at the request of the Chief Justice, the JRP conducted a rural court observation program which provides critical information for improving court operations and management. This program replicated a similar activity conducted in 2005 in the Ulaanbaatar courts. The observation program was conducted in eight Aimags. The main observation's results and recommendations for changes included improved public service, implementation of procedures to ensure timeliness of hearings and development of avenues to ensure appropriate representation of litigants during court proceedings. The Court Observation Report and Recommendations were submitted to the Chief Justice and are currently under consideration by the GCC. Once the GCC has fully evaluated the court monitoring report, the JRP will assist with the implementation of the recommendations.

Throughout the year, the JRP provided input and limited implementation assistance to the GCC as result of 2005 activities that were aimed at improved court operations and management, including assistance to the GCC in redesigning Capital City and District courtrooms to a modern standard.

Results and implications: The initiative of the Supreme Court/GCC to develop training material on change management and to expand the court monitoring program shows judicial leaders' commitment to improving the administration of courts. This change in attitude is further demonstrated by the initiatives the GCC has undertaken during 2006, such as 1) creating detailed job descriptions for the heads of these units; 2) updating courtroom design (see *Activities continued from 2005 workplan* below) which resulted in ensuring that both parties are on equal standing during the hearings, and that the public and media have better access to the hearings; and 3) facilitating media access to court hearings resulting in greater openness and accountability of the courts. In addition, the Chair of the GCC has issued a regulation and operational procedures for handling complaints which provide for an enhanced timeframe for accepting complaints (previously there were set hours for filing of a complaint but now a complaint can be filed anytime during business hours).

Assistance to the GPO: In 2006, the JRP built on prior efforts and took advantage of a new focus on management and changes by the GPO leadership. After the Prosecutor General had been reappointed, he expressed his commitment to make modernization of the organization a priority for the next six years. In February 2006, Dr. Gramckow led a group of eleven management level officers, including the Prosecutor General, to Australia. The group visited the Offices of Public Prosecution of New South Wales and Canberra where they observed the operations and studied the management, structure, function and jurisdiction of the various offices of the Australian prosecution system and their relationships to each other. As a result of the study tour, the participants drafted an action plan for management reform (Attachment A). The plan was approved by the Prosecutor General in April 2006, and several working groups were established to address specific tasks outlined in the plan

Building on the management survey, conducted in 2005, the JRP further completed a full scale workflow assessment of the GPO. The JRP collected information on administrative and organizational policies and practices of prosecutors' offices (POs) and developed workflow charts

for different departments of the GPO, District Offices and the Transportation Office. The JRP analyzed this information and provided initial recommendations for the GPO management improvement plan. Further recommendations will be made in the following months as the GPO implements new processes.

Results and implications: The planned changes were not only designed to make the GPO and all prosecutors' offices more efficient, accountable, and open to the public but also to reduce the almost unrestricted power of the PG and provide for a more balanced and democratic office. This is an unprecedented step taken by an organization that, while constitutionally created as an accountable, independent office, was born out of a post-Soviet procurator's office. This is a dramatic shift that requires not only new and different organizational and management processes but also a significant change in attitude which will require some time to be fully institutionalized. As of November 2006, the GPO has achieved the following:

- Draft rules and procedures for the new Prosecutor's Ethics Council were submitted to the MoJHA and the President's Office for approval. Previously all disciplinary cases were filed with the Prosecutor General. The Prosecutor General reviewed the cases and imposed disciplinary sanctions based upon the conclusions of the Prosecutor that submitted the disciplinary case. According to the proposed procedures, a Prosecutor's Ethics Council shall review the cases and issue a conclusion as to whether the prosecutor breached ethical norms. The Prosecutor General shall impose disciplinary sanctions based on the Council's conclusion. The newly established Selection Committee shall consist of 5 highly qualified and respected prosecutors, including the Assistant to the Prosecutor General, Chief of the Foreign Affairs Department, the Capital City Prosecutor, and the Supervisory prosecutor in charge of Ethics of the GPO. The committee will be led by the Assistant to the Prosecutor General and Head of the Administrative Department. Once approved this process should create a more transparent and fair evaluation of disciplinary cases.
- Procedures to monitor budget expenditures on a monthly, instead of annual, basis were developed and approved by the Prosecutor General. As a result, the budgeting unit has better ongoing insight into expenditures and budget needs of individual offices, has improved monitoring capabilities and is better able to respond to increased needs or alerts to overspending.
- Procedures for appointment of a Selection Committee to evaluate candidates for prosecutor positions were developed and approved by the Prosecutor General. The selection process to fill vacant prosecutor positions shall include a written examination and an interview. The prior procedure required only a written examination. The purpose of the interview will be to evaluate communication and other interpersonal skills that cannot be evaluated based on written information. The Selection Committee has twice conducted the selection process according to the new procedures.
- Procedures for a new annual performance evaluation process of prosecutors were approved by the Prosecutor General. Previously, performance evaluations were conducted based on a review of case data reports. The new procedure will provide prosecutors the opportunity to personally attend the evaluation session and explain data and the results. While the office had not taken the step to then give prosecutors an opportunity to comment on their evaluation, this approach is a very significant change. It not only provides for input from the individual evaluated and as it will help determine how prosecutors understand and execute their duties. The first evaluation in accordance with the new procedures was conducted in December 2006. The results will be discussed at the Annual Meeting of Prosecutors in February 2007.

The following policies, procedures and other documents outlined in the Action Plan are in the drafting stage:

- Development of recommendations and a manual on how to communicate with victims of crime submitted to the leadership for approval.
- One day orientation program for newly appointed prosecutors developed and approved by the Prosecutor General.
- Mandatory trainings on new legislation regularly administered in all units. The list of updated or new legislation and the Orders and Decrees of the Prosecutor General distributed to the local units on a quarterly basis.
- Special training program for administrative and support staff developed and conducted.
- Training course for accountants and archive officers developed and the first training conducted in October 2006.
- Guidance on supervision over criminal proceedings in grave and serious crimes sent to all units.
- The draft of the Annual Report of the PO completed. The JRP will fund the first publication in January 2007 and the next publication will be financed by the GPO.

In 2007 the JRP will continue to assist the GPO in improving its management structures, policies, procedures and human resources development and in monitoring the impact and success of these changes.

Assistance to the Special Investigative Unit (SIU): The JRP provided the SIU with technical assistance, training and equipment since its establishment in September 2002. The establishment of the SIU was the only concrete step by the Government of Mongolia to combat crime and corruption within the justice sector. In 2006, the JRP's goal was to assist the SIU in formulating sound legislative proposals and strengthening management systems and operating procedures.

To achieve these objectives, the JRP engaged a new anticorruption expert to follow up on the recommendations of the previous consultant and provide targeted training on investigative techniques. The training focused on corruption cases as well as non-corruption crimes committed by justice sector officials. The expert's preliminary report is attached as Attachment B.

The JRP also assisted the SIU in creating a website that will allow the unit to provide more information to relevant legal institutions and the public, and allow citizens to file on-line complaints and petitions about crimes committed by justice system officials. The website was officially launched in November at a press conference organized by the SIU. In order to ensure a reliable operational environment, the JRP also assisted in improving the Unit's internal computer network, which will also facilitate the connection of the Unit to the UIS.

The JRP also worked with the SIU to incorporate their recommendations into the JRP comments on proposed amendments to the Criminal and Criminal Procedure Code (see Activity 1.9). However, with the adoption of the new law on anticorruption and the establishment of the anticorruption agency, the contemplated changes may not be required. Over the coming year, the JRP will continue to monitor these developments and work with the SIU to ensure a legal environment suitable for the efficient operation of the Unit.

Results and Implications: The training and more efficient operations of the SIU have resulted in more successful investigations and prosecutions of illegal activities within the justice sector. As of

October 2006, the SIU received over 700 complaints and investigated 243 cases, 115 of which were submitted to the PO for indictment. Forty-two cases were transferred to the court and 22 people have been convicted (nine cases are under consideration and there is no information on the disposition of nine other cases). The statistics below show that the volume of complaints received and responses by the SIU are relatively stable over all the years of operation of the Unit (see Table with the statistics from the SIU Annual reports and the official website).

Year	Complaints received	Cases investigated	Submitted to the PO for indictment	Number of convictions
2003	725	256	167	Not available
2004	754	255	186	60
2005	737	236	169	70
2006 (Oct)	over 700	243	115	22

Compared to 2005 there was, however, a significant decrease in the number of convictions. This can be partially explained by the fact that the current figures for 2006 include only three quarters. Further, the recent law on pardon (Attachment C) that dismissed minor and less serious cases of persons that have committed crime for the first time regardless of the stage of criminal proceedings (Article 7 of the Law on Pardon of June 23, 2006) also had an impact. According to the Deputy Chief of the SIU, 42 cases were dismissed according to the law on pardon and this is the main factor for the reduced number of convictions. He predicted that the ratio for investigated cases and convictions will be at the same level or even higher than in 2006 after data for the two remaining months are included. Also he noted that the interactive practical training on investigation of corruption cases and specific case reviews with the Unit staff were very useful and pertinent as the case studies and the training material, specifically the comparative law, were applicable to Mongolian circumstances and thus have improved the investigators' ability to analyze and apply the substantive law to case facts. Still, the continuous low number of convictions point to a need to enhance operations and particularly coordination with the prosecution divisions, activities that the JRP will stress in 2007.

Activity 1.2: Strengthening capacity for providing analytical input into decision-making

Accurate statistics and reliable information on court and individual judge performance are integral to the effective administration of justice. However, the Supreme Court and GCC currently lack expertise in generating the type of statistics that can be used to identify organizational problems (e.g. reversal rate, time to disposition, clearance rate, age of pending caseload, etc.) and to use such statistics in making management decisions or in developing operational policies. The goal of the JRP is to promote the development of a government policy on and increased capacity for the collection and use of court statistics.

Late in 2005, the JRP placed a court management expert in the Supreme Court Research Center (SCRC) to build capacity for supplying justice sector agencies with research and statistical analysis. Over six months, the expert developed a series of recommendations (Attachment D) on adjusting the mission, goals and objectives of the SCRC and restructuring its operations. The JRP also worked to improve the quality of the information available to the SCRC by upgrading the *Judge* software (see Activity 1.5). The upgrades included the addition of a module to record trial dates, inclusion of an error checking module for case registration, and enhancement of the decision registration module, among others.

Results and Implications: At the end of 2006 the recommendations were undergoing review by the Supreme Court. If accepted, the JRP will work with the SCRC to implement the recommendations.

Activity 1.3: Strengthening human resources management within the judiciary

Building on prior efforts, the JRP worked to improve the competency level of judges and increase judicial independence by reducing opportunities for abuse of the evaluation and selection systems. The JRP expert assigned to work with the SCRC also reviewed judicial selection procedures and the performance evaluation measurements used for courts and judges. The expert developed recommendations for improving these processes to enhance transparency and fairness (Attachments E and F).

Strengthening the performance evaluation system for the judiciary: The recommendations focused on the creation of a formal program for evaluating judges and courts, which includes transferring the mandate to evaluate courts and judges from the GCC and the Supreme Court. (GCC Qualifications Committee and the Supreme Court Research Center each review some aspects of judges' performances, but they do not coordinate their efforts and their reviews are not comprehensive) to the Judicial Professional Committee (JPC), setting appropriate criteria, enhancing coordination and streamlining of the evaluation activities of the GCC and the SCRC, changing the information and data collected by the SCRC, using more sources of information and changing the way the information is analyzed by adopting objective performance standards. The JRP submitted the recommendations to the GCC and the Supreme Court for consideration

Results and Implications: The proposed recommendations require legislative changes and the proposed changes are still being reviewed by the GCC. In particular, the JPC currently is not mandated to evaluate courts and judges. If amendments are made to the relevant legislation and the recommendations are accepted, the JRP will assist the JPC to implement the recommended changes. If no legislative changes can be made within the near future, the JRP will work with the GCC on adopting new procedures that are possible under the current legislation.

Strengthening merit-based selection of judges: The JRP recommended that the criteria for evaluating judicial candidates be expanded to include knowledge of ethics, legal reasoning, and communication skills. In addition, the selection process should be made more transparent by, among other things, making the test scores, and other aspects of the testing and grading available to the public immediately after the candidates receive their results, and providing the candidates with more information about the grading process, including the criteria and relative weight of each part.

Results and Implications: In response to these recommendations, the GCC approved a revised version of the Judicial Professional Committee Rules. The revised Rules include two new sections:

- A provision to announce the examination/evaluation scores immediately after the results are compiled; and
- A provision allowing the candidates and judges to submit complaints if they do not agree with the decision of the JPC. Though the inclusion of this section is an important step towards an open and responsive qualification system, this procedure relates only to scores on the written examination. The limitations with regard to the content of complaints and lack of truly clear and transparent complaints handling procedures remains an obstacle to fair and objective evaluation of candidates' qualification and skills for merit based selection.

The remaining JRP recommendations in this area require legislative changes and are still under review by the GCC. The JRP will engage the courts and stakeholders in a dialogue to promote this legislative agenda, with a focus on increasing appreciation for transparent, objective selection and promotion methods and their impact, not only on the quality of judicial candidates, but also on the trust the public has in the selection process and ultimately the judiciary.

Strengthening merit-based promotion of judges: The efforts to strengthen selection and evaluation systems, as described above, will set the stage for improving promotion criteria and processes. Once the pending legislative changes are passed, the JRP will work with judicial officials to implement the expert recommendations.

Defining behavioral standards for judges: The JRP is providing technical assistance to develop written behavioral standards and a legislative proposal for strengthening the Judicial Code of Ethics. In December 2005, the JRP developed recommendations, based on consultant input, that were incorporated into draft amendments to the existing Judicial Disciplinary Committee (JDC) procedures and Judicial Ethics Code (Attachments G and H). The proposed amendments will substantially reduce opportunities for corruption and contribute to increased public trust in the judiciary.

Results and Implications: The draft amendments were originally scheduled for submission to the Judicial Board for approval in January 2006. However, due to changes in the leadership of the judiciary and the composition of the Committee, consideration of the amendments has been postponed until early 2007. In addition, the amendments, specifically additional sanctions, require legislative changes. Therefore, the adoption of the revised JDC procedures and the Judicial Ethics Code will depend on the pending amendments to the Law on Courts. Upon passage of the legislation, the JRP will assist the JDC in educating judges on the new ethics rules.

Strengthening capacity of the Judicial Disciplinary Committee: The JRP assisted the JDC in organizing a roundtable meeting for representatives of ethics and disciplinary boards from justice sector institutions to share their experiences in handling disciplinary cases. Additionally, the JRP presented information on financial disclosure statements (FDS) and their relation to professional ethics norms as the new anticorruption law adopted in July requires public disclosure of income statements of public officials, including judicial personnel.

Results and Implications: In 2006, the number of complaints received, cases filed and judges disciplined have slightly decreased in comparison with the previous years, which the JDC views as a result of effective disciplinary processes. The JRP will continue to provide advice and training support to the JDC including assistance in developing enforcement mechanisms and procedures for collecting, retention and random inspection of the FDS. In addition, the JRP will assist the JDC in posting its decisions on the "judgeinfo" site (see Activity 1.5) to educate the judiciary and others about appropriate and inappropriate behavior. In 2007, the JRP will work with the JDC to introduce pattern analysis for identifying suspected ethical violations.

Advancing the concept of sustainable continuing legal education (CLE): The JRP, since its inception, has focused on creating high quality and sustainable CLE capacity in Mongolia. Building on earlier work, the JRP has focused increasingly on supporting the National Legal Center (NLC) and coordinating all CLE related activities with this institution. Modern interactive training techniques have been taught to all of its trainers and the organization has been exposed to the best practices of international CLE. Since the World Bank Judicial and Legal Reform Project is focused

on building sustainable capacity within NLC, the JRP has limited its assistance to training of trainers on specific courses introducing innovative techniques and international best practices.

Training:
The JRP sponsored the development of training on the following topics:

- Judicial Decision Writing
- Domestic Violence
- Anti-Corruption Law
- Crime Against Environmental Regulations
- Legal Ethics in Inquiry and Investigation Stage
- Trial Skills
- Adult Teaching Techniques. Basics of Organization and Management of CLE Courses
- Use of Microsoft Power Point in Teaching

Also during 2006, the JRP assisted the NLC in developing and printing a series of training manuals that can be used as distance learning materials and self-study tools. The manuals were developed by highly experienced professionals, experts, scholars and legal trainers (including JRP trained trainers) to provide practitioners and law students with new theoretical and practical knowledge. The manuals covered the following topics:

- Psychology of Lawyer's Communication
- Evidence
- Statement as Evidence
- Criminal Liability
- Proceedings of Expert

The JRP has also funded training manuals on Crimes against Environmental Regulations, the new Anti-Corruption Law and Legal Ethics in Inquiry and Investigation Stage. These manuals were used as training materials in the courses referenced above. These manuals are essential reference material for those studying criminal justice as they equip the reader with a greater knowledge of criminal procedure. The manuals include practical exercises and tests, which enhance the manuals' value as training handbooks.

Results and implications: In all, 8 training courses were conducted for 685 trainers and practitioners, representing all Aimags and Ulaanbaatar. The courses have been well received by the participants. In particular, the judges who attended the course on Judicial Decision Writing noted that they had never previously considered their decisions from the point of view of litigants trying to understand the judge's thinking. In addition, the NLC conducted a two week course for appellate court judges, monthly trainings for Ulaanbaatar judges, a one week course for new judges, a one week course for new prosecutors and one day training for Ulaanbaatar prosecutors based upon prior assistance by the JRP in developing curriculum. The courses were held without donor support, demonstrating increased sustainability.

Law Schools: The JRP is working with the laws schools to promote improved standards in providing practical skills courses and critical thinking skills. The JRP sponsored interactive training on legal writing skills for law students from the National University, and Otgontenger and Shikhikhutag Law Schools. The goals of the training were to introduce a new method of legal analysis and to prepare students for a writing competition that would be used to select students for

specialized training in trial skills. In June, the JRP sponsored the first ever training for law students demonstrating the adversarial trial process. This training was significant because law schools in Mongolia currently do not offer sufficient practical skills courses, particularly those focusing on trial skills. This activity was an opportunity to provide training to law students that would not otherwise be available and to demonstrate to representatives from the aforementioned law schools and the NLC a practical skills course that could be conducted and implemented as part of a law school curriculum.

The JRP also entered into a Memorandum of Understanding (MoU) with Otgontenger University to provide equipment and technical advice for the creation of a legal clinic. The goal of the project is to provide students an opportunity to receive training on practical skills such as legal research, writing and client consultations while at the same time providing a service to the community by providing free consultations in areas related to commercial law, family law, etc. Otgontenger is developing the necessary procedures, training materials and finishing the construction of the clinic on the premises of the university. The clinic will be operational in December 2006.

In conjunction with the Mongolian Women's Lawyer Association (MWLA) and the Moot Court Association (MCA), the JRP conducted a moot court tournament during 2006. The participating students were given a fact pattern and research materials for developing arguments on current international law issues. A team from National University won the three day competition. It is worthy of note that the winning team participated in JRP's earlier mentioned trial skills and legal writing trainings.

Results and implications: Prior to the JRP's involvement with law schools, law students in Mongolia did not receiving adequate training on the practical skills necessary to effectively represent clients and practice law. As a result of JRP's activities, law students are now receiving training on legal analysis, legal research, legal writing, and trial skills and are improving their legal reasoning and critical thinking skills. It is JRP's goal to transfer the substance of its trainings to the law schools through curriculum development and legal clinics.

Activity 1.4: Strengthening caseflow management

The JRP, in cooperation with the CCC, launched a pilot study in three District Courts in Ulaanbaatar to focus attention on self-assessment relying on the statistics generated by case tracking software. The study will (1) assess present caseflow management practice in comparison to the objectives defined in the new management concept; (2) test courts' quantitative data compiled by the "Judge" software; and (3) demonstrate the applicability of internationally recognized court performance measures, such as clearance rates, time to disposition, and age of active pending caseload, to establish performance benchmarks for the Mongolian courts. It is anticipated that the study will lead to improved procedures and practices for better caseflow management at the local level and more consistent compliance with legislative requirements for processing cases. The pilot study began in November and is scheduled for completion by February 2007.

Activity 1.5: Strengthening information management

The JRP is building on earlier automation efforts by providing the judiciary tools for effectively using the new technology, i.e. specially developed software In the fall of 2006, the World Bank officially launched the Unified Information System (UIS) website (www.legalinfo.mn, www.legalsystem.mn) (These two websites are the same but "legalsystem" is for users connected through fiber optic cabling) providing all Mongolians access to court information by linking to the

JRP created website ”judgeinfo” (www.judgeinfo.mn) which contains information about the Mongolian courts and their operations, such as basic information on the structure and organization of the judiciary (e.g. location of courts, brief descriptions of individual courts, court management policies and procedures, etc.), its mission and objectives, decisions and resolutions of the GCC, JDC, JPC and SCRC, SC interpretations, court decisions and information for the public with regard to requirements for filing petitions and claims, detailed description of fees, and weekly trial schedules. The “judgeinfo” site will be regularly updated on events occurring in the courts.

The JRP supported the development of a software program, which allows the courts to upload recent decisions and other information to the National Case Information Database (NCID) over the Internet. The NCID contains case records or data collected from all courts, it compiles these data and “judgeinfo” retrieves necessary information from these collected data, and only IT specialists have access to it. The JRP conducted a series of trainings for judges and court staff on the structure and operation of the UIS, use of the software for transferring information to the database, and other topics related to computer and internet use.

In addition, the Executive Secretary of the GCC has issued an Ordinance endorsing 1) a procedure on the operations of the Unified Judicial Information System, the National Case Information Database and the court website; 2) a procedure on the operations for the IT/Computer regional specialist; and 3) a detailed job description for IT/Computer specialists. As a result of these ordinances, the courts have procedures and designated professionals to work with NCID, “judgeinfo” site, and case tracking software, to provide hardware and software support and service to court employees, and to maintain sustainable operation of servers and Internet connections.

Results and implications: As a result of these activities, judges now have access to court decisions from all Mongolian courts providing for more consistent application of laws. In addition, citizens may research court decisions and case information anywhere there is access to the Internet thereby creating a far more transparent judiciary (see also Activity 3.1). The World Bank plans to add a counter to the website in order to track its usage. Following the full automation of courts, the JRP will continue to assist in improving the software and work with the user group and GCC to ensure that standard operating procedures are in place, court staff and judges are trained accordingly and that monitoring systems are in place to ensure that the procedures are adhered to uniformly.

Activity 1.6: Strengthening court budgeting and supply and support services

The JRP is assisting the GCC in improving the quality of budgets, with the goal of strengthening the GCC’s capacity to formulate budget requests based on real and justifiable needs and amending legislation to permit more rational and transparent budgets for justice sector institutions. Building on the improvements to the GCC’s budgeting capacity achieved in the first 5 years of the project, the JRP provided examples of best international practices on court budgeting, including procedures for direct submission to the legislature, fixed percentage of state budget and irreducibility clauses. In February 2006, the JRP retained a consultant to prepare an analysis of the negative and positive aspects of having a fixed percentage budget for courts upon the request of the GCC (Attachment I). The GCC used this information in preparing proposed legislative amendments. The JRP also assisted with organizing training for court accountants on financial tracking software.

Results and implications: Proposed amendments to the Law on Courts and other relevant legislation providing for a fixed percentage budget for courts were submitted to the Parliament. Due to strong support from the President’s Office, it is anticipated that these amendments will be considered and adopted during the 2007 spring session.

Activity 1.7: Raising court efficiency through structural and procedural optimization

The current procedural code, specifically the provision that specifies the types of cases that require review by a panel, requires all rural courts to have at least three judges even where the caseload can barely justify one judge. In 2005, the JRP recommended legislative amendments to reduce the types of cases to be reviewed by a panel of judges. The current proposed amendments to the Criminal Procedure Code include an altered version of Article 32.1 that limits the types of cases to be considered by a panel to only serious and grave cases.

Results and implications: Reducing the types of cases requiring a three judge panel to more important and complex cases would improve the allocation of judicial resources and permanently reduce the level of expenditure for remote regions where caseloads are low and recruitment is difficult. It would also make more judges available to high volume courts.

Activity 1.8: Strengthening strategic planning at the court level

In 2005, the JRP worked with the CCC on developing a Strategic Plan for its reform efforts. The strategic plan assists the CCC in defining the CCC mission and objectives, planning the actions and justifying the budget. The CCC working group developed a manual on developing strategic plans for courts. Building on the success of this effort, the JRP is expanding this activity to all courts throughout Mongolia by 2008. In 2006, the JRP initiated this effort by distributing copies of the strategic planning manual to all courts.

As any state funded organization, courts have begun to develop their individual strategic plans required by the Public Institutions Finance and Management Law. The Chief Justice also ordered individual courts to develop their own strategic plans that will be evaluated at end of January, 2007. The individual strategic plans will be reviewed and discussed when the Chief Judges and Court administrators meet for a conference scheduled for January 29, 2007.

Results and Implications: The courts now have a tool to assist them in complying with the above-referenced law and the Chief Justice ordinance. The courts also have the CCC Strategic plan as an example and source for exchanging opinions and experiences.

Activity 1.9: Upgrading priority elements of the substantive legal environment

Developing recommendations on strengthening the Criminal and Criminal Procedure Codes: The JRP provided assistance by evaluating the implementation of the Criminal and Criminal Procedure Codes to promote more efficient processes that ensure the protection of human rights. In 2005, the JRP drafted recommendations regarding the maximum time possible for pre-trial detention, the rights in practice of defense attorneys in the pre-trial stage, and the treatment of victims and juveniles that were incorporated into proposed amendments to the Criminal Procedure Code, submitted to the Legal Standing Committee of the State Great Khural. In addition, JRP recommendations regarding new procedures for arrest and detention were largely incorporated into the proposed amendments as well.

In October 2006, the Chair of the Legal Standing Committee of the State Great Khural requested that the JRP comment on the revised draft amendments to the Criminal and Criminal Procedure Codes. The JRP comments (Attachments J and K), submitted in December, focused on the rules of

evidence consistent with the adversarial process in the Criminal Procedure Code and the analysis of the harshness of sentences for different crimes, and the absence of a crime of perjury in the Criminal Code.

Results and implications: If passed, the JRP recommendations to the above codes will ensure just and efficient processes that ensure the protection of human rights by limiting the amount of time a defendant is in pre-trial detention and providing defense attorneys additional rights.

Anti-corruption: After signing the UN Anti-Corruption Treaty, the Mongolian Government faced the challenge of adjusting a myriad of laws in a relatively short timeframe. The MoJHA requested assistance from the JRP in this challenging undertaking. The JRP assisted by locating an international expert (funded by the UNDP) to advise on the treaty implications and implementation processes, assist in establishing priorities for drafting legislative changes, and provide comments on the proposed anticorruption legislation.

Results and implications: The new anticorruption legislation was adopted in July 2006. Although the JRP did not plan specific anticorruption activities for 2006, the JRP's work with the courts, POs and other relevant institutions focuses largely on the development of efficient and transparent processes aimed at reducing opportunities for corruption. The JRP will continue to assist these institutions in promoting effective management structures for enhancing openness and accountability to reduce corruption.

OBJECTIVE 2: PROMOTING ACCOUNTABILITY AND ETHICAL BEHAVIOR OF JUSTICE SECTOR OFFICALS THROUGH INCREASED PROFESSIONALISM

Activity 2.1: Strengthening qualifications of lawyers by improving the Non-Staff Committee's procedures and communication

Over the past three years, the JRP helped create and assisted the Non-Staff Committee, which is responsible for lawyer qualification. In 2006, the JRP assisted the Non-Staff Committee in implementing the tasks outlined in the action plan developed after the bar exam study tour conducted by JRP in 2005. In addition, the JRP provided financial assistance to publicize the examination and trained the Examination Committee staff on use of the new grading machine. JRP staff monitored the examination process at five Ulaanbaatar sites and one rural site.

This year, approximately 1,900 law school graduates took the examination at eight sites in Ulaanbaatar and four sites in the countryside (3,025 people took the bar exam in 2005). The lessons learned from the study tour were reflected in the examination policies and procedures as well as the design of the exam.

Results and implications: There was a marked improvement in the administration of the exam. Cheating was reduced as a result of strict implementation of new security measures (such as different versions of the test and random seating) and strengthening of the monitoring process. Grading of the multiple choice portion was conducted using a high speed Scantron machine which eliminated opportunities for manipulation. Grading of the essay portion was improved with the use of grading guides, as recommended by the US National Conference of Bar Examiners during the study tour.

The JRP developed additional recommendations for further improving the process (Attachment L). Over the coming year, the JRP will continue to assist with enhancing the testing material and administration of the exam. The JRP will also continue to assist in publicizing the examination process, particularly working with the MoJHA to ensure that testing fees are sufficient to support the expense of such publicity in the future but still affordable.

Activity 2.2: Developing the Mongolian Advocates Association (MAA)

In 2005, the Board of Directors of the MAA participated in a study tour to the United States. The two main objectives of the study tour were: First, to familiarize the MAA Board with the structure and services of an American bar association to provide ideas about how to better serve their membership and the public. In particular, CLE courses for members, legal services to the poor, and providing web based information were emphasized. The second purpose was to expose the Board members to the practice of law in an advanced market economy, specifically areas of practice that are new to Mongolia and the organization and management of modern law firms, both small and large.

Throughout 2006, the JRP worked with the MAA to implement the action plan that resulted from the study tour. The JRP encouraged the MAA to play a role in public education through the creation of posters and brochures that inform people of their rights, their right to an attorney and practical steps for locating an attorney as well as explaining what an attorney ethically can and cannot do.

At the request of the MAA, the JRP conducted two trainings on trial skills using mock trials and brief writing exercises to improve the writing and critical thinking skills of advocates. The JRP also sponsored the MAA annual training for advocates from the Eastern and Central Aimags. During this three day event, the participants received training on a variety of topics including ethics, administrative law and public speaking.

Results and implications: In 2006, the MAA implemented several initiatives as a result of the information obtained during the JRP-sponsored study tour. These activities included: publishing a reference book of advocates, with the help of the Japanese International Cooperation Agency (JICA), to distribute to police stations, courts, and other legal institutions; creating a new library for advocates; establishing a club for young lawyers; and launching a mediation center with the support of JICA. In 2007, the MAA will focus on public education on citizen's rights through posters and brochures.

Activity 2.3: Developing policy proposals on ensuring access to legal advice and representation

During 2006, the JRP did not plan any activities as the Mongolian Government was preparing to pass a resolution on public legal assistance negating the need for a study report. A resolution was finally passed on November 9, 2006 that endorses a National Program on Providing Legal Assistance to Indigent Citizens and provides methods for implementation. In 2007, JICA will be exploring opportunities to work within the purview of this resolution and the JRP will discontinue its plans to work in this area.

Activity 2.4: Helping the Prosecutor's Association improve professional standards

The key role of a strong Prosecutors' Association is to further the professionalism of prosecutors and provide for a forum to discuss the needs of the profession. In particular, a Prosecutors Association can be a vehicle to allow the discussion of ethical challenges and solutions. It can be a

means of providing feedback on management practices to the leadership of the GPO. The JRP added assistance to the Prosecutors' Association as a project component in mid-2006. Recently, the GPO submitted draft rules and procedures for the new Prosecutor's Ethics Council to the MoJHA and the President's Office for approval. Additionally, the Prosecutor General approved a procedure for annual performance evaluations of prosecutors in August 2006. To build on these developments, the JRP will work with the Prosecutors' Association, over the coming year, to develop a standard ethics training curriculum and explore other training and information needs that can be addressed through Association meetings.

OBJECTIVE 3: IMPROVING UNDERSTANDING BETWEEN JUSTICE SECTOR INSTITUIONS AND THE PUBLIC

Public understanding of the legal system is essential to public support for the rule of law. Only a public that understands its rights and the role of the various justice sector institutions in protecting these rights is capable of demanding proper functioning and services from these institutions. Public understanding is also key ensuring support for independent justice sector institutions and protecting them from undue interferences from other branches of government. Thus, it is an ongoing JRP priority to increase the public's understanding of the reformed justice system and mobilize support for justice sector reform and independence.

Activity 3.1: Strengthening Public Communication Capacity of Justice Sector Agencies

One focus of the JRP has been to work with justice sector institutions to develop the capacity to effectively communicate with the public and each other. To achieve this goal, the JRP engaged in a series of activities as described below.

Creation of a Judicial Sector Press Center: In prior years the JRP assisted the judiciary in establishing Public Access Terminals, which provided the public, attorneys and the media with access to case information, and laid the foundation for improving the public relations activities of courts. Building on these efforts, the newly appointed Chief Justice of the Supreme Court and the Prosecutor General agreed to establish a special press room at the Supreme Court to better accommodate the media by providing a reliable and a regular source of court and PO information. To assist in this effort, the JRP provided the necessary equipment and furniture as well as helped to foster good working relations among court personnel and journalists, who had attended prior JRP trainings on court reporting.

Results and implications: The Center now organizes monthly briefings for journalists in order to provide timely and accurate information about the activities of courts and POs to the public and media. Moreover, the Press Center has taken over the training sessions for journalists from the JRP. Prior to the establishment of the Press Center, media did not have access to information regarding cases and the courts. Now, as a result of access to information through the Center, the media regularly publishes information about the courts, especially articles about trials on high profile topics such as corruption.

Newsletter: The judicial sector was lacking a regular publication that could provide opportunities for communication among justice sector agencies and allow them to exchange information about their activities, work achievements and experiences. To address this deficiency, the JRP continued to publish its monthly newsletter "Rule of Law" in Mongolian for judges, court administrators and stakeholders to improve their professional communications and to encourage the exchange of

practice and experience. The newsletter discusses ongoing events and activities in courts and other legal institutions throughout Mongolia. JRP also began to publish a newsletter in English that discusses JRP activities and success in programming for other implementers and donors. Both newsletters are regularly placed on the JRP website which is continually updated with training materials and photos of different JRP activities.

Results and implications: The new English version of the newsletter was well received by our readers. The newsletter focuses on JRP activities and provides a good communication opportunity for donor coordination. In addition, the electronic version with success stories provides an excellent opportunity to publicize the JRP activities to our stakeholders. The Mongolian language version of the "Rule of Law" Newsletter which has been published monthly is the only regular communication tool about training and reform activities for the courts and other agencies and provides an opportunity to exchange information on their achievements, to exchange work experiences and to learn from each other.

Launching of the www.judgeinfo.mn website: As described under Activity 1.5 above, the JRP assisted the judiciary in designing, developing and launching a website (www.judgeinfo.mn), which contains information about the Mongolian courts and their operations, such as basic information on the structure and organization of the judiciary (e.g. location of courts, brief descriptions of individual courts, court management policies and procedures, etc.), its mission and objectives, decisions and resolutions of the GCC, JDC, JPC and SCRC, SC interpretations, court decisions and information for the public with regard to requirements for filing petitions and claims, detailed description of fees, and weekly trial schedules. The "judgeinfo" site will be regularly updated on events occurring in the courts.

Results and Implications: Establishing access to the information described above is a significant step toward increasing public understanding of the judicial branch and trust in the courts. The JRP will continue to assist the GCC and the Supreme Court in upgrading the website and will ensure the availability of all Supreme Court decisions as well as interpretations, other court decisions and case information on the website.

Activity 3.2: Public Education

The changes in the justice system have been rapid and it is important that the public appreciates these reforms. The public needs to be able to avail itself of the new procedures enacted to protect its rights. A 2005 survey conducted by the NLC confirmed that there is an urgent need to increase dissemination of legal information as citizens lack sufficient knowledge of legal issues (Attachment M). To address this need, the JRP conducted the following activities in 2006.

Television and Radio Productions: The NLC survey showed that one-third of respondents *always* receive legal information from TV. In addition, 25.1 percent of respondents answered that they *often* receive legal information from TV. In total, 56.1 percent or more than half of the respondents receive legal information through TV. To target this audience, the JRP continued the production and broadcasting of the award winning "Khuuliin Tsag" or "Legal Hour" TV series in cooperation with the GTZ. This year, TV-9 contributed 15 million Tugrugs for professional actors and a producer. The "Legal Hour" remains the number one program in its category, which includes approximately 300 TV programs.

The JRP and Pact have continued their successful radio program on criminal procedure, "Who is guilty," using scenarios from the "Legal Hour" TV series. The radio program reaches rural

audiences that have no access to TV. The program educates the public about the criminal code by dramatizing crimes, investigations and trials with explanations of experts. In 2006, the JRP launched a second radio program, "Victims," which focuses on civil law issues. "Victims" was rated 17th most popular show and "Who is Guilty" was rated 18th out of 70 programs on Mongol Radio. Additionally, "Who is guilty" was awarded the "Certificate of the Best Radio Drama" and was included in the Golden Archive of the Mongolian Radio.

In 2005, JRP entered into an agreement with Pact Mongolia for additional public education activities. In 2006, those activities included the development of a pilot TV Show "Huh Devter" or "Blue Notebook" on Court Hearings. The goal of the program is to use real trials and comments by experts to educate the public on how court trials are conducted. The pilot is still in production and should be ready for viewing by the end of the year. If successful, JRP will continue its production during calendar year 2007.

Results and Implications: These TV and radio programs have raised public understanding of court activities. Three successive public opinion surveys conducted by JRP have shown that the public's belief that they understand court proceedings has increased (see *Public Perception of the Judicial System Administration, 2005* on the JRP website). The survey results on "Public Views about Khuuliin Tsag TV Program" show that the program remains the top rated TV program and one of every two people in the sampling group responded that they watch the tele-serial often. In addition, up to 70% of respondents replied that the program's ability to provide legal education is very good. The JRP will continue to support the production and broadcasting of these public education programs.

Posters and videos: The JRP has printed a variety of posters which are displayed in virtually every court and many government offices. In 2006, the JRP assisted the NLC in producing a poster on "Pre-trial Detention Center: Rights of Detainee's and Accused." The NLC distributed the poster to all urban and rural police stations and detention centers.

JRP also assisted the National Center Against Violence (NCAV) in reprinting 1000 copies of the poster on the new law on combating domestic violence. The poster was developed to assist victims of domestic violence by providing information on how to submit a claim and how to prevent domestic violence. The poster also describes the duties and obligations of the relevant officials.

In addition, the JRP assisted the NLC in producing 1000 copies of a video lesson on the Labor Law entitled "Citizens' Right to Work and Labor Regulations" on CD ROM. The NLC has begun distributing them to all public administration units in Ulaanbaatar and Aimags for use in public education. The JRP and NLC also produced a poster on "How to Resolve a Labor Dispute in Court."

Results and Implications: The posters are a very effective means of educating the public. Posters provide the public the most essential information on their rights in crisis situations such as being suspected of a crime, being involved in a labor dispute and in the case of domestic violence. In a request letter from the NCAV for reprinting the poster on domestic violence for the third time, the NCAV wrote that "the posters were distributed to each administration unit of the Capital City, 9 districts, 21 aimags, 378 soums and 124 khoroos, police stations and courts. Over the past two years the majority of victims who requested help and advice from the NCAV said that they received first information on the Law on Combating Domestic Violence from the posters." The General Police Department wrote that "the poster on 'Pre-trial Detention Center: Rights of Detainee's and Accused' were sent to all police stations to display," and the Prison Fellowship Mongolia, wrote

that "the poster is very well designed and is being enthusiastically received by Prison Directors who are asking for further information like this to display inside the prisons."

Manuals: In 2006, the JRP assisted the NLC in developing and printing two public education manuals. The manual "Criminal Law" written in simple language, explains in detail the new provisions as well as legal terms, using colorful illustrations to help the public easily understand an extensive legal glossary. The manual, "Criminal Liability," explains the legal meaning of criminal liability. It also explains the terms indictment, sentence, fine, arrest, imprisonment, confiscation of property, death penalty and enforced community work. The manual is also illustrated to improve understanding. The manuals were provided to the NLC, which distributed copies to citizens, social workers and law students through aimag and district governors. Governors hold "open days" which are events designed to provide information about the government's activities. As part of the "open day", the legal department of the governor's office is required to provide information on public education so they use this opportunity to distribute materials including manuals.

Results and implications: These manuals play an important role in increasing public understanding of criminal law and labor law issues. The manuals were the first public education products on these new laws. In addition, these manuals provide an example of how develop quality illustrative training material for the general public.

ACTIVITIES CONTINUED FROM 2005

Courtroom Redesign to Enhance Access and Party Equality: In early 2006, the JRP successfully completed the courtroom redesign activities which reconfigured 17 courtrooms in Ulaanbaatar to ensure openness of hearings, promote the adversarial process and the principles of equality of parties in trials and reinforce the presumption of innocence in criminal cases. Furthermore, the JRP raised the issue of media access to court hearings that ensure the openness of courts and GCC agreed to revoke an earlier regulation limiting journalists' access to courts. (The media had to receive written permission from the Chief Judge of a given court). In October, the GCC adopted Resolution #59 which regulates the access of media, representatives from organizations, institutions, businesses and citizens to court hearings. Under the new Resolution, the media shall have unrestricted/free access to hearings, and will only need permission (verbal) from the given judicial panel if pictures of court proceedings will be taken.

Results and implications: The JRP's efforts resulted in the GCC issued new resolutions that provided for an environment that ensures the principles of equality of parties and openness of hearings through reconfiguration of courtrooms and ensuring media access.

D. DONOR COORDINATION, MONITORING AND EVALUATION, AND PROGRAM STAFFING AND MANAGEMENT

Donor/Stakeholder Coordination

The JRP has taken the lead for the last six years in coordinating the various rule of law donors to avoid duplication of effort and ensure maximization of limited resources. In particular, the JRP and GTZ have closely coordinated their activities and conducted joint projects, such as the development of commentaries to the General Part of the Civil Code, the judicial decision writing training, the publication of a joint journal for all legal professionals and the Khuliin Tsag TV series. The JRP

contributed information on Mongolia to the Transparency International comparative corruption survey and provided assistance to the Asia Foundation for a survey on corruption. The JRP also worked closely with the World Bank in developing access to the judgeinfo website through the UIS.

The JRP, in preparation of the 2007 workplan, met with GTZ, Pact, JICA, Chemonics, GCC, Supreme Court, GPO and the Ministry of Justice to assess potential areas of cooperation and to avoid duplication of activities. Additionally, Dr. Heike Gramckow met with Dr. Bertrand Desmoulins, the new UNICEF representative, with regard to coordination/cooperation in the area of juvenile justice and commentaries to the Criminal and Criminal Procedure Codes. It was agreed that UNICEF and JRP will make consistent its commentaries to the Codes and could coordinate its activities, e.g. training on special treatment of juvenile offenders for judges, prosecutors and police.

The JRP also engaged extensively with all of its key Mongolia stakeholder organizations to ensure that reform efforts are not duplicated. For example, the JRP collaborated with the Supreme Court to create materials for a training course on effective time management for judges, coordinated training development with the NLC, and cooperated with the MOJ and other agencies on drafting amendments to key legislation.

Successful donor and stakeholder coordination has also been accomplished through individual meetings, regular information exchange at ad hoc meetings and through the JRP newsletter, and periodic larger and focused meetings of all relevant donors and stakeholders involved in ROL, specifically in justice sector training efforts. The JRP plans to continue this process and will seek to institutionalize these meetings by encouraging other key donors to share the responsibility for organizing and supporting these meetings on a rotating basis and enticing key Mongolian stakeholders to initially take the lead in such events and ultimately become the leaders in donor coordination to the extent feasible.

Program Monitoring and Evaluation

The JRP was designed to implement priority elements of the Strategic Plan for the Justice System of Mongolia approved by the State Ikh Khural in 2000. With the purpose of identifying progress in implementing the Plan, the JRP hired one of Mongolia's most respected legal experts, to conduct an evaluation of the implementation status and provide critical review and comments for further reform work. This evaluation will assist the JRP in its own internal progress evaluation and provide further insight for continued ROL programming and for engaging key stakeholders in renewed reform activities.

The JRP established a group of representatives from the judiciary, prosecution, advocacy and MoJHA led by the JRP's consultant, to assess the implementation of the Strategic Plan for the Justice System and identify future goals and objectives. In August, the final draft assessment on the six values of the Strategic Plan was completed and circulated to the leaderships of major legal institutions. The JRP is in the process of incorporating the comments and finalizing the assessment. The Chair of Legal Standing Committee, in a meeting with the JRP Chief of Party, noted that the Committee will review the Assessment of the Strategic Plan in connection with the Government decision to review the Government Program for Legal Reform (1998-2008). The JRP was asked to submit a summary report to the Legal Standing Committee in December (Attachment N). Hopefully it will prompt Parliament to allocate greater resources to the justice sector and reaffirm the objectives of justice sector reform. The JRP will further work with major legal institutions and the judiciary to amend the Strategic Plan in order to set new strategic principles, objectives and new directions for the period beyond 2008.

The JRP completed an inventory of all equipment at all donee locations and presented it to USAID/Manila for the final resolution of outstanding recommendations resulting from the USAID audit. All outstanding issues resulting from the audit have been resolved.

Finally, the JRP created a new PMP for the extension period that was approved by USAID. The JRP has established the baseline data for 2006 which is set forth in Attachment O.

E. PROBLEMS ENCOUNTERED AND STEPS TAKEN TO RESOLVE THEM

There were no special problems not noted above with respect to the conduct of the project.

F. CONCLUSION

The JRP was designed to assist the Mongolian Government in implementing the Strategic Plan for the Justice System of Mongolia. The Strategic Plan has a large number of specific objectives and tasks. However, USAID, in consultation with the Mongolian stakeholders, focused the JRP on a limited number of critical areas which included: Court Administration and Case Management, Review of Court and Justice Sector Agency Jurisdictions, Continuing Legal Education (CLE), Lawyer Qualification, Public Education and improved Ethics. These activities support USAID/Mongolia's Strategic Objective "Strengthen 'Good Governance' and Make It More Accountable," specifically Intermediate Result 2.1 "Comprehensive Legal Reforms Implemented." The JRP accomplished its objectives specifically in shaping the major laws that affect the operations of the judiciary and the justice sector as a whole (e.g. Criminal and Criminal Procedure Codes, Law on Courts, Law on Prosecutor's Office, etc.), in automating the courts and prosecutor's offices, in introducing new management practices and ideas related to openness and transparency of operations, in establishing a qualification system for all legal professionals, in setting up a framework for continuing legal education, in establishing a new anti-corruption unit reporting to the Prosecutor General and in enhancing the ethics of the legal profession. Concisely, the JRP has been instrumental in moving towards institutionalizing the reforms and helped Mongolia to advance the rule of law. For the coming years the JRP will start work with the police to improve its practices in order to ensure that human rights are protected at the inquiry and investigation stages of criminal procedure and will continue its work to sustain the developments affecting the courts and POs.

Still, much remains to be done to sustain and truly institutionalize these broad and substantial changes. First and foremost, the project needs to continue to develop the leadership and management capacities within the key judicial institutions, to ensure that the reform efforts continue and become a part of standard operations. Equally important, is continuous support for broadening public understanding of these reforms and their importance for a democratic society and a market economy. One area the JRP has been working extensively with its key stakeholders is ensuring adequate financial support for the justice sector. This will continue to be a focus activity for the JRP since an adequate budget is needed to sustain and continue needed changes and the government's response has not been supportive so far. To the extent possible, the JRP will continue to provide limited support to key legal institutions and agencies that are not core stakeholders, such as law schools and the MAA. Both are essential to ensuring that Mongolia's lawyers have the knowledge, skills and professional ethics to support the rule of law. There are also areas that have not been within the framework of the JRP and that need to be addressed.

Effective and efficient delivery of justice is vital for ensuring that all Mongolians live within a state in which the rule of law is respected and followed and essential for sustained economic growth. Observations have shown that judges still have problems with understanding and applying commercial laws, particularly the new concepts relating to contract law, property rights, banking, investment, corporate structures, leasing and commercial practices. The JRP will assist in commercial law development and application, including training of judges and prosecutors so that they better understand business practices related to the abovementioned areas for fair and impartial commercial dispute settlement. With this goal in mind, the JRP has reached an initial agreement with the GTZ to cooperate in developing commentaries to the Special Part of the Civil Code that contains most of the elements of commercial law and conducting follow-up trainings. The JRP will provide experts in areas internationally recognized as best developed in the US such as banking, insurance and mortgage. Similarly, activities to enhance public understanding of the legal requirements underlying contracts and other commercial transactions and where to turn to if a dispute arises will be an area of new activity for the JRP.

List of Attachments

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Discussed at the Meeting of the Board of General Prosecutor

APPROVED BY: GENERAL
PROSECUTOR OF MONGOLIA
M.ALTANKHUYAG

AUSTRALIA STUDY TOUR FOLLOW-UP ACTIONS CONCERNING
MANAGEMENT OF PROSECUTOR'S OFFICES

April 10, 2006 Ulaanbaatar

BASIC GOAL:

To improve the system of functions and responsibilities of prosecutor's offices, to improve the professional skills of prosecutors and other employees, to make the activities of prosecutor's offices transparent to the public, and to establish procedures on certain management issues within the discretion of General Prosecutor.

One. In respect of internal activities of prosecutor's offices:

1. To develop a procedure on public relations of prosecutor's offices.

Goals and Targets:
First of all, we will be guided by the principle of independence of prosecutors.

The purpose of the procedure shall be to ensure that only senior prosecutors give news, information and interview on certain criminal cases which are under the supervision of the prosecution to the press and public.

The procedure will regulate who will inform the public that prosecutors don't prosecute cases under the public pressure and provide the public with information on cases and prosecutor's activities. The public must be provided with simple and comprehensible information.

News and information on activities of a prosecutor's office shall be published through the public relations unit of the prosecutor's office and information on criminal cases shall be given to the public by certain officials.

Ways to Implement the Task:
A procedure will be issued and implemented.

Period of Implementation and Officials in Charge of the Task:
In 3rd quarter: B.Tserenbaltav, J.Oyunchimeg

2. To establish the Prosecutor's Ethics Council, to develop the procedures of the Council and to make amendments to the relevant law.

Goals and Targets:
The purpose of establishing of the Prosecutor's Ethics Council is to develop ethical and behavioral standards among prosecutors and to maintain the prosecutor's integrity and reputation.

Establishment of an independent Prosecutor's Ethics Council and development of its procedures will be important in improving proceedings of ethical violations of prosecutors and enhancing the participation of independent parties in resolving such matters.

Ethical violations by prosecutors are detrimental to the public confidence in prosecutors and the integrity of prosecutor's offices, so every prosecutor needs to comply with not only the standards of prosecutor's ethics, but also legal ethics.

Investigation and hearing of ethical violations by prosecutors at the Prosecutor's Ethics Council will have the following benefits:

- Such violation will be resolved by collective decisions. An appropriate sanction will applied to the violation according its cause and nature which will be determined by such hearing.
- Investigation of ethical violations will help the prosecutor and prevent such violation.
- The code shall provide warning and admonishment as types of sanctions to be applied by the Ethics Council first depending on the nature of violations, thus prosecutors will be provided with opportunities to regain the confidence.
- Ethical trainings for prosecutors will be conducted.

Ways to Implement the Task:
Amendments concerning the Prosecutor's Ethics Council will be made to the Law on Prosecutor's Offices. The procedures of the Prosecutor's Ethics Council will be approved by the Presidential Decree.

Period of Implementation and Officials in Charge of the Task:
Within the year: S.Battumur, D.Otgonbayar

3. To develop a procedure for prosecutors to keep records of supervision and to prepare reports and statistics based on such records

Goals and Targets:
The goal of the action is to stop requiring prosecutors to prepare big reports which distract them from their basic works and to enable prosecutors monitor their own activities by assessing their performance in shorter periods and on an ongoing basis.

The final outcome of prosecutor's work depends on how the records of prosecutor's supervision are conducted, and such records are very important in objective evaluation of performance and preparation of accurate statistics and reports.

Every prosecutor will have simple and comprehensible records of their performance. They will be required to prepare reports that are not big based on their records.

Ways to Implement the Task:
We will appoint a working group to revise the performance measures of prosecutors and to make the relevant amendments to the statistics.

Period of Implementation and Officials in Charge of the Task:
Within the year: Working Group

4. To develop recommendations on the Law on Protection of Victim's Rights

Goals and Targets:

On one hand, any crime victim is on the prosecution side, so we would like to incorporate our ideas to involve the state in enabling victims enjoy their rights and ensuring restitution of their rights and compensation of their losses.

The prosecutor's office will have the position that victim's rights must be provided by the law. The action will aim at providing assistance to victims and victim's families to enable them to give accurate testimonies.

It is important to define the legal status of victims in developing a new law on protection of victim's rights.

Duties and responsibilities of social workers and mental health counselors will be defined in the law on protection of victim's rights.

We should consider that Mongolia doesn't have a law on protection of victim's rights and the Criminal Procedure Code doesn't specify clearly how life, property, physical and mental losses caused to victims shall be compensated and how their affected legal status shall be restituted.

Ways to Implement the Task:
We will develop our comments on the draft law on protection of victim's rights.

Period of Implementation and Officials in Charge of the Task:
Within the year: B.Tserenbaltav, B.Jargalsaikhan, D.Dagvasundel

5. To revise the performance measurements of prosecutors and to make the relevant amendments to the structure of quarterly, semiannual and annual reports and statistics

Goals and Targets:
The key goal of this action is to develop measures and procedures that will enable prosecutors to monitor their own performance using the statistics and performance evaluation that set the relationship between the quantity and quality properly.

The contents and essence of the current statistics and reports have been used for many years and can't meet the today's needs.

In other words, we are not able to evaluate the performance of first level prosecutor's offices based on the statistics submitted by them and the statistics can't be used as a lever for improving performance.

More frequent evaluation of performance of units is based on the principle that the units can evaluate their performance several times for a year.

Units will evaluate their performance on a quarterly basis and the General Prosecutor's Office will evaluate the performance of units on semiannual and annual bases. The performance measures and standards will need to be set to do so. We will abandon our old practice of evaluation based on competition and will adopt a new principle of comparative evaluation.

Ways to Implement the Task:
A working group appointed by Decree of General Prosecutor will develop performance measures and procedures.

Period of Implementation and Officials in Charge of the Task:
Within the year: Working Group

6. To develop recommendations and a manual on how to deal with victims

Goals and Targets:
Each prosecutor's office will conduct training based on the recommendations and manual and have the common understanding on how to protect victim's rights and how to communicate with victims during the prosecution process.

Ways to Implement the Task:
Special recommendations and manual on this subject will be developed and sent out to local offices.

Period of Implementation and Officials in Charge of the Task:
In 3rd quarter: J.Oyunchimeg, U.Sodnomtsog, D.Dagvasundel

7. To develop a procedure for annual performance evaluation of prosecutors

Goals and Targets:
Prosecutors will present their annual reports before Aimag, Capital City, Transport and District Chief Prosecutors, Deputy General Prosecutors and Assistant General Prosecutors who will evaluate their performance. This procedure will be an instrument to evaluate the performance of prosecutors, to give them bonuses and incentives, to promote them to higher positions or to sanction them.

Such annual reporting procedure will be important in improvement of the prosecutor's accountability, objective evaluation of their performance and determination of further actions.

The annual performance of the prosecutor will be analyzed and assessed and if necessary, its accuracy will be checked against the records

Ways to Implement the Task:
The prosecutor's performance measures and statistics will be revised and the procedure for annual performance evaluation of prosecutors will be developed and enforced.

Period of Implementation and Officials in Charge of the Task:
Within the year: B.Tserenbaltav, J.Oyunchimeg, S.Battumur

Two. In respect of selection and training of prosecutors:

8. To develop a procedure to appoint a selection committee to assess the candidates for prosecutor's positions and to interview them

Goals and Targets:
The assessment and selection of candidates for prosecutor's positions will be brought into a new level.

Since the legal test can't determine the capacity of candidates, so the candidates also need to be assessed by "face-to-face" interviews. The selection committee will use the criteria which are specific to prosecutors.

The selection committee will assess the behavior, conduct, communication skills, morals and views of candidates, which can't be assessed by papers under the new procedure for interviewing the candidates.

This will be important in setting higher requirements for candidates who want to join the prosecutor's offices and employing more qualified and competent personnel with good characters.

Ways to Implement the Task:
A committee will be appointed by General Prosecutor's Decree.

- The committee shall consist of 3 members, including 2 prosecutors and 1 independent member (for independent control).
- The form and procedures of interview will be established and the procedures shall specify the rights and duties of committee members.
- The subjects, criteria and assessment measures of interview shall be specified in the procedures. The committee members will assess the candidates according to the criteria during the interviews.
- Candidates who got more than 75 scores in the lawyer's selection exam shall be eligible for the interview.
- Candidates will be asked not only questions to test their legal knowledge but also questions to determine their skills to work in teams, reason and overcome difficulties.
- Members will tell their grades on each applicant openly and combine their grades to make a final decision.

Period of Implementation and Officials in Charge of the Task:
In 3rd quarter: S.Battumur, M.Tuyatsetseg

9. To develop the model agenda of one-day orientation training for new prosecutors

Goals and Targets:

The purpose of the training is to introduce newly appointed prosecutors to the activities of the prosecutor's offices, and to provide them with the knowledge on structure and organization of prosecutor's offices, document control of prosecutor's offices, maintenance of confidentiality, communication procedures, and ethical and behavioral norms of prosecutors.

The training will be conducted within 8 working hours.

Ways to Implement the Task:
- The one-day orientation training for new prosecutors will be conducted according to an agenda.
- The one-day orientation training will introduce prosecutors to the structure and organization of prosecutor's offices, basic functions and guidance of prosecutor's offices.
- The one-day orientation training will introduce prosecutors to the culture and conduct in prosecutor's offices and communication with other legal sector institutions.
- The training will also introduce the ethical standards of prosecutors.

Period of Implementation and Officials in Charge of the Task:
In 2nd quarter: S.Battumur, M.Tuyatsetseg

10. To conduct the standard annual compulsory trainings for prosecutors in units

Goals and Targets:
The purpose of this program is to organize trainings on new legislation, amendments to the laws, the Supreme Court interpretations to the laws, the guidance issued by General Prosecutor and

the current issues in parallel with the unified training program for prosecutors. Every prosecutor will be required to attend this training program every year.

It necessary to conduct trainings on use of computer networks and equipment regularly and such training will provide prosecutors with the knowledge of information technology.

Ways to Implement the Task:
The list of the guidance documents issued by General Prosecutor, the Supreme Court interpretations, new legislation and amendments to the laws shall be provided to the units on a monthly basis.

Period of Implementation and Officials in Charge of the Task:
Within the year: S.Battumur, J.Oyunchimeg, M.Enkhmandakh

11. To develop special training program for administrative and support staff

Goals and Targets:
The purpose of the training for administrative and support staff is to provide them with the knowledge on how to perform their duties honestly under the relevant procedures, how to be a self-starter, how to use their equipment under the relevant procedures, how to comply with the safety regulations and how to communicate with others.

Ways to Implement the Task:
- Develop the training program.
- The training for administrative and support staff will provide them with the knowledge on how to communicate with the customers and how to be a self-starter.
- Another area of the training will cover technology and computer.

The training program will be evaluated every six months.

Period of Implementation and Officials in Charge of the Task:
Within the year: S.Battumur, M.Tuyatsetseg

12. To conduct training for accountants to improve their professional skills.

Goals and Targets:
The purpose of the training for accountants is to provide financial officers with skills and experience to maintain financial records of prosecutor's offices in accordance with the International Accounting Standards.

Aimag and local office accountants will attend the training on the International Accounting Standards for public sector, thus all 37 units will maintain their financial records accurately and objectively and annual and quarterly financial statements and balance sheets will be submitted accurately and promptly.

The training will improve their skills and will provide accountants with an opportunity to share their experience, to improve their skills, and to obtain skills to work with the modern application programs and to use the network.

The accounting software will make the accountant's performance more efficient, reduce their workload and allowing them use their saved time for improving their professional skills and attending trainings.

Following this training, we will have a team of trainers who will teach accounting to others and share their experience with others and we will be able to conduct trainings for new accountants ourselves in the future.

Ways to Implement the Task:

- To organize a meeting of accountants in Ulaanbaatar in 2006 and to develop and conduct training on the public sector accounting and "Budget Cost Performance Monitoring System" used by the Australian prosecutor's offices in cooperation with the Ministry of Finance and Institute of Certified Accountants.
- To appoint accountants who completed the training successfully as trainers (particularly among the accountants from Ulaanbaatar)
- To install the accounting software which produces four types of financial statements in prosecutor's offices with a computer for accounting (the software company will conduct the training for software users free of charge according to its contract)
- To prepare books and handouts for the training, to distribute them among the accountants and to send them to local offices.

Period of Implementation and Officials in Charge of the Task:
Within the year: S.Battumur, G.Oyunsuren

Three. In respect of the basic functions of prosecutor's offices

13. To create a system of double supervision over criminal proceedings of grave and serious crimes

Goals and Targets:
The goal of the task is to implement "the double eye system" of prosecutor's supervision where two prosecutors jointly supervise and dispose grave and serious crimes.

Two prosecutors will jointly make decisions in certain stages of criminal proceedings (to oversee investigations starting from collection and documentation of evidence, to take a measure of restraint, to protect property and to suspend subjects from their duties) as well as the final decision (to dismiss cases, to refer cases to courts and to return cases for more investigations) and will jointly be responsible for the consequences of the decisions.

Such teamwork in disposing certain types of criminal cases will improve quality and effectiveness of prosecutor's supervision, ensure that criminal cases are resolved fairly under the laws and prevent professional mistakes, corruption and other outside influence.

Such system will speed up case disposition, help prosecutors make correct decisions and avoid outside influence, make activities of prosecutor's offices open and transparent and prevent corruption.

Ways to Implement the Task:
Cases will be assigned to prosecutors according to the instructions and procedures issued by General Prosecutor.

Aimag, Capital City, Transport and District Chief Prosecutors will appoint prosecutors who will work in teams on the above-mentioned types of cases from the beginning of investigations and the appointed prosecutors will oversee the investigations of such cases from the beginning.

Prosecutors will work in teams in overseeing criminal procedures, getting involved in criminal procedures, writing prosecutor's instructions, reading case files, and making decisions in certain stages.

In the event a decision may be delayed due to absence of any of the prosecutors working on the case, a prosecutor of higher rank may appoint a prosecutor in place of the absent prosecutor.

- If two prosecutors have different opinions, they shall present the matter to a prosecutor of higher rank together and get guidance from the prosecutor of higher rank. But the guidance from the prosecutor of higher rank shall not be the final decision on the matter.
- Two prosecutors shall jointly make an indictment. One of them shall participate in the court hearing (in order to be equal with an advocate) and if necessary, the other one may attend the court hearing to help his/her colleague.

The General Prosecutor's Office doesn't need to issue special procedures to implement this principle and trainings will be conducted before the implementation of the principle.

Period of Implementation and Officials in Charge of the Task:
In 2nd quarter: B.Tserenbaltav, L.Bold, U.Sodnomtsog

14. To develop a procedure on supervision of aimag, capital city, transport and district prosecutors and their deputy and assistant prosecutors over grave crimes

Goals and Targets:
The procedure which assigns grave crimes to senior prosecutors considering their experience will reduce time for investigation of such cases, ensure prompt and uniform resolution of cases, reduce the number of cases returned from courts, and provide uniform understanding about certain types of cases.

Aimag, capital city, transport and district chief prosecutors will oversee procedures of grave or capital crimes. Their deputies and assistant prosecutors will oversee procedures of serious crimes.

Senior ranking prosecutors will work together with supervisory prosecutors when they perform the above-mentioned duties and make decisions on criminal cases.

This procedure will prevent delays in proceeding of grave crimes and multiple extensions of investigation periods.

Ways to Implement the Task:
The Department of Supervision over Investigation of the General Prosecutor's Office shall monitor the implementation of the procedure.

Aimag, capital city, transport and district chief prosecutors, their deputies and assistant prosecutors will perform their other duties while overseeing procedures of grave and serious crimes.

It is about prosecution of serious or grave crimes, so the senior ranking prosecutors will oversee all procedures of such cases, including initiation of investigations, documentation and collection of evidence, and disposition of cases and the performance of the task shall be measured by detection of grave crimes, time needed for disposition of cases and legal grounds used for disposition.

Period of Implementation and Officials in Charge of the Task:
In 3rd quarter: B.Tserenbaltav, L.Bold

15. To develop a procedure for prosecutors to get advices on criminal cases, which are under their supervision, from prosecutors of higher ranks

Goals and Targets:
The goal of the task is to improve the information provided by lower level prosecutor's offices on the status and disposition of criminal cases, to ensure that prosecutors of higher ranks work on an open basis, to study the problems that lower level prosecutor's offices are facing, to provide them with recommendations, and if necessary, to conduct trainings and to provide them with professional guidance.

The goal of the task is to ensure decisions made at any stage of criminal procedures come into effect without any change.

Prosecutor's decisions made on any case or matter shall have legal grounds.

As a result of the implementation of the above-mentioned task, we will be able to prevent possible changes in prosecutor's decisions at different stages of prosecution, which cause delays in resolution of the case or matter, impairments of evidence, and inconvenience to participants of the case.

This procedure will require prosecutors to avoid making professional mistakes and to find out what are the reasons for their mistakes. The advice from a prosecutor of higher rank shall not be the final decision on a case, but provide professional recommendations to the prosecutor who is seeking advice.

This procedure will provide practical skills to newly appointed prosecutors and if necessary, trainings in the areas where prosecutors sought advice.

Ways to Implement the Task:
If a prosecutor considers a case as complex or doubts his/her decision, he/she shall present the case or matter to a prosecutor of higher rank. The grounds for considering a case complex:

- Unable to classify the crime or make a decision;
- Doubts over evaluation of evidence;
- Insufficient evidence for referring the case to the court, the case is considered to be doubtful;
- Grave crimes, crimes with multiple suspects and/or accused who have conflicting interests;
- Expert's evaluation is not consistent with the facts.
- Other necessary issues

The prosecutor shall present the case to a prosecutor of higher rank, express his/her opinion freely and consult with the prosecutor of higher rank on complex issues.

Prosecutors shall be able to get advice at any time during investigation and this act is not a joint-decision making act.

Period of Implementation and Officials in Charge of the Task:
Within the year: B.Tserenbaltav, L.Bold, B.Jargalsaikhan

16. To develop a procedure to define which criminal cases acquitted or dismissed by courts will be considered to be prosecutor's mistakes

Goals and Targets:
The goal of the task is to consider the factors which are under the control of prosecutors and the factors which are beyond the control of prosecutors differently in evaluation of their performance.

We will change the procedure for evaluation of performance which considers each case acquitted or dismissed by the court as prosecutor's failure.

In other words, the cases returned, acquitted or dismissed by courts will be considered differently in evaluation of performance.

If cases which are disputable in theory and proof are returned or dismissed by courts, they will not be considered to be failures of prosecutors.

Ways to Implement the Task:
The working to revise the performance measures of prosecutors will develop a procedure on this issue.

Period of Implementation and Officials in Charge of the Task:
Within the year: B.Tserenbaltav, J.Erdenebaatar

Four. In respect of financial activities:

17. To develop a procedure to monitor the budget expenditures on a monthly basis and to inform it to the local offices

Goals and Targets:
The goal of the task is to perform financial management of prosecutor's offices effectively and to keep the budget expenditures at the certain level within the discretion of General Prosecutor.

With the procedure on monthly monitoring of budget expenditures, the prosecutor's offices will monitor overspending on a monthly basis and take the relevant measures on a promptly manner, thus prevent the budget from being spent on non-intended use and being overspent.

Such procedure will maintain the financial independence and self-sufficiency of prosecutor's offices that are needed for their normal operations.

Ways to Implement the Task:
- To change the format of financial performance reports submitted by aimag and local offices on a monthly basis from a 2 column table into a 7 column table and to have it approved by General Prosecutor's decree.
  Thus, the budget overspending and saving can be monitored in shorter periods. We were not able to make comparisons using the old forms, but we can do so with the new forms.
- If organizations overspend the budget again even when the major cost items, such as salary, heating, electricity and maintenance costs, were paid by monthly funding, then such organizations should be held liable on a quarterly basis.
- If the budget overspending of a prosecutor's office is justified and required due to unavoidable circumstances, the prosecutor's office will get additional funding.
- The new forms will be distributed among all aimag and local prosecutor's offices and the new procedures will be implemented from the end of 2nd quarter and the results will be assessed immediately.

Period of Implementation and Officials in Charge of the Task:
Within the year: S.Battumur, G.Oyunsuren

18. To prepare the annual report of the prosecutor's offices for publication and and to seek financial sources for publication

Goals and Targets:
To ensure the transparency of the prosecutor's offices by making their activities open to the public.

To send the report to President, State Great Hural, Government and Supreme Court.

To put the report in the website of the GPO.

The public will have access to the report of the prosecutor's offices if we publish it.

Ways to Implement the Task:
The annual report of the prosecutor's offices will be published.

Period of Implementation and Officials in Charge of the Task:
Within the year: S.Battumur, J.Oyunchimeg

Special Investigative Unit Under the Prosecutor General
Preliminary Assessment and Recommendations

By Emery E. Adoradio
March 3, 2006

During the period January 16 – 27, 2005, I was able to accomplish various tasks set forth in the scope of work document as a consultant to the Judicial Reform Program ("JRP").* The overall objective as consultant was to assist the Special Investigative Unit ("SIU") in improving its management policies and investigative processes. My work during the ten days in Mongolia included:

1. Five days of interactive training with SIU investigators
2. Meetings with SIU Chief B. Galdaa and his Deputy Ts. Batbold during which I followed-up on recommendations made by a prior consultant; reviewed SIU's 2005 goals and accomplishments; discussed SIU's work and current issues; reviewed, on a case-by-case basis, all open SIU investigations; conducted in-depth reviews and discussions of cases with investigators and supervisors; and observed the interrogation of a suspect
3. Meetings with relevant stakeholders including the Prosecutor General, two high-ranking police officials, and the Head of the Office of the (Judicial) Disciplinary Committee
4. Numerous informal meetings and discussions about SIU and justice sector corruption with consultants and experts working with the JRP and Mongolia's legal system
5. Briefing Leon S. Waskin, U.S. Aid Representative in Mongolia (USAID/Mongolia Mission Director), on my work with SIU and the JRP.

As a result of this work, I am making the following preliminary findings and recommendations regarding SIU's operations and investigative strategies. This assessment and the recommendations are based on issues raised during the interactive training sessions as well as discussions with SIU staff and relevant stakeholders. The Criminal Code of Mongolia (Revised) ("Criminal Code") and Criminal Procedure Law of Mongolia (2002) ("Procedure Law") provide a substantive and procedural framework for the findings and recommendations regarding Mongolian law. The findings and recommendations are subject to further refinement and will be fully discussed in my final report.

Summary of Preliminary Findings by Subject Area
SIU Operational-Related

- SIU Chief B. Galdaa reports that out of 19 tasks developed from the prior consultant's recommendations, SIU has accomplished 11
- These are: (1) securing a sufficient operating budget for SIU; (2) the establishment of an office computer network; (3) adjusting the evaluation system for investigators by using more quality-based criteria; (4) the creation of an analyst position within SIU; (5) increasing internal training for investigators; (6) using a greater number of experts in cases; (7) enhancing cooperation with local police and prosecutors in the Aimags; (8) the submission of quarterly reports on police cases to the National Police; (9) assigning a staff member to

* I would like to thank the staff of the Judicial Reform Program, including Ms. D. Suheemaa and Mr. T. Tsogt, for all their assistance during my time in Ulaanbaatar, especially their work in translating documents and interpreting during training sessions and meetings. Additionally, I would like to thank Robert La Mont, Chief of Party, Mongolian Judicial Reform Program, for his insights into the Mongolian legal system. These were invaluable to me in understanding the challenges the Mongolian legal system and Special Investigative Unit face.

handle media relations; (10) providing more information about SIU's mandate and work to the public and media; and (11) providing statistics and information to the JRP monthly Newsletter for publication in English and Mongolian

- According to Chief Galdaa, three recommendations remain unfilled
- These are: (1) SIU's jurisdiction continues to be based on a suspect's status as a justice sector official rather than on subject-matter, i.e., crimes involving corruption or malfeasance committed by justice sector officials; (2) Mongolia's Law on Undercover Work ("LUW" or "Undercover Law") has not been amended to give SIU authority to conduct surveillance and undercover operations; and (3) SIU staff has not established contacts and ties with foreign counterparts.

Based upon my discussions with Chief Galdaa, Deputy Batbold, and relevant stakeholders, I have concluded that:

- The SIU analyst focuses on statistics and work-load indicators that are used to determine bonuses rather than on analyzing data that could be used to identify patterns of police, judicial and prosecutorial corruption
- Although SIU has three tape recorders, they are infrequently used during suspect interrogations and witness interviews
- While SIU has increased its public visibility through the use of posters and other efforts, the lack of a public annual report of activities hinders its ability to expand public awareness of its work; without such a report, opportunities for encouraging complainants and witnesses to report corruption, and enhancing deterrence, are forfeited. The JRP signed a MoU with the SIU on assistance in creating the Unit's website to enhance the public awareness of and support for the Unit and its activities. According to the SIU Deputy Chief the Annual Report modified for the public will be available on the website. The website will ready in April.

SIU Investigative-Related

- SIU has apparently improved the quality of its investigations and fewer SIU investigative findings and recommendations are rejected by the Prosecutor General's Office ("PGO")
- This improvement reflects a greater level of experience and expertise among SIU investigators as SIU matures
- The skills of investigators vary widely according to years of experience and background prior to joining SIU
- Investigators, depending upon skills and level of experience, need further training in the application of law to case facts
- SIU investigators need significant training on how to create and implement a viable surveillance and undercover operation; this training is necessary whether or not the Undercover Law is amended to grant authority to SIU to conduct such operations
- A failure among investigators, at times, to fully appreciate burdens of proof related to substantive crimes and principles of evidence, diminishes the quality of investigations and hinders more creative and proactive investigative strategies
- SIU investigators are trained and required to record, in writing, as accurately and fully as possible, what suspects and witnesses state during interviews; this method limits the ability of an investigator to fully and effectively develop evidence
- SIU has made extremely few surveillance and undercover requests of the police.

Relations with other Stakeholders

- SIU does not have regular and formalized interaction with police, judicial disciplinary, and prosecutor stakeholders.
- The lack of regular interaction with relevant stakeholders encourages a culture of mutual distrust and misunderstanding and hamstrings the ability of stakeholders to work effectively together in identifying patterns of corruption and create proactive investigations
- Without a program of on-going integrity testing of justice sector officials, particularly the police, the deterrence value of successful SIU investigations and PGO prosecutions will remain limited.

Substantive Law and Procedural-Related

- Rules under the Procedure Law requiring disclosure of the existence of an investigation to subjects undermine investigative integrity and effectiveness and have the potential unintended consequence of creating conflicts of interest and perceptions of unfairness among the public and stakeholders
- The current Undercover Law imposes a serious impediment to SIU effectively combating misconduct and corruption, especially in maximizing the deterrence value of SIU's work and in changing corruption attitudes within the justice sector
- Additions and amendments to substantive crimes of the Criminal Code would enhance the ability of investigators and prosecutors to combat corruption and misconduct
- The Procedure Law unduly protects judges by giving them immunity from searches and seizures until a formal investigation has been opened and the judge has been suspended
- A complainant's right to withdraw his complaint at any stage of a criminal proceeding (Article 23.1 of the Procedure Law) has the potential consequence of encouraging witness tampering, harming perceptions of fairness, and creating its own corruption hazard.

Summary of Preliminary Recommendations
SIU Operational-Related

- SIU should obtain more tape recorders (see also Investigative-Related recommendation below)
- SIU should publish an annual report of its activities to the public and make it available on SIU's web-site; such a report would include statistical information, summaries of investigations that resulted in successful prosecutions, and outreach activities. The annual report of New York City Civilian Complaint Review Board ("CCRB") provides a fine example of such a report. (A copy of the CCRB report will be part of an appendix to my final report.)
- SIU investigators should use an activity log to document investigative actions in cases; a model log will be part of the appendix to my final report
- SIU investigators should be encouraged to interact more informally with one another to discuss investigative strategies and SIU supervisors should institute regular opportunities for such interaction
- SIU should train the analyst in assessing and adjusting the qualitative and quantitative criteria and indicators for performance evaluation and in analyzing data for identifying patterns of police, judicial and prosecutorial corruption.

SIU Investigative-Related

- SIU should obtain more tape recorders and utilize them during interrogations and interviews

- The SIU analyst position should include identifying patterns of complaints so that intelligence can be gathered and pro-active investigative strategies developed
- SIU needs to increase the number of surveillance and undercover operation requests made to the police
- If SIU investigators gain a better understanding of surveillance and undercover operations, requests to the police agencies with current undercover authority will be more credible and effective.
- Specific training for investigators on interrogation and interview techniques should be conducted
- Investigators need further training on analyzing the substantive law and its application to case facts
- Investigators need further training on evidentiary principles
- Investigators need forensic training in medical and financial subjects

(The Deputy mentioned that more training on types of corruption cases and the specific investigative techniques for different types of corruption cases is needed).

Relations with Other Stakeholders

- SIU supervisory staff need to meet regularly with PGO supervisory staff to discuss the quality of investigations, evidentiary and burden of proof issues, barriers to effective prosecution, and other mutual issues
- PGO staff should provide periodic training to SIU investigators
- SIU staff need to meet regularly with police agencies that have authority to conduct surveillance and undercover operations and conduct internal investigations; such meetings should include a review of open internal police investigations
- Future training sessions should include SIU, PGO and police officials and periodic joint-training involving these groups should be conducted
- SIU staff need to regularly review complaints lodged with the Judicial Disciplinary Committee and police officials to help develop intelligence and identify corruption hazards and patterns of misconduct
- A consultant or other qualified person should consider conducting a survey of the public, complainants, witnesses and other subjects of SIU investigations, to determine visibility and perceptions of effectiveness and fairness
- A consultant or other qualified person should consider providing specific recommendations and assistance in developing working protocols for cooperation with other judicial and law enforcement institutions.

Amendments to Criminal Code and Procedure Law

- The Criminal Code should be amended to refine and expand the substantive crimes of perjury, official misconduct, bribery, and other crimes, [should we suggest reviewing the classification/categorization of corruption related crime?]

- The Procedure Law should be amended to ensure greater investigative integrity by changing disclosure requirements, limiting a complainant's ability to withdraw a complaint, and removing immunity for judges from searches and seizures early in the investigation

- The Criminal Procedure Code should be amended to ensure the right to conduct self-initiated investigations (this will require amendments and/or alterations to Articles 166, 171 and 172).
- The Undercover Law should be amended to give authority to SIU to conduct surveillance and conduct undercover operations including targeted and random integrity testing
- SIU's mandate should be changed so that SIU conducts investigations involving corruption and malfeasance only and not all crimes committed by justice sector officials.

Brief Summary of Work Conducted
Interactive Training

My work consisted of over 20 hours of interactive training with SIU investigators. The training focused on actual cases that I have investigated and prosecuted involving crimes committed by justice sector officials. The cases involved justice sector officials who have committed crimes in their official capacity as well as non-corruption crimes committed by officials in their "civilian" capacity. SIU Chief B. Galdaa and Deputy Batbold commented that they found the case studies used particularly effective because of the similarity with many cases SIU has investigated.

The case studies included excessive force, extortion, embezzlement, perjury, death in police custody, judicial bribery, theft of police property, and alcohol-related police misconduct crimes. In total, 15 cases studies were presented and discussed. (The training materials will be attached as an appendix to my final report.) The issues highlighted in the case studies included forensic topics in assault, homicide, and financial crimes cases; identification of patterns of complaints in developing pro-active investigative strategies; the use of undercover operations to initiate broader investigations, and others. The case scenarios challenged investigators to think analytically in applying law to case facts. Approximately 20 investigators attended the training sessions each day. The discussions were highly interactive and SIU investigators broadly participated in developing the issues related to each case study. My final report will discuss specific issues that arose during the training and that inform my findings and recommendations in this area.

Meetings with SIU Chief, Deputy and Staff
Review of Recommendations of Prior Consultant

In several meetings with Chief Galdaa I reviewed the recommendations made by the prior consultant to determine whether they had been implemented or not. As noted above, Chief Galdaa reports that all but three have been implemented. My final report will take a critical look at the implementation of these recommendations.

Review of SIU Goals and Statistics

Several sessions were spent with both Chief Galdaa and Deputy Batbold reviewing SIU goals and statistics. Chief Galdaa discussed goals developed outside of the recommendations made by the prior consultant and reported success in meeting those goals. These goals are summarized in SIU's annual report which has now been translated and will be reviewed and discussed critically in my final report.

Deputy Batbold presented statistical information regarding the number of cases handled by SIU, types of cases, investigative results and other information. Through this data, I will be able

to make findings regarding SIU's current workload and the viability of investigators devoting more time to the development of pro-active investigative strategies.

Case Review

I spent several sessions with Deputy Batbold reviewing, on a case-by-case basis, all open SIU investigations. These sessions provided an opportunity to assess the breath of SIU's work, its current workload and complexity, and familiarize myself with SIU's investigations prior to the interactive training. Additionally, the in-depth review of three cases, which included participation of the investigator and his or her supervisor, provided an opportunity to review how an investigative file is kept, meet investigators, and discuss in detail investigative strategies and decisions. I was able to select cases randomly for in-depth review and I was impressed by the high level of preparedness by the investigators and Deputy Batbold.

Interrogation Observation

Observing an interrogation presented an opportunity to assess, if on a limited basis, how SIU staff conducts interrogations. The interrogation confirmed concerns I developed regarding the SIU requirement that a suspect or witnesses' statement be taken down as close to verbatim as possible.[*] This issue will be fully developed in my final report.

Discussions About Laws and General Issues

Chief Galdaa reported that he has made various efforts to affect changes in Mongolia's laws, especially SIU's jurisdiction and the Undercover Law. He reports that he made a recommendation to the Minister of Justice regarding limiting SIU's jurisdiction to corruption-related crimes committed by justice sector officials rather than its current jurisdiction which includes all offenses committed by such officials whether or not the crimes implicate their official positions or public corruption. Chief Galdaa reports that the proposal was rejected. Chief Galdaa also worked on one version of an anti-corruption bill that has been in the State Great Hural. The bill would grant SIU authority to conduct surveillance and undercover operations.

In my final report I will fully discuss my conclusions regarding SIU's mandate in light of possible amendments to the anti-corruption laws.

Meetings with Key Stakeholders

Prosecutor General

I met with Mr. M. Altanhuyag, the Prosecutor General, to discuss various issues related to SIU and PGO, including following-up on issues raised by the previous consultant. The Prosecutor General stated that to a certain extent, SIU has not met expectations. He cited several reasons for this: the lack of legal authority for SIU to conduct undercover operations; budget and financial restraints that limit SIU's effectiveness in the Aimags; and the lack of investigative experience and equipment. Regarding investigations, the Prosecutor General described SIU's work as "average" and partly attributed this to the difficulties in developing such cases and

[*] Chief Galdaa reported that he has tested investigators on their ability to report as accurately as possible the statements of witnesses.

SIU's reliance on interviews as the primary source for gathering evidence against subjects. The Prosecutor General also noted that SIU's limited expertise in their area of forensic science undermines public confidence in the integrity of SIU investigations because SIU must turn to the police for such expertise.

In the area of communication between PGO and SIU, the Prosecutor General stated that SIU is responsible for finding out the final disposition of cases and that it is a SIU management problem not an access issue. The Prosecutor General noted there are no prohibitions in law regarding SIU access to the outcome of cases but agreed with me that a formal procedure should be established for obtaining disposition information from the PGO.

The Prosecutor General also noted when asked about joint-training with SIU investigators that while various police agencies have requested such training SIU has not. The Prosecutor General agreed that PGO training of SIU staff would be valuable.

The Prosecutor General also was asked about relations between the police and SIU. The Prosecutor General's comments in this area and his views regarding an anti-corruption bill that would grant authority to SIU to conduct undercover operations will be discussed in my final report.

Head of the Office of the (Judicial) Disciplinary Committee

I met with Mr. B. Tsognyam, Head of the Office of the (Judicial) Disciplinary Committee to discuss his committee's interaction with SIU and other issues. When asked whether there is a corruption problem in the judiciary, he stated that a corruption problem exists but that the number of corrupt judges is small. He reported that the Committee reviews few conflict of interest cases, a fact that I found surprising given the perceptions of this issue among SIU investigators, police officials and the Prosecutor General. Mr. Tsognyam also noted that ignorance by police regarding Mongolia's legal system has lead to misperceptions about SIU. He noted further that he supports integrity testing of judges, but only where a judge has been named in a specific complaint. Not surprisingly, he noted that the primary reason for corruption among judges was low pay. He also cited the lack of retirement benefits for judges as another corruption hazard. Further comments and conclusions based on this discussion will be made in my final report.

Meetings with Police Officials
Colonel Ganbold, Head of the Criminal Police and Mr. Ochgerel, Head of Economic Crime and Combating Corruption Division

I discussed a broad range of issues with Colonel Ganbold and Mr. Ochgerel. These included their interactions with SIU, general views of justice sector corruption and SIU's effectiveness. Strikingly, both officials expressed doubts regarding SIU's effectiveness and cited the lack of experience of SIU investigators as a contributing factor. Colonel Ganbold expressed the view that the establishment of SIU violates the Mongolian constitution because prosecutors are not supposed to investigate cases. Based on various views expressed by these police officials, it became apparent to me that significant work needs to be done by SIU in improving communication and interaction with police officials. Without this, there will be distrust between stakeholders.

I was also struck by the lack of agreement between the police agencies and SIU regarding number of referrals, requests for undercover assistance, and other forms of interaction. Both police officials cited minimal interaction and cooperation with SIU.

In my final report I will fully discuss various issues raised during the meetings with police officials, including:

- Inter-agency communication
- Joint-training
- Perceptions of effectiveness
- Barriers to devising effective undercover operations
- Improving the deterrence value of SIU's work with or without changes to Mongolia's Undercover Law
- Developing a common base of intelligence regarding justice sector corruption
- Breaking down levels of mistrust and misunderstanding
- Creating greater inter-agency transparency.

Briefing to USAID Representative Waskin

I was accompanied by Robert La Mont at the briefing. During this meeting I discussed my work with the JRP and SIU and outlined my preliminary findings and recommendations. Mr. Waskins expressed strong support for the JRP and inquired of the status of various bills before the Mongolian parliament that will affect legal reform.

Informal Meetings

I met with Susanne DiPietro, Court Administration Consultant to the JRP, on various occasions and discussed her work with the Mongolian courts and judiciary. In these discussions I inquired of judicial qualifications and whether the quality of the judiciary was related to corruption issues. In addition to various discussions with Susanne DiPietro, I had various informal discussions with experts and consultants working with the Mongolian legal system. These discussions helped informed my general findings and recommendations.

Conclusion

My final report will elaborate on the findings and recommendations summarily made in this preliminary report. The report will also contain several attachments, including the case studies used during the training; the training syllabus and other documents; a sample investigative log; and, sample language for amendments to Mongolian Criminal Code and Procedure Law.

LAW OF MONGOLIA
ON PARDON

June 23, 2006 Government House
Ulaanbaatar

CHAPTER ONE
General Provisions

Article 1. Purpose of Law

1.1. The purpose of this Law is to regulate the relations pertaining to relief of offenders from criminal liability and release of convicts from punishment on the occasion of the 800th Anniversary of the Great Mongolian State.

Article 2. Legislation on Pardon

2.1. The legislation on pardon consists of the *Constitution of Mongolia*, the *Criminal Code*, the *Criminal Procedure Code* and this Law.

Article 3. Period Covered by the Law

3.1. This Law shall apply to persons who committed crimes before 23rd June 2006 (24.00 hrs, 22nd June).

CHAPTER TWO
Form, Scope and Extent of Pardon

Article 4. Full Pardon

4.1. The remaining principal and additional sentence of the following convicts who were sentenced to imprisonment first time shall be pardoned regardless of their sentences imposed by courts:
- 4.1.1. convicts who are serving their sentences for crimes they committed when they were under age;
- 4.1.2. women with under age children and pregnant women;
- 4.1.3. men with single-parent under age children who are in their direct care;
- 4.1.4. persons who were disabled 70% or more due to causes other than injuries they inflicted to their bodies intentionally while serving their sentences;
- 4.1.5. men above 60 years of age and women above 55 years of age;
- 4.1.6. under age children.

4.2. Subparagraph 7 of Paragraph 1 of Article 8 of this Law shall not apply to the persons specified in Subparagraph 6 of Paragraph 1 of Article 4 of this Law.

4.3. The remaining principal and additional sentence of convicts, who were sentenced to imprisonment first time for negligent offenses, shall be pardoned.

4.4. The remaining principal and additional sentence of convicts, who were sentenced to penalties other than imprisonment or who committed less serious crimes and were sentenced to imprisonment first time, shall be pardoned.

Article 5. Reduction of Sentence

5.1. The remaining sentence of the following convicts shall be reduced as follows:
   5.1.1. The remaining sentence of convicts who were sentenced to imprisonment for serious crimes shall be reduced by three years;
   5.1.2. The remaining sentence of convicts who were sentenced to imprisonment for grave crimes shall be reduced by two years.

Article 6. Nullifying Certain Terms

6.1. The following terms shall be nullified:
   6.1.1. The remaining period required under Paragraph 2 of Article 78 of the Criminal Code of Mongolia for the expunction of record of a person who served his/her sentence before this Law comes into effect;
   6.1.2. The remaining probation period of a person whose sentence of imprisonment was probated;
   6.1.3. The remaining probation period of a person released on parole;
   6.1.4. The remaining period of postponing a sentence of imprisonment of an under age person.

Article 7. Dismissal of Criminal Cases

7.1. Criminal cases against subjects, who committed minor and less serious crimes provided in the Criminal Code first time, which are under inquiry, investigation and trial proceedings, shall be dismissed.

Article 8. Conditions Excluded from the Pardon

8.1. The following persons shall not be pardoned:
   8.1.1. A convict whose death penalty was pardoned and substituted by a sentence of imprisonment;
   8.1.2. A person considered to be a dangerous criminal;
   8.1.3. A convict who committed a crime three or more times and was sentenced to imprisonment;
   8.1.4. A convict who has already served a sentence of imprisonment for a crime with malice, committed a crime with malice prior to the expiry of period required under Article 78 of the Criminal Code of Mongolia for the expunction of record and was sentenced to imprisonment again;
   8.1.5. A person who committed a crime with malice after he/she was pardoned by the Law of 21 June 1991, the Law of 22 August 1996 or the Law of 07 July 2000;
   8.1.6. A person who committed a crime with malice after he/she was released from a sentence of imprisonment by a Presidential Decree;
   8.1.7. A person who committed a grave crime against the state (Article 79-85 of the Criminal Code), murder (Article 91 of the Criminal Code), kidnapping (Paragraphs 2 and 3 of Article 108 of the Criminal Code), human trafficking (Paragraphs 2 and 3 of Article 113 of the Criminal Code), rape (Paragraph 3 of Article 126 of the Criminal Code), robbery (Paragraph 3 of Article 147 of the Criminal Code), fraud (Paragraph 3 of Article 148 of the Criminal Code), banditry (Article 177 of the Criminal Code), drug trafficking (Paragraph 3 of Article 192 of the Criminal Code), escape from court, jail or prison (Paragraph 2 of Article 261 of the Criminal Code), receiving bribes (Article 268 of the Criminal Code), giving bribes (Paragraph 2 of Article 269 of the Criminal Code), and intermediation in bribery (Paragraph 2 of Article 270 of the Criminal Code).

CHAPTER THREE
Entry into Force

Article 9. Effective Date of Law

9.1. This Law takes effect on 23 June 2006.
9.2. Convicts who are serving their sentences in prisons or jails shall be pardoned under this Law by 10 July 2006.

CHAIRMAN OF THE STATE GREAT HURAL TS.NYAMDORJ

Memorandum

To: JRP
From: S. Di Pietro
Date: April 13, 2006
Re: Recommendations about SCRC's Mission, Goals and Objectives

This memo outlines the current work and procedures of the Supreme Court Research Center. It then recommends ways that the SCRC's work might be re-aligned to provide information to court leaders about judge and court performance, and court management information for use in strategic planning and operations analysis. Finally, it discusses what additional resources might be needed to implement the recommendations.

I. INFORMATION CURRENTLY COLLECTED BY THE SCRC

The SCRC collects, analyzes, and distributes information about trial and appellate court decisions. Some of its work involves routine counting and reporting of court decisions, while some of it consists of it involves a more detailed examination of certain kinds of cases.

At the beginning of each calendar year, the head of the SCRC develops, in cooperation with the chief justice, a work plan for the special research projects. Each SCRC researcher is then assigned certain tasks from the action plan. These plans may contain any number of research projects on different areas of the law. The SCRC's 2006 work plan is attached as Appendix A.

A. Information for Court Administration (Supreme Court and GCC)

1) Aggregate case information/statistical index

The GCC has approved 14 statistical information sheets of aggregate case information including:

> the number of cases filed, type of case, number dismissed and reason why, number of decisions issued, information about parties (including demographic, employment, and recidivism information about criminal defendants), cases pending at the end of the reporting period, payments enforced, restitution awarded, sentences given (in years), and whether an appeal was taken.

Once or twice a year, an SCRC researcher receives this information electronically and on paper from all trial and appellate courts. The researcher then compiles the data into a standard report format. The data compilations are shared with the GCC and the supreme court, and are published in an annual report.

SCRC researchers have a good understanding of how to put the data into their standard report format, and of how to write the accompanying boilerplate narrative; however, they seem to have a somewhat limited understanding of how the courts come up with the figures that they send. Also, because many of the courts send their data on paper, SCRC researchers must transfer the written information into a spreadsheet, or some cases onto a handwritten "tally" sheet, before they can generate nationwide totals.

2). Survey for "best judge" and "best court"

SCRC distributes a stand-alone survey to all courts every year. The purpose of the survey is to evaluate four or five aspects of each individual judge's performance over the past year. A SCRC researcher compiles the survey information for each individual judge into an Excel spreadsheet, and based on a ranking generated by the spreadsheet, the supreme court chooses one judge to receive an award for being the "best" that year.

After each judge has completed his individual survey, all the judges in the court meet and nominate two (or four) among them to represent their court in a "best court" contest. An SCRC researcher performs roughly the same analysis and the supreme court chooses one court as the "best" that year.

B. Information for Judges

1) Laws and supreme court decisions

One SCRC researcher compiles the laws passed by the Grand Hural, and official supreme court interpretations of the laws and distributes them to the judges. That researcher also helps compile the appellate decisions that are published in the new case reporter book funded by JICA and World Bank.

2) Quarterly reports

SCRC staff uses the aggregate case information discussed in paragraph 1, above, to create basic case processing reports that it publishes and distributes quarterly for all judges. These quarterly reports contain:

1/ basic information about case filings and dispositions, along with narrative summaries of filing trends from SCRC staff;
2/ some analysis from SCRC staff about whether the law was correctly applied in particular cases, and guidance and recommendations for judges;
3/ guidance and recommendations from chief judges about case processing, application of laws, and other matters;
4/ Selected appellate court decisions considered to be important for judges to read.

C. Information for Other Government Departments

1) National Statistical Office of Mongolia.

SCRC is required by law to send certain information in a certain format to the National Statistical Office. SCRC staff compiles this information (mostly by hand) twice a year. Some of this information is published in the *Mongolian Statistical Yearbook*.

2) President, Prime Minister, Head of Grand Hural.

The SCRC distributes the statistical reports referenced above to the President, Prime Minister and Head of the Grand Hural. It is not clear what use, if any, those people make of this information.

SCRC staff also respond to *ad hoc* information requests from lawmakers (usually in committee work), and other governmental officials. In the past, requested information has included trends in criminal case filings and average sentences for particular crimes.

SCRC also routinely is asked to do research on cases dealing with particular areas of the law that the Grand Hural is planning to amend. These projects appear to be quite time consuming, as they often involve accessing archived case files and compiling case information by hand. For example, one current project involves analysis of how often the appellate courts varied or dismissed the trial courts' banking decisions. Interestingly, conversations with SCRC researchers responsible for some of these projects suggest that the purposes of these studies are not necessarily explained to them, and they are not told the purposes to which the information will be put. Since they don't know the issues of interest to the requesters of the research, they just make the same standard analyses for each topic. It is not clear to me how useful the requesters find these "boilerplate" reports.

3) Ministry of Justice and other government departments

SCRC staff sends information upon request and supports working groups that are developing proposed changes to the laws.

4) Research institutes such as the NLC and Legal Universities

SCRC staff sends information upon request of students and professors.

5) General public

SCRC provides the statistical case information published in the annual reports funded by USAID with technical assistance from JRP.

In addition, under an initiative recently announced by the head of the new supreme court press relations office, members of the public were invited to contact SCRC staff with their ideas about how to improve the court system. At least at the beginning, most citizens who responded to this invitation wanted to complain about decisions made in their particular case. I do not know whether the SCRC will continue with this task.

6. The media

SCRC staff has provided information upon request to the media. Although the supreme court public relations office has more recently assumed the function of interacting with the media, I believe SCRC staff are still called upon to assemble the requested data.

II. IDEAS FOR REFORMING THE ROLE OF THE SCRC

A. Re-Align SCRC's Role to Focus on Supporting Court Administration

I agree with the recommendations in the JRP's recent report on the structure and functionality of the GCC.[1] GCC staff should assume responsibility for more system-wide administrative and policy activities. If it does, it will need more information, and the main function of the SCRC should be to supply that information to the GCC, and to the Supreme Court. The SCRC's mission should be changed to focus on providing court and individual judge performance information to the GCC and the Supreme Court.

[1] *The Structure and Functionality of the General Council of Courts: Report and Recommendations.*

As discussed in my memo on performance evaluation, a number of developed countries have adopted schemes for measuring aspects of the performance of their own legal systems.[2] In that memo, I recommend that the Mongolia Court System adopt the idea of measuring trial court performance based on the guidelines developed in the United States by the National Center for State Courts. Those guidelines examine trial court "outputs" in five areas- access to justice, timeliness, fairness, independence and accountability, and public confidence. I also recommended that if the Supreme Court adopts the NCSC framework for measuring trial court performance, that it also create and adopt specific performance standards on each of the measures.

The NCSC Trial Court Performance Standards contain 22 specific indicators. Since it is unrealistic to at this point for the court's performance evaluation to use all 22 indicators, my recommendations for the most important indicators are included in Appendix B.

B. Compile and Analyze Certain Information on Individual Trial Judge Performance

In my memo on judge performance evaluation, I recommend that attorneys be surveyed as to their opinions about individual judges' performance. I also recommended that more detailed surveys be sent out to a few attorneys who have extensive experience with a particular judge. SCRC researchers would be well qualified to compile and analyze these types of survey data.

C. Assume Responsibility for Providing Professional Guidance

"Professional guidance" is not defined but the relevant provision states that "professional guidance shall be carried out by providing interpretations of law, training and recommendations based on the research of judicial practice." The apparent purpose of professional guidance is to encourage uniform application of the law. Currently the authority to provide such guidance is vested in the supreme and appellate courts and judges.[3]

There are several problems with the current system. First, there is no clear definition of "professional guidance." This lack of clarity results in inconsistent application of the guidance and causes confusion among judges. A second problem is that higher-level courts that provide professional guidance run the risk of improperly influencing or interfering in the adjudication process of lower courts. At the very least, it gives the impression that the higher court is exerting improper influence and interference. Thus, the practice of higher courts giving professional guidance to lower courts could undercut the independence of individual trial judges, and it undermines public trust and confidence in the fairness of the adjudication process.

To address these two problems, the authority to provide professional guidance should be transferred to the Supreme Court Research Center. The SCRC is well positioned to assume this responsibility for the following reasons:

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[2] For discussion on the broader topic of justice performance measures, see *World Bank Law and Justice Institutions Performance Measures Topic Brief*, at www.worldbank.org, citing (Cole 1993, U.S. Dept of Justice 1997).

[3] Specifically, the Supreme Court and its Chambers provide professional guidance to all courts (on specific types of cases/disputes), the Aimag and Capital City Courts and its Chambers provide professional guidance to the Soum, Inter-Soum, and District Courts (on specific types of cases/disputes), the Supreme Court Chief Justice provide the unified coordination for professional guidance to all courts, the Presiding Justices of the Supreme Court Chambers coordinate the activities for providing courts with professional guidance related to its jurisdiction; the Chief Judges of the Aimag and Capital City Courts coordinate the activities for providing professional guidance to courts within their territorial jurisdiction, the Chief Judges of Administrative Courts coordinate the activities for providing professional guidance to courts within their territorial jurisdiction, and Presiding Justices of the Capital City Court Chambers coordinate the activities for providing District Courts with professional guidance related to their jurisdiction.

1) the national case information database will be located at the SCRC;
2) the SCRC issues recommendations on uniform and correct application of laws;
3) the SCRC will be officially given the authority to draft interpretations according to Article 23.5. of the draft Law on Courts stating "Supreme Court Justices shall draft interpretations of laws in cooperation with the Supreme Court Research Center and submit them to the full session of the Supreme Court for approval";
4) the SCRC and the Administrative Departments and Divisions of courts study judicial practice. In addition, the SCRC provides (or used to provide) recommendations on topics for judicial training and re-training (based on the "study of judicial practice"), as it previously was the SC Research and Training Center.

Appellate and supreme court judges would receive ample information about trial judges' performance from the improved performance evaluation and court evaluation processes, and from the SCRC. Lower courts would no longer need to be "monitored" by the higher courts, because they will have better information about their own performance.

If SCRC is given the responsibility for providing professional guidance, it should develop guidelines about what guidance is to be provided, and how it is to be provided. SCRC could work with the higher courts to identify specific areas of concern, and to develop procedures.

D. Continue to Provide Legal Resources for Judges

Judges need accurate, easy to read, and up-to-date information about the law, Supreme Court interpretations, and appellate decisions. The SCRC should provide information to help the judges research particular articles of the law.

It would be helpful to create an "annotated" version of the Mongolian code to distribute to judges. So, instead of publishing the Supreme Court's official interpretations separately from the code, SCRC should combine them in one document, with the interpretations applicable to a particular code section listed beneath that section. It also would be helpful if SCRC staff could include information about legislative history under each code provision.

E. Continue to Provide Legal Information for the Public

Publishing this general information about the courts, the law and the administration of justice is important to improve public understanding of the courts, and to promote transparency and accountability. This is a valuable service that does not seem to consume too much staff time, and it should be continued.

F. Limit Work Provided for the Benefit of Other Government Departments

As a court administrator and advocate for the judicial branch, I question whether the Mongolia Supreme Court can really afford to devote so much SCRC staff time to the types of surveys and general legal research projects that currently appear on the work plan. In my opinion, SCRC staff should be devoted first and foremost to collecting, compiling and analyzing data necessary to measure and manage court performance. If the SCRC were given that responsibility, staff would be completely or almost completely occupied, and there would be little or no time for additional projects. However, I also recognize that for purposes of comity and good inter-branch relations, the supreme court might wish to make staff time available for special projects of interest to government leaders or MPs.

SCRC leadership may wish to set guidelines for the amount of time staff spend on such requests. Whenever possible, staff should simply give the requesters access to the raw data in the

spreadsheet and let them do their own analyses. Since the spreadsheets contain only aggregate case information, there would be no risk of revealing personal or identifying information about individual parties/cases.

G. Upgrade the Technical Skills of SCRC Researchers and Make Additional Resources Available

The level of analysis that SCRC staff currently can perform is limited by their lack of tools and of knowledge. For example, an SCRC researcher might be able to report that banking decisions in Aimag 1 are overturned on appeal more often than banking decisions in Aimag 2; but she could not say whether the difference is statistically significant or merely the result of chance.

If SCRC researchers are going to be assigned these types of research projects, they should be given a few tools and access to necessary expertise. First, someone at the SCRC should understand basic statistics and principles of social science research. For example, someone should be able to create a statistically valid sample out of a list of cases, so that the researchers do not have to review each and every case file when researching a question.

Second, someone at SCRC should have access to statistical analysis software such as SPSS for Windows, and should know how to use it. This person should have a background in social science research, databases, and statistical analysis. For this, SCRC could replace a law-trained researcher with a statistician, it could create a strategic alliance with a professor of statistics at a local university, or it oculd create a strategic alliance with a statistician at the national statistics office.

The statistics database expert should understand the Judge 2005 software. This person should be able to generate lists of cases from that software for the law-trained researchers' projects. In addition, this person should be able to import data from the Judge 2005 software database into other databases to help minimize the amount of case file information that has to be collected by hand. As information from more and more cases starts to be entered into the Judge 2005 program, more and more electronic information should start to become available to the researchers, thus decreasing (hopefully) reliance on paper files. Law-trained staff should then work with the database/statistics expert to design electronic databases for their larger research projects.

Further, it is inefficient for law-trained staff to pull archived cases and enter case file data. Law-trained staff should focus on designing the study (what questions are to be answered, what cases are to be sampled, etc), designing the database (what pieces of information need to be recorded), monitoring the data collection (ensuring that the people entering information into the database do so in an accurate and consistent manner), and data analysis (analyzing frequencies and cross tabs, and writing the report). The task of collecting and entering the paper case file data from archives into the database should be assigned to clerks or other less expensive employees.

For smaller research projects, law-trained staff should be able to put together a simple Excel or Access database file capable of holding the necessary information. Law-trained staff ideally should be able to perform basic statistical analyses in whichever database is being used. This would require new training for current staff.

Someone at SCRC should have enough of a background in social science/statistical research to be able to help heads of other agencies and court leadership to understand what kinds of law-related questions can and can't be reliably answered by statistical studies. Having this background also would help the SCRC prioritize its workload, because this person would have an idea of the amount of time and effort necessary to collect and analyze requested information.

When the Judge 2005 software is fully operational, additional information will be available that would enable more interesting analyses. When the wide area network connecting all courts is completed, SCRC will be able to receive most case information electronically. Receiving the information electronically will enable staff to work more efficiently because they will no longer have to count by hand. It also may help staff better understand the data. However, in order for these efficiencies to be realized, SCRC leaders must ensure that the researchers fully understand the software and how the trial courts enter case-specific data into the software.

Appendix A:
Action Plan for SCRC in 2006

A. Activities for developing law proposals, preparing interpretation and making recommendations

1. Working group for proposing amendments draft to criminal, criminal procedure.
2. Working group for proposing amendments draft to civil, civil procedure.
3. Working group for proposing amendments draft to administrative procedure.
4. Working group for proposing amendments draft to law on court.
5. Study on convicted people or regarding qualification of criminal law article 145 [theft] between 2003-2005.
6. Study and report last 3 years court experience of using criminal law article 49 [confiscation of property].
7. Study and make summary of whether sentencing or not on criminal law article 60 [penalties for attempted crimes or preparation for crimes]
8. Study and make summary on how the banking or non-banking financial organizations law articles are used.
9. Study and make summary on how courts are using medicine related law articles.
10. Study and make summary on courts practice of social insurance law use.
11. Study judicial practice on duty of loan and account law use.
12. Study judicial practice on using energy law.
13. Study judicial practice on using patent law.
14. Study judicial practice on using combating against family violence law.
15. Study judicial practice on using administrative law article 90 [common procedure for court sessions].
16. Study judicial practice on using law on land and participate in making recommendation.
17. Study judicial practice about solving disputes on issuing special permit.

B. Activities regarding study of judicial practices

18. Study sentences for grave crimes that were appealed to the supreme court during 2003-2005: Summarize the reasons that the trial judge's sentence was varied on appeal.
19. Study and make summary on sentences and types of minor's crimes during 2003-2005.
20. Provide information and research regarding court inspection work to Arhangai, Umnugovi, Orhon, Uvs, Hentii, Govisumber Aimags.
21. Study how many cases were appealed from prosecutor and how many were returned to investigation from appellate or trial court since the new criminal procedure was applied (2002.09.01) and what were the decisions.
22. Make recommendation and present about reason for people convicted of misuse of official position between 2001-2005.
23. To study, select and publish a book of criminal, civil and administrative court decisions or decrees.
24. Take part in publishing book of court 2005 annual report for public accessibility.
25. To study all criminal, civil and administrative court judiciary monthly and deliver the review to courts.

C. Activities regarding court statistic reports

26. Study, summarize and present administrative court reports from inter-soum, soum, district, Aimag, and City courts
27. Summarize caseload of judges and courts through endorsed measurements and present to head of GCC and SC.
28. Make changes of draft laws to Ikh Hural, President order, Ikh Hural and Government decree, Tsets decree and decree of Chief Justice of SC and include those in unified information database.

29. Make quarterly and semi-annual court statistic report and notify the brief presentation to corresponding agency or person in charge.
30. Set up all related court statistic reports to Court Unified Network and cooperate with regarding organizations.
31. Input SC explanation and recommendation to unified database regarding the rule of procedure to use and run the "Information Unified Database"
32. Classify all laws and acts by legal clause.
33. Provide information of act and law to SC staff quickly.

D. Organizing seminars and training

34. Conduct 14 days judges' initial training to new appointed judges.
35. Conduct seminar and training to claim registration people, prosecutors and investigators about case procedure.
36. Participate and provide training on work direction regarding training schedule of trial, appellate and supreme courts.
37. Participate in organizing seminars to administrative trial courts.
38. Study and present foreigners who are sentenced for last 5 years.

E. Other works

39. Make order of materials to and publish "Mongolian State and Law" journal.
40. Prepare materials for "Mongolian Court Information" journal and distribute to courts.
41. Include SCRC researchers, staff to internal and oversee seminars and trainings in turn.
42. Make report and set up discussion in meeting of joint Legal Organizations about the topic of "Methodology of studying unified survey on minors who are committed to crime"
43. Take part in organizing seminar on "Importance and influence of Mongolian Court decisions collection"

Appendix B

SCRC should refine its data collection and analysis to focus on providing trial court performance data using at least some of the trial court performance standards developed by the National Center for State Courts. SCRC could, with the data it has available right now, provide performance information on some of the trial court performance measures, provided that staff understand those measures and the reasons for the change in procedure. For other measures, additional data would be needed. These ideas also are discussed in my memo on performance evaluation.

1. Data on Timeliness and Expedition

The SCRC should compile and analyze information on four measures, both for individual judges and for the court system as a whole.

a) *Clearance rates*. Clearance rate is a court management statistic defined as the number of outgoing cases as a percentage of the number of incoming cases. It measures whether the judge is keeping up with his incoming caseload. Clearance rate should be calculated separately for criminal, civil and administrative cases. Criminal cases should be broken down according to seriousness of the crime. Civil cases should be broken down, at a minimum, by family and non-family (see example);

Example: Annual Clearance Rates **Date**					
Type of case	Criminal: Serious	Criminal: Less Serious	Civil: Family	Civil: Non-Family	Administrative
Aimag 1	XX%	XX%	XX%	XX%	XX%
Aimag 2	XX%	XX%	XX%	XX%	XX%
Aimag 22	XX%	XX%	XX%	XX%	XX%
Total	XX%	XX%	XX%	XX%	XX%

b) *Age of active pending caseload*. The age of active pending caseload is a court management term that means the age of the active cases that are pending before the judge. It is measured as the number of days from filing until the time of measurement. It should be broken down in same way as above for each aimag. It should be calculated at least twice a year. Example:

Age of Active Pending Caseloads **Serious Criminal Cases** **Aimag 1**			
Age (days)	Number of Cases	Percent	Cumulative Percent
0-90	X	XX%	XX%
91-180	XX%	XX%	XX%
181-270	XX%	XX%	XX%, etc.

c) *Time to Disposition*. Time to disposition is a court management statistic that refers to the percentage of cases disposed or otherwise resolved within established time frames. It tells how long it takes a court to process cases. This is the average amount of time that elapses between the registration/filing of a case and the final judgment or disposition of that case. It is important when calculating this measure to exclude inactive or closed cases from the count. Should be calculated annually or twice a year.

Example of Time to Disposition: Criminal Cases Date		
Court Location	Criminal: Serious	Criminal: Less Serious
Aimag 1	50% within 15 days; 75% within 30 days; 100% within 60 days	75% within 15 days; 100% within 30 days
Aimag 2	66% within 15 days; 80% within 30 days 97% within 60 days	69% within 15 days; 100% within 30 days
Aimag 22	89% within 15 days; 90% within 30 days; 99% within 60 days	78% within 15 days; 92% within 30 days
Total	50% within 15 days; 88% within 30 days; 95% within 60 days	75% within 15 days; 100% within 30 days

Once the average time to disposition is calculated, the court can compare that figure to the terms set by law. If there is no term set by law for deciding that particular kind of case, the supreme court or GCC should adopt its own internal guidelines or time standards.[4] Procedures for adopting performance standards are discussed in my memo on judge and court performance evaluation.

d) *Trial Date Certainty.* A court's ability to hold trials on the first date they are scheduled to be heard is closely associated with timely case disposition. Routinely continuing or rescheduling trial dates creates inefficient calendars and wastes judge and staff time. The Supreme Court and GCC should monitor trial date certainty in each of the trial courts, and nationwide. Information necessary to calculate trial date certainty should be collected by the Judge 2005 software.

   Trial date certainty can be expressed in several ways. It can be expressed as the percentage of cases disposed within a certain number of trial settings. For example, the court should know that 57% of its serious criminal case trials were disposed after one or two trial settings. It also can be expressed as the average number of trial settings per case. This calculation should be broken down by type of case (as above): serious criminal, less serious criminal, civil family, civil non-family, and administrative.

2. Data on Accountability and Independence

a) *Analyze employee opinion survey.* In my memo on court performance evaluation, I recommend that GCC survey court employee opinion once a year on whether they believe they have the materials, motivation and direction to do quality work. If GCC administers an annual opinion survey to all employees, SCRC could compile the results.[5]
b) *Collection of Monetary Penalties*. The SCRC already tracks the amount of money collected. However, this measure would be more useful if it were expressed as the percentage of money actually collected compared to the total amount of money awarded (in civil cases), or (in criminal cases) the amount of money actually collected compared to the amount of fine or restitution awarded in the judgment.

[4] Ideas for how to define and adopt performance standards are discussed in my memo on performance evaluation.
[5] An example of a court employee opinion survey developed in the United States and translated into Mongolian is available from the Mongolia Judicial Reform Project Office. I believe that this survey could be adapted for use here in Mongolia, although GCC staff and judges should review it and test it before deciding to use it.

3. Data on Equality, Fairness & Integrity

a) *Perform sentencing study*. The *2005 Report on Mongolian Courts* identified fair treatment as an area the public thinks needs improvement. The report further found that the public thinks the court's performance is better in civil and family cases than in criminal cases. Given these findings, fair treatment in criminal sentencing is an important issue to study.[6]

The SCRC could help in this area by doing statistical analysis of information about sentence length. Experience in other countries has shown that criminal sentences typically vary by court location, by the defendant's race, whether the defendant was released before trial, type of lawyer, defendant's income, marital and employment status and other factors. An example of the types of information it is important to collect in a criminal sentencing study is available from the JRP.

Important work (which is beyond the skill level of any person currently working at the SCRC) would be to use multiple regression or other valid statistical analyses to compare average sentences among different groups (for example, urban vs. rural, Mongolian vs. non-Mongolian, male vs. female, uneducated vs. educated, employed vs. unemployed, poor vs. not poor) to see whether there are any statistically significant differences, and to analyze whether or not legally relevant factors could account for the differences. This type of analysis, although complex, is routinely performed in the United States and has revealed important findings about unwarranted disparity in criminal sentencing. This information might be helpful to judges, interesting to members of the public, and important for policy makers.

SCRC researchers are qualified to gather the information from the case management system and the case files; however, they probably are not qualified to generate a random sample of case files, nor do they know how to do the type of statistical analysis that could reveal significant patterns of unfairness in criminal sentencing. Recommendations on how to overcome these problems are included in my main memo, above.

b) *Analyze information about pretrial release*. Whether a defendant was released before trial or held in prison, and for how long, is important information. Pretrial release status is closely associated with sentence length. I believe some information about pretrial release currently is collected, but it should be analyzed in the context of a sentencing study.

5. Data on Access

a) *Analyze court user survey*. In my memo on court performance evaluation, I recommend that GCC oversee periodic administration of a survey of court users at various court locations. If GCC administered this survey, SCRC could compile the results.[7]
b) *Collect and analyze information about use of attorneys*. As discussed in my performance evaluation memo, the frequency with which court users are helped by attorneys is an important indicator of the effectiveness of their participation in the judicial process. It also is helpful information for court leaders, because people who do not have attorneys typically are

[6] According to the 2006 SCRC action plan, two sentencing studies will be undertaken (one on sentences given for grave crimes and one for minor crimes). However, the studies will not address any of the concerns I am raising here.
[7] An example of a court user survey developed in the United States and translated into Mongolian is available from the Mongolia Judicial Reform Project Office. I believe that this survey could be adapted for use here in Mongolia, although GCC staff and judges should review it and test it before deciding to use it.

less efficient and consume more of the judge's time. This information should be recorded and analyzed.

Memo

To: Chief Justice Batdelger
From: S. DiPietro
Date: 7 February 2006
Re: Judicial Selection

On Nov. 30 Justice Amarsaikhan kindly invited me to observe the Qualifications Committee's selection process for Mongolian judges. I observed that the Professional Committee is doing a good job of evaluating each candidate's knowledge of the law, but I believe that the Committee could better identify the most qualified candidates if it gathered some additional information and changed a few of its procedures.

1. Expand the Scope of the Evaluation

   The Professional Committee's evaluation of each candidate is mostly limited to the candidate's knowlege of the law. While it is important to ensure that a candidate knows the law, legal knowledge is not enough to be a successful judge. Successful judges possess excellent oral and written communication skills, integrity, good judicial temperament, impartiality, and dedication. Thus, the Supreme Court and the Committee should consider including additional criteria in the judicial selection process.

   The American Judicature Society[1] recommends that all applicants for judgeships be evaluated on qualities in addition to knowledge of the law. These include: impartiality, integrity, judicial temperament, industry, collegiality, writing ability, decisiveness and speaking ability. The American Bar Association evaluates candidates for the US Supreme Court based on their character and reputation in the legal community, industry, dilligence, temperament, writing skills, and analytical ability, among other things. The Committee could collect information on these qualities in a variety of ways, outlined below.

   a) Seek input from the legal community and the public
   Currently, the Committee receives letters of recommendation from each applicant's former employers. While those letters provide important information, the Committee should seek additional perspectives. The Committee should consider publishing the candidates' names to the public, or at least to members of the Mongolian Bar, and asking for written comments about the candidates' temperament, integrity, impartiality and other qualities. Giving the legal community, or the public at large, the opportunity to comment on the candidates' qualifications inspires trust and confidence in the courts and could reveal

[1] The American Judicature Society is a national organization that works to maintain the independence and integrity of the courts and to increase public understanding of the justice system in the US. In 1991, AJS established a nationally recognized research center that collects and conducts empirical research on best practices in the selection of state and federal judges.

important information about candidates' character and reputation, or about problems such as substance abuse.

Information from the public often is included in the selection process for state court judges in the US. For example, in Alaska, the judicial nominating commission sends out a written survey to all attorneys in the state asking about each applicant's qualifications. The Alaska commission also holds an open hearing at which members of the public can comment on the applicants' qualifications. Similarly, the American Bar Association's Standing Committee on the Federal Judiciary solicits the views of the legal community about the qualifications of people nominated for the US Supreme Court.

b) Emphasize ethics

To emphasize the importance of integrity, and to alert potential candidates to the ethical standards that judges are required to follow, the Committee should include questions about judicial ethics in the written test. The format could be similar to the multiple-choice format used for the MPRE in the United States. The Committee also could send a copy of the Code of Judicial Conduct to each applicant, a practice widely adopted by judicial nominating commissions in the United States.

c) Evaluate all candidates' writing skills

One study in the US found a lawyer's writing ability to be closely correlated with later success as a trial court judge. Using statistical analysis, this study found that a lawyer's writing skill was actually the factor most closely correlated with success as a judge. Most judicial nominating commissions in the US require a writing sample from each candidate.

The Committee should require applicants for all levels of court to submit a writing sample of 5-10 pages analyzing legal issues. The candidates' samples should be graded based on correct grammar, spelling and punctuation; clarity of writing style; organization; depth of understanding of the legal issues; and sophistication of analysis. Alternatively, the Committee could require the candidates to write an essay about a legal or ethical issue at the same time they take the multiple-choice test.

d) Gather information about any civil judgments and tax liens against a candidate (if available).

A candidate who is having financial difficulties could be more susceptible to corruption. Information about civil judgments and tax liens is routinely gathered by judicial nominting commissions in the US.

e) Restructure the interview format

The interview is an important tool for evaluating the candidates' temperament, reasoning, communication and other important skills. The Committee could get more valuable information about the candidates if it asked more open-ended and

situational questions, allowed the applicants to talk more during the interview, and made the interviews longer.

Open-ended questions allow the applicant to provide a great deal of information in a short time. Examples of open-ended questions include:

- Describe the ideal judge.
- What skills and experience would you bring to this position?
- How do you set goals and manage your time?
- What is the most significant challenge facing the court to which you are applying, and how do you propose to approach it?

Situational questions allow the Committee to evaluate the candidate's speaking ability, reasoning, and other skills. The following example of a situational question comes from the American Judicature Society's handbook for judicial nominating commissions:

- What sort of control do you feel a judge should exercise over his or her courtroom? For example, if the attorneys are disrespectful toward one another or other participants in the courtroom, what would you do?

It is a mistake for the interviewers to dominate the conversation; the interviewee should do most of the talking. The American Judicature Society handbook for judicial nominating commissions recommends that the interviewee talk 85% of the time, or at least that the interviewers talk no more than 25% of the time.

The interview should last long enough for the members of the committee to evaluate each candidate's integrity, temperament, communication skills, and and analytical skills. The American Judicature Society's handbook for judicial nominating commissions recommends, based on the results of a federal study, that each interview last 45 minutes, or at least 30 minutes. This amount of time is the minimum necessary to properly evaluate the candidate. Group interviews are not recommended because it is too difficult to evaluate each candidate individually.

2. Make the Selection Process More Open

More openness ensures accountability and inspires public trust and confidence in the courts. The selection committee could make the process more open with only a few small changes.

a) To improve public trust and confidence and promote a transparent process, make the results of the written the test available to the candidates and applicants as soon as the candidates are informed of the results.

b) Make sure the candidates know in advance how their written tests, interview, and writing sample will be graded. For example, what criteria are used and

what is the relative weight of each portion of the interview, written test, and writing sample?

Conclusion

These ideas should be circulated and discussed by the members of the Professional Committee, the supreme court and the GCC. To the extent that the system needs to recruit better candidates for judgeships, efforts to improve the selection process should be jointly undertaken.

These recommendations are consistent with Strategic Principle 2.4 of the Strategic Plan for the Justice System of Mongolia: To enhance the selection and promotion process for judges for the purpose of ensuring the accountabilty of judges.

Memorandum

To: JRP
From: S. DiPietro
Date: April 14, 2006
Re: Analysis and Recommendations on Performance Evaluation for Judges and Courts

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This memo summarizes current procedures used to evaluate judges in the Mongolia Court System, explains how judges are evaluated in the United States, and analyzes how the Mongolia Court System could improve the way it evaluates judges. The last part of the memo explains how the Mongolia Court System could build on the judge evaluation data to monitor and evaluate trial court performance nationwide.

I. Current Judicial Performance Evaluation Activities

The law in Mongolia currently does not require regular reviews of a judge's performance. Instead, the law authorizes both the General Council ("GCC") and the Qualifications Committee to evaluate judges' skills and qualifications under certain circumstances.[1]

In practice, the General Council of Courts, Qualifications Committee, and the Supreme Court Research Center ("SCRC") each review some aspects of some judges' performances. But, they do not coordinate their efforts, and the reviews are not comprehensive.

A. Supreme Court Research Center

Each year, the SCRC collects and compiles some case information about each judge and each court. This information includes whether the judge decided all cases assigned to him, how many were overdue, and how many were corrected on appeal.[2] SCRC then enters that information into an Excel spreadsheet that ranks each judge from "best" to "worst." The "best judge" receives a cash prize.

The Supreme Court also has an annual contest for the "best court." The best court evaluation is the same as the best judge contest, except instead of evaluating every judge, the SCRC evaluates two (or four) judges as representatives from each court location. These judges are selected by their colleagues to represent that court location in the contest.

B. Qualifications Committee

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[1] Articles 30.7.2 and 30.7.3 of the Law on Courts authorize the Judicial Qualification Committee to evaluate judges' qualifications and professional skills in case of demotion or dismissal, or at the request of the appellate and/or supervisory instance courts, the chief judge, or the decision of the judges' conference. Article 62.1.6 authorizes the General Council to set the procedures and criteria for assessment of judges' qualifications and professional skills (and to establish the Qualification Committee).
In addition, the Discipline Committee is authorized to investigate complaints that a judge has violated the judicial ethics code. When a complaint is received, a working group of the Committee usually travels to the judge's home court to investigate the complaint. However, this activity should not be considered a performance evaluation.

[2] Specifically, each trial court judge reports: how many cases he was assigned, whether he was the lead judge on the panel, whether the case was reversed or affirmed on appeal (and the reason), whether he proposed any good ideas or initiatives that year, whether he received any awards or promotions, and whether he was the subject of disciplinary action. Each appellate court judge reports the same things as the trial judge, plus how many times he provided professional guidance. Supreme court justices are not evaluated. The form used to gather this information is attached as Appendix A.

The Qualifications Committee evaluates a judge if a higher court judge reports that the judge is not making correct decisions or otherwise seems not to be performing well. The Committee calls the judge in and gives him a test. For the test, the judge must write a decision based on an example of a case. The Committee then reviews the decision and interviews the judge. Last year, two judges were dismissed because they did not pass this test.

C. Inspections by GCC

In the past, supreme court justices (accompanied by GCC staff) traveled to outlying courts to inspect the court and the judge's work. The supreme court justice inspected the case files and reviewed decisions from the past 3-4 years, and made recommendations to the judges about problems with the decisions. GCC staff inspected the financial accounts, the court building, and other administrative matters. However, visits were sporadic because of budget constraints, and the quality of the reviews was not consistent.

Starting this year, a change is being proposed. The new proposal is that supreme court justices will not go with GCC staff on the court inspection visits. Apparently, the visits by the justices were too expensive, and were not thought to result in particularly useful feedback for the trial judges. Instead, GCC staff will examine administrative matters and will inspect the judge's case files. GCC recently approved guidelines and requirements to be used on the administrative aspect of court inspection tours.[3] I do not believe that GCC has any guidelines or checklists for inspecting the case files; it is not clear what criteria staff will use to do that.

II. Judicial Performance Evaluation in the United States

Judicial Performance Evaluation (JPE) in the United States began in 1976 in the state of Alaska and is now well developed in most states. Most states have established procedures and regular schedules for reviewing the performance of all judges, including supreme court justices. In contrast, JPE is not well developed at the federal level, where federal judges receive little feedback about their job performances.[4]

A. Purpose of JPE in United States

Although different states have different goals and approaches to JPE, judges' self-improvement is the primary goal in most states. Other goals are to improve the overall quality of the judiciary, and to design more useful judicial education programs.

B. How Do Performance Evaluation Programs Operate in the U.S.?

Different states use different models for evaluating the performance of judges. Whatever model is chosen, it must ensure meaningful accountability, without unduly infringing on the independence of the judges' decision making. Also, it is important that the evaluation program be established by the court system, so as to preserve the court's independence from the other branches of government. Two different models are described below.

1) *Independent Commission with Diverse Membership.* In many states, an independent and diverse commission or committee is responsible for evaluating state court judges. In some

[3] The document includes over 40 items, from evaluating the court's strategic plan, to reviewing job descriptions, to documenting any disciplinary actions taken against judges or staff. The document is attached as Appendix A.
[4] An exception is the federal judges in Alaska, who several years ago asked to be included in the evaluation process used for state court judges.

states this commission is connected to the supreme court or the administrative office of the courts; in other states, the commission is part of a bar association, and in several states (including Alaska), the performance evaluation commission is a separate state agency. In some states, evaluation commissions are required by law, while in other states they are established voluntarily by court leaders or bar associations.

In order to ensure a balanced assessment, most performance evaluation commissions include both judges and lawyers as members. For an even more balanced assessment, many commissions also include non-lawyer members of the public. For example, the Alaska evaluation commission has three lawyers, three people who are not lawyers, and the Chief Justice of the Alaska Supreme Court.

2) *Internal Evaluation without Commission.* Not all states use independent commissions to evaluate all their judges. For example, in Alaska, lesser judges (called "magistrates") are evaluated internally without the independent commission. Because magistrates hear only very small cases and perform limited judicial functions, they are thought not to need a more sophisticated evaluation performance review process. Even so, there have been complaints in Alaska that the magistrate evaluation process is not transparent enough. I include the following information about this magistrate evaluation process for the sake of completeness.

   Magistrates in Alaska often are inexperienced, they often work in remote areas, and they may have little contact with other magistrates or judges.[5] Because of this isolation and inexperience, each Alaska magistrate is assigned an experienced trial court judge to be his "training judge." The training judge does not have jurisdiction to review the magistrate's decisions, and he does not supervise the magistrate. The training judge's job is to answer the magistrate's questions and provide advice at the magistrate's request.

   Once a year, the training judge travels to the magistrate's court and evaluates the magistrate using a standard checklist.[6] The training judge listens to tapes of the magistrate's hearings. He also reviews a randomly selected sample of case files to ensure that the legal papers were filed and organized in the proper way, and that no papers are missing from the file.[7] The training judge also reviews some of the magistrate's written decisions, not to say whether the magistrate made the correct decision, but just to make sure that the magistrate gave a reason for his decision, and did not make any obvious procedural errors (like forgetting to advise a person of his rights). Finally, the training judge talks to lawyers and other people who use the courts in the magistrate's community. The training judge asks these people who have experience in the magistrate's courtroom about any problems with the magistrate's temperament, fairness, and integrity.

   The training judge records all his information on a form, and then discusses his findings with the magistrate. If the magistrate's performance is successful, he qualifies for a pay increase in the next year. The magistrate can record on the form whether he agrees or disagrees with the training judge's assessment. The training judge then sends the form to the chief judge, who approves it and sends it to the Central Administrative Office of the court system for filing.

C. <u>Criteria Used for Evaluating Judges</u>

[5] Some magistrates in Alaska do not have law degrees.
[6] I have provided a copy of this checklist to GCC staff.
[7] Some magistrates in Alaska do not have assistants, so they are responsible for doing all their own clerical work and filing of papers.

JPE programs in the United States evaluate judges on many different qualities. The most common criteria include: integrity (including being unbiased), legal knowledge, effective communication, judicial temperament, courtroom effectiveness, management skills, punctuality, service to the profession, and working well with colleagues.

For example, Alaska's judicial performance evaluation program, acknowledged as one of the most comprehensive in the country, evaluates judges on fairness, integrity, legal ability, judicial temperament, and performance of administrative duties. Similarly, the American Bar Association recommends that judges be evaluated in the five areas listed in the table below. The next section of this memo discusses what information would be needed to evaluate a judge using these or similar criteria.

American Bar Association Guidelines and Criteria for Evaluating Judges Revised February, 2005	
Category	**Items to Measure**
Legal Ability	Legal reasoning, knowledge of the law; knowledge of rules and procedure; keeping current on developments in the law
Integrity and Impartiality	Avoiding impropriety and the appearance of impropriety; treating all people with dignity and respect; acting fairly by giving people individual consideration; considering both sides of an argument before making a decision; basing decisions on the law and the facts without regard to the identity of the parties; ability to make difficult or unpopular decisions
Communication Skills	Clear and logical oral communication while in court; clear and logical written decisions
Professionalism and Temperament	Acting in a dignified manner; treating people with courtesy; acting with patience and self-control; dealing fairly and effectively with litigants who do not have lawyers; providing leadership for court improvement and judicial education, as appropriate; promoting public understanding of and confidence in the courts
Administrative Capacity	Punctuality and preparation for court; maintaining control over the courtroom; appropriate enforcement of court rules, orders and deadlines; making decisions in a prompt, timely manner; managing calendar efficiently; fostering a productive work environment with other judges and court staff, ensuring that physical or language disabilities do not limit access to the court

D. Information Used to Evaluate Judges

States use information from many different sources to ensure a balanced and complete evaluation of their judges. The American Bar Association recommends that many sources of information be used to evaluate judges whenever possible. Below are the main ways in which performance information is collected in the United States.

1) *Written Surveys.* Many states send out written surveys to prosecutors, defense attorneys, other lawyers, police, other judges, court employees, and other professionals who appear regularly in the trial courts. The surveys ask the person to rank the judge on qualities such as legal ability, judicial temperament, fairness, integrity, communication and control of the courtroom. In order to encourage honest responses, the surveys often allow the respondents to withhold their names.

   The benefits of these types of surveys are that they actively solicit information from groups of professionals who have first-hand experience with the courts. To be useful and valid, however, surveys must be sent to all members of the group, and procedures must ensure that

each respondent cannot submit more than one completed survey. An example of a survey for lawyers is attached as Appendix B to this memo.

2) *Attorney Questionnaires.* In addition to written surveys, some commissions send in-depth questionnaires to two or three lawyers who have had a lot of experience with that particular judge. The lawyers are asked specific questions about how the judge handled a particular case, and about the judge's overall performance. In Alaska, for example, each judge gives the evaluation commission a list of three cases that went to trial, three cases that did not go to trial, and any other important cases that the judge completed since his last evaluation. The evaluation commission sends a brief questionnaire to all of the attorneys in each case. The questionnaire asks about items such as the judge's fairness, legal abilities, temperament and administrative handling of the case.
3) *Comments from Public.* Many states hold public hearings or take written comments from the public about judges. In Alaska, statewide newspaper ads and radio announcements encourage the public to testify at public hearings. Public hearings give citizens an opportunity to speak out about their experiences with judges, and they also provide a forum in which citizens can hear the opinions of others. Also, many evaluation processes allow a member of the public to submit anonymous written comments about the judge. Allowing people to comment anonymously encourages members of the public to participate in the evaluation process.
4) *Other Information.* Performance evaluation commissions also review public records, records of ethics violations, how many of the judge's cases were reversed by a higher court, and the judge's own statement about his performance in office.

III. Recommendations for Improving Judicial Performance Evaluations in Mongolia

A. Create a formal program for evaluating judges and justices

The GCC and the Supreme Court should develop and implement a formal program for the evaluation of judges, including appellate judges and supreme court justices. Such a program is needed for the judges' own self-improvement, for improving the overall quality of the bench, and to better design judicial education programs. Thus, the purposes of the program should be: (1) self-improvement for judges, (2) improving the overall quality of the bench, and (3) to help design judicial education programs.

Evaluation programs should not be punitive; that is, they should not be used as a way to single out certain judges. Rather, effective performance evaluation programs function as a positive way for judges to get feedback about their performances, so that they can use the information for self improvement.

An evaluation program is not useful unless judges and justices are evaluated at regular intervals. I recommend that the Supreme Court and GCC adopt a regular evaluation schedule. For example, justices might be evaluated two years after appointment and once every 5 years thereafter, appellate court judges two years after appointment and once every three years thereafter, and trial court judges one year after appointment and once every two or three years thereafter. Such a schedule could be added to the law on courts or adopted by the GCC and Supreme Court as an official policy.

B. Evaluate judges on more criteria and use more sources of information

One problem with the current system is it does not measure enough aspects of judges' performance. More information is needed to provide a balanced and accurate picture.

Specifically, the evaluation process must be expanded to include information other than that discussed above. Specifically, the evaluation can not be complete without information about each judge's fairness, integrity and impartiality, legal ability (including written and oral communication skills), judicial temperament, diligence, and performance of administrative duties.

A second problem with the current system, related to the first, is that the process does not include information from enough sources. In order to evaluate the judges on the criteria mentioned above, additional sources of information are needed. That information and how to get it is discussed below.

1) *Survey attorneys.* In order to evaluate judges' fairness, temperament, oral communication skills, integrity, and administrative ability, we need information from the people who spend the most time in the judges' courtrooms. Thus, I recommend surveying lawyers (prosecutors, defense attorneys, and civil attorneys) and asking them to rate the judges they know on those criteria.[8] This technique is very commonly used in the United States. Although attorneys occasionally misuse the survey process by writing inappropriate comments, most answer honestly and provide useful feedback to the judges. The judges quickly learn how to tell which feedback they should pay attention to, and which feedback is exaggerated or inaccurate.

   Some states allow attorneys to respond anonymously (without giving their names). Giving attorneys the option of responding anonymously ensures that they can say what they think without fear of being penalized by the judge. On the other hand, some judges prefer that the attorneys give their names as a way of preventing the attorneys from abusing the survey process. A middle ground, which I recommend for Mongolia, is to make the attorney surveys anonymous, but to leave a space for the attorneys to sign their comments if they wish to waive their anonymity. Procedures for sending a survey in this way are included in Appendix C.

2) *Continue the court observation program as long as possible.* A very good way to evaluate judges is through objective court observation. The existing court observer program is an excellent resource and should be included in the judicial evaluation process.[9] Court observations should focus on treatment of litigants in court (treating people with courtesy and respect, verbal communication, control of the courtroom, acting with patience and self-control, and punctuality).

   One problem with relying too heavily on the court observation program is that expanding it to include all judges might be too expensive to sustain over the long run. To the extent that the observation program cannot be funded nationwide, court leadership should send the court observers to those small or remote locations where there may not be enough lawyers or other professionals to merit a written survey.

   A less expensive way to evaluate judges' performance in the court room is for experienced trial judges to listen to tapes of proceedings. This method, which is used by the Alaska Court System, might work for the Mongolian courts that record hearings.

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[8] In very rural court locations, there may not be enough lawyers to merit a survey. In the rural locations, a representative from the GCC or the Qualifications Committee could interview local lawyers, law enforcement and community leaders about the judge's performance. (This is the method used in Alaska's remote magistrate posts—the training judge conducts the interviews). In these rural locations, court observations also would be especially important.

[9] Court observations would be especially important in the smallest and most remote court locations.

3) *Get input from the public.* Members of the public have a viewpoint that helps give a balanced picture of a judge's strengths and weaknesses. It also sends an important message that the court system cares about the public's opinions. Thus, I recommend that the Supreme Court or GCC solicit written comments from the public on judges' performance. Although some members of the public will write comments critical of the judge, others will write positive comments. The Supreme Court could advertise the opportunity to comment on radio, in newspapers, and on its web site. All public comments should be shared with the judge.

C. Improve the case processing information collected by the SCRC

1) *Information about timeliness.* One important aspect of performance that is missing from SCRC's case processing information concerns timeliness. Timeliness of decisions and compliance with hearing and trial schedules are two of the most important considerations for people who use the courts.[10] Judges need information about how they are doing in this area.

   For trial court judges, the SCRC should gather the following information related to timeliness of decision making:

   - age of active pending caseload[11] (broken down by criminal, civil, and administrative cases assigned to that judge);
   - time to disposition[12] (broken down by criminal, civil, and administrative cases assigned to that judge); and
   - clearance rate[13] (broken down by criminal, civil, and administrative cases assigned to that judge).

   Detailed information about how to calculate each of these items is available from the Mongolia Judicial Reform Project office.

2) *Information related to reversal rates.* Reversal rates, which SCRC does collect, would be more useful if they were expressed as a percentage of cases appealed (for example: "20% of Judge Bold's criminal cases were reversed on appeal"). But reversal rates standing alone do not give a very complete picture of a judge's performance. Experience in other countries shows that many factors affect a litigant's decision whether to appeal his case, and some types of cases are appealed much more often than others.[14] Thus, a judge who handles a particular type of caseload may be more likely to have his cases reviewed by an appellate court than judges who handle different types of cases. This distinction should be recognized and accounted for. Thus, the reversal rate information should be accompanied by information showing the frequency with which parties appeal a judge's decisions (for example: "40% of Judge Bold's criminal cases were appealed").

D. Designate a committee to review the evaluation information

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[10] In a 2005 nationwide public opinion survey about the Mongolia Court System, three quarters of respondents agreed with the statement that "cases are not resolved in a timely manner."

[11] The age of active pending caseload is a court management term that means the age of the active cases that are pending before the judge. It is measured as the number of days from filing until the time of measurement.

[12] Time to disposition is a court management statistic that refers to the percentage of cases disposed or otherwise resolved within established time frames. It tells how long it takes a court to process cases.

[13] Clearance rate is a court management statistic defined as the number of outgoing cases as a percentage of the number of incoming cases. It measures whether the judge is keeping up with his incoming caseload.

[14] For example, it appears from my review of 2005 court statistics that criminal and administrative cases are appealed far more often than civil cases. Thus, a judge who handles a criminal or administrative caseload could be expected to have more cases reviewed by the appellate courts than a judge who handles mostly civil cases.

Once the evaluation information is gathered, it must be analyzed and shared with the judges. For this, the court needs an evaluation committee. There are several possibilities for this committee; the most important thing is that it must include members who represent a variety of perspectives. The more perspectives that are represented on the committee, the more balanced and complete the evaluation will be. At a minimum, the evaluation committee should include judges and lawyers. It also could include legal scholars and members of the public.

The Qualifications Committee would be a good choice for this task, because it has the right mix of members, and also because it has expertise in evaluating the qualifications of lawyers who wish to become judges.[15] Other options might be to create a committee within the supreme court administrative office or the GCC. While these options might be easier to administer, they have the weakness of not including members who represent a variety of viewpoints.

Whatever the structure of the evaluation committee, its role should be to receive and review the performance information about each judge. The committee would then share the information with that judge.

If the Qualifications Committee were chosen as the evaluation committee, it would require changes to the Law on Courts. Article 30.7 should be amended to include a new duty: "to collect and analyze judicial performance evaluation and to share that information with the judge and with court leaders; and to share summary performance evaluation information with providers of judicial education and others as appropriate."

E. Change the way the performance information is analyzed

1). Adopt objective performance standards. A major problem with the current system is that it ranks the judges against each other, instead of against an objective performance standard. So, one year the "best" judge may have cleared 90% of his cases and been reversed on appeal only 20% of the time, while the next year the "best" judge may have cleared 75% of his cases and been reversed on appeal 50% of the time. This sends the wrong message about how we define acceptable performance.[16] Performance expectations should be set so every judge understands from the beginning what goal he should strive for.

Performance standards take time to develop but are an important signal that the court is prepared to hold itself accountable. It is important that performance standards be developed and adopted by the court system; they should not be imposed on the court by the Ministry of Justice or other branches of government. This is because judicial independence would be infringed if standards were imposed by another government department, and also because judges and court leaders are the only ones with the knowledge and experience to come up with realistic and appropriate standards.

The best way to develop performance standards is for the supreme court to create one or more committees composed of lawyers and judges with expertise in different types of cases, and ask them to make recommendations about appropriate standards. The Supreme Court (or GCC?) would then either adopt the committee's recommendations or change them.

[15] In Alaska, the commission that selects candidates for judicial appointment also evaluates the performance of sitting judges.

[16] Comparing judges to each other in this way also creates practical problems. To give one example, the current evaluation system unfairly compares judges with very high workloads to those with very low workloads.

The supreme court (or GCC?) could adopt one set of standards applicable to all courts in the nation, or it could adopt slightly different performance standards for different court locations to reflect the local staffing levels, caseload, and volume of cases. Standards should not be so high that few judges can meet them; nor should they be so low that they are meaningless. Instead, they should be a realistic and fair expression of a level of performance acceptable to court leaders, court users, and the public.

There are many types of performance standards. Examples of some performance standards that should be considered for a judge evaluation program are explained in Appendix D.

2) *Reversal rates should be viewed as only one measure of performance.* The current system focuses heavily on the frequency with which judges' decisions are varied or dismissed by the appellate and supreme courts. Using rates of reversal as a main indicator of judicial performance encourages consistency in application of the law. However, consistency is often a poor proxy for both quality and equality.[17] In fact, research done in the United States and at least one study from a civil law country (Germany) suggests that many factors outside of the quality of the decision influence the probability that an appellate court will reverse a lower court decision.[18] Also, excessive attention to rates of reversal can have the undesirable effect of pressuring judges to align their decisions with the views of the higher courts. Many judges feel this pressure jeopardizes judicial independence.[19] Although I am not arguing that reversal rates should be ignored, I would argue that they should be viewed as only one of many measures of judicial performance.

F. Share performance information with judges

Because the purpose of the performance evaluation program is self-improvement, the Qualifications Committee should discuss each judge's performance evaluation with that judge. The performance evaluation would include the results of the lawyer survey, comments from the public, the SCRC's statistical information, and results of any court observations. All this information taken together will give the judge a very good idea of his overall performance.

Again, it is important that the evaluation committee share the performance information in a positive way. The needs to receive both positive and negative feedback to get the complete picture of his strengths and weaknesses. In cases where the judge's performance could be improved, the role of the committee should be to support the judge.

Although it is common in the United States to share individual judges' performance information with the public, the reason is that the public needs information when it votes whether to retain judges in office. Because Mongolia's judges do not participate in retention elections, there is less reason to share individual judges' performance information with the public.

G. Re-examine the "best judge" and "best court" prizes

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[17] Vera Institute of Justice, *Measuring Progress Toward Safety and Justice: A Global Design for Performance Indicators Across the Justice Sector*, at p. 45 (Vera 2003). Available from Vera's web site: www.vera.org.

[18] For example, in the United States, research on federal and state appellate decisions in criminal cases suggests that the issues raised on appeal influence the reversal rate. In other words, some types of issues raised on appeal are reversed more often than others. Also, the data suggest that more frequently raised issues have a lower success rate than less frequently raised ones.

Another example involved a study of 171 decisions in Germany's Labor Courts of Appeal. The study found that confirmation rates were predicted by the trial judges' qualifications (whether or not they had a PhD) and their career incentives (whether they were motivated to seek promotion).

[19] *Measuring Progress Toward Safety and Justice* (cited above) at p. 45.

The Supreme Court and the GCC should re-examine the annual competition for "best judge" and "best court." Would continuing the competition encourage judges to meet performance standards set by the Supreme Court, or would it merely encourage them to compete against their colleagues? Does giving a prize for "best" performance suggest that judges wouldn't do a good job without the prize? Instead of giving a prize to the "best" judge, perhaps medals could be given to all judges who met or exceeded a certain percentage of the performance standards.

H. Re-examine "professional guidance"

If the Mongolia Court System implemented and institutionalized the judge evaluation program outlined above, judges would receive timely and meaningful feedback about their performance from a variety of sources. If this kind of information is collected and shared with judges on a regular basis, I would question whether it is necessary for the higher courts to continue to provide professional guidance to lower court judges. In my memo about the role of the SCRC, I explain why it would be best to transfer the professional guidance function to the SCRC.

IV. Recommendations for Adopting a Nationwide Performance Evaluation Program for the Courts

A recent World Bank report on transition economies studied how well countries in central and Eastern Europe had implemented reforms to their justice systems from the 1990s through the start of the 21st century.[20] The report documented how, in terms of institutional reforms, building judicial independence had taken precedence over building capacity or accountability in these countries.[21] The report found that during the 1990s these countries successfully reformed constitutions and laws to enhance judicial independence by removing the court systems from under the direct control of the executive branch (for example, the Ministry of Justice) and by establishing tenure in office for judges, among other things. As these judiciaries gained more independence, however, their efforts to remain accountable to the public did not keep pace. The proof of this problem is now found in low levels of public trust in those courts, and a low public opinion of those courts' fairness, quickness and honesty.

A similar problem was encountered in the United States, even though the history of court development there was very different from the countries in the World Bank report. In the US before about 1950, the state and federal courts were poorly organized and not well managed. Starting around 1950, court leaders and lawyers called for legal and structural reforms, and those reforms were successfully implemented over the next 10-20 years. Soon, however, these court reforms (along with profound changes to the social and political climate in the US at the time) caused people to use the courts more, and to use them for more kinds of disputes. As caseloads increased and the laws became more complex, it became clear that the courts needed more than just hard working judges in order to be successful. Lawyers and the public began to complain about lack of efficiency in court procedures, unnecessary expenses, and general lack of accountability on the part of the courts. In response, court leaders in the 1980s acknowledged the need to evaluate their courts' performance, and many state courts now have voluntarily started performance evaluation programs.

Although Mongolia surely differs from the US and from many of the countries studied by the World Bank, there may be some lessons to learn. Mongolia's judiciary must continue to work to

[20] Anderson, Bernstein & Gray, *Judicial Systems in Transition Economies: Assessing the Past, Looking to the Future* (2005). Some of the countries studied were Albania, Bulgaria, Belarus, Czech Republic, Croatia, Kazakhstan, Hungary, Georgia, Uzbekistan, Slovak Republic, Poland, Romania, Macedonia, etc.
[21] Anderson, Bernstein & Gray, at p. *xiii*.

preserve and enhance its institutional independence, and this goal has been recognized as a priority by court leaders and international donors. However, it also may be time to begin to examine the other side of independence, which is accountability. By starting now to develop a nationwide court evaluation program, court leaders can demonstrate their willingness to be accountable to the public, to donor agencies, and to other branches of government. More importantly, a performance evaluation program will enable the Supreme Court and GCC to document improvements to court operations that result from implementing the court management concept. Using the performance evaluation system described below, the Supreme Court will be able to measure each year the improvements that occur because of the new court management concept.

A. Adopt Performance Standards

Summary information about nationwide court performance is useful for many purposes. On the most basic level, court managers and leaders need this information to find out about problems in case processing, so they can take steps to fix the problems. Second, GCC and the Supreme Court need performance information for strategic planning, budget requests to the Ich Hural, analysis of internal staffing needs, and other important court management decisions. Finally, information about court performance should be shared with the public and with government officials to increase transparency and enhance public trust and confidence in the courts.[22]

A number of developed countries have adopted schemes for measuring important aspects of the performance of their legal systems.[23] For example, the United States Bureau of Justice Administration and National Center for State Courts have collaborated on a Trial Court Performance Standards project, which includes indicators that assess trial court outcomes in five areas - access to justice, timeliness, fairness, independence and accountability, and public confidence. The Trial Court Performance Standards with commentary are attached as Appendix D.

I have introduced the NCSC Trial Court Performance Standards to GCC staff, SCRC staff, chief judges and judges' assistants in Mongolia,[24] and they have agreed that with a few small modifications those standards could be used here in the Mongolia Court System. Based on that feedback, I recommend that the supreme court and GCC formally adopt a version of the NCSC Trial Court Performance Standards to measure nationwide court performance.[25]

There are 22 trial court performance standards. Although ultimately the Mongolia Court System leadership needs information about all of those standards, it could begin by choosing a few of the most important measures and gathering information on those. The goal is to create a system that uses, on the one hand, information that is already collected or can be collected

[22] Experiences in other countries have suggested that the public often has an unrealistically poor opinion of the court's performance; to the extent that is true here in Mongolia, it is even more important for the court to supply positive information about its performance.

[23] In addition, World Bank and other NGOs have done some excellent thinking about how to measure the success of judicial reform programs worldwide. The ideas they have developed so far are remarkably consistent with the principles and values underlying performance standards adopted by courts in developed countries. See, for example, *World Bank Law and Justice Institutions Performance Measures Topic Brief*, at www.worldbank.org. See also, Hammergrin, L., *Diagnosing Judicial Performance: Toward a Tool to Help Guide Judicial Reform Programs* (Draft Working Paper Prepared for Transparency International)(available from World Bank web site).

[24] I conducted two, three-hour workshops on the Trial Court Performance Standards at which participants explored each of the five areas and the 22 indicators. In the second workshop, the chief judges worked through three examples of how the standards might be used to measure the performance of their courts in the performance area of *Timeliness*.

[25] The performance standards and accompanying commentary have now been translated into Mongolian and are available from the Mongolia Judicial Reform Program.

inexpensively, and on the other hand, information that is relevant, timely and valid. Below are some suggestions for the court could use information it already has, and some limited additional information, to create a nationwide performance evaluation program.

The court evaluation program should first build on the information collected about individual judges' performances. The statistical case processing information, the attorney surveys and questionnaires, the comments from the public, and the court observations taken together would give court leaders an idea of how the trial courts were performing in several of the performance areas. To the extent that similar information could be gathered about appellate judges, appellate cases, and supreme court justices, court leaders would have a more complete idea of the performance of the court system.

Next, the program should formally incorporate the results of the public opinion surveys commissioned by the JRP. Finally, to round out the picture, additional information would be needed. The necessary additional information is described below.

B. Gather Information in the Five Trial Court Performance Areas

The five performance areas are access to justice, timeliness, fairness, independence and accountability, and public trust and confidence. Each is discussed below.

1. *Access to Justice*

   Access to justice is a goal that embodies several different ideas—physical access to court hearings, courthouse safety and security, effective participation in court processes, courteous treatment of court users, and affordable costs. Information about physical access to court hearings and about courthouse facilities already are being evaluated by the court observation program.

   a) Effective participation in the legal process. This item could indirectly be measured by the percentage of parties who are represented by lawyers at one or more hearings. This information is tracked by the court observation program; however, it could be more reliably evaluated if it were tracked by the Judge 2005 software. If it is not tracked by the Judge 2005 software, the software should be modified so that it can be tracked. Knowing how many court users have lawyers is extremely useful information, because people who do not have lawyers typically are not as effective as those who do.
   b) Courtesy and respectfulness of judges' behavior. When judges do not treat court users with courtesy and respect, people are discouraged from using the courts. This item would be measured in the attorney surveys (whether the judge displays courtesy and respect in court), and in the court observation reports.
   c) Courtesy and responsiveness of court staff. If court employees are not courteous and responsive to court users, the public is discouraged from using the courts. A relatively easy and inexpensive way to measure parties' treatment by court staff and judges is to create a short (one-page) survey to be given to all the individuals who use the court on a typical day.[26] The Mongolia Judicial Reform Project has an example of such a survey developed in the United States that could be adapted for Mongolian courts. The JRP also has details about how to administer the survey and analyze the results. The SCRC could analyze the survey data.
   d) Affordability of the justice system. Information about this measure is compiled in the nationwide public opinion surveys conducted by JRP.

[26] Information on this item also is available from the nationwide public opinion survey; however, it is important to get the views of people who are using the court.

2. *Timeliness*
   This standard includes the ideas of timely case processing, compliance with schedules, and prompt implementation of law and procedure. Timeliness of case processing can be measured in four ways: time to disposition, clearance rate, age of pending caseload and certainty of trial dates. Each of these is discussed in Appendix E.

3. *Equality, Fairness & Integrity*
   This performance standard includes the ideas of a fair and reliable judicial process, fairness of court decisions and actions, clarity of judgments and sentences, responsibility for enforcement, and production and preservation of records.

   a) Fairness of the judicial process. This item is measured generally in the nationwide public opinion surveys conducted by JRP. More specific information would be available from the survey of court users that I recommended earlier. The benefit of the court user survey compared to the nationwide survey is that the court user survey is inexpensive, easy to administer, and specifically targets people who are using the courts.
   b) Fairness of court decisions and actions. This is a broad area that can be difficult and expensive to measure. On way to approach this item might be to concentrate on an area which we know needs improvement. The most recent public opinion survey suggested that people perceive courts as being less fair in criminal cases than in civil cases and administrative cases. Since most criminal defendants are convicted, studies of fairness in criminal cases usually focus on sentencing. A statistical analysis of criminal sentencing in trial courts would be a worthwhile exercise for the courts. The criminal sentencing study also should include information about pretrial release, since pretrial release status is directly related to sentence length. Some ideas about how to structure that study are included in my memo on the Supreme Court Research Center.
   c) Clarity. The third idea of this performance area is that court decisions be clear. The usual way to evaluate performance in this area is to review case file documents, a process that can be time consuming and expensive. However, the GCC already has in place a process for inspecting court locations, and it already intends to do some kind of inspection of case files. These inspection visits could, without too much trouble, be revised to gather information relevant to this performance area. In order for the evaluation to be meaningful, I recommend that the GCC include an experienced court judge from a different court on each of its site visit teams.[27] While GCC staff review administrative matters, the trial judge could review a randomly chosen sample of case files from that location.[28]

      The inspection guidance document currently used by GCC would be more useful if it were shorter and easier to use. To assess all the items listed in a meaningful way for every court would be expensive and time consuming, and the resulting report would be so long that few would read it. Instead, GCC should develop a standard checklist for the review. Checklists are easy to complete, they display the information in a format that is easy to understand, and they ensure uniformity. The checklist should not be more than a few pages long. It should contain only those items that are most important to review (a committee of trial and appellate judges should create the list of items to be reviewed).[29] Some examples of appropriate questions are included in Appendix F.

[27] If the judge is an appellate judge, he should be from a different aimag (and not the supreme court), so as to avoid the appearance of undue influence.
[28] Alternatively, GCC could hire a retired trial court judge or experienced litigation attorney to work in UB and to go with the GCC court inspection teams
[29] The on-site review should not address information that can be obtained from the electronic case management system. Rather, it should focus on items that are not recorded in the system.

d) Production and preservation of records. GCC staff already collect information about this item during the court inspection visits. However, as discussed above, the inspection guidance document could be improved if it were streamlined and reformatted into a checklist or short form that contains the most important items, is easy to complete, and is easy to understand when it is completed. Examples about items to examine are available from the JRP.

4. *Independence and Accountability*

This performance area includes five ideas: independence and comity, accountability for public resources, personnel practices and decisions, public education and response to change. The GCC and Supreme Court already have recognized the importance of independence and (in the category of accountability for public resources) have undertaken workload studies. In addition, the court has initiatives in the area of public and media education, the effectiveness of which it measures in its public opinion survey.

a) Personnel practices. Fair employment practices create committed and loyal employees, and loyal employees have a positive impact on a court's performance. I recommend that GCC staff survey court employee opinion on whether they believe they have the materials, motivation and direction to do quality work. GCC should administer an annual opinion survey to all employees. [30] The survey results could be compiled by SCRC staff and analyzed by GCC staff. The results will show areas in which the court is doing well, and may also reveal areas where improvement is needed. Upon review of the results, court leaders should communicate with the employees what actions it will take to address any problem areas identified.

b) Cost per case. Cost per case is the average amount of money it takes to process a particular type of case. This is important information for court management and policy makers, and it is an important expression of accountability. If court leaders know how much money it costs to process a particular type of case (for example, a serious criminal case), the court can request additional funds when those types of case filings increase. Information about how to calculate the cost per case is available in Mongolian from the Judicial Reform Program.

5. *Public Trust and Confidence*

Performance with regard to this performance area depends, in large part, on the court's performance in the other four performance areas. However, it focuses on peoples' perceptions of how the court is performing in the other areas. So, for example, measurements of this performance area include whether the public perceives that the trial court and the justice it delivers as accessible, whether the public has confidence that the trial court conducts its work expeditiously, fairly and with integrity, and that the public perceives the court as not unduly influenced by other government departments, and that the court is accountable. Information about the court's performance in these areas is contained in the nationwide public opinion surveys conducted by the JRP, so additional measures probably are not necessary at this point.

VI. Conclusion

With technical assistance from JRP, the GCC and Supreme Court could implement these recommendations. To make these changes sustainable over the long term, however, the

[30] An example of a court employee opinion survey developed in the United States and translated into Mongolian is available from the Mongolia Judicial Reform Project Office. I believe that this survey could be adapted for use here in Mongolia, although GCC staff and judges should review it and test it before deciding to use it.

Mongolia Court System needs to develop its own internal court management expertise. Some of this expertise can be gained through experience, but some should be learned through formal training. There is a large and ever-growing body of research and knowledge about principles of court management in the US and Europe, and GCC staff and court administrators should be professionally trained in those principles. Courts in Europe and the US have found that professionally trained court managers improve court operations, and they also could help here in Mongolia.

Appendix A:

SCRC Best Judge and Best Court Competition Form

Measurement Items of Trial Court Judge Performance

1. Report on disposed cases

Single judge decision			Administrative	Panel of judges` decision									Restraint		Probation before due	Overdue			Pending overdue		
		From it		Civil			Criminal			Admin											
Criminal	Civil	Simplified		Lead	Reported	Participated	Lead	Reported	Participated	Lead	Reported	Participated	Arrest	Detain		Civil	Criminal	Admin	Civil	Criminal	Admin
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22

2. Report on court decree, decisions that has been nullified, varied or dismissed from appellate or supervising court

2.1 Criminal case decisions (Appellate court)

	Total	From it				The ground for nullifying or dismissing								Other
		Single	Panel of judges			Not complete or one sided decision during ct hearing or investigation	The summary in the decree is not matching to the reality	Violated the criminal procedure law seriously	Wrong use of criminal law	If violated the ground of taking criminal procedure	If not proven by proof document that he/she is committed to crime	Too light sentence	Extenuated or lower the treatment in prison	
			Lead	Reported	Participated									
Varied														
Dismissed														
Remained same														
Total														

2.2 Criminal case decisions (Supreme court)

		From it				The ground for nullifying or dismissing											
			Panel of judges			Violated the criminal procedure law seriously							Wrong use of criminal law				
	Total	Single	Lead	Reported	Participated	Unlawful panel of judges` decision	Defendant was not in the court hearing which he/she is must.	Did not provide opportunity to have attorney for defendant, suspender and	Betrayed a secret of deliberating room	No signature on court decree	No protocol on court hearing	Violated the article of having citizen representation	Not appropriate law was applied	Used wrong law	Interpreted the law wrong from the meaning	Extenuated or lower the treatment in prison	Other
Varied																	
Dismissed																	
Remained																	
Total																	

2.3 Civil Case Decisions (Appellate court)

		From it				The ground for nullifying or dismissing								
			Panel of judges											
	Total	Single	Lead	Reported	Participated	Used law wrongly	Violated the case processing regulation	Violated the right of party seriously	Resolved the case with unlawful panel of judges.	No judge and/or panel of judges` signature on decision	Case was decided by lawless proof document	Judge decided the case using incomplete proof documents	Parties were reconciled at appellate court (refused from claim)	Other
Varied														
Dismissed														
Remained														
Total														

2.4 Civil Case Decisions (Supreme Court)

	Total	From it				From it							Other
		Single	Panel of judges			Not appropriate law was applied	Used wrong law	Interpreted the law wrongly	Wrong use of law that regulates similar conditions	Violated the case processing regulation			
			Lead	Reported	Participated					Did not have litigants, their attorneys, representatives in the court hearing	Resolved the case with unlawful panel of judges.	Violated the right of party seriously	
Varied													
Dismissed													
Remained													
Total													

3. Productive initiatives and ideas to improve judiciary, organization and structure of court and its implementation.

Number	Initiatives and ideas	Implementation

4. Training, lecture, seminar held at institutions, organizations and NGO`s about use of law and publicize.

Number	Name and address of organizations	Topic	Time

5. Awards and promotions taken

....
....
....

6. Whether he/she got disciplinary action(s) and its reason

Evaluated by
Chief Judge ....
Agreed by Judge ....

Appendix B:

GCC Court Inspection Guidance Document

General guidance to inspect all levels of court administration activities from GCC

One. Purpose

The main purpose of this guidance is to give organizational, methodological, professional support for court administration and to evaluate and summarize activities of court administration and staff through unified criteria in order to create whole court system and public accessibility on court activity by consolidating success, creation and inspecting responsibility, disciplinary of court staff and judges, clearing their mistakes, implementation of GCC decisions and law and regulations related to ensure judicial and judge independence, the strategic plan of court, organization, court administration, and its fulfillment.

Two. Inspection on court administration management and organization

2.1 Fulfillment of order or law for Chief Judge, Court Administration and officer in division, which he/she has to observe and fulfillment of obligation or assignment from upper level officials.
2.2 Strategic and action plan of court, taken action afterward and count on its fulfillment, seriousness of judges discussion, all staff meetings and urgent meetings, actions taken regarding proposed viewpoint or critique.
2.3 Performance of reports of court administration and court hearing, judicial practical study, its quality and result.
2.4 The conformation of order and decrees from head of court administration and chambers to corresponding law and articles.
2.5 The activity of court information and inquiry office.
2.6 The situation and result of cooperation with self-governing body, civil organization, NGO and public organizations.
2.7 Law, article, handbook, methodology and its reform
2.8 Conducting a diary of documents, its arrangement, completeness, registration of claim, request, cases, time things, decisions, organization of sending documents to regarding body.
2.9 The maintenance and use of court account program and putting certain information to database.
2.10 Maintenance of electron techniques, network and its information security procedure, saving and storage.
2.11 Preparation of court hearing, posting and noticing hearing schedule on time to parties and providing equipping of court room and its security.
2.12 The issue of making court hearings` notes on time.
2.13 Transferring all daily log notes to archive, and assembling, standard and security of archive.
2.14 Fulfillment of decree on punishing and rehabilitation of what to do with proof document.
2.15 Whether they writing and sending the writ of execution to litigants on time.
2.16 Actions on searching people, who escaped from court.
2.17 Note list on penalty and sentences, delivery of it to corresponding organizations.
2.18 Delivery of statement, order, and decree to sentence additional sentence or different sentence than detaining to corresponding organizations.
2.19 Delivery of claim that has been declined to receive or returned to the party.
2.20 Preventive measures on labor disciplinary, use of working hours, guard and security of court, technical and natural possibly threat.
2.21 Implemented measures on court staff and judges` social problems and its result.

Three. Inspection on court human resource and ensuring its development

3.1 Court human resource plan, accounting program, information database, research collecting, and its change on time.

3.2 Job description of administration and chamber staff, representatives, evaluation on efficiency contract with administrative staff, and contract of employment with service staff.
3.3 Granting leave for judges and court staff.
3.4 Actions on training, retraining and other actions taken to improve knowledge and specializing.
3.5 Actions on delivering SC interpretation, recommendation, information from Appellate Court on specific cases, to have them analyzed and using those productively for their job.
3.6 Paying of position rank and classification extra to judges and court staff.

Four. Inspection on court budget and financial supply

4.1 Providing conditions for normal court hearing and working conditions for judges and court staff to work.
4.2 The ground and development methodology of planning court budget.
4.3 Observation of law, regulation, rules and standard related to budget and finance.
4.4 Accounting documents and accounting form keeping and its completeness.
4.5 Whether developed an accounting policy, its fulfillment and internal inspection of finance.
4.6 Fixed capital, debt, and payment to be received.
4.7 Keeping inventory, maintenance, storage, wear and tear of fixed capital.
4.8 Keeping inventory, maintenance, storage, and wear of contributions or donations.
4.9 Keeping inventory and expenditure of non-activity revenue /rent, donation/
4.10 Document preparation for required facilitation, techniques and equipment.
4.11 Supporting, aid, promotion, and bonus.

Five. Inspection on disciplinary action and responsibility of judges & staff

5.1 State of following the civil ethics code on court staff and judges, actions taken regarding, result and measures to those who had disciplinary act, actions taken not to repeat by researching its ground.
5.2 Actions taken to redress one's violated rights if the reputation of court, judges and court staff is defamed without any ground or infringed their liberty and right.
5.3 Actions directed to the transparency and openness of court activities to public.

Six. Inspection duration

6.1 The inspection of court administration and divisions should be made once in two years within 5 days.
6.2 Not periodic inspections can be made through head of GCC`s decree if necessary.

Seven. Draw a performance of inspection and actions afterward

7.1 The performance of inspection should be reported with conclusion on success, lack during inspection as well as recommendation with necessary documents enclosed.
7.2 The performance of inspection shall be introduced to regarding court staff and if necessary reported to other courts.
7.3 This introduction will consist of following actions after inspection, including shortcomings as a result of careless and irresponsible apply to work of judges and court staff, legal responsibilities to ones, who violated ethics code, and proposals to award ones, who had been productive or initiative with good effort.
7.4 The performance of inspection should be introduced to GCC.

Appendix C

Example of Attorney Survey on Judicial Performance
(From Alaska Judicial Council)

The Alaska judge evaluation survey is mailed out to all attorneys licensed to practice law in the state. The survey booklet contains the names of all judges who are being evaluated during that year. The instructions tell the attorneys not to rate a judge unless they have enough experience with that judge's work. Then the attorneys are asked to mark down whether they have direct professional experience with that judge, and whether this experience is "substantial and recent," "moderate," or "limited." Attorneys who do not have direct professional experience with the judge may fill out the form, but their answers are not counted.

Each attorney completing the survey is asked to give some information about his type of practice and level of experience. Attorneys are asked to mark down:

- whether they work in private practice, work for the government, are a judge, or work for an NGO;
- how long they have been practicing law (less than 5 years, 6-10 years, or more than 10 years);
- their gender;
- the types of cases that they most often handle (prosecution, mainly criminal, mainly civil, mixed criminal and civil, other); and
- the location where they do most of their work (which aimag).

The reason these questions are asked is because attorneys' opinions about judges' performance often vary based on what type of work they do, how experienced they are, where they work and sometimes, based on their gender. So for example, the survey may show that prosecutors give very high marks to a judge who is rated very poorly by defense attorneys—this judge then may wish to consider whether his treatment of criminal defendants is fair.

Each attorney who has direct professional experience with the judge is asked to rate the judge using the following scale:

1. Poor: Seldom meets minimum standards of performance for this court
2. Deficient: Does not always met minimum standards of performance for this court
3. Acceptable: Meets minimum standards of performance for this court
4. Good: Often exceeds minimum standards of performance for this court
5. Excellent: Consistently exceeds minimum standards of performance for this court
9. Insufficient knowledge: Insufficient knowledge to rate this judge or justice on this criteria.

The attorneys use the above scale to rate each judge's performance on the following sixteen criteria:

1. Legal and factual analysis
2. Knowledge of substantive law
3. Knowledge of evidence and procedural law
4. Equal treatment of all parties
5. Sense of basic fairness and justice
6. Conduct free from impropriety or the appearance of impropriety
7. Makes decisions without regard to possible public criticism
8. Courtesy, freedom from arrogance

9. Human understanding and compassion
10. Reasonable promptness in making decisions
11. Willingness to work diligently; preparation for hearings
12. Ability to control courtroom
13. Ability to settle cases
14. Consideration of all relevant factors in criminal sentencing
15. Talent and ability for cases involving families and children
16. Overall evaluation of this judge

In addition, attorneys are asked to write any other comments about the judge on blank lines at the bottom of every page.

Preserving Anonymity. After completing the survey, the attorney seals it in an envelope marked "confidential." The attorney then puts the "confidential" envelope into a larger mailing envelope, signs his name to this outside mailing envelope, and mails it. When the packet arrives in the mail, a clerk checks off the attorneys' name on a master list, and discards the outer mailing envelope without opening the confidential envelope. The clerk then sends the confidential envelope (which does not have the attorney's name on it) to another clerk, who enters the data from the survey. In this way, the court can ensure that an attorney completes only one survey while also ensuring that the attorney's identity cannot be matched to his survey responses.

Appendix D
Trial Court Performance Standards
with Commentary for the Mongolia Court System

1. Access to Justice

Trial courts should be open and accessible. Location, physical structure, procedures, and the courtesy of court employees all affect accessibility. The intent of the first two guidelines is to promote transparency and to make the courts accessible. Guideline 1.1 requires the trial court to conduct its business openly unless otherwise required by law. Guideline 1.2 requires the trial court to make its facilities safe, accessible and convenient for members of the public. Guideline 1.3 requires the court to provide opportunities for all people who appear before the court to participate effectively, including people who do not speak Mongolian and people with handicaps. Guideline 1.4 urges that all court employees treat members of the public and each other with respect, courtesy, and dignity. Respectful behavior promotes access to justice, and it also improves citizens' trust and confidence in the courts. Guideline 1.5 recognizes financial and procedural barriers to access to justice. It requires that the fees imposed and procedures established by the court be fair and reasonable. The standard also requires that the court's records be preserved, and that public records be made available at a reasonable cost.

1.1 Public Proceedings

The trial court conducts its proceedings and other public business openly.

Commentary. This guideline requires the trial court to conduct hearings openly that are public by law or custom. The court must specify which proceedings will not be open, and ensure that the law authorizes closing the hearing. Further, the court must ensure that its proceedings are accessible and audible to all participants in the courtroom.

1.2 Safety, Accessibility, and Convenience

The court facilities are safe, accessiblle, and convenient to use.

Commentary. This guideline urges a trial court to be concerned about the centrality of its location in the community it serves, the availability of public transportation, the degree to which the design of the building provides a secure setting, and whether visitors to the court can find their way (for example, signs that guide visitors to important locations). Because the attitudes and behavior of court employees can make the courthouse safe, more accessible, and more convenient to use, this guideline also refers to the behavior of court employees.

1.3 Effective Participation

The trial court gives all who appear before it the opportunity to participate effectively, without undue hardship or inconvenience.

Commentary. This guideline focuses on how a trial court accommodates all participants in its proceedings, including witnesses, parties, defendants and victims. It also requires trial courts to make accommodations for people who do not speak Mongolian, people who are mentally impaired, and people who are physically handicapped, because these people have the right to use the courts too.

1.4 Courtesy, Responsiveness and Respect

Judges and other trial court personnel are courteous and responsive to the public, and accord respect to all with whom they come in contact.

Commentary. The intent of this guideline is to make the justice system more accommodating and less intimidating. Without showing favoritism, judges and other court employees should assist members of the public, especially those who are not familiar with court procedures. Judges and other court employees should reflect by their conduct thelaw's respect for the dignity and value of all individuals who come before the court, even individuals who are convicted of crimes.

1.5 Affordable Costs of Access

The costs of access to trial court proceedings and records—whether measured in terms of money, time, or the procedures that must be followed—are reasonble, fair,and affordable.

Commentary. Although the courts cannot control all the fees that are charged to litigants and others who use the court, trial courts should try to reduce their own fees where possible. Also, the trial court should simplify its procedures and reduce paperwork where possible. As a general rule, the trial court should use uncomplicated procedures to handle simple cases, in order to reduce costs.

2. Expedition and Timeliness

A trial court should handle its work in a timely and expeditious manner—one that does not cause delay. Unnecessary delay causes injustice and hardship. It is the main cause of the public's lack of trust and confidence in the court system.

2.1 Case Processing

The trial court establishes and complies with recognized guidelines for timely case processing while, at the same time, keeping current with its incoming caseload.

Commentary. Timely case processing is the amount of time the court requires to resolve a case, including the time reasonably required for the parties to file pleadings. As much as possible, the court must control the amount of time from the beginning of the case until the end. This idea includes the requirement that the trial court hold hearings when they are scheduled, and that the court make its decisions in a timely manner as required by law or by GCC policy. The guideline also urges courts to manage their caseloads to avoid overdue decisions.

2.2 Compliance with Schedules

The trial court disburses funds promptly, provides reports and information according to required schedules, and responds to requests for information and other services on an established schedule that assures their effective use.

Commentary. As public institutions, the trial courts have a responsibility to provide information and services to their customers. This guideline reuires that information be provided in a timely manner. Services provided may include appointing lawyers for accused in criminal cases, and providing interpreters for some parties or witnesses.

In addition to completing assigned cases within the deadline established by law or court decree, an effective trial court establishes and and complies with schedules and guidelines for activities not directly related to case management. The court also meets reasonable time schedules set by other government offices for filing reports or providing other information about court activity.

Timely disbursement of funds held by the court is important. Fines, fees, and restitution are categories of moneys that pass through the courts to their lawful recipients. In addition, the courts oversee disbursement of funds from their budgets. These funds go to othe branches of government, civil representatives, or witnesses. For some people, delayed receipt of funds may be merely an inconvenience; however, for others it may create personal hardships. Thus, timely performance is crucial.

2.3 Prompt Implementation of Law and Procedure

The trial court promptly implements changes in law and procedure.

Commentary. Both the law and procedures affecting court operations can change. Changes in statutes, supreme court interpretations, and court decrees affect what is done in the courts, how it is done, and those who conduct business in the courts. Trial courts must ensure that mandated changes are implemented promptly and correctly. Standard 2.3 requires that the court make its

own employees aware of the changes, and also notify court users of changes to the extent practicable. Changes mandated by law must be integrated into court operations as they become effective. Failure to do so leaves the court open to criticism for not obeying the law.

3. Equality, Fairness, and Integrity

A trial court should provide due process and equal protection of the law to all who have business before it, as guaranteed by the Mongolian Constitution. These are fundamental constitutional principles.

Integrity should characterize the nature and substance of trial court procedures and decisions, and the consequences of those decisions. The decisions and actions of a trial court should reflect the duties and obligations imposed on the court by law, court rule, and ethical standards.

Integrity refers not only to the lawfulness of court actions (for example, lawful bail decisions, appointment of lawyers, and keeping a record of legal proceedings), but also to the results or consequences of its orders. A trial court's performance is diminished when, for example, orders for payment of fines or restitution are routinely ignored.

3.1 Fair and Reliable Judicial Process
Trial court procedures faithfully adhere to relevant laws, procedural rules, andestablished policies
Commentary. This performance area draws on the concept of due process, including notice and a fair opportunity to be informed and heard at all stages of the judicial process. Trial courts should respect the right to legal counsel, impartial hearings, and the adversarial principle. The court must adhere to constitutuional and statuory law, court decrees and other authoritative policies and regulations. Adherence to established law and procedures helps the court achieve predictability, reliability, and integrity. This guideline also overlaps with standards in the areas of Access to Justice and Public Trust and confidence, which emphasize that justice should be "perceived to have been done" by those who are directly involved.

3.2 Juries
Jury lists are representative of the jurisdiction from which they are drawn.
Commentary. This guideline relates to juries, which are not used in the Mongolian Court System. The guideline requres that jurors be representative of the total adult population of the trial court's area. This principle ensures that all individuals qualified to serve on a jury should have equal opportunities to participate, and all partiesa nd the public should be confident that jurors are drawn from a representative pool. The Mongolian Court System might wish to develop some guidelines about use of civil representatives.

3.3 Court Decisions and Actions
Trial courts give individual attention to cases, deciding them without undue disparity among like cases and upon legally relevant factors.
Commentary. This guidleine requires that litigants receive individual attention without variation due to judge assignment or other legally irrelevant factors. Persons similarly situation should receive similar treatment. The standard further requires that court decisions and actions be in propoer proportion to the nature and seriousness of the case, and to the characteristics of the parties. The outcome of a case should not depend on which judge presides over a hearing or trial. The guideline refers to all decisions, inclugin sentences in criminal cases, conditions of bail, and appointment of legal counsel.

3.4 Clarity

The trial court renders decisions that unambiguously address the issues presented to it and clearly indicate how compliance can be achieved.

Commentary. An order or decision that is not clearly communicated poses problems both for the parties and for appellate judges who may be called upon to review it. This guideline requres that it be clear how compliance with court orders and judgments is to be achieved. The outcome for each charge in a criminal complaint, for example, should be easy to see, and terms of punishment and sentence should be clear. Orders should be written in terms that are easy to understand and capable of being monitored. An order that requies a menimum payment per month on a restittuion obligation, for example, is clearer and more enforceable than an order that establishes an obligation but sets no deadline for completion.

3.5 Responsibility for Enforcement

The trial court takes appropriate responsibility for the enforcement of its orders.

Commentary. Courts should ensure, as much as possible, that its orders are enforced. Parties who do not comply with court decisions and orders may lack respect or confidence in the courts.

Obviously, a trial court cannot be responsible for enforcing all of its decisions and orders. Many judgments are enforced by the Court Decision Enforcement Agency. However, courts should be aware that patterns of systematic failures to pay judgments are contrary to the purpose of the courts, undermine the rule of law, and diminish public trust and confidence in the courts. Courts can and should monitor and enforce proper procedures and interim orders while cases are pending.

3.6 Production and Preservation of Records

Records of all relevant court decisions and actions are accurate and properly preserved.

Commentary. Equality, fairness and integrity in trial corts depend on the accuracy and availability of records. This guideline requires that trial courts preferve an accurate record of their proceings, decisions, orders, and judgments. Becauase records may affect the rights and duties of individuals for many years, they must be protected and preserved over time. Records systems must ensure that the location of case records is always known, whether the case is active, inactive or archived.

4. Independence and Accountability

The five guidelines in the performance area of Independence and Accountabilty combine the principles of separation of powers and judicial independence with the need for comity and public accountability. In other words, the judiciary must assert and maintain its distinctiveness as a branch of government separate from the executive and legislative branches, while at the same time demonstrating respect for those coequal partners in government. Courts must establish and support effective leadership, operate effectively, develop plans of action, obtain resources necessary to implement those plans, measure their performance accurately, and account publicly for their performance.

4.1 Independence and Comity

The trial court maintains its institutional integrity and observes the principle of comity in its governmental relations.

Commentary. Effective trial courts resist being absorbed or managed by the other branches of government. A trial court compromises its independence, for example, when it merely ratifies decisions made by others, such as prosecutors, without independently evaluating the evidence. Effective court management enhances independent decisionmaking by trial judges.

The court must achieve its independent status, however, without damaging the reciprocal relationships that it maintains iwth others. Trial courts are necessarily dependent upon the cooperation of other components of the justice system over which they have little or no direct authority. For example, police and prosecutors perform both a court-related function and a law enforcement function. The trial court must establish boundaries and effective relationships between itself and other segments of the justice system.

4.2 Accountability for Public Resources

The trial court responsibly seeks, uses, and accounts for its public resources.

Commentary. Effective court management requires sufficient resources to do justice and to keep costs affordable. This guideline requires that a trial court responsibly seek the resources needed to meet its judicial responsibilities, use those resources wisely (even if they are inadequate), and account for their use.

Trial courts must use available resources wisely to address muliple and conflicting demands. Resource allocation to cases, categories of cases, and case porcessing are at the heart of trial court management. Assignment of judges and allocation of other resources be consistent with established case processing goals and priorities.

4.3 Personnel Practices and Decisions

The trial court uses fair employment practices.

Commentary.The trial court stands as an important and visible symbol of government. Equal treatment of all persons before the law is essential to the concept of justice. Extended to the court's own employees, this concept requires every trial court to follow the law in its personnel practices and decisions.

Fairness in the recruitment, compensation, supervision, and training of court personnel helps ensure judicial independence, accountability, and organizational competence. Court personnel practices and decisions should establish the highest standards of competence among its employees.

4.4 Public Education

The trial court informs the community about its programs.

Commentary. Most members of the public do not have direct contact with the courts. Information about the courts comes from sources such as the media, lawyers, political officholders and employees of other justice system offices. Public opinion polls indicate that the public has a poor opinion about courts. This guideline requires trial courts to inform and educate the public, in order to help the public understand and appreciate the administration of justice.

4.5 Response to Change

The trial court anticpates new conditions and emergent events and adjusts its operations as necessary.

Effective trial courts are responsive to emerging public issues such as human rights, drug abuse, child abuse, domestic violence, and AIDS. This guideline requires trial courts to recognize and respond appropriately to such public issues. A trial court that moves deliberately in response to emerging issues is a stabilizing force in society and acts consistently with its role of maintaining the rule of law.

5. Public Trust and Confidence

Compliance with the law depends, to some degree, on public respect for the court. Ideally, public trust and confidence in trial courts should come from the direct experience of citizens

with the courts. Unfortunately, there is no guarantee that public perceptions reflect actual court performance.

All members of the public should have trust and confidence in the courts. At the most general level, the local community of "general public"—the vast majority of citizens and taxpayers who seldom experience the courts directly. A second group is a community's opinion leaders (for example, the local newspaper editor, reporters who write stories about the courts, the police chief, members of Parliament and local politicians, and researchers). A third group includes citizens who appear before the court as attorneys, parties or witnesses, or who attend proceedings as family friends or observors. The last group consists of judges, other employees of the court system, citizen representatives, and lawyers who may have an "inside" perspective on how well the court is performing. The trust and confidence of alll these groups is essential to tiral courts.

The central question posed by the three guidelines in this final area is whether trial court performance, in accordance with the other four performance areas, actually instills public trust and confidence. Ideally, a court that follows these guidelines is recognized by the public as an effective court. However, if public perception is distorted and the public does not understand the court, good performance may need to be buttressed with educational programs, more transparency, and better public information.

5.1 Accessibility

The public perceives the trial court and the justice it delivers as accessible.

Commentary. The five elements in the performance area of Access to Justice require the removal of barriers that interfere with access to trial court services. This guideline focuses on the perdeptions of different public groups about court accessability. A trial court should not only be accessible to those who need its services but also be percevied as accessible.

5.2 Expeditious, Fair and Reliable Court Functions

The public has trust and confidence that basic trial court functions are conducted expeditiously and fairly, and that court decisions have integrity.

Commentary. As part of effective court performance, this guideline requires a trial court to give the public trust and confidence that basic court functions are performed in accordance with the standards in the areas of Expedition and Timeliness and Equality, Fairness and Integrity.

5.3Judicial Independence and Accountability

The public perceives the trial court as independent, not unduly influenced by other components of government, and accountable.

Commentary. The policies and procedures of the trial court, and the way in which trial courts interact with other branches of government, affect the perception of the court as an independent and distinct branch of government. A trial court that establishes and respects its role as part of an independent branch of governemnt and works to define its relationships with other branches of government presents a favorable public image.

Appendix E

Ideas for Judge and Court Performance Evaluations

1. *Legal Ability*: Judge's legal and factual analysis, knowledge of substantive law, and knowledge of evidence and procedural law is acceptable.
2. *Fairness*: Judge treats all parties equally regardless of race, gender, and income level, and displays a sense of basic fairness and justice.
3. *Integrity*: Judge's actions are free from impropriety or the appearance of impropriety, and judge makes decisions without regard to possible public criticism.
4. *Temperament*: Judge acts with patience and self-control, is courteous, displays conduct free from arrogance, and treats people with dignity and respect.
5. *Administrative Ability*: Judge displays willingness to work diligently, prepares for hearings, is punctual, displays ability to control the courtroom.
6. *Communication skills*. Judge displays good listening skills and is logical and clear in written and oral communication.
7. *Reversal rate*. The SCRC currently measures how many of a judge's cases were varied on appeal; however, there is no standard for what amount is acceptable. If this is something that the court wishes to measure, it should say what is acceptable performance, for example, "fewer than X% of cases varied on appeal because the judge violated the criminal procedure law seriously."

   If the court adopts a standard for the percentage of cases varied on appeal, it also should adopt a standard for what percentage of each judge's cases are appealed. I could imagine a situation in which the parties appeal only a small percentage of a judge's decisions, but the judge is reversed relatively frequently on appeal. That judge should get credit for the fact that most of the time the parties trust his decisions and do not appeal. On the other hand, there might be a situation in which the parties routinely file appeals because they do not trust the judge or understand his decisions, even though the appellate court affirms the decisions most of the time.
8. *Time to disposition*. Time to disposition is a court management statistic that refers to the percentage of cases disposed or otherwise resolved within established time frames. It tells how long it takes a court to process cases. These standards are very important, because they show whether the judge is completing his work timely. Time to disposition standards are expressed as follows (the numbers are just an example):

   75% of less serious criminal cases should be disposed within 15 days of charges being filed in court, and 100% should be disposed within 30 days.

   Time to disposition standards like this one should be adopted (at a minimum) for the three main types of cases (civil, criminal and administrative), because each type of case has different requirements in terms of legal time lines and amount of work required.[31] The case flow management working group is working on a project to estimate optimal time standards for completing each event and stage of case processing. This assessment should form the basis of any project to develop time to disposition standards.

   It is important to be realistic about time to disposition standards. Adopting timelines that are too short will encourage judges to dispose of their cases quickly, possibly at the expense of quality decision making and individual attention. Thus, the Supreme Court might consider slightly different time lines for judges in courts with particularly high or low workloads. Also, it is well known by court managers that the judge's ability to dispose of a case depends in large part on the preparation and readiness of the parties and the lawyers in that case. That

[31] Other examples of time to disposition standards: 90% of all divorce cases should be decided within 2 months of filing, and 100% within 3 months of filing; or 75% of administrative cases should be decided within 30 days of filing (capital city) or 75% within 40 days (aimag); 85% within 60 days (capital city) or 85% within 70 days (aimag); 100% within 75 days (capital city) or 100% within 85 days (aimag). And so forth.

is why it is important to get the input of experienced lawyers when deciding on time to disposition standards. However, the Supreme Court should not make the time lines so long that there is no incentive for judges to try to improve their timeliness. Thus, setting time to disposition standards requires a difficult balancing of the deadlines set in law, lawyers' reasonable expectations, judges' workloads, and the public's reasonable expectation that their cases will be decided without delay.

9. *Clearance Rate.* Clearance rate is a court management statistic defined as the number of outgoing cases as a percentage of the number of incoming cases. It measures whether the judge is keeping up with his incoming caseload. The number of cases the judge decided that year is divided by the number of new filings received that year. The clearance rate should be 100% or higher.[32] Detailed information about how to calculate the clearance rate is available from the JRP.
10. *Age of Pending Caseload*. The age of active pending caseload is a court management term that means the age of the active cases that are pending before the judge. It is measured as the number of days from filing until the time of measurement. Performance standards for age of pending caseload can be expressed as the percentage of cases that should be pending after a certain number of days. So, for example, the court might adopt the goal of having no more than 10% of all less serious criminal cases pending within 15 days after filing, and no more than 2% pending longer than 30 days. Detailed information about how to calculate the age of pending caseload is available from the JRP.
11. *Certainty of trial dates*. It is important to know how often trials and hearings are postponed or cancelled. Some information about this is contained in the court observation reports. However, this measure is so important that I recommend that SCRC collect it on an ongoing basis. If hearing dates and trials are entered in the Judge 2005 software program (as I believe they are), a standard report could be written that would show the average number of times a hearing is postponed, or the average number of postponed hearings per case. The Supreme Court should adopt performance standards with respect to the number of postponed hearings that is acceptable.[33]

[32] The clearance rate is greater than 100% if the court disposes of more cases than were filed that year. So if the court received 125 new claims in 2005 but disposed of 130 cases during 2005, the clearance rate would be greater than 100%.

[33] By way of background, most experts in court management agree that a policy of no continuances except under exceptional circumstances is the best way to manage a caseload.

EXAMPLE Individual Performance Evaluation Summary for Judge Ts. Bold Performance Period: Jan. 1, 2003 – Dec. 31, 2005			
Source of Information	**Item**	**Judge Bold's Score**	**Performance Goal**
Attorney survey	Legal Ability	X.X	3.0 or higher
Attorney survey	Fairness	X.X	3.0 or higher
Attorney survey	Integrity	X.X	3.0 or higher
Attorney survey	Temperament	X.X	3.0 or higher
Attorney survey	Administrative Ability	X.X	3.0 or higher
SCRC analysis	Percent of cases appealed	XX%	XX% or lower
SCRC analysis	Percent of cases affirmed on appeal	XX%	XX% or higher
SCRC analysis	Clearance rate	XX%	100%
SCRC analysis	Time to disposition		
	Time to disposition: Serious criminal cases	XX% within 15 days; XX% within 30 days, etc.	50% within 15 days; 75% within 30 days; 100% within 60 days
	Time to disposition: Less serious criminal cases	XX% within 15 days; XX% within 30 days	75% within 15 days; 100% within 30 days
	Time to disposition: Cases related to marriage	XX% within 60 days; XX% within 90 days	60% within 60 days; 100% within 90 days
	Time to disposition: Civil cases not related to marriage	XX% within 60 days; XX% within 90 days	50% within 60 days; 100% within 90 days
	Time to disposition: Administrative cases	XX% within 30 days	75% within 30 days (capital city) or 75% within 40 days (aimag); 85% within 60 days (capital city) or 85% within 70 days (aimag); 100% within 75 days (capital city) or 100% within 85 days (aimag).
	Time to disposition: civil cases of small financial value	XX% within 30 days; XX% within 60 days, etc.	60% within 30 days, 80% within 60 days, 100% within 90 days
SCRC	Age of Pending Caseload	X% of criminal cases pending more than 15 days after filing; X% of criminal cases pending more than 30 days after filing	No more than X% of criminal cases pending 15 days after filing; no more than X% of criminal cases pending 30 days after filing.
Court Observer Report	Temperament (treats parties, lawyers, etc. with respect in court), punctuality, attendance, postponements of sessions; clear and logical oral communication in court		

Appendix F: Examples of How to Measure Clarity

Did the judge use the use the most current version of the law?

Clarity of criminal judgment and sentence: Is the basis for the finding of guilt (or innocence) clear, is the sentence clear and understandable, and are the reasons for the sentence included in the decision?, whether the judge give reasons on the record for his decisions about measures of restraint; whether the judge made findings required by Article 80 of the Criminal Procedure Code; whether defense counsel was assigned and participated in the case; whether the chair explained the parties' rights as required by Article 260 of the Criminal Procedure Code; reasons for any continuances; how well did the written judgment follow the format explained in the new manual on how to write decisions that has been developed by GTZ and JRP.

Clarity of civil judgments: Does the decision clearly state the issues raised by the parties, the issues addressed by the court, the reasons for the findings, and is it clear how the parties can comply with the decision?; how well did the written judgment follow the format explained in the new manual on how to write decisions that has been developed by GTZ and JRP.

Completeness of final orders: Did the judge include all required provisions in the final order? (For example, in a debt case did the judge include the date by which the money must be paid); how well did the written judgment follow the format explained in the new manual on how to write decisions that has been developed by GTZ and JRP. For this measure, some checklists for the most common types of cases might need to be developed.

Reviewer's comments on the

RULES OF THE JUDICIAL DISCIPLINARY COMMITTEE

By Jack Marshall, President, ProEthics LTD.

The Committee Rules are reasonable and procedurally sound. There are two areas where I believe some modifications are warranted: section 2.4, involving the recusal of committee members, and sections 4.14 and 4.15, covering the resulting consequences of future conduct on the part of a judge who has been disciplined.

Section 2.4

Discussion: Currently the Section reads as follows:

2.4 The Head of the Disciplinary Committee shall distribute to the Committee members the cases for investigation having considered presence of the following reasons contradicting to the review of the complaints and requests by certain members of the Committee:

1) if the Committee member is a relative of the judge mentioned in the compliant or of the complainant; or if the members appointed for investigation are relatives;

2) if the Committee member has personal relations with the judge mentioned in the compliant or of the complainant; or if there are reasonable questions about the objectivity of a member.

Presumably, this means that a member who is related to, has personal relations with, or has reason to be biased for or against either the complainant or the judge complained against will not be permitted to participate in a particular case.

This leaves unclear how the Head is to know about such relationships. There needs to be a preliminary step, in which each member of the committee is asked to disclose any and all relationships, prior opinions, and encounters with either a complainant or accused judge. Moreover, this crucial question should be answered by each committee member as well as by the Head of the Disciplinary Committee:

"Could the participation of this committee member in this proceeding appear to a reasonable observer to be improper in any way, or to compromise the integrity of the final decision rendered, whatever it may be?"

Section 4.14 and 4.15

Discussion: The Sections read as follows:

4.14 If the judge is not imposed another disciplinary sanction within a year from date of the Committee penalty, he/ she shall be considered as not having a disciplinary sanction.

4.15 If the judge is imposed another disciplinary sanction within a year from the date of the penalty, the Disciplinary Committee shall submit a proposal on his/her dismissal to the General Council of Courts.

While the principle of recognizing and rewarding good conduct after a sanction is fair and sound, there needs to be some recognition of the seriousness of the offense involved. While a year of good behavior might be sufficient to warrant expunging a sanction for undignified conduct, it might not be sufficient to justify forgiving an instance of favoritism or yielding to influence, failing to reveal a relationship with a litigant, or dishonesty. A year of good behavior is reasonable for a relatively minor offense, but greater offenses should require correspondingly longer periods without violations, up to five years or more.

The same principle should apply to section 4.15. Two minor infractions within a year should not trigger dismissal proceedings, but should trigger a more serious sanction than the first, a longer probationary period for the second infraction (18 months or two years), and a warning that a third violation will trigger a dismissal inquiry.

Reviewer's comments on the

PROPOSAL FOR AMENDMENTS TO THE CODE OF JUDICIAL ETHICS OF MONGOLIA

(December 24, 2004)

By Jack Marshall, President, ProEthics,LTD.

Proposal 1. The term "ethics" is not defined as "judicial ethics" in the code. "Ethics" is regarded as a code of professional conduct or a code of fair and impartial conduct, and is explained similarly in the prosecutor's, advocate's and notary's codes of ethics. So, "judicial ethics" shall be defined as follows in the code: "Judge shall be fair, shall obey the professional ethics and personal morals, shall not misbehave and shall work only under the Constitution of Mongolia and other laws passed in conformity with it".

Proposal 2. The following formulations shall be added to the definition of the main purpose of the Code of Judicial Ethics:

a) judge shall not to be influenced by others,
b) judge shall treat others properly,
c) judge shall maintain the reputation and integrity of the judiciary and judge.

Recommendations:

- I suggest that it would be more useful to use values-based definition of "judicial ethics" than the proposal suggests, using that the actual provisions of the codes to define the required conduct and prohibited acts and behavior that will embody the values that the definition describes. Thus the addition a) suggested by proposal #2 is too specific for this function. The definition of the purpose of the code should describe the general values that the conduct dictated by the Code will embody. The specifics, such as "a judge should not be influenced by others," belong in the Code itself. Addition b) in the proposal (at least the English translation of it) is too vague to be useful. What is "properly"? Only c) is the kind of statement of general principle that I believe should be in the definition section.
- I believe it is a mistake for a professional Code of Ethics to endorse "personal morals." Personal morals may clash with professional ethical obligations as, for example, when a judge is in a position to help someone who has done a great service for a family member in the past, or when a ruling will affect the welfare of a family member or friend. The point of professional codes is that they must take precedence to personal moral. Invoking "personal morals" in a Code can only result in ambiguity and confusion.
- "Shall not misbehave" is, like "treat others properly," too vague to be useful in a definition of ethics.
- I suggest language that resembles the following:

"Judicial ethics are the values, norms of conduct and qualities of performance and demeanor that a judge must adopt and display to ensure a Mongolian judiciary that is honest, fair, dignified, competent, just, and independent, and, just as important, is perceived as being so by the public it serves."

Proposal 3. It is recommended in the survey report that considering the common violations committed by judges in Mongolia, the following terms shall be added to the Code of Judicial Ethics by enriching the code with Mongolian terms and contents (not translation):

1. poor communication skills,
2. establish personal contacts with litigants and participants of court hearings,
3. prone to material and personal influences,
4. careless attitude towards court hearings,
5. bureaucratic,
6. alcohol addict.

Therefore, Clauses 5 and 6 of the Code shall be rephrased to reduce and eliminate the above-mentioned common violations.

Recommendations:

- "Poor communication skills" is covered by Article 8.2, which states that judges must perform at a high professional level. I do not believe that something as basic as communications skills should be specified; if it is, then the omission of other obvious competencies (ability to speak, read, know the law, not behave in a childish or clownish manner, etc.) might be interpreted as a statement that they are not equally important.
- #2, personal contacts, involves *ex parte* communications, which is dealt with in *Proposal 4*. Certainly prohibiting *ex parte* communications is a critical aspect of judicial ethics, and should be added to the Code.
- #3 is broadly covered in the general prohibition against conflicts of interest in Article 7. In this case, more specificity would be helpful as guidance, and a more detailed description of what "material and personal influences" would be is advisable.
- The grounds for mandatory disqualification are listed under Article 49 of the Criminal Procedure Code. However, a Judicial Ethics Code can and should include aspirational standards whereby a judge should remove himself even if the law would permit him to preside over the case. The addition of two general statements to Article 7 would accomplish this:

  7.1. …to disqualify himself or herself from any case in which the judge feels he would not be able to render an unbiased and independent decision.
  7.2. …to disqualify himself or herself from any case in which an objective observer would have reason to question the judge's ability to render an unbiased and independent decision.

  Failure to follow these rules would not be a violation of law, and in the case of 1), it would be difficult to show that a judge continued to preside over a case despite believing that an unbiased and independent decision would be difficult or impossible. Nevertheless, I strongly believe that the Code should emphasize the principle that the threat of punishment should not be the sole reason to obey these rules.
- This section should include a section emphasizing that the code should not be used as a device or pretense for a judge to avoid a controversial, burdensome or unpopular case. Suggested language:

  7.3. A judge should not seek to disqualify himself or herself in order to avoid a burdensome or controversial case.

Reprinted below are relevant excerpts from the recently released ABA draft Model Code, which are useful for comparison purposes. It is not necessary to go into the great detail that the ABA draft does. I have highlighted the provisions that are essential:

RULE 3.01: INFLUENCE OF PERSONAL INTERESTS ON JUDICIAL CONDUCT

A judge shall not allow his or her financial, political or other personal interests or relationships to influence his or her judicial conduct or judgment.1

RULE 4.08 FINANCIAL ACTIVITIES

A judge shall not engage in financial and business dealings that

A. may reasonably be perceived to exploit the judge's judicial position, or

B. involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves.

RULE 4.12: SOLICITATION AND ACCEPTANCE OF GIFTS

A. A judge shall not solicit or accept and shall urge members of the judge's family residing in the judge's household* not to solicit or accept gifts, * from anyone except that a judge may accept

(1) a gift* incident to a public testimonial;

(2) books, magazines, journals, audio-visual materials and other resource materials supplied by publishers or organizations on a complimentary basis for official use;

(3) an invitation to the judge and the judge's spouse, domestic partner or guest to attend without charge

(a) a widely attended event;
(b) a bar-related function; or
(c) any activity devoted to the improvement of the law,* the legal system or the administration of justice;56

(4) a gift*, award or benefit incident to the business, profession or other separate activity of a spouse, domestic partner or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse, domestic partner or other family member and the judge (as spouse, domestic partner or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties

(5) a gift* from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is commensurate with the occasion and the relationship;58

(6) a gift* from a relative or personal friend whose appearance or interest in a case would in any event require disqualification under Rule 2.12;59 or

(7) any other individual gift*, from any other source, valued at [$50] or less, or series of gifts from the same source whose value in the aggregate does not exceed [$150], if the donor is not

(a) a lawyer, party, or third person who has come before the judge, or a person or entity whose interests have come before the judge, within the preceding five years, or

(b) a lawyer, party, or third person who is likely to come before the judge, or a person or entity whose interests are likely to come before the judge, in the foreseeable future.60

B. for any gift, other than a gift from a member of the judge's family, that alone or in the aggregate with other gifts received from the same source in the same calendar year exceeds [$250.00] in value, the judge must publicly report receipt of the gift in the same manner as the judge reports compensation, reimbursement or waiver of charges pursuant to Rule 4.16

A more detailed section on Gifts, including which gifts are permitted and do not raise a question of judicial integrity, is a necessary addition to the Code.

Proposal 4. A provision which states judge should avoid ex-parte communication shall be added to the code. Although judge may be able to be uninfluenced by ex-parte communication, such ex-parte communication creates suspicions and misunderstandings about impartiality of judges.

Recommendation: I agree.

Proposal 5. To give the Disciplinary Committee a power to make recommendatory decisions as well as to impose disciplinary sanctions:

a) to recommend sending judges professional development courses at their own expense,
b) to give warnings or advices

Proposal 6. A new provision which states that judge may employ a professional advocate in disciplinary proceedings against himself/herself shall be added to the code.

Recommendation: These are good proposals.

Proposal 7. Transfer of judge to a court of different level during Disciplinary Committee hearing of his/her case will not hinder imposition of a disciplinary sanction on him/her. For example, promotion to the court of higher instance will not constitute a ground to exempt the judge from disciplinary liability.

Recommendation: I recommend that no transfers or promotions take place while disciplinary proceedings are taking place. A judge who is in the process of being disciplined for ethical violations should not be promoted, and it reflects badly on the integrity of the judiciary for such a thing to occur.

Proposal 8. If a disciplinary case is related to immunity of the judge and/or secrets of government institution and privacy, the hearing can be held privately. In this case, Chairperson of the Disciplinary Committee must issue a decree.

Proposal 9. If judge's criminal case, though proven, is dismissed under the Pardon Law or on the basis of settlement with the victim, this matter may be heard by the Disciplinary Committee.

Proposal 10. Judge shall come to attend the Disciplinary Committee hearing in person at his/her own expenses from Aimags and if the Disciplinary Committee dismisses his/her case, the judge will be entitled to be reimbursed for the travel costs.

Recommendation: I have no problem with any of these proposals.

Attachment I

PRELIMINARY RESPONSES TO ISSUES RAISED BY CHIEF JUSTICE BATDELGER

by
Prof. John K. Hudzik
Michigan State University
28 February 2006

The issues raised by Chief Justice Batdelger are important. I look forward to meeting him and having a chance to talk. The Chief Justice raises:

1. The New Zealand experience, why they decided that there should be a special treatment/approach in terms of the judiciary;
2. The experience of countries that allocate a certain fixed percentage of the State Budget to the judiciary (currently the judicial budget makes 0.40% of the State Budget, they are planning to request a fixed 0.80% from the State Budget);
3. The budget structure (the judicial budget of Mongolia consists of three separate budgets for the Supreme Court, the GCC and the rural courts; the Chief Justice would dearly love to consolidate these so money can be moved to priority areas when circumstances change.)
4. The budget development process and approving procedures (the role of the executive branch).

Following are some thoughts on the four issues raised by the Chief Justice. I deal briefly with each but assume we will have more detailed discussions on these issues during my visit.

<u>Issue One</u>: The "special treatment" or exemption of courts or the judicial branch from aspects of budgeting rules and processes expected of executive-branch agencies. (The answer below also relates in part to the Chief Justice's fourth question).

This is an interesting but complex issue. First, I do not know the reasons in the specific case of New Zealand. I can guess, though, that it related to notions of judicial-branch independence and to not treating the judicial branch as just another agency of executive government—which it is not. It also is likely related to the general reputation of and political clout of the New Zealand judiciary.

Regardless, there is a general issue about the exemption of courts from regulations applied to executive branch agencies. One issue includes exemptions in whole or in part to general civil service or government personnel practices (e.g., some court employees being hired and serving "at the pleasure of the judge.") The other major area is in budgeting practices, and this is the one I will comment about below.

When speaking about exemptions from budgetary practices, it is important to distinguish and parse answers among the following: (a) requirements for budget plan submission; (b) line item and

programmatic control over the judicial branch allocations; and (c) requirements to follow uniform accounting procedures and regulations.

From my preliminary research, as well as having checked with colleagues, there are no comparative and reliable data about general practices in other countries to exempt the judicial branch from general government budgetary procedures. There is a somewhat clearer picture of practice in American states, but this too comes largely from anecdotal data. One can draw some tentative conclusions, however.

First, with respect to budget submission requirements: Practices vary widely from lock-step adherence to general government submission requirements to near total disregard of established requirements (however, such a level of disregard is rare and not without risk). The reality for most jurisdictions is that courts will follow the general submission format, but not respond to issues considered irrelevant for courts, or which might directly challenge judicial branch independence (e.g., that a particular requirement might inappropriately impose a cost criteria, performance standard or precedent). In sum, you would probably find most courts submitting requests using the generally established format except where modifications were needed to account for judicial branch independence or anomalies, or where the level of detail requested under the general submission format was viewed as intrusive on judicial branch independence.

A key issue is whether the judicial branch has discussed and negotiated a special procedure which will apply to it. Such discussions should focus on balancing between, (a) on the one hand, providing the legislative and executive branches with information in a format which they have a right to receive and which they need in order to discharge their responsibilities of "powers of the purse" and, (b) on the other hand, not having to provide information that is irrelevant to the judicial branch or which would stifle its ability to act independently. Again, based on anecdotal data from several states, my suspicion is that the more successful systems have had these conversations and reached agreements, even if informal, that provide "special" accommodations for the judicial branch within the overall government budget framework.

Second, with respect to control over line item or programmatic allocations and reallocations: Of course, the general preference of courts is for no executive branch control over the allocation and reallocation of dollars across line items or program areas. But practices vary widely. And, one must distinguish between submitting funding requests under line item and programmatic designations from the subsequent receipt of a budget, and the allocation and reallocation of funds across line items and programmatic categories.

I believe that it is general practice for a large percentage of court systems to submit requests packaged in line item categories and programmatic categories if requested to do so. The real issue, however, is not whether budgets must be submitted this way, but rather whether the budget as awarded constrains subsequent movements of funds across line items and programs. Judicial independence argues strongly for complete freedom to move funds across line items.

Most court systems which have successfully defended their independence will treat the budget allocation as a lump with them being free to move funds around as needed. There are two guiding

parameters for such freedom. The first is common sense in that many costs are locked into position by other obligations (e.g., judges and other key personnel salaries must be paid, debt obligations have to be met). The second is a wariness to play too loosely with the use of funds. For example, it would be politically unwise for courts to take a large sum of money awarded for a new branch-wide computer system and reprogram its use to, say, buying new cars or new judicial assistants. The political fall out would likely damage subsequent inter-branch budget relations.

Third, with respect to general accounting rules: This is the area where courts are typically held closely to general government requirements. As we have seen throughout the world and in both public and private sectors, failure to follow standard reporting and accounting rules usually opens the door to many problems, from mis-management and mal-management, to outright criminal behavior. This is the area where there tends to be the least judicial branch departure from general procedures, and from uniform accounting and audit rules.

So, the overall issue of exemptions is complex, and made even more so by informal agreements about what the courts will/must do. Some courts may have an exemption from some practices, but then follow them nonetheless. Other courts create de facto exemptions by just refusing to follow certain procedures, or by half-hearted attempts which end up putting square pegs into round holes.

Finally, this is an evolving area as the issues of setting and documenting judicial branch performance and performance standards gather momentum. Once there are agreed performance standards, there can be an expectation that budget requests will be related to meeting standards (e.g., a new case processing system involving new computers and personnel are related to how case processing in criminal docket will be brought within time standards). This, in turn, provides a basis for holding courts accountable.

<u>Issue Two</u>: The experience of countries that allocate a certain fixed percentage of the State Budget to the judiciary (currently the judicial budget makes 0.40% of the State Budget; they are planning to request a fixed 0.80% from the State Budget.)

How many jurisdictions allocate a fixed percentage of the government's overall budget to the judicial branch? I, and colleagues with whom I conferred, believe that almost none do in the United States. With respect to comparative international data, this is not an area in which I have done much systematic research. A recent check with colleagues suggests that it is not known how many countries, if any, might have this practice. We guess that very few in reality follow this practice.

However, in most jurisdictions the percentages of budget allocated across major program categories is quite stable from one year to the next, except in times of significant economic upheaval or programmatic revisions. (For example, when probation is moved from an executive branch agency to the judicial branch, the judicial branch's budget appears to have had a significant increase, but it didn't in reality; another example might be that when moving from local to state funding of courts, the proportion of the state budget going to the judicial branch can easily triple or more, but in reality this is a cost shift from local to state levels and no real change in the amount of total funds flowing to courts).

Stability may give the appearance of fixed-formula funding. While there may be the appearance of a fixed percentage allocation being in effect, there actually is none; rather, there is relative stability across years in the proportion of funds allocated to the judicial function in most places because of general budgetary behaviors. In most places 90-95% of the base budget changes very little from year to year; past decisions dominate. Change is at the margins, and except in extraordinary years, changes in aggregate proportions are very small.

What do we know about judicial branch expenditures as a percentage of total expenditures in the United States? Looking at state and local levels where the majority of judicial expenditures concentrate, the national average is 1.5%. That is, if one takes total judicial branch and legal expenditures at state and local levels and compares this to total government state and local expenditures, only about 1.5% of total state and local expenditures go to fund the courts. At the federal level it is about 0.2% of total federal outlays by agency. One could loosely interpolate this figure to an overall national aggregate (combining national, state and local data) of between 0.75% to 1% of total government expenditures going to the judiciary.

In this context, a figure of 0.8% being recommended for Mongolia carries some weight and could be used to build a case, but only if one were willing to suggest that American conditions and budgetary practices were a reasonable basis on which to build such a figure for Mongolia. However, there are several cautions with respect to specifying a fixed percentage of total government expenditures as the basis for a judicial-branch budget allocation:

1. Under a fixed percentage model, judicial branch budgets will go up and down in lock step fashion depending on the overall budgetary and economic situation. Hitching one's wagon to a rising star makes sense, but not to a falling one. All economic stars rise and fall, so there will be good and bad years even with a fixed percentage system.
2. One should compare how courts do <u>without</u> such a fixed percentage guaranteed. Again, no international data exist, but fairly good data exist from the United States where fixed percentages are not guaranteed. Over the last 2-3 decades, a general picture emerges that U.S. courts have been somewhat insulated from the worst excesses of economic downturns. For example, in the most recent and severe downturn, approximately 2001--2004, courts were treated relatively favorably compared to many other agencies of government.
3. A fixed percentage once set is hard to change. One needs to be very sure that the fixed percentage will be sufficient in the long term, not just in the short and medium terms. There is also the problem that new responsibilities can be shifted to the judicial branch, but not necessarily new money or a change in the fixed percentage to meet these costs.
4. As I understand the proposal, a movement to 0.8% will double the actual allocation to the judicial branch. At face value, this will raise many questions and will require special efforts at justification. Questions that may surface include, "Why should their budget double?" "They seem to be doing the job with what they have, maybe they need a small increase, but certainly not one that big." "What kind of costs do they currently have that they aren't meeting?" "Is this really just ploy to get the judges salaries doubled or tripled?" "Exactly what would all this new money be used for?"

Dealing with the last caution may well be helped by developing a realistic baseline budget for the judicial system. The baseline budget is essentially that amount of funding needed to adequately and efficiently meet the workloads and responsibilities of the judicial branch. Baseline budget amounts can be established and justified by a budget "work up" that reasonably costs out functions and workloads. So, when asked, why does it cost "x" to do "y," there is an answer based on hard information.

If the Chief Justice wishes to move toward a 0.8% level of funding it might be helpful to establish the basis for such through a good baseline cost analysis study.

<u>Issue 3</u>: The budget structure (the judicial budget of Mongolia consists of three separate budgets for the Supreme Court, the GCC and the rural courts; the Chief Justice would dearly love to consolidate these so money can be moved to priority areas when circumstances change.)

My personal view on this point is simple: "Absolutely this should be done." I am a strong advocate of decentralized fiscal management. I would also argue that just as management of the budget should be "devolved" to the judicial branch, the judicial branch should also devolve portions of budget management practices down within the judicial branch administrative structure as well. When people are given requisite training about how to manage funds, and assigned BOTH the authority and responsibility to do so, then the management of funds tends to improve. In addition, I have strong views and have expressed them at judicial conferences and in writing that I believe judicial independence ultimately depends on the ability of the judicial branch to manage its own funds. This is why I advocate for lump sum budgeting for the judicial branch. We can talk more about this if the Chief Justice, or others, would like.

One caveat about having one budget for the Mongolian courts is that there ought to be ground rules established, at least internally within the judicial branch, for the movement of funds. People will be more comfortable with a system that can allocate and reallocate budget funds if there are agreed parameters (known criteria and a process) for determining shifts in funds across court sectors. No flexibility to move funds is arbitrary. However, if there is no understanding of the principles, criteria and procedures used to reallocate money, the use of that flexibility can appear equally arbitrary.

<u>Issue 4</u>: The budget development process and approving procedures (the role of the executive branch)

I addressed part of this issue in my response to issue #1. Let me add a few points.

I generally have deep reservations about executive branch participation in developing the budget request. The risk is great that in the process of their involvement, the judicial branch will be seen as just another agency of executive government. But the judicial branch needs sufficient budget staff of its own so that it has the capability of developing a credible budget request. The argument will probably be made that not using executive branch budget staff results in duplication. True,

but, executive branch staff report to the Executive, not to the Chief Justice and other senior judicial officers. A budget request from the judicial branch should reflect the leadership of that branch, or judicial independence is poorly served. Judicial branch budget staff should report within the branch.

On the issue of executive branch involvement in approval of the budget, this is more complicated especially to the extent that there is a real separation of powers among the "three" branches of government. I understand that separation of powers becomes a very clouded concept in a parliamentary system, and maybe even more so under a mixed parliamentary/presidential system.

In the U.S,, many state judicial systems have taken to submitting their budget requests directly to the legislatures (where the power of the purse resides) with a courtesy copy being sent to the governor. This is to underscore the point that the governor and executive budget apparatus does not have the authority to change the judicial branch's budget request. I don't know the extent to which this is an issue in Mongolia but would be happy to talk about it further. Of course, to the extent that both legislative and executive approval is required for budgets, then executive branch participation in the approval process is obvious. My previous stated preference for a lump-sum allocation, and for the courts to be able to freely reallocate funds, remain of relevance.

GOVERNMENT OF MONGOLIA

September 12, 2006 No: ZG 1/624 Ulaanbaatar

TO: TS. NYAMDORJ
CHAIRMAN OF THE STATE IKH HURAL
MONGOLIA

Submission of the Draft Law for reconsideration

After discussion and approval of the Draft Laws to amend Criminal Law, Criminal Procedure Law, Law on Reviewing and Resolving Civil Cases in Court and Court Decision Enforcement Law, and draft laws introducing amendments to other laws in connection with these draft laws initiated and prepared by the Government of Mongolia are submitted hereby to the State Ikh Hural.

We request consideration of these draft laws by the State Ikh Hural.

Prime Minister of Mongolia M. Enkhbold

CONCEPTS OF THE
DRAFT LAW ON AMENDING THE CRIMINAL LAW

One. Grounds and need for developing the draft law

Need for drafting of the Draft Law on Amendment of the Criminal Law can be explained by following grounds:

It is agreed to introduce appropriate amendments considering difficulties that arise with respect to uniform understanding, interpretation and enforcement of the revised version of the Criminal Law since its adoption and based on review and study of comments submitted by judicial organizations to amend provisions of the law in order to meet current needs and demands.

In total, 285 comments were submitted from 42 judicial and law enforcement organizations to introduce amendments to 102 provisions (in overlapping numbers). During the process of reviewing the amendment of the Criminal Law, it is considered more appropriate to resolve the issue by making changes and amendments to individual articles, sections and provisions of the Law.

New articles and provisions will be added or some articles and provisions of the law shall be amended based on following needs:

1) to clarify the description of the punishable offense;

2) to create alternative sentences;

3) to bring into conformity the sentencing ranges with the categories (seriousness) of crime;

4) to rectify unclear or unsuitably used terms and definitions;

5) to change the ratio of substituting compulsory labor sentence for another sentence;

6) to reconsider the scope of sentence for some particular provisions;

7) to review the criminal liability and penalties of juveniles based on the UN Convention of Children's Rights and other documents on juvenile justice;

8) to bring in conformity with other respective laws; and

9) to bring in conformity with UN Convention against Corruption.

Two. Relations to be regulated by the draft law, scope and general structure of the draft law

In drafting the Law on Amending the Criminal Law, the principal of fairness specified in the Criminal Law "Sentence and other measures of criminal liability shall conform to the nature and extent of the social danger of a crime, personal behavior of guilty person and circumstances of crime commission" shall be adhered.

Draft Law on Amending the Criminal Law shall be in line with concepts of the Constitution and objectives, principles and grounds and procedure for application of the Criminal Law.

There is no need to separate the relations to be regulated by and scope of this Draft Law from the Criminal Law as Article 2.2 of the Criminal Law states that "…law on changing and amending the Criminal Law shall be considered as an integral part of the Criminal Law".

On the other hand no principal changes that would affect the sentencing policy and structure of the Law are to be introduced.

Structure of the Draft Law shall consist of articles, sections and provisions. Articles, sections and provisions shall be placed in following orders:

a) Article, section, provision and sentences which introduce changes into the Law;
b) Revision of articles, provisions and sentences of the Law;
c) Change of terms, definitions, words and sentences of some articles, provisions and sentences of the Law;
d) Sections, provisions, words and sentences to be deleted from some of Articles of the Law;
e) Articles, sections and provisions to be invalidated.

Three. Social and economic consequences that may arise after adoption of the Draft Law and comments on measures to be taken for resolution of such consequences

No new type of sentence will be adopted by the Draft Law and no additional funding and expenditure will be required for enforcement after its adoption.

Four. Regarding laws to be drafted, amended or invalidated in connection with enforcement of the Law.

In connection with the Draft law on amending the Criminal Law, draft laws to amend Administrative Sanction Law and Law on Protection of Children's Right shall be drafted.

MINISTRY OF JUSTICE AND HOME AFFAIRS

INTRODUCTION

Regarding Draft Law on Amending the Criminal Law

The Draft Law on Amending the Criminal Law in certain aspects was drafted based on review of comments submitted by relevant organizations on issues causing certain difficulties in the uniform understanding and implementation of the Criminal law in effect since September 1, 2002.

One. General Part of the Criminal Law

1. As General Part of the Criminal Law does not have provision on recidivous crime despite the fact of existing description of repetitive and consolidated crimes in the General Part and of reflection of recidivism as aggravating circumstances of the crime in the Special Part, a new article 19^1 on Recidivous Crime was added.

2. Following change was introduced in order to keep sentence balance ratio in serving compulsory labor sentence, newly introduced to the Criminal Law. Specifically, article 50.3 which states "For a remaining portion of sentence of a convict who deliberately avoids from serving compulsory labor sentence, 24 hours compulsory labor sentence shall be substituted by one day arrest sentence", allows the convict to serve 4-20 days arrest sentence instead of 100-500 hours compulsory labor sentence, thus encourages the convict to avoid from serving the sentence and serve the arrest sentence, because it is more beneficial to the convict. On the other hand this also contravenes the principle specified in Article 46 which states that type of sentences shall go from mild to severe. Therefore, eight hours of compulsory labor is to be replaced with one day of arrest.

3. Comments were made that due to rigid provision in the current law of the lower level of the imprisonment sentence, court lacks possibility to impose differentiated sentence taking into consideration circumstances, cause, harm, damage caused by a crime, and personal behavior of a person who committed the crime. Therefore, a new part was added to consider other mitigating circumstances except of those specified in Article 55 and new Article 55^1 was incorporated to impose lighter (imprisonment) sentence than provided in the law, in lieu of Article 6.1 which states "Sentence and other measures of criminal liability shall conform to the nature and extent of the social danger of a crime, personal behavior of guilty person and circumstances of crime commission".

4. Article 61 of the Law provides that if during the probation period a convict with conditional sentencing demonstrates his/her correction and rehabilitation then the court decision may be not enforced. However, there is no provision in the Law regarding cases when a convict with conditional sentencing is imposed several administrative sanctions during the probation period. Therefore, an additional Paragraph 4 on police oversight over the convict and Paragraph 5 on physical service of the imprisonment if the convict with conditional sentencing is imposed administrative sanctions during the probation period.

5. Article 65 of the Law provides on application of compulsory measures of medical nature to a criminal who cannot be legally liable for a crime and in Article 68 same measures are to applied to chronic alcoholics and addicts of narcotics substances. Whereas Paragraph 67.1 provides to include term served under the compulsory measures of medical nature to be included in the total term of the sentence, Article 68 does not have such a provision. Therefore, Subparagraph 68.3 is added to include term served under the compulsory measures of medical nature to be included in the total term of the sentence.

6. Statute of limitation under Article 62 (with respect to misdemeanor through to extreme grave crime) is set for 1-30 years. Based on human treatment principal of the criminal law current scale of the statute of limitation of 1; 5; 20; 30 years is to be shortened to 1, 3, 15, 25 respectively.

7. The Law on Enforcement of Court Decision in Article 116.2 provided "imprisonment sentence for juvenile and female convicts shall be served in prisons of normal and strict regimes and same sentence for adult male convicts shall be served in prisons of normal, strict and special regimes and in punishment cells". Therefore, provision of Article 52.11 of the Criminal Law regarding the service of imprisonment sentence in punishment cells is amended to state that the sentence is for male convict.

8. in order to differentiate conviction and criminal liability of juvenile criminal from that of adult criminal, a new Article 62^1 (imposing lighter conviction to juvenile persons than provided by law). Article 21.2 is amended that provisions of Articles 145.1, 146.1 and 181.2 will not apply to the same article.

   The amendment to reduce imprisonment sentence term for juvenile persons in the Draft law can be explained based on following grounds.

   According to study made by the Court Decision Enforcement Agency, there were 105 juvenile convicts at the end of 2005 of which 8 were serving arrest sentences, 73 were serving terms for 1-5 years and 24 were serving sentences lasting 6-15 years. Convention on the Children's Rights and UN documents regarding juveniles require to apply imprisonment sentences only in special cases and mentioned that negative consequences of isolation from the society affects juveniles who are on early stage of growth and development harder than adults.

   In particular "Minimum standard procedures of UN with respect to criminal proceedings regarding juvenile persons" or "Beijing Procedures" in article 19.1 stated that "imprisonment of juvenile persons in correctional institution shall be used as a final measure only if necessary and for the shortest period of term".

Two. Regarding Special Part of the Criminal Law

1. Articles 50 and 51 of the Criminal Law provide not to impose sentences of community service and arrest to pregnant women or single parent (male or female) who has a child under the age of 3. Considering the need to create an alternative conviction under the above-mentioned two cases a sentence of fine is added to Articles 107.1, 114.1, 117.1, 129.1, 136.2 and 178.1 of the Law.

2. Due to inconsistency of the scope of sentence with crime classification in Article 21 of Special Part of the Criminal Law, specifically, due to mix up of sentence of fine for

misdemeanor with compulsory labor sentence for less grave crime, it was unclear under which classification the crime will fall. Therefore, in order to correct this situation, sentence for the crime is changed consistent with the category of the crime (misdemeanor, less grave, grave and extreme grave).

This was applicable to Articles 114.2, 149.1, 152.1, 154.2, 168.1, 183.1, 193.1, 196.2, 197.1, 218.1, 233, 234, 232.1, 234.2, 237.1, 237.2, 246.1, 258.1, 265.1, 267.1 and 271.1.

3. In Article 29 of the Law, damages caused due to crime are to be calculated is equal to or not less than one-month minimum wage effective at the time of committing the crime multiplied by 1-50 factor. However, the Chapter of the Special Part of the Law on the Crimes against Property does not provide minimum amount of damages, thus, causing complications in classifying the crimes. In this regard, Articles 145.1, 146.1, 148.1 and 150.1 were amended with wording “not less than” and in addition, some of the provisions of these Articles were also amended with wording “significant, substantial and severe damages”.

4. For purposes of improving legal status of a convict an amendment was introduced to Articles 145, 146 and 148 of Chapter 19 on Crimes against Ownership, to sentence for up to 5 years imprisonment if a crime was committed by group or in conspiracy, and to sentence for up to 10 years of imprisonment if a crime is committed by an organized group.

5. New Article 153^1 was added to impose a sentence in case of causing extremely significant damages to other’s property by negligent action.

6. As provided in the Criminal Law a case is dismissed if guilty person reconciles with a victim. However, a person who knowingly takes and disposes stolen item from a guilty person, he/she is being imposed punishment. In that way, it suggests that a person who has committed a crime could go without any punishment whereas a person who has taken and disposed from him/her the stolen item might be imposed harsher punishment. Therefore, Article 155^2 was dismissed and in Article 155^1 a wording “taken, kept or disposed” is added.

7. Considering the comments aimed at protecting rights and interests of participants and customers of financial markets, new articles 155^1 /Violation of rights of owners by notary public and/or ownership right registrar/ and 156^1 /Violation of laws and legislations on savings and credit, and non bank financial activities/ into Chapter 19 on “Crimes against Ownership” and Article 158^1 /Violation of Insurance Laws and Legislation” into Chapter 20 on “Crimes against Economy” were added respectively.

8. Unclear, confusing or misleading terms and definitions used in some of articles were corrected. Namely:

- a term defined differently such as “significant taxable income” or “income to be levied extremely significant amount of tax” in Article 166 was amended by a term “extremely significant taxable income”;
- title “Term during which criminal sanction may not be imposed” of Article 72 changed to “Term during which criminal sanction may be imposed”;
- term “deprivation of driver’s license” in Article 215.1.3 was changed to “deprivation of right to occupy certain position and conduct certain activity” in line with type of sentences set by the Law;

- term “in Special Part of this Law” in Article 274.1 changed to “in this Chapter” etc.

9. New Articles 177^1 /Terrorism/, 177^2 / Financing of Terrorism”, and 178^1 /Propaganda of Terrorism/ were added in connection with the “Law on Terrorism Fighting”.

10. Articles 202, 203, 208, 212, 213 and 214 were amended taking into account, the increase of crimes against nature resources which cause ecology imbalance and negative consequences on human health.

11. Sentence of “deprivation of right for up to 2 years” in Article 215.2 which provides for misdemeanor classification was changed by sentence of “deprivation of right for up to 2 years”, as this sentence was more severe than of sentence of “deprivation of right for up to 3 years”, specified in Article 215.3 which falls for less grave crime classification.

    Amendment was introduced to Articles 215.2 and 215.3 taking into consideration the comments that scope of sentence provided by Article 215 was too severe.

12. Article 222 which imposed sentence for passing of driving to others was annulled in line with a principal stipulated in the Criminal Law “Guilty person committing a crime shall only be personally liable for criminal sanctions”.

13. Within the scope of work to align local laws and legislation with UN Convention Against Corruption some changes were introduced to the Criminal Law. Title of Chapter 28 “Crimes committed by Officer’s holding a Position/Title” was changed to a title “Corruption Crimes”. New Articles “Notion of corruption cases” and “Use of property and money acquired through illegal means /money laundering/” were added. Articles titled “Pretending to be an official” and “Negligence by an Officer of its duties” were removed and placed in the Chapter on Crimes against Administrative Procedures”.

14. Though Article 274.5 of the Criminal Law provided that “Crimes against violation of set rules on military service during war time or during time of announcement war alike state and sanctions for such crimes shall be regulated by then adopted law of Mongolia”, some provision in this regard was reflected in the Law. Therefore, these provisions were annulled in conformity with Article 274.5.

15. It was unclear how to differ some of the provisions of the Criminal Law from respective provisions of the Law on Administrative Sanctions, Law on Preventing from AIDS, Law on Protection of Children Right, Health Law, Law on Procedures for Organizing Demonstration and Mass Meeting, Law on Secrecy of Individual Person, Law on Tax Levy, Supervision over tax payment and Collection of Taxes, Law on Granting Special Business License and Telecommunication Law. Therefore, following changes are introduced:

    Articles 104.1, 104.2, 132.1, 136.1, 181.1, 227.1, 231.1 and 242.1 were amended, Articles 103.1, 128.1, 167.1, 230.1, 239.1, 240.1 and 244.1 were annulled and Draft Law to annul Article 25.8 of the Law on Children Right is prepared.

16. In order to provide sentence choice option, Articles 132.1, 241.1 and 243.1 which provided only sentence of fine are amended accordingly.

Draft Law on Amending Administrative Sanctions Law is prepared in line with reflection of size of damages as “not insignificant” in some of Articles of Chapter 19 on “Crimes against Ownership”.

Draft Law on Amending Criminal Law was prepared by a working group consisted of officers of the Ministry, court, Prosecutor’s Office, Police Department, Advocacy Organization and Court Decision Enforcement Agency.

GOVERNMENT OF MONGOLIA

LAW OF MONGOLIA

_____, 2006 Ulaanbaatar

ON AMENDING CRIMINAL LAW

Article 1. To add Articles, Paragraphs and provisions with following content to the Criminal Law:

1) Article 19[1]. Recidivous Crime

19[1].1. Recidivous Crime shall mean deliberate commission of a crime by a person convicted for deliberate commission of a crime before and whose conviction is not annulled for grounds specified in this Law, or who has not been considered yet as not convicted.

19.[1].2. Recidivous crime shall be imposed with more severe sentence within the scale of sentence stipulated in the Special Part of this Law.

19.[3].3. Crime committed after commission of crime by juvenile, and by a person whose conviction is annulled for grounds specified in this Law or who has not been considered yet as not convicted shall not be considered as recidivous crime.

The definition of recidivisim requires more detail. It needs to be specified if all crimes committed by an individual count as prior crimes or if only crimes committed within a certain period and of certain severity will be considered for imposing more serious sentences. It also needs to be stated how many crimes of what type should be considered for imposing harsher sentences for recidivism. If there is not limit in the types of crimes committed and the years that have passed between crimes than this can lead to overly harsh punishments for small crimes. For example, someone may have been convicted of theft of a small item and five years later again steel a small item and therefore get a much more serious sentence. Examples from other countries, especially the US have shown that this unrestricted consideration of prior crimes leads to significantly increased prison terms (and therefore much higher cost to the state) for relatively minor crimes.

Germany is one country that has handled the issue of recidivism and imposing harsher sentences quite well. The German laws may provide good guidance for drafting more detailed legislation that better fits the Mongolian situation.

2) Article 55[1]. Imposing more mild (imprisonment) sentence than provided by the Law

55[1].1. Court may impose more mild (imprisonment) sentence than provided by the Law taking into consideration social danger of a crime committed by a person who has committed the crime first time, his/her personal behavior, compensation of damages or elimination of harm caused by a crime. Minimum scale of such sentence shall not exceed 2/3 of imprisonment sentence to be imposed for that particular crime under Special Part of this Law.

This article may not be specific enough. Generally what determines the level of sentence is the not just the severity of the crime but the degree of guilt of the

offender. Art. 49 of the German Criminal Code provides good details that are more easily assessed and applied by the court.[1]

3) Article 62[1]. Imposing on juveniles more mild (imprisonment) sentence than provided by the Law

62[1].1. Court may impose more mild (imprisonment) sentence for a crimes committed by juveniles and minimum scale of such sentence shall not exceed 1/2 of imprisonment sentence to be imposed for that particular crime under Special Part of this Law.

Based on decades of research that have shown the limited capacities of juveniles to fully grasp the long-term implications of their actions, it international standards support the implementation of special provisions to allow states to better respond to crimes committed by juveniles. The current provision is a good start but should be a "must" provision, not just a "may" provision. In the future it would be beneficial if Mongolia developed more detailed provisions and more alternatives to address juvenile offenders.

4) Article 96[1]. Cause of severe bodily injury to others body under sudden strong psychological distress

96[1].1. Deliberate severe bodily injury to others by a person due to sudden and strong psychological distress necessitated by significant damages or potential damages to the person or his/her close persons because of forceful harassment or grave insult or other illegal activity of the victim, shall be punishable by fine equal to minimum labor wage multiplied by 51-200 times or arrest for a term of 3-6 months or imprisonment sentence for up to 3 years.

This provision is not quite clear – maybe it's the translation?

1. It is unclear if the severe bodily injury would involve only injuries suffered by the victim or also others. If the injuries are suffered by the victim, a distinction needs to be made if the offender reacted to defend himself (which would fall under a different provision for self-defense) or may have been enraged as a result of the victim's actions (which requires weighing the action of the victim versus that of the offender). If others are injured it needs to be distinguished if the offender wanted to injure them or not (which would be just negligence, not criminal intent).

2. The sentencing guidelines should not just spell out a range of sentencing options but should linking the level of aggravation of the offender by the victim to the level of reduction in the sentence that would be prescribed in the article in the special part of the CC

Overall, this provision appears to try to cover a number of issues that require more clarity and more detail.

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[1] § 46 Grundsätze der Strafzumessung

(1) Die Schuld des Täters ist Grundlage für die Zumessung der Strafe. Die Wirkungen, die von der Strafe für das künftige Leben des Täters in der Gesellschaft zu erwarten sind, sind zu berücksichtigen.

(2) Bei der Zumessung wägt das Gericht die Umstände, die für und gegen den Täter sprechen, gegeneinander ab. Dabei kommen namentlich in Betracht: die Beweggründe und die Ziele des Täters, die Gesinnung, die aus der Tat spricht, und der bei der Tat aufgewendete Wille, das Maß der Pflichtwidrigkeit, die Art der Ausführung und die verschuldeten Auswirkungen der Tat, das Vorleben des Täters, seine persönlichen und wirtschaftlichen Verhältnisse sowie sein Verhalten nach der Tat, besonders sein Bemühen, den Schaden wiedergutzumachen, sowie das Bemühen des Täters, einen Ausgleich mit dem Verletzten zu erreichen.

(3) Umstände, die schon Merkmale des gesetzlichen Tatbestandes sind, dürfen nicht berücksichtigt werden.

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5) Article 153[1]. Negligent cause of damages to property of others

153[1].1. Extreme significant amount of damages caused to property of others shall be punishable by fine equal to minimum labor wage multiplied by 51-200 times, compulsory labor for 251-500 hours or arrest for a term of 3-6 months or imprisonment sentence for up to 3 years.

Negligence per se cannot trigger a criminal penalty no matter how large or severe the damage is. There can be certain circumstances under which negligence can be defined as triggering a criminal penalty. These circumstance need to be defined, such as not applying the care or supervision that is standard, or being drunk – but the amount of the damage alone cannot be the factor determining that negligence is criminal. For example, if the provision would be applied as it is currently stated, it could happen, that someone who walks along Peace Avenue throws away the rest of a still burning cigarette; the cigarette falls under a car that has a leaking motor; the burning cigarette ignites some leaking benzin, the car explodes, burning parts fly into a house where it ignites a gas oven, the house explodes – major property damages result for the a cigarette butt being thrown away – is this an act that should be punishable as a crime? The German CC makes a distinction between general negligence and severe negligence, which is further defined. Generally only severe negligence will trigger criminal responsibility in certain types of cases.

In addition the "extreme amount" needs to be more specified to ensure that there is some standard application by all judges across Mongolia.

6) Article 155[1]. Violation of right ownership right by notary public or ownership right registrar

155[1].1. Causing of significant damages to others due to confirmation and certification by notary public or ownership right registrar of clearly illegal agreement regarding limitation and transfer of ownership rights shall be punishalbe by deprivation of the right to occupy certain position and conduct certain activities for up to 3 years or fine equal to minimum labor wage multiplied by 151-200 times, or arrest for a term of 3-6 months.

155[1].2. If this crime is committed repeatedly or by group of persons or extreme significant damages are caused due to the crime, sanction of deprivation of the right to occupy certain position and conduct certain activities for up to 5 years and imprisonment sentence for up to 5 years shall be imposed.

The aggravating factors of repeated offense, group of persons, and extreme significant damages need more clarification.

1. Does this apply of this same crime was committed 20 years ago?
2. What is level of involvement of each individual in a "group" that is required to be considered part of the group and what is the level of activity they would have needed to contribute? (I am certain some other article defines what a group is – i.e. are two a group?)

7) Article 156[1]. Violation of laws and legislation regarding savings and credit or non bank financial activities

156[1].1. Causing significant damages to others due to violation of laws and legislation regarding savings and credit or non bank financial activities shall be punishalbe

by deprivation of the right to occupy certain position and conduct certain activities for up to 3 years or fine equal to minimum labor wage multiplied by 151-200 times without such a deprivation, or arrest for a term of 3-6 months.

156[1].2. If this crime is committed repeatedly or by group of persons or extreme significant damages are caused, sanction of deprivation of the right to occupy certain position and conduct certain activities for up to 5 years and imprisonment sentence for up to 5 years shall be imposed.

Here the same comments as for the previous article apply. In addition, there is a need to make some distinction between simple and severe violations of the laws and not just focus on the significance of the damages caused.

8) Article 158[1]. Violation of laws and legislation on Insurance

158[1].1. Causing significant damages to others due to violation of laws and legislation on insurance and on professional participant of insurance shall be punishable by deprivation of the right to occupy certain position and conduct certain activities for up to 3 years or fine equal to minimum labor wage multiplied by 151-200 times without such a deprivation, or arrest for a term of 3-6 months.

158[1].2. If this crime is committed repeatedly or by group of persons or extreme significant damages are caused, sanction of deprivation of the right to occupy certain position and conduct certain activities for up to 5 years and imprisonment sentence for up to 5 years shall be imposed.

Same as above.

9) Article 177[1]. Terrorism

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It may be helpful if first, terrorism would be defined and then the punishable actions would be listed in a clearer manner, also, what is currently missing is a) just issuing the threat of terrorism, b) creating a terrorist organization

177[1].1. Brutal violence commited by illegal armed group or a terrorist against life and health of citizens or threat to commit such a violence or creation of disaster situation in order to reach their own political, religious and ideological agenda and to disseminate fear among the society or its certain part, shall be punishable by imprisonment sentence for 10-15 years.

177[1].2. If this crime is committed by extremely dangerous criminal or organized group or criminal gang or human life is suffered or significant damages are caused to others due to this crime, sanction of imprisonment for 20-25 years or death sentence shall be imposed.

10) Article 177[1]. Financing of terrorism

177[2].1. Raising, transfer or disposal of funds and assets while being previously aware of the funds and assets to be used for terrorist organization or terrorist activities shall be punishable by confiscation of funds and assets and imprisonment for 5-10 years.

177[2].2. Repeated or group commission of this crime or financing in significant amount of funds shall be punishable by confiscation of the funds and assets and imprisonment for 10-15 years.

177^2.3. Commission of this crime by an organized group or criminal gang, or financing in extremely significant amount of funds shall be punishable by confiscation of the funds and assets and imprisonment for 15-25 years.

11) Article 178^1. Propaganda of Terrorism

178^1.1. Propaganda of terrorism, calling, provoking or forcing general public to conduct terrorist activity or to take part in such an activity, preparation and dissemination of propaganda materials in this regard shall be punishable by a fine equal to minimum labor wage multiplied by 5-50 times, or arrest for a term of 1-3 months.

178^1.2. Repeated commission of this crime or use of mass media for this crime shall be punishable by arrest for a term of 3-6 months or imprisonment for up to 3 years.

12) Article 230^1. Pretending to be an official

230^1.1. Pretending to be an official of the Government, non government organization or business entity by a person who is not an official and conducting certain activities without elements of crime of fraud and gaining significant or extremely significant profits and causing significant amount of damages to other shall be punishable by a fine equal to minimum labor wage multiplied by 51-250 times, or arrest for a term of 3-6months.

There needs to be a distinction between impersonating a government official and impersonating a staff member of a private company. Impersonating a government official in itself has to be a violation of the law since it undermines the trust of the public in the government. No matter what the criminal gain is, impersonating a government official is more serious for this very reason. Impersonating a member of a private company is just onw way to defraud others. The penalty applied here is too low considering that serous financial damage is caused. It is particularly low in comparison to the penalties suggested for article 155-158.

13) Article 230^2. Careless attitude of an official to his/her official duties

230^2.1. Failure or unsatisfactory performance of official duties defined by law and legislation or procedures and regulations according to the law by an official shall be punishable by a fine equal to minimum labor wage multiplied by 5-50 times, or arrest for a term of 1-3 months.

230^2.2. if significant damages caused to a person due to this crime a sanction of deprivation to occupy certain position and conduct certain activities for up to 5 years and imprisonment sentence for up to 5 years shall be imposed.

Unsatisfactory performance by an official in itself cannot be a crime but is rather a matter of internal disciplinary procedures and labor law. In its current wording this is a troublesome provision that could be politically abused to arrest any official accused of unsatisfactory performance. Negligence, particularly severe negligence that would result in significant harm, damages or losses (including loss of life) is another matter that could be criminalized.

14) Article 263^1. Notion of corruption crimes

263[1].1. Crimes provided by this Chapter committed by government official occupying management or executive positions in political, special, administrative or logistical services of the Government or government official occupying management or administrative positions in business entities fully or partially state owned enterprises or management or executive officers of non government organization temporarily or permanently performing certain duty of a government executive organization according to procedures provided by law, shall be considered as corruption crimes.

263[1].2. Commission of a crime provided by this Chapter, by an official of international government organization operating on the territory of Mongolia, or officer of foreign government working in branch or representative office of foreign government organization or state owned enterprise shall be punishable by a criminal sanction.

263[1].3. Person giving or intermediating bribe or providing illegal discount or advantages to officials described by subparagraphs 1 and 2 of this Article shall be liable as provided by respective Articles of this Chapter.

It is not quite clear what "crimes provided by this chapter would really mean – the CC listed some crimes, i.e. art 272, neglect of duties, that are not necessarily a corruption crime since the damage caused may not be lucrative to anybody. Also, some of the wording of the new art. 263 seems to duplicate other articles (i.e. 268/269 giving/taking of a bribe). This entire chapter may need another review to ensure all articles actually cover all situations that should be criminalized. What appears to be missing at all are abuse and excess of use of power that inflicts harm but does not benefit anybody (i.e. excess use of power by police officers). What is also troublesome is that most these illegal actions appear to be criminal acts only if the results are a significant financial gain or harm. The attempt to commit these crimes appears not to be punishable at all and less significant gain appears to also not be a crime of corruption. Also the sentencing options need to reviewed. For example, abuse of power that results in significant damage is only punishable by prison for 3-6 months, while taking a bribe itself is punishable by up to 3 years in prison.

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Furthermore, and this applies to the entire code and all articles, the fines for government officials and others are tied to the minimum wage instead of the income of the individual. This means, that those that earn high salaries receive a less severe sentence than those who earn little or have no income.

And how about corruption in the business sector?

15) Article 268[1]. Money laundering

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268[1].1. Knowingly introducing clearly illegally obtained assets into transaction in order to conceal the origin of the assets and to legitimize the possession, use and disposal rights of the assets shall be punishable by a fine equal to minimum labor wage multiplied by 51-200 times, or imprisonment sentence for up to 5 years.

268[1].2. Repeated or group commission of this crime or commission through abuse of official position or gaining significant amount of profit shall be punishable by confiscation of assets or imprisonment sentence for 5-15 years.

268[2].3. Commission of this crime by an organized group or criminal gang, or gaining extremely significant profits shall be punishable by confiscation of assets or imprisonment sentence for 10-15 years.

Money laundering is in most countries limited to assets gained from serious crimes (felonies) and select misdemeanors that or particularly lucrative and where the

driving criminal intent is making money (i.e. dealing in drugs, illegal gambling). The reason is that money laundering itself is difficult to detect and investigate and following just small amounts of money for petty crime is not cost-effective nor in the public interest. This provision currently makes no such distinction.

In addition, this provision does not include the entire range of actions included in other countries' money laundering legislation, especially not impeding the detection of illegal or laundered assets. More importantly, the provision reads as if the intent has to be to legitimize the asset – not just to hide which would make the enforcement of this provision very difficult.

16) Article 273[1]. Deliberate false declaration of assets and income statement

273[1].1. Deliberate false declaration of assets and income statement by government official **shall be punishable by deprivation of** the right to occupy certain position and conduct certain activities for up to 3 years or fine equal to minimum labor wage multiplied by 5-50 times, or arrest for a term of up to 3 months.

I am not providing comments to the below changes to the law but want to make a general comment and suggestion to the sentencing provisions in the law:

1. **As mentioned above, there appear to be a number of inconsistencies in the severity of punishments applicable for similarly severe or less severe crimes. In order to address this issue it may be helpful to develop a table that shows all articles and the related sentencing ranges provided in the law. That will make a review and comparison easier.**
2. **Also as mentioned earlier, the fines are all tied to the minimum wage instead of the income of the offender. This means that poor offenders are punished more harshly than higher income offenders. The way Germany applies day fines based on income and other assets is an internationally recognized best practice that may be of interest to Mongolia.**
3. **There is a scarcity of sentencing options. The options mentioned are generally fines, incarceration or prison terms, and loss of office. First, it is unclear if illegally gained profits can always be confiscated – which they should. Second, there are a range of other options, particularly for first time offenders that should be explored. Mongolia's law allow for work options, which, instead of the current forced labor provisions, could be work that benefits the community in place of fines or incarceration if the offender is willing. Other options would include a combination of conditions, i.e. to seek counseling for alcohol problems, and fines.**

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17) Paragraph 2 Article 55:

"55.2. In imposing a sentence court may consider circumstances other than provided by Paragraph 1 of this Article as mitigating circumstances".

18) Paragraph 4 Article 61:

"61.4. Police shall exert supervision over suspended convict".

19) Paragraph 5 Article 61:

“61.5. In case of imposing administrative penalty to suspended convict during the parole period court shall decide whether to impose physical service of imprisonment sentence based on opinion of the police”.

20) Paragraph 2 Article 198:

“198.2. Production, import, storage, sale or distribution of forged medicine shall be punishable by arrest for 3-6 months or imprisonment for up to 2 years”.

21) Paragraph 1 Article 202:

“202.1. Discarding in the air without purification substances emitted as a result of production process and toxic to human health and environment shall be punishable by a fine equal to minimum labor wage multiplied by 51-100 times, compulsory labor for 251-500 hours or arrest for a term of 3-6”.

22) Paragraph 3 Article 202:

“202.3. If a human life is suffered due to this crime imprisonment sentence for 2-5 years shall be imposed”.

23) Paragraph 3 Article 203:

“203.3. Poaching or catching game without permission on territory of national special protected area shall be punishable by a fine equal to minimum labor wage multiplied by 51-100 times, or imprisonment for a term of 5-8 years”.

24) Paragraph 2 Article 208:

“208.2. Repeated commission of this crime or commission on territory of national special protected area or causing significant or extremely significant damages shall be punishable by imprisonment for a term 3-5 years”.

25) Paragraph 3 Article 214:

“214.3. Eradication of soil fertility and causing extremely significant damages to environment due to failure to conduct restoration works in mineral exploration or mining field shall be punishable by a fine equal to minimum labor wage multiplied by 450-500 times, or imprisonment for a term of 5-10 years”.

26) Paragraph 4 Article 214:

“214.4. Person who repeatedly committed this crime shall be punished by imprisonment for a term of 10-15 years”.

27) Paragraph 4 Article 215:

“215.4. If 2 or more human lives are suffered due to this crime deprivation of the right to occupy certain position for up to 5 years or imprisonment sentence for a term of 5-10 years shall be imposed”.

28) Paragraph 3 Article 251:

“251.3. If the victim has died due to this crime, imprisonment sentence for 10-15 years shall be imposed”.

29) Subparagraphs 7-8, Paragraph 2, Article 113:

“113.2.7. If committed by abuse of official position;
113.2.8. If committed by purposes of using physical labor or for slavery, imprisonment sentence for 5-10 years shall be imposed”.

Article 2. Following wording shall be added to following provisions respectively: “elements” to Article 10.1 after wording “crime”; “guilty” to Article 16.2 after “dangerous”; “deliberate” to Article 24.1.1 after “previous grave crime”, and “deliberate” after “repeated grave crime”; “deliberate” to Article 24.1.2 after “grave or extreme grave crime”, and “deliberate” after “repeated extreme grave crime”; “deliberate” to Article 24.1.3 after “repeated”; “deliberate” to Article 24.1.4 after “crime”; “2 or more” to Article 52.7 before “extreme grave”; “male” to Article 52.11 after “sentenced”; second sentence “sentence of fine to imposed to a person who was under custody shall be calculated as one day of custody being equal to one month minimum labor wage effective at the time and shall be deducted from the total fine” after “may”; “minimum” to Article 60.2 and 60.3 after “severe sentence”; second sentence “police shall exert supervision over the convict during this period” to Article 63.2 after “may”; “fine equal to minimum labor wage multiplied by 51-100” to Article 107.1 after “if damages caused”; ‘intermediating” to Article 113.1 after “accepting”; “fine equal to minimum labor wage multiplied by 5-50” to Article 114.1 after “if involved”; “fifty” to Article 114.2 after “two hundred”; “fine equal to minimum labor wage multiplied by 51-250” to Article 117.1 after “leaving in unknowing place”; “organizing prostitution” to Article 124.2 after “intermediating”; “fine equal to minimum labor wage multiplied by 51-250” to Article 129.1 after “if accepted”; “compulsory labor for 100-250 hours” to Article 132.1 after “fine”; “causing grave damages to others” to Article 136.2 after “committed” and “fine equal to minimum labor wage multiplied by 51-250” to Article 136.2 before “two”, or “imprisonment for up to 5 years” to Article 136.2 after “arrest”; “more than” to Article 145.2 after “two”; “extremely significant or” to Article 148.2 after “due to”; “significant or” to Article 150.3 after “to others”; “stored or sold” to Article 155.1 after “accepted”; “significant harm” to Article 161.2 after “damages”, “compulsory labor for 251-500 hours” to Article 175.1 after “fine”; “use” to title of Article 176 after “commission”, “utilized” to Article 176.1 after “knowingly”; “fine equal to minimum labor wage multiplied by 51-250” to Article 178.1 after “if informed”; “fine equal to minimum labor wage multiplied by 51-250 and arrest for 3-6 months or” to Article 179.1 after “if instigated”; “up to 3 years” to Article 183.2 after “right”; “significant or extremely significant damages were caused by this crime” to Article 203.2 before “very”; ““fine equal to minimum labor wage multiplied by 51-250” to Article 203.2 after “if admitted”; “committed in the forest of national special protected area” to Article 211.2 after “caused”; to article 213.2 “forest and steppe” after “because of”, “fine equal to minimum labor wage multiplied by 51-250” after “if caused”; to article 214.2 “and special protected area” after “amount”, “gained profits shall be confiscated” after “if mined”; “grave” to Article 231.1 after “before”; “arrest for 3-6 months” to Article 241.1 after “fine”; “compulsory labor for 251-500 hours” to Article 243.1 after “fine”, to Article 246.1: “87.2 /Disclosure of state secrecy with aggravating circumstances/” after “special part”, to Article 247.2: “177^1 /Terrorism/” after “177 /Banditism/”; “avoid serving imprisonment sentence” after “261.2 Kidnapping of airplane”; “prosecutor’s supervision” to title of Article 261 after “court”; “against service” to title of “Section 10” after “of military”; “against service” to Article 274.4 after “of military”; “significant harm” to Article 288.1 after “damages”; “imprisonment for up to 5 years” to Article 288.1 after “arrest”; “harm” to Article 294.1 after “damages”; “extreme significant” to Article 294. 2 after

“significant”, and “significant harm” after “damages”; “harm” to Article 295.1 after “damages”; “significant harm” to Article 295. 2 after “damages", and; “forced to be missing” to Article 302.1 after “lead to”.

Article 3. Following wording shall be replaced in following provisions respectively: “145” in Article 21.2. with “145.2; 145.3; 145.4”; “146” with “146.2; 146.3; 146.4”; “shall be calculated” in Article 48.2 with “ shall be calculated and if imprisonment sentence is suspended, then the term shall start from the moment when sentencing decree of the court becomes effective”; “twenty four” in Article 50.3 with “eight”, "55.2" with "55.3"; “twenty four” in Article 58.3, 58.4, and 59.2 with “eight”; “may” in Article 68.3 with "may and term spent under compulsory measures of medical nature shall be included in the sentence term of the person"; “may not” in the title of Article 72 with “may”; ‘five” in Article 72.1.2 with “three”; “twenty” in Article 72.1.3 with “fifteen”; “thirty” in Article 72.1.4 with “twenty five”; “one” in Article 76.1.1 with “three”; “causing premature birth of a child” in Article 96.1 with “causing fetus loss”; “avoiding treatment of disease” in title of Article 103 with “disease”; “103.2” with “103.1”; “103.3” with “103.2”; “faliure to give” in Article 104.1 with “significant harm is caused to others due to failure to give”; “limited” in Article 104.2 with “harm is caused to the patient due to the limitation”; “age” in title of Article 107 with “body”; “age” in Article 107.1 with “body” and “four hundred” with “three hundred fifty”; “age” in Article 107.2 with “body” and “51-150” with “101-150”, “251-400” with “351-500”; “three” in Article 113.1 with “five”; “150-250” in Article 124.1 with “100-200”, “this” in Article 128.2 with “abortion is performed by a medical professional but in non medical environment or by a person who is not a medical professional” and "128.2" with "128.1"; “five hundred” in Article 129.1 with “three hundred and fifty”, “limited” in Article 132.1 with “significant harm is caused due to the limitation”; “corrected” in Article 136.1 with “harm is caused due to the correction”; “Legislation on labor” in title of Article 138 with “Labor safety and health procedures”; “stole” in Article 145.1 with “not a small harm is caused due to the theft”; “or by a group” in Article 145.2 with “by a group or group verbally agreed beforehand”; “verbally agreed beforehand” in Article 145.3 with “organized”, “eight” with “ten”; “robbed” in Article 146.1 with “not a small harm is caused due to the robbery”; “or by a group” in Article 146.2 with “by a group or group verbally agreed beforehand”; “verbally agreed beforehand” in Article 145.3 with “organized”; “5-8” in Article 147.1 with “3-5”; “over eight” in Article 147.2 with “over five”; “taken away” in Article 148.1 with “not a small damage is caused due to the taking away”; "251-300" in Article 149.1 with “51-250”; “embezzled or taken away assets of other through abuse of official position or power” in Article 150.1 with “not a small damage is caused due to the embezzlement”; “significant” in Article 150.2 with “extreme significant”; “25-75” in Article 152.1 with “5-50”; “100-250” in Article 154.2 with “151-500”; “damages caused do not bear elements of crime provided by Article 155 of this Law” in Article 160.1 with “damages caused”; “undertaking in significant amounts” in Article 161.1 with “gained extremely significant gains through such undertaking”; “imposed extreme significant amount of taxes” in Article 166.2 with “extreme significant amount to be taxed”, "5-8" with "3-5"; “100-200” in Article 168.1 with “251-500”; “significant” in Article 171.1 with “extreme significant”; “significant” in Article 172.1 with “extreme significant”; "assets" in Article 175.1 "not a small amount of assets", "over 100" with "over 51", "two" with "one"; "historic animal, plant root or valuable findings " in Article 175.2 "unique, rare and valuable findings of historic animal or plant", "over 50" with "over fifty one"; "securities" in the title of Article 176 with "securities and excise tax stamp"; “means and excise tax stamp” in Article 176.1 with “means”; “serious” in Article 181.1 with “rudely”; “51-250” in Article 183.1 with “251-500”; “251-500” in Article 193.1 with “200-300”; “Illegal production, import, storage, sale and distribution of medicine and medical equipment” in the title of Article 198 with the title “Illegal conduction of Pharmacy operation”; “Production, import, storage, sale and distribution by a person engaged in medicine and

medical equipment supply of expired or prohibited medicine and medical equipment in significant amount" in Article 198.1 with "Sale of expired or banned medicine and preparation, by a person conducting pharmacy operation"; "two to five" in Article 198.2 with "three", "Pollution of Air", in the title of Article 202 with "Violation of Laws and Legislation on Air"; in Article 202.1 "from one hundred" with "from hundred"; "202.2" with "202.1"; in 203.1 "substantial" with "significant or extremely significant", "rare" with "prohibited to hunt", "one" with "two"; "substantial" in Article 208.1 with "significant"; in Article 212.1 "without permission for production purposes" with "illegally", "substantial" with "significant", "213.2" with "213.1", "213.1" with "213.2"; "substantial amount of damages caused as a result of extraction" in Article 214.1 with "extraction"; "five" in Article 214.2 with "two"; "up to one year" in Article 215.1 with "year", in Article 215.2 "one" with "two", "3" with "2-5"; in Article 215.3 "occupy certain position or conduct certain activity" with "driving auto vehicle", "151-200" with "251-500"; "5-50" in Article 218.1 with "51-70"; "if not small amount of damages caused to others as a result of an attempt" with "attempt"; "protest using force against government officer during his/her execution of its lawful duties and against community inspector during his/her execution of its duties to keep an order" in Article 230.2 with "use of force in committing the crime"; "350-500" in Article 230.3 with "200-300", in Article 230.4 "fine equal to minimum labor wage multiplied by 251-500" with "compulsory labor for 100-500 hours"; "230.2" with "230.3", "230.3" with "230.4", "officer of court decision enforcement agency" in the "Interpretation and Definition" of Article 231 with "court decision executor"; in Article 232.1 "to kill and" with "to kill", "from three to six" with "from one to three", "251-300" in Article 234.2 with "100-200", "251-300" in Article 237.1 with "100-200", "351-500" in Article 237.2 with "100-200", "interrupted and caused significant amount of damages and severe harm" in Article 242.1 with "interrupted", "5-50" in Article 246.1 with "51-80", "investigate under torture" in Article 251.1 with "use of force by inspector, investigator, or threaten to use force, torture, taunt, tease", "of criminal case" in the title of 257 with "of investigation", "judge" in Article 257.1 with "without permission of judge", "of corruption", in the title of Chapter 28 with "of officer's", in Article 265.1 "5-50" with 301-400", "1-3" with "3-6", in Article 274.1 "force" with "for force", "in the Chapter" with "in the Special part of this Law", "address" in Article 277.1 with "approach", "substantial" in Article 281.1 with "significant", "substantial amount of damages caused by impairment" in Article 282.1 with "impairment", "substantial in Article 281.1 with "significant", in Article 295.2 "from 3" with "from 5", "5" with "7", "address" in Article 299.1 with "approach" and "from 15 to 20" in Article 303.3 with "3-5".

Article 4. Followings shall be deleted respectively: "181.2" in Article 21.2, "arrest" in Article 47.3, "Period of confinement under custody shall not be calculated for a period of serving imprisonment sentence in punishment cells" in Article 59.1, "other than those provided by Article 145.1 /Theft of other's Property/ of the Special Part of this Agreement; "if has committed imprisonment sentence for a period of 5-10 years shall be imposed" in Article 113.2.6, "adult" in Article 122.1, "up to" after "times", "organized group" in Article 145.4, "use of force without causing danger to other's live" in Article 146.2, "five" in Article 196.2, "arrest for a term of 3-6 months" in Article 202.1, "in prohibited place and" in Article 203.1, "for production purposes" in Article 211.1, "from 2" in Article 234.2, "148.4" in Article 246.1, "from 1" in Article 246.2, "inspector, investigator" in Article 251.1, "up to" in Article 257.1, "or imprisonment for a period up to 2 years" in Article 258.1, "other military" in Article 274.1, "other military personnel" in Article 274.2, "committed during war time or during time of announcement of war alike state" in Article 276.3, and "employees of foreign trade organization of foreign countries in the "Interpretation and definition" of Article 301.

Article 5. Following articles, paragraphs and provisions of the Criminal Law shall be considered annulled: Articles 163, 167, 170, 222, 239, 240, 244, 267, 272, 103.1, 128.1, 155.2, 230.1, “Interpretation and Definition” in Article 263, “Interpretation and Definition” in Article 269, Articles 274.3, 275.3, 279.3, 280.2, 281.3, 282.3, 286.3, 287.2, 288.2, 294.3, and 295.3

SIGNATURE

Draft

LAW OF MONGOLIA
LAW ON AMENDING ADMINISTRATIVE SANCTION LAW

_____, 2006 Ulaanbaatar

Article 1. After wording “in significant amount” in article 36 of the Administrative Sanction Law to add wording “through theft, robbery, swindling and embezzlement”.

Article 2. This Law shall enter into force from the date of enforcement of the Law on Amending the Criminal Law.

SIGNATURE

Draft

LAW OF MONGOLIA
LAW ON AMENDING
CHILDREN’S RIGHT PROTECTION LAW

_____, 2006 Ulaanbaatar

Article 1. Section 8, of Article 25 of the Children’s Right Protection Right shall be considered void.

Article 2. This Law shall enter into force from the date of enforcement of the Law on Amending the Criminal Law.

SIGNATURE

Annual Report 2006 Attachment K

LAW OF MONGOLIA ON AMENDMENTS TO THE CRIMINAL PROCEDURE CODE

Date: … 2006 Ulaanbaatar

Article 1. Add the following paragraphs and subparagraphs with the following contents to the Criminal Procedure Code:

1) Subparagraphs 5, 6 and 7 of Paragraph 1 of Article 24:

"24.1.5. if a person, who committed a minor crime first time and reported his/her crime voluntarily, compensated the losses incurred due to his/her crime fully and restituted the damages;

Does this require reporting to the police or is it sufficient if the offender admits the crime to the victim and provides for full compensation/restitution? Does the compensation/restitution have to be provided in full before the case is dismissed or could a compensation/restitution plan be established with the dismissal of the case pending until the plan is fulfilled? The latter is particularly important for first time juvenile offenders who rarely have any income and would need to provide compensation/restitution in a different manner.

24.1.6. if an act which had nature of minor or less serious crimes loses its socially harmful nature due to changes in the social situation and the offender is determined to be socially harmless during the case proceeding;
24.1.7. if the offender is to be freed from criminal liability due to expiry of period of limitation."

Article 24.1.5 and 6 are important to ensure that the criminal courts are not burdened with minor infringements that are not really a burden to society. At the same time, the article needs to be clearer as to who can make these decisions and under which circumstances. Right now it appears that it is up to the discretion of each police officer, prosecutor and judge to decide if a crime is not perused without little further guidelines. This can easily lead to significant variation in responses in similar cases. The law should at least point to additional guidelines that need to be developed for these type of decisions. This article also provides a good opening to introduce additional concept of restorative justice – a key requirement established by the Council of Europe for EU accessing.

2) Subparagraphs 6 of Paragraph 1 of Article 40:

"40.1.6. if an indigent person requests the presence of an advocate"

3) Paragraph 7 of Article 46:

“46.7. If an expert doesn’t meet the deadline for issuing expert’s conclusion specified in the decree or order, the liability provided in Article 77 of this Law shall be imposed on the expert."

This should be amended to include “delay without a valid reason announced to the court in time before the hearing.” It would then be up to the court to determine how much longer the expert would have for submitting his/her report.

4) Subparagraph 3 of Paragraph 2 and Paragraph 10 of Article 68:

“68.2.3. they have committed a crime again during the case proceeding.

Art. 68.1. applies to more severe crimes. It should be made clear that the situation outlined in Art. 68.2 can also apply. Further, considering the potentially long terms of confinement Art. 68.2 should be more specific as to which types of restraints would have to be violated earlier. Also, just committing another very minor crime alone should not be sufficient reason detain a suspect for longer periods of time.

68.10. In case of transfer of the detained suspect or accused to a different location, the judge shall make a decision on this matter based on the prosecutor’s proposal and shall notify a family member or advocate of the suspect or accused about such transfer within 24 hours.”

5) Paragraph 10 of Article 69:

Art. 69. 3 provides for an extremely long pre-trial detention period without intermittent judicial review. This is not in line with international good practice. It should be considered to introduce at least quarterly reviews of pre-trial detention decisions that would involve a hearing during which the prosecution has to justify the continuous need to hold the accused. In addition, the suspect/accused should have the right to present evidence showing that the initial conditions supporting pre-trial detention have change, are no longer valid and the suspect/accused should therefore be released.

“69.10. The judge shall make a decision on extending the detention period of the suspect or accused in the presence of the advocate and prosecutor if he/she deems it necessary or the advocate makes a request.”

(Is the right of the defense lawyer to participate in the pre-trial detention hearing included in Art. 41?)

6) Paragraph 2 of Article 99:

“99.2. The state shall be responsible for the costs of criminal proceedings and the court shall have the costs of criminal proceedings compensated according to Paragraphs 100.1, 101.1, 101.2, 101.4 and 101.5 of this Law.”

Art. 101.2 delineates that the cost of the proceedings can be attributed proportionally to several defendants but does not specify how this should be done. Also, this article specifies that cost can be attributed proportionally to the income of the defendant. This needs to be specified further. While it is just to have those with higher income pay a proportionate share of the cost that reflect their income level, more detailed guidelines needs to be established to ensure that this rule is applied equally to all defendants across the country. Again, the day fine system applied in Germany may be a helpful guide for establishing payment scales.

7) Paragraph 3 of Article 114:

"114.3. A complaint shall not be made against the decision made by the Chief Judge or a judge assigned by him/her concerning the complaint according to Paragraph 114.2 of this Law."

8) Paragraph 4 of Article 115:

"115.4. Paragraph 115.3 of this Law shall not apply to the civil proceedings of a claim for the losses related to the crime, but incurred due to failure of a party to perform its contractual duties."

9) Paragraph 4 of Article 172:

Paragraph 172.3 should be amended to include a provision that requires the officer to

a) assist the victim(s) in securing evidence, seek medical and other assistance. This includes ensuring that evidence found in or on the body of the victim is secured (i.e. semen in rape cases, potential drugging of rape victims, etc.)
b) assist in ensuring that the victim is safe from further attacks (i.e., particularly important in domestic violence and organized crime cases)

"172.4. The following officials shall take the immediate actions specified in Paragraph 172.3 of this Law in the following events:
172.4.1. In the event of a crime committed on board of a ship or aircraft with the Mongolian flag abroad, the captain of the ship or the crew leader of the aircraft;
172.4.2. In the event of a crime committed within the property of the diplomatic mission of Mongolia in a foreign country, the consular officer of the diplomatic mission;
172.4.3. In the event of a crime committed by a convict within the area of a prison, the director and/or deputy director of the prison;
172.4.4. In the event of a crime committed in the border zone, the relevant official of the border intelligence service;
172.4.5. In the event of a crime specified in Paragraphs 26.1 and 27.1 of this Law, an intelligence officer of the intelligence organization;

172.4.6. In the event of a crime committed by military or police personnel while participating in peacekeeping and other international operations, the relevant official of the military or police team;
172.4.7. In the process of determining the reason or cause of a fire, the relevant officer of the fire fighting organization;
172.4.8. In the event of a crime committed discovered during the customs inspection, a state customs inspector."

10) Paragraph 3 of Article 177:

"177.3. Inquiry may be conducted at a place where the crime was discovered or most of suspects, accused, victims and/or witnesses of the crime reside or by a unit/division conducting inquiries of certain types of crime. The prosecutor of the department in charge of inquiry shall decide the jurisdiction of the case."

11) Paragraph 4 of Article 178:

"178.4. If a suspended or dismissed case is reinstated, the prosecutor shall set the timeline of inquiry according to Paragraph 178.2 of this Law."

12) Subparagraph 5 of Paragraph 1 of Article 230:

"230.1.5. a different sentence is to be imposed in addition to the sentence applied before or the crime is to reclassified as a more serious crime."
I am not sure why reclassification or an additional sentence would automatically trigger the need for more inquiry or investigative action. While more investigation/inquiry may be need this sounds as if its mainly an internal matter of assigning a different prosecution division to handle the case.

13) Paragraph 6 of Article 263:

"263.6. The procedures provided in Paragraph 263.3 of this Law shall also apply to hearing of testimony of minor defendant."

Does "minor" hear mean someone who has committed a minor crime or a juvenile? If a juvenile is involved 263.2 should be limited to having the judge leading and conducting the questions of the juvenile.

14) Paragraph 2 of Article 342:

"342.2. The supervisory instance court must review and resolve a case against which a complaint or protest is lodged under Paragraph 342.1 of this Law."

15) Subparagraph 4 of Paragraph 1 of Article 350:

"350.1.4. to invalidate decree or order, dismiss a case or acquit/"

16) Paragraph 2 of Article 370:

"370.2. The interrogation process may be video-recorded at the expenses of the advocate for the person who is being interrogated at his/her request. The inquiry officer, investigator or prosecutor shall record this in the note of inquiry or investigation and the video record shall be attached to the case file."

Video taping of interrogations should be allowable not just at the request of the advocate but also at the request of a victim of certain violent crimes and/or their parent/other close relative, and an accused juvenile and/or their parent and/or close relative .

Article 2. The clauses and paragraphs with added words:

24.3. If termination of a case based on the grounds stated in Articles 24.1.1. and 24.1.2. of this Law is objected by the accused and his/her advocate, or on the grounds stated in 24.1.3 of this Law - by the advocate of the accused or member of his/her family, relative, their complaint shall be lodged to **prosecutor's office or** court and the court shall execute judicial examination in the usual manner and shall review and resolve whether the person involved in the case is guilty or not.

If the elements of the crime are not given then there can be no guilt and I don't understand why anybody accused would want to object to the termination of this action (24.1.1) There is no way the prosecutor will be able to determine guilt or not guilt – there is no crime . I can understand that someone accused of committing a crime past the experation period (24.1.2) but this is a significant burden for the state (and cost to the taxpayer). Rather the "accused" could counter sue for slander – or start a civil case to get reimbursed for any losses resulting of an investigation of a case that is beyond the expiration period.

32.2. If a judge considers that decree of a case**, the inquiry of which has been completed,** shall be handled by a bench of judges due to complicated nature of the case, he/she may submit a petition on the issue and a bench may be appointed by order of Chief Judge of the respective court.

This is a helpful provision but there should be more clarity as to what constitutes "complicated nature" to ensure some conformity across the country regarding the use of a bench of judges. Otherwise this provision could open the door to allowing judges and chief judges to create more work for an otherwise less busy court. If certain matters are deemed too complex for an individual judge in the countryside because he/she is new to the bench or that particular matter is dealt with only infrequently this is better handled by reassigning the case to a more experienced judge or designating specialist judges to cover slightly more complex cases in a certain region.

40.1.3. persons who do not have command of oral **and written** Mongolian language;

41.1. Advocate shall be obliged to protect rights and legal interests of suspect, accused, or defendant, provide legal assistance to them and **appear *well prepared* at the court hearing at the time set by the court if there is no good reason to be late or absent**. *The advocate shall inform the court of the need and reason to be absent or late at soon as he/she realizes that timely presence at the hearing will not be possible.*

I've added "well prepared" since just appearing alone does not help the defendant. The attorney must be ready and prepared to defend his/her client. Again, some guidelines should be established as to what "good reasons to be absent or late" are. Also, informing the court immediately should be required. Most advocates have cell phone so there is no good excuse for not letting the court know in time.

44.1. Parents, guardians, curators, and other persons as well as economic entities, and organizations which by law bear material **and immaterial** liability for a loss caused by the criminal actions of the accused, may be prosecuted as civil defendants.

Here I am adding something for Art. 45which is not addressed but its pretty obvious:

ARTICLE 45. WITNESS

45.1. A person who knows significant circumstances of a crime, *who or may not be involved* in the crime shall be deemed to be a witness.

Other suspects/accused can very well be a witness, particularly if they had just a small role in a crime that involve several offenders/acts/victims.

59.8. The counting of arrest period shall be started from the moment of presenting the decree **or order** of arrest to the suspect.

68.4. If the suspect arrested according to rules set for by Articles 58 and 59 of this Law is to be confined under guard, **the prosecutor shall deliver** the respective order ~~**shall be delivered**~~ to court 6 hours before the time of arrest expires.

69.4. If it is considered necessary to confine accused for crimes provided for by Articles 81.2 (Assault to life and body of prominent political and social figure), 84 (Sabotage), 91.2 (Murder in grave circumstances with intention), **145.4 (Theft in grave circumstances),** 177.2 (Banditry in extremely grave circumstances), **177.3. (Financing of terrorism)** and 302 (Genocide) of the Criminal Law for longer period than specified in Article 69.3. of this Law the period of confinement under guard may be extended by court for up to six months additionally.

77.1. In cases victim, witness, translator, interpreter, **expert** or other relevant persons violate their duties in proceedings or the rules of court session they shall be imposed a monetary fine according to procedures provided by Article 78 of this Law.

Art. 77.2 establishes that the fine to be paid would be calculated based on the minimal wage – as mentioned earlier, this punishes those with no or little income more than those with higher income. The range should be reviewed and clearer guidelines for what these violations are and how to determine the severity of each violation are needed.

115.1. A citizen, economic entity, and organization that have suffered material **and immaterial** damages because of a crime shall have the right to bring a civil suit in respect of a suspect, accused, defendant or a person bearing material responsibility for the damages caused by them and the suit shall be reviewed and resolved by a court jointly with the criminal case.

145.1. Before interrogation of a minor witness he/she shall be explained about the importance of telling truthfully all circumstances of a case known to him/her, but it shall be prohibited to warn **the witnesses aged under 16** of responsibility for refusing to give or evading from giving a testimony or for giving deliberately false testimony.

172.3.6. to obtain explanation from citizens, and officials**, if necessary to appoint an expert and to get his/her evaluation**;

172.4. Actions listed Articles 172.3.2, **172.3.3, 172.3.4,** 172.3.5 and 172.3.8 of this Law shall be carried out only in accordance with the procedures established in this Law.

177.1. An inquiry officer shall carry out an inquiry for minor and less grave crimes specified in the Criminal Code in accordance with the jurisdiction set forth in this Law. **The inquiry shall be conducted in the criminal scene.**

I don't understand this addition – in addition to crime scene related inquiries information may need to be collected elsewhere. It may be particularly important to interview witnesses not at the crime scene.

209.4. The suspect, accused or victim shall be notified **within 3 days** of the order to terminate the case and shall be explained about the procedure for appeal.

215.3. The term for drawing up a conclusion to indict shall be 10 days. A higher instance prosecutor may extend this term for **up to** 14 days.

This provision should include the grounds for extending the term – also, is this 14 additional days or just extend the 10 days to 14 days?

229.1.2. In the event that the accused is not capable to arrive due to mental or other grave illness which is confirmed by a conclusion of expert **or** certification of a medical institution;

230.1.3. **Misapplication of the Criminal Code and** substantial violation of this Code in the process of inquiry or investigation;

Article 242. Consequences of Nonappearance of Prosecutor, Advocate and **Citizen's Representative**

There has been no reference so far to the Citizen's Representative and there is not article in this code that delineates the role of the Citizen's Representative, the responsibilities, selection process and instructions, or anything else that would ensure that this person fully understands the process and limits of the law. Considering that the absence of this person can derail the process, that this person has the right to state his opinion of the defendant's guilt, this is a serious gap in the code that can lead to significant discrepancies across the country.

242.1. Nonappearance of prosecutor, advocate and citizen's representative shall serve as grounds for postponing a court hearing.
242.2. In case a prosecutor, advocate and/or citizen's representative is not able to participate further in court hearing, they may be replaced. In such case, the case hearing shall start over again and a prosecutor, advocate and/or citizen's representative who assumed the case shall be given access to all materials of the case.

Having the case start all over again may be necessary in some cases but not always. First, it should be up the prosecutor's office, the new defense council to determine if the can continue the case. I am uncertain if the role of the citizen's representative is so important that a new person could not be briefed by both parties and then continue as replacement. For the prosecutor's office there is a higher responsibility to ensure that their office is able to replace a prosecutor without the need to restart a court case. For the defense there needs to be some limit as to how often a defense attorney can be replaced and therefore having to start the case again. This can become a troublesome trial technical in larger, highly political cases to ensure that the case drags on and is not resolved. The court needs to have the ability to assign a replacement counsel and/or a back-up counsel if a repeated change in counsel threatens to derail the case more than twice.

262.2. The presiding judge of the court hearing shall ask each defendant whether he/she has understood the accusation or indictment, and if necessary shall ask the state prosecutor to explain the substance of the accusation or indictment to the defendant.

The presiding judge has to do the same with witnesses/victims and experts – with some limits when children are a witness/victim.

269.1. Hearing of testimony by minor witnesses shall be carried out according to procedures set forth in Article**s 145 and** 267 of this Law.

269.1. A minor witness or victim must be removed from the courtroom at the end of his/her testimony, if further presence of them is not necessary.

Removing the child is very important and should of primary concern. If the presence of the minor is required later, he/she should be removed even just for shorter periods of

time. In addition, it is recommended to allow video testimony and increased reliance on written testimony for minors.

279.2. Oral arguments of court hearing shall consist of speeches of the prosecutor, advocate or of the defendant if an advocate has not participated in the court hearing, as well as of the victim, civil plaintiff, civil defendant and their representatives. **Citizen's representative may read out his/her opinion on the guilt of the defendant.**

If the citizen's representative has this right, it is important that this statement can only be made once at the end of the hearing, just before the judge(s) would state his/her opinion. There needs to be a good process in place to ensure that the citizen's representative understand that the guilt can only be established according to the law and based on the evidence and that this opinion cannot be a personal opinion based on emotions, feelings, or a close relationship to the defendant or any other party in the case.

Naturally, there need to be clear rules to identify if a Citizen's Representative has a conflict of interest and needs to be excused from the proceedings. Some of the underlying principles that guide the selection, instruction, exclusion, and responsibilities of jurors in the US and elsewhere may be helpful in developing articles and guidelines for the participation of the Citizen's Representative.

296.1. The descriptive part of a order of conviction must contain information of **the criminal record of the defendant,** place, time, and method of the crime, damages caused as a result of the crime, its amount, causes and conditions of the crime, the evidence on which the court's conclusions are founded, and the reasons for which the court has rejected other evidence; indications of circumstances tending to mitigate or aggravate liability; and in the event that part of the accusation is deemed terminated, the grounds therefore; the court shall also be obliged to provide the reasons for changing the accusation previously presented, if such has been done in court, and, when necessary, the reasons for the relief of the defendant from conviction and for the decision of the question connected with the stay of execution of order imposing imprisonment sentence.

It may be more helpful if this article provides a more structured outline for the order, i.e. a description of the elements of the crime and how they are supported by the evidence (including evidence to support criminal intent or negligence), why certain evidence was rejected, the role of the defendant in the crime, and the related conclusions of the court about the guilt of the defendant; this should then be followed deliberations about mitigating or aggravating factors beyond those that are already an element of the crime, mental capacities and the prior criminal record of the defendant which then lead to the sentencing decision.

303.1. Convict, victim, their advocate and legal representative shall have the right to file an appeal against the court decision and the state prosecutor shall have the right to write a protest against the court decision. **If the higher instance prosecutor deems that the state prosecutor refused to prosecute the defendant without a valid reason, he/she can write a protest against the court decision.**

I don't quite understand, why the prosecutor, too, would not file an appeal. I also don't understand the newly added sentence – if a prosecutor did not pursue the case there would not be a court decision to protest or appeal. If the prosecutor in the case did not pursue the case to the full extent it would have been possible, then the higher level prosecutor may consider appealing the court decison.

Article 332. Deferral of execution of Order Sentencing a Person To **Fine,** Compulsory Works, Arrest and Imprisonment.

Article 336. Replacing Fine with **Incarceration or** Imprisonment Sentence, Terminating Deferral of the Execution of Court Decision Imposing Imprisonment Sentence and Making the Convict Serve His/Her Imprisonment Sentence in Person
336.1. Issue of replacing conviction assigned in the form of fine with **incarceration or** imprisonment sentence, or terminating the deferral of the execution of court decision imposing imprisonment sentence and making the convict to serve his/her imprisonment sentence in person shall be decided by an order of a judge upon the request or proposal of the organization in charge of execution of the conviction or of carrying out supervision over such execution as well as an opinion of the prosecutor.

Somewhere the code needs to specify under which circumstance these decisions that are leading to harsher sentencing alternatives are allowed.

346.2. The court shall review and resolve the case within 30 days after receiving the case and based on complicated nature of the case the Presiding Judge of the Chamber may extend the term for **up to** 14 days.

For most cases this should be a sufficient time frame, for some complex cases the review period may be tight. Requiring the court to also resolve complex cases within even the extended period may not be realistic. Any time limits for appellate court cases need to be responsive to the special needs of individual cases without sacrificing the quality of appellate justice. Time standards applied in other countries are generally considerably longer. For example, the American Bar Association's Standards Relating to Appellate Courts (Standard 3.53) suggests that court of last resort should resolve 90% of all appeals within one year, and intermediate courts should resolve 95% of all appeals within one year. Such timelines may be excessive for Mongolia but really complex cases in most countries require more time for review and resolution then the maximum of 6 weeks allowed in Mongolia. The GCC or the Supreme Court Research Center should study if there are certain types of cases and case situations that may warrant a longer review period.

349.4. The reporter shall present the circumstances of the case, the content of the order, ruling, **complaint** or protest, after which questions may be asked from the reporter and a prosecutor or advocate may comment on the case.

408.1. If there is ground for satisfaction of the request of authorized organization of foreign country and for extradition of a criminal, he/she shall be arrested and detained until the extradition and the prosecutor and requesting organization shall be informed immediately on date and place of the extradition.

Annual Report Attachment L

REPORT OF MONGOLIA JUDICIAL REFORM PROJECT on the 2006 Lawyer Qualification Examination

August 25-28, 2006

Background:

The Judicial Reform Program (JRP) has been assisting the Mongolian government to improve its system for the qualification of lawyers by creating a uniform mechanism for qualifying legal professionals (Strategic Principle 2.5), specifically to develop a bar system for qualifying legal professionals (Strategic Principle 2.5.2.) set forth in the Strategic Plan for the Mongolian Justice System. In May 2003, the Great Khural adopted the legislation setting up the requirements and procedures for the qualification exam. In 2004 and 2005, the JRP assisted the Ministry of Justice and Home Affairs and the Non-Staff Council in administering the lawyer qualification examination by providing technical assistance, financial assistance and equipment (grading machines, computer forms and other items).

After a study tour to the US, organized by the JRP in February 2005, the Non-Staff Council produced a report and action plan (See **Exhibit I**) that contemplated legislative changes to improve the qualification process. The Great Khural was not able to pass the proposed amendments and the second and third qualification exams in 2005 and 2006 were held under the existing legislation. However many changes were made as a result of the study tour and continual assistance and recommendations (See **Exhibit II.** "Mongolia Lawyer Qualification Examination, January 30-February 2, 2004, The Mongolia Judicial Reform Program, Report and Recommendations" and **Exhibit III.** "Report of Mongolia Judicial Reform Project on the 2005 Lawyer Qualification Examination, July 22-24, 2005") by the JRP to address the problems of the previous exams. The most important of these changes were the creation of two versions of the multiple choice exam, the introduction of essay questions, the reduction of the interview to a short pro forma format and the development of protocol for observing the examination for preserving the integrity and transparency of the process.

In 2006, the JRP consistently provided assistance for administering the third qualification examination. In addition, the JRP developed recommendations aimed at improving the monitoring of exams and commented on the Procedures for the Observation of the Qualification Examination upon the MoJHA request.

The 2006 exam was a big success as there were fewer errors in grading of multiple choice tests that constitute 60% of the total score as a result of using the fully automated Scantron Scanmark SP2260 (SS SP2260) grading machine and thus there were much less complaints by test takers.

At the meeting of the Non-Staff Council of September 6th the Examination Committee reported that 2660 people registered for the examination, 2538 people took the test and 512 people passed the test in 2006, 20.1%. The pass rate increased by 1.4% compared to the pass rate of 2005 exam.

However many improvements need to be made in order to streamline and fine-tune the administration of the examination process. The question of whether the exam was unnecessarily difficult can only be addressed by further study and will be discussed in the recommendation section.

Preparation for the 2006 Examination:

The JRP financed the newspaper and TV announcements for the examination. The JRP verified the availability of the grading machines and the software to run the high speed SS SP2260. The JRP IT coordinator made modifications to the software and taught the NLC staff how to use it as NLC staff was not familiar with it. The high-speed machine does not print the scores on the forms, but creates an electronic database and can be connected to a printer, which will print out all score information. This significantly reduces the possibility for manipulation, which became a critical issue in grading the multiple-choice tests in 2005.

Observations of Examination:

On August 25, the JRP staff observed the administration of the test examination at 5 sites in UB (Computer and Technical Management School, Culture Palace, Ikh Zasag University, Municipal Library and the Ulaanbaatar University) and the site in Erdenet. In general, the observation reflected significant and important improvements over the 2005 examination.

- The random seating assignment was enforced at all examination sites observed.
- The use of two versions of the multiple-choice examination seemed to have eliminated the problem of people copying from their neighbor.
- At most sites the spaces between the rows were enough for the proctors to walk without disturbing the test takers.
- The test takers were appropriately warned about the time they had left before finishing.
- Although there was no specific protocol for keeping the test takers' belongings, the proctors and committee members have managed to collect the personal belongings and put them in a safe place. There was no theft of personal items reported.
- The general atmosphere in the examination rooms was quiet and conditions were generally good for taking the examination.

A few problems were noted:

At some sites, the registration was not well organized. For example, people without proper identification were allowed to take the examination (4 people at the UB University). Some people did not have their names on the admission lists and there were problems with the ID numbers (at the UB University and the Computer and Technical and Management School there were cases where two test takers had the same ID number, three people had their ID numbers mixed up). In UB University, the examination did not start at 10:00 a.m. as announced, because the organizers continued to register people who were late. At some sites, some people were allowed to keep their belongings. For example, in Children's library, people were allowed to keep their cell phones. The test takers were allowed to bring only law books for the

essay portion of the examination. However, the proctors did not check whether there were notes and other papers inserted among the pages of law books. There were no uniform procedures for distributing the tests. For example, at some sites the tests were distributed column by column so that the people sitting elbow to elbow have different test versions, while at other sites the tests were distributed using chessboard like pattern that is, all seats neighboring horizontally and vertically had different test versions. However, the latter seating arrangement sometimes allowed the test takers with the same test version to sit next to each other due to gaps in seating and careless distribution. There were two same choices of answers for one of the multiple-choice questions (Version B, Question 5).

Although the NLC has published a handbook for test takers, which gave information about how to fill out the forms and other exam procedures, many people at the examination site did not have a basic understanding, either for it was because people did not know that such a handbook existed or because they did not bother to look for it [or buy it]. The only place that was selling this handbook in UB was the NLC bookstore. Therefore, in some cases a simple verbal warning before the examination provided all the information about the exam procedures and the instruction on filling out the forms. At one site, a test taker with ID number 1740 refused to give in her form and argued with the proctor that she has the right to finish filling in the form because she already marked the correct answers on the test questions.

There was no training conducted for the proctors for enforcing rules and procedures and giving instructions etc. We have observed that some [untrained] proctors did not give concise, uniform and clear instructions on how to fill out the forms. There were 40 forms that showed errors when read by the scoring machine which indicates that there were people who did not understand the instructions. Some people entered 8 digits instead of 4 in the ID number section as there were 8 lines (4 red and 4 white), some made two marks on the same line while other people correctly put a single mark per line. [This created problems in the grading process]. At the Computer Science and Technology School site, two proctors gave instructions in two different classrooms at the same time. One of the proctors gave a better speech than the other proctor's speech and as a result did not take long and the exam started in time. However, the other proctor was not as good in explaining and received many more questions, it took more time than necessary, and as a result, the examination in the other classroom did not start in time.

Because different instructions were given at different test sites about how long the break would last and whether test takers could leave, some people were not allowed to take the essay portion of the examination when they arrived late from the break between the multiple question portion of the exam and the essay portion.

There were still no uniform rules on how to collect the test forms. At some sites, the collection took too long time that some of the test takers were able to fill out a couple of more answers during the collection when no one was supposed to be filling out the forms. We have observed that there were too few proctors per examination site to enforce the procedures and as a result, some test takers had the chance to fill out some more answers after the time is called.

Some test takers were very critical about the essay portion of the examination. They complained that they were advised to write different possible options and were not told that the answers would be graded based on their ability to provide well-substantiated grounds.

Observations of Grading:

On August 25 JRP staff had observed the grading of 1,869 test forms. The grading started at 3 p.m. and was completed by 7 p.m. and the PDF report issued at 8 p.m. However due to problems relating to incorrect filling of forms and errors of NLC staff working with the machines the Examination Committee had to take additional measures to ensure accurate results. 40 forms had incorrectly marked ID numbers and had to be fed into the grading machine separately after corrections were made. Most probably due to human error, the form with identification number 1930 was recorded in the grading of both the "A" and "B" test versions. In order to correct the error the Examination Committee decided to check the forms of both the "A" and "B" versions to verify whether there were two forms mistakenly marked as 1930. There was only one form with ID number 1930. Therefore, the only explanation left is that the people who fed the forms into the machine mistakenly fed it into both A and B test feeds. The final machine read results were issued at 3 a.m. of August 26. In Erdenet, the examination committee received 7 complaints. All seven people were able to review their answer sheets.

Recommendations:

During the Non Staff Council meeting, the Head of the Examination Committee suggested the following changes:

The budget for organizing the examination in the countryside did not include costs for local transportation, stationery and equipment. In the future, the budget for organizing the examination needs to be reviewed in detail before approval.

The registration date should be announced at least 6 months prior to the examination.

The Law on selection of lawyers allows only 7 days after the registration for administering the examination. In order to prepare for the examination the examination committee needs the number of people registered for the examination at least 30 days prior to the examination. Therefore, the law needs to be amended.

The basic requirements for the examination site need to be established officially and the sites need to be evaluated and those sites that are meeting the requirements need to be contracted in advance.

Each lawyer qualification examination should be conducted during July and after Naadam.

Considering that some of the examination sites in the countryside registered as few as 80 people, the examination sites in the countryside need to be reduced to western, eastern and center regions. If possible, the examination should be administered only in Ulaanbaatar City.

Besides the above-mentioned suggestion made by the Head of the Examination Committee during the Non Staff Council meeting, the JRP recommends the following:

As recommended earlier the examination should be strictly monitored to ensure uniform implementation of procedures and rules with the purpose to preserve the integrity of the examination process and avoid any appearance of impropriety. The Non-Staff Council should develop a protocol for monitoring the process (see **Exhibit IV**. JRP recommendation of August 11, 2006) and publicize the observation procedures approved by its August 2006 Resolution #7.

Another important aspect for ensuring consistent and uniform application of rules and procedures is the enactment of protocols for dealing with people without proper ID, who are late or who knowingly break the examination rules, of procedures for placing personal belongings of test takers as recommended last year. These protocols should be widely publicized and made available for law schools. The handbook for examinees should have all of the above-recommended protocols and need to be distributed among law schools before they close for the summer holiday.

In addition to preparation courses for test takers the Council should develop written instructions or an overview of the examination process [or the handbook for examinees] each year and make it available for test takers at all registration sites. This will not only ensure the proper and uniform implementation of procedures but also reduce the problems with incorrect marking of test forms, which in turn will eliminate the problems in their grading. If the written instruction [or the handbook] becomes free and available to anyone, the Examination Committee would be able to consider the forms with incorrectly marked ID numbers simply as invalid and not spend time to correct them.

The observations had shown that training for all proctors, observers and other people involved in the administration of the exam is essential for the uniform implementation of rules and procedures. This could be a “mock examination” to be held for proctors some days prior to the examination explaining all the procedures and protocols as recommended last year. Written copies of the exact instructions to be given to all test takers should be distributed to all proctors and observers.

The guideline for grading the essays was too general informing the graders only about what arguments are good to make, but did not give them a table of matching scores for each argument. Since the guideline does not have a specific matching score for each correct argument, the graders are still subject to favoritism. Also, the total score for the essay portion of the examination was too high this year (35%) increasing the subjective role of graders (human involvement in the grading) and making the objective machine read test results relatively weaker compared to last year’s exam. Therefore, the guideline should have a table of matching scores for all possible arguments and some portion of scores for general writing skills. The total score for the essay portion should be reduced.

In addition, the exam committee should provide a book of laws for the essay portion to each exam taker with the printing costs added to the exam fee. If this cannot be done then at least the proctors should check the pages of the law books entering the site for the essay portion of the examination.

A procedure for collecting the forms and booklets needs to be made uniform. The JRP recommends that the test takers be instructed that when the time is called, they hold up their forms or booklets in their right hand and keep them in the air until they are collected. All other papers can be passed in. No one who does not

immediately hold up his or her form or booklet should have that form or booklet graded.

It is recommended that the number of test takers per examination room be reduced so that they be seated at least one seat apart. The distribution of tests should be regulated by a protocol. Creation of a third version is also recommended and that the indication of the version ("A", "B" or "C") be small so it cannot be read from the next seat.

A protocol between the MoJHA, the Non-Staff Council and the NLC delineating their duties and responsibilities with regard to the administration of the examination including the logistics (timely preparation of all necessary equipment, better organization of examination sites), selection and instruction of examiners, monitors, support staff and observers, development and revision of examination material should be developed. The JRP will only assign ownership of the grading machines when this protocol has been signed.

The administration of the 2006 lawyer qualification examination has shown that several of the JRP recommendations were not introduced despite the fact that JRP offered its assistance and they do not require that much funding. In 2004, the JRP had retained title to the machines, but given custody to the NLC pending a written agreement between the Non-Staff Council and the NLC. If the Examination Committee considers that the high speed machine is not suitable for grading the test forms the JRP will consider transferring them to law schools that will be able to sustain their efficient exploitation.

Pass rates for every law school should be published. This will encourage law schools to improve the quality of their preparation and all prospective student will be able to evaluate and know how much value they will get for their tuition and if they are likely to have a career as a lawyer after their study.

Legislative Changes – Having successfully completed 3 examinations the Non-Staff Council is now able to accurately estimate how much subsequent examinations will cost to administer. The legislation needs to be changed to allow the Non-Staff Council to set the examination fee at an amount that will cover all of the costs of administering future examination.

The Non-Staff Council should be allowed to have an account in which to hold funds from one examination for the "up front" expenses of the next examination in order to be able to conduct the examination independently without any donor support. In addition, the Non-Staff Council should publish the complete budget and its disbursement to ensure the transparency of its operations.

The requirement for an interview needs to be dropped. The Examination Committee needs to be able to call for an interview if they think it is required, particularly if there are questions about the test takers personal history, if information on education, employment or crime record do not seem to be correct or point to potential ethical problems. But, nothing is added by a requirement to interview everyone.

The Difficulty of the Test – Over --% of the people who took the test failed and must have experienced frustration. Test takers complained that the multiple-choice

examination allowed a minute per question and was too long to be taken in one hour and forty minutes. Furthermore, they complained that a significant part of the multiple choice questions was to identify the correct version of a text of law, which gave the impression that the requirement for lawyers was not to correctly apply the law but to memorize the text of law. It has also been suggested that the test is too difficult. The government of Mongolia has a need to fill a number of vacancies in the justice sector and the number of people passing the test may not be adequate to fill that need. Many of those passing the test will seek employment in the private sector, rather than as government lawyers. The purpose of the examination is not to be a selection exam for government employment but to ensure that everyone who calls themselves a "lawyer" has at least the basic knowledge required to practice law competently. All of the questions are designed so that a competent lawyer should be able to answer them. It is much harder to calibrate the difficulty of the test to the level of knowledge required to practice law. It is recommended that the Non-Staff Council investigate ways of determining if the Lawyer Qualification Exam is too easy or too hard to select qualified lawyers. It could have a sample of lawyers already working in government jobs who are rated as qualified take the exam along with the new test takers in future years. If the sample lawyers scored below the cut off, it could be judged as evidence that the exam was unnecessarily difficult. If the group scored uniformly above the cut off, it could be evidence that the exam is too easy. Other means of determining how well the exam measures lawyer competence could be investigated with the help of foreign lawyer examination bodies.

SURVEY REPORT ON NEEDS OF PUBLIC LEGAL EDUCATION 2005

Survey title	Needs for Public Legal Education
Sponsor of the survey	Mongolia Judicial Reform Program
Implementer organization	National Legal Center
Survey Coordinator	B.Tamir, Teacher, Informal Legal Training Center, The NLC
Survey Consultant	Ch.Tamir, Teacher, Faculty of Sociology, National University of Mongolia
Start and finish of the survey	May - December 2005
Continuation	8 months
Total filled questionnaire	2000
Method of the survey	Questionnaire and interview
Places where the survey was conducted	Total 23 regions

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1. BACKGROUND, PURPOSE AND METHODOLOGY

Over the past several years, the importance of conducting research on citizens' legal knowledge, legal educational level and to identify needs of informal legal training has been constantly increasing. It is due to the importance of the survey that we set the purpose and goals of the survey in the following approach.

One. Background

The following three main reasons generated urgent need to conduct this survey.

Firstly, in 1992, the new Constitution was adopted by the People's Ikh Khural and the state had faced challenges to renew the laws and rules which regulated all social relations. Since 1992, more than 300 laws have been adopted or amended. These new laws aimed at ensuring citizen's rights and interests. Therefore, it is essential for the citizens to know about these new laws and rules.

Secondly, over the past years unemployment, poverty and corruption have been increasing and these factors create unexpected and abnormal situation in the society. The crime rate has also increased and the number of registered crimes in 2005 was 2.5 times more compared to 1990. It is not secret that behind this fact exist violations of human rights and human freedom. Therefore, enhancing citizen's legal knowledge and legal education is important for them to protect their violated rights, and to be aware of whom they can apply in case of violation and how to prevent crime, and how to resolve the legal problem. These issues inseparably connected together.

Thirdly, promoting citizens' legal education is an important factor for establishing rule of law. As citizen's legal knowledge increases the enforcement of laws adopted by the state will be ensured and citizens will abide by the laws, which is essential in developing and strengthening democracy.

Two. Purpose and goals of the survey

The main purpose of the survey is to identify *Needs of Citizens' Informal Legal Training through Research on Citizen's Legal knowledge and the level of their Legal education*. To achieve the purpose of the survey, we accomplished the following tasks.

1. To identify citizens' legal knowledge and educational level
2. To do research on the needs of informal legal training in citizen's life
3. To research the methods, content and phases of the public legal training

4. To identify opportunities to correspond legal knowledge to citizens.

Three. Methodology

1. Raising hypothesis

Employment, residential place, social classes are important factors in identifying citizen's need on legal informal training.

2. Suitable case

In the survey, the following groups were chosen as suitable research cases.

- Rural herders
- Residents of the soum center (public service, private business, unemployed persons and other groups).
- Residents of the aimag centers (public service, private business, unemployed persons and other groups)
- Residents of the city (public service, private business, unemployed persons etc)

3. Scope of the survey

Article 57.1 of Mongolian Constitution states that "the territory of Mongolia is divided administratively into aimags and a capital city; aimags are subdivided into soums; soums into bags; the capital city is divided into districts and districts into neighborhoods". The survey was conducted within this administrative scope.

4. Glossary of terms

In any survey the explanation of key terms or definitions is crucial. We used the following terms and definitions in this survey. To define the term, firstly, we considered the description of terms, secondly, the level to use them, thirdly, meanings /content/ and scope of the term and respective understanding.

- Legal knowledge and education

This term has broad meaning and for the purpose of the survey the term can be understood as citizens' knowledge, awareness and understanding about laws and legal acts.

- Informal legal training

It is a short term training aimed at enhancing citizens 'legal education and to raise citizens 'awareness on legal issues and laws.

- Legal framework

Legal framework means legal acts, laws and rules that link government and citizens together. Particularly, under this term we consider laws, rules and decisions that were involves citizens 'participation.

- Citizens 'legal need and demand

Essential legal demands for regulating the conduct of citizens '.

5. Geographical areas and research selection

To cover all groups of the population, the survey team used simple random selection method regarding respondents and chose one aimag from every 2 aimags (there are 21 aimags) and Ulaanbaatar. Consequently, the survey was conducted among 2000 citizens in 10 aimags, 2 towns and the capital city or 13 areas. There were planned to take in total 150 research data. The survey team took four basic criteria such as age, gender, education level and geographic area as main judgments and made the model of the core sets and selected sets based on them. It is the universal research methodology used not only in Mongolia, but also around the world.

Research selection method and geographic areas reflected the following peculiarities. To represent whole Mongolia, firstly the differences of city and rural areas, secondly, the differences of regions /tried to reflect current and renewed administrative divisions/, thirdly, considered the differences of aimag centers and soums.

Based on the above criteria, we selected the following geographical areas to conduct the research.

	Target research location	Districts and soums	Region
1	Ulaanbaatar	Bayanzurkh district, Khan-Uul district, Bayangol district	Capital city
2	Erdenet	2 soums	town
3	Darkhan	2 soums	town
4	Uvurkhangai	2 soums	
5	Huvsgul	2 soums	
6	Dornogobi	2 soums	
7	Uvs	2 soums	
8	Bayankhongor	2 soums	
9	Bulgan	2 soums	
10	Umnugobi	2 soums	
11	Selenge	2 soums	
	Total	23 areas	

Participants age groups.

	Your age	Percentage
1	17 years old	5.8
2	18-24 years old	28
3	25-30 years old	13.7
4	31-35 years old	12.3
5	36-40 years old	10.5
6	41-45 years old	11.8
7	46-50 years old	8.5
8	51-60 years old	6.2
9	61 years old	3
10	Total	100

6. Data collection and analysis

This sociological survey uses the following methods. The methods can be divided in two categories: one is quantitative methods and the second is qualitative methods.

Firstly. Quantitative method

1. *Method of content analysis*

To make analysis in legislative acts, formal and informal documents, research reports and expertise and lectures related to the research subject.

2. *Research through questionnaire: 2000 persons*

In total, the survey on needs of public legal education was conducted on 2000 persons. The survey questionnaire consisted of 23 questions.

In addition, in the survey used methods of logic quadrangle and correlation.

Secondly. Qualitative methods

3. Interview with experts: 50 persons

The survey team conducted interview with experts on the research topics and used their opinion, experience and research data in the preparation of the survey report. From each selected area the team member met with 2-3 experts such as local khoroo's police officer, khoroo's social worker and children's inspector.

Quantitative data was processed through SPSS software. The researchers processed the qualitative data using his/her own methods.

Four. Expected outcome

- A survey report identifying citizens 'need for informal legal training.
- A database of information on citizens 'need for informal legal training.
- Identifying instruments and methods for citizens 'informal legal training phases.
- Content and basic directions of training manuals and handouts for informal legal training.
- To prepare a training curriculum for different target groups in the society and define its methodology.

2. CITIZENS 'AWARENESS OF LEGAL INFORMATION

Citizens 'awareness of legal information

The research revealed the sources from where citizens obtain information on law. The survey team conducted research on these sources such as media, friends, and colleagues and studied how citizens receive legal information from their surrounding environment. Next table shows the results of the research.

How do you receive legal information and from what source?

	Always		Often		Sometimes		Never		Not answered		Total	
	number	%	num.	%	num.	%	num.	%	num.	%	num.	%
Television	644	31.0	523	25.1	418	20.1	74	3.6	421	20.2	2080	100
Radio	220	10.6	259	12.5	423	20.3	223	10.7	955	45.9	2080	100
Newspapers	425	20.4	454	21.8	369	17.7	59	2.8	775	37.2	2082	100
Friends	206	9.9	310	14.9	364	17.5	144	6.9	1058	50.8	2082	100
Colleagues	183	8.8	248	11.9	325	15.6	194	9.3	1130	54.3	2080	100
Family members	137	6.6	203	9.8	313	15.0	290	13.9	1139	54.7	2082	100
From conversation	141	6.8	208	10.0	384	18.5	235	11.3	1110	53.4	2078	100

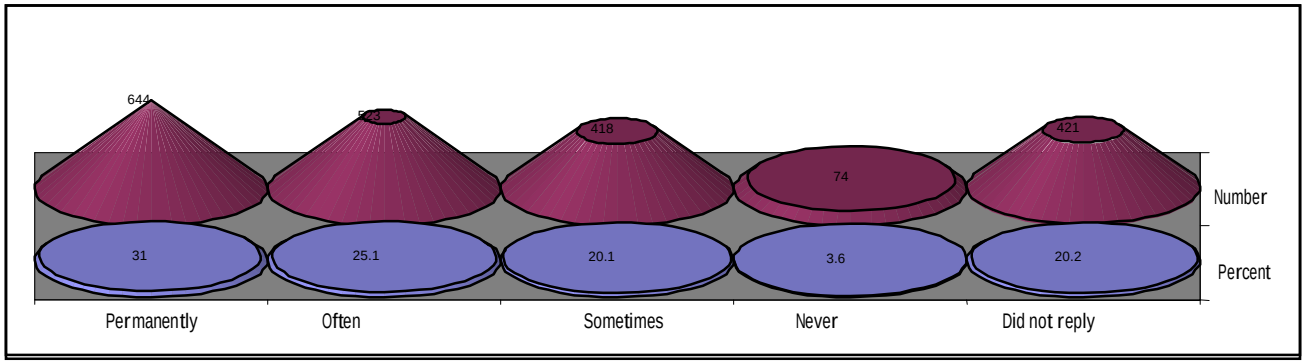
The study shows that one-third or 31 percent of all respondents replied that they always receive legal information from TV. In addition, 25.1 percent of respondents answered that they often receive legal information from TV. In total, 56.1 percent or more than half of the respondents receive legal information through or from TV.

The second main source or legal information was newspapers. Two-fifth of respondents said that they receive legal information from newspapers. It is about 42.2 percent of all participants of the research. The next main source of legal information was the radio. However, radio was not so popular source of legal information as TV and newspapers. People use it sometimes or depending on their residential areas. The study showed that 23.1 percent of respondents always or often receive legal information from the radio, and 10.7 replied that never receive legal information from radio. It is certain that this percentage depends on the quality or popularity of radio programs and audience that likes listen to the radio.

Another very popular source of information, other than media, was friends and colleagues. For example, out of all respondents 24.8 percent replied that they receive legal information from friends and colleagues. For them, colleagues were one of important sources of legal information and 20.7 percent of respondents receive legal information through colleagues. However, number of respondents replied that they receive more legal information from outside conversation and talks than their families. It shows that people receive legal information often accidentally, not deliberately.

- Therefore, TV is the main source of legal information for the citizens.

As previously noted, 56.1 percent of all respondents always received legal information or legal knowledge mainly from TV.



Depending on living conditions and because of certain reasons such as geographical location, lack of electricity, the use of TV was different in rural areas compared to city and towns. Consequently, the use of TV between city dwellers and rural residents was not the same and it was reflected in the survey results. To show this we compared answers of respondents in the next table.

Number and percentage of respondents who receive legal information from TV.

	Always		Often		Sometimes		Never		Did not reply		Total	
	number	%	nu	%	nu	%	nu	%	nu	%	nu	%
Ulaanbaatar	104	32.0	63	19.4	65	20.0	6	2.5	85	26.2	325	100
Darkhan, Erdenet	91	21.9	41	15.2	75	27.9	3	1.1	59	21.9	269	100
Aimag center	216	32.9	232	35.3	139	21.2	25	3.8	45	6.8	657	100
Soum center	174	28.8	156	25.8	97	16.1	14	2.3	163	27.0	604	100
Rural areas	50	28.1	26	14.6	34	19.1	24	13.5	44	24.7	178	100

As the above table shows, in Ulaanbaatar (32 percent) and aimag centers (32.9 percent) people mainly receive legal information from TV or TV was more affordable or available in these areas. But in Erdenet and Darkhan towns and soums this level were lower than Ulaanbaatar, however, in remote rural areas significant percent (13.5 percent) of respondents replied that they never receive legal information from TV.

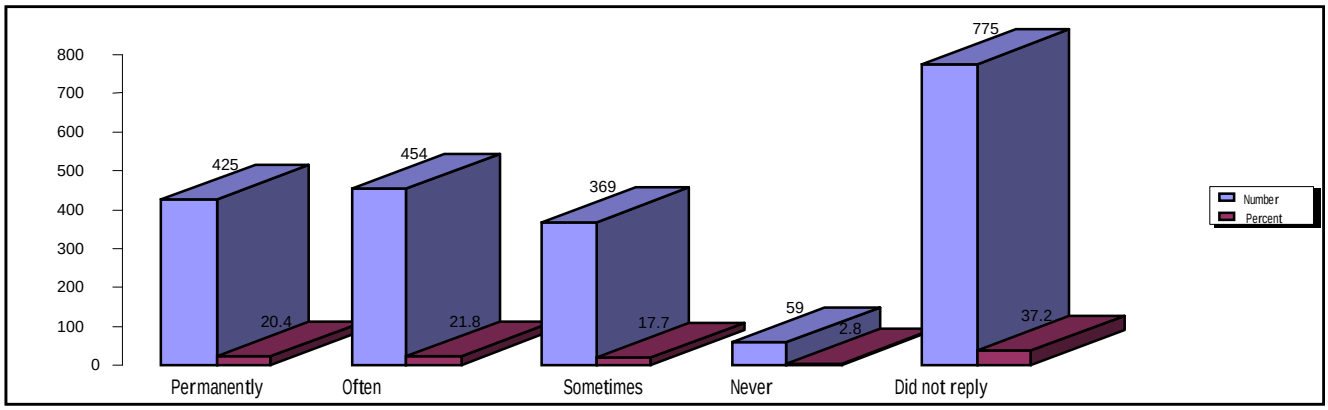
		From what source you receive legal information? From TV					Total
		Always	Often	Sometimes	Never	Did not reply	
Age	Under 17	40	27	16	8	30	121

	18-24	173	169	143	16	83	584
	25-30	94	54	76	9	53	286
	31-35	74	75	45	6	57	257
	36-40	70	48	43	14	43	218
	41-45	66	68	30	8	74	246
	46-50	57	38	35	3	42	175
	51-60	56	29	17	5	23	130
	Over 61	14	15	13	5	16	63
Total		644	523	418	74	421	2080

If we classify age groups of citizens who currently receive legal information from TV, 18-30 years old young people replied that they often receive from TV, 31-45 years old people said only sometimes. However, for 46 or over years old people, very small number of them replied that they receive legal information from TV and are not interested in watching TV programs that broadcast legal information. These facts allow us to make the following conclusion. It is important to produce TV programs in accordance with the needs and interest of different age groups. Especially, dissemination of legal information to 18-30 years old young people through TV programs can be very efficient. But for younger people under 17 years old and for the old persons, choosing above mentioned media as a tool of dissemination of legal information might be waste of money, time and efforts. But it depends on when and how to disseminate legal information, and what media to choose.

- The second source of legal information for citizens is newspapers.

As the survey shows, 42.2 percent of respondents regarded newspapers as the main source of legal information. At the same time, small number of respondents (2.8 percent) said that they almost do not read newspapers. It can be seen from the following table.



The survey findings show that quite a high number of people did not answer (37.2 percent) the questions. Over the past years, total number of free newspapers, including a number of daily newspapers has increased in Mongolia and thanks to these media; affordability of news and information for citizens increased significantly. It is certain that the citizens 'demand for the legal information from newspapers will grow in the future. Let us see from the following table about how citizens receive legal information from newspapers depending on their geographical region.

How citizens receive legal information from newspapers.

	Always		Often		Sometimes		Never		Did not reply		Total	
	number	%	nu	%	nu	%	nu	%	nu	%	nu	%
Ulaanbaatar	53	16.3	62	19.1	63	19.4	9	2.8	138	42.5	325	100
Darkhan Erdenet	65	24.0	62	22.9	40	14.8	5	1.8	99	36.5	271	100
Aimag centers	95	14.5	157	23.9	131	19.9	20	3.0	254	38.7	657	100
Soum centers	136	22.5	150	24.8	100	16.6	16	3.0	200	33.1	604	100
Rural area	72	40.4	19	10.7	34	19.1	6	3.4	47	26.4	178	100

In rural areas significant percentage (40.4) of citizens use newspapers as their main source of legal information as in Ulaanbaatar (16.3) and in aimag centers (14.5) percentage was relatively low. Moreover, in rural areas the number of respondents who answered, that the newspaper is not a source of information, was very low and there was not any specific differences.

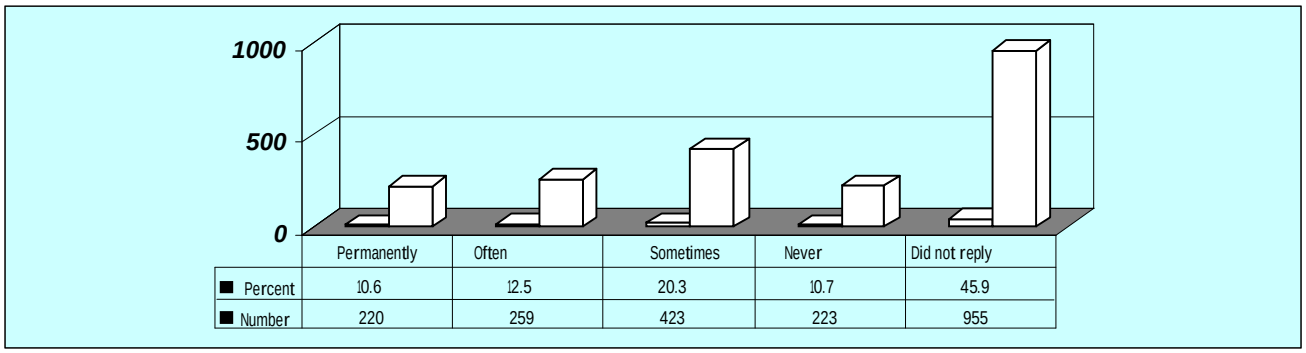
Among the age groups, whose primary source of legal information was newspaper, no specific difference was found. However, people under 17 years old and aged 18-24 years old often or sometimes used newspapers as source of information. The next table shows that 48.7 percent of 121 citizens aged 17 always received legal information from newspapers, and 43.4 percent of 584 people aged 18-24 always or often received legal information from newspapers. In addition, the survey showed that people aged 25-30, 31-35; 36-40 do not always use newspapers as a source of legal information.

		Newspapers					
		Always	Often	Sometimes	Never	Did not reply	Total
Age	17 under	33	26	16	2	44	121
	18-24	96	158	145	26	159	584
	25-30	62	52	55	9	108	286
	31-35	50	58	29	4	116	257
	36-40	48	39	18	7	108	220
	41-45	54	37	41	2	112	246
	46-50	30	43	32	6	64	175
	51-60	38	34	20	1	37	130
	61 above	14	7	13	2	27	63
Total		425	454	369	59	775	2082

In summary, significant part of young and elder people always or often use newspapers, but middle aged people use newspapers as source of legal information less than other age groups.

- The survey results showed that the radio does not play an important role among sources of legal information.

The number of people who use the radio as a source of legal information and the number of people who do not use it as a legal information source were almost equal. 10.6 percent of respondents replied that they always receive legal information from the radio, and 10.7 percent of respondents replied that they "do not receive legal information from the radio". Also, 20 percent of the respondents listened to the radio sometimes and 45.9 percent did not reply this question.



	Permanently	Often	Sometimes	Never	Did not reply
Percent	10.6	12.5	20.3	10.7	45.9
Number	220	259	423	223	955

It is possible that for some citizens the term "The radio" only means the Mongolian Radio and some answer could be based on this assumption. Nowadays, young generation in the capital city, aimags and rural areas often listen to local FM radio stations

The survey finding shows that usage of radio, in rural areas and cities, differs. It is directly connected with rural condition; rural inhabitants receive information mostly from radio as a substitute of TV and newspapers. In Ulaanbaatar, the percentage of the citizens, who listen to the radio was very low (8.0 percent), but in the rural areas it was higher (24.5 percent).

Moreover, 34, 7 percent of respondents replied that they never use the radio, whereas the number of the people who never listens to the radio was decreased in aimags, soums and rural areas respectively. For example, it can be seen from the table that in Darkhan and Erdenet 16.2 percent of respondents replied they "never use" the radio compared to aimag center, where this rate was 9.6 percent and in soums and remote rural areas it was 9.1 and 4.0 percent respectively.

How citizens receive information from the radio. /Percentage of the radio listeners in Ulaanbaatar, towns, aimag centers and soums/.

	Always		Often		Sometimes		Never		Did not reply		Total	
	number	%	nu	%	nu	%	nu	%	nu	%	nu	%
Ulaanbaatar	26	8.0	12	3.7	48	14.8	53	34.7	185	57.1	324	100
Darkhan Erdenet	36	13.3	7	2.6	25	9.2	44	16.2	159	58.7	271	100
Aimag centers	73	11.1	128	19.5	131	19.9	63	9.6	262	39.9	657	100
Soum centers	39	6.5	91	15.1	138	22.8	55	9.1	281	46.5	604	100
Rural areas	45	25.4	17	9.6	75	42.4	7	4.0	33	18.6	177	100

Within the survey scope we studied how age groups receive legal information from the radio. In connection with change in the society, it is quite rare for a young person under 17 listens to the Mongolian Radio. For that reason, they replied that they "do not receive legal information from the radio". However, young persons of 18-24 said that they sometimes listen to the radio. Therefore, the use of the radio as dissemination tool of legal information might be effective for this age group.

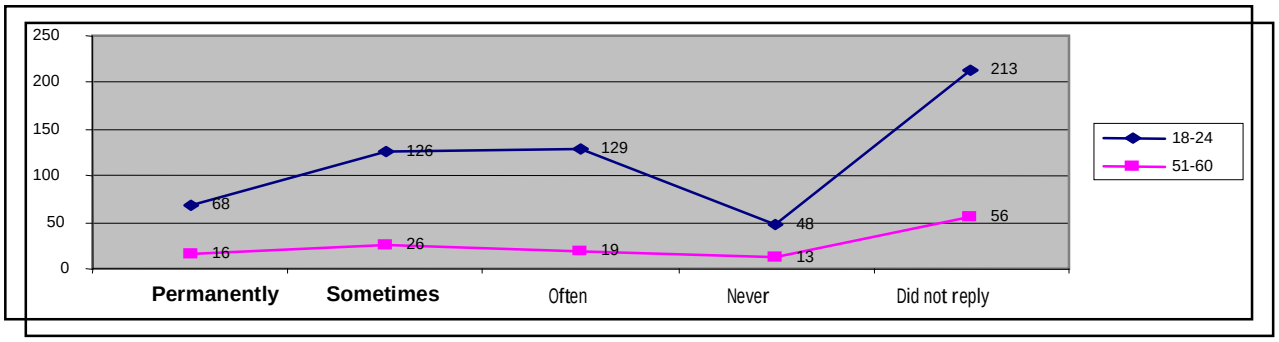
Percentage of age groups who receive legal information from the radio.

		From radio					Total
		Always	Often	Sometimes	Never	Did not reply	
You age	17 under	12	11	22	11	65	121
	18-24	46	76	149	113	198	582
	25-30	39	38	52	33	124	286
	31-35	19	37	34	11	156	257
	36-40	33	22	33	25	107	220
	41-45	25	21	37	19	144	246
	46-50	23	28	30	2	92	175
	51-60	13	18	48	6	45	130
	61 over	10	8	18	3	24	63
Total		220	259	423	223	955	2080

The findings of the survey show that old people do not use the radio as a source of information.

Ø Other sources of legal information (friends, colleagues and family members etc)

Study of age groups revealed that they receive legal information from several other different sources than media. One-fourth of respondents said they receive legal information from friends and colleagues and 18-24 years old people dominate among this group. But for those who are 51-60 years of age, the situation was different.



Most of the respondents did not answer the question whether their friends and colleagues were a source of legal information. It can be explained in two ways. In one hand, people who do not receive legal information from friends were almost half of respondents. On the other hand, in every day life people do not pay much attention to such issues and may be because of that this question was difficult to answer.

Respondents who receive such sort of information from colleagues were relatively few. The survey results showed that only 8 percent of the respondents replied that they receive legal information from colleagues. It is because of the lack of exchange of legal information among colleagues.

		Always	Often	Sometimes	Never	Did not reply	Total
Age	17 under	12	15	18	13	63	121
	18-24	56	91	111	66	260	584
	25-30	19	40	56	28	143	286
	31-35	16	26	25	11	179	257
	36-40	12	18	33	23	132	220
	41-45	23	14	25	19	165	246
	46-50	15	19	25	10	106	175
	51-60	23	19	24	9	55	130
	61 over	7	6	8	15	27	63
Total		183	248	325	194	1130	2082

Percentage of respondents who did not reply this question was high and especially higher among respondents aged 31-35.

One of the research findings is that relatively small number of people receives legal information from their family members. For example, 54.7 percent of respondents did not reply this question and 13.9 percent said they never get legal information from their family members. Moreover, with regard to the age, 23.8 percent or majority of them were old persons (61 or above).

		From family members					Total
		Always	Often	Sometimes	Never	Did not reply	
Age	17-or under	14	11	21	16	59	121
	18-24	48	77	114	101	244	584
	25-30	16	28	61	38	143	286
	31-35	14	11	31	17	184	257
	36-40	12	21	23	24	140	220
	41-45	10	8	21	37	170	246
	46-50	8	20	15	13	119	175
	51-60	11	22	15	29	53	130
	61-or over	4	5	12	15	27	63
Total		137	203	313	290	1139	2082

Conversation is one of the biggest sources of information, which expresses public opinion, and is also one of the means of information dissemination. According to the survey, people receive most of legal information from conversation. We can explain it that 16.7 percent of respondents replied that they always or often receive legal information from conversation.

Moreover, the survey finds that 18.4 percent of the respondents received legal information from conversation. This situation is directly connected with lack of organized activities to distribute legal information among the citizens.

How people receive legal information from conversation */by age groups/.*

		From conversations					Total
		0	Always	Often	Sometimes	Never	
Age	Under 17	61	14	17	17	12	121
	18-24	244	41	62	152	83	582
	25-30	139	18	30	48	51	286
	31-35	181	15	22	22	17	257
	36-40	135	14	11	46	12	218
	41-45	165	12	11	30	28	246
	46-50	108	11	17	32	7	175
	51-60	60	11	25	25	9	130
	Over 61	17	5	13	12	16	63
Total		1110	141	208	384	235	2078

Gender differences of persons who receive the legal information

The following table compares the ways of receiving legal information based on age groups and gender.

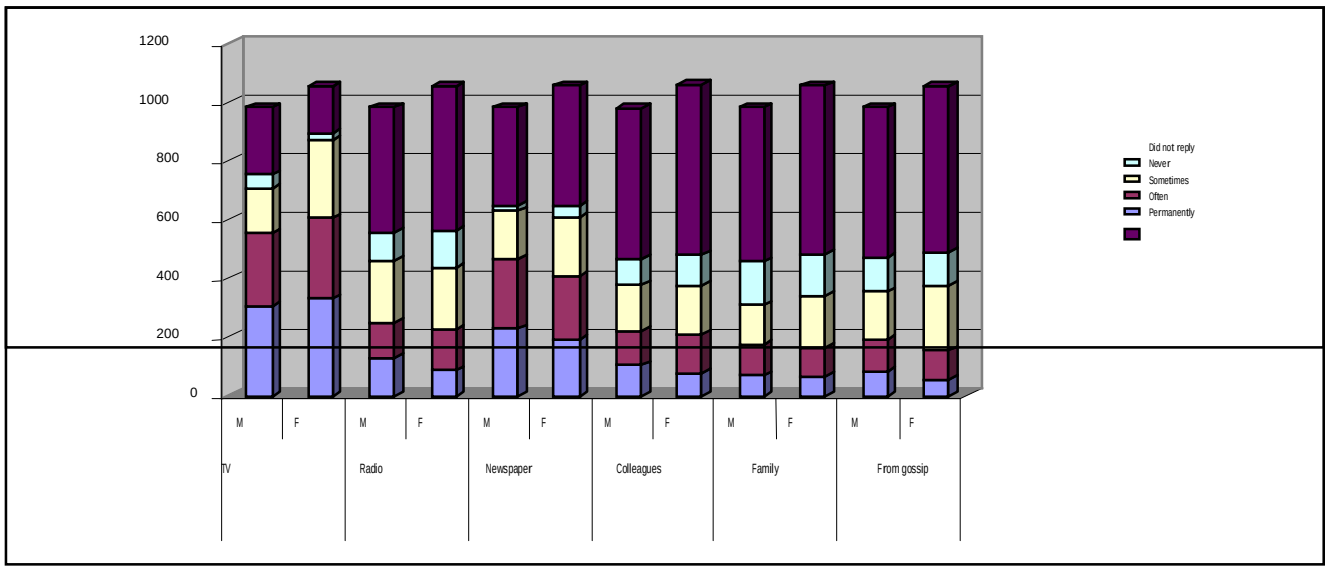
	From TV		From Radio		From Newspaper		From colleagues		From family members		From conversations	
	m	w	m	w	m	w	m	w	m	w	m	w
Always	308	331	130	87	229	193	103	79	70	66	85	55
Often	246	275	121	138	237	217	118	129	104	99	108	100
Sometimes	152	265	209	214	162	200	157	168	135	176	162	220
Never	49	24	96	124	22	37	89	104	148	141	117	115
Did not reply	228	159	427	491	333	409	514	578	526	574	511	562
Total	983	1054	983	1054	983	1056	983	1056	983	1056	983	1052

The survey finds that citizens receive legal information mainly from mass media such as TV, the radio and newspapers and there are specific differences regarding their gender. For instance, more women than men wanted to receive legal information from TV; men preferred and used newspapers and the radio rather than TV as a source of legal information. Twice more men than women or 49 percent of men replied that they did not receive legal information from TV and only 24 percent of women respondents replied that they did not receive legal information from TV.

However, the number of men who (130) listens to the radio was more than women (87) and we can see it from the survey results. As for newspaper, the number of men who read it was bigger than number of women who read newspaper.

This data shows that specific legal information can be disseminated trough TV, radio and newspaper designed for men or for women.

Next table shows percentage of women and men receiving legal information from TV, radio and newspapers.



Regarding legal information received from colleagues, family members and conversation, no specific gender difference was noticed.

3. CITIZENS' LEGAL KNOWLEDGE AND ITS BASIC TYPES

How much do citizens know about the law? This is a question we was interested to have an answer. It has been quite important and interesting issue. Therefore, in the survey questionnaire we included the question "which one of the following three types is yours?" The first type included people who are always interested in legal information and actively work to protect their legal rights; the second type of people were generally interested in obtaining legal information but do not work to protect their legal rights; the third type of people never receive legal information nor are concerned about protecting their rights. The first type or group of people was named "Protectors of own rights", second type or group was named "strivers", third type or group was named "victims".

		Answers	Group
1	Who protect their rights	18%	3
2	Who try to protect their rights	53%	1
3	Whose rights often violated	25%	2
4	Total	96%	

Comparing these groups and their passport data and other social data, the following general picture and differences can be seen.

Who protect own rights

About 18 percent of the people who were involved in this survey belong to this type or group and they always seek, learn legal information and carefully study it to protect their rights. This type of people always has been ready to protect their legal rights using newly obtained or learned legal information and knowledge.

Who tries to protect his/her own rights?

Majority of people or 53 percent of respondents are belonging to this type or group. They have interest in legal information and documents but do not work to protect own legal rights.

Whose rights have been violated?

Who never obtained legal information and knowledge and think that "legal information is not necessary in their life" was 25 percent or one-fourth out of all respondents. It is not small number and probably, their rights are often violated and they accept such a situation to certain extend. Most importantly, for these people we urgently need to organize legal informal training. If we can bring them for such trainings it will be very helpful for them to learn how to protect their own rights and enjoy opportunities that democratic society provides.

Citizens described their legal knowledge in the following way.

		Response in percentage	Group
1	Good	17%	3
2	Satisfactory	51%	1
3	Bad	23%	2
4	Did not reply	9%	4
5	Total	100%	

The table shows that majority of the people described their legal knowledge as satisfactory, 23 percent bad and only 17 percent described as good. It is certain that even this 17 percent of respondents had several and different kind of judgments when replied this question. However, these judgments can be realistic.

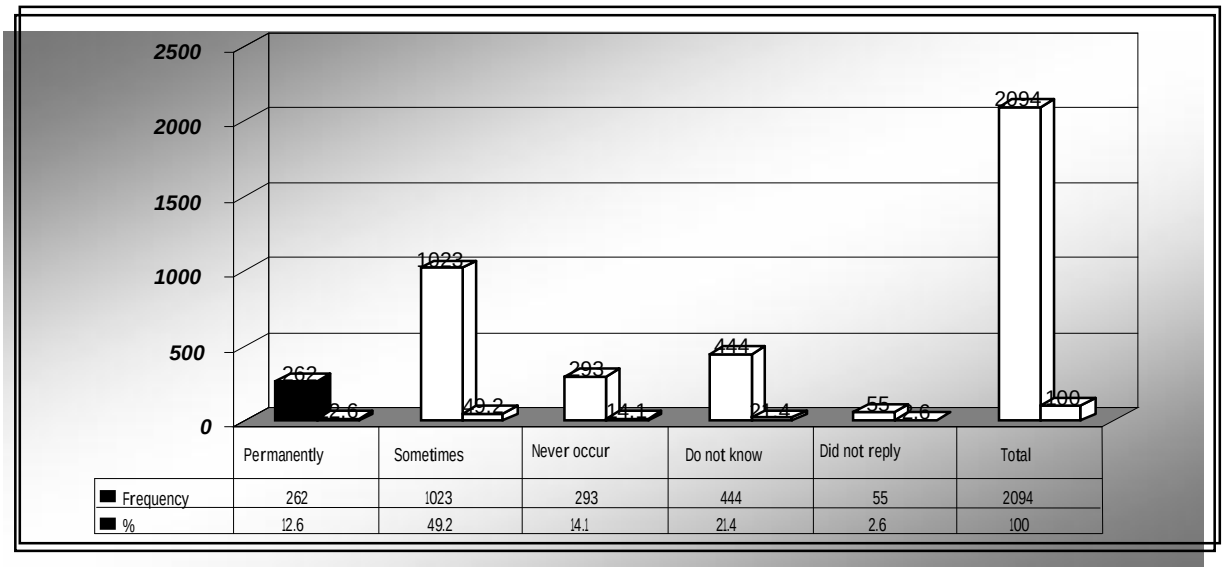
	Do you learn about new laws?	Response in percentage	Group
1	Yes, learn every new law	7%	4
2	Yes, I learn certain part of new laws	33%	1
3	Lightly learn new laws	28%	3
4	Never learn new laws	32%	2
5	Total	100%	

The survey finds that a few people or 7 percent of respondents replied that they learn new laws and one-third replied that they learn certain part of new laws. And 28 percent of respondents described themselves as light learners and 32 percent replied that they never learn new laws. The survey suggests that citizens do not obtain or receive information on newly adopted laws and regulations to a satisfactory extend.

4. VIOLATIONS OF HUMAN RIGHTS AND RESTORATION

In spite of the lack of legal knowledge to protect their own interests and own rights, there have been advances with regard to the issue in recent years. The survey results show that human rights are violated in both urban and rural areas. However, this assessment will depend on what we consider as violations of human rights. As society develops, human rights

issue is obtaining more and more multiple sides. 12.6 percent of all respondents said that human rights are violated in their respective aimags. And almost half of respondents or 49.2 percent of surveyors said that human rights violation occurs sometimes. This fact illustrates current situation, general trend and spread of violations of human rights in real life. In addition, the percentage of the people who replied "do not know" was high. This finding shows that people do not know their rights properly and because of that they can not answer what specific rights have been violated. People who think that their rights are not violated or there are no violations of human rights at all constituted 14.1 percent of respondents.



When compared violations of citizens rights to the violations of human rights, there were big differences. For instance, when compared responses "violations of human rights occur permanently or often" to response "it never happens", 47.7 percent of the people replied that violations of human rights occur permanently or often. It means that more violations of human rights occur in the capital city and rural areas.

The survey team studied in what age groups the instances of violations of human rights prevail. From the next table, we can see that instances of the violation of citizens 'rights differ depending on which age group they belong to.

Violations of human rights in city and rural areas /by age/.

Age	Always	Sometimes	Never happens	Do not know	Did not reply	Total
Under 17	14	56	7	15	29	121
18-24	70	307	91	105	7	582
25-30	44	135	44	58	4	285
31-35	21	138	40	56	2	257
36-40	37	84	19	78	2	220
41-45	15	135	59	34	3	246

46-50	19	76	22	55	3	175
51-60	30	59	4	33	4	130
Over 61	12	33	7	10	1	63
Total	262	1023	293	444	55	2079

If classify, violations of human rights by age groups, in all age groups exist equally high level of violations. But especially, rights of 18-24 years old young people and over 61 years old elderly people have been violated permanently and often. This means that there is urgent need to take measures to stop violations of human rights regarding people of above mentioned age groups.

This survey also intended to find and show how violations of human rights connected with educational level of citizens.

Human rights violations in rural areas and its dependency on educational level.

	Always	Sometimes	Never happens	Do not know	Did not reply	Total
High	88	424	111	90	6	720
Special Secondary	39	153	10	71	11	284
Full secondary	85	336	127	120	9	678
Not full secondary	39	71	24	92	5	231
Elementary	7	6	10	58	1	82
Did not reply	4	33	11	12	23	83
Total	262	1023	293	443	55	2078

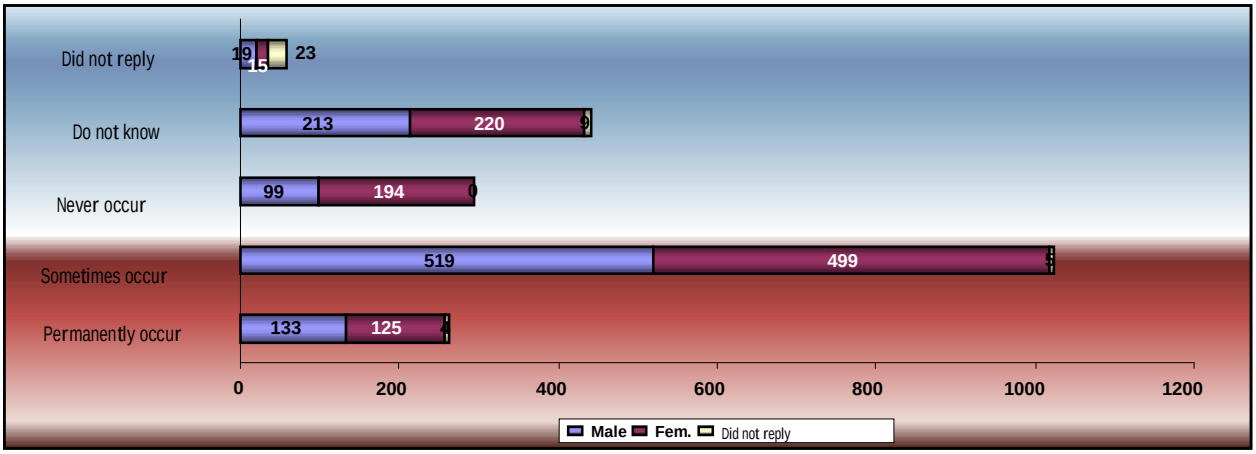
The survey finds that people with high and secondary education have enough knowledge on human rights issues. Therefore they expressed their opinions about the violation of human rights in their respective aimags. For example, 71.1 percent of the people with high education admitted that in their residential area violations of human rights occurs always or sometimes.

For the people with special secondary education we can consider that their knowledge on human rights is sufficient. 62-67.6 percent of them noticed that violations of human rights are widespread in their provinces.

However, for people without secondary education and elementary education the situation was relatively different and more attention should be paid to this data. This category of citizens replied in the question "Does the violation of human rights occur where you live?" mostly "Do not know" (39.8-70.7 percent). The survey findings once again prove that high or higher education is critical in protecting human rights and in preventing violations. People with high education notice more violations of human rights and take respective measures to protect their rights actively.

If compare violations of human rights by gender we can make the following conclusion. More men (652) than women (624) replied that violations of human rights always or often occur in their living rural area. More women (194) than men (99) replied that violations of human rights occur very seldom. 220 women and almost the same number of men or 213 men replied that they do not know about violations of human rights.

Violations of human rights in rural areas /by gender/



VIOLATIONS OF HUMAN RIGHTS AND EMPLOYEMENT

The survey team studied about citizens who expressed their opinion on violations of human rights by employment.

First of all, unemployed people and students, also civil servants and employees of non governmental organizations, legal workers, intermediaries and merchants gave negative answers to the question on violations of human rights. Out of 303 unemployed respondents 45.5 percent replied that violations of human rights sometimes occur in rural areas, 11.5 percent of the people based on their own experiences replied that violations occur very often. Moreover, out of 344 respondent-students 13.9 percent replied that violations of human rights occur permanently and 54.6 percent think that violations of human rights occur sometimes.

97 percent of 131 civil servants participated in the survey replied that violations of human rights are widespread in rural areas. Out of employees of non governmental organizations 22.6 percent said that violations of human rights occur very often. The response of those employees of non governmental organizations who work on sociology and human rights field can be more realistic. Out of 42 intermediaries who participated in the survey, 79.4 percent said that violations of human rights occur sometimes and rest of them or 20.6 percent said that violations of human rights occur all the time.

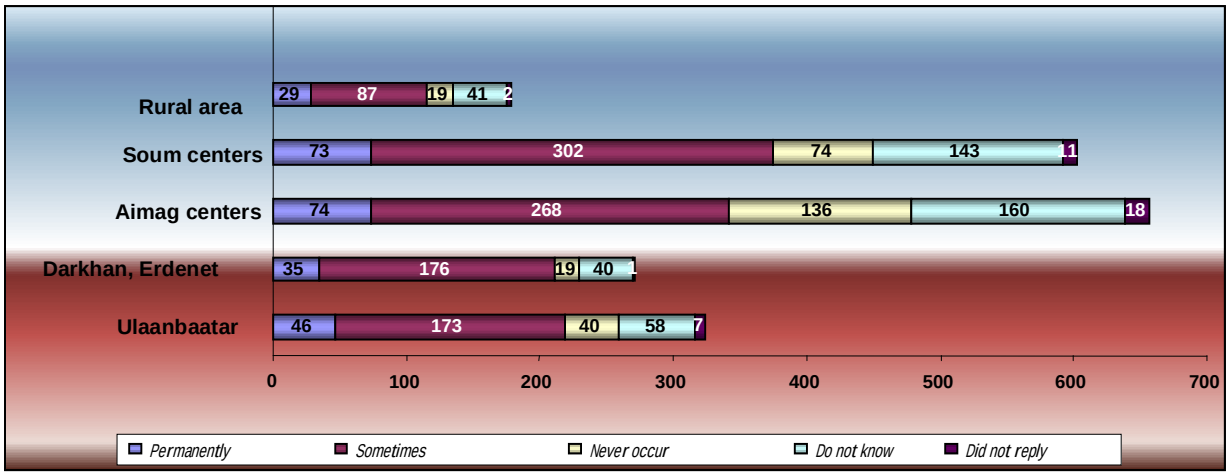
The next paragraph dedicated for the people who gave neutral response. They were mostly employees of educational institutions, transport and communication specialists and workers of large factories. Out of all respondents of above mentioned professions 7-12 percent thinks that violations of human rights are common or widespread trend in rural areas and 16-30 percent of them think it happens sometimes.

Herders or people who work in agricultural sector mostly replied (59.1 percent) that they do not know about violations of human rights. It is connected with their work and duties where violations of human rights occur less than in other sectors.

If look generally, people had different experience and knowledge on violations of human rights connected with employment. At the same time, the survey findings show that there was no workplace or profession without violations of human rights.

During the survey we compared violations of human rights that occurred in urban area to rural area specific conditions and disclosed more violations. The research revealed the place where violations of human rights occur more often is rural areas (16.2 percent). This percentage was in the capital city 14.1 percent, in towns 12.9 percent, in soum centers 12.1 percent and in aimag centers 11.2 percent. However, 53.3 percent of respondents in the capital city and 64.9 percent of respondents Darkhan and Erdenet towns replied that human rights violations occur sometimes.

The next table shows that in soum centers (50.1 percent), rural areas (48.8 percent), and in aimag centers (40.8 percent) violations of human rights do not occur as much as in the capital city and towns. But at the same time this data can be considered as quite high percentage.



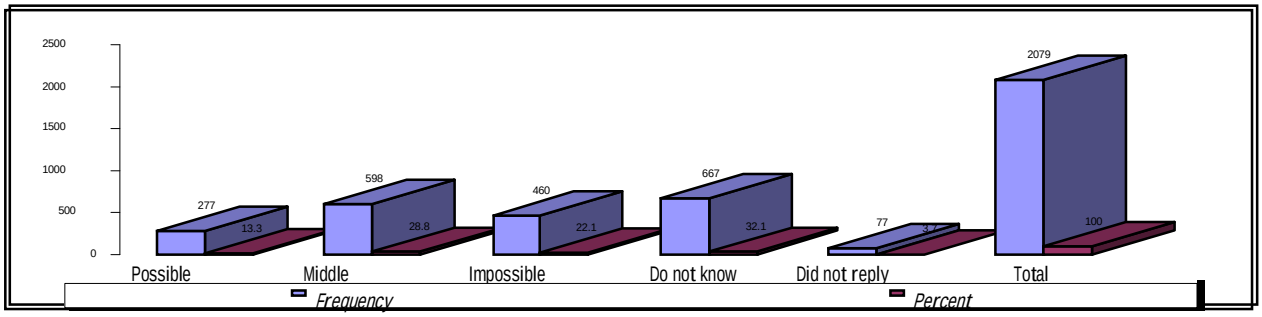
In comparison with other geographical areas, aimag centers have fewer violations of human rights than any other area (20.7 percent), the capital city was in the second place (12.3 percent), soum centers were in the third place (12.2 percent), rural areas were in the fourth (10.6 percent), and towns were in the fifth place (7.0 percent). Moreover, 23 percent of rural respondents said that they do not know about violations of human rights. It is the highest percentage in remote rural areas.

POSSIBILITY OF RESTORING VIOLATED RIGHTS

The survey team studied what citizens think about possibilities of restoring their violated rights. Answers to this question varied. Some of them replied that it is possible to restore violated rights but some of them replied that it is impossible and presented arguments, provided evidences and examples.

The survey findings show that 22.1 percent of citizens think that it is impossible to restore violated rights. However, significant part of them or 13.3 percent think that it is possible and they expressed their hope to restore violated rights.

Moreover, citizens who replied "do not know" (32.1 percent) and replied "might be possible" (28.8 percent) were in significant number. Regarding these citizens, the survey findings show that their knowledge on human rights issues was unsatisfactory, they were not experienced in this issue or their rights were not violated or they did not know what rights were violated.



About possibilities to restore violated rights citizens think that way. It is very important in understanding their abilities in protecting their rights in the future. This data has direct connection with citizen's educational level and we can make the following conclusions.

22.2 percent of people with high education said that it is possible to somehow restore violated rights, and more people or 24.7 percent of them replied that it is impossible. Answers were either pessimistic or optimistic. Percentage of people who replied positively to this question among respondents with high education was more than any other groups. For example, if we compare positive answers of people with high education to people with special secondary education (9.5), full secondary education (9.1), with not full secondary education (7.7), elementary education (1.2), their percentage was higher than any other group or was more than 12.7-21 percent.

People with full secondary education had (27.8-34.3 percent) median positions about possibilities of restoring violated rights or they had doubt that "it might be possible or not possible".

People with elementary and with not full secondary education had little understanding about possibilities of restoring their violated rights. For instance, 44.6 percent of the people without secondary education replied "do not know about it well", so, 81.7 percent of the people with elementary education simply replied "do not know". *Possibilities of restoring violated rights /by education/.*

	Possible	Middle	Not possible	Do not know	Did not reply	Total
High	160	226	178	133	23	720
Special secondary	27	79	50	118	10	284
Full secondary	62	233	157	215	11	678
Not full secondary education	18	49	51	103	10	231
Elementary education, without education	1	6	8	67		82
Did not reply	9	5	15	31	23	83
Total	277	598	459	667	77	2078

The survey findings illustrated that people with high education already have more clearly formed position. But people with low level of education generally doubted about possibilities of restoring violated rights and could not express their points clearly.

In this paragraph we considered citizens responses to the question on possibilities of restoring their violated rights.

First of all, unemployed citizens had no knowledge about this issue and almost half of them replied that they "do not know about possibilities of restoring their violated rights" (40.2 percent). This percentage was high among people who worked in agricultural sector (71.9). Out of 303 unemployed people who participated in the survey, only 4.9 percent replied that "it is possible to restore violated rights".

Moreover, people who work in non governmental organizations, pensioners and merchants think that once citizens' rights are violated then it is almost impossible to restore the violated rights. 47.6 percent of the 84 NGO employees participated in the survey replied that it is impossible to restore violated rights and 38.4 percent of pensioners agreed with this point. Out of merchants 29.3 percent replied that there is no possibility of restoring violated rights.

134 employees of governmental organizations participated in the survey and 29.8 percent of them think that it is possible to restore violated rights, while 24.6 percent answered that it is impossible and 36.5 percent of them think that it may be possible. Although these people must have more knowledge on human rights issue than ordinary citizens, there were no noticeable differences.

As for the police and law enforcement agencies they had relatively clear points on this issue. For example, out of all police officers who participated in the survey 36.5 percent replied that it is possible to restore violated rights. Also, 29.8 percent of law enforcement agency officers had the same point of view and thought that it is possible to restore violated rights in some way.

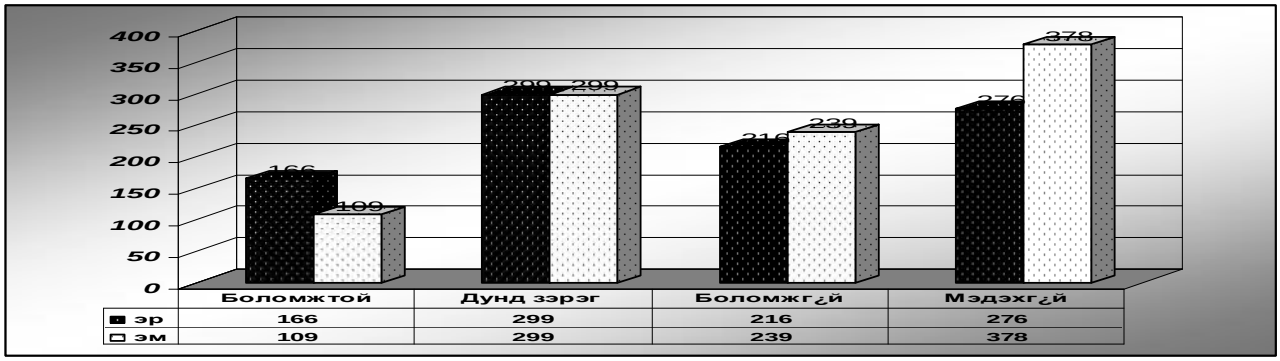
Workers of large factories and students had median positions about possibilities of restoring violated rights. They doubted about the possibilities of restoring violated rights. Government officials and civil servants were also included in this group.

In conclusion, people with different job and professions had different points and opinions on possibilities of restoring violated rights. The fact that even those people who must know well about human rights had doubts in this issue and it makes the problem more complicated. It demonstrates that there is urgent need to conduct trainings on possibilities of restoring violated rights or on human rights issues for the police and as well as for educational and legal institutions.

There were different opinions and points regarding possibilities of restoring violated rights in towns, in aimag centers, in soums and in rural areas. Generally, in aimag centers 36.4 percent, in soum centers 38.9 percent, in rural areas 39.3 percent of citizens do not know whether it is possible or impossible to restore violated rights. In towns 42.0 percent of

respondents said it is possible to restore violated rights and in Ulaanbaatar 26.2 percent said it is almost impossible to restore violated rights.

On the following table showed how women and men replied regarding possibilities of restoring violated rights.



We see from the graphic diagram that the number of women and men who gave the same answers as "it is possible to restore violated rights", "it is impossible to restore violated rights", "median" were almost equal. It shows that public opinion in this issue was generally the same. However, significant number of women replied they do not know about this issue.

The survey team also studied how age groups think about the possibility of restoring violated rights. Youngsters under 17 and people over 61 had the same idea about the possibility of restoring violated rights or think anything is possible with this issue.

How age groups think about possibility of restoring violated rights.

	Possible	Medium	Impossible	Do not know	Did not reply	Total
Under 17	12	36	27	19	27	121
18-24	69	187	127	189	9	581
25-30	43	77	62	98	6	286
31-35	27	83	51	88	8	257
36-40	24	63	41	86	6	220
41-45	52	54	66	72	2	246
46-50	29	51	32	62	1	175
51-60	13	29	39	37	12	130

Over 61	8	18	15	16	6	63
Total	277	598	460	667	77	2079

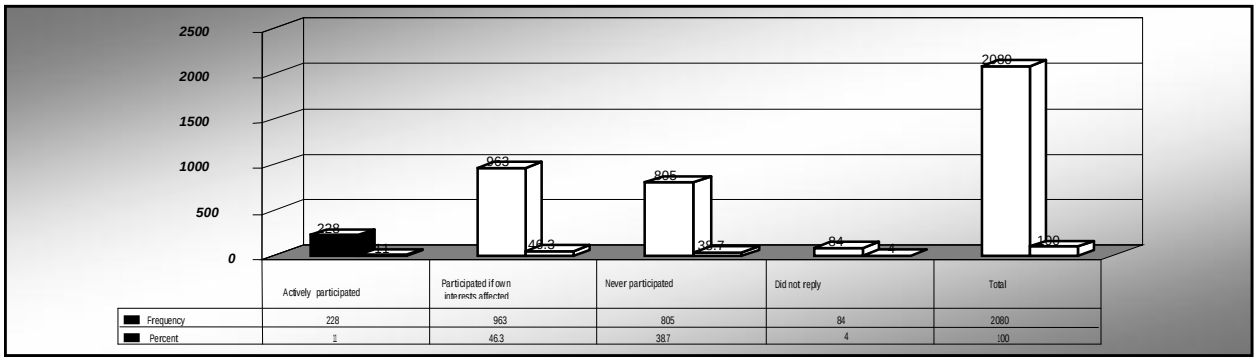
For age groups of 18-24, 25-30, 31-35 there was dominating answer "do not know" and relatively small percentage of them think it is possible to restore violated rights.

5. CITIZENS INITIATIVES TO PROTECT THEIR RIGHTS

How citizens protect their own rights

In previous chapters, we showed that in rural areas violations of citizens rights are wide spread phenomenon. This is a prerequisite of talking about this issue or how citizens are protecting their own rights. The survey studied violations of rights among citizens and at the same time asked them what points they have regarding this problem. Below are the answers of citizens' to this question.

How actively do you protect your rights?



First of all, the study disclosed that citizens in certain level participated in the activities to protect their own rights; however, they do so only when their own rights were violated. The majority of the survey respondents or 46.3 percent replied that way. At the same time, the answer "never participated" also took high percentage. For example, 38.7 percent of respondents replied that way. Based on these responses, we can conclude that Mongolians do not have firm points or ideas regarding how to protect their own rights and they are also lack of such experience. For instance, only 11 percent of respondents actively involved in activities to protect their rights. Therefore, it is very important to explain or teach them how to protect their rights, and about possible activities to protect their rights.

The study shows that one-third of respondents got acquainted with certain parts of newly adopted laws and legislative acts. Undoubtedly, it was a good thing. But, people who do not get acquainted with newly adopted laws or just learned only one or two provisions of newly adopted laws were not few. This data shows that there is also urgent need to advertise new laws and to enhance public legal education.

Do you learn newly approved laws?

Legal knowledge and legal education are essential for citizens. Without legal knowledge they make decisions without even realizing if it is right or wrong. Therefore, the survey findings once again show that there is high demand for legal knowledge in citizens 'life.

Need for legal knowledge

The survey team asked from citizens "What legal knowledge was the most needed knowledge in your life?", and they replied in the following way. Among the legal branches, information on labor law had the highest demand. The survey showed that 22.8 percent of respondents noted that the knowledge on labor law and labor regulations were most needed knowledge when their right to work was violated.

The next most needed legal knowledge was knowledge about political rights or knowledge to vote and to be elected. When rights to vote and to be elected were violated, this need emerged – said 11.4 percent of citizens. Above mentioned two were the most needed legal knowledge for citizens. Regarding knowledge of other laws the situation was quite different. The study shows that need for legal information in other fields of law was twice less than above mentioned two. For instance, 6.6 percent of the citizens said that tax law is very important, whereas 6.2 percent voted for civil law, 5.1 percent replied that business laws is important, and 4.2 percent replied that they need knowledge about how to borrow money from the bank or how to save money in non banking financial organizations and about banking system. Information on family law had the lowest demand (2.2 percent) of all.

Need for legal knowledge

	Number	Percentage
When violated rights to elect and to be elected	238	11,4
When violated rights to work	478	22,8
Regarding various taxes	139	6,6

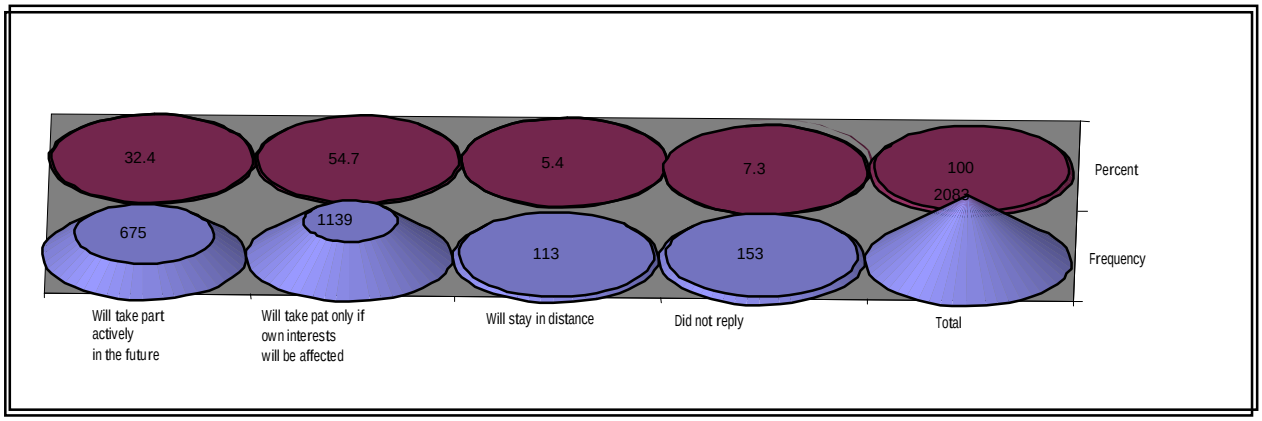
Issue connected with saving money in bank or non banking financial organization, how to take loan, banking law	87	4,2
Issue connected with business	107	5,1
Issue connected with family law	47	2,2
Issue connected with civil law	129	6,2
Other	19	,9
Did not reply	832	39,7
Total	2094	100,0

Usually, everybody admits that legal knowledge is essential in their life. But in most cases, citizens did not reply - in what situations the knowledge was needed and 4.8 percent said that when they have problems with their business, 4.3 percent said when they wanted to be employed, and 4.1 percent said when they face problems with tax payment. Rest of the people or small number of respondents replied they needed legal information when they faced problems regarding civil law, family problems or wanted to take banking service they were needed in legal knowledge. Above mentioned works and services demand to conclude contracts with strict responsibilities and duties. Therefore, this data shows how limited is legal knowledge of Mongolians.

The survey team studied what measures or activities citizens will take to protect their rights if rights were violated. For this purpose the following question was asked – "Will you be involved in activities to protect your rights in the future?"

The study shows that people have optimistic attitudes toward the activities to protect their rights. For instance, 32.4 percent of respondents said that if there will be any organized activities to protect their rights they will participate, and 54.7 percent expressed readiness to participate in such actions if their rights were violated or will be violated.

Readiness to participate in activity to protect human rights.



Based on the above findings we make conclusion that in the future citizens activities to protect own individual rights on human rights issues will be possible.

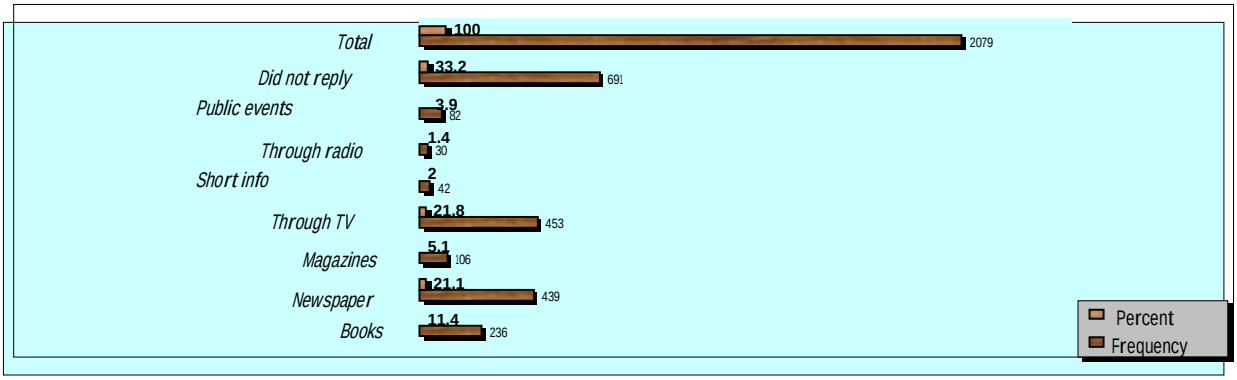
6. HOW TO RAISE PUBLIC AWARENESS

It is very important to actively conduct public education activities to enhance their legal knowledge and to make it available for them. The survey result confirms that in daily life, citizens face many violations of their rights, and they believe in impossibility to restore violated rights and they have not capacity to struggle themselves to protect own rights.

Consequently, continuous public education activities aimed at enhancing their legal knowledge must take especial place in the current legal knowledge and legal information system. Most people think that they urgently need in wide range public education activities and it must be conducted via mass media and particularly, through TV, newspapers, magazines and manual books. For example, majority of the participants or 21.8 percent think that awareness raising activities should be conducted through TV. At the same time, 21.1 percent of the people think that public education activities should be conducted through newspapers and 11.4 percent think that manuals are good for public education measures and 5.1 percent preferred journals or magazines for such activity. The radio (Mongolian Radio) as instrument for public education activities received 1.4 percent of supporters. /We can see it from the survey findings/

During the study, some people also expressed their opinions in favor of flyer, and introductions and public measures as important method for public education activity to enhance legal knowledge. However, the percentage was low. 3.9 percent of respondents thought that public measures should be organized to advertise legal information; only 2 percent of respondents think that posters and short flyer - introductions should be used for such activity.

What are the best tools for legal awareness raising activities?



Majority of respondents replied to the question "If legal lessons will be conducted through TV will you watch?" positively and 53.1 percent said they will watch them with high interest. Moreover, 34 percent replied that if available, they will watch TV programs on legal education. The percentage of the survey participants, who would not watch TV programs on legal education were very low (5.8%). It means that among citizens already started forming a habit to watch TV programs on legal

education issues. Therefore, mass media or TV, newspapers and magazines are the best tools for public legal education activities and usage of them can bring the best results.

Public awareness raising campaigns consists of various activities, so, all of these aspects should be covered in order it to be successful. Because of the reason, we studied public opinion about the tools and ways to conduct public legal education activity in city, towns, aimags, soums and districts. The following table shows how people in different areas think about the tools or ways to conduct public legal education activity.

Table. Instruments and ways to conduct public legal education activities in towns, aimags and soums.

	Manual	Newspaper	Magazines	TV	Short information	Radio	Public meeting	Did not reply	Total
Erdenet	10	21	3	10	1	1	5	98	149
	6,7%	14,1%	2,0%	6,7%	,7%	,7%	3,4%	65,8%	100,0%
Darkhan	6	38	2	42	4	1	11	44	148
	4,1%	25,7%	1,4%	28,4 %	2,7%	,7%	7,4%	29,7%	100,0%
Uvurhangai	4	69	4	12	4	0	1	2	96
	4,2%	71,9%	4,2%	12,5%	4,2%	,0%	1,0%	2,1%	100,0%
Huvsugul	12	19	7	83	9	18	1	1	150
	8,0%	12,7%	4,7%	55,3 %	6,0%	12,0%	,7%	51,1	100,0%
Dornogobi	6	2	0	15	0	0	0	126	149
	4,0%	1,3%	,0%	10,1%	,0%	,0%	,0%	84,6%	100,0%
Uvs	9	34	9	62	5	5	10	6	140
	6,4%	24,3%	6,4%	44,3 %	3,6%	3,6%	7,1%	4,3%	100,0%
Bayanhongor	24	31	6	67	6	1	15	1	151
	15,9%	20,5%	4,0%	44,4 %	4,0%	,7%	9,9%	,7%	100,0%
Bulgan	24	34	11	58	3	0	13	5	148
	16,2%	23,0%	7,4%	39,2 %	2,0%	,0%	8,8%	3,4%	100,0%
Umnugobi	55	68	26	0	0	0	0	0	149
	36,9%	45,6%	17,4%	,0%	,0%	,0%	,0%	,0%	100,0%
Selenge	18	22	6	26	4	0	4	220	300
	6,0%	7,3%	2,0%	8,7%	1,3%	,0%	1,3%	73,3%	100,0%

From each area, we selected three media that regarded as the best tool in conducting public legal awareness raising activities.

For Erdenet or Orkhon-Uul aimag residents the best tool for legal education activity was newspaper (14.1 percent), then manual book (6.7 percent), TV was on the third place (6.7 percent).

Darkhan-Uul aimag residents said TV is the best way (28.4 percent), then newspaper (25.7 percent) and public meeting (7.4 percent). They said usage of these tools can facilitate in achieving good results in public education activity on legal issues.

For Uvurhangai aimag residents, newspaper was very important tool and way to educate public on legal issues (71.9 percent), manual book was on the second place (12.5 percent), magazines were on the third place (4.2 percent).

Huvsugul aimag residents think that TV is the best instrument to disseminate legal knowledge and legal information (55.3 percent), newspaper took second place (12.7 percent), and the radio was on the third place (12.0).

For Dornogobi aimag respondents TV was in the first place (10.1 percent) and manual books on legal issues were on the second (4.0 percent) place.

Uvs aimag respondents said that TV is the best tool for public legal education activity (44.3 percent), then were newspaper (24.3 percent) and public meeting (7.1 percent) and suggested to use all of them.

Bayanhongor aimag residents think TV is good for public legal education activity (44.4 percent), then the newspaper (20.5 percent) and manual books (15.9 percent) and wished to receive legal information through these tools.

For Bulgan aimag residents, TV is the best way to receive (39.2 percent) legal information, then newspaper (23.0 percent), and manual books (16.2 percent). They said usage of these tools in public legal education is very important.

Umnugobi aimag residents preferred to receive legal knowledge and legal information from newspaper (45.6 percent), then from manual books (36.9 percent) and from magazines (17.4 percent).

However, for Selenge aimag respondents, TV was in the first place (8.7 percent) then newspaper (7.3 percent) and manual books (6.0 percent).

The survey findings show that the majority of people chose TV, newspaper and manual book as the main instruments for public legal education activity in respective order.

In the capital city Ulaanbaatar the study was conducted in three districts-Bayangol, Bayanzurkh and Khan-Uul through random selection method. The city residents had the following opinions about tools and ways for public legal education activity.

Table. Main tools for public legal education activity.

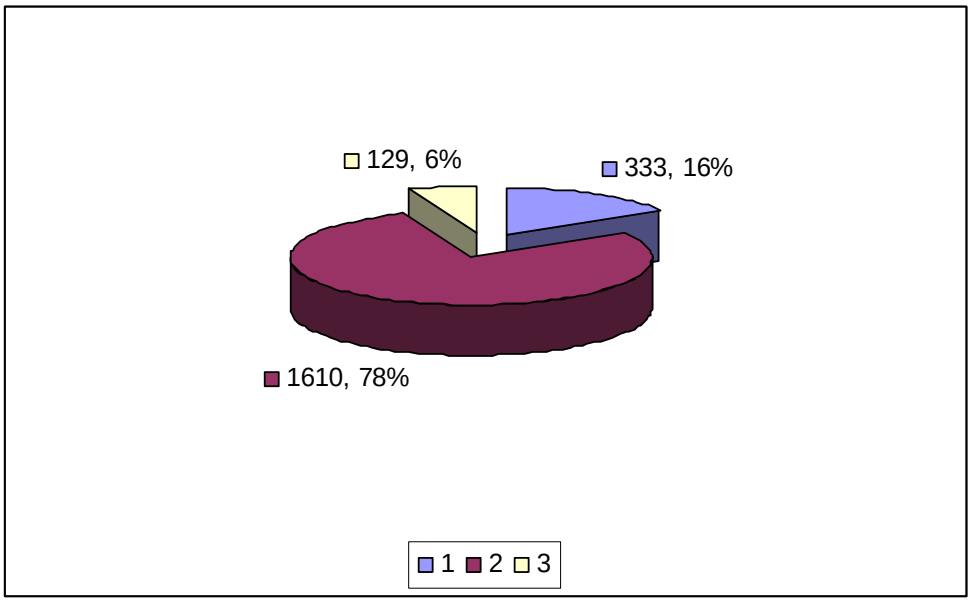
	Manual book	Newspaper	Magazine	TV	Announce	Radio	Public meeting	Did not reply	Total
Bayangol	25	37	14	51	5	2	10	4	148
	16,9%	25,0%	9,5%	34,5%	3,4%	1,4%	6,8%	2,7%	100,0%
Bayanzurkh	10	21	3	10	1	1	5	98	149
	6,7%	14,1%	2,0%	6,7%	7.0%	7.0%	3,4%	65,8%	100,0%
Khan-Uul	12	25	3	16	0	1	7	85	149
	8,1%	16,8%	2,0%	10,7%	,0%	,7%	4,7%	57,0%	100,0%

To compare the survey results in these districts, 34.5% of participants from Bayangol district preferred awareness raising shows on TV, whereas participants from Bayanzurkh (14.1 percent) and Khan-Uul district (16.8 percent) preferred newspaper and magazines.

7. DEMAND FOR INFORMAL LEGAL TRAINING

One-fourth of respondents said that they have never participated in any informal legal training. Out of 2000 respondents only 333 people participated in such kind of training activity.

Have you ever attended an informal legal training?



From the survey findings, the trend can be seen is that the informal legal training is not well-known among the citizens and the significance of the training is not fully realized. In other words, people do not fully understand benefits of attending legal informal training, do not know by attending such trainings they can obtain necessary legal information useful in their life and in protecting rights and interests.

When studied gender of the respondents who replied positively or "attended in the legal informal training", 18.4 percent of them were men and 14.1 percent were women. Out of respondents who replied negatively or "did not attend in any kind of legal training" 70.6 percent were men and 80.6 percent were women. These findings show that more men than women attend in informal legal training. It can be explained by the fact that women, besides their professional duties, have more

domestic responsibilities than men such as taking care of children, house work and these additional duties limit their opportunity to attend in informal legal trainings.

Table. Your gender and did you attend in informal legal training (ILT)? /Cross tabulation/

			Did you attend ILT?					Total
			0	Yes	No	3	5	
	0	Count	23	3	4	0	0	30
		Expected Count	1,9	4,8	23,2	,1	,0	30,0
		Percentage within Your age?	76,7%	10,0%	13,3%	,0%	,0%	100,0%
		Percentage within Did you attend ILT?	17,8%	,9%	,2%	,0%	,0%	1,4%
	male	Count	50	181	747	5	0	983
		Expected Count	61,0	157,5	760,7	2,8	,9	983,0
		Percentage within Your gender?	5,1%	18,4%	76,0%	,5%	,0%	100,0%
		Percentage within Did you attend ILT?	38,8%	54,4%	46,5%	83,3%	,0%	47,3%
	fem.	Count	52	149	850	1	2	1054
		Expected Count	65,4	168,9	815,6	3,0	1,0	1054,0
		Percentage within Your gender?	4,9%	14,1%	80,6%	,1%	,2%	100,0%
		Percentage within Did you attend ILT?	40,3%	44,7%	52,9%	16,7%	100,0%	50,7%

Nowadays, people start seeking legal assistance only when their own rights or their close friend's or relative's rights are violated and such practice became a habit or norm of their life. Even in such cases, instead of applying for legal advice to legal firms or legal professionals who have license for such service, they seek through own relatives, friends and classmates the easy ways to resolve the problem and waste not only own time but also others precious time.

What kind of legal knowledge they seek through such ways to resolve legal problems? To know it the survey team asked from respondents the question *"If you attend an informal legal training what kind of legal information you think is necessary /important/ for your life and work?",* because it is very important to identify the answer through citizens' need and necessity in legal information.

Table.

1	Category of legal knowledge	Assessment									
		Important		May be important		Not necessary		Did not reply		Total	
		Nu	%	Nu	%	Nu	%	Nu	%	Nu	%
1.	Civil	1009	48.2	361	17.2	48	2.3	661	31.6	2079	99.3
2.	Labor	862	41,2	397	19,0	74	3,5	745	35,6	2079	99,3
3.	Social insurance	786	37,5	412	19,7	68	3,2	813	38,8	2080	99,3
4.	Family	620	29,6	398	19,0	94	4,5	967	46,2	2080	99,3
5.	Insurance	608	29,0	439	21,0	64	3,1	967	46,2	2078	99,2
6.	Criminal	557	26,6	460	22,0	131	6,3	931	44,5	2079	99,3
7.	Tax	522	24,9	384	18,3	114	5,4	1055	50,4	2080	99,3
8.	Administrative	470	22,4	385	18,4	178	8,5	1045	49,9	2080	99,3
9.	Contract	459	21,9	495	23,6	104	5,0	1021	48,8	2080	99,3
10	Bank, finance	406	19,4	393	18,8	139	6,6	1140	54,4	2080	99,3
11	Inheritance	367	17,5	474	22,6	179	8,5	1060	50,6	2080	99,3
12	Customs	318	15,2	331	15,8	123	5,9	1307	62,4	2080	99,3

The survey finding shows that people need in legal knowledge on civil law, labor law and social welfare law. Besides civil rights to work and to be covered by social care service, they want to obtain legal knowledge on family law to resolve family

disputes in compliance with law, to know how to insure their health, wealth, and how to receive insurance service on labor protection against accidents. Such interests are increasing.

As transition to a new society with market economy continues, first of all people want to obtain legal knowledge on economic rights of individual. They want to receive legal knowledge on contract law, knowledge related to inheritance of wealth to children, and knowledge on banking law. Therefore, it is important to pay more attention to the trainings which will give citizens legal knowledge on above mentioned laws.

More than half of respondents aged under 17 (53.7 percent) and majority of respondents aged 18-24 58.3 (percent) replied in the question "If you attend informal legal training what kind of legal information you think is necessary for your life and work?" that in their life knowledge on civil law is more important or necessary. Necessity in knowledge on civil law is falling as age of people increased. Majority of middle age people said knowledge on contract law is more important in their life and their percentage was 56.7 among 31-35 years old people.

The rest of the answers are listed below:

1.	Family law	18-24 years old	43.1 %
2.	Inheritance law	51-60 years old	23.1 %
3.	Insurance	18-24 years old	43.3 %
4.	Criminal	46-50 years old	46.9 %
5.	Labor Law	18-24 years old	51.1 %
6.	Social care	61-over	54.0 %
7.	Administrative law	18-24 years old	33.2 %
8.	Taxation law	18-24 years old	36.6 %
9.	Customs law	18-24 years old	22.5 %
10.	Banking and finance law	18-24 years old	30.1 %

When we considered legal knowledge which is possible to convey through informal legal trainings, we studied its efficiency and relation to needs of citizens. In other words, in which particular situation, and what particular kind of legal knowledge was necessary for their life and work.

Table. When do you need legal knowledge?

1	Assessment	Number	%
1.	concerning business problems	100	4,8
2.	rights under the labor law were	89	4,3
3.	tax related problems	86	4,1
4.	problems concerning civil law	75	3,6
5.	saving, loan and other problems related to bank	57	2,7
6.	family disputes	65	3,1
7.	disputes concerning right to elect and to be elected	21	1,0
8.	other problems	1	,0
9.	NA	1585	75,7
	Total	2079	99,3

Out of all respondents, 75.7 percent think that in their life there is no need in legal knowledge. It is possible that they have no understanding about legal knowledge and because of that they did not reply the question. In market economy, living on salary is not sufficient to support family and people doing private business or seeking additional source of income through second job. In such efforts or in their private small business people constantly face many burdens of bureaucracy, tax pressure and other problems. People face all these problems and waste their precious time and money because they do not have proper legal knowledge.

One of every 5 people or 21.7 percent of 25-30 years old people said that because of tax burden they need information on tax law. Also, 8.4 percent of young people of this age group said that they need in legal knowledge about business law and regulations.

The survey findings demonstrate that for this age group or for 25-30 years old people, the main problems in work and business are difficulties related to tax and business regulations.

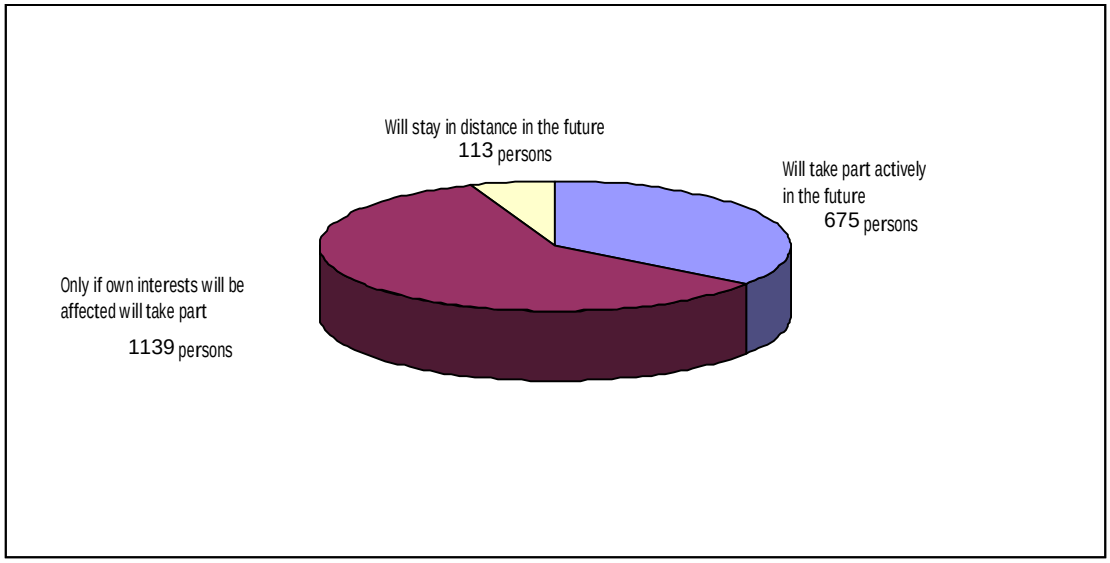
In the next age group /including pensioners/ there is need to improve their knowledge and information on banking law about how to get loan from bank, 12.3 percent of them said they need such knowledge.

The survey found very interesting data which shows that knowledge on political right and information is not set in people's mind fully. In other words, only one percent of respondents or just 21 people thought that political rights to vote and to be elected were violated. However, in real life such violations were occurred. For example, during the 2004 parliamentary elections, people's right to vote was violated in Uvurkhangai aimag and Ulaanbaatar. The whole country witnessed how the dispute to resolve them continued for one and a half year in all levels of court system.

How do people respond to the acts violating their rights and what measures do they take to protect or restore their rights? In reality, what kind of legal knowledge they use and what measure they take to protect their rights is unclear.

We asked respondents if they have planned any activities to protect their rights.

Will you protect your rights in the future?



Generally, people have a tendency to protect only their own rights. More than half of respondents said only if their own rights were violated they will take measures to protect and restore rights. Out of 1139 people 54.4 percent replied this way and it is clear evidence of above mentioned tendency. This finding shows that our citizens take actions only if they faced any problems and not prepared to prevent them. They have no habit to do any avoidance action. However, one of every three respondents or 32.2 percent plans to protect their rights in the future. The rest of the respondents will not be involved in any action.

8. HOW TO ORGANIZE INFORMAL LEGAL TRAINING

Types of informal legal training

Conducting of informal legal training is one of problems that society is facing these days and people urgently need this kind of public education activity. Therefore, informal legal trainings should be conducted not only within the capital city or other towns but also this kind of public training must be organized broadly within the scope of the whole country. When conducting such kind of public legal training, it is very important to take the specific conditions of respective local areas into account.

In the survey questionnaire, we asked respondents of rural areas about types of legal training they need. The next table shows findings of that study.

Table. Type of legal training. (by provinces)

Aimag	Not answered	In-house Training	Distant learning	TV	Radio	Do not know	Total
Erdenet	124	1	11	12	1	0	149
	116,2	2,1	8,2	15,6	5,1	1,7	149,0
	83,2%	,7%	7,4%	8,1%	,7%	,0%	100,0%
	7,8%	3,4%	9,8%	5,7%	1,4%	,0%	7,4%
Darkhan	107	0	2	17	21	0	147
	114,6	2,1	8,1	15,4	5,1	1,7	147,0
	72,8%	,0%	1,4%	11,6%	14,3%	,0%	100,0%
	6,8%	,0%	1,8%	8,0%	30,0%	,0%	7,3%
Uvurkhangai	23	20	40	8	4	0	95
	74,1	1,4	5,3	9,9	3,3	1,1	95,0
	24,2%	21,1%	42,1%	8,4%	4,2%	,0%	100,0%
	1,5%	69,0%	35,7%	3,8%	5,7%	,0%	4,7%
Huvsugul	136	1	2	2	9	0	150
	117,0	2,1	8,3	15,7	5,2	1,7	150,0
	90,7%	,7%	1,3%	1,3%	6,0%	,0%	100,0%
	8,6%	3,4%	1,8%	,9%	12,9%	,0%	7,4%
Dornogobi	133	0	4	9	3	0	149
	116,2	2,1	8,2	15,6	5,1	1,7	149,0
	89,3%	,0%	2,7%	6,0%	2,0%	,0%	100,0%
	8,4%	,0%	3,6%	4,2%	4,3%	,0%	7,4%
Uvs	118	1	3	9	9	0	140
	109,2	2,0	7,7	14,6	4,8	1,6	140,0
	84,3%	,7%	2,1%	6,4%	6,4%	,0%	100,0%
	7,5%	3,4%	2,7%	4,2%	12,9%	,0%	6,9%
Bayankhongor	114	0	7	25	5	0	151
	117,8	2,2	8,3	15,8	5,2	1,7	151,0
	75,5%	,0%	4,6%	16,6%	3,3%	,0%	100,0%
	7,2%	,0%	6,3%	11,8%	7,1%	,0%	7,5%

Bulgan	114	1	2	25	7	0	149
	116,2	2,1	8,2	15,6	5,1	1,7	149,0
	76,5%	,7%	1,3%	16,8%	4,7%	,0%	100,0%
	7,2%	3,4%	1,8%	11,8%	10,0%	,0%	7,4%
Umnugobi	86	0	0	41	0	22	149
	116,2	2,1	8,2	15,6	5,1	1,7	149,0
	57,7%	,0%	,0%	27,5%	,0%	14,8%	100,0%
	5,4%	,0%	,0%	19,3%	,0%	95,7%	7,4%
Selenge	242	4	22	26	6	0	300
	234,0	4,3	16,6	31,4	10,4	3,4	300,0
	80,7%	1,3%	7,3%	8,7%	2,0%	,0%	100,0%
	15,3%	13,8%	19,6%	12,3%	8,6%	,0%	14,8%

When planning the informal legal training in rural areas and in towns, it is important to consider some specific factors of that area such as population, infrastructure, communication, level of education and life, activities of state central organizations, law enforcements etc. It is very important to compare these factors in conducting informal legal trainings.

The survey findings show that both women and men choose in-house training as the most useful type of training for legal informal education /men 24.2 percent and women 23.1 percent/, TV was on the second place /men 10 percent, women 25.3 percent/. But radio and distant learning methods as types of training for legal informal training received (Radio -men 2.2 percent, women 2.4 percent, distant learning -male 16.1 percent, female 10.8) less rates. Such approach is associated with citizens' psychological mindset that people usually prefer moving images and sounds or live images than just sounds. They want to see and hear simultaneously.

As for age groups, teenagers under 17 like TV trainings more than any other trainings /22.7 percent/. But for elder people over 61 this rate was contrary and only 4.8 percent choose TV. 25-30 years old young people chose radio training /2.4 percent /, and TV trainings (25.9 percent). But people of 36-40 and over 61 preferred in-house training (14.0 percent) and gave quite significant importance to the radio trainings (10.5 percent).

Organizing informal legal training among citizens is not easy task. It is complicated issue which includes multiparty interests and problems. After studying public opinion on types of informal legal training we compared people's responses to the question *"If you choose in-house training, what training methods should be used?"*

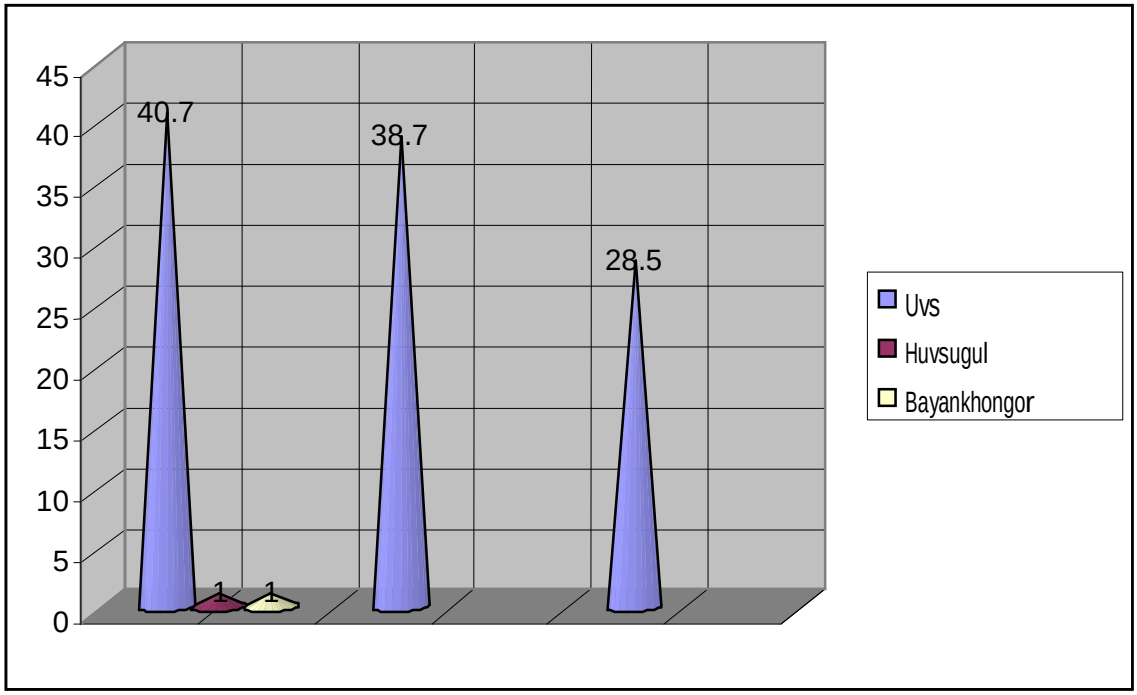
Table. Types of informal legal training

Aimag	Not answered	Participation	Case	Lecture	Other	Total
Erdenet	26	51	25	32	15	149
	25,5	48,9	31,5	35,5	7,6	149,0
	17,4%	34,2%	16,8%	21,5%	10,1%	100,0%
	7,7%	7,9%	6,0%	6,8%	14,9%	7,5%
Darkhan	50	54	13	25	6	148
	25,4	48,6	31,3	35,2	7,6	148,0
	33,8%	36,5%	8,8%	16,9%	4,1%	100,0%
	14,7%	8,3%	3,1%	5,3%	5,9%	7,5%
Uvurkhangai	3	16	14	12	1	46
	7,9	15,1	9,7	11,0	2,3	46,0
	6,5%	34,8%	30,4%	26,1%	2,2%	100,0%
	,9%	2,5%	3,3%	2,5%	1,0%	2,3%
Huvsugul	1	30	58	58	3	150
	25,7	49,2	31,7	35,7	7,7	150,0
	,7%	20,0%	38,7%	38,7%	2,0%	100,0%
	,3%	4,6%	13,9%	12,3%	3,0%	7,6%
Dornogobi	85	27	13	15	9	149
	25,5	48,9	31,5	35,5	7,6	149,0
	57,0%	18,1%	8,7%	10,1%	6,0%	100,0%
	25,1%	4,2%	3,1%	3,2%	8,9%	7,5%
Uvs	11	42	24	57	6	140
	24,0	45,9	29,6	33,3	7,1	140,0
	7,9%	30,0%	17,1%	40,7%	4,3%	100,0%
	3,2%	6,5%	5,7%	12,1%	5,9%	7,1%
Bayankhongor	2	72	27	43	7	151
	25,9	49,5	31,9	36,0	7,7	151,0
	1,3%	47,7%	17,9%	28,5%	4,6%	100,0%

	6%	11,1%	6,5%	9,1%	6,9%	7,6%
Bulgan	13	53	44	34	5	149
	25,5	48,9	31,5	35,5	7,6	149,0
	8,7%	35,6%	29,5%	22,8%	3,4%	100,0%
	3,8%	8,2%	10,5%	7,2%	5,0%	7,5%
Umnugobi	24	69	37	19	0	149
	25,5	48,9	31,5	35,5	7,6	149,0
	16,1%	46,3%	24,8%	12,8%	,0%	100,0%
	7,1%	10,6%	8,9%	4,0%	,0%	7,5%
Selenge	50	102	50	88	10	300
	51,4	98,4	63,4	71,4	15,3	300,0
	16,7%	34,0%	16,7%	29,3%	3,3%	100,0%
	14,7%	15,7%	12,0%	18,7%	9,9%	15,2%

In aimags and rural areas there was a common tendency to use case study and direct participation of attendees for informal legal trainings. These types of informal legal training easily attract people's interest because of newness, advantage of direct communication and opportunity to express opinions freely. In addition, such types of trainings are new in rural areas and never used before. In remote aimags, people still highly valued the importance of lecture as a traditional type of training.

Graphic. Lecture as type of informal legal training received the following score.



- The survey findings show that the lecture, direct involvement and case study methods should be used for informal legal trainings in aimags.

Majority of respondents are residents of the capital city and small towns such as aimag centers and soum centers. This structure of the selection was chosen after consideration of many factors such as population density, availability of telephone and internet connection, and availability of equipments for use in trainings.

53, 1 percent of respondents replied affirmatively or said "yes" when asked the question "If legal informal training will be organized through TV, will you watch?" Moreover, 34 percent said "they will watch informal legal trainings conducted through TV, if the have time". Percentage of respondents who responded negatively and said "will not watch" was very low, they got just 5.8 percent. It illustrates the fact that among citizens already had formed culture to receive legal information from TV. Consequently, conducting informal legal trainings through TV will be very effective.

In addition, with regard to age groups, 18-35 years old young people mostly said that "they like to watch TV and receive legal information from TV". This finding once again confirms the suggestion about effectiveness of trainings conducted through TV. Not only our survey but also, results of many other studies confirm that TV, the radio (FM), and internet became the main source of information for young people.

People responded differently in the question *"What do you think about the frequency of the training?"* The following suggestions were made by the participants: to conduct informal legal trainings frequently and free of charge; to

organize such trainings in the form of free discussion and conversation or lecture which involves many people; one time participation is enough, in bags and khoroos 1-2 times per month is sufficient; in every organization must conduct constantly; trainings will be efficient for public if it will be conducted through manual book, through special newspaper.

9. BASIC CONCLUSIONS

1. CITIZENS' AWARENESS OF LEGAL INFORMATION

- The survey findings show that the majority of people receive legal information from TV and newspaper.
- 56.1 percent or more than half of the people received legal information from TV.
- If we classify citizens who receive legal information from TV by age groups, the majority is 18-30 years old young people.
- The next source of legal information for citizens is newspaper and two-fifth of the people receive legal information from it. 42.2 percent of the people received legal information from newspaper.
- In the age group of people, who made newspapers their source of legal information, youngsters under 17, and 18-24 years old young people mostly or sometimes use this source.
- Young and old people read newspapers to obtain legal information more than any other age groups, but people of middle age group rarely read newspapers for this purpose.
- The survey findings show that people do not often listen to the radio to receive legal information. Only 23.1 percent of citizens always listen to the radio to obtain legal information and 10.7 percent of them never listen to the radio to obtain legal information.
- Although the 18-24 years old young people do not always listen to the radio, sometimes they do listen to the radio. Therefore, dissemination of legal information for them through radio can be efficient.

- Most of people regularly receive legal information from *friends* (one-fourth of them replied that way) but small number of people received such information from family members and collectives.
- If conclude generally, women are more interested in receiving legal information from TV than men. But men obtain legal information from the radio more than women.

2. CITIZENS' LEGAL KNOWLEDGE AND ITS BASIC TYPES

- 18 percent of people regularly seek, obtain and choose legal information or they have such desire and always ready to protect their rights using legal knowledge.

- There is a large group of people who are usually interested in laws and legal documents but do not take adequate actions to protect their own rights and 53 percent of the people or majority belongs to this group.
- One-fourth or 25 percent of the people who were involved in the survey never obtained any legal information and knowledge; they think that such information and knowledge were not useful in their life. It is not a small number.
- Majority of the citizens evaluated their legal knowledge as "medium", 23 percent think their legal knowledge is "bad" and only 17 percent said "good". But, certainly this 17 percent gave this response considering own legal knowledge through many assessments.
- The survey findings show that only 7 percent got acquainted with newly adopted laws and regulations and one-third of the people replied that they got acquainted with some of the newly adopted laws. But 28 percent evaluated themselves as "have got acquainted lightly" and 32 percent never get acquainted with newly adopted laws and legal regulations. Based on this fact we made the conclusion that citizens are not well informed of the newly adopted laws.

3. VIOLATIONS OF CITIZENS 'RIGHTS AND RESTORATION

- The survey disclosed that violations of human rights have become a common occurrence in rural areas. 16.2 percent of people think that violations of human rights very often occur in rural areas. This percentage was not high in other places: in the capital city it was 14.1, in towns was 12.9, in soum centers was 12.1, and in aimag centers was 11.2. However, in the capital city 53.3 percent of the respondents, in towns of Darkhan and Erdenet 64.9 percent of the respondents think that the violations of human rights sometimes occur.
- In terms of age groups, violations of citizens' rights frequently occur in all age groups. Particularly, among 18-24 years old young people and among over 61 years old people violation of rights observed most frequently.
- Unemployed citizens, students, civil servants and employees of non governmental organizations, employees of legal institutions, intermediaries, and merchants said that violations of rights occur frequently. But majority or 59.1 percent of the people who work in agricultural sector do not know about violations of rights.
- The study confirms that high education is very important factor in noticing violation of rights and to restore violated rights.
- The survey findings illustrate that people with elementary education and with not full secondary education do not know much about possibility to restore violated rights. Particularly, 44.6 percent of the people with not full secondary education said they do not know about it, and 81.7 percent of the survey participants with elementary education could not reply this question.
- 22.1 percent of citizens think restoration of violated rights is impossible. Little bit smaller percentage or 13.3 percent of citizens hope that restoration of violated rights is somehow possible.

4. CITIZENS' ACTIVITIES TO PROTECT THEIR OWN RIGHTS

- As Mongolians have little experience and clearly formed conception on the issue how to protect their own rights, it is important to teach them about activities to protect own rights. In the past, only 11 percent of the citizens in some cases were participated in activities to protect their rights.
- The most important legal knowledge for citizens is knowledge on Labor law or about economic rights. In the second place was legal knowledge on rights to vote and to be elected or knowledge on political rights. 22.8 percent of people said that when their rights were violated at their workplace, they need legal knowledge on Labor law. And 11.4 percent of the people said because of the violations of rights to vote and to be elected, they need knowledge related to this issue.

5. PUBLIC AWARENESS RAISING ACTIVITIES

- Based on the study results we can conclude that the most efficient ways of raising public awareness in law are TV, manual books and newspapers.
- Consequently, citizens think that for public legal education activities, organizers should widely use mass media, including TV, newspapers, magazines and manual books. For example, 21.8 percent of citizens think public awareness raising activities should be conducted through TV. At the same time, 21.1 percent think it should be conducted through newspapers, 11.4 percent think it should be conducted through manual books and 5.1 percent think magazine is good for the better public understanding.

6. DEMAND FOR INFORMAL LEGAL TRAINING

- One-fourth of the respondents said that they "never attended in informal legal trainings when they were asked questions intended to identify needs for informal legal training. It means that there are no such trainings at all, or such trainings can not attract citizens' interest at all.
- The survey results illustrate the fact that today people urgently need in legal knowledge on Civil law, Labor law and the Law on Social Welfare. They want to obtain legal knowledge on their rights to work and to be covered by social care.
- In addition, people are very much interested in obtaining legal knowledge to resolve family disputes within the legal framework, or to be covered by insurance in case of labor accident and to insure own property, health and life.
- In the question "If you attend legal informal training what kind of legal information you think is necessary for your life and work?", majority or 53.7 percent of young people under 17 years, and 58.3 percent of 18-24 years old young people chose "legal knowledge on Civil Law". This percentage decreased as people's age was increasing. In the age group who highly valued knowledge on *"Contract Law"* as necessary for their life were 31-35 years old people with 56.7 percent.
- The survey findings show that the main problem for the working age group were the problems concerning the tax and business regulations.

- 75.7 percent of the participants said that "legal knowledge is not that necessary for them.

7. HOW TO ORGANIZE INFORMAL LEGAL TRAINING?

- The survey results suggest that organizing informal legal training in aimags is necessary and for the in-house lectures direct involvement /participation/ and case study methods should be used together.
- In remote aimags, residents still highly value importance of in-house lecture as a traditional training method.
- The survey findings illustrate that both female and male respondents chose in-house training as the most useful type of training for informal legal education (men 24.2 percent and women 23.1 percent). TV was on the second place (men 10 percent, women 25.3 percent).
- Significant part of teenagers (22.7 percent) under 17 years old liked TV trainings. However, for the group of 61 and older the rate was opposite or 4.8 percent. Majority of 25-30 years old people chose radio trainings (FM), TV training was in the second place for them (25.9 percent).
- 14 percent of the age group of 36-40, and over 61 preferred in-house training more than other types of trainings. Moreover, they (10.5 percent) gave significance to the radio training.

GENERAL RECOMMENDATIONS

- First of all, the survey results confirm that there is urgent need to increase dissemination of legal information for public. Particularly, dissemination of legal information and knowledge through TV for 18-30 years old people can be very efficient.
- Citizens with not full secondary education and elementary education do not have sufficient knowledge of the issues. Therefore, trainings and awareness raising activities designed for them should be organized through all efficient ways and means as soon as possible.
- Informal legal trainings and advertisements must be directed to rural areas, where violations of rights often occur.
- Because of the high demand for legal information and knowledge on right to work and to vote and to be elected, it is very important to disseminate information on these fields.
- For public awareness raising activities, using mass media, particularly TV, newspapers, magazines and manual books can reach citizens 'mind more efficiently.
- Use of different kinds of efficient training methods can be effective for the informal legal trainings.

Annual Report 2006 Attachment N

МОНГОЛ УЛСЫН ШҮҮХ ЭРХ МЭДЛИЙН СТРАТЕГИ ТӨЛӨВЛӨГӨӨНИЙ БИЕЛЭЛТЭНД ХИЙСЭН ҮНЭЛГЭЭНИЙ ХУРААНГУЙ

Монгол Улсын засаг төрийн байгууллын шинэтгэлийн нэн чухал хэсэг нь шүүх эрх мэдлийн шинэтгэл мөн билээ. Түүнийг эрчимжүүлэн гүнзгий хэрэгжүүлэхэд тус дөхөм үзүүлэх зорилгоор Шүүх эрх мэдлийн Стратеги төлөвлөгөөг (СТ) АНУ-ын Олон улсын хөгжлийн агентлагийн (ОУХА) санаачилга дэмжлэгтэйгээр Монгол Улсын Засгийн газар (ЗГ), Шүүхийн Ерөнхий зөвлөл (ШЕЗ) эрхлэн боловсруулж Монгол Улсын Их хурал (УИХ) 2000 оны 5-р сарын 4-ний өдрийн 39 дүгээр тогтоолоор батлагдсан юм.

Энэхүү Стратеги төлөвлөгөөг хэрэгжүүлэх жилийн болон удаан хугацааны арга хэмжээг тодорхойлсон матрикс-ыг тухайн үед ШЕЗ-ийг тэргүүлж байсан Хууль зүй, дотоод хэргийн сайд баталж улмаар Улсын Дээд шүүх (УДШ), Улсын Ерөнхий прокурорын газар (УЕПГ), Хууль зүй, дотоод хэргийн яам (ХЗДХЯ), Монголын Өмгөөлөгчдийн холбоо (МӨХ)-ны тэргүүлэгчид тус тусын шугамаар хэрэгжүүлж ирсэн байна.

2001 оны 1-р сард АНУ-ын ОУХА нь АНУ-ын Муж улсуудын шүүхийн үндэсний төвтэй (МУШҮТ) гэрээ байгуулан СТ-ний тэргүүн зэргийн ач холбогдол бүхий арга хэмжээнүүдийг хэрэгжүүлэх зорилго бүхий “Монгол Улсын Шүүх эрх мэдлийн шинэтгэлийн хөтөлбөр”-ийн баг байгуулж, мөн оны 3-р сараас Улаанбаатарт суурин ажиллуулсан юм. 2001 оны 8-р сарын 23-ний өдөр ХЗДХ-ийн сайд бөгөөд ШЕЗ-ийн дарга Ц.Нямдорж, АНУ-ын ОУХА-ийн суурин төлөөлөгч ноён Эдвард Биргэллс нар Шүүх эрх мэдлийн шинэтгэлийн хөтөлбөрийг (ШЭМШХ) хэрэгжүүлэх ажлыг зохицуулах зорилгоор “Монгол Улсын Хууль зүй, дотоод хэргийн яам (ХЗДХЯ), АНУ-ын ОУХА-ийн хамтын ажиллагааны санамж бичиг”-т гарын үсэг зуржээ. Энэ үндсэн дээр ШЭМШХ нь СТ-ний хариуцагч буюу гүйцэтгэгч байгууллагуудад мэргэжил, арга зүй, санхүү, техникийн дэмжлэг үзүүлж ирсэн юм. СТ-ний нийт өртөг 13,500,000 гаруй сая ам. доллар, үүнээс 2 сая ам. долларын санхүүжилтийг Монголын ЗГ, 10 сая ам. долларыг АНУ-ын ОУХА хариуцсан байна. ШЭМШХ 2001 оноос жилд дунджаар 2 сая орчим ам. доллар зарцуулж дараах 5 чиглэлээр дэмжлэг туслалцаа үзүүлж ирэв. Үүнд:

А. Шүүхийн хараат бус байдлыг бэхжүүлэхэд чиглүүлэн шүүх дэх менежментийг зөв төлөвшүүлж улмаар сайжруулах;
Б. Хуульч бэлтгэх, тэдний ялангуяа шүүгчдийн мэргэжлийг дээшлүүлэх сургалт, давтан сургалт явуулах үргэлжилсэн сургалтын тогтолцоо, шинэ сургалтын хөтөлбөр боловсруулан нэвтрүүлэх, сургагч-багш нарыг бэлтгэх, гүнзгийрүүлсэн сургалт явуулах; төрөл бүрийн сургалтын гарын авлага бэлтгэхэд дэмжлэг үзүүлэх;
В. Хуульчдыг сонгон шалгаруулах тогтолцоог шинээр бий болгон төлөвшүүлэх;
Г. Хуульчдын ёс зүйн дүрэм журмыг боловсруулж нэвтрүүлэх;

Д. Эрх зүйн болон шүүхийн мэдээллийн тогтолцоог шинээр бүрдүүлж хууль, шүүх болон хуулийн бусад салбарт үйл ажиллагаа явуулдаг байгууллагуудын талаарх олон нийтэд мэдлэг олгох болон мэдээлэл, сургалт, сурталчилгааны бусад ажлыг зохион байгуулсан.

СТ-г хэрэгжүүлэх асуудлыг нийт шүүхийн Ерөнхий шүүгчид, аймаг, Нийслэл, дүүргийн болон Тээврийн прокурорын газрын тэргүүн нарын 2001 оны зөвлөлгөөнөөр хэлэлцүүлж, бүх нийтийн анхаарлыг хандуулсан болно.

Монгол Улсын Ерөнхийлөгчийн ивээл дор зохион байгуулагдсан "Шүүх эрх мэдлийн болон хууль сахиулах төв, орон нутгийн байгууллагуудын удирдах ажилтнуудын нэгдсэн зөвлөлгөөн"-ийг 2003 оны 3-р сарын 3-5-ны өдрүүдэд хийж төлөвлөгөөний биелэлтийн явцыг хэлэлцүүлсэн нь түүний хэрэгжилтийг эрчимжүүлэхэд мэдэгдэхүйц нөлөө үзүүлсэн юм. Тус зөвлөлгөөнд Ерөнхийлөгч Н. Багабанди оролцож СТ-ний эрхэм зорилго, суурь үнэлэхүй бүрээр дүгнэлт өгч сургамжилсан нь энэ ажилд зохих эрч хүч өгснийг тэмдэглэх нь зүйтэй. Төлөвлөгөөг хэрэгжүүлэхэд УИХ-ын Хууль зүйн байнгын хороо, ХЗДХЯ-ны дэмжлэгтэйгээр 2003 онд байгуулагдсан ХЗҮТ нь сургалт судалгаа, мэдээлэл, сурталчилгааны талаар олон чухал үүрэг гүйцэтгэсэн ба гүйцэтгэж байна.

Энэхүү СТ-г хэрэгжүүлэхэд шүүх эрх мэдлийн орон нутгийн байгууллага, ажилтан идэвхтэй оролцсоны дээр АНУ, ХБНГУ, Япон зэрэг хандивлагч орны холбогдох байгууллага, төслийн баг, Монгол дахь суурин төлөөлөгчийн газрын дэмжлэг, УИХ, ЗГ, ШЕЗ, ХЗДХЯ, УДШ, УЕПГ, МӨХ зэрэг зохицуулагч гүйцэтгэгч байгууллагуудын чармайлтын үр дүнд Стратеги төлөвлөгөөний 6 суурь үнэлэхүйд багтсан 30 стратеги зорилт ямар нэг түвшинд хэрэгжиж практик үр дүнд хүрсэн байна. СТ-ний биелэлтийг бүхэлд нь дүгнэж тооцвол 58% хувь нь бүрэн биелсэн бөгөөд ШЕЗ, УДШ, УЕПГ, МӨХ-оос шууд хамаарах зорилтууд үндсэндээ хэрэгжсэн бөгөөд тэдгээрийн биелэлтийг "Стратеги зорилт" бүрээр дор хураангуйлан жагсаав. Үүнд:

<u>ХАРААТ БУС БАЙХ</u>

УИХ-аас 2002 онд баталсан Шүүхийн тухай хууль (ШТХ), Эрүүгийн байцаан шийтгэх хууль (ЭБШХ), Иргэний хэргийг шүүхэд хянан шийдвэрлэх тухай хууль (ИХШХШТХ), Прокурорын байгууллагын тухай хууль (ПБТХ) зэрэг хуулиудаар:

- анхан, давж заалдах болон хяналтын шатны шүүхүүд шүүх эрх мэдлийг шат шатандаа бие даан хэрэгжүүлж, тэдний шийдвэр гармагц хүчин төгөлдөр болдог журамд шилжсэнээр шүүх тус бүрийн бие даасан байдлын хууль зүйн баталгаа эрс сайжирсан;
- УДШ, аймаг, нийслэлийн Ерөнхий шүүгч "өөрийн үзэмжээр" доод шатны шүүхийн шийдвэрт эсэргүүцэл бичдэг хуучин зохицуулалтыг халсан;
- Ерөнхий шүүгч хэрэг, маргааныг шүүгчдэд хуваарилдаг захиргаадлын тогтолцоог мөн халж, "Шүүгчдийн зөвлөл" ба

“Шүүгчдийн зөвлөлгөөн” гэх шүүгчдийн өөрөө удирдах ёсны байгууллагын статусыг шинээр хуульчилснаар шүүгчдэд ерөнхий шүүгч, шүүхийн захиргааны албан тушаалтнаас шууд нөлөөлөх “механизм”-ыг тасалсан (ШТХ-ийн 67,68);
- Шүүгчийг томилохоор шууд нэр дэвшүүлдэг, халж өөрчлөх талаар шийдвэрлэх санал бүхий ШЕЗ-ийг ХЗДХЯ-ны сайд тэргүүлдэг байсныг өөрчилж УДШ-ийн Ерөнхий шүүгч тэргүүлэх болсноор (ШТХ-ийн 61.4) шүүгчийг томилох, өөрчлөх, чөлөөлөхөд ЗГ-ын зүгээс шүүгчийн хараат бус байдалд нөлөөлөх нөхцөл, хууль эрх зүйн боломж хаагдсан.

Шүүхийн хараат бус байдлыг хангах үндсэн үүрэг бүхий ШЕЗ-д улсын хэмжээний шүүхийн захиргааны үйлчилгээний байгууллагынх нь хувьд ШЭМШХ-өөс түүний чадавхийг сайжруулах ажлыг 2001 оноос эхлэн өнөөг хүртэл үргэлжлүүлсээр ирэв. Энэ ажлын хүрээнд:

- ШЕЗ-ийн зохион байгуулалтын бүтцийг сайжруулж, үйл ажиллагаандаа дэвшилтэт арга хэлбэр нэвтрүүлэхэд нь техникийн болон санхүүгийн нэлээд дэмжлэг үзүүлсэн;
- ШЕЗ болон орон нутгийн шүүхийн тамгын хэлтсүүдэд нэгдсэн бодлогоо төлөвлөн хэрэгжүүлэх, менежмент нэвтрүүлэхэд туслалцаа үзүүлж, энэ талаар шинэлэг сургалтууд зохион явуулсан;
- шүүх дэх менежментийн үйлдлүүд, бүртгэл зүй болон хэрэг хуваарилах зэрэг ажлыг автоматжуулсан;
- шүүх бүрт мэдээлэл, лавлагааны төв байгуулж хэргийн оролцогчид, тэдгээрийн өмгөөлөгч, хууль ёсны төлөөлөгчид болон бусад сонирхогчдоос шаардлагатай мэдээлэл авах боломжийг өргөтгөсөн зэрэг болно.

Энэ суурь үнэлэхүйд хамаарах нэг томоохон арга хэмжээ бол Захиргааны хэргийн дагнасан шүүхийн бүхэл тогтолцоог 2002-2004 онуудад бүрдүүлсэн явдал юм. Иргэн, хуулийн этгээдийг нийтийн засаг захиргааны байгууллагын хууль бус үйл ажиллагаанаас сэргийлэх, таслан зогсоох, улмаар түүнд шүүхийн хяналт тавих бололцоо нээгдэж төрийн эрх мэдлийн салаадын хоорондын тэнцэл сайжрав.

УИХ, ХЗДХЯ болон холбогдох бусад байгууллагуудыг Захиргааны хэрэг хянан шийдвэрлэх тухай хууль (ЗХХШТХ), Захиргааны хэргийн шүүх байгуулах тухай хууль (ЗХШБТХ), Шүүхийн тухай хуульд нэмэлт өөрчлөлт оруулах тухай хуулиудыг боловсруулахад Ханнс-Зайделийн сан нь туршлага судлах, зөвлөгөө авах, сургалт зохион байгуулахад ихээхэн дэмжлэг үзүүлсэн. Мөн ХЗДХЯ, Дэлхийн банкны ШЭЗШ төслөөс зарласан “Захиргааны хэргийн шүүхийн боловсон хүчин бэлтгэх, сургах, давтан сургах болон хууль зүйн дээд боловсрол олгох сургалтын хөтөлбөрийг боловсронгуй болгох” олон улсын тендерт Ханнс-Зайделийн сангийн төлөөлөгчийн газар, Эрх зүйн боловсролын Академийн (ЭЗБА) хамт шалгарч 2003 оны 11-р сараас өнөөг хүртэл сургагч-багш бэлтгэх, ЗХШ-ийн шүүгч нарт зориулсан сургалтыг тасралтгүй явуулж байна. Мөн Дэлхийн банкны ШЭЗШ төсөл нийслэлийн болон 7 аймгийн ЗХШ-ийн

шүүх танхим, байр засаж тохижуулан техник хэрэгслэлээр тоноглосны дээр УДШ, ХЗҮТ-тэй хамтран бүх аймаг, нийслэлд шүүгч, прокурор, өмгөөлөгчид захиргааны хуульчдын 24 цагийн хөтөлбөртэй сургалт явуулсан.

ЗХШ өнгөрсөн 2 жилийн байдлаар, 2004 оны 6-р сарын 1-ээс 2005 оны 12-р сарын 31 хүртэлх хугацаанд 851, түүний дотор 2004 онд 225, 2005 онд 626[1] хэрэг маргааныг шийдвэрлэсэн нь ажил хэрэг амьдралд нэвтэрсний баримт юм.

Хараат бус байх суурь үнэлэхүйд хамаарах дараагийн нэг томоохон болоод чухал арга хэмжээ бол Шүүхийн төсвийн хараат бус байдлыг бэхжүүлэх асуудал байв. Үндсэн хуульд "Шүүхийг улсын төсвөөс санхүүжүүлж, үйл ажиллагаа явуулах эдийн засгийн баталгааг төр хангана" гэж заасан бөгөөд түүний дагуу 1992 оноос шүүхийн тогтолцоог бүхэлд нь улсын төвлөрсөн төсвөөс санхүүжүүлэх зарчим, журам тогтоосон. Ингэснээр анхан болон давж заалдах шатны шүүхүүд орон нутгийн төсвөөс хамааралгүй болов. Гэвч нэг талаар төрийн санхүүгийн хямрал, алдагдлаас нөгөө талаас шүүх, прокурорын байгууллагыг бараг л "үлдэгдлээр" санхүүжүүлэн өрд унагаж ирсэн хуучин практикийн энерцээс шалтгаалан ШЭМБ-гууд санхүүгийн хүнд байдлаас мөддөө гарч чадаагүй, одоо ч муухан нөхцөлд хэвээр байна. СТ-ний жилүүдэд гарсан нэг шинэ зүйл гэвэл ханган нийлүүлэгч байгууллагуудад төлөөгүй дулаан, цахилгаан, шуудангийн зэрэг үйлчилгээний зардал 114 сая төгрөгийн "шүүхийн өр"-ийг ЗГ-аас 2003 онд шийдвэрлэж өгсөн явдал юм.

УДШ шүүхийн төсвийн төслөө шууд УИХ-д өргөн мэдүүлдэг байхаар хуульд өөрчлөлт оруулах саналыг боловсруулж тавьсан боловч ЗГ, Санхүү эдийн засгийн яамнаас хэтэрсэнгүй. Иймээс шүүхийн төсөв сангийн яамнаас хараат хэвээр үлдсэнээр барахгүй Төсвийн байгууллагын удирдлага, санхүүжилтийн тухай (ТБУСТ) шинэ хуулиар яг л гүйцэтгэх эрх мэдлийн байгууллага яам, агентлагийн журмаар санхүүждэг болсон нь хууль зүйн хувьд бүр ч дорджээ. Гэмт хэрэг түүний дотор зохион байгуулалттай хэрэг өсөж, иргэний болон захиргааны маргаан улам ихсэж, шүүхийн ачаалал нэмэгдсээр байхад төсвийн хязгаарлалт, хэмжээ хуучнаараа ба зайлшгүй зардлыг төлөвлөснийг дураар танан хасдаг практик хэвээр үргэлжилсээр байна. Төрийн эрх мэдлийн 3 салааны хамгийн ядуу нь ШЭМБ мөн гэдэгтэй маргахын аргагүй болжээ.

"Засгийн гурван салааны нэг нь шүүх эрх мэдэл гэдгийг хэн хүнгүй мэднэ. Түүнийг ерөнхий, дагнасан бүх шатны шүүх тус тусдаа биеэ дааж хуулийн дор хэрэгжүүлнэ. Ардчилал өөрийгөө хамгаалах чадвартай, тийм зэмсэгтэй байх ёстой. Элдэв явуулгаас ардчилал, ардчилсан тогтолцоог хамгаалах арав шүдэт "арслан" нь бие даасан, хараат бус, шударга шүүх гэдэг. Шүүхийн өнөөгийн байдлыг эрх мэдлийн бусад хоёр салаатай нь зэрэгцүүлж үзвэл эн чацуу "гурван хүүгийн нэг" гэж хэлэмгүй. 1990-1991 онд 53 гишүүн, 40 хүрэхгүй ажилтны орон тоотой үүссэн Улсын Бага Хурлын оронд бий болсон УИХ 76 гишүүнтэй, (энэ ч зөв шинэтгэл байх) 300 гаруй бие төлөөлөгч, ажилтантай хэдэн арван тэрбумын төсөвтэй

“том айл” болжээ. Гэхдээ ганцхан байгууллага шүү дээ. Тэр үед ганц, ганц сайдтай арав орчим яамтай байсан. ЗГ өдгөө 18 жинхэнэ, 17 дэд сайд, мөн тийм тооны яам, газартай дээр хэдэн арван агентлагтай болоод зогссонгүй. Тэдгээрийн тасаг бүхэн нь хэлтэс, хэлтэс бүхэн нь газар, газар нь ерөнхий хэмээн томорч, машин тэрэг хөлөглөн давхилдах болжээ. Яам, агентлаг бүр өөртөө тамгын газар, хэлтэстэй ажлын албанаас гадна “сайдын алба” гэх зэрэг “хувийн ч гэмээр “баг”-тай, хажуугаар нь хариуцлагаа түлхчихдэг хаана ч харъяалдаггүй “үндэсний” гэх хороо, зөвлөлүүд гүйцэтгэх эрх мэдлийн хүрээнд язрахаа шахтал чихэлцэх болов. Гэтэл нөгөө “муу данст” шүүх нь (шинээр үүсмэгц ажлаа мөн л хагас хийдэг Цэцэд эрхээ хасуулаад бас олон түмэнд танигдаж амжаагүй байгаа Захиргааны хэргийн шүүхээс бусад) улсын хэмжээнд 360-аадхан шүүгчийн орон тоотой хэвээр, жил бүр өссөөр буй хэдэн арван мянган хэрэг маргааныг цагт нь ултай шийдэж дийлэхгүй байгааг мэргэнээр тунгаан харах цаг болжээ. Прокурор ч гээд нэг их ялгаагүй.

Алс нутгийн иргэд шүүхээр цангаж шүүхийн хамгаалалтгүй сууна. Гэтэл сум дундын шүүх ихэнхдээ аймгийн төвд оршино. Сумдаар нүүдэллэх зардалгүй, тэнд очоод ч шүүх хуралдаан хийх байр танхим (зардал)-гүй. Зочид буудлын умгар өрөөнд юм уу, багт бол айлын гэрт эздийг нь гаргачихад шүүх хуралдаан хийдэг ч удаа бий гээд боддоо! Халширмаар ажил байгаа биз. Бусдын аманд ороход ч бэлэн мэт. Ялангуяа хамаг ажлыг нь хийдэг анхан шатны буюу сум, сум дундын шүүх албаны болон хувийн орон байр, баг, суманд хүрэх унаа тэрэг байтугай утсан холбоо ч үгүй (зардалгүй), явган таваргасан, сайндаа дугуй унасан зарлагатай, “айлын зай”, хадмын хатавчинд суудаг шүүгчтэй, бүсгүй голдуу бүрэлдэхүүнтэй хэрүүл хэрэг хоёрт дарагдсан хэдхэн орон тоотой байгааг ер нь мэддэг удирдагч хэр олон байна вэ? Мэддэг бол нэг шийд гаргамаарсан. Төрд 120-130 мянган албан хаагч бий гэдэгтэй харьцуулбал үнэхээр “шоовдорлогдсон” нь илт. Дээр нь шүүхүүд шуудан, дулаан, цахилгааны гэх мэт олон жилийн өрнөөс хэсэг зуур салсан ч 1990 оноос хойш улсынхаа төвлөрсөн нийт төсвийн хөрөнгийн дөнгөж 0,39-0,40 хувьтай тэнцэх зардал дээр л дэвхцэж байгаа аж. Компьютер мэт ойр зуурын (тусгай зориулалтынх ч бүр саналтгүй) техник хэрэгсэл нь гагцхүү гаднын төслийн сайн санааны өглөгийнх. Эвдэрч гандахаар нь яана даа. Хадганд боож авдрандаа хийгээд хаяа нэг харж тоосыг нь гүвээд л сууж бай гэмээр, хангамжийн тогтолцоо гэж ямар байх биш дээ. Төрийн юмыг хямгадалгүй л яахав. Гэхдээ “эдлэх хэрэгцээ” байна шүү дээ. Энэчлэн гадаадын хандиваар л өнгө засаж, сэхэл авч байгаагаас төрөөс халамжилсан нь ховор. 10 аймгийн шүүхийн албан байрыг Дэлхийн Банкны ШЭЗШ-ийн төслийн хөрөнгөөр л засварлаж, тохижуулж байна. Нийт шүүхүүдийн засварт сүүлийн 5 жилд засгаас өгсөн мөнгө нь (ганц нэг албан байр авсныг эс тооцвол) олигтойхон ганц машины үнэнээс төдий л хэтэрсэнгүй. ШЕЗ ултай судалгаа хийж, шургуу хөөцөлдөнгүй Сангийн яам хавиар л эргэлдсэн байдалтай байна уу. Элдэв ой тахилга, уралдаан тэмцээн, найр наадам, олон зуугаар тоологдох дотоод гадаад томилолтынхаа зардлыг ч атугай хэмнэж, шүүх, прокурор, мөрдөн байцаахаа өөд татах улс төрийн тогтолцооны “улс төргүйжүүлсэн” хэсгийг тойрсон тулгамдсан асуудал, ард түмний энхийн хэрэгцээ болоод байна. Шүүх эрх мэдлийн хараат бус

байдлыг хангах үүрэгтэй ШЕЗ-ийн “хуримталсан” гэмээр тулгамдсан бүх асуудлыг соргоор харж, ёстой л “шинжлэх ухааны үндэслэлтэй” боловсруулж дээш нь шургуу тавьж тулгуу шаардаж, УИХ ч зориуд анхааран үзэж гар сунгах цаг болжээ. Шүүгчид ч, прокурорууд ч, байцаагчид ч олны шүүмжийг ухаалгаар тусгаж, эрх тушаалдаа эрдэн ямаан омог гаргаад байлгүй, хүнд хүндэтгэлтэй хандаж үйлчлэх өндөр хариуцлагаа ухамсарлаж, өөрсдийгөө эрс “шинэчилж”, аймшиггүй, чин шударгаар ажиллах цаг болжээ”[1].

ШЭМШХ-ийн зүгээс ШЕЗ-д хангалттай санхүүжилт авахад үндэслэлтэй төсөв боловсруулах шаардлагатайг зөвлөж ирсэн бөгөөд 2001 оны 9-р сард ХЗДХЯ-ны дэд сайдын хүсэлтээр шүүхийн төсвийн асуудлаар дараахи зөвлөмж боловсруулж санал болгосон. Үүнд:

- шүүхийн төсвийг бие даан хянан төлөвлөх эрхийг шүүх эрх мэдлийн байгууллагад өөрт нь олгох;
- шүүх эрх мэдлийн байгууллага нь УИХ, нийт ард иргэдэд төсвийн үр дүнг мэдээлж, хариуцдаг байх зарчим;
- Сангийн яамны шүүхийн төсвийг “танах” эрхийг хасах;
- ШЕЗ нь баталсан төсвийг хуваарилахдаа Сангийн яамнаас зөвшөөрөл авахгүй байх;
- шүүхийн үйл ажиллагааг дүгнэхэд харгалзах гүйцэтгэлийн стандартыг ШЕЗ-өөс боловсруулж нэвтрүүлсэн байх;
- УИХ-аас шүүхэд хамаарах аливаа хуулийн төслийг хэлэлцэхдээ зардлын тооцоог ШЕЗ-өөр гаргуулж байх;
- ШЕЗ нь шүүх эрх мэдэлд тулгарч буй асуудлаар УИХ, нийт иргэдэд тогтмол мэдээлж байх;
- ШЕЗ нь санхүүжилтийн талаарх шүүхийн байгууллагаас гаргасан аливаа саналыг нийт шүүхийн СТ-тэй уялдуулж харгалзах зэрэг саналыг оруулсан.

Монгол Улс 2002 оны 6-р сарын 27-нд баталсан Төсвийн байгууллагын удирдлага, санхүүжилтийн тухай хуулийн ёсоор 2003 оны 1-р сарын нэгний өдрөөс үр дүнгээр санхүүжүүлэх агуулга бүхий төсвийн санхүүжилтийн шинэ тогтолцоонд шилжсэн. Энэ хуулийн ёсоор: УДШ-ийн Ерөнхий шүүгч нь тус шүүхийн төсвийн; ШЕЗ-ийн даргын хувиар аймаг, нийслэл, сум, дүүргийн шүүхийн төсвийн Ерөнхийлөн захирагч:

- УДШ-ийн ТГ-ын болон аймаг, нийслэл, сум, дүүрэг, дагнасан шүүхийн Тамгын хэлтэс (ТХ)-ийн дарга нь тус тусын шүүхийн төсвийн Ерөнхий менежер
- ШЕЗ-ийн нарийн бичгийн дарга нь тус зөвлөлийнхөө төсвийн Ерөнхий менежерээр тус тус ажиллах болсон. Иймд УДШ-ийн дарга нь олон шүүхийн төсвийн Ерөнхий менежертэй “бүтээгдэхүүн нийлүүлэх гэрээ”, Ерөнхий менежер нь шүүгч ажилтан нартай мөн тийм үр дүнгийн гэрээ байгуулж гэрээт ажлын гүйцэтгэл буюу бүтээгдэхүүн нийлүүлэлтээр санхүүжүүлэх болов. Энэ нь шүүх яг л салбарын сайд, яам газрын төсөвтэй адил арга зарчмаар санхүүжинэ гэсэн үг бөгөөд ингэхлээр УДШ нь санхүүгийн хувьд салбарын яамны буюу ЗГ-ын агентлагийн статустай мэт өөрөөр хэлбэл шууд хараат болжээ.

[1] Б. Чимид: Өнөөгийн улс төр хуульчийн нүдээр

Тухайн үед ТБУСТ хуулийг Шинэ Зеландын загварт тулгуурлан боловсруулсан аж. Шинэ Зеланд улс шүүхийн хувьд “бүтээгдэхүүн” тодорхойлох нь боломжгүй юм байна гэсэн дүгнэлтэд хүрсэн учраас ШЭМШХ-өөс Шинэ Зеланд, Австрали, Их Британи зэрэг загвар орнуудын шүүхийн төсөвлөлтийн асуудлаар мэргэшсэн зөвлөх ажиллуулж, шинэ хуулийн давуу талуудыг ашиглан төсөвлөлтийн журмыг хэрхэн өөрчлөх талаар санал боловсруулсан. Энэ ажлын үр дүнд ТБУСТ хууль болон Улсын төсвийн тухай хуулинд шүүхийн төсөвтэй холбоотой нэмэлт өөрчлөлт оруулах нь зүйтэй гэсэн дүгнэлт гарсан.

ХАРИУЦЛАГА ХҮЛЭЭДЭГ БАЙХ

Шүүх эрх мэдлийн байгууллага (ШЭМБ), түүний ажилтнуудын хариуцлага хүлээх чадвар нь тэдний хараат бус, бие даасан байдлын салшгүй хэсэг юм. “Хариуцлага” гэдэг ойлголтыг бид ШЭМБ-д холбогдуулж үзвэл:

- шүүх, прокурор хуулиар ноогдуулсан ажлыг бүрэн дүүрэн гүйцэтгэдэг байх;
- албан ажлын алдаа, ёс суртахууны гажуудал гаргасан шүүгч, прокурор хэн боловч өөрөө нийгмийн өмнө хууль зүйн, ёс зүйн зэмлэл хүлээдэг байх;
- уг алдаа дутагдлаараа иргэд, байгууллагад учруулсан хохирлыг арилгадаг байхын утгаар ойлгох үндсэн дээр СТ-нд 20 арга хэмжээ заасан бөгөөд түүний 40% хувь хэрэгжсэн дүнтэй байна. Гол үр дүнг хураангуйлан дурьдвал:

2002 онд батлагдсан материаллаг хийгээд процессын хуулиудад шүүх эрх мэдлийн болон энэ хүрээний бусад байгууллагын чиг үүргийг (шүүхийн хэргийн болон нутаг дэвсгэрийн харъяалал, прокурорын хяналтын харъяалал, хэрэг бүртгэх, мөрдөн байцаах байгууллагын хэргийн харъяалал, ерөнхий болон бусад шүүгч, прокурорын тус тусын эрх, үүрэг гэхчилэн) шинэчлэн тогтоосноор тэдгээрийн хариуцлагын хүрээ илүү тодорхой болжээ.

ШЭМБ-ын хариуцлагыг дээшлүүлэхэд тэдгээрийн ажлын зохион байгуулалт, эрх үүргийн зөв хуваарь, чанарын үзүүлэлтийг нарийсгах явдал гэж үзэж шүүхийн захиргааны удирдлага, шүүн таслах ажиллагааны “менежментийн үр ашигтай загвар”-ыг бий болгох, ШЕЗ-ийн чадавхийг нэмэгдүүлэх, шүүх хооронд мэдээлэл солилцох техникийн боломжийг сайжруулах, ТГ, хэлтсүүдийн ажлыг үр дүнтэй болгох арга хэмжээг ШЭМШХ-ийн туслалцаатайгаар хэрэгжүүлж иржээ. УДШ, Нийслэлийн шүүх хэргийн төрлөөр дагнасан шүүх танхим, туслах албыг зохион байгуулснаар хэрэг маргааныг чирэгдэл багатай шийдвэрлэх боломж, шүүгчдийн мэргэшлийн чадавхи дээшилсэн.

Шүүн таслах ажиллагааны менежментийг боловсронгуй болгох ажлын хүрээнд шүүхэд хэрэг маргааныг хүлээн авч бүртгэх, хуваарилахаас

эхлээд шийдвэрлэж хяналт тавих дүн мэдээг гаргах зэрэг гол үе шатны ажлыг багтаасан хэргийн бүртгэлийн програм хангамжийг боловсруулахад ШЭМШХ, ГТХАН-тэй хамтран дэмжлэг үзүүлсэн. Мөн шүүхийн болон хэргийн менежментийг шинэчлэн төлөвшүүлэх талаар ШЭМШХ-ийн тусламжтайгаар "Шүүхийн Ерөнхий зөвлөлийн бүтэц, үйл ажиллагаа" зөвлөмж гарган, холбогдох сургалтыг зохион байгуулсан. Улмаар ШЭМ-ийн бусад байгууллагатай холбосон сүлжээ байгуулах хүртэл шинэ нөхцөл бүрдсэн үед ажилчдаас шуурхай, чанартай гүйцэтгэлийг шаардаж гологдол, алдаа дутагдал гаргасан тухай бүрт хариуцлага тооцох үндэслэл, боломж сайжрав.

ШЭМБ-ын ажилтны гаргасан алдаанаас иргэн, аж ахуйн нэгж, байгууллагад учирсан хохирлыг арилгах талаар зарим зохицуулалт хийжээ. ШТХ-ийн 86.5-т "Шүүн таслах ажиллагааны явцад шүүгчийн гаргасан алдааны улмаас учирсан хохирлыг төр хариуцна", ПТХ-ийн 36.7-т "Прокурор бүрэн эрхээ хэрэгжүүлэх явцад гаргасан алдааны улмаас учирсан хохирлыг төр хариуцна" гэж тус тус заажээ.

"Шүүгчийн ёс зүйн дүрэм, түүний хэрэгжилтийг хангах механизмыг бий болгох замаар шүүгчийн хариуцлага хүлээдэг тогтолцоог боловсронгуй болгоно" гэсэн зорилтын хүрээнд зохих арга хэмжээг авч хэрэгжүүлэв. ШТХ-ийн 5-р бүлэгт зааснаар шүүгчийн ёс зүйн дүрэм зөрчсөн үндэслэлээр сахилгын хэрэг үүсгэх, иргэн, аж ахуйн нэгж холбогдох гомдол гаргах эрхтэй болгож иргэдийн болон хөндлөнгийн хяналтыг өндөржүүлэв. Шүүхийн Сахилгын Хороо (ШСХ) давах болон хяналтын шатны шүүх бүрийн дэргэд байсныг улсын хэмжээнд нэг болгон шинэчилж бүрэлдэхүүнд нь прокурор, өмгөөлөл болон хуульч биш иргэдийн төлөөллийг оруулсны зэрэгцээ ажлын албатай болгожээ. ШСХ нь Ерөнхий шүүгчээс хараат биш үндсэн дээр гэм буруутай шүүгчид сахилгын хариуцлага хүлээлгэдэгт шинэ механизмын онцлог оршиж байгаа юм.

Шүүгч, прокурор, хэрэг бүртгэгч, мөрдөн байцаагчийн үйлдсэн хэргийг мөрдөн шалгах тусгай албыг Улсын Ерөнхий прокурорын дэргэд байгуулсан нь шүүх эрх мэдлийн хүрээнд хариуцлага хүлээдэг байх суурь үнэлэхүйг хэрэгжүүлэх чухал ач холбогдол бүхий механизм болсон. Шүүх эрх мэдлийн албан тушаалтнаас албан үүргээ хэрэгжүүлэхтэй холбогдуулан сахилгын шийтгэл хүлээлгэх тохиолдолд тухайн этгээдийг биечлэн байлцуулж тайлбар гаргах эрхийг нь холбогдох журмуудад тусгаж өгсөн. ШЭМШХ-өөс шүүх эрх мэдлийн байгууллагын ажилтнуудын мэргэжил дээшлүүлэх тогтолцоонд хэзээ ч тусгай сэдэв болгон оруулж байгаагүй ёс зүйн асуудлаар сургалтын хөтөлбөрийг ХЗҮТ-тэй хамтран нэвтрүүлсэн бөгөөд нийт шүүгч, прокурор, өмгөөлөгч нарт 2002 оноос тогтмол явуулдаг болов. 2003 оноос ШЭМШХ-ийн техникийн туслалцаатайгаар шүүх, прокурорын байгууллагын ажлын ачааллын судалгаа хийж эхэлсэн байна. Судалгааны дүнгээс үзэхэд шүүх, прокурорын байгууллагын орон тоо болон үйл ажиллагааны үр ашгийг эргэн харах шаардлагатай гэсэн дүн гаргав.

Шинэ Үндсэн хуулийн “төрийн жинхэнэ албан хаагч”-дын (захиргааны болон тусгай) эрх зүйн байдлын талаархи хууль тогтоомжийг шинэтгэсний дотор хуульчид (шүүгч, прокурор, өмгөөлөгч, мөрдөн байцаагч, нотариатч)-дын статусыг шинэтгэж ирэв. Түүний агуулга нь тэдгээрт тавих шаардлагыг өндөржүүлэн, эрх, хууль ёсны ашиг сонирхлыг хамгаалах, улс төрийн нөлөөллөөс гаргах, ангид байлгахад оршиж байгаа бөгөөд үүний тул сонгон шалгаруулж, үр дүнг томилох, дэвшүүлэх, өөрчлөх, огцруулах зэрэгт гол үндэслэл болгох нь чухал болсон билээ. Үүний тулд шалгаруулах нэгдмэл тогтолцоог бүрдүүлэх зорилт тавьсан. Уг зорилтыг хэрэгжүүлэх үүднээс ХЗДХЯ, ГТХАН болон ШЭМШХ-ийн техникийн туслалцаатайгаар Хуульчдаас сонгон шалгаруулах журмын тухай хуулийг СТ-ний дагуу боловсруулж оруулснаар УИХ 2003 оны 5-р сарын 23-нд баталснаар түүхэнд анхных нь болсон. Энэ хуульд зааснаар сонгон шалгаруулалтыг ХЗДХЯ-ны Төрийн нарийн бичгийн дарга тэргүүтэй Орон тооны бус зөвлөл (ОТБЗ) эрхлэн гүйцэтгэнэ. ОТБЗ нь сонгон шалгаруулалтыг зарлаж, зохион байгуулж, хянан зохицуулж, шалгарагчдад гэрчилгээ олгох, дүгнэх ажлуудыг 2004 оноос 3 удаа зохион байгуулав. ШЭМШХ-өөс 2004, 2005, 2006 оны сонгон шалгаруулалтын ажиллагаанд санхүүгийн болон техникийн туслалцаа үзүүлэн ажиглалт хийж шалгаруулалтыг илүү шударга, ил тод явуулах талаар зөвлөгөө өгч ирсэн (Арга хэмжээ 2.5.1).

МЭДРЭМЖТЭЙ БАЙХ

Энэхүү суурь үнэлэхүйн дагуу:

- Нийгмийн эрэлт хэрэгцээг цаг тухайд нь мэдэрч шаардлагатай арга хэмжээг авч байх
- хэрэг, маргааныг эвлэрэл, зуучлалын аргаар шийдвэрлэх явдлыг шүүх эрх мэдлийн хүрээнд аль болохоор дэмжих
- шүүхийн практикаас хууль тогтоомжийн үр нөлөөг тухай бүр мэдэрч, түүнийг жам ёсонд нийцүүлэх талаар санаачлагатай ажиллах
- ШЭМБ-гуудын удирдлага, зохион байгуулах ажлыг нийгмийн хэрэгцээ, шаардлагын хэмжээнд хүртэл сайжруулах

гэсэн стратегийн дөрвөн зорилтыг тодорхойлсон байна. Түүний дагуу 11 арга хэмжээ төлөвлөгдсөнөөс 72% хувь нь биелжээ. Үүнд:

Сүүлийн жилүүдэд гадны хандивлагчдын төслийн санхүүжүүлтээр хууль зүйн үйлчилгээний эрэлт хэрэгцээ, түүнийг хангахад эрх зүйн орчин хэр зохицож байгаа талаар судалгаа шинжилгээний ажлыг идэвхжүүлэхэд ШЭМБ өмнөхөөс илүү анхаарал тавьдаг болсон. Нийгмийн хэрэгцээ, шаардлагыг цаг алдалгүй мэдэрч, улмаар урьдчилан харж, өөрчлөлт шинэчлэлтийг цаг тухайд нь хийж чадсанаар ШЭМБ-ын үйлчилгээ үйлчлүүлэгчдийн хэрэгцээнд нийцэж, энэ нь шүүхэд итгэх олон нийтийн итгэлийг нэмэгдүүлэх ач холбогдолтой юм.

СТ-ний жилүүдэд авсан шинэлэг арга хэмжээнүүдийн нэг бол ЗГ-ын 2003 оны 4-р сарын 21 дүгээр тогтоолоор (ХЗДХ-ийн сайдын 2003 оны 222 дугаар тушаалаар дүрмийг нь баталсан) Хууль тогтоомж, шүүх эрх

мэдлийн эрдэм шинжилгээ, сургалт, мэдээлэл, сурталчилгааны үндэсний төв (ХЗҮТ)-ийг байгуулагдсан. Шүүх эрх мэдлийн болон түүнд оролцогч бусад байгууллагын үйл ажиллагааны шинжлэх ухааны үндэслэлийг сайжруулах, тэдгээрийн ажилтны боловсролын түвшинг дээшлүүлэх, хүн амд эрх зүйн мэдлэг түгээхэд тус төв мэдэгдэхүйц үүрэг гүйцэтгэх болсон.

ХЗҮТ нь ШЭМБ-гуудын үйл ажиллагаанд мөрдөж байгаа хуулийн үр нөлөө, хууль хэрэглэж буй практик, шүүх, хууль тогтоомжийн талаарх олон нийтийн санаа бодол, нийгмийн эрх зүйн ухамсарын байдал төлөв, эрэлт хэрэгцээг судалж статистик мэдээнд анализ хийж, хууль практикийг нийгмийн эрэлт хэрэгцээнд нийцүүлэх, хуулийг үр нөлөөтэй ашиглах талаар зөвлөмж, мэдээллийг боловсруулах, сургалт, судалгаа явуулах эрдэм шинжилгээ–сургалтын мэргэшсэн байгууллага юм. ХЗҮТ нь ШЭЗШ төсөл ба ШЭМШХ, түүнчлэн бусад хандивлагчдын дэмжлэг туслалцаатайгаар байгуулагдсанаас хойшхи богино хугацаанд:

- эрүүгийн ял, иргэний гэрээний (хуулийн) үр нөлөө
- ЭБШХ-ийн шинэлэг зарим асуудал (жишээ нь: мэтгэлцэх зарчмын хэрэгжилт)
- эрүүгийн шүүхийн статистик боловсруулалт, криминологийн асуудал
- ИХШХШТХ-ийг шүүхээс хэрэглэж буй практик
- ЗХШ-ийн төлөвшил ба ЗХХШТХ-ийг практикт хэрэглэж байгаа байдал
- хүний эрхийн талаархи хууль тогтоомжийг боловсронгуй болгох
- эрх зүйн ухамсрын шинэтгэл, төлөвшил
- олон улсын гэрээ, харьцуулсан эрх зүй зэрэг томоохон асуудлаар судалгаа явуулж холбогдох акт, практикийг боловсронгуй болгох зөвлөмж, шүүгч, хуульчдад зориулсан олон тооны гарын авлага боловсруулж хэрэгцээнд нийлүүлжээ.

ХЗҮТ-ийг үүсгэн байгуулах болон түүний цаашдын үйл ажиллагааг дэмжих үүднээс ШЭМШХ-өөс дараах арга хэмжээнүүдийг авсан:

- ХЗҮТ-ийн барилга баригдахад өрөө тасалгааны байршил, телевизийн студийн зохион байгуулалтын талаар санал өгч, тус төвийг байгуулан ажиллуулахад арга зүйн зөвлөгөө өгсөн;
- ХЗҮТ-ийн удирдах ажилтнуудын чадавхийг нэмэгдүүлэх зорилгоор ХЗҮТ-ийн болон сургалтын төвийн захирал Ж.Амарсанаа, Т.Мэндсайхан нарыг АНУ-д явуулж туршлага судлуулсан;
- ХЗҮТ-ийн Стратеги төлөвлөгөө, нийт хуульчдын үргэлжилсэн сургалтын тогтолцоог боловсруулах, сургагч-багш нарыг бэлтгэх, шүүгчийн ёс зүйн интерактив сургалт, бусад сэдвээр сургалт явуулах, сургалтын гарын авлага, ном товхимол боловсруулж гаргахад туслалцаа үзүүлсэн юм.

УДШ-ийн дэргэдэх Судалгааны төвийг ШТХ-ийн 72-р зүйлд заасны дагуу шүүхийн статистик, практикийг нэгтгэн судалж санал дүгнэлт хийх үндсэн дээр шүүхээс хууль хэрэглэх, тайлбарлахад эрх зүйн онол,

практикийн зөвлөмж өгөх үүрэгтэй байхаар өөрчлөн зохион байгуулав. Нэг талаас УДШ-ийн судалгааны төв шүүн таслах ажиллагааны практик мэдээллийн сангаа ашиглан, нөгөө талаас ХЗҮТ нь багшлах бүрэлдэхүүн, гадаад дотоодын онолын мэдээллээ ашиглан хамтран үйл ажиллагаагаа уялдуулбал энэхүү суурь үнэлэхүйн арга хэмжээнүүдийг хэрэгжүүлэх бололцоо, нөөц бүрэн байгаа гэж болно.

ШЭМБ-ын системийн хэмжээний мэдээ, мэдээлэлд боловсруулалт хийх, олон нийтэд мэдээллийг шуурхай, үнэн зөвөөр хүргэх, ингэснээр иргэдэд шүүх эрх мэдлийн талаарх болон өөрсдийн эрхийг мэдэж хэрэгжүүлэх мэдлэг олгох, олон нийтийн санаа бодлыг судлах, тандах ажил өнөөг хүртэл орхигдсон, хийгдсэн ажил бага гэхэд хилсдэхгүй.

ШЭМШХ нь 2001, 2003, 2005 онуудад Сант-Марал судалгааны төвөөр шүүхэд хандах хандлага, үзүүлэх итгэлийг судлах зорилгоор олон нийтийн дунд судалгаа явуулсан. Үүгээр олон нийтээс шүүхэд итгэх итгэлийн түвшинд гарч буй хандлагыг судалсан. Үүний тулд судалгаанд хамрагсадыг хот (судалгаанд хамрагсадын 57%), хөдөөгийн (судалгаанд хамрагсадын 43%) болон шүүхтэй шууд харьцаж байсан (судалгаанд хамрагсадын 20%), харьцаж байгаагүй хүмүүс (судалгаанд хамрагсадын 80%) гэж тус тус ангилан хүн амын янз бүрийн бүлгийн шүүхэд итгэх итгэлийн хооронд ямар зөрүү байгааг харуулахыг зорьсон. Судалгаанд хамрагдсан шүүхүүд нь Монгол Улсын Дээд шүүх (УДШ), Үндсэн хуулийн цэц болон орон нутгийн шүүхүүд юм.[2] Шүүхэд үзүүлэх итгэлийн түвшингийн үзүүлэлтүүдийг бусад байгууллагад итгэх итгэлийн түвшинтэй харьцуулж шинжлэв. Энэ хэсэгт хэрэглэж буй "итгэлийн түвшин" хэмээх нэр томъёо нь тухайн шүүх буюу байгууллагад "итгэдэг" буюу "ихэнхдээ итгэдэг" гэж хариулсан хүмүүсийн эзлэх хувь юм. “Бага зэрэг итгэдэг" буюу "итгэдэггүй" гэж хариулсан хүмүүсийг тухайн байгууллагад итгэдэггүй гэж үзэв.

УДШ-д итгэх итгэл 2005 онд аажмаар өсч ирсэн бол Үндсэн хуулийн цэцэд үзүүлэх итгэлийн түвшин 2001 оноос харьцангуй тогтвортой байна. Орон нутгийн шүүхүүдэд итгэх итгэлийн түвшин дээр дурдсан хоёр шүүхэд итгэх итгэлийн түвшингээс маш доогуур байна. Гэхдээ уг түвшингийн үзүүлэлт 2001 онд 43.6% байсан бол 2005 онд 55.7% болж өссөн нь орон нутгийн шүүхийн чанар сайжирсан гэж хүмүүс үзэх болсныг илэрхийлж байна.

Эдгээр үзүүлэлтүүд нь олон нийтийн санаа бодлын ерөнхий хандлагыг тусгасан учир тэдгээрийг тухайн үеийн нөхцөл байдалтай уялдуулан авч үзэх нь зүйтэй. Тухайлбал орон нутгийн аймгийн засаг даргын тамгын газар, цагдаагийн байгууллагад үзүүлэх итгэлийн түвшин мөн адил өссөн байна. Иймээс орон нутгийн шүүхэд итгэх олон нийтийн итгэл өссөн нь орон нутгийн түвшний ерөнхий хандлагын хүрээнд гарсан өөрчлөлт гэдгийг хэлж байна. Гэхдээ шүүхэд итгэх итгэлийн түвшний өсөлт орон

[2] Судалгааны асуулгад “Танай шүүх” гэж оруулсан. Респондентууд үүнийг анхан шатны шүүх тухайлбал хөдөөд сум буюу сум дундын шүүх, Улаанбаатарт дүүргийн шүүх гэж ойлгосон болов уу. Хариултууд сум, дүүрэг, аймаг, хотын шүүхийн аль алины талаархи үзэл бодлыг тусгасан болно.

нутгийн бусад байгууллагад итгэх итгэлийн түвшний өсөлтөөс илт илүү байгаа нь тодорхой харагдаж байна.

Улсын хэмжээнд шүүхийн талаархи санаа бодолд гарсан өөрчлөлтийг хууль тогтоох байгууллагын талаархи санаа бодолд гарсан өөрчлөлттэй харьцуулсан. Хууль тогтоох байгууллагад итгэх итгэлийн түвшин өссөн боловч УДШ, Үндсэн хуулийн цэцэд итгэх итгэлийн түвшин хууль тогтоох байгууллага зэрэг бусад төв байгууллагад итгэх итгэлийн түвшингээс нэлээд дээгүүр байна. Шүүхийн төв байгууллагууд улс төрийн төв байгууллагуудаас илүү нэр хүндтэй байгаагийн зэрэгцээ орон нутгийн шүүхүүдэд итгэх итгэлийн түвшин орон нутгийн бусад байгууллагад итгэх итгэлийн түвшинтэй (цагдаагийн байгууллагаас дээгүүр, аймгийн засаг даргын тамгын газраас доогуур) ойролцоо байна.

Тоталитари дэглэмээс ардчилсан тогтолцоонд шилжиж байгаа манай улсын хувьд ШЭМБ-дын удирдлагыг боловсронгуй болгох нь нэлээд нарийн түвэгтэй зорилт юм. ШЭМБ-дын удирдлагын илүү оновчтой хувилбарыг эрж хайх нь сорилт туршилтын байдалд байгаа нь нууц биш юм. ШТХ-иар шүүхийн процессын (“мэргэжлийн” гэх) удирдлага (хяналт); зохион байгуулалтын (“захиргааны” гэх) удирдлага хоёрыг тогтолцоо, бүрэлдэхүүн, эрх хэмжээний хувьд нь зааглахын зэрэгцээгээр шүүхэд “өөрийн удирдлагын” ба зарим чухал хэлбэрийг нэвтрүүлэхээр заасан. Үүнд:

- процессын удирдлагын хяналтыг Ерөнхий шүүгч, Танхимын тэргүүн толгойлсон давж заалдах болон хяналтын шатны танхимууд, улмаар Дээд шүүхийн (шүүгчдийн) хурал хэрэгжүүлнэ;
- зохион байгуулалтын удирдлагыг буюу үйлчилгээг зохих шүүхийн ТГ, ТХ, ТА, төлөөлөгч хэрэгжүүлнэ;
- бүх шүүхэд Шүүгчдийн зөвлөлгөөн (ШТХ-ийн 68) бий болгож “хэрэг шийдвэрлэх шүүгч, шүүх бүрэлдэхүүн, хуралдаан даргалагчийг томилох; түр эзгүй шүүгчийн ажлыг хуваарилах; иргэдийн төлөөлөгч сонгон авах журам батлах; шүүн таслах ажлын үр дүн; ТГ, ТХ, ТА-ны тайлан сонсох; Ерөнхий шүүгчид нэр дэвшүүлэх” зэрэг асуудал хэлэлцэж тогтдог болсон нь <u>өөрөө удирдах ёсны</u> чухал хэлбэр болжээ. Түүнчлэн УДШ, аймаг, нийслэлийн болон дагнасан шүүхүүдийн Ерөнхий шүүгчдээс бүрдсэн Шүүгчдийн зөвлөл ажиллаж (ШТХ-ийн 67) Шүүгчийн ёс зүйн дүрэм батлах, ШЕЗ-ийн болон Мэргэшлийн хороо, Сахилгын хорооны бүрэлдэхүүнд орох, шүүгчдийг сонгох зэрэг асуудал шийдэх эрхтэй болсон нь өөрөө удирдах ёсны бас нэг хэлбэр мөн. Сая дурьдсан хоёр хороо ч шүүгчийн хараат бус байдлыг хангахад туслах өөрийн удирдлагын (оролцооны) хэлбэр болно (ШТХ-ийн 30, 46).

ШЕЗ-ийн бүрэлдэхүүн, даргын тухай асуудлыг шинэчилж, бүрэн эрхийг тодруулсан нь тус Зөвлөлөөс шүүхийг боловсон хүчин, санхүү, хангамж, зохион байгуулалтын талаар үйлчилж бие даасан, хараат бус байдлыг хангах талаар хийсэн нэг алхам болсон. Цаашид тус Зөвлөлийн статусын тухай хууль боловсруулж, түвшинг дээшлүүлэхэд онцгой анхаарах шаардлагатай гэж үзэж байгаа.

ШУДАРГА БАЙХ

“Шударга байх гэдэг нь хуулийг нэг мөр ойлгож, зөв хэрэгжүүлдэг байх хуульчийн чадвар юм. Энэхүү чадварыг бий болгохын тулд нэгдүгээрт, хуульчийн ёс зүй, мэдлэг чадварын түвшин өндөр байх ёстой, хоёрдугаарт, энэхүү чадварыг төлөвшүүлэх үйл явц, арга ажиллагаа тасралтгүй, нягт хийгдэж байх учиртай. ШЭМБ нь иргэдэд нээлттэй төдийгүй, шүүмжлэлийг хүлээн авдаг, түүнчлэн олон нийтэд ил тод болон тэд шууд харах боломжгүй далд хийгдэж байгаа бүхий л үйл ажиллагаагаа тайлагнадаг нөхцөлд шударга байна” гэж СТ-нд дурьджээ. Үүний дээр шүүх шударга байх урьдач нөхцөлийн нэг нь “хууль шударга байх” ёстойг нэмж ойлгох нь чухал.

ШЭМБ-ын албан тушаалтнаас аливаа этгээдэд хүндэтгэлтэй хандаж, ямарч тохиолдолд хуулийг чанд нэг мөр хэрэгжүүлэх нөхцөл боломжийг сайжруулах зорилгоор шүүхийн үйл ажиллагаатай холбоотой гол хуулиудыг үнэ төлбөргүйгээр энэ салбарт үйл ажиллагаа явуулж буй бүх албан тушаалтанд хүргэх ажлыг донор байгууллагуудын дэмжлэгтэйгээр зохион байгуулсан. 2002 онд ГТХАН, Ханнс-Зайделийн сан, ШЭМШХ-ийн хамтын туслалцаатайгаар 5 гол хуулийг эмхтгэн хэвлүүлж, хууль хэрэгжихээс өмнө хуульчдад хүргүүлсэн. Мөн ШЭМШХ-ийн дэмжлэгээр ЭБШХ-ийн тайлбарыг боловсруулан хэвлүүлж нийт шүүгч, прокурорын зарим хэсэг болон бусад хуульчдад албан ажлын хэрэгцээнд тараасан. ШЭМБ-ын хоорондын ажлын уялдаа, зааг, ялгаа, хариуцлага хүлээх тогтолцоог боловсронгуй болгох ажлын хүрээнд мэдээллийн нэгдсэн сүлжээтэй болгох ажил хэрэгжилтийн үе шатанд байгаа.

Хуулийг нийтэлж, цаг алдалгүй хүргэхийн тулд хууль зүйн болон шүүхийн мэдээллийн автоматжуулсан тогтолцоо шийдвэрлэх ач холбогдолтой болно. Гэвч хуулийг албан ёсоор болон албан шугамаар, ердийн болон цахим хэлбэрээр хэвлэн нийтлэх явдлыг зогсоож болохгүй. Иймд:

- хуулийн албан ёсны эхийг УИХ-ын ТГ “Төрийн мэдээлэл” сэтгүүлд тогтмол албан ёсоор хэвлэж байна
- ХЗДХЯ, ХЗҮТ-ийн эрхлэн гаргадаг “Монгол Улсын хуулиуд” гэсэн цувралыг албан хэвлэл болгон тогтмол гаргаж (одоогоор 13 дэвтэр) байна
- ХЗҮТ дангаар болон холбогдох (сонирхогч) байгууллагуудтай хамтран “хуулиудын системчилсэн” эмхтгэл, тусгай хэвлэл цөөнгүйг гаргасан
- ХЗҮТ-өөс сурталчилгааны зориулалтад нэлээд хуулийг цахим дискээр нийтэлж гаргасан. Энэ бүхэн мөн л донорууудын туслалцаатайгаар гардаг.

Дээрхи хэлбэрүүд өнөөгийн тогтолцоо болж бүрэлдсэн боловч шүүгчдийг (прокурор, хэрэг бүртгэгч, мөрдөн байцаагч нарыг ч) албан ёсны хэвлэмэл хуулиар нэг бүрчлэн хангах улсын тогтолцоо бий болоогүй, харин албан ёсны хэвлэлийг тэд өөрсдөө худалдан авах, эсхүл

шүүх, прокурор, хэрэг бүртгэх, мөрдөн байцаах байгууллагын номын санд “дундын хэрэглээнд” цөөн тоогоор худалдан авч өгдөг хэвээр байгааг өөрчлөх цаг болсон.

Нэг талаар шинэ хуулийг хэрэглэх, нөгөө талаар нийгмийн амьдралд тохиолдож буй “шинэ” хэрэг маргааныг шийдвэрлэхэд мөн л шинэ ойлголт – практик төлөвшдөг. Үүнийг түргэн тусгаж нэгдмэл ойлголт, практикийг тогтоохын тулд:

- шүүхүүд өөр өөр дээрээ шүүгчдэд хууль, шүүхийн практикийн мэдээлэл тогтмол өгдөг болсон,
- шүүх эрх мэдлийн хүрээнд байнга хэрэглэдэг хуулиуд шинэчлэгдсэн буюу шинээр гарсантай холбогдуулан (2002-2003) донор байгууллагуудын санхүү, арга зүйн туслалцаатайгаар зохицуулсан (давхардалгүй) сургалтыг тусгай хөтөлбөртэйгээр хот хөдөөд зохион байгуулав. Үүнд:

  1. ГТХАН-ийн туслалцаатайгаар Иргэний болон ИХШХШТ хуулиар;
  2. ШЭМШХ-ийн туслалцаатайгаар Эрүүгийн болон ЭБШХ хуулиар;
  3. ШЭЗШ төслийн туслалцаатайгаар ЗХХШТ хуулиар;
  4. Ханнс-Зайделийн сангийн “Эрх зүйн боловсрол” академийн туслалцаатайгаар шүүхийн туслах ажилтны болон ЗХШ-ийн шүүгчдийн сургагч багш нарыг бэлтгэх сургалт зохион явуулж шүүгчдийг бүрэн хамруулсан.

УДШ, ХЗҮТ-тэй хамтран Дэлхийн Банкны ШЭЗШ төсөл, ШЭМШХ, Японы ЖАЙКА зэрэг байгууллагын тусламжтайгаар эрүү, иргэн, захиргааны хэргийн бүх шатны шүүхийн шийдвэрүүдийг системчлэн нийт шүүхэд практикийн ач холбогдолтойг нь сонгон эмхтгэж цуврал болгон хэвлэн гаргасан. Эдгээр эмхтгэл хууль хэрэглэх талаар нэгдмэл практик тогтоохоос гадна хуульчид, судлаачид, оюутнуудын хувьд сургалт, судалгааны чухал эх сурвалж, нэгэн зүйл гарын авлага болсон. Иймд энэ ажлыг цаашид үргэлжлүүлэх нь зүйтэй бөгөөд санхүүжилтийн асуудлыг шийдвэрлэх шаардлагатай.

ХҮРТЭЭМЖТЭЙ БАЙХ

Энэхүү суурь үнэлэхүйн гол агуулга нь шүүх, хууль сахиулах байгууллагын ажлыг болон уг үйлчилгээг “зөвхөн хэргийн оролцогч талуудад биш, өргөн олон түмэнд хүргэх чадвар”-аар хэмжин үнэлдэг болгоход оршино.

ШЭМБ бол иргэн хүний эрх, эрх чөлөөний баталгаа байхаас гадна нийтийн үйлчилгээний байгууллага билээ. Иймд шүүхэд хандаж байгаа аливаа этгээдэд хүндрэл, чирэгдэлгүй, түргэн шуурхай үйлчлэх нь чухал юм. Түүнийг хүртээмжтэй болгох талаар авсан арга хэмжээ гэвэл:

- Захиргааны 22 шүүхийн 70 гаруй шүүгчийн орон тоо нэмсэн;

- Шүүхийн үйлчилгээ хүртээмжтэй байх шууд нөхцөл нь түүний санхүүжилт буюу төсөвт зардлын хэмжээ, боломж юм. ИХШХШТХ-ийн 40-р зүйлд зааснаар төлбөрийн чадваргүй иргэний өмгөөллийн үйлчилгээний хөлсийг төр хариуцахаар заасныг биелүүлэхийн тулд ХЗДХ-ийн Сайдын 2005 оны 4-р сарын 16-ны өдрийн 69 тоот тушаалаар "Төлбөрийн чадваргүй иргэний өмгөөллийн хөлсний жишгийг тогтоох, зардлыг төсвөөс санхүүжүүлэх, тайлан гаргах журам" баталж төрөөс тодорхой хэмжээний төсөв хуваарилж өгөх тогтолцоо үүсэв. Ял шийтгэгдэгчдийн дийлэнх нь төлбөрийн чадваргүй байдаг туд цаашид төсвийн санхүүжилт нэмэгдэх магадлалтай байгаа. ХЗДХЯ, МӨХ-той хамтран Соросын сангийн санхүүгийн туслалцаатайгаар төлбөрийн чадваргүй иргэдэд туслах "Эрх зүйн төв"-ийг Сонгинохайрхан дүүрэг, Хэнтий аймагт 2 өмгөөлөгчтэйгээр нээн ажиллуулаад байгааг онцлон тэмдэглэх нь зүйтэй.
- ХЗДХЯ-аас хуулийн зохих төсөл боловсруулж Соросын сан, Хүчирхийллийн эсрэг үндэсний төв, ШЭМШХ-тэй хамтран "Гэмт хэргийн хохирогчийн эрх зүйн хамгаалалтын өнөөгийн байдал, цаашид боловсронгуй болгох арга зам" сэдэвт бага хурлыг 2005 оны 4-р сарын 12-нд Улаанбаатар хотноо зохион байгуулсан. Хурлын санал шүүмжлэлүүдээс дүгнэлт хийж хохирогчийн эрхийг хамгаалах арга хэмжээ авч хэрэгжүүлэх, зөвлөмж гаргасны дотор гэмт хэргийн хохирогчийн эрхийг хуулиар хамгаалах болон доор дурьдсан асуудлыг хуульд тусгахаар санал дэвшүүлжээ:
  - гэмт хэргийн улмаас хохирсон иргэнд нөхөн төлбөр олгох тухай хуулийн төслийг боловсруулж батлуулах, холбогдох хуульд нэмэлт өөрчлөлт оруулах;
  - "бүх төрлийн хохирогч"-ийн тухай хуульд шинээр тусгах (хохирогчийн гэр бүл буюу түүгээр тэжээлгэж буй хүмүүс, хохирогчид туслах буюу хохирол учруулах гэмт үйлдэлд саад болох явцад хохирсон этгээд г.м);
  - ЭБШ ажиллагаанд хохирогчийн оролцох эрх, үүрэг (гэмт этгээдийн гэр бүл, хамсаатнаас хамгаалуулах, нэр хаяг нууцлах, хянан шийдвэрлэх ажиллагааны мэдээлэл авах зэрэг эрхээр хангагдах г.м), түүнд үзүүлэх тусламж үйлчилгээг (эрүүл мэндийн үйлчилгээ, зөвлөгөө өгөх г.м) нарийвчлан тусгах;
  - гэмт хэргийн хохирогчид тусламж, дэмжлэг үзүүлэх, албан бус нийтийн үйлчилгээ явуулах, түүнд олон нийтийн хяналт оролцоог идэвхжүүлэх.

- Олон нийтийг эрх зүйн мэдээллээр хангах, иргэний нийгэмтэй харилцах ажлыг ихэвчлэн донор байгууллагуудын туслалцаатайгаар өргөжүүлж иржээ. Шүүх эрх мэдлийн хүрээнд олон нийтийн эрх зүйн мэдлэгт зориулсан дараах тогтмол сонин, сэтгүүл гаргаж ирсэн: УДШ-ээс "УДШ-ийн мэдээлэл", "Монголын төр, эрх зүй" сэтгүүлүүд, ШЕЗ-өөс Ханнс-Зайделийн сангийн санхүүгийн дэмжлэгтэйгээр "Шүүх эрх мэдэл" сэтгүүл, ХЗҮТ-өөс "Хууль дээдлэх ёс" сэтгүүл, "Хууль зүйн мэдээ" сонин, УЕПГ-аас "Мэдээлэл" сэтгүүл, МӨХ-оос "Өмгөөлөгч" сэтгүүлийг тус тус

улирал тутам гаргаж байна. Төлөвлөгөөт хугацаанд хуулийн байгууллагуудын сонин хэвлэлийг уялдуулах зорилгоор ГТХАН-ийн “Хуульчдын сургалт, давтан сургалт” төсөл, ШЭМШХ ба ХЗҮТ “Хууль дээдлэх ёс” сэтгүүлийг ХЗҮТ-өөс улирал тутам эрхлэн гаргах талаар хамтран ажиллах 1 жилийн гэрээг 2005 оны 6-р сард байгуулж, ХЗҮТ-ийн “Хууль дээдлэх ёс” сэтгүүлийг бие даан гаргах чадавхийг бүрдүүлэхийг зорьсон юм. Өнгөрсөн хугацаанд энэ сэтгүүлийн нийт 5 дугаарыг хэвлэн гаргаж, захиалагчдын тоог 500-д хүргэсэн болно.

Энэ нь маш их далайцтай, үр дүнтэй ажил хэдий ч бид өөрөө өөрийгөө санхүүжүүлдэг, байнгын тогтмол ажиллагаатай, чадварлаг боловсон хүчинтэй тогтолцоо бий болгох шаардлагатай байгаа.

ШЭМБ-гууд 2006 оны 1-р сараас өөрийн мэдээллийн төвтэй болсон нь шүүхийн үйл ажиллагааны талаар олон нийт, хэвлэл мэдээллийн хэрэгсэлтэй холбоотой ажиллахад чухал алхам болсон. УДШ дээр байгуулагдсан уг алба нь одоогийн байдлаар төвийн өдөр тутмын 5 сонин, 5 телевиз болон радиотой байнга холбоо барьж шүүхийн мэдээллийг дамжуулж байна.

- ШЭЗМН сүлжээ болон ШМНС-г бий болгож иргэдээс хуулийн байгууллагад хандах, зохих шийдвэртэй танилцах, мэдээлэл олж авах боломжийг хангах, тэдэнд чирэгдэлгүй үйлчлэх механизм нэвтрүүлэх арга хэмжээг авч ахиц гаргав.

БҮТЭЭМЖТЭЙ БАЙХ

Хуульчдыг тодорхой төрлийн хэргээр мэргэшүүлэн ажиллуулах зохион байгуулалттай арга хэмжээг шүүх, прокурорын байгууллага бүр өөрийн хэмжээнд авч байгаа. Мэргэшүүлэх асуудлыг бодлогын хэмжээнд тавьж, салбар чиглэлээр мэргэшсэн хуульчдыг бэлтгэх ажлыг бодит нөхцөл байдлалд хийсэн судлагааны үндсэн дээр явуулах нь чухал юм.

СТ-ний 6-н суурь үнэлэхүй 30 зорилтын талаар огт хөндөгдөөгүй асуудал байхгүй боловч зорилт бүрийн хүрээнд хэрэгжүүлэхээр төлөвлөсөн тодорхой арга хэмжээний хувьд эцсийн үр дүнд хүрээгүй нилээд ажил үлдэж цаашид шинэ эрч хүч өгч үргэлжлүүлэхийг “хүлээж” байна. Тус төлөвлөгөөний нийт 30 зорилтын хүрээнд 103 арга хэмжээ авч хэрэгжүүлэхээр зааснаас **60** арга хэмжээ буюу **58.2%** хувь нь бүрэн, **17** арга хэмжээ **буюу 16.5%** хувь нь /үндсэндээ/ зонхилон биелсэн гэж тооцож болохоор байгаа бөгөөд **26** арга хэмжээ буюу **25.2%** хувь тодорхой үр дүнд хүрээгүй буюу тасалдсан байна. Судалгаанаас үзэхэд гол төлөв шүүгчдийн хараат бус, шүүхийн бие даасан байдлын эдийн засгийн баталгааг хангаж бэхжүүлэх болон дотоодын эх үүсвэрээр санхүүжүүлж, судлан боловсруулах, зохих зохион байгуулалтын шинжтэй чухал арга хэмжээ тасалдсан нь анхаарал татаж байна. Тэдгээрээс заримыг дурьдвал:

№	Тасалсан, биелээгүй арга хэмжээний индекс, нэр, агуулга	Хариуцах эзэн, шалтгаан
1	1.3.1. шүүх эрх мэдлийн хараат бус байдлыг хангах чиглэлээр Ерөнхийлөгч, Улсын Их Хурал, Засгийн газар, Шүүхийн ерөнхий зөвлөлийн хүлээх эрх, үүрэг тэдгээрийн харилцан шүтэлцээг боловсронгуй болгох талаар санал боловсруулах	ХЗДХЯ, УДШ, УЕПГ
2	1.3.5. Үндсэн хуулийн цэцтэй харилцах шүүх эрх мэдлийн байгууллагуудын харилцааг боловсронгүй болгох	УДШ, Үндсэн хуулийн цэц
3	1.4.2. шүүхийн төсвийн төсөл, гүйцэтгэлийн тайланг Улсын Их Хуралд өргөн мэдүүлэх, аудитын дүгнэлт гаргуулах, тайлагнах хугацаа, журмыг хуулиар нарийвчлан зохицуулах	ШЕЗ
4	1.5.1. шүүгчийн албан тушаалыг хаших нь төрийн тусгай чиг үүргийг хэрэгжүүлж байгаа хуульчийн нэр төрийн хэрэг болохуйц хэмжээнд эдийн засгийн баталгаа, хөшүүрэг бий болгох асуудлыг судалж шийдвэрлэх	ХЗДХЯ
5	1.5.2. бүх шатны шүүхийн шүүгчдийн орон сууцны асуудлыг шийдвэрлэхэд төрөөс хөнгөлөлт, туслалцаа үзүүлэх тухай хуулийн заалтыг хэрэгжүүлэх журмыг боловсруулах	ШЕЗ, ХЗДХЯ
6	1.6.1. шүүхийн хараат бус бие даасан байдлыг хангах үүрэг бүхий ШЕЗ-ийн эрх зүйн байдлыг тодорхой болгож Ерөнхийлөгч, Засгийн газар, Үндсэн хуулийн цэцтэй хэрхэн харилцах асуудлыг судалж боловсруулан хуульчлах	ШЕЗ
7	1.6.2. хуулийн байгууллагын удирдлага болон шүүгч, прокурорыг томилох, чөлөөлөх асуудлыг улс төрийн нөлөөллөөс ангид байлгах асуудлыг судалж баталгаажуулах	ХЗДХЯ, УДШ, УЕПГ
8	2.1.1. шүүх эрх мэдлийн байгууллагын үйл ажиллагааны алдаанаас иргэн, аж ахуйн нэгж, байгууллагад учирсан хохирлыг арилгах талаархи хууль тогтоомж болон түүнийг хэрэгжүүлэх механизмыг боловсронгуй болгох	ХЗДХЯ
9	2.3.3. ажлын ачааллын жишгийг үндэслэн шүүгч, шүүхийн шийдвэр биелүүлэх байгууллагын ажилтнуудын ажлын ачааллыг жигдрүүлэх ажлыг зохион байгуулах	ШЕЗ, ХЗДХЯ
10	2.4.2. шүүгчээр томилохоос татгалзах үндэслэлийг хуульд тодорхой тусгах	ШЕЗ, УДШ
11	2.4.5. бүх шатны шүүхийн Ерөнхий шүүгч нарын үйл ажиллагааг үнэлэх шалгуурыг нарийвчлан тодорхойлж хуульчлах	ШЕЗ, УДШ
12	3.2.2. хэрэг, маргааныг хянан шийдвэрлэхэд арбитр, зуучлагч, хөндлөнгийн шүүхийн оролцоог дээшлүүлэх боломжийг судлах, эрх	ХЗДХЯ, МӨХ, ГХАТ

	зүйн орчин бүрдүүлэх	
13	4.2.1. шүүх эрх мэдлийн байгууллагуудын хоорондын ажлын уялдаа, зааг, ялгаа, хариуцлага хүлээх тогтолцоог боловсронгуй болгох асуудлыг судалж шийдвэрлэх	
14	5.1.3. гэрч, хохирогч, шинжээчийг хамгаалах асуудлыг судалж хуульчлах	ХЗДХЯ, УДШ, УЕПГ
15	5.5.3. гэмт хэргийн улмаас учирсан хохирлыг хохирогчид нөхөн төлөх зориулалт бүхий тусгайлсан сан бий болгох асуудлыг судлах	ХЗДХЯ, УДШ, УЕПГ
16	5.5.5. иргэд, хуулийн этгээдийн хоорондын төлбөр гаргуулах тухай шүүхийн шийдвэрийн бодитой биелэгдээгүй хэсэгт нь эрсдэлээ төлбөр авагч өөрөө хариуцах, шүүхийн шийдвэрийг биелүүлэх байгууллага бодитой биелэгдэхгүй шүүхийн шийдвэр биелүүлэх ажиллагааг хэрэгсэхгүй болгуулдаг тогтолцоо бий болгох асуудлыг судлах	ХЗДХЯ
17	5.6.1. шүүхэд хэрэг хэлэлцэх шат бүрт гарч байгаа зардлын хэмжээг бодитойгоор тооцож, шүүхийн төсвийн төслийг боловсруулах үед харгалзаж үздэг болох	ШЕЗ
18	6.5.3. шүүх эрх мэдлийн байгууллагын ажилтныг сургах, давтан сургах хөтөлбөрийг үндэслэн шаардлагатай зардлыг төсөвлөсөн хэмжээгээр тухайн байгууллагын төсөвт тусган баталж байх эрх зүйн үндсийг бүрдүүлэх	ХЗДХЯ, УДШ, УЕПГ, МӨХ,
19	6.5.7. шүүх эрх мэдлийн байгууллагын ажилтанд хуульчдыг сургах, давтан сургах хөтөлбөрт хамрагдан мэргэшлийн шалгалт өгсөн байдлыг үндэслэн зэрэг дэв, мэргэшлийн зэрэг олгодог механизм бий болгох	ХЗДХЯ, УДШ, УЕПГ, МӨХ,
20	6.5.11. хуульчдыг болон шүүгчдийг сургах, давтан сургах ажилд төрийн бус байгууллагуудыг татан оролцуулах, тэдэнтэй хамтран ажиллах боломжийг судалж хэрэгжүүлэх	ХЗДХЯ, УДШ, УЕПГ, МӨХ

СТ-ний доор дурьдсан арга хэмжээнүүд хэрэгжих явцдаа байгаа гэж үзэж болох боловч шаардлагатай нөөц бололцоог тооцоолон гүйцэд биелүүлэх арга зам, шалгуур нь тодорхой биш байна.

4.1. Нийгмийн эрэлт хэрэгцээ, эрх зүйн орчинд тогтмол судалгаа явуулах, түүний дагуу арга хэмжээ авна.
4.2. Хэрэг, маргааныг шүүхээс гадуур шийдвэрлэх арга механизмыг өргөжүүлж боловсронгуй болгоно.
4.3. Хууль тогтоомжийг нийгмийн эрэлт хэрэгцээний дагуу шуурхай өөрчлөх санал гаргана.
4.4. Шүүх эрх мэдлийн байгууллагуудын удирдлагыг боловсронгуй болгоно гэх мэт.

Төлөвлөсөн арга хэмжээ тасалдсан, саарсны гол шалтгаан нь төсвийн бие даасан байдал, хэмжээ, хөрөнгө оруулалт, шүүгч, ажилтан, орон сууц, хөдөлмөр ахуйн бусад гол түгээмэл нөхцөл зэрэг асуудлаар эцсийн шийдвэр гаргах эрх бүхий байгууллага (УИХ, Засгийн газар) хүчтэй дэмжлэг үзүүлж, зоригтой алхам хийгээгүйд оршиж байна гэсэн дүгнэлтэнд арга буюу хүрч байна. Нөгөөтэйгүүр шүүх эрх мэдлийн хүрээний зохих төв байгууллагууд, хараат бус байдлын баталгааг хангах ажлыг зохицуулах гол үүрэг бүхий ШЕЗ-ийн буурьтай шинжлэн судалж үндэслэлтэй бөгөөд үнэмшилтэй төсөл боловсруулж хараахан чадаагүй, эцсийн үр дүнд хүргэх шийдмэг шаардлага чармайлт дутсанаас эдийн засгийн баталгааны талаар төлөвлөсөн арга хэмжээ, санхүү эдийн засгийн яам болон холбогдох төв байгууллагаас хэтрээгүй, эрч нь суларч цаг хугацаа алдсан байдал ажиглагдав. Үүнд ШЕЗ-ийн бүрэлдэхүүнийг энэ хугацаанд нэг тогтолцооноос нөгөөд нь 3 удаа шилжүүлэн удирдлагыг өөрчилсөн явдал нэг хэсэгтээ саармагжуулах нөлөө үзүүлжээ.

Эрдэм шинжилгээний чанартай судалгаа, эдийн засаг, санхүүгийн нарийн тооцоо шаардсан бөгөөд шүүх прокурорын байгууллагын хуучин байршил–зохион байгуулалтыг бүхэлд нь эвдэж шинэтгэхэд засгийн 3 салааны хоорондын болон шүүх эрх мэдлийн байгууллагуудын хоорондын харилцааны эрх зүйн үндсийг шинээр тогтооход чиглэсэн зарим арга хэмжээ тасалдсан нь “дээд газрын шийдэл” гэхээсээ шууд эрхэлсэн төв байгууллагуудын санаачилга чармайлт дутсанаас голлон шалтгаалсныг хүлээн зөвшөөрөх нь зүйтэй.

СТ-ний биелэлт, үр дүнгийн талаар шүүх, прокурорын байгууллагын тайландаа хийсэн өөрсдийн дүгнэлт (үнэлэмж) болон энэ талаархи олон түмний (олон нийтийн) санаа бодол хоёр зарим талаар ноцтой зөрүүтэй байгааг дурьдахгүй өнгөрч болохгүй юм. ШЭМШХ-ийн захилгаар 2001, 2003, 2005 онуудад хийсэн социологийн (анкетчилсан) судалгааны зарим дүнгээс үзэхэд ШЭМБ-ын талаархи олон түмний санаа бодол буюу үнэлэмж төдий л сайнгүй “тааруу” гарсан байв. Түүний дотор шүүх нь:

- шүүх компанийн сонирхлыг хувь хүнийхээс илүүд авч үздэг;
- шүүхийн шийдвэрт улс төрийн сонирхол нөлөөлдөг;
- шүүгчийн шийдвэрт хувийн сонирхол нь нөлөөлдөг;
- ШЭМБ-д хандаж байгаа аливаа этгээдэд шүүхээс хүндрэл чирэгдэл багатай, түргэн шуурхай хямд зардалтай үйлчилгээ хүргэх чадвар тааруу гэсэн хариулт давамгайлжээ.

Түүнчлэн хэрэг маргааныг шийдвэрлэхтэй холбоотой зардлын өсөлт:

а) өмгөөлөгчийн зардал, б) шүүхийн хураамж, в) хянан шийдвэрлэх ажиллагааны удаашрал, г) хуулийн ээдрээтэй байдал, д) шүүхээр хэрэг маргаан шийдвэрлүүлэхэд их цаг хугацаа зарцуулдаг, е) ёс зүйн доголдол, зөрчил нөлөөлдөг гэсэн нь цаашид эдгээр хүчин зүйлийн нөлөөллийг бууруулах, иргэдэд учирдаг дарамтыг багасгахын чухалыг харуулжээ.

СТ-ний зорилтуудыг хэрэгжүүлэх ажлыг ихэвчлэн донор байгууллагуудын туслалцаатайгаар өргөжүүлж ирсэн. АНУ-ын ОУХА-ийн санхүүжилттэй ШЭМШХөтөлбөр, ХБНГУ-ын Германы техникийн хамтын ажиллагааны нийгэмлэг (ГТХАН)-ийн "Эдийн засгийн эрх зүйн шинэчлэл" болон "Хуульчдын сургалт ба давтан сургалт" төсөл, Ханнс-Зайделийн сангийн Монгол дахь суурин төлөөлөгчийн газар, Соросын сан, Дэлхийн банкны Шүүх, эрх зүйн шинэчлэл (ШЭЗШ) төслийн баг, Японы улсын ЗГ-ын харъяа олон улсын хамтын ажиллагааны агентлаг ЖАЙКА-гийн Эрх зүйн шинэтгэлийн туслалцаа (ЭЗШТ) төсөл тус тусын шугамаар бодит үр нөлөөтэй дэмжлэг туслалцаа үзүүлсэн бөгөөд тэдний хийсэн гол гол ажлуудыг дурьдахгүй өнгөрч болохгүй билээ. Үүнд:

- **<u>ШЭМШХөтөлбөр:</u>**

ШЭМШХ-ийн үйл ажиллагаа эхэлж байх үед Монгол улсад ардчиллыг хөгжүүлэх болон эрх зүйн тогтолцоог шинэчлэхэд чиглэсэн гол хуулиудын төслийг хэлэлцүүлж байсан юм. ШЭМШХ-өөс Шүүхийн тухай хууль (ШТХ), Эрүүгийн байцаан шийтгэх хууль (ЭБШХ) болон Прокурорын байгууллагын тухай хууль (ПБТХ)-ийн төсөлд дэлгэрэнгүй зөвлөмж, тайлбар өгсөн:

- ЭБШХ-ийн төсөлд эрүүгийн байцаан шийтгэх ажиллагааны явцад хүний эрхийг хангах тодорхой заалтуудыг боловсруулан санал болгосон.
- ШТХ-ийн төсөлд ШЕЗ-ийн үүрэг ролийг шинэчлэн тодорхойлж, бүтэц, зохион байгуулалтыг нь боловсронгуй болгох (Арга хэмжээ 1.1.5.), шүүхийн төсөв боловсруулах, өргөн барих, батлах аргачилал, арга замыг боловсронгуй болгох замаар шүүхийн хараат бус байдлыг сайжруулах (Арга хэмжээ 1.4.1, 1.4.2.), шүүх, шүүн таслах ажиллагааны менежментийг хурдан шуурхай, үр ашигтай болгох (Арга хэмжээ 6.2.1, 6.2.2, 6.2.3.), шүүгчийн хараат бус байдлыг бэхжүүлэх үүднээс дээд шатны шүүхээс доод шатны шүүхийг "мэргэжлийн удирдлагаар хангах" практикийг зогсоох (Арга хэмжээ 1.1.3.), шүүхийн боловсон хүчний бодлогыг сайжруулах (Арга хэмжээ 2.3, 2.4.), шүүгчийн сахилга, хариуцлагын тогтолцоог боловсронгуй болгох (Арга хэмжээ 2.2.2, 2.2.3.) зэрэг зарчмын гол асуудлуудыг санал болгосон
- ПБТХ-ийн төсөл боловсруулахад тус хөтөлбөрөөс прокурорын байгууллагын бие даасан харат бус байдал, мөрдөн байцаах үйл ажиллагаан дахь прокурорын үүрэг ролийг хязгаарлаж тодорхой болгох, прокурорын байгууллагын зохион байгуулалтыг сайжруулах шаардлага байгаа болон эрх зүйн салбарт гарч буй авилгын гэмт хэргийг мөрдөн шалгах тусгай бие даасан мөрдөн байцаах алба байгуулах зэрэг саналуудыг өгсөн.

ШЭМШХ-өөс хууль тогтоомж, бусад орны шүүхийн захиргааны бүтцийн талаархи харьцуулсан судалгаа зэргийг үндэслэн ШЕЗ-ийн зохион байгуулалт, үйл ажиллагааны давуу болон сул талыг дүгнэж, түүнийг

цаашид улсын хэмжээний шүүхийн захиргааны байгууллагын хувьд бэхжүүлэх талаар зөвлөмж боловсруулсан. Түүнчлэн ШЕЗ-ийг тоног төхөөрөмжөөр хангаж шүүх хоорондын бүх төрлийн мэдээллийг харилцааг шинэ түвшинд гаргахад дэмжлэг үзүүлсэн (Арга хэмжээ 1.3.2.).

Шинээр байгуулагдсан Шүүхийн сахилгын хороо (ШСХ)-ны бүтэц, зохион байгуулалт, үйл ажиллагааны талаар тус тус зөвлөмж боловсруулан өгч, сургалт зохион байгуулж, техникийн туслалцаа үзүүлсэн. Үүний зэрэгцээ Шүүгчийн ёс зүйн дүрмийг шинэчлэх, шинэ дүрмийг хэрэгжүүлэх механизмыг санал болгосон зөвлөмж боловсруулж өгсөн (Арга хэмжээ 2.2.1).

Шүүх, эрх зүйн тогтолцоонд хийсэн шинэтгэлийг Монголын олон нийтэд мэдээлэх, тайлбарлан таниулах зорилгоор олон зурагт хуудас, ном, товхимол гаргаж, олон тооны мэдээлэл сонин хэвлэлд нийтлүүлж, радио телевизийн нэвтрүүлэг бэлтгэн хийлгэж ирсний дотор “Хуулийн цаг” телевизийн нэвтрүүлэг үзэгчдийн хамгийн их таашаадаг нэвтрүүлгийн нэг болсоор байна. Хөдөөгийн иргэдэд зориулсан “Хэн буруутай вэ?” радио цуврал нэвтрүүлэг шилдэг нэвтрүүлгийн өргөмжлөл авч радиогийн алтан фондод орсон. Шүүхийн үйл ажиллагааг хэрхэн бичиж сурвалжлах талаар сэтгүүлчдэд болон хуулийн байгууллагын хэвлэл мэдээллийн ажилтнуудад зориулсан сургалтуудыг үргэлжлүүлэн явуулж байгаа. Хандивлагч байгууллагуудын ажлыг уялдуулах, ТББ болон олон нийтэд шүүх эрх мэдлийн байгууллагуудын (ШЭМБ) үйл ажиллагааны талаар мэдээлдэг “Хуулиа дээдлэх нь” мэдээллийн хуудсыг ШЭМШХ-өөс сар бүр гаргаж ирэв.

Шүүгч, прокурор, хэрэг бүртгэгч, мөрдөн байцаагчийн үйлдсэн гэмт хэрэг болон эрх зүйн салбарт гарч буй авилгын гэмт хэргийг мөрдөн шалгах тусгай бие даасан Мөрдөн байцаах албаны (МБА) бүтэц, зохион байгуулалт, үйл ажиллагаанд санхүүгийн болон техникийн туслалцаа үзүүлэхийн зэрэгцээ мөрдөн байцаах арга техникийн талаар сургалтуудыг зохион байгуулсан. МБА-ны үйл ажиллагааг олон нийтэд ил тод болгох үүднээс байгууллагын талаар товч мэдээлэл болон тус албанд гомдол, өргөдөл гаргах журмыг агуулсан зурагт хуудас хэвлүүлэн шүүгч, прокурор, цагдаагийн байгууллага, орон нутгийн Засаг даргын Тамгын газрууд болон хууль, эрх зүйн салбарт үйл ажиллагаа эрхэлдэг ТББ-д хүргүүлсэн.

Монголын Өмгөөлөгчдийн холбоонд (МӨХ) үзүүлэх техникийн туслалцааны хүрээнд өмгөөлөх чадварыг дээшлүүлэх шинэ сургалтыг зохион явуулсан. Энэ нь 1994 оноос ЭБШХ-нд байсан хэдий ч хэрэгжиж байгаагүй “мэтгэлцэх зарчим”-ыг хэрхэн хэрэгжүүлэх талаархи сургалт юм (Арга хэмжээ 6.5.8.). 2005 оны 10-р сарын 19-28 өдрүүдэд ШЭМШХ-ийн дэмжлэгтэйгээр МӨХ-ны гишүүн 5 өмгөөлөгч АНУ-ын Хавай муж улсын БАР-ын холбооны үйл ажиллагаатай танилцаж туршлага судалсан (Арга хэмжээ 2.5.2).

- **<u>Ханнс-Зайделийн сан</u>**:

Ханнс-Зайделийн сангийн Монгол дахь төсөл нь Монгол улсын эрх зүйн тогтолцоог бэхжүүлэхэд дэмжлэг үзүүлэх, Монгол Улсын захиргааны бүтцийг сайжруулахад туслах, эрх зүйн захиргааны боловсон хүчний чадавхийг дээшлүүлэхэд дэмжлэг үзүүлэх, хууль боловсруулахад зөвлөгөө өгөх, ХЗДХЯ-ны харъяа байгууллагуудын шинэтгэлд дэмжлэг үзүүлэх, хууль зүйн салбарыг хамарсан мэдээллийн сүлжээ байгуулахад туслах, түншлэгч байгууллагуудад техникийн дэмжлэг үзүүлэх, бие даасан захиргааг бий болгохын тулд мэдээллийн болон сургалтын арга хэмжээнүүдийг захиргааны байгууллагуудтай хамтран зохион байгуулах, түншлэгч байгууллагуудын багш нарыг богино хугацааны сургалтанд хамруулах, төслийн хүрээнд мэргэжлийн номын сан байгуулах зэрэг хамтын ажиллагааны зорилгуудыг хэрэгжүүлж байна.

Хууль боловсруулахад зөвлөгөө өгөх ажлын хүрээнд Ханнс-Зайделийн сан ЭХ, ЭБШХ, ЦБТХ, ЗХШХШТХ зэрэг хуулиудын төслийг боловсруулахад бие даан туслалцаа үзүүлсэн. ЗХХШТ хуулийн төслийг боловсруулахад УИХ, ХЗДХЯ болон холбогдох бусад байгууллагуудад туршлага судлах, зөвлөгөө авах, сургалт зохион байгуулахад дэмжлэг үзүүлсэн.

МУ-ын хууль зүйн дээд боловсрол олгох тогтолцоог боловсронгуй болгоход дэмжлэг, туслалцаа үзүүлэх хамтын ажиллагааны хүрээнд МУИС-ийн Хууль зүйн сургууль дээр хуульч бэлтгэх Европын сургалтын стандартад тулгуурласан 5 жилийн сургалтын хөтөлбөр хэрэгжүүлж байна. 2001 онд Ханнс-Зайделийн сангаас санаачлан “Эрх зүйн боловсрол” Академийг (ЭЗБА) үүсгэн байгуулсан бөгөөд хот, орон нутагт тухайлбал, аймаг, сум, дүүрэг, хороодод нийт иргэдийн эрх зүйн боловсролыг дээшлүүлэх, анхан шатны ойлголт өгөх, чөлөөт ардчилсан ёсыг төлөвшүүлж, иргэдээс захиргааны байгууллагад хяналт тавьдаг болгохын төлөө үйл ажиллагаа явуулсаар байна.

Түншлэгч байгууллагуудад техникийн дэмжлэг үзүүлэх ажлын хүрээнд 2001 онд тус сангаас УДШ-ийн хуралдааны танхимд санал хураалтын болон аудио системийг шинээр суурилуулахад тоног төхєєрємжийн иж бvрэн туслалцаа vзvvлсэн. Мөн 2002 онд УДШ-ийн хуралдааны танхим, Үндсэн хуулийн Цэц-д, 2003 онд УИХ-ын Тамгын газрын архивт ажлын зориулалтын тоног төхөөрөмжийн дэмжлэг үзүүлсэн. Хуулийн байгууллагуудын мэдээллийн нэгдсэн сүлжээ байгуулах төслийн хүрээнд ГТХАН, Соросын сантай хамтран ХЗДХЯ-д хуулийн байгууллагуудын нэгдсэн веб хуудсыг хийж гүйцэтгэхэд шаардлагатай тоног төхөөрөмж, хууль зүйн мэдээллийн хайлтын программ боловсруулах болон нийлүүлэхэд туслалцаа үзүүлсэн.

Эрх зүйн сурталчилгаа явуулах ажлын хүрээнд УДШ-ээс эрхлэн гаргадаг “Монголын төр, эрх зүй”, ШЕЗ-өөс эрхлэн гаргадаг “Шүүх эрх мэдэл” сэтгүүлүүдийн хэвлэлтийг санхүүжүүлдэг. Төслийн хүрээнд мэргэжлийн номын сан байгуулах ажлын хүрээнд ХБНГУ-ын C.H.Beck хэвлэлийн компаниас орос, герман хэл дээр хэвлэгдсэн хууль зүйн сурах бичиг, ном, гарын авлага, толь бичгийг олгосон.

- **<u>Германы техникийн хамтын ажиллагааны нийгэмлэг</u>**:

ГТХАН-ийн “Эдийн засгийн эрх зүйн шинэчлэл” төслийн үндсэн зорилт нь эрх зүйн баталгаат орчинг бүрдүүлэхэд оршиж байсан бөгөөд дараах чиглэлээр үйл ажиллагаа явуулсан:

- хуулийн төсөл боловсруулахад зөвлөгөө өгөх;
- хуульчдын сургалт, давтан сургалт;
- хуулийн байгууллагын бүтэц, зохион байгуулалтыг боловсронгуй болгоход зөвлөгөө өгөх;
- эрх зүйн сурталчилгаа;
- эрх зүйн судалгаа.

2003 оны 8-р сарын 1-ээс дээрх төсөл “Хуульчдын сургалт ба давтан сургалт” нэртэйгээр үргэлжилж үйл ажиллагааны чиглэлээ өөрчилсөн. Үүнд:

- хуульчдын сургалт, давтан сургалт;
- хуулийн төсөл боловсруулахад зөвлөгөө өгөх;
- эрх зүйн сурталчилгаа.

Хуулийн төсөл боловруулахад зөвлөгөө өгөх ажлын хүрээнд 30 гаруй хуулийн төсөл боловсруулахад зөвлөгөө өгснөөс 10 нь батлагдсан. Үүнд: Үл хөдлөх эд хөрөнгийн бүртгэлийн тухай, Шударга өрсөлдөөнийг хориглох тухай, Хоршооны тухай, Өмгөөллийн тухай, Нотариатын тухай, Арбитрын шүүхийн тухай, ХСШТ, Үнэт цаасны тухай, Хөдөлмөрийн хууль. 2002 онд батлагдсан шинэ ИХ, ИХШХШТХ, ШШГТХ зэрэгт боловсруулахаас эхлээд батлагдан гарах хүртэл зөвлөгөө өгч, дэмжлэг үзүүлсэн. 2005 онд тус төслөөс Иргэний хуулийн ерөнхий ангийн болон ИХШХШТ хуулийн тайлбаруудыг бичиж ном болгон хэвлүүлсэн. Мөн Дампуурлын тухай болон Шударга өрсөлдөөнийг хориглох тухай хуулийг шинэчлэн найруулах ажилд мэргэжлийн зөвлөгөө өгсөн.

Хуулийн байгууллагуудын бүтэц, зохион байгуулалтыг боловсронгуй болгох ажлын хүрээнд Үл хөдлөх хөрөнгийн бүртгэлийн газрын тухай хуулийн төсөл боловсруулах шатнаас байгуулагдтал нь эрх зүйн болон бусад туслалцаа үзүүлсэн. Мөн шүүхийн дотоод зохион байгуулалт, ажлын алба буюу тамгын хэлтсийн ажлыг боловсронгуй болгох зорилгоор Judge-98 програм хангамжийг боловсруулж 2002 онд шинэ хуулинд нийцүүлэн уг програм хангамжийг шинэчилсэн. Прокурорын байгууллагын захиргааны ажлыг боловсронгуй болгох үүднээс Prosecutor-2000 программ хангамж боловсруулсан. Онолын бөгөөд практик ач холбогдол бүхий “Прокурорын ном” гарын авлагын анхны хэвлэлтийг 2001 онд, хоёр дахь хэвлэлтийг 2003 онд боловсруулан хэвлүүлэхэд туслалцаа үзүүлсэн. 2001-2002 онуудад хуулийн цахим мэдээллийн санг бүтээх, хуулийн байгууллагуудын нэгдсэн веб хуудас хийж гүйцэтгэхэд Ханнс-Зайделийн сангийн хамт ХЗДХЯ-нд дэмжлэг үзүүлсэн.

“Хуульчдын сургалт, давтан сургалт” төслийн явуулсан зарим нэг гол сургалтуудаас дурьдахад: “ИХ, ИХШХШТХ болон шүүхийн шийдвэр

боловсруулах аргачлал” сэдэвт сургалтыг аймаг, нийслэл, сум, сум дундын болон дүүргийн шүүгчдэд болон прокурор, өмгөөлөгч нарт 2000-2001 онуудад явуулсан. Шинээр батлагдсан ИХ, ИХШХШТХ, ЭХ, ЭБШХ зэрэг хуулиудаар бүх шатны шүүгч, прокуроос гадна өмгөөлөгч, хуулийн хэлтсийн ажилтнууд болон цагдаагийн ажилтнуудад 2002-2003 онуудад “Эрүүгийн шинэ хууль”-иар хот, хөдөөгийн бүх прокуроруудад, нийт шүүгчдэд “Иргэний эрх зүй дэх үл хөдлөх хөрөнгө буюу газрын харилцаа”, “ИХШХШ эрх болон шүүхийн шийдвэр боловсруулах аргачлал” зэрэг сэдвүүдээр сургалтууд явуулсан. Дээрх сургалтуудын концепци болон сургалтын материалыг ХБНГУ-ын мэргэжилтнүүдийн дэмжлэгтэйгээр боловсруулсан. 2004-2005 онуудад шүүхийн шийдвэр гүйцэтгэгч нарт “Хуулийн этгээдийн эд хөрөнгөнд болон үл хөдлөх хөрөнгөнд явуулах шийдвэр гүйцэтгэлийн ажиллагаа” сэдэвт сургалтыг ШШГЕГ-тай хамтран улсын хэмжээнд явуулсан.

Тус төслийн эрх зүйн сурталчилгааны ажлын хүрээнд иргэдийн эрх зүйн мэдлэгийг дээшлүүлэх зорилгоор тэдний өдөр тутмын амьдралд гардаг тохиолдлуудад тулгуурласан телевиз, радиогийн цуврал “Хуулийн цаг”, “Дэнс”, “Таны хуулийн мэдлэг”, “Хууль таны амьдралд” нэвтрүүлгүүдийг MYTB, MN25-р телевиз, TB-9 болон Монголын радио-той хамтран бэлтгэж тасралтгүй хүргэдэг билээ. Мөн хууль, эрх зүйн ном, гарын авлага, сурах бичиг, сэтгүүл хэвлэн нийтлүүлэх зэрэг сурталчилгааны ажил явуулж ирсэн.

Эрх зүйн судалгааны ажлын хүрээнд 2001 онд УДШ-ийн судалгааны төв, Сант-Марал судалгааны төвтэй хамтран “Загвар шүүхийн дэд төслийн хэрэгжилтийн үр дүн”-ийн талаар, ХЗДХЯ, ШУА-тай хамтран “Эрх зүйн сурталчилгааны ажилд дүгнэлт, үнэлгээ өгөх” сэдэвт зэрэг сургалт-судалгааны ажлуудыг зохион байгуулсан. 2002 онд “Монгол дахь эдийн засгийн эрх зүйн шинэтгэлийн явц, үр дүн” сэдэвт бүсчилсэн судалгаа, 2003 онд ШЭМШХ-ийн захиалгаар “Хуулийн цаг” нэвтрүүлгийн талаарх үзэгчдийн дунд санал асуулга-судалгааг МУИС-ийн Социологийн тэнхимтэй хамтран явуулсан. 2004 онд эрх зүйн шинэтгэлийн явцын талаарх судалгаа болон эдийн засгийн идэвхтэй үйл ажиллагаа эрхэлдэг хүн амын дунд судалгааг 4 аймагт зохион байгуулсан.

- **<u>Соросын сан</u>**:

2001 оноос Соросын сан нь үйл ажиллагаагаа эрх зүйн боловсрол, шүүх, цагдаа, хорих байгуулалтын шинэчлэлт, өөрчлөлтийг дэмжих, иргэний нээлттэй нийгмийг төлөвшүүлэхэд хувь нэмэр оруулах зэрэгт чиглүүлэн ажилласан.

2001 онд ЭХ, ЭБШ хуулиудыг шинэчилж байгаатай холбогдуулан хорихоос өөр төрлийн (альтернатив) ял шийтгэл оногдуулахын үр ашиг, олон улсын туршлага, онол практикийн үндэслэл, нийгэмд тустай хөдөлмөрлөх эрхлүүлэхийн ач холбогдол зэргийн талаар зохих арга хэмжээнүүд авсны үр дүнд 2002 оны шинэ ЭХ-нд нийгэмд тустай хөдөлмөр эрхлүүлэхийг “албадан ажиллуулах” гэсэн нэрийн дор тусгасан. 2003 онд Соросын сан “Мэдээллийн эрх чөлөөний тухай” хуулийн төслийг хэлэлцэхэд их хувь нэмэр оруулсан.

Шүүхийн ажилтнуудын давтан сургалтын тогтолцоо, чадавхийг бэхжүүлэх болон шүүгч-багш бэлтгэх үйл ажиллагаанд Нидерланд улсын ЗГ-аас авсан санхүүгийн дэмжлэгийг зориулж Нидерланд улсын мэргэжлийн шүүгч-багш нарын туслалцаатайгаар монголын шүүгч-багш нар сургалтын агуулга, төлөвлөгөө, хөтөлбөр боловсруулж, сургалтын орчин үеийн заах арга зүй, арга барил эзэмшүүлсэн. Үүний үр дүнд Шүүгчдийн давтан сургалтын төв нь (ШДСТ) багшлах бүрэлдэхүүн (12 шүүгч-багш), сургалтын хөтөлбөртэй болжээ.

Соросын сангийн дэмжлэгтэйгээр МУИС-ийн ХЗС дээр байгуулагдсан хууль зүйн зөвлөгөө өгөх "Хүмүүнлэг төв"-д тус сургуулийн 3,4-р ангийн оюутнууд багш нарын удирдлага, хяналт дор эмзэг бүлгийн хүмүүст хууль зүйн үнэ төлбөргүй зөвлөгөө өгөх, зарим тохиолдолд өмгөөллийн үйлчилгээ үзүүлэх ажлыг явуулсан. Тус төв 2001 оноос "Хууль–бидний амьдрал" хууль зүйн клиник сургалтыг нэвтрүүлсэн. Уг клиник сургалтаар хуулийн ангийн оюутнууд мэргэжлийн бус хүмүүст хууль нь иргэдийн өдөр тутмын амьдралд хэрхэн нөлөөлдөг, хуулийг яаж эрх ашгаа хамгаалах хэрэгсэл болгох, иргэний эрх, үүрэг гэж юу болох талаар хичээл зааснаар өөрсдийн мэргэжлийн мэдлэг, ур чадварыг нэмэгдүүлэх боломжтой болсон юм.

Соросын сан нь ШШГЕГ-тай хамтран хорих байгууллагад хийгдэж буй шинэчлэлийг дэмжих ажлын хүрээнд ахлагч, офицеруудын болон багш нарын мэргэжил дээшлүүлэх сургалт, сургалтын хөтөлбөр, материал боловсруулахад дэмжлэг үзүүлсэн.

Мөн цагдаагийн үйлчилгээг ард иргэдэд ойртуулах, тэднийг үйл ажиллагаандаа татан оролцуулж харилцан дэмжлэг үзүүлснээр гэмт хэргээс урьдчилан сэргийлэх, цагдааг хүчний байгууллагаас ард иргэдэд үйлчилдэг үйлчилгээний байгууллага болгох зорилгоор "Цагдаа-олон нийтийн хамтын ажиллагаа" хөтөлбөрийг хэрэгжүүлсэн. Энэ төслийн хүрээнд ЦЕГ, Умард Ирландын ЦБ-ын тусламжтайгаар 2001-2003 онуудад 9 дүүрэг, 3 аймгийн цагдаагийн удирдлага, бие бүрэлдэхүүн, цагдаагийн академийн багш нарт цагдаа иргэдтэй хэрхэн харьцах талаар хэд хэдэн удаагийн сургалт явуулсан. Цагдаагийн үндсэн ажилтан бэлтгэдэг Цагдаагийн Академийн сургалтын хөтөлбөрийг шинэчлэх, багшлах боловсон хүчний заах арга барилыг сайжруулах, цагдаагийн бүх шатны бие бүрэлдэхүүний мэргэжил дээшлүүлэх давтан сургалтын төлөвлөгөөг боловсронгуй болгох зэрэгт дэмжлэг үзүүлсэн.

Төлбөрийн чадваргүй иргэдэд эрх зүйн туслалцаа үзүүлэх үндэсний хөтөлбөрийг боловсруулах, хэрэгжүүлэхэд Соросын сан ХЗДХЯ-нд дэмжлэг үзүүлэн ажиллаж байгаа. Эрх зүйн туслалцаа үзүүлэх шинэ загварыг туршихаар Төлбөрийн чадваргүй иргэдэд өмгөөллийн туслалцаа үзүүлэх туршилтын төвийг Сонгинохайрхан дүүрэг болон Хэнтий аймагт 2004 оны 5-р сард байгуулсан. Туршилтын төв нь үйлчлүүлэгчийг аль болох түвэг чирэгдэлгүй, чанартай түргэн шуурхай өмгөөллөөр хангах зорилготой. Эрх зүйн туслалцааны төвүүдийн

өмгөөлөгчдөд зориулан ур чадвар, менежмент, зохион байгуулалт, үйл ажиллагааг хэрхэн явуулах талаар сургалтыг явуулсан.

ШШГЕГ-тай хамтран “Албадан ажил хийлгэх ялыг хэвшүүлэх” төслийг Улаанбаатар хотын бүх дүүрэгт хэрэгжүүлсэн. Уг төслийн хүрээнд албадан ажил хийлгэх ял оноох, эдлүүлэх, хянах ажиллагааг явуулах хуулийн байгууллагын ажилтнуудыг бэлтгэх, мэдээллээр хангах сургалтуудыг тогтмол явуулах, холбогдох судалгаа болон олон нийтэд мэдээллээр үйлчлэх зэрэг ажлыг хийсэн.

- **<u>Дэлхийн банкны Шүүх эрх зүйн шинэтгэл төсөл</u>:**

Тус төсөл нь 2002 оноос хэрэгжсэн бөгөөд ХЗҮТ-ийн барилгыг барих гүйцэтгэгчийг сонгох, байгууллагын дүрэм, орон тоо, бүтцийн төслийг боловсруулан ХЗДХЯ-ны Сайдаар батлуулах болон ХЗҮТ-ийг түшиглэн мэдээллийн нэгдсэн сүлжээг байгуулахтай холбоотой ажлыг зохион байгуулах, хуулийн сургуулиудын сургалтын агуулга, аргачлалыг өөрчлөн шинэчлэх чиглэлээр ажлын хэсэг байгуулах, захиргааны шүүгч, шүүхийн ажилтнуудын сургалтын хөтөлбөрийг боловсруулах зэрэг ажлуудыг эрхлэн гүйцэтгэсэн.

ЗХХШТХ, ЗХШБТХ зэрэг хуулиуд батлагдсантай холбогдуулж тус төсөл “Захиргааны хэргийн шүүхийн тогтолцоог байгуулж эхлэх” бүрэлдэхүүн хэсгийг 2003 оны 1-р сараас эхлэн хэрэгжүүлсэн. 2003-2004 онуудад ХЗҮТ, Ханнс-Зайделийн сантай хамтран ЗХХШТХ-ийн үзэл баримтлал, агуулга, ач холбогдолыг олон нийтэд сурталчлах, тайлбарлан таниулах ажлыг зохион явуулсан.

“Эрх зүйн дээд боловсролыг сайжруулах” дэд төслийн хүрээнд хууль зүйн сургалтад хэрэгжүүлэх шинэчилсэн хичээлийн загвар хөтөлбөр боловсруулан түшиц сургуулиуд болох Отгонтэнгэр Их сургууль, Шихихутаг ХЗДС дээр туршилтын журмаар хэрэгжүүлж байна.

- **<u>ЖАЙКА-гийн Эрх зүйн шинэтгэл төсөл</u>**:

Тус төсөл нь Япон улсад маргаан зохицуулах талаар хамгийн өргөн хэрэглэгддэг “маргааныг эвлэрүүлэн зуучлах” үйл ажиллагааг МӨХ-той хамтран хэрэгжүүлж байгаа юм. Иргэний эрх зүйн туслалцаа үзүүлэх, маргааныг эвлэрүүлэн зуучлах төв 2006 оны 5-р сарын 5-ны өдөр албан ёсоор нээлтээ хийсэн. Тус төвөөр үйлчлүүлэгчид нь иргэний эрх зүйн асуудлаар хууль зүйн туслалцаа авахыг хүссэн хэн ч байж болохоос гадна тодорхой асуудлаар шийдвэрт хүрч чадахгүй байгаа, сайн дурараа хүсэлт гарган ирэх аливаа маргалдагч талууд байна. Уг төсөл нь нийслэлийн хоёр дүүрэгт уг төвийг байгуулахад дэмжлэг үзүүлсэн бөгөөд хэрвээ 1 жилийн хугацаанд амжилттай ажиллавал дахин дөрвөн дүүрэгт байгуулах юм. Уг ажлын хүрээнд зуучлах төвийн боловсон хүчин болох өмгөөлөгч нарт 2005 оны 12-р сард сургалт зохион байгуулсан. Сургалтыг Японы Бар-ын холбооны багш-өмгөөлөгчид явуулсан. Тус төсөл нь Иргэний хэргийн шүүхийн шийдвэрийн 4 эмхэтгэлийг хэвлүүлэн гаргахад дэмжлэг үзүүлсэн.

Ингээд өнөөгийн хүрсэн түвшин, өнгөрсөн жилүүдийн сургамжаас үүдэн дараахи саналыг дэвшүүлж байна.

1. ШЕЗ-ийн бүтэц, ажиллагааг оновчтой тодорхойлох замаар ШЭМБ-ын захиргааны үйлчилгээ буюу удирдлагыг боловсронгуй болгох, менежментийн үр дүнтэй арга, ажиллагааг нэвтрүүлэх замаар шүүхийн удирдлагын стандартыг олон улсын жишигт нийцүүлэх тухай заасан Стратеги зорилт 3.4-ийг шүүхийн менежментийн гол чиглэл болгон ажиллах.

2. Хэргийн хөдөлгөөний менежментийг боловсронгуй болгох (Стратеги зорилт 6.2). Үүний үр дүнд хэргийн хөдөлгөөний үе шатыг хянан өөрчилж, хэрэг хянан шийдвэрлэх стандарт бий болгож, үүрэг хариуцлагыг тодруулж, ажлын байрны тодорхойлолтыг хянан өөрчлөхийн зэрэгцээгээр шүүхийн тухай шинэ хууль тогтоомжийн төсөл боловсруулж, батлуулж, хянах, тайлагнах журмын талаарх шилдэг туршлагыг цуглуулж түгээнэ.

3. Хөдөө орон нутагт шүүхийн нөөцийг үр ашигтай зарцуулах зорилгоор ЭБШХ-д нэмэлт өөрчлөлт оруулах санал зөвлөмж боловсруулах, өөр журам боловсруулах (Стратеги зорилт 3.4, 5.1, 5.3)

4. Шүүхийн төсөв, хангамж үйлчилгээг эрс шинэтгэх, бэхжүүлэх. (Стратеги зорилт 1.4)

5. Шүүх эрх мэдлийн байгууллагуудын ажил дүгнэх тогтолцоог боловсронгуй болгох (Стратеги зорилт 2.4)

6. Шилдэг шүүгчдийг сонгон шалгаруулдаг, дэвшүүлдэг тогтолцоог бэхжүүлэхэд туслах (Стратеги зорилт 2.4)

7. Бичмэл стандарт, “мэргэжлийн удирдлага”-ын тохиромжтой цар хүрээг бий болгоход техникийн туслалцаа үзүүлэх замаар шүүгчдийн зан байдлын стандартыг тодорхойлоход туслах (Стратеги зорилт 1.1)

8. ШСХ-ны чадавхийг бэхжүүлэх, Шүүгчийн ёс зүйн дүрмийг боловсронгуй болгох санал боловсруулахад туслалцаа үзүүлсээр байх болно. Энэхүү саналыг боловсруулахад нэг талтай дангаар харилцахыг хязгаарлах, хөрөнгө орлогын мэдүүлгийг нийтэд нээлттэй болгоход (шаардлагатай бол хууль тогтоомжид нэмэлт өөрчлөлт оруулах замаар) голлон анхаарч ажиллана. (Стратеги зорилт 2.2, 2.4) ШСХ-ноос өргөн барьсан Ёс зүйн дүрэмд нэг талтай дангаар харилцахыг хязгаарлаж, мэргэжлийн алдааг тодорхойлсон нэмэлт өөрчлөлт оруулах төслийг оруулахдаа Шүүгчдийн зөвлөл болон хууль тогтоох байгууллагаас дэмжлэг авна.

9. Шүүхийн автоматжуулалт, Мэдээллийн нэгдсэн сүлжээн дээр суурилан статистик мэдээний ашиглалтыг үр дүнтэй болгох талаар УДШ-ийн

дэргэдэх Судалгааны төвтэй хамтран ажиллах. Шүүхийн бүртгэл мэдээллийг цахим хэлбэртэй болгосноор илүү их мэдээлэл цуглуулж, шийдвэр гаргагчдад мэдээллийг илүү тус дөхөмтэй хэлбэрээр танилцуулах боломжтой болно. (Стратеги зорилт 5.3)

10. УДШ, ХЗДХЯ-д хууль эрх зүйн судалгаа, хуулийн тайлбар боловсруулах, хуулийн нөлөөллийн үнэлгээ, хууль тогтоомжийн талаар олон нийтийн санаа бодлыг авах механизм зэрэг чиглэлээр туслалцаа үзүүлсээр байх болно. (Стратеги зорилт 3.1)

11. УЕПГ-т боловсон хүчний менежментээ боловсронгуй болгох өөрчлөлт хийж, ялангуяа гэмт хэргийн хохирогч, гэрч нарт чиглэсэн үйлчилгээний хандлагатай үйл ажиллагаанд анхаарлаа төвлөрүүлж, ил тод байдлыг дээшлүүлэхийн тулд олон нийтэд өгөх мэдээллээ нэмэгдүүлэхэд нь туслах. (Стратеги зорилт 3.4) ШЭМШХ-өөс Улсын Ерөнхий прокурорын дэргэдэх Мөрдөн байцаах албанд туслалцаа үзүүлэх. (Стратеги зорилт 2.1, 3.4)

12. ХЗҮТ-ийг Монголын хуульчдыг давтан сургах үр өгөөжтэй байгууллага болгох туслалцаагаа үргэлжлүүлэх замаар хууль зүйн үргэлжилсэн сургалтыг тогтвортой явуулах үзэл баримтлалыг хэрэгжүүлэх талаар ажиллах. (Стратеги зорилт 6.5, 6.5.1)

13. Шүүгч, хуульчдыг нарийн мэргэшүүлэх (авилгал, үнэт цаас, татвар, олон улсын худалдаа зэрэг чиглэлээр) хэрэгцээг үнэлж, нарийн мэргэшүүлэх сургалт бий болгоход нь ХЗҮТ-д тусална. (Стратеги зорилт 6.1, 6.1.3)

14. Сургалтын стандартыг боловсронгуй болгож, суралцагчдын шүүмжлэлтэй сэтгэх чадварыг дэмжих талаар хууль зүйн их дээд сургуулиудтай хамтран ажиллах. (Стратеги зорилт 6.4)

15. ЭХ, ЭБШХ-ийг боловсронгуй болгох санал зөвлөмж боловсруулна. (Стратеги зорилт 1.1, 3.1, 5.1). Тухайлбал бүрэлдэхүүнтэй шийдвэрлэдэг хэргийн төрөл, тоог багасгаснаар шүүх эрх мэдлийн хэрэгжилтийн чанарыг их бууруулахгүйгээр шүүхийн нөөцийн хуваарилалтыг сайжруулна. (Стратеги зорилт 1.1, 1.1.2) Гэрч, хохирогч, шинжээчдийг заавал баталгаатай хамгаалдаг байх зөвлөмж боловсруулах. (Стратеги зорилт 2.5, арга хэмжээ 2.5.2)

16. ОТБЗ-ийн журам, холбоо харилцааг сайжруулах замаар хуульчдыг сонгон шалгаруулах ажиллагааг боловсронгуй болгох (Стратеги зорилт 2.5, 2.5.2)

17. Шүүх, хуулийн байгууллагуудын олон нийттэй харилцах чадавхийг бэхжүүлэх (Стратеги зорилт 5.2)

18. Шүүх, хуулийн байгууллагууд болон олон нийтийн хооронд ойлголцлыг бэхжүүлэх (Стратеги зорилт 1.7.3)

19. Шүүх эрх мэдлийн хүрээнд эрдэм шинжилгээний ажил, судалгааны ажлыг өргөн хүрээтэй явуулах.

20. УИХ-ын Хууль зүйн Байнгын хорооноос өгөх чиглэл зөвлөмжийг тусгах зэргээр Стратеги төлөвлөгөөг цаашид үргэлжүүлэн АНУ-ын ОУХА-ийн туслалцаатайгаар сунгаж, шүүх эрх мэдлийн шинэтгэлийг гүнзгийрүүлэх.

“Монгол Улсын шүүх эрх мэдлийн стратеги төлөвлөгөөний хэрэгжилтэнд хийсэн үнэлгээ” хэмээх баримт бичиг нь агуулга, хэлбэрийн хувьд чанарын өндөр түвшинд хийгдсэн бөгөөд шүүх эрх мэдлийн хэмжээнд сүүлийн 5 жилд хийгдсэн ажлыг нэгтгэн дүгнэж, цаашид хүлээгдэж байгаа асуудлыг тодорхолсноороо ач холбогдолтой болжээ. Энэ баримт бичгийг хэвлүүлэн хууль тогтоох, гүйцэтгэх, шүүх эрх мэдлийн байгууллагын болон бусад байгууллага, олон нийтийн хүртээл болгох нь зүйтэй гэж ШЕЗ-өөс санал ирүүлснийг дурьдах нь зүйтэй болов уу.

Mongolia JRP: PMP for 2006-2008

	Indicator Description	Method & Source	Frequency	Responsibility	Baseline	Target 2007	Actual 2007	Target 2008	Actual 2008	Comments
OBJECTIVE 1: STRENGTHENING THE INDEPENDENCE OF JUSTICE SECTOR INSTITUTIONS THROUGH IMPROVED MANAGEMENT STRUCTURE										
Activity 1.1.1: Special Assistance to the General Council of the Courts (GCC)	1) The GCC top management and 90 percent of the GCC staff have a strong understanding of the GCC mandate and their role in carrying it out. 2) GCC has implemented satisfactory operating procedures for both aspects of its mandate: policy development and policy administration.	Expert assessments and feedback from stakeholders.	Annually	JRP staff	2	3		5		
Activity 1.1.2: Assistance to the Special Investigative Unit	1) The SIU has adjusted management systems and operating procedures within its control based on agreed JRP recommendations. 2) The SIU has formulated sound legislative proposals seeking to enable adjustments in areas where legislative changes are required.	Expert assessments and feedback from stakeholders.	Annually	JRP staff	2	3		4		
Activity 1.2 Strengthen capacity for providing analytical input into decision making	The Mongolian Government has developed a policy concept on collection and use of court statistics with a view to improve the quality and transparency of justice sector management.	Expert assessments and feedback from stakeholders.	Annually	JRP staff	0	2		4		
Activity 1.3.1 Strengthen Performance Evaluation System for the Judiciary:	A new performance evaluation system based on recommendations by Susanne D. Pietro.	Expert assessments and feedback from stakeholders.	Annually	JRP staff	1	2		4		
Activity 1.3.2 Strengthen Merit-Based selection of Judges:	Merit-based criteria and procedures for judicial selection have been developed and disseminated.	Expert assessments and feedback from stakeholders.	Annually	JRP staff	1	2		4		
1.3.3 Defining Behavioral Standards for Judges	1) Written behavioral standards for judges are developed. 2) Guides on how to follow the behavioral standards for judges are developed.	Expert assessments and feedback from stakeholders.	Annually	JRP staff	1	2		4		
Activity 1.3.4 Strengthening Capacity of Judicial Disciplinary Committee.	The Judicial Disciplinary Committee has introduced pattern analysis in identifying suspected violators.	Expert assessments and feedback from stakeholders.	Annually	JRP staff	0	3		5		
Activity 1.3.5 Advancing the concept of sustainable continuing legal education.	1) The NLC has introduced training programs on commercial transactions and property. 2) The NLC's Legal Information Promotion Center has introduced procedures for dissemination of new law.	Expert assessments and feedback from stakeholders.	Annually	JRP staff	3	3		5		
Activity 1.4 Strengthening Caseflow Management. Courts develop new procedures on caseflow management. Results based upon number of new procedures as well as implementation.	The GCC has developed new caseflow management procedures.	Expert assessments and feedback from stakeholders.	Annually	JRP staff	1	3		4		
Activity 1.5: Strengthening Information Management	1) Caseflow management software for the courts and prosecution service is implemented in all courts on the basis of standard operating procedures for information management. 2) GCC has established a standard reporting mechanism for case tracking.	Expert assessments and feedback from stakeholders.	Annually	JRP staff	2	3		4		

Activity 1.6: Strengthening Court Budgeting Supply and Support Services	The GCC has developed capacity for formulating budget requests for the judiciary based on real and justifiable needs.	Expert assessments and feedback from stakeholders.	Annually	JRP staff	2	2	4
Activity 1.8: Strengthening Strategic Planning at the court level.	1) All courts have developed strategic plans. 2) The GCC has developed capacity to assist courts with strategic planning and performance monitoring.	Expert assessments and feedback from stakeholders.	Annually	JRP staff	2	3	5
Activity 1.9 Upgrading Priority Elements of the Substantive Legal Environment:	3 points for developing and presenting well grounded recommendations. 4th point for draft legislation. 5th point for passage.	JRP Monitoring	Annually	JRP staff	3	4	4
Objective 1:	Courts protect defendants' Constitutional Rights:5 points for statistically significant improvement in 2007 national survey.	2007 Survey	Biannual		78.8% strongly agreed, or agreed in 2005		5
Objective 1:	Court rulings and decisions are understood by people 5 points for statistically significant improvement in 2007 national survey.	2007 Survey	Biannual		66.7% strongly agreed or agreed in 2005		5
OBJECTIVE 2: PROMOTING ACCOUNTABILITY AND ETHICAL BEHAVIOR OF JUSTICE SECTOR OFFICIALS THROUGH INCREASED PROFESSIONALISM							
Activity 2.1 Strengthening Qualification of Lawyers by Improving the Not Staff Committee:	1 point for improved quality of exam administration, e.g. fewer complaints of cheating. 4 points for passage of recommended legislation.	JRP Monitoring	Annually	JRP staff	4	5	5
Activity 2.4 Helping Prosecutors' Association Improve Professional Standards.	The Prosecutors' Association has formulated ethical standards for Mongolian prosecutors and a strategy for ensuring that they have the necessary skills to follow the standards.	Expert assessments and feedback from stakeholders.	Annually	JRP Staff	1	4	5
Objectives 2: Generally	Judges are generally honest and fair in deciding cases 5 points for statistically significant improvement in 2007 national survey.	2007 Survey	Biannual		73.7% strongly agreed or agreed in 2005		5
Objectives 2: Generally	Judges' decisions are based only on the facts presented and the law. 5 points for statistically significant improvement in 2007 national survey.	2007 Survey	Biannual		79.6% strongly agreed or agreed in 2005		5
Objective 2: Generally	Judges' decisions are influenced by other government officials 5 points for statistically significant improvement in 2007 national survey.	2007 Survey	Biannual		70.1% strongly agreed or agreed in 2005		5
Objective 2: Generally	How much does having to pay a bribe contribute to the cost of going to court? 5 points for a statistically significant improvement in 2007 national survey.	2007 Survey	Biannual		75.7% said a lot or some in 2005		5
OBJECTIVE 3: IMPROVING UNDERSTANDING BETWEEN JUSTICE SECTOR INSTITUTIONS AND THE PUBLIC							
Activity 3.1 Strengthening Public Communications Capacity of Justice Sector Agencies:	1 point for every 1% increase in number of articles, TV or radio segments with a positive or well informed story about the justice system.	JRP and Supreme Court Monitoring	Annually	JRP Staff	2	3	3
Activity 3.2 Public Education Programming:	Points for relative ratings of TV and radio educational programs. 5 points for highest ratings, 0 points for bottom.	TV rating system	Annually	JRP Staff	4	5	5
Objective 3: Generally	The media's portrayal of the courts is mostly accurate 5 points for statistically significant improvement in 2007 national survey.	2007 Survey	Biannual		69.2% strongly agreed or agreed in 2005		5
OBJECTIVE 4: IMPROVE POLICE PRACTICES TO CARRY OUT FUNCTIONS UNDER COURT AND PROSECUTOR CONTROL							

Objective 4: Improving police practices to carry out investigations and forensic functions conducted under judicial and prosecutorial control.	The Police have improved coordination with the Courts and with the Prosecutor's Office. 2) The Police have improved evidence management. 3) The capacity of the police academy has strengthened. 4) The Police have introduced transparent case management procedures.					2	4
		Interviews with Police and academic evaluation.	Annually		0		
Objective 4: Automation of selected Police Stations and case tracking software. 5 points for complete case tracking system for the selected stations. Less for partial success.	5 points for complete case tracking system for the selected stations. Less for partial success.					3	4
		JRP Monitoring	Annually	JRP Staff	0		
Objective 4: Provision of computers to assist development of Police Case Management System.	Points awarded on scale of 1-5 on basis of police officer rating of new system and Prosecutor evaluation.					3	4
		Interview with Prosecutors and Police affected by pilot court summations	Annually	JRP Staff	0		