Justice Sector Reform in Mongolia:
Looking Back, Looking Forward

Dr. Heike Gramckow and Frances Allen
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Foreword

This paper was originally written at the request of the Ministry of Justice of Mongolia and presented at a conference held in celebration of the ministry’s 100 years anniversary in June 2011 in Ulaanbaatar. In this revised version for publication, the paper offers a succinct profile of progress made in supporting justice sector development over a relatively short space of 20 years since the establishment of post-communist Mongolia. It makes observations about progress made in areas that commonly draw donor attention in other developing countries that have never before enjoyed the benefits of an independent judiciary or effective access to courts of justice. The paper offers a sampling of considerations that are normally the focus of attention of donors and country governments that seek to impact positively on developing justice systems within a democratic state. It also offers a sample progress report on a project of a type that the World Bank Group has typically supported in many countries over many years. The opinions expressed are those of the authors and do not reflect official World Bank policy.

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Justice Sector Reform in Mongolia:  
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Abstract
The justice sector in Mongolia has changed significantly in the 20 years since the country became a democracy. From the very beginning, the World Bank and other international partners have provided significant assistance to reform processes, particularly in areas concerned with the development of an independent judiciary. Especially in comparison to other countries in the region, Mongolia’s reform efforts have been generally successful. During the early and economically difficult times since democracy was established, reform activities naturally focused on legal reforms, including the creation of a legislative framework for democratic institutions, the transition to a market economy, and for needed changes in the relationship between the state and the people. This was followed at the end of the millennium by concerted efforts to reform justice institutions and to improve human capacities for supporting, implementing and sustaining reforms. Mongolia was the first developing nation to pursue comprehensive and inclusive strategic planning for its justice sector. Its strategic plan has provided a roadmap for reforms over many years and withstood leadership changes in both the government and in the key justice agencies. Much has been achieved, considering the challenges that have been overcome in terms of justice system infrastructure, human capacities and changes in attitudes, all with only very limited budget resources. At the same time, reform gaps exist and public trust in the justice sector is lacking. Critics continue to point to weak and uneven decision making capacities of prosecutors and judges, despite more than a decade of intensive donor support for their training. This paper reviews some of the underlying issues affecting justice reforms in Mongolia; and points to areas that require attention to overcome the current shortcomings and challenges.

1. Looking Back

Like the rest of government and society in Mongolia, the transition from communism to a democratic state and a free market economy, has required the justice system to adjust to rapid and fundamental political, economic, and societal changes. Limited resources, lack of infrastructure, and increasing caseloads of growing complexity have escalated the demands for more and higher quality services on an already strapped justice system.
The adoption of Mongolia’s new Constitution in 1992 marked the departure from 70 years of communism and laid the groundwork for a series of significant legislative and institutional reforms that have spanned the last two decades and are still continuing. Today there is a relatively good framework of legislation to support a democratic society and free market economy, an active media, and a small but energetic civil society that is increasingly engaged on the political front. While the legal reforms proceeded at a very rapid pace, this was not always well coordinated. Numerous statutes, for example, were promulgated without adequate regard to need for legal harmonization. Reforms have not systematically addressed the long-term implications of justice sector reform efforts, including the need for ongoing assessment and further development of a comprehensive modernization plan, adequate and sustained funding, enhanced institutional capacity. Human capital considerations based on justice needs were not systematically addressed within that process, resulting in a less than optimal approach to achieving enduring improvements.

The Mongolian Government adopted the Legal Reform Program in 1998 that was aimed at consolidating the push for a new political and economic system. This was followed in 2000 by the adoption by Mongolian legislature of the Strategic Plan for the Justice System of Mongolia. This five year Strategy, developed with support from USAID, clarified the direction of development for judicial bodies within the framework of overall legal reform. It set strategic goals for the judiciary, which in Mongolia includes the prosecution service. The Strategy also stressed the need for the judiciary to strengthen its political, economic, organizational and decision-making independence as the first fundamental value. This was a significant step and the first time a developing nation embarked on such comprehensive and inclusive strategic planning process. The Strategy outlined detailed action plans under each of six overall goals: Independence, Responsiveness, Accountability, Fairness, Effectiveness, and Accessibility. An accompanying action plan outlined objectives and activities to achieve them, set benchmarks and indicated responsibilities for implementation and estimated budget needs. This plan served as a roadmap for Mongolian-led reforms and as a blueprint for coordination of donor and IFI support for the judicial sector. Despite its title, however, the Strategy and especially the related action plans largely focused on establishing a functioning independent judicial sector, not on reforming the justice sector at large. While the initial strategic planning efforts included representatives from most justice sector agencies and civil society, the focus of the planning committees concentrated on creating an independent judicial sector, concentrating on areas that strongly affected its functioning, such a legal education and public understanding of the law and the role of judiciary. In hindsight this concentration, while highly important to a newly democratic Mongolia, was and continues to be a shortcoming, one that is not unique to Mongolia.

In the years after the Strategy was adopted, much was achieved. Among the improvements made, the governance structure of the courts was changed to provide for greater independence;

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1 Mongolia became officially a communist state in 1924, making it the second oldest communist country in the world.
2 The revised action plan can be found in Attachment L to the Mongolia Justice Reform 2003 Annual Report submitted by the National Center for State Courts to USAID.
new judicial committees for improved human resource management were created; a central training institute was established to provide comprehensive continuing education; progress was made in equipping the judiciary and developing a basic understanding of effective case management; and significant public education efforts were supported along with and many other important initiatives. A review of the Strategy in 2006 indicated that although a significant part of the many activities planned had been implemented, most had been supported financially and technically by international partners. Those parts that required government funding were mostly lagging behind. The review also suggested that the prospect of sustaining the reforms were questionable without the government providing the needed resources to maintain improvements. A further review of progress achieved was conducted in 2008 when the USAID project ended. Again, significant progress was reported, but so too were the continuing gaps in human capacities needed to sustain reforms. A certain lack of an institutional commitment to embark on more difficult issues was noted, especially a lack of commitment to human resource management for quality and integrity and the necessary financial resources for those purposes.

Despite the passage of significant legal reforms and considerable changes in justice sector operations, especially in the courts and the prosecution service, public trust in the rule of law is still not well established; and critics often question the capacities and fairness of the justice system. Almost twenty years after the end of communism, allegations of corruption and suspected remnants of the old “telephone justice” methods continue to undermine public trust in the judiciary.

1.1. World Bank Legal and Justice Sector Reform Assistance 1991-2011 and Beyond

The World Bank has been actively supporting Mongolia’s legal and justice sector reform efforts for the past two decades, often in close coordination with other international partners, such as the United States Agency for International Development (USAID), Asian Development Bank (ADB), Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ, formerly known as GTZ), the Hans-Seidel Foundation, the Japan International Cooperation Agency (JICA) and other bilateral donors.

Mongolia became a member of the World Bank in 1991. That year, as part of a larger technical assistance loan, the World Bank provided $318,000 to support the Ministry of Justice (MOJ). This money was allocated to support legal reform via in-country and overseas training and workshops, consultancy services, assistance in law drafting, translations of laws, and miscellaneous purchases.

The first project supported by the World Bank that focused on justice system reform and direct assistance to justice system institutions was the US$5 million Justice Sector Reform Project (the “JSRP”). It was approved in 2001 and aimed at assisting the judiciary in enhancing public trust and confidence in the legal system as a whole, and the judiciary in particular. The project supported the establishment and operation of a specialized administrative court system together with Bank funded activities to improve legal education and the legal profession. It also supported, among other things, the construction of the National Legal Center of Mongolia. The review at the conclusion of this project was especially critical of the lack of attention to adequately defining indicators for monitoring progress of the project, a recurring challenge for justice reform and other public sector reform projects around the globe.

In 2008, the World Bank supported the continuing demand for further reforms in the governance agenda with approval of another US$5 million for the Enhanced Justice Sector Services Project. This project started in 2009 and is scheduled to continue until mid-2013. For the first time, one component of this project provided for international support to the executive branch-led Court Enforcement Agency, the agency in charge of enforcing court decisions. With all the investment that the international community has made in the judicial sector over the last decade, it is astonishing that this agency had not received any attention before, considering that it directly determines whether court decisions are actually enforced and thereby affects both the efficiency and public perception of the courts. The project is further supporting the MOJ’s efforts to implement a value oriented national public education campaign aimed at increasing public understanding of the law and justice sector institutions, and increasing transparency and access to justice by providing greater access legal information and legal aid. A smaller component is aimed at enhancing law school education, an essential requirement for assuring that future players in the justice sector have the needed basic requirements. Another component focuses on enhancing judicial operations which includes rehabilitation of court infrastructure, including construction of 5 new local courts and 3 new court enforcement buildings, along with the commissioning of a fiber optic network that is intended to connect all courts, prosecutors’ offices and court enforcement buildings. The MOJ has so far shown firm leadership and additional government funds have been provided to start several project activities related to public education, modernizing law school education, and access to justice for minorities as well as several infrastructure improvements activities. But again, the collection of progress indicators remains a challenge.

1.2. Coordination with other Major Donor Programs

The World Bank’s activities were closely coordinated with other donors, especially the major donors, USAID and GIZ. From 1991 to 1993, USAID executed a US$2 million project to provide Mongolia with advice and technical and academic training in various fields, which included law and justice. USAID began a five-year program in 1994 to support economic and

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7 IDA Credit No. 35950-MN, approved by the World Bank’s Board of Executive Directors on December 21, 2001.
8 IDA Credit No. 4493-MN and Grant No. H413-MN were approved by the World Bank’s Board of Executive Directors on June 6, 2008.
policy-making development, which also included funding for legal and judicial reform activities. About a further US$200,000 was provided in 1999 to support the development of the already mentioned justice reform Strategy. After its ratification by the Mongolian legislature (the Ikh Hural) in 2000, USAID provided a further US$14 million over 8 years to support its implementation by funding the Mongolia Judicial Reform Program, implemented by the National Center for State Courts. The project was designed to assist the Mongolian Government in implementing select key elements of the Strategy, namely in the areas of court administration and case management, and in conducting reviews of court and justice sector agency jurisdictions, continuing legal education, lawyer qualification, public education and improved ethics. As mentioned above, two assessments of this project established that much progress had been made in improving key governance and organizational structures to support judicial independence, enhanced continuous legal education and qualification requirements, greater court management capacities, and in educating the public about the law and the justice sector. But several reform gaps continued. Although, the project was successful in implementing planned activities, sustainability remained an issue throughout, along with uncertain government and judicial leadership commitment to supporting fundamental changes in attitudes towards the importance of improving human resources competencies and integrity, and the avoidance of undue influences on decisions makers. The project also tracked public perceptions of justice sector operations and found that significant positive changes in public opinion about the judicial system occurred between 2001 and 2003. This trend slowed between 2003 and 2005. Starting from 2005, public attitudes changed in several areas to the negative.9

The GIZ has supported legal and justice reform since 1995. Its two phase project provided DM 9,000,000 (approximately US$4 million) over an eight year period10 and focused on technical assistance for legal reform and training for judges that was largely related to commercial law. This was followed by two additional projects to support further legal reforms, education of judges and institutional strengthening at a total budgeted cost of approximately US$6 million to date. The GIZ made significant investments into increasing judicial capacities, but the results are mixed, leading the GIZ in 2008 to building on prior work supported by USAID and refocusing its assistance on strengthening internal monitoring and control mechanisms. That Mongolian judges on average still exhibit limited skills and expertise for handling commercial cases was recently outlined in a review of judicial capacities in Mongolia and other Eastern European countries conducted by the EBRD. This study further indicated that good quality decisions are not just a matter of good laws and judicial training, but are more likely to be found where case outcomes are more predictable and where there is easy access to court decisions. Predictable outcomes requires clearly written laws and consistent and clear guidance from higher court decisions and genuine ease of access to court decisions requires publication of court decisions on the web or at least in an affordable and regularly published journal.11

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Several other international partners similarly supported legal reforms and provided significant assistance to strengthening law and justice institutions, especially the judiciary. The Strategy included a range of initiatives that had its roots in earlier, less comprehensive donor supported activities. The ADB, for example, had supported a smaller Legal Training Center, while the GIZ and the Hanns-Seidel-Foundation supported training for the judiciary, along with a range of other donors. This experience had led to the recognition of the value and need for a central location for providing training and for creating a more comprehensive, long-term approach to judicial education. Among all justice sector agencies in Mongolia, none has received more international attention and assistance than the judiciary.

1.3. Government Investments in the Judiciary

Government budget allocations to the judiciary in Mongolia increased substantially over the past two decades, but not as much as it may seem from Table 1 below.

<table>
<thead>
<tr>
<th>Year</th>
<th>Budget (MNT)</th>
<th>Equivalent (US$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1993</td>
<td>114 million</td>
<td>248,000</td>
</tr>
<tr>
<td>1994</td>
<td>236 million</td>
<td>513,000</td>
</tr>
<tr>
<td>1995</td>
<td>456 million</td>
<td>991,300</td>
</tr>
<tr>
<td>2002</td>
<td>1,994.8 million</td>
<td>1,637,766</td>
</tr>
<tr>
<td>2010</td>
<td>11,142.1 million</td>
<td>9,147,865</td>
</tr>
</tbody>
</table>

The funding of courts in Mongolia amounted to just 0.4% of the total government budget in 2007.13 This percentage remained unchanged in 2010, despite steadily increasing court caseloads.14 The courts’ budget itself, if converted into Euro values in 2010, would equal EUR 6,389,512 amounting to an average of just EUR 2.3 per capita in Mongolia. This is significantly less than the average EUR 37 per capita allocated in 2008 to the courts in EU countries.15 This suggests that the level of government investment in Mongolian courts remains at a very low base compared with more developed regions against which the critics tend to compare the country in terms of justice sector performance. The significant donor support for the judiciary may have been a reason for the Mongolian government to limit its own funding during the earlier cash strapped years. As the government budget increased in recent years, so did persistent criticism that the government lacks commitment to serious and sustainable reforms in this sector.

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14 Assuming MNT 3.69 trillion budget for 2010, the percentage is even below 0.4%
15 See European Committee for the Efficiency of Justice (CEPEJ). 2010. European Judicial Systems. Efficiency and Quality of Justice, p.21
1.4. Increasing and Changing Caseloads in the Courts

The overall caseload of the Mongolian courts has more than doubled and the composition of the caseload has changed substantially over the last past two decades. Under the former socialist system, most judicial caseloads were dominated by criminal cases. In 2010, two-thirds of the cases are civil, primarily involving contractual disputes (see Table 2), although criminal matters still comprise a large number of appeals. This change in the predominant case type initially had a significant impact on skills required by judges. Continuous training programs supported by international donors have since sought to address this issue, but it remains uncertain if the training provided was sufficient or if there are adequate local capacities for providing the needed ongoing training. This training is needed, not just in the essential legal and judicial skills, but also with respect to practical understanding of the impact of judicial decisions on business operations and commercial transactions. Refocusing university education priorities has been an even greater challenge, which may further explain the continuous claims that lawyers and judges are not well prepared to handle the more complex civil cases.

Table 2. Cases Registered in Mongolian Courts 1992-2010

<table>
<thead>
<tr>
<th>Year</th>
<th>Civil cases</th>
<th>Criminal Cases</th>
<th>Administrative cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>16,708</td>
<td>7,442</td>
<td>0</td>
</tr>
<tr>
<td>2002</td>
<td>26,866</td>
<td>11,947</td>
<td>614</td>
</tr>
<tr>
<td>2005*</td>
<td>38,914</td>
<td>8,027</td>
<td>1,876</td>
</tr>
</tbody>
</table>

* Data included cases resolved by first instance courts plus cases resolved by appeals and by the Supreme Court. Data for criminal and civil cases is from 2002; administrative case data is from 2005. Administrative cases where not distinguished before the creation of administrative courts in 2004.

Some positive developments in judicial effectiveness improvement can be observed in the administrative courts where the total number of administrative cases resolved tripled since the introduction of these specialty courts in late 2004. An opinion survey conducted in 2007 reported that 83.3 percent of case applicants and 54.8 percent of public representatives believed that the administrative courts could protect their legal rights, a testament to the positive impact of administrative courts on court users.

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Caseload increases occurred mainly but not only in the capital, Ulaanbaatar. Some of the courts in the “states” (known as aimags), such as Uvurkhangai, Khovd, Gobisumber, and Dornogobi, experienced significant case increases, while others saw only a very slight changes. As shown in Table 3 below, data provided by the GCC also indicated that the change trends over time differ among aimags, with some experiencing steady increases while others experienced little change or declining numbers since 2002. The overall caseload in most aimags is still quite low. Caseload changes generally but not always mirror population changes, and there is currently no data available to fully understand changes in cases filed in various aimags.

<table>
<thead>
<tr>
<th>Location (aimags)</th>
<th>1992</th>
<th>2002</th>
<th>2010</th>
<th>Increase since 1992</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arkhangai</td>
<td>496</td>
<td>386</td>
<td>843</td>
<td>70%</td>
</tr>
<tr>
<td>Bayan-Ulgii</td>
<td>806</td>
<td>959</td>
<td>935</td>
<td>16%</td>
</tr>
<tr>
<td>Bayankhongor</td>
<td>491</td>
<td>695</td>
<td>853</td>
<td>74%</td>
</tr>
<tr>
<td>Bulgan</td>
<td>445</td>
<td>473</td>
<td>731</td>
<td>64%</td>
</tr>
<tr>
<td>Gobi-Altai</td>
<td>277</td>
<td>397</td>
<td>678</td>
<td>145%</td>
</tr>
<tr>
<td>Gobisumber</td>
<td>87</td>
<td>319</td>
<td>292</td>
<td>236%</td>
</tr>
<tr>
<td>Darkhan-Uul</td>
<td>682</td>
<td>879</td>
<td>2062</td>
<td>202%</td>
</tr>
<tr>
<td>Dornogobi</td>
<td>262</td>
<td>742</td>
<td>887</td>
<td>239%</td>
</tr>
<tr>
<td>Dornod</td>
<td>544</td>
<td>1039</td>
<td>1056</td>
<td>94%</td>
</tr>
<tr>
<td>Dundgobi</td>
<td>436</td>
<td>523</td>
<td>566</td>
<td>30%</td>
</tr>
<tr>
<td>Zavkhan</td>
<td>457</td>
<td>940</td>
<td>924</td>
<td>102%</td>
</tr>
<tr>
<td>Orkhon</td>
<td>873</td>
<td>1005</td>
<td>1419</td>
<td>63%</td>
</tr>
<tr>
<td>Uvurkhangai</td>
<td>395</td>
<td>881</td>
<td>1768</td>
<td>348%</td>
</tr>
<tr>
<td>Umnugobi</td>
<td>261</td>
<td>687</td>
<td>553</td>
<td>112%</td>
</tr>
<tr>
<td>Sukhbaatar</td>
<td>329</td>
<td>460</td>
<td>689</td>
<td>109%</td>
</tr>
<tr>
<td>Selenge</td>
<td>564</td>
<td>1129</td>
<td>1520</td>
<td>170%</td>
</tr>
<tr>
<td>Tuv</td>
<td>553</td>
<td>533</td>
<td>1404</td>
<td>154%</td>
</tr>
<tr>
<td>Uvs</td>
<td>306</td>
<td>420</td>
<td>686</td>
<td>124%</td>
</tr>
<tr>
<td>Khovd</td>
<td>404</td>
<td>855</td>
<td>1599</td>
<td>296%</td>
</tr>
<tr>
<td>Khuvsgul</td>
<td>1033</td>
<td>1529</td>
<td>1925</td>
<td>86%</td>
</tr>
<tr>
<td>Khentii</td>
<td>463</td>
<td>974</td>
<td>974</td>
<td>110%</td>
</tr>
<tr>
<td>Ulaanbaatar</td>
<td>4399</td>
<td>8275</td>
<td>13423</td>
<td>205%</td>
</tr>
</tbody>
</table>
1.5. Human Capital Development in the Courts

The number of judges in Mongolia has increased over time, but not at the same rate as the caseload. Mongolia had 260 positions for judges and 694 support staff in 1992. This changed to 341 judges and 641 support staff in 2002, and 424 judges and 875 support staff in 2010 (see Table 4 below). This means that the number of judges roughly doubled, court staff was increased by only about one fifth while the number of cases tripled. Using an indicator commonly applied in Europe, this equates to roughly 15 judges per 100,000 inhabitants in Mongolia. For judges this is close to the average of European countries with similar judicial systems, such as Austria (19), the Netherlands (13), Ukraine (15), and Italy (10). The number of court staff per judge, however, is below the European average where, in a majority of states (24 out of 44), 3 to 5 non-judge staff are deployed per each professional judge. This suggests a less than effective distribution of court staff resources in Mongolia.

Table 4. Number of Judges and Court Staff in Mongolia - 1992-2010

The allocation of staff and other resources so far has not fully reflected the variation in caseload changes across different courts. This is an important distinction. As shown in a 2003 comprehensive study of staffing needs in the judicial sector supported by USAID, caseload volumes alone are not a good indicator of staff and other resource needs. Because the time and effort involved in processing a case depends on its complexity, a court with a high number of simple cases may still have an overall lower workload than a court that handles less but more complex cases. Examination of the mix of current workloads and staff allocation, with attention

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17 Data provided by the GCC.
19 See CEPEJ 2010 Report, p.130.
to the types of cases that make up workloads, offers a better prospect of reliably gauging the adequacy of staffing needs in each court location. The study conducted in 2003 provided a basis for such calculations and its findings were much debated. The results, however, were only partially reflected in some reallocation of judges and staff deployed in courts in the capital. This is an analytical approach that can still be used to benefit the courts by providing a more rational basis for effective staffing allocations.

In addition to having the right number and mix of staff, courts also need to have access to well qualified candidates for each position, as well as a good system of continuing education to ensure that those already serving the courts can keep up with legislative and societal changes.

The creation of a well qualified judicial body was, and as mentioned earlier, still remains a special challenge in Mongolia despite good progress. In 1992, approximately one-fifth of judges did not have a law degree, but were permitted to stay in office as there were no replacements available.21 All judges have received significant training since then,22 and continuous education remains widely available to them. The question remains as to how effective it is. Good continuing education is especially important in a country like Mongolia, where the standard of law school education is still uneven and weak, especially in many new legal areas and where laws continue to evolve relatively quickly. In the 1990s judicial training was almost exclusively supported by international donors, when it was often conducted in an ad hoc manner without much focus on actual training needs and priorities. With support of the World Bank and other donors, the National Legal Center (NLC) was created to become the focal point for continuing legal education. While there are now some standard courses for entry level judges and others, and while in country training capacities to develop and deliver quality training have been created at the NLC and elsewhere, there is still no established concept of systematic continuing education that would follow a career path for judges. Training for court staff also remains minimal. The use of cost effective distance learning tools remains underdeveloped and is underused where it is available. Government funding for training is insufficient and not well targeted. Fifteen years of significant international support for judicial training have made a difference, but developing the needed judicial capacities is still a challenge and remains dependent on international support.

The current judicial qualification standards, along with the requirement to have some practical experience to enter the judiciary, are designed to ensure that new judges fulfill a minimum requirement standard and have some qualifications beyond law school. The ability of the courts to attract good candidates is initially dependent on there being significant numbers of available and well qualified young lawyers. As mentioned before, law school education in Mongolia itself is still uneven and important education standards are still evolving. As a result, sufficient numbers of well qualified young lawyers are not always available to fill positions in the courts. When the GCC introduced the requirement that new judges would have to pass the new lawyers’ qualification exam with a particular grade in 2005, the number of qualifying candidates was too low to fill most vacancies, forcing the GCC to lower its requirements. While this situation has

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21 See Asia Foundation 2005.
22 A study undertaken in 2003 indicated that judges on average spent 40% of their time in training. See NCSC, 2003.
improved somewhat, law school education still needs to be further standardized and improved to provide a sufficient pool of qualified new lawyers. International support to enhance law school education has been provided, although at a more modest level. The World Bank’s current Enhanced Justice Sector Services Project includes assistance to improve law school syllabi and assist legal education institutions to meet both national and international standards. This includes development of standard course material and the training of trainers (in substantive knowledge and new interactive teaching methods) who to then trained 70 professors from 14 law schools. It also includes the creation of standards for legal clinics to be adopted as an annex to the national standards on bachelor legal education.

Nevertheless, there are still significant concerns about the quality of judicial decisions. Reports cite significant discrepancies and variation in judicial decisions from one court to the next, among judges and even when decisions of individual judges are reviewed over time. While some variation can be expected, such discrepancies can be an indication of a range of shortcomings. This can be due to a lack of understanding and gaps in legal reasoning skills, or even the result of flagging professionalism and integrity, or undue outside influence. But it can also be due to unclear or contradictory legislation; inconsistent guidance from higher courts; insufficient legal research support; and a lack of access to relevant secondary legal publications such as commentaries and quality, peer-reviewed academic journals that systematically review Mongolia law, or describe recent legal trends, or analyze higher court decisions. Mongolia has come a long way since the beginning of this century when judges did not even have access to the most recent laws. But they still lack ready access to relevant secondary legal resources, such as the ones mentioned remains a problem that impacts judicial decision making. These shortcomings are typical symptoms of a still relatively young and evolving legal system. Still, uneven judicial decision making is not just a problem in an individual case; it undermines public trust in the judiciary and is often interpreted by the public to be a result of corruption.

For several years now the World Bank, along with USAID and the GIZ, has supported the creation of a Uniform Information System (UIS) that, among other benefits, would link judges at least to all existing legal and case information. The current efforts to link all courts, prosecutors’ offices and court enforcement agencies via fiber optic cable will be an important step to making the vision of the UIS reality – but only if the range and quality of information made available is dramatically improved, and if it addresses systematically the needs of the judiciary, other justice sector actors and users. To date no real mechanism exists for reviewing the information needs of the courts, of individual judges or other institutions connected to the UIS. Nor are there yet settled plans for strategically developing the needed information, for ensuring that up-to-date and

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23 A few years ago, the GTZ, now GIZ, invested significant efforts to provide a basis for the evolution of a body of commentaries by contracting German and some Mongolian lawyers to develop the first set of commentaries ever. To date these publications have not evolved into the kind of standard essential source of Mongolian law development that is needed to support the development of the law and provide a better basis for judicial decision making.

24 While Mongolia’s legal profession quite actively published in a broad range of legal journals, few if any can truly be regarded as high quality peer review-based publications.

25 Access to some but not all higher court decisions is available.
accurate information is available to judges and court staff, or for ensuring that the relevant professions are trained in the use of this information, especially legal research skills.

Attracting and keeping well qualified lawyers and good support staff remains a challenge for the judiciary for a range of reasons, including relatively low pay, low prestige, less than optimal working conditions, and access challenges. And change in these conditions has been slow. Judicial salaries in 1994 were comparable to those of civil servants, but low compared with lawyers in private practice, ranging from MNT 15,200 (US$33) to MNT 23,500 (US$51) per month.\textsuperscript{26} Judges and court staff were not always paid regularly, sometimes not receiving a salary for several months. This was still largely the situation in 2002, but changed significantly by 2010. Judges and staff are now regularly paid and judicial salaries were increased in recent years, as indicated in Table 5 below.

### Table 5. Monthly Judges Salaries 2002-2010 (in Mongolian Tugrugs)

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Supreme Court Judges</td>
<td>200,000.00</td>
<td>800,000.00</td>
</tr>
<tr>
<td>Judge of Soum and Intersoum Court</td>
<td>400,000.00</td>
<td>600,000.00</td>
</tr>
<tr>
<td>CJ of Soum and Intersoum Court</td>
<td>600,000.00</td>
<td>800,000.00</td>
</tr>
<tr>
<td>Judge of District Court</td>
<td>400,000.00</td>
<td>600,000.00</td>
</tr>
<tr>
<td>CJ of District Court</td>
<td>600,000.00</td>
<td>800,000.00</td>
</tr>
<tr>
<td>Judge of Aimag Court</td>
<td>600,000.00</td>
<td>800,000.00</td>
</tr>
<tr>
<td>CJ of Aimag Court</td>
<td>600,000.00</td>
<td>800,000.00</td>
</tr>
<tr>
<td>Judge of CCC</td>
<td>600,000.00</td>
<td>800,000.00</td>
</tr>
<tr>
<td>CJ of Capital City Court</td>
<td>600,000.00</td>
<td>800,000.00</td>
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</tbody>
</table>

Source: GCC, 2011

A study recently conducted by Mongolia’s Civil Service Council further indicates that at senior levels, the total cash compensation in the civil service, including the judiciary, is approximately 60 to 70 percent, relative to similar private sector jobs. So while there is a significant pay gap, these positions are not unattractive when benefits and job security are factored in. Low level civil service jobs even had similar or higher levels of total cash compensation compared to private jobs.\textsuperscript{27} This may make attracting good candidates to judicial positions easier, at least in Ulaanbaatar. Other reports, however, indicate that the total median compensation for qualified working level professionals in Mongolia in 2009 already ranged from about $14,000 to $22,000,

\textsuperscript{26} See Asia Foundation 1995.
\textsuperscript{27} World Bank, Mongolia Monthly Economic Update, March 2010, based on Civil Service Council Survey.
and up to $36,000 for managers and other senior level professionals, such as private lawyers.\textsuperscript{28} Information provided by the General Council of Court show a starting monthly salary of roughly 607,000 Mongolia Tugrugs, about US$500,\textsuperscript{29} for judges at the lowest court in Ulaanbaatar, meaning judicial salaries are still lagging far behind comparable private sector positions. Judicial salaries are also considered insufficient by Mongolia’s Banks which regularly deny credit to judges unless they can provide other collateral. The result is that good and experienced lawyers tend to work in the private sector. Furthermore, the salaries of judges assistants and other support staff is significantly lower, making these positions attractive mainly to those who are seeking to become a judge, since this is one of the limited access options. The fact that judges still are largely chosen from a limited pool of candidates that have worked as judges’ assistants, or who have family ties to the courts, remains one of the unwritten impediments to developing a quality judiciary.

In combination with mediocre working conditions, the relatively lower salaries continue to be an impediment to attracting highly qualified candidates to the judiciary and keeping them. This is especially the case for positions in the aimags where the living conditions are often difficult. Many aimag centers have little to offer and many judges do not have an apartment, largely due to lack of availability. Consequently, some judges live temporarily in their office or with extended family members, which is not desirable and does not enhance the status of the judiciary. The General Council of Courts has advocated for years for the allocation of apartments to newly appointed judges.

\section*{1.6. Court Infrastructure Improvements}

Court facilities used to be in a depilated state all across the country. In 1994, only the premises of the Capital City Court had been allocated for the exclusive use of the judiciary, but were also in a poor state of repair and minimally furnished.\textsuperscript{30} Other court buildings were leased from the aimag administrations or the General Prosecutor’s Office and their resources for maintenance was insufficient. The Supreme Court had only one courtroom at its disposal. Most other courts did not even have a court room and judges conducted hearings in their offices. Most courts in the countryside had no plumbing and the monthly allocation of funds for heating, electricity, and phones was insufficient and often not provided at all for months in a row. On the whole, court rooms were poorly furnished. This situation has dramatically changed. Today the judiciary has acquired ownership of most court houses or shares a facility with the prosecution. All buildings have been refurbished to some extent and several new buildings have been and continue to be built. The World Bank’s Justice Sector Reform Project alone refurbished three courts in Ulaanbaatar (Supreme Court and Capital City Court) and one in Darkhan. Thirteen buildings for

\begin{footnotes}
    \item[29] According to international conversion rates in September 2011.
    \item[30] See The Asia Foundation. 1995. I visited the CCC in 1999. The court was located in a building that was in dire need of renovations and adjacent to a hospital. The CCC had one court room with minimal furniture. Other court buildings visited in the aimags were in even worth state.
\end{footnotes}
the administrative courts were renovated. The administrative courts were also provided with office furniture, computers, printers, scanners, photocopiers, large screen TV and VCD/DVD players to provide technical support to the decision making process at selected administrative courts. Air conditioning and heating equipment was provided to the Ulaanbaatar administrative court. The USAID project meanwhile had provided computer equipment to all courts and also supported some refurbishment. The World Bank’s EJSSP further provides funds for five new court buildings in aimag centers and refurbishment of two.

Today most courtrooms are not only well furnished, they have also been redesigned to reflect the changed roles of judges and prosecutors and to provide room for the public to attend hearings. Public information terminals have been created in all courts and staff has access to a simple canteen in most locations. There are still issues with having sufficient office space for all judges and court staff (in many locations even judges share offices), sufficient number of court rooms, adequate furnishing for all offices and especially accessible but secure facilities to keep active files and evidence. The current court buildings are a major improvement over what has been, but outside of Ulaanbaatar they are all located in aimag centers, limiting access to the courts in rural areas.

Similarly, information technology infrastructure has evolved from practically zero to every court having at least some computers and relevant software. And when all courts are connected via fiber optic cable, as they are planned to be by the end 2012, a new era of IT use for information sharing, managing court operations, access to the courts and improved processes can begin. In the future, as connectivity is pushed further out into soums, cases may be filed on-line and some hearings may be held via video, greatly increasing access for the rural communities. This, of course, will require further investment in building a more comprehensive IT infrastructure, developing the human capacities for making the most of these new options, and creating a policy framework to supports the full use of electronic information exchange and access. It will also require an adequate budget to maintain IT investments made. This continues to be a major issue for the courts and the international partners who have invested in court IT infrastructure. At least since 2005, the GCC’s budget request for IT maintenance and replacement cost was disallowed every year, requiring the courts to look for external funding to replace and upgrade equipment and software.

1.7. Public Perception of the Courts

The previous sections outline the many positive changes and significant investments made to support the development of an independent, accountable and professional judiciary in Mongolia. Many more changes have been introduced in the form of procedural changes and new approaches to managing court operations. However, as mentioned earlier, the quality of judicial decisions continues to be a focal point of concern and public perception of the courts is declining.
Public surveys inquiring about the perception of court operations have been conducted in Mongolia since 2001. The summary of surveys conducted until 2008 indicated that:

- starting in 2005, public opinion towards the judiciary significantly changed to the negative;
- along with a drop in confidence in the legislature and advocates, a dramatic drop of confidence in the Supreme Court and Constitutional Court could be observed;
- 2007 had become a year of a major shift in personal experience in courts, producing a triple increase of “very negative” attitudes towards the courts, compared to just 2005;
- in all years there has been high public awareness of interference in court decisions by the executive;
- there is an increasing concern about bias in the courts, with “people with high influential positions”, “wealthy people”, and “relatives and friends” being seen as treated more favorably by the courts; and
- “Corruption”, “bureaucracy” and “unfair treatment” are the most cited reasons why first instance courts are perceived as not performing well.

Already in 2005, a further report commissioned by USAID explored the extent of corruption in Mongolia. While understanding corruption in any country is a difficult undertaking, the report found enough evidence to assert that there is no question that corruption is taking hold in Mongolia, stating that “Corruption is increasingly prevalent in Mongolia and the stakes are getting larger as economic growth makes more resources available”. Anybody who worked in Mongolia in the 1990s and today will likely support this statement even if solid evidence is scarce, largely based on perception, and while most information available remains insufficiently detailed to provide a good basis to develop effective counter measures. This is not just true for the justice sector, but across all sectors. At the same time, corruption among the judiciary seems to have gained more attention than in other sectors in Mongolia. One internationally published article even claims that Mongolia’s judiciary is “corrupt to the core” without providing further evidence and even despite some evidence to the contrary. While corruption in the justice sector and especially among the judiciary is a serious issue, even if it is less widespread, it also appears that focusing accusations of corruption on the judicial branch provides for an easy out for other branches of the state.

As in other countries, when Mongolians perceive there to be a high level of corruption in the courts, this may also be a result of unclear regulations and the lack of capacities leading to uneven decision making. Independent of the underlying reasons, public confidence in the

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34 See Sant Maral 2008
judiciary remains low in Mongolia. Respondents to a 2009 survey conducted by The Asia Foundation indicated the judiciary as the second most corrupt institution in the country. The report also indicated that public confidence in the independent anti-corruption agency is decreasing and frequent bribe-seeking by judges or clerks was reported. The latest Transparency International (TI) Report for 2010 shows public perception of corruption by government officials, members of parliament and the judiciary continues to be widespread. Mongolia ranked 116th in the recent TI report, which is a slight improvement over 2009 when it ranked 120th. It also showed that corruption concerns overall are decreasing slightly with fewer households reporting having paid a bribe – however, when bribes were paid, the amounts increased in comparison to the previous year.

A survey of judges and court staff conducted by TI in 2008 explored where in the process corruption occurs most frequently. The results may be debatable but provide a good basis for further exploration and discussion to address potential weaknesses in the system and to target interventions and public information campaigns.

2. Looking Forward

Despite many remaining challenges, many positive changes can be observed today. Supported by extensive international assistance, all courts and most prosecutors’ offices are automated, basic case management software assists in tracking cases, managing caseloads and providing some management information. All courts have public access terminals where everybody can check on the status and outcome of a case, courtrooms have been redesigned and policies changed to provide for more equality among the parties and for public access, particularly media access to the courts. All judges and prosecutors have access to the latest laws, many electronically. Some new qualification standards and testing processes for judges and prosecutors have been implemented and select continuing legal education is available.

At the same time, the analysis offered in this paper suggests several areas that are in need of further attention:

- Continued efforts at harmonizing the laws.
- Further development of and electronic access to secondary legal material, such as commentaries, higher court decisions, and high quality, peer reviewed legal articles.
- Review of staffing needs based on solid workload projections to inform staff allocations to different courts and chambers, and a related review of salary and incentive requirements to attract and retain quality staff along with greater attention to limiting barriers to enter the judicial profession that are not related to qualification and behavior.

- Review of current expenditure and budget development patterns to better reflect actual needs, support a more adequate judicial budget, and sustain investments;
- Strengthening of judicial and court staff capacity development through more comprehensive continuous education that is career-based and funded mainly out of the national budget.
- Greater focus on developing management capacities in the courts and other justice sector agencies.
- Greater focus on developing data to inform management decisions and to develop adequate management structures and capacities on all court levels, as well as at the GCC;
- Further facility improvements to accommodate better work flow, including new technologies, not only related to information and access, but also related to energy efficiency.
- Further infrastructure planning linked to the need to provide adequate housing for staff and for creating other development opportunities in aimag centers.
- Development of a comprehensive IT strategy that considers not only current IT capacities and needs, but explores potential new uses and new technologies to increase efficiencies, enhance information exchanges across all courts and with relevant agencies and supports access to the courts. A special focus should be on developing options for conducting hearings via video connection and for distance learning options. Both have the potential, not only for significant cost savings, but for better linking aimag-based operations to the latest developments in the capital, for reducing travel time for judges, courts users and other agencies, and for reducing delays.
- Closer attention needs to be paid to public perception of the courts, including corruption. Several studies have provided good information to review policies and procedures to limit opportunities for corruption and honest efforts by the court to curb corruption should be made public.
- The courts need to develop not only a communication strategy and related capacities, but provide incentives for courts across the country to engage in active public outreach to create a better understanding of the roles and responsibilities of the court and what their limits and challenges may be.

These are just some of suggestions for continuous improvements. One highly important issue that has not been addressed is the fact that changes in courts alone will not result in significant changes overall. Courts are just one link in the chain of justice sector agencies that all need to perform well for the system to function adequately. The World Bank’s current support to the Court Enforcement Agency is a first step to ensuring that one important link in this chain has better capacities to function better. But much more has to be done across all agencies.

Another equally, if not even more important issue is, how much changes in the judicial sector have been donor driven so far and to what extent the Mongolian government, the courts and other justice sector institutions are ready and willing to, not just take ownership, but to actually determine the direction of future changes and ensure their sustainability. A clear commitment to making the needed changes has to be expressed in the form of adequate government funding, changes in human resource management and consequent actions when corruption and other undue interference with judicial decisions are suspects. A well functioning and trustworthy
judiciary and broader justice sector is not only important to individuals, but to the development of the nation. Particularly as revenues increase due to a growing mining sector, good governance, functioning accountability mechanisms and accessible grievance systems are essential to more equity in economic development, protection of individual rights and common goods, and to national stability. The courts and justice sector institutions are important cornerstones for ensuring that the needed accountability mechanisms are in place.

The World Bank and other international partners remain committed to supporting Mongolia in its efforts to achieve its long term objectives of building an engaged civil society, the creation of a sound legal framework and a favorable environment for economic development. With the focus of the president of Mongolia on justice reform as outlined during the Justice Reform Forum convened in March 2011, and continuous support of other international partners and the World Bank, there is good cause to be confident that the foundation for justice reform is on solid ground and can yield sustainable achievements in the future if a concerted effort is made to agree on a strategic reform plan based on good assessments, international good practice lessons and backed by sufficient funding commitments from the government.
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