



# **The Judicial Reform Program in Mongolia: Accomplishments, Lessons Learned, and Recommendations for the Future**

## **Final Project Report**

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# **The Judicial Reform Program in Mongolia: Accomplishments, Lessons Learned, and Recommendations for the Future**

## **Purpose and Context of this Report**

National Center for State Courts (NCSC) and the United States Agency for International Development (USAID) have provided continuous support to the justice sector of Mongolia for over a decade, first by assisting in the development of a long range strategic plan, and second, as implementing partners with the Government of Mongolia working to achieve selected objectives of that plan.

Following eight years of uninterrupted assistance from USAID through NCSC's Judicial Reform Program (JRP), much has been achieved. This report summarizes those accomplishments.

Part I summarizes in broad strokes the scope of JRP's work with Mongolia's justice sector institutions. Part II summarizes "Lessons Learned" from the perspective of donors, implementers, and recipients of USAID assistance. The final chapter, Part III, contains recommendations for the justice sector of Mongolia and for future donors. It is based on the experience of the Judicial Reform Program over the past eight years and draws on the recommendations coming out of JRP's March 2009 closing conference "Next Steps in Justice Reform," which brought together all of the key justice sector leaders and administrators. As its final contribution to its Mongolian partners, this Report seeks to synthesize the consensus outcomes of the conference which in turn were intended to serve as a road map for future reforms and improvements in the administration of justice.

## **Introduction**

The United States Agency for International Development (USAID) has been providing assistance to Mongolia since 1991, shortly after the withdrawal of all Soviet support. After several years of work to stabilize the energy sector and shore up the economy, Mongolia, with international help, began to focus on developing its fledgling democratic institutions and to take steps to strengthen the rule of law.

At the beginning of the decade of the 1990s, Mongolia's justice sector, supported by USAID and National Center for State Courts (NCSC), took a decisive step to modernize the justice system and strengthen the rule of law. Justice sector stakeholders, working with international organizations such as USAID and National Center for State Courts, developed a long-range Strategic Plan to reform the justice sector. In retrospect, the importance of this Strategic Plan cannot be overstated. The Plan set forth clear, well-reasoned values, goals, specific strategies to reach those goals, and measurable objectives along the way. It became the road map throughout the decade for reformers, institutional leaders, and foreign donors alike.

During the eight year implementation period for the Strategic Plan, much of the justice system has been transformed. In assisting in this transformation, NCSC through the JRP has followed a comprehensive approach, simultaneously recommending changes to the legal framework, building training capacity, raising ethical standards, introducing modern court management practices, and increasing public awareness about the workings of the justice system. Specific activities and strategies varied over the life of the project, but the basic components, the fundamental themes of the assistance, did not. This continuity of focus is a key factor contributing to the success of the USAID's assistance program to Mongolia's justice sector.

Since its inception and continuing through its final weeks, the project conducted scores of training sessions reaching thousands of individuals; organized study tours abroad to bring back ideas on best practices; purchased and installed over one thousand five hundred computers; produced a wide variety of educational materials, television programs, public service announcements and radio episodes all designed to raise public awareness of the justice system. By all accounts, this long-running partnership between the United States and the institutions of Mongolia has elevated the justice system to a higher level of professionalism. The judiciary enjoys respect within the community, greater independence, and is no longer viewed as simply an instrument of state power. Mechanisms designed to ensure high ethical standards among judges and prosecutors are in place. New institutions, such as the Special Investigative Unit and more recently the Anti-Corruption Agency have been created, equipped and trained to investigate wrongdoing among justice sector officials. No system is ever perfect, but Mongolia has made significant progress in creating the basic structures necessary to maintain the rule of law.

## **Part I: Background and Context of JRP's Activities**

Since its inception and throughout the life of the project, the JRP has been the largest donor-funded contributor to Mongolia's judicial reform efforts. After the democratic revolution of 1989, Mongolia faced the need to reform the government institutions designed to serve the socialist model for a democratic future. Attempts were intermittently made until 1999 when, with USAID assistance, Mongolian institutions and stakeholders agreed to a Strategic Plan for Reform of the Justice Sector ("Strategic Plan"), which was adopted by the Ikh Khural in 2000. USAID created the Mongolia Judicial Reform Program to assist Mongolia achieve the goals of the Strategic Plan. 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. These critical areas evolved over time, but primarily covered the following areas: Court Administration and Case Management, Review of Court and Justice Sector Agency Jurisdictions, Continuing Legal Education (CLE), Lawyer Qualification, Public Education and Ethics.

One of the key “Strategic Principals” of the Strategic Plan for the Justice System of Mongolia was to *Improve Court Administration and Case Management*. The overall objective has been to make the judicial system more transparent, independent and accountable. Perhaps the most important strategy contributing to this goal has been the automation of Mongolia’s courts, which in turn made possible changes in procedures that not only improved efficiency but more importantly transparency, accountability and access to the justice – all fundamental values of the Plan. One example of procedural change was the adoption of a system of random assignment of new cases, an important step that prevents “judge shopping” and removes undue and improper pressure on judges by powerful litigants.

In the early stages, the project began advancing this strategy with five pilot courts. New case management procedures were established. A computerized case tracking system initially developed by GTZ was upgraded. The first public access terminals, where people could obtain information or seek assistance with legal matters, were established in these pilot courts. More efficient records management processes were piloted and tested.

During this early phase of NCSC’s work in Mongolia, a significant percentage of USAID’s assistance dollars were directed to improving the information technology (IT) infrastructure. The first few years brought significant acquisitions of computer equipment, the establishment of network connectivity, and renovations to dilapidated court facilities. By 2004, the automation of all courts in Mongolia had been completed. By 2007, almost all courts were connected to the Internet. Judges had access to court decisions from all Mongolian courts, providing for more consistent application of laws.

During this period, the JRP was actively working to automate the General Prosecutors Office as well as district offices. By the end of 2007, a total of 23 prosecutor’s offices were automated.

The rapid expansion and use of computer technology is a remarkable achievement given the vast expanse of the country linked by a rudimentary road system. Court automation led to enormous increases in transparency and access as case information became available to the public through public access terminals. Accountability was increased with the greater speed and accuracy with which management reports were prepared and case processing and case outcome data become available. These improvements paved the way for direct availability of case information and decisions on-line. It also led to major improvements in case management practices and corresponding software upgrades, which the JRP continued to support until the closing days of the project in 2009.

Work to improve the management capacity of the General Council for the Courts (GCC) has been continuous throughout the project, especially in the early years. Initially, the JRP attended all monthly meetings of the GCC and provided suggestions for adjusting its decision making processes. As a result of a study tour in 2002 that took members of the GCC to the United States to show how court administration bodies there worked, a number of changes were introduced, including the introduction of subcommittees to better

inform the decision making process of the GCC and broaden participation in these processes.

In 2006 and 2007, the JRP intensified efforts to improve case management practices for both civil and criminal cases. In cooperation with the Capital City Court (CCC), the Judicial Reform Program launched a pilot study in three District Courts in Ulaanbaatar as part of a self-assessment which relied on statistics generated by case tracking software. The study revealed, among other things, that approximately 30% of cases were not resolved within the legally-required timeframe, and went on to list the reasons cited for this failure. To present and address the findings, the JRP assisted the GCC and the Capital City Court in organizing a workshop on Caseflow Management for 90 chief judges and court administrators. Discussions focused on problematic areas of court practices, the multiple filing systems in effect at that time, low clearance rates, unregulated court practices, and the lack of a unified civil case numbering system. The upshot of the analysis and the subsequent discussions was the development of new procedures for caseflow management, and led to the adoption in October of 2007 of the first-ever Caseflow Standards for Mongolia, covering civil, criminal and administrative cases.

The adoption of Caseflow Standards by the GCC was a truly significant accomplishment which strengthened the institution, enhanced its independence, and shaped the kind of assistance provided by the JRP during the final year of the project. The new procedures introduced a new case numbering and indexing system that assigns a single tracking number for each case which stays with the case from initial filing through appeal. This ensures that case numbers are unique and makes searches for case information via public access terminals easier for court users. More importantly, for the first time, the case management software could be configured to provide court managers and leaders with reliable information about the time a case takes from filing to final disposition and about appeal rates and outcomes. These capabilities were incorporated in the final upgrade to the case management software (*Judge2008*), a major activity of JRP during 2008 and 2009.

Numerous tasks in the Strategic Plan related to the *Legal Environment, or Court and Justice Sector Agency Jurisdictions*. The JRP was asked almost from the very beginning to comment on new laws as they were being drafted. In the early years of the project, JRP's advice was actively sought, and comments and suggestions frequently found their way into legislation. In later years, JRP's focus turned more toward implementing laws that had been passed, rather than assisting with new legislation. During the second year of the project, the JRP provided a report on the Criminal Procedure Code, which alerted the Ministry of Justice and Home Affairs (MoJHA) and the Ikh Khural to several areas where the code did not appear to live up to Mongolia's treaty commitments to uphold human rights. Most of the JRP's points were addressed in the final legislation. In 2002 the JRP contributed significantly to the drafting of the "Law on the Courts" and the "Law on the Prosecutors Office". In 2004, the JRP addressed concerns about the failure of practice to conform to the ideals expressed in the Criminal Procedure Code in areas of arrest and detention and use of the adversarial process. A key element of the JRP's early credibility in these areas was that it was on the ground in daily contact with all Mongolian legal

institutions and could identify issues and quickly respond to requests for advice and assistance as questions arose.

A “Fundamental Value” articulated in the Strategic Plan is *Effectiveness*, or “the ability to uphold and apply the law consistently throughout the country.” Many strategic principals and tasks in support of this fundamental value relate to *Continuing Legal Education*. When the Strategic Plan was enacted in 2000, Mongolia faced a situation where most legal professionals had been educated under the old Soviet-dominated system. Not only did they lack training in basic concepts associated with adjudicating disputes in a market economy, they were accustomed to thinking of the courts as an instrument of state power. While Mongolia’s 1992 Constitution adopted the theory of an independent judiciary as a third branch of government, habits and attitudes of the public and the legal profession were slow to change. With the passage of new laws, especially the new Criminal and Civil Codes as well as new Procedural Codes in 2002, whole bodies of new law had to be absorbed by the legal profession. In addition, legal education had consisted of academics standing and reading notes which the students were required to copy and memorize. Modern adult education techniques were unknown. Mongolia’s relatively small population meant that with a legal community of a few thousand underpaid professionals, there was little potential for competitive market-based trainings and even separate training systems for the different branches of the legal profession ran up against the absence of economies of scale. Conversely, Mongolia’s huge geographic expanse meant that legal training was required in countryside locations that were remote and isolated.

The JRP has responded to these challenges with multiple approaches. Very early in the project, the JRP was involved in planning and drawing up the organizational papers for National Legal Center (NLC) which for the first time created a Mongolian institution with a mandate to provide Continuing Legal Education CLE to all legal professionals. (The World Bank subsequently built a facility for this new institution.) Even before the creation of the NLC, the JRP and the main German donor, GTZ, worked together to create a cadre of trainers proficient in modern adult education techniques and theory. Identifying key agents for change and then training them in “Training of Trainer” (ToT) classes allowed the JRP to deepen its ties to influential Mongolian lawyers as well as create a cadre of qualified trainers. With the creation of National Legal Center (NLC) in late 2002, the JRP was ready to build its institutional capacity to absorb what had already been accomplished and meet its ambitious goal of retraining an entire nation’s legal community. The JRP conducted a study tour for the top management of the NLC in 2003 and used that experience to help them build a strategic plan to accomplish the NLC’s goals. From 2004 until the end of the project in 2009, the JRP focused on capacity building with the NLC, continuing ToTs to expand the core of trainers into new substantive areas and the creation of new courses in areas where the NLC needed outside substantive assistance.

Just as USAID through JRP had invested heavily in the Information Technology (IT) infrastructure in the early years, so too in the later years did it invest in communications infrastructure to support new methodologies for delivering adult education. By the final year of the project, Mongolia’s fiber optic network was sufficiently developed to support

the installation of Video Conferencing technology in seven regional Aimag courts. Already this new capability is showing great promise to expand educational opportunities and to improve communications among a variety of justice sector personnel. Especially in light of the recent economic downturn, the ability to convene meetings or conduct seminars remotely, without the expense of travel and per diem, will become increasingly important.

Another educational technology that became possible only late in the project was web-based e-learning applications. Working with the Training Division of National Legal Center, the Judicial Reform Program has purchased equipment and provided manuals and technical assistance on how to “deliver” educational content to anyone with an internet connection.

With respect to *Raising Qualifications for Legal Professionals*, 2004 marked a milestone for the JRP and Mongolia with the administration of the first lawyer qualification examination (Bar-type exam). Improving the qualification of lawyers and providing assurance to the public of lawyers’ qualifications through a transparent and effective bar examination process remains a key element of the Strategic Plan. The JRP contributed extensively to the drafting of legislation that created the examination process. The JRP worked with the Non-Staff Committee representing the judges, prosecutors, advocates, notaries, bailiffs and the Public Service Council and Chaired by the State Secretary of the Ministry of Justice and Home Affairs tasked with creating and administering a qualification exam for lawyers working in those fields. The JRP’s recommendations were largely adopted in the preparation of the exam process. The JRP helped assemble the exam questions to assure absolute secrecy and provided grading machines to promote impartiality in the process. After its observation of the exam process in Ulaanbaatar and three of the five Aimag testing sites, the JRP wrote and published an observation and recommendations report. The first examination was not without problems, but the JRP continued to make recommendations, organize study tours, and introduce international best practices to improve the process. While the low passage rate disappointed many, it indicated success in ensuring that only those qualified were allowed to practice law in Mongolia, and it highlighted the need for law schools to improve their preparation of aspiring legal professionals.

*Public Outreach and Education* has been a significant activity throughout the project, and reflects the holistic approach taken by USAID and JRP to justice reform. Public trust in the justice system is the foundation upon which the rule of law rests. If the public lacks a basic understanding of how the system is supposed to work, or what the reforms are designed to accomplish, the impact will be limited and justice sector institutions will not achieve the legitimacy that is essential in a representative democracy. Throughout the project, JRP has had an active public outreach program, utilizing television, radio, posters, flyers, promoting public access terminals, providing training to journalists, and encouraging public access to hearings. To gauge effectiveness, the project measured changes in public perceptions through annual surveys.

From 2003 through 2008, JRP supported the production of various television and radio programs. The rationale for these productions was that such programs, when carefully planned and produced, can add to the viewer's knowledge, change attitudes and lead to different behaviors. Professionally-produced TV or radio dramas, with interesting topics and recurring characters, can be especially helpful in assisting people adjust to new times and institutions.

Beginning in 2003, the JRP started working with the GTZ to create "Legal Hour," a series of TV programs, which, in an entertaining manner, illustrated how the new legal system worked. The GTZ focused on episodes featuring civil law issues and the JRP focused on criminal procedure issues. The following year, "Legal Hour" received an award as the most popular drama series on TV, reaching more homes than any program other than the evening news. The "Blue Book" TV series dramatized real life trials, and included expert commentary on the legal issues.

Since most rural residents receive information via radio, JRP launched several radio dramas designed to inform citizens on legal issues. The most recent series, "Comprehension," began running from September 15, 2008, and was aimed at enhancing public legal understanding of recent changes in criminal law aimed at improving human rights and providing greater due process rights by ensuring the right to an attorney during hearings on arrest or detention.

With respect to *Ethics*, the JRP has pursued both education and improved monitoring. Of course ethical behavior is key to the effective functioning of the justice sector and public confidence in it. Mongolia again has to confront its Soviet-era heritage, where the concept of conflict of interest was not well developed or understood. Low judicial sector wages combined with the increased value of cases have made temptations greater than they ever were before. The JRP helped the Mongolian judiciary write a more effective Judicial Code of Ethics in 2002. The JRP advised on the creation of a disciplinary mechanism that would be more effective. These proposals were implemented and the JRP has equipped and trained the new Judicial Disciplinary Committee. In addition, the JRP has equipped and trained the Special Investigative Unit (SIU) reporting to the Prosecutor General, a unit charged with investigating crimes by justice sector officials. In 2003, its first year in operation, the Special Investigative Unit investigated and sent to the prosecutor's office for prosecution more cases than had been investigated in the previous four years. From 2005 through 2008, JRP continued to strengthen the management and procedures of the SIU. After the Anti Corruption Unit was established, JRP provided training to its investigators as part of a broad strategy to fight corruption and strengthen judicial independence.

In November 2004 the Government of Mongolia issued a new Policy Program which identified key priorities. The main goal was to raise the quality of public service to secure the standards for ensuring human rights and security, and emphasizing open government through technology. The sub-goals were to improve the effectiveness and responsiveness of public institutions which it specified as:

- Increasing the openness and transparency of the decision-making process;
- Publicizing the mission goals of all public institutions;
- Setting standards for public service;
- Ensuring the rights of citizens to information;
- Enhancing the ethics of public officials through improved ethical requirements and disciplinary mechanisms in the Law on Public Service; and
- Upgrading the qualification of public servants through continuing education.

With regard to the justice sector the Program identified several areas such as combating corruption, crime prevention, improvement in the enforcement of court decisions, compliance of laws with international treaties and conventions, human rights, victim's compensation, codification/systematization of laws, legal information system and continuing legal education. The goals and objectives of the Government's Program were very much in line with the objectives of the JRP and with USAID's 2004-2008 Strategic Plan.

Thus, the Judicial Reform Program, guided by Mongolia's Strategic Plan for the Justice Sector and drawing on the depth of expertise of National Center for State Courts, has pursued a multifaceted approach to strengthen the justice sector. The project has focused extensively on improving court administration and case management and raising both professional standards and public awareness on the operation of the justice system. The continuity provided by a long-term cooperative agreement with USAID, the caliber and stability of both international and local staff, and the receptiveness to change among Mongolian stakeholders all contributed to a project which, by all accounts, has been model of effective support for good governance.

Of particular note is the way in which USAID-supported activities and investments have become self-sustaining. Managers are eager to build on their successes. Within the courts, there is evident pride in the way they are managing their workloads in accordance with their standards. There exists a friendly competition among individual courts on reaching their annual objectives. The General Council of Courts has built in to the budget an annual plan for renewing and upgrading computer equipment. In the area of human resources, the cadre of trainers nurtured by JRP and GTZ continues their activities in a variety of creative ways. The changes made possible by USAID assistance have taken hold, and there is little doubt that Mongolian managers and leaders have the will and the capacity to continue them.

## **Part II: Lessons Learned**

The closing conference of the Judicial Reform Program highlighted many positive results supported by USAID funding and JRP activities. There was broad agreement that while much remains to be done, there are nevertheless many improvements in the justice system realized over the past decade. Some of these changes are immediately apparent to even a casual observer. Court facilities have been renovated. Courtrooms have been furnished in ways that promote the dignity of the justice system and the openness and transparency that

Mongolia is working to achieve. Public information windows welcome every person entering a courthouse or a prosecutor's office, and trained personnel stand ready to assist every citizen.

Other changes are not so visible, yet are more profound. In the area of governance, the judiciary enjoys a greater degree of independence than ever before. The General Council of Courts is now controlled by the Chief Justice, rather the Minister of Justice and Home Affairs. Policy decisions are now informed by empirical data, assembled by the Supreme Court Research Center, using modern statistical gathering techniques. Administrative Courts have been established to hear claims against government agencies. Judicial disciplinary mechanisms have been established and are working. There is a real emphasis on ethical conduct.

Management of the judiciary is much improved from what it was a decade ago. The courts now control their own budget process, rather than relying on an executive branch ministry. Cases are now randomly assigned to judges by computer, a system which greatly reduces the opportunities for manipulating the system to a litigant's benefit. Most important of all, the courts have adopted Caseflow Standards for each division of the court. These standards have been published, are displayed as posters in every courthouse, and are the basis for evaluating the performance of every court in the country. The best-managed courts are valued and rewarded. USAID and JRP have advocated, supported, and nurtured each of these changes, but it is the leadership of the institutions who actually implemented them.

A major effort was made to enhance the professional qualifications of lawyers, judges, prosecutors, public information officers, law school students, and other legal professionals. Bar exams are now standard. Over 5000 justice system professionals have completed JRP-supported courses. A cadre of experienced trainers now exists to continue efforts to raise professional qualifications of legal personnel.

What lessons can be gleaned from this experience? Can Mongolia's successes be applied to other development settings? What should Mongolia's own institutions take from their achievements during this extended period of engagement with USAID and the Judicial Reform Program? How can these lessons be applied in the future with possibly less donor support? The following represents a first look at lessons learned as USAID completes its strategy for the sector and JRP concludes its work as implementing partner.

***Lesson Learned: There Is No Substitute for a Good Strategic Planning Process***

One of the most important lessons from the last decade, cited repeatedly throughout the JRP's Closing Conference, was the development in 1999 and 2000 of the Strategic Plan for the Justice System. USAID, through National Center for State Courts, assisted the planning process, which involved all of the justice system stakeholders as well as donors.

The plan that was produced after months of deliberations represented a shared vision for the future, with clear values and performance goals, specific milestones, and straightforward delineation of responsibilities. It focused the efforts of the institutions, and provided a roadmap for donors, the judiciary, and the Mongolian government. The plan underscored the need for a holistic, system-wide approach.

Various donors – but primarily USAID – assumed responsibility for supporting the implementation of specific elements of the plan. During the past eight years, development efforts have been guided not by what external donors perceived to be the needs, but by what Mongolian leaders themselves have identified as objectives as well as strategies for achieving those priorities. Given the clarity of the plan and the commitment of various justice sector leaders, many of the objectives have in fact been accomplished.

There are lessons here for both donors as well as Mongolian leaders. Institutions would be well advised to build on their successes by continuing to devote energy and resources to this kind of planning. A logical next step would be to develop a similar process within each institution, while continuing to maintain focus on the larger inter-institutional goals.

### ***Lesson Learned: Continuity of Focus Produces Results***

Another factor contributing to successful implementation of USAID's strategy was the continuity of focus and effort over an extended period. Institutional reform takes time. It is a long, sometimes painful process, and there are no shortcuts. Lasting reforms involve forging consensus on a vision for the future, changes to the legal framework, strengthening the institutions responsible for carrying out the improvements, developing human capacities within the institutions, and ensuring that the overall direction can survive changes in government. In some countries, USAID support is directed to numerous smaller projects with shorter terms. In Mongolia, USAID followed a strategy of continuity, with a good implementing partner and generally stable management, both locally and at the home office. This long-term, systematic approach appears to have produced real reforms that will continue long after JRP ceases operations and USAID takes on new challenges.

### ***Lesson Learned: Capacity Building is Essential in Managing the Reform Process***

From the beginning of the project, there was a significant investment in capacity building. Capacity building is a term usually associated with training, or training of trainers. Indeed JRP was very active in this area, conducting training sessions that reached almost 6000 judges, prosecutors, advocates, investigators, and court administrators over the life of the project.

Perhaps more important than skills training was developing the capacity to manage change and advance reforms. Management in the judiciary was an unknown concept in Mongolia

when National Center for State Courts entered into a Cooperative Agreement with USAID in 2001. JRP provided management training to key people in the judiciary and in the General Prosecutor's Office in critical areas such as leadership, strategic planning, team building and budgeting. The project worked not just with individuals, but tried to create small stakeholder working groups – a model that was still being successfully applied at the end of the project in developing the conference program for “Next Steps in Justice Sector Reform,” and in developing a post-conference action plan.

Capacity building was not limited to government officials, but included project staff as well. Most local project staff were recruited at the beginning and remained until project closeout. Over time, they developed the skills to manage their own areas of responsibility, which included planning, budgeting, and carrying out activities. They all earned the respect of their counterparts through their competence and commitment, acquiring valuable institutional knowledge necessary to move reforms along.

### ***Lesson Learned: Early Investment in Infrastructure and IT Led to Major Gains***

The first few years of the Judicial Reform Program saw major improvements in both court facilities and IT infrastructure. A decade ago, most courts were housed in decrepit, dysfunctional buildings with little courtroom furniture, no computers, and in some cases, neither heat nor indoor bathroom facilities. Judges and staff were underpaid and worked in cramped, unprofessional quarters. Such conditions convey a not-too-subtle message to the public that the courts are not valued and not worthy of respect – in other words, places to be avoided.

One of USAID's early decisions was a requirement that called for a certain percentage of funds to be directed to infrastructure improvements, primarily computer hardware purchases. As computer prices dropped, more equipment could be purchased. Eventually, JRP procured more than 1,500 computers plus associated network equipment and peripherals, permitting the automation of every courthouse and every prosecutor's office in Mongolia.

This kind of rapid installation of equipment and software naturally creates goodwill among recipients. But it also can create an environment more conducive to change. Substantive procedural improvements were loosely linked to the installation of new hardware and improved software applications. Perhaps the best example was an option in the first software application to provide for random assignment of cases. At the time, this idea was not embraced by all Chief Judges, but is now viewed universally as an important procedural step that relieves the Court from having to deal with parties requesting a “favorable” assignment of their case before a “sympathetic” judge. Such a simple change permits the Court to operate transparently, shielding it from even the appearance of impropriety in the assignment of cases.

Other changes in court administration were much more pronounced. Automation permitted the judiciary to move quickly to adopt real court management principles, with streamlined procedures. The adoption of a single case numbering system meant that consistent data could be collected from each court, which in turn led to a focus on the timely flow of cases through the courts. One of the most significant and lasting accomplishments of the judiciary during the past eight years has been the adoption of Caseflow Standards. This would not have been possible, but for the existence of case management software running on computers in every one of 83 courts.

Automation also permitted the introduction of public information terminals in courthouses and eventually in prosecutors' offices. The technology, coupled with the creation and training of a nationwide cadre of court employees specifically responsible for assisting the public, has, along with an extensive public information campaign, made the courts much more open and accessible.

In short, facility improvements and automation – made possible by USAID's early investment strategy in IT infrastructure – have been the means for promoting procedural and policy changes. These changes enhanced the level of professionalism among court administrators, judges, and court staff, and over time led to changes in the way court professionals see their role. This is perhaps the best guarantee of sustainability.

***Lesson Learned: Effective Donor Coordination Has Contributed to Success***

Though perhaps less obvious, the Judicial Reform Program's work with the justice sector benefited greatly from close coordination at the project staff level with all justice sector projects. The Ministry of Justice and Home Affairs had the foresight and wisdom to devote a wing of one floor in the Ministry to donor projects working in the sector. The close physical proximity and daily interactions among project and ministry staff ensured that each project was fully aware of the activities of the other, and of the priorities of the host government. This not only avoided duplication of effort, but fostered true coordination and cooperation, with a number of activities being jointly conducted by international donor projects. The physical grouping of justice-sector projects in the main Ministry headquarters reflected the importance of donor assistance to the Mongolian counterparts, and enhanced the effectiveness of each through the sharing of experiences and knowledge.

### **Part III: Recommendations for the Future**

The completion of the Cooperative Agreement between USAID and National Center for State Courts, though regretted all around, has come at a logical time. The USAID assistance strategy for the period has come to its planned conclusion. The tasks USAID agreed to support within Mongolia's Strategic Plan for the Justice Sector have been successfully implemented in a sustainable fashion.

Good governance requires vision and a commitment to continued improvement, and for all the accomplishments of the past decade, much remains to be done. Moreover, Mongolia has strategic importance to the United States, and USAID will continue supporting Mongolian institutions to the extent that resources permit. Thus, it is only fitting that this final project report include recommendations for future improvements, both for the benefit of Mongolian institutions and as a guide for USAID, should funding become available in the near future.

### ***A Justice System Coordinating Council Should Be Established***

During the JRP's closing conference, "Next Steps in Justice Sector Reform," there were extensive discussions on the need for a steering committee to coordinate present and future justice sector projects and to attract donor support for specific areas of need. As the JRP project was closing down, the Deputy Minister of Justice and Home Affairs had been assigned an oversight role for donor projects, but there is no secretariat or staff specifically dedicated to this function. Moreover, project coordination would benefit from direct participation of all stakeholders.

Discussion at the conference focused on the three phases of a project: (1) project launch; (2) implementation; and (3) post-implementation. Assessing the impact of projects is an important task, as is planning for their continuation when donor support is no longer available.

A Justice System Coordinating Council should be established through legislation, with a clear mandate and composition, as well as sufficient funds for a small secretariat. Donor support for establishing such a Coordinating Council should be explored, but the Coordinating Council can and should be established, with or without external support. At a minimum, each institution should be represented.

While the initial focus may be limited to project coordination, there is a need for a much broader, policy-level coordinating function. The justice system is inter-related. While each institution has its own set of legally-mandated functions, actions in one institution affect the workload of others. On the criminal side, for example, a change in law enforcement or arrest policies will affect all of the institutions "down stream" from the arrest, including prosecutors, courts, advocates and possibly corrections. As institutions automate their processes, new possibilities are created to exchange data with other agencies, leading to greater efficiencies and better decision-making. These kinds of information exchanges are potentially beneficial, but still require careful policy decisions on what kinds of data elements will be shared, under what conditions, and with what restrictions. These are the kinds of questions that are best considered by the stakeholders themselves, through the mechanism of a Justice System Coordinating Council.

Based on discussions at JRP's closing conference, there is broad consensus on the need for a coordinating mechanism for projects. A relatively modest amount of donor assistance

could serve to advance and broaden the concept. Within the United States, there are numerous state-level models for inter-agency justice system coordinating councils. USAID could support the launch of such a mechanism by introducing a range of governance models, perhaps through the mechanism of a study tour where working examples could be observed. Equally important but often neglected is a staff component dedicated to supporting the coordinating council. USAID could play an important role by providing start-up funding for an executive director position that would support the work of the council.

### ***Strategic Planning Should Be Continued, System-Wide and Within Each Institution***

Strategic planning involves the articulation of long-term goals and the allocation of resources necessary to achieve those goals. The benefits of a careful strategic planning process have been amply demonstrated by the success in implementing the 2000 Strategic Plan. Justice system leaders should build on this experience by renewing their long-range objectives and continuing to address the practical challenges of implementation.

There is now a need to go beyond sector-wide planning and incorporate similar processes within each institution, and in some cases, within departments of institutions. Successful planning often involves going outside the institution to gain the support of stakeholders. Typically, some implementing activities can be accomplished internally, but others require legislative action or community buy-in. Each justice sector institution (police, prosecutors, courts, court decision enforcement, etc.) should design strategic planning processes that consider their respective roles within the larger community.

As shown in the 2000 Strategic Plan, success involves identifying who “owns” each specific implementing activity – that is, who is responsible for overseeing the implementation process and being held accountable for results. Benchmarks and ownership were important features of the 2000 Plan, and should be specified within the planning processes of each institution.

Good planning requires leadership and a commitment to provide the necessary human and financial resources. Given the day-to-day demands of any organization, it is often difficult to step back and think in terms of long range goals with realistic strategies to accomplish them. Even a modest amount of donor assistance can go far to encourage the planning process. However, with or without external assistance, Mongolia’s justice sector should devote the time and resources to maintain the current momentum.

### ***The National Legal Institute Should Be Strengthened***

Just before the Judicial Reform Program was to close, a number of changes were made to the National Legal Center (NLC). The Government of Mongolia reorganized NLC under a new name, the National Legal Institute. The new Institute remains under the Ministry of

Justice and Home Affairs, but with broader responsibilities to draft laws, conduct research for the legislative branch, and improve qualifications of lawyers. A new Director was appointed to the Institute, and assumed his duties in March. Given the economic downturn and the corresponding pressure on the budget, it was unclear whether adequate funding would be available to realize the aspirations and expanded mandate for the Institute.

This is an area that could benefit from donor assistance. The National Legal Center never fully achieved the potential envisioned by those who established it. Many issues regarding NLC training responsibilities *vis-à-vis* internal training among justice-sector institutions have yet to be resolved. Yet there is broad consensus on the need for advanced training and raising standards for legal professionals.

### ***USAID Should Support a New Project to Modernize the Police***

The very success of USAID's assistance to the justice sector has highlighted a lingering and serious problem. The Police Department has lagged far behind the modernization and professionalization of other parts of the justice system, specifically the courts and the prosecutors. As a result of sustained USAID funding, a significant investment in IT infrastructure, and a long-term effort to raise professional standards, the courts and the prosecutors have been transformed into modern institutions using automation to manage their workloads efficiently and effectively.

The same cannot be said of the National Police. To quote the Minister of Justice and Home Affairs at JRP's closing conference, police officers general do not have computers, and it is disheartening to observe officers "typing their reports on 50 year old manual typewriters." A 2009 assessment by a JRP Police expert noted:

*The overwhelming majority of processes within the GPF involve hand written communication. Hand written documentation is cumbersome to manage and difficult to distribute to those who need to see it. Accountability is almost non-existent. The efforts to automate a portion of the police function at the Bayangol and Baganuur District Police Stations has marginally improved effectiveness. Broader, nation-wide automation efforts will substantially improve the effectiveness of virtually all police functions. Automation saves time for officers. Once they are properly trained, they enter data faster and more effectively using prompts and drop-down menus. The police administration will have access to timely and relevant information on criminal activity, crime statistics and customer service levels. The police-prosecutor relationship should improve with greater communications between departments and automated compliance with due process reporting laws.*

There is now an imbalance in the overall administration of justice. Correcting this imbalance is a high priority. The need is especially acute, since the police are “the face of justice.” That is, the police constitute that part of the justice system with which the public most frequently comes in contact. Good police work is the key to crime prevention, successful prosecutions, public safety and ultimately, economic prosperity.

During the early phase of NCSC’s work in Mongolia, USAID was prohibited from supporting foreign law enforcement entities by Section 660 of the Foreign Assistance Act of 1961. Later in the project, a special waiver had to be approved for JRP’s limited assistance to two pilot police districts. These earlier restrictions have now been substantially eased. Section 564(a) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 2005 specifically expanded USAID’s mandate to work with civilian policing authorities. There are still restrictions, but none are likely to apply to Mongolia. For example, under current USAID policy, no assistance can be contemplated for civilian police forces that are not under control of democratic authorities. USAID input must be sought from the regional legal advisor, and any proposal must have the concurrence of the ambassador. Congressional notification is required. None of these policy guidelines are likely to pose impediments to assistance to the police in Mongolia.

With the easing of restrictions on support to civilian policing authorities, and if funds become available, USAID could direct assistance to the National Police Agency applying the lessons from the successful JRP project. Such a project should simultaneously focus on automation, capacity building, internal reforms, and raising professional standards.

Mongolia has the capacity to absorb and successfully utilize a rapid infusion of technology. All Aimags are already connected to the nation’s fiber optic network, and soon all Soum-level police departments will also be connected.

It is hard to imagine a setting more favorable for USAID assistance than the civilian police sector of Mongolia. Following the JRP model of justice-sector development over the past eight years, much could be achieved with a relatively modest level of assistance.

The components of such a project might begin with support for software and hardware acquisition to permit the rapid expansion of information technology. JRP experience with the courts has shown that the infusion of technology can “jump start” other, more profound changes in the management structure of an institution. Technical assistance to improve the performance of police authorities, including training, curriculum development, and accountability standards could make up a second component. Institutional capacity building could form a third component, and might include personnel management, tracking systems, change management, and problem-solving policing. Monitoring, or institutional performance oversight, is already well-understood throughout the Government of Mongolia, and could form the basis for another component. Finally, Mongolia has already taken steps to strengthen community policing, and this might constitute a final component of USAID assistance.

A program of USAID assistance to the National Police could be tailored according to the funds available. The structure of the Mongolian Police conforms to the 21 Aimags and 330 Soums. Ulaanbaatar is organized into nine districts. USAID has already taken the first steps through JRP's designation of several pilot district police stations where automation has been introduced and specialized training provided. Building on this experience, approximately \$3 million over two years would be sufficient to automate and train most of the remaining police districts of the capital. Additional funds, if they became available, could be used to expand to the next two largest cities (Erdenet and Darkhaan Uul) which could be the foundation for a nationwide system of records management with online booking and arrest data exchanges with prosecutors and courts.

Such a program would have a high likelihood of success. There is top-level support for such an initiative, which has already been identified as a national priority. The National Police Agency has a well-qualified team of IT professionals, as was pointed out in the recent (2009) assessment carried out by JRP. Long experience in Mongolia has shown a high receptivity for training and technical assistance, and real enthusiasm for professional development opportunities. High speed, fiber optic Internet connectivity already exists, providing the backbone for automation projects. USAID projects in Mongolia have always demonstrated significant and sustainable results for relatively small investments. Finally, addressing this "missing piece" would permit the entire justice system to realize the full potential of moving criminal justice data throughout the system, thereby improving efficiency for all institutions, and enhancing public safety.

### ***USAID Should Support Education, Reform, Training and Technical Assistance to Improve the Justice System's Competence to Adjudicate Commercial Cases***

The adjudication of commercial cases has taken on increasing importance as Mongolia continues along the path of strengthening its market economy. Efficient and fair enforcement of contracts is necessary for the functioning of any market economy. Yet judges, lawyers and legal scholars often cite commercial law as an institutional weakness that is bound to retard the Mongolia's economic development.

The private sector is still relatively young in Mongolia. The process of converting from a centrally-planned to a market-based economy is ongoing, and market-supporting institutions are not yet well developed. The legal system is not perceived to be an efficient arbiter of commercial disputes, and there are many problems where the law and commerce intersect. Contract enforcement, bankruptcy, alternative dispute resolution (ADR) secured transactions are areas largely neglected by Mongolia's system of legal education.

Exacerbating the problem is Mongolia's process for selecting judges. In other legal systems, judges come from the bar of practicing lawyers, and often have practical experience in commercial litigation. By contrast, the judiciary in Mongolia is often a "career" position, meaning that many judges may rise from the ranks of judge's assistant with neither practical experience in commercial transactions nor an academic background

in the subject matter. Judges have frequently voiced support for the idea of additional training in these areas.

USAID should consider a broad program to strengthen the capacity of the justice system to adjudicate commercial cases. Such a program of assistance should involve the law schools and might result in a pilot certification program for commercial legal advisors, possibly by partnering with the Chamber of Commerce.

## **Conclusion**

National Center for State Courts brings to a close the current phase of its work in Mongolia. It has been a long and productive association with the people of Mongolia and with the United States Agency for International Development. In many ways, the Judicial Reform Program is a model for development projects.

Much of the success of the project is a result of the thorough, inclusive, and deliberative process launched by Mongolian justice sector leaders to develop an ambitious plan for their justice system. Their clarity of vision and their efforts to build consensus made subsequent implementation efforts much easier. The Strategic Plan for the Justice Sector of Mongolia provided the road map for both international donors and local administrators. National Center was honored to be invited to participate in this early planning phase which subsequently led to the now-concluded long-term Cooperative Agreement with USAID.

National Center for State Courts has benefited from the support and guidance provided by USAID/Mongolia. Perhaps because it is the smallest USAID assistance program in the world, all members of the team, from the Ambassador on down, are thoroughly familiar with the local setting, key Mongolian leaders, and the specific activities of all USAID projects. This kind of in-depth knowledge of local affairs, coupled with a supportive relationship with contractors in the field, makes for a productive relationship in which much can be accomplished together.

The project was also noteworthy for the contributions of local staff. The core team remained with the project for most of the full eight years of the Cooperative Agreement. During this time, they developed a deep understanding of the human and institutional dynamics of the justice system, and earned the respect of their counterparts. They also acquired new skills in budgeting, procurement, project management and facilitation, and were able to manage their responsibilities effectively and independently. An important legacy of the Judicial Reform Program is the cadre of Mongolian professionals that made up the local staff and will continue to work for the betterment of their society in other capacities.

Finally, in response to the many words of praise and gratitude for the work of JRP and USAID, it is important to remember that the lasting accomplishments noted by so many are the accomplishments of the Mongolians themselves. International donors can provide assistance, introduce new ideas, and sometimes serve as catalysts for change. But it is the

local leaders, administrators and staff who must make the vision a reality, and who deserve the real credit for the transformation of the Mongolian Justice system. National Center for State Courts has been pleased to work in partnership with USAID and the Mongolian people, and has been honored to be a part of this process.