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**Anti-corruption Training on Preventing
Corruption in Public Procurement and Judicial
Systems (for judges) and Improvement of the
Judicial Code of Ethics**



TRANSPARENCY INTERNATIONAL - MONGOLIA

Hello everybody

I am very happy to be here with you, and many thanks to the government of Thailand, TI-Thailand, the organizers of the conference and Partnership for transparency fund.

As the background information on Mongolia legal system has already been kindly given by Anabel, let me brief you on the two projects we have implemented on judiciary. By the time we started these two projects, in addition to lack of checks and balances between the pillars of the NIS and due to it, we observed the following irregularities, which were basically "legalized":

- the President had the right to reject candidates for judges position, proposed by the GCC, without providing verbal nor written explanation;
- the Chief Justice of the Supreme Court was also appointed the Head of the General Council of the Courts;
- a provision in the Law on Courts allowed Chief Judges provide "professional advices" to judges working under his authority
- 8 out of 15 members of the disciplinary committee were political nominees, and CSO was not represented;
- Justices reserved the right to file complaint on wrongdoings by the judges, to the disciplinary committee;
- the Code of ethics did not distinguish the "professional" mistakes from "ethical" misconduct;
- Ex-parte meetings were not banned by the code, instead by a regulation, following of which was not monitored;
- Provisions setting standards of judicial conduct were very unclear, which could be regarded as more of an advice instead of prohibition;

Above pre-conditions allowed undue influence by politicians and the government, and peers, and as such weakened law enforcement, in general, resulting in catching small fish despite public pressure calling for putting big fish behind the bars.

Also the comparative opinion poll conducted by Santmaral Centre for years 2003, 2005 and 2007, revealed among other the following:

1. Confidence in legislature and advocates office declined, dramatic drop of confidence in Supreme Court and Constitutional Court was observed;
2. There was a sharp increase in number of respondents who "strongly disagreed" that they would be treated fairly at courts
3. Almost 88% of respondents agreed that "People with high influential positions" remained most favoured by courts closely followed by "wealthy people" and by "relatives and friends".
4. "Corruption", "bureaucracy" and "unfair treatment" were perceived to be reasons for courts poor performance

This deep distrust in the judiciary revealed by above opinion poll, despite numerous concerted efforts made by donors aimed at enhancing and strengthening the judiciary,

training specifically focused on preventing and curbing corruption in the judicial system hasn't been conducted by donors, CSO's or other organizations.

By implementing these two projects TI-M aimed at:

1. enhancing awareness of target groups, of types of corruption in PP and judicial systems, on the "red flags" which indicated occurrence of fraud, corrupt practices;
2. initiating debate, by "breaking the silence" which enabled engagement of academics, professionals and specialist level of public services in improving judicial performance, safeguarding judicial independence and impartiality, and drawing politicians attention to the issue;
3. contributing to enhancement of law enforcement through raising awareness on corruption and it's devastating impact on the country's development;
4. through providing knowledge to lecturers of law schools, improving school curriculums and raising awareness among the students
5. through publishing of a report comprising findings and recommendations on improving the judiciary, initiate further deepening of the reforms
6. improving the judicial code of ethics and restoring public trust in judiciary
7. making the Association of Judges a truly non-for-profit organization to engage in strengthening of judicial independence through engaging with legislation to improve laws and rules regulating the judiciary, and improving judicial ethical conduct etc.

In order to simplify and save time, I combined the two projects and divided the works performed under these projects into 4 components:

Training for judges:

A nationwide anti-corruption training for judges of all 63 courts. We signed MOU's with the General Council of the Courts on organizing the trainings and ensuring that all the judges attended the trainings. And a separate MOU with the Capital City Administrative Court for providing 3 most prominent judges to lead the session on judicial corruption. The trainings had 2 sessions, one general lead by TI-M on corruption, it's forms and corruption in PP, we used TI's Handbook on PP. 2nd part was lead by the judges/trainers and they based their training program on translated version of TI's Global Corruption Report 2007: corruption in judicial systems.

In total, we conducted 26 trainings, 22 trainings at courts of all provinces and cities, per PTF request we did trainings for NGO's, auditors, investigators of the Special Investigative Unit and on request from the Capital City Court a separate training for law clerks of the their court.

2. The second component was training for lecturers of law schools, which was organized in close co-operation with the Ministry of Education.

During the two trainings on Parts 1 and 2 of GCR 2007, we have disseminated translated and published versions of the GCR to all participants of the trainings and provided 30 handbooks to libraries of 14 law schools, and in total we covered 70 lecturers of these schools

3. Improving the by-law of the Mongolian Association of Judges:

The Mongolian association of judges is an organization membership in which is mandatory, fees are paid by all judges and the governing body is the judges' council formed by justices of all courts. The associations main activities were rather administrative, monies collected were used for providing financial assistance to judges for medical treatment, helping out retired judges, etc.

Under this project the Head and the secretary of the association attended the 52nd conference of the International Association of Judges, at Morocco in 2009. But prior to this conference they re-drafted the associations by-law to comply it with internationally recognized standards, or at least to those of other professional associations. The improved by-law's adoption is pending, due to President's request to draft a completely new law on Bar Associations, under his reform program, and once this law is adopted, the draft of the law on the judges association would be adjusted in conformity with the law on Lawyers association.

4. Improving the judicial code of ethics to comply it with the Bangalore principals of judicial conduct.

A working group comprising district court justices, head of Disciplinary committee and TI-M representation was formed to work on the code. Ethical standards were set in accordance with the Bangalore principals, provisions made more clear with banning not only the acts of misconduct but also the appearance of impropriety. Ex-parte meetings were prohibited and professional mistakes clearly distinguished from ethical misconduct and a provision requesting adhering to the high ethical standards both in office and ordinary life was also incorporated.

Impact:

1. The printed documents comprising world's best practices became "living documents" of vital importance for judges and court workers and academics
2. For Mongolia, anti-corruption training is an effective method of curbing corruption. We disseminated not only handbooks on corruption, but also other materials developed by other NGO's on FOI, COI, investigative journalism, for which the trainings were called by judges as "intellectual investment in the judicial system".
3. Motivated by the results of the training and approval of the Code of Ethics, the City Court has launched a precedent-setting program to document and publish the best decisions made in criminal cases in the Capital city courts of first instance. The book comprised 80 decided cases, we financed the printing of this book under this project. We were given 21 books, which we have disseminated to 14 law schools and 6 most active human rights NGO's.
4. Reported cases of bribery steadily declined, in 2009 the JDC received complaints against 6 judges, by June 2010 they received only 1 bribery complaint. If from 2003 until 2009 in average 63 cases were filed, in the first 6 months of 2010 55 cases were filed, this is a reduction of 13%. If around 12 judges were annually disciplined, by June 2010 only one judge was meted with disciplinary action.

5. Yet the most significant impact will be realized within the judicial reform which is initiated by the President, it is aiming at: 1. Criminalizing more corrupt offences, illicit enrichment, promising of services against a bribe, etc., 2. Increasing of penalties for 'misdemeanor' [punishable 3 months to 5 years] to felony [5 years to 15 years]) 3. Improving the working conditions of judges 4. Strengthening independence of GCC, 5. Allowing civil society representation in disciplinary and professional committees, 6. giving power to NGO's to engage in "strategic litigation"
6. Last month the Supreme Court's Chief Justice who opposed President's reforms resigned
7. Also in October a working group to draft the Law on Bar Associations was formed, TI-M is included
8. TI-M has signed a Partnership Agreement with the National Police Authority on improving procedure standards to reed those of loops allowing abuse of power.

Lessons learnt

We have learnt the following:

- The second half of the training called "Preventing corruption in judicial systems" was lead by the judges' peers. This contributed not only to the quality of the trainings but to efficiency, as well. The information provided by these trainers in legal language was precise and digestible by attendees, helped the training sessions run smoothly. Participants of the trainings have expressed gratitude to TI-M, in hiring well-known and respected judges to undertake these trainings, which improved both delivery and absorbing of messages.
- Impact of these anti-corruption trainings was multiple and strong, as the trainings were co-organized by the General Council of the Courts. This also made clear to all participants that the management of the courts was already strongly committed to take relevant actions against wrongdoings by judges and court workers.
- Initiating projects involving multi-stakeholder participation, the GCC, CCAC, MECS, MAJ and law schools and providing media coverage helped raise debate over the issues concerned.
- Literature analyzing corruption in this sector, published in Mongolian, and disseminated to participants and libraries of law schools provided opportunity for research works by experts, students, judges and court workers.
- Due to public pressure the newly elect President requested resignation of the Chief Justice of the Supreme Court. This forced TI-M to refrain from implementing certain activities initially proposed under this project. We have learnt that it was very important for us to be very flexible and provide options should such problems occur in future. Despite this problem, the funding organizations' monitoring advisor found that the projects were very successfully implemented.

Recommendations to CSOs working with law enforcement agencies

It would be difficult to engage constructively with above agencies and at the same time expect them to go public which would in some way mean that they are admitting that abuse power is there.

In order to avoid this, TI-Mongolia approached the General Council of Courts (GCC) (with a draft MOU on co-operation in conducting anti-corruption trainings for judges) and offered services in providing basic knowledge on corruption and its forms in public procurement and judicial systems and the means to prevent it.

As public trust is crucial for the judiciary, we agreed that both TI-Mongolia and the GCC when going public with info on the project, ensure that the message that the initiative for conducting anti-corruption trainings came from GCC side was spread. With this kind of attitude to the initiative and bearing in mind that it is the judges who know most about judicial corruption, and thus would be the most relevant people to deal with it, we win the confidence of the judiciary. We assured the GCC that TI-Mongolia was not after publicity nor discrediting of the judiciary, instead that we were looking at restoring trust in judiciary (proof of distrust in them we complimented with surveys conducted on judiciary). On request from TI-M, a 30-minute interview with Eagle TV, on the results of the trainings were provided by one of judges/trainers and an HR specialist of GCC responsible for training and re-training of judges.

In our case, after completion of this project on trainings, the GCC called us and informed TI-Mongolia that GCC was ready and was happy to co-operate with us in improving the Code of Judicial Ethics. We won judiciary's heart and mind by simply demonstrating confidence in them and by respecting their independence.

In post-communist countries, as well as developing countries with little political will to establish rule of law, small funds (if any) are allocated for law enforcement agencies for training of their personnel or translation/publication of relevant literature comprising good practices from around the world on improving performance and ethics of above organizations. Therefore, CSOs willing to provide translated material and trainings on them should not shy away from offering services in providing trainings and handbooks, and asking the public organizations of their priorities. Handbooks published in native languages has proved to become a powerful tool/armour, much stronger than hollow criticism.

Also, it is a common practice that only high level management is nominated by politicians and thus not independent, that's why it is very important to design the training program to approach the specialist level, especially the professionals who respect their duties and simply wish to be proud to do their job properly. By doing so, you don't only raise awareness but inspire the professionals to go ahead and move the initiatives forward and show support to reforms, on a professional level.

As a proof, a judge on criminal cases working with the Capital City Court approached TI-Mongolia in providing assistance in finding funds to publish a book comprising the best 80 decisions of criminal cases made by judges of the courts of first instances. TI-Mongolia has seen this as an opportunity of supporting the consistency of law application and funded the initiative through support from PTF.