

ENHANCING JUDICIAL TRANSPARENCY AND PROMOTING PUBLIC TRUST

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I am very happy to be speaking at this conference, marking the 25th anniversary of the establishment of the Judicial General Counsel of Mongolia. IDLO is also celebrating an anniversary this year, the 30th anniversary of the agreement establishing IDLO as an intergovernmental organization. The Council's role in ensuring the impartiality of judges and the independence of the judiciary cannot be overestimated and I would like to thank its members for all the exciting work we have been doing together to advance the rule of law for Mongolia and its people. While our collaboration has been anchored in international standards and values, the Council has helped ensure that our work is aligned with Mongolian priorities, addresses Mongolian needs, and is based on locally defined parameters. Based on IDLO's long experience in the field of the rule of law, it is my pleasure to discuss today the international best practices for transparency in the judiciary.

Transparency is a fundamental characteristic of modern democracies. It helps ensure the citizens' control of and participation in public matters. In practice, transparency should include the ability of citizens to request access to public information and the state's duty to generate information and make it broadly accessible to citizens. Empowering citizens to hold States accountable to these obligations is another crucial pillar of transparency.

Transparency is particularly important in judicial institutions because it promotes accountability, combats corruption, and helps eliminate arbitrariness. In this way it facilitates greater judicial independence and enhances public confidence. The open operation of justice systems creates an increased flow of information from the judiciary to society, enabling the public to learn about its performance and rulings. A policy of transparency and access to public information fundamentally enhances the level of trust and the legitimacy of judges and others operating in the justice system by providing information that enables society to understand its operation, challenges, and limitations. Transparency fundamentally reassures society that justice is served.

INTRODUCTION TO IDLO

Before detailing some of the more specific elements of transparency in the judiciary, I'd like to give you a brief overview of IDLO's work to support judiciaries globally. The International Development Law Organization is the only intergovernmental organization with the mandate to promote the rule of law around the world. Since it was established more than 30 years ago, IDLO has expanded its presence and currently has offices in 21 countries. IDLO is presently implementing projects and activities in more than 40 countries worldwide.

IDLO's portfolio on judicial transparency includes such innovative programs as a project in Indonesia that is improving the admissibility of electronic evidence in corruption trials while also strengthening the capacity of law enforcement agencies and the Supreme Court in the use of electronic evidence. Meanwhile in Myanmar, IDLO supported the Training Department of the Supreme Court of the Union by assisting with a training needs assessment, developing and operationalizing capacity development strategies, and integrating fair trial standards into the Court's curricula for recruitment and training courses.

IDLO champions the rule of law both as an outcome of sustainable development and also as its essential enabler, and our decades-long experience has shown us the relationship between judicial transparency and sustainable development. By ensuring stable, transparent legal regimes, the rule of law promotes investment, trade and economic development.

INTRODUCTION TO IDLO'S WORK IN MONGOLIA

Since 2012, IDLO has developed extensive experience working with Mongolian justice sector professionals, which have involved up to eight government institutions in Mongolia, IDLO has helped Mongolia strengthen the capacity of over 1,300 individuals from across the Mongolian justice sector. Mongolia's ties to IDLO were further strengthened in 2015 when it became a Member Party of IDLO. IDLO is pleased to build on its long and fruitful history of partnership with Mongolia to help support the further strengthening of its judicial institutions through enhanced transparency.

KEY INTERNATIONAL BEST PRACTICES FOR JUDICIAL TRANSPARENCY

I would now like to turn to a more specific discussion of key international best practices for judicial transparency. The first is access to internal information about the judiciary, including judicial selection and appointment, financial disclosures, and court statistics. Second, I will talk about the importance of publishing judicial decisions, which facilitates access to the courts by citizens and the press, promotes adherence to decisions, and enhances consistency in judicial decision-making.

Access to internal information about the judiciary

Judicial selection and appointment

Across the globe in analyses of systems of governance, the process used to appoint judges has long been identified as a critical element in promoting the principle of judicial independence. Using transparent and open processes for appointment helps protect judges from undue external influences that may be exerted by the other branches of government or from interest groups. Likewise, transparency helps ensure the selection of candidates that meet the basic international standards for qualifications, including high professional standing and the necessary legal skills and experience.

While there is no single mechanism for the selection of judges, the process should—at a minimum—reflect certain basic principles: appointments should be clear, merit-based and objective, transparent to the public, and satisfy requirements for legal qualifications. It is also important for the process to be open to the input of civil society groups, including professional associations related to judicial activities, so that they may provide opinions on the merits of the candidates. Greater involvement by civil society in the judicial appointment process also enhances public confidence in the judiciary.

Progress has already been made on this front in Mongolia. As you know, the Package of Laws on Courts, initiated by the President of Mongolia and passed by the Parliament, came into force in April 2013 and has led to a number of judicial reforms, including processes for the fair, open, and transparent selection and examination of judges. As one example of such reforms, the USAID/Asian Foundation project collaboration produced the "Judges' selection system" which enables the selection of judges to proceed electronically. The recent creation in 2016 of a nine-member Judicial Ethics

Committee has also helped ensure that complaints from citizens are listened to and dealt with in the most appropriate and expedient manner.

Judicial financial disclosures

Another tool which is widely used to build trust in public administration, including the judiciary, is the requirement that public officials file asset and income disclosure statements. Such disclosures have been a key element of anti-corruption efforts worldwide. In conjunction with the right to access public information, these disclosures allow for oversight of members of all government branches, including the judiciary. By monitoring financial assets and transactions, these statements help identify and prevent potential conflicts of interest as well as crimes such as bribery and illicit enrichment.

The identification of potential conflicts is particularly relevant for members of the judiciary, who may be asked to rule on matters of significant public and commercial significance involving a variety of parties. Knowing where government officials – even judges – may have conflicting personal or financial interests helps all officials avoid situations where they have their actions questioned and helps the public maintain trust that these officials are acting in the best interests of the public.

Publication of court statistics

The gathering, analysis, and sharing of statistical information is another important way of increasing judicial transparency. Such information makes it possible to analyze performance, identify achievements, detect problems and, design strategies to solve them. It is therefore important to both collect and share some basic information on court performance.

Making such statistical information available to citizens contributes not only to improved transparency of justice systems but also increases the interaction between the courts and civil society. It also allows citizens to learn about the operation and workload of judges.

Since 2004, IDLO has been working closely with other governments in this region, including the government of Kyrgyzstan, to explore how information communication technology and information-sharing can foster more effective, efficient and inclusive justice institutions. A milestone achievement of the IDLO's portfolio in Kyrgyzstan has been the creation of an Automated Case Distribution systems for the Supreme Court chambers, as well as an Electronic Document Flow Management System for the Constitutional Chamber of the Supreme Court. To ensure that these efforts were sustainable, IDLO supported the Kyrgyz Council of Judges in establishing an information technology entity to assist the Judiciary through maintenance of these systems, as well as the training of information technology experts, judges, and court personnel. In this way, sharing key indicators about judicial performance can play an important role in strengthening judicial independence and integrity, access to justice, and institutional capacity.

Access to Substantive Work of the Courts

The second category of international best practices for judicial transparency that I will discuss is related to increasing public access to and awareness of the cases placed before the courts and their

results. Fostering such access is an important way to address the double challenge of making the work of the courts known as well as strengthening citizen trust in judicial institutions. It includes access to court proceedings and publication of judicial decisions.

Access to the courts by citizens and the press

Public access to the courts, including through the media, is important to publicizing the work the judiciary is doing. Such access can include the recording of court sessions by video, audio or transcription. The press also has a fundamental role to play in informing citizens about the important work of the courts, particularly with respect to cases with broad public significance, because citizens do not typically go to the courts to attend a trial. Thus, access by the press to courtrooms – whether in person or remotely -- is one way to facilitate public awareness of these processes and their results.

Publishing judicial decisions

Additionally, the principle of open justice is recognized as a vital element in preventing perceptions of secrecy and lack of accountability, which can in turn generate distrust and confusion amongst the public. Such perceptions can be avoided by public access to the decisions made by the judiciary.

Access to decisions of the Supreme Court of Justice is particularly relevant since those decisions transcend the cases at issue and affect government institutions and actions more broadly. Such decisions may address matters relating to the rights of individuals or the obligations of the state and thus have a critical influence on the ways in which citizens' rights are understood and protected. Additionally, the decisions made by such bodies are vitally important since they establish guidelines for the operation of the lower courts.

Furthermore, by making judicial decisions readily accessible to citizens, legal professionals, and lower courts, judicial transparency fosters greater clarity and consistency in judicial decision making. Greater consistency enhances respect for and adherence to the law, as well as confidence in the rule of law. It is also a decisive factor for investors, who are particularly concerned about the predictability of the court system.

The chief component of IDLO's e-justice efforts in Kyrgyzstan remains the publication of judicial decisions in open access format, through the creation of a dedicated website. This ongoing effort has currently resulted in the publication online of 84% of the judicial acts of the Kyrgyzstan Supreme Court.

Again, Mongolia has already made progress here. The Package of Laws on Courts includes open access of judicial decisions and proceedings to the general public through a similar dedicated website.

Other Judicial Support

Increased judicial transparency can be particularly effective in strengthening the impact of the judiciary and enhancing public confidence when combined with other support. For example, at the request of the Judicial General Council of Mongolia, EBRD and IDLO have worked with the Council to strengthen its capacity to monitor and enhance judicial output. This work has included the development of a mechanism based on relevant international standards for the periodic analysis of

judicial decisions in order to assist judges in enhancing their quality. The Council has subsequently established a Committee to analyze a sample of decisions on a regular basis and make suggestions on how the quality of judgments can be strengthened.

Additionally, effective and efficient enforcement of the judgments is essential to maintaining public confidence in the courts. Effective systems for the enforcement of judicial decisions represent a vital element for economic growth, job creation, foreign investments and prosperity increase.

CONCLUSION: POTENTIAL FUTURE WORK TO PROMOTE JUDICIAL TRANSPARENCY IN MONGOLIA

In conclusion, increasing transparency and access to information makes the judiciary more independent, effective, and inspires confidence from and adherence by its citizens in its judgments and judicial institutions. It can also have a powerful positive effect on external perceptions of a country's judicial system and promote foreign confidence and investment.

Mongolia's progress in ensuring the transparency, fairness and independence of its judiciary has been steady and noteworthy, and reflects the commitment of its judges to strengthening the rule of law. IDLO is very pleased to have contributed and supported Mongolia throughout this journey and very much looks forward to continuing this collaboration into the future. Among IDLO's future plans is continuing our work with the Judicial General Council, the Agency for Enforcement of Court Decisions as well as working with the Mongolian Bar Association and other partners in Mongolia in producing a set of recommendations on possible improvements in the adjudication of domestic violence cases. We are excited to contribute to this fundamental dialogue between the judiciary and civil society, further fostering judicial transparency, openness and effectiveness.

IDLO looks forward to working together with all of you to make it a reality through the rule of law.

Thank You.