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REPORT ON THE STATUS OF COURT REFORM IN MONGOLIA

BRENT T. WHITE
FOR THE OPEN SOCIETY FORUM
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FOREWORD

Judicial reform is a crucial element of the democratic transition that occurred in Mongolia. The Open Society Forum is presenting this survey report, commissioned at the end of 2008, to assess the judicial reform process in the past decade.

The survey was conducted by professor Brent White of University of Arizona, College of Law, based on the “Judicial Reform Index,” the internationally applied methodology developed by The United States Bar Association and modified in accordance with the Mongolian context. Similar surveys were conducted by The US Bar Association in countries such as Moldova, Uzbekistan, Serbia, Bosnia Herzegovina and Georgia.

We think this report, along with the numerous recommendations provided by the author, Professor Brent White, who specializes in constitutional and comparative law and possesses valuable research and trial experience, will be of great importance to not only policy makers or judicial employees, but also to the general public in terms of strengthening judicial independence and fairness

Strengthening judicial independence is the responsibility of not only state or judicial authorities, but it is also crucial to maintaining public and civil society participation. The Open Society Forum plans to address the issue of Judicial Independence from the civil society perspective in 2008-2010. This report that we are presenting to you is the first of a series to be commissioned.

The original text of the report is written in English, therefore it might have terminology or translation errors, to which we ask you to alert us by the contact information provided.

*Erdenejargal P.
Executive Director of
Open Society Forum*

INTRODUCTION

Since the late 1990's, the World Bank, the Asian Development Bank, USAID, GTZ, the Hanns-Seidel Foundation, and the Japan International Cooperation Agency (JICA), among others, have invested tens of millions of dollars to “reform” the Mongolian judiciary.¹ These reform efforts have been driven in large part by the belief by international donor agencies and development banks that economic growth depends upon the “rule of law”.² “Rule of law” in turn depends on a well-functioning and independent judiciary - which the public can trust to render fair, just and consistent decisions.³

After nearly a decade of “reform,” however, public confidence in Mongolia’s judicial system remains decidedly low. More strikingly, public attitudes toward the judiciary have grown increasingly negative during this period of reform – with a “dramatic drop” in confidence in the Supreme Court and the Tssets (Constitutional Court) in particular.⁴

A recent survey of public nationwide attitudes toward the courts found that only 28% percent of Mongolians believe they would be treated fairly were they to find themselves in court.⁵ In contrast, over 85% of Mongolians believe that the courts show favoritism to each of the following: the wealthy, public officials, relatives and friends of court personnel, and corporations.⁶ Likewise, over 75% of Mongolians believe judicial decisions are influenced by political considerations, judges’ own personal interests, and government officials.⁷

Moreover, confidence in the courts is significantly lower – and increasingly so - among individuals who have had actual experience before courts than those who have not – with a three-fold increase since 2005 in negative perception of the courts among actual court users.⁸

Out of concern that a decade of judicial reform has failed to appreciably improve public confidence in the courts, the Open Society Forum (OSF) has initiated a “Judicial Independence Project.”

As a first stage of this project, OSF conducted a needs’ assessment intended to gauge the actual progress of judicial reform in Mongolia, sort out perceived verses real deficiencies in the judicial system, and to guide OSF in developing a strategy moving forward. Below are the results of this needs assessment and recommendations as to how OSF might direct its Judicial Independence Project.

¹ USAID alone invested US\$13.5 million in it’s Mongolia Judicial Reform Project between 2001 and 2006.. The World Bank spent US\$5 million in a judicial reform project began in 2001, and recently announced another US\$5 million dollar project in June of 2008 to “support Mongolian justice sector institutions enhance their efficiency, transparency and accountability through capacity improvements.” A significant portion of this money will be spent to refurbish the Supreme Court building.

² See e.g., Kenneth W. Dam, *The Law-Growth Nexus: The Rule of Law And Economic Development* (2006); and, Ana Palacio (ed.), *Law, Equity and Development*, *The World Bank Legal Review*, Volume 2 (2006)

³ See id.

⁴ L. Sumati and Ts. Sergelen, *Trend Lines in Public Perception of Judicial System Administration in Mongolia: Comparative Study Based on Nationwide surveys 2001, 2003, 2005, 2007* (Sant Maral 2007).

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id.

METHODOLOGY

Assessing the status of judicial reform is no easy task. First, there is no one generally accepted methodology, nor is there agreement over which criteria are most important in measuring the success of judicial reform. Additionally, many aims of judicial reform – judicial independence, fairness, impartiality, and even efficiency to some degree – tend toward qualitative rather than quantitative measurement.

Nevertheless, it is certainly possible to identify some essential characteristics of an independent, fair, impartial, and efficient judiciary. For example, in an independent judiciary, decisions would be free from political influence from other branches of government or other public officials. Similarly, an impartial judiciary would not be influenced by payments, gifts, or favors from litigants or other interested parties. To the extent that characteristics of an independent, impartial, qualified and efficient judiciary (assuming those are the goals of the reform) can be identified, the central task in assessing a particular judicial system lies in developing a metric for measuring, more or less objectively, the extent to which these various characteristics are descriptive of that judicial system.

One metric to have been developed is known as the “Judicial Reform Index” (JRI), which was developed by the Rule of Law Initiative (RLI) of the American Bar Association (ABA) to assess judicial reform and judicial independence in emerging democracies and transitioning states. In developing the JRI, the RLI identified 30 factors “that facilitate the development of an accountable, effective, independent judiciary.”⁹ Each factor is fashioned as a descriptive statement (i.e., - “Ethnic and religious minorities, as well as both genders, are represented amongst the pool of nominees and in the judiciary generally”) and then allocated one of three values: positive, neutral, or negative. Where the statement strongly corresponds to the reality in a given country, the country is given a score of “positive” for that statement. However, if the statement is not at all representative of the conditions in that country, the country gets a “negative” score. If the conditions within the country correspond in some ways but not in others, it gets “neutral” score. Additionally these factors are grouped into categories including: Quality, Education, and Diversity; Judicial Powers; Financial Resources; Structural Safeguards, Accountability and Transparency; and “Efficiency.” This grouping of factors allows the reader to form a quick impression of a country’s progress in any given area.¹⁰

While this approach has many strengths, which OSF has sought incorporated into its methodology for evaluating the Mongolian courts; it has several weaknesses that the OSF has also sought to avoid.

⁹ See e.g., Judicial Reform Index for Georgia, ABA 2005, available at <http://www.abanet.org/rol/publications/georgia-jri-2005-eng.pdf>

¹⁰ The JRI, however, leaves it to the reader of the JRI report to develop their own impression of the judicial system’s overall reform progress.

First, while the factors identified by the JRI are all relevant in assessing the progress of judicial reform, the JRI does not include a number other factors identified by other judicial reform experts as relevant to status of judicial reform¹¹ and fails to adequately and/or directly address a number of issues of great importance to OSF – including the degree of judicial integrity, accountability, and transparency. OSF has thus identified 60 separate factors (rather than 30) that it believes would be indicative of successful judicial reform in Mongolia and which OSF has evaluated as part of its assessment of the Mongolian courts.¹²

An additional weakness of the JRI is that the score for each factor represents the conclusion of one, or at most a few, “legal specialists who are generally familiar with the country and region,” after “limited questioning of a cross-section of judges, lawyers, journalists, and outside observers with detailed knowledge of the judicial system.” The JRI thus risks being tainted by biases of the specialist – who, especially since he or she is generally familiar with the country, will inevitably, whether consciously or unconsciously, approach the task with certain preconceived notions and opinions about the country’s judiciary. As is widely recognized by social scientists, such biases will tend to cause the specialist to selectively attend to information that supports their own impressions and beliefs about the country’s judiciary and discount or reinterpret information that does not.

To counter this possibility of bias, OSF’s assessment reflects the collective judgments of approximately 30 experts on the Mongolian judiciary, who completed anonymous surveys (See Appendix A) in which they evaluated the courts on each of the 60 factors.

Another concern with the JRI is that it scores each factor as only negative, positive or neutral. Such a scoring system, while simple, provides little information other than an up or down for each factor and does not distinguish between factors that are overwhelming negative or positive and those that are only marginally so. Additionally, as discussed above, the positive or negative score represents the subjective conclusion of only one or a few individuals – and thus appears to convey more information than it actually does.

In contrast, OSF has given each factor a numerical score based upon the collective judgment of over 30 experts.¹³ The score represents the average response of experts surveyed on a scale of 1-5 and asked to identify on a continuum the degree

¹¹ See e.g., Lin Hammergen, *Diagnosing Judicial Performance: Toward a Tool to Help Guide Judicial Reform Programs* (Transparency International).

¹² Some of the disparity in the number of factors comes from the fact that OSF has broken some JRI factors into their component parts. For example, rather than asking in one statement whether “Ethnic and religious minorities, as well as both genders, are represented amongst the pool of nominees and in the judiciary generally”, the Open Society Report Card separates this into separate questions – one about representation of minorities and the other about gender representation. Similarly, whereas the JRI asks whether “Judicial decisions are based solely on the facts and law without any undue influence from senior judges, private interests, or other branches of government,” the Open Society Report Card breaks this down into several questions and adds additional questions related to other types of undue influence over court decisions.

to which they agreed that each positive statement was an adequate reflection of the Mongolian Courts (“1” represented “Strongly Disagree” and “5” represented “Strongly Agree”). Scores below 3 (with 3 being “Neutral”) are failing scores and those above 3 are passing scores – and are identified as such on a “Report Card on the Mongolian Courts.” Additionally, the Report Card includes the percentage of experts who agree or disagree with each statement – so as to identify those areas where there is widespread consensus as to the state of the Mongolian courts. Finally, the report card, like the JRI, divides the factors into categories (for example, “Integrity”), but unlike the JRI, each category is given an overall assessment of either excellent, sufficient, marginally sufficient, marginally insufficient, insufficient, or grossly insufficient.

In order to inform these overall assessments with more than raw numbers, OSF also invited written comments and explanations from those who took the survey – an opportunity taken advantage of by many survey participants. OSF also conducted in-person interviews with various experts on the Mongolian Judiciary –including Supreme Court Justices, well-regarded attorneys, law professors, heads of NGO’s, government officials, and law enforcement officers. While there was not a one-to-one correlation to those interviewed and those surveyed, the narrative accounts gathered during those interviews help elucidate the raw numbers and are discussed below.

Finally, OSF consulted with various international agencies that are involved in judicial reform in Mongolia – not only to benefit from their considerable expertise, but also to avoid overlap or conflict with ongoing efforts to improve the Mongolian Judicial system. Such meetings led OSF, for example, to steer away from and ask less survey questions related to issues of judicial efficiency and training – which are a primary focus of ongoing efforts of USAID Judicial Reform Project and GTZ, both in conjunction with the General Council of Courts.

ASSESSMENT TEAM

Brent T. White, Associate Professor of Law, James E. Rogers College of Law, University of Arizona; and Badamragchaa Purevdorj, Manager, Open Society Forum.

¹³ OSF also distributed copies of the survey to the Research Center of Supreme Court, primarily as a means of comparing the Courts’ perception of itself with that of outside experts. Eight such surveys were distributed and collected by the Supreme Court’s Research Center and returned to OSF. All but two of the returned surveys did not identify the position of the individual who filled out the survey, as the form requests. Thus, it was impossible to tell if the surveys were filled out by Supreme Court staff, such as clerks or employees of the research center, or whether they were filled out by Supreme Court justices. Additionally, because the forms were collected by one individual at the Supreme Court, the anonymity of the survey participants, and their ability to answer the survey without fear of reprisal was compromised. These surveys are thus not included in the numerical scores reported below. As a general matter, however, the surveys returned by the Supreme Court gave the court’s significantly higher scores that did the outside experts. This was particularly the case in terms of court integrity – which the Supreme Court rated as high and experts generally rated as extremely low. On the other hand, the Supreme Court surveys reflected a need for more resources and better facilities, whereas – as will be discussed below - outside experts rated the level of court resources as sufficient.

REPORT CARD

on the Status of Court Reform in Mongolia

The following Report Card is intended to give an overall sense of the status of court reform in Mongolia. It should be viewed in conjunction with the narrative analysis.

QUALITY, TRAINING, AND DIVERSITY – INSUFFICIENT			
Judges are well-qualified. (Judges have formal university-level legal training and have practiced before tribunals before taking the bench.)	2.4*	Disagree 66%** Agree 20% Neutral 14%	Failing
Judges are well-trained. (Before taking the bench judges are required to take relevant courses concerning basic substantive and procedural areas of the law and the role of the judge in society.)	2.4	Disagree 57% Agree 19% Neutral 24%	Failing
Judges receive adequate continuing legal education. (Judges must undergo, on a regular basis professionally prepared legal education courses, which adequately inform them of changes and developments in the law.)	3.3	Disagree 19% Agree 43% Neutral 33%	Passing
Minority Representation. The number of judges who are members of ethnic and religious minorities adequately reflects the percentage of ethnic and religious minorities in the overall population.	2.5	Disagree 42% Agree 21% Neutral 37%	Failing
Gender Balance. The number of male and female judges is roughly equal at all levels of the court system.	2.0	Disagree 77% Agree 5% Neutral 18%	Failing

* This score represents the average response of experts surveyed on a scale of 1-5, with "1" representing "Strongly Disagree" and "5" representing "Strongly Agree" with each statement. Scores below 3 (with "3" representing "Neutral") are failing scores and those above 3 are passing values.

** This is percentage of surveyed experts who agreed or disagreed with each statement – with "strongly agree" and "agree" combined and "strongly disagree" and "disagree" also combined. For a break down of each see Appendix B.

Quality, training and diversity of judges is an overall area where judicial reform has made some significant progress in Mongolia, but, as evident from the overall score, where much remains to be done. One particular bright spot is continuing education of judges. This has been a focus of GTZ, the Judicial Reform Project of USAID, and the World Bank, all of which helped establish the National Law Center (NLC) for the training of judges and lawyers.¹⁴ The fact that a significant plurality of experts (43%) agrees that judges receive adequate continuing legal education, with only 19% disagreeing, is evidence of the success of these efforts.

On the other hand, 66% percent of experts disagree with the statement that judges are well-qualified to begin with and 57% believe that they do not receive adequate training before taking the bench. Comments from various survey participants and interviews with various experts suggest some possible reasons for these low marks. Some experts suggest that the clearest path to becoming a judge is to serve first as a court secretary. A number of others complained that familial relations played the largest role in selection of judges, with a few family networks occupying most judicial positions. Additionally, experts noted that the selection process is highly politicized, with the President having disproportionate influence over the selection

JUDICIAL POWER/AUTHORITY – SUFFICIENT			
Courts have the authority to determine the ultimate constitutionality of legislation and official acts.	4	Provided by Constitution	Passing
Courts have exclusive, ultimate jurisdiction over all cases concerning civil rights and liberties.	4	Provided by Constitution	Passing
Court decisions are respected and enforced by other branches of government.	2.7	Disagree 50% Agree 32% Neutral 18%	Failing
Court decisions may be reversed only through the appellate process.	3.8	Disagree 9% Agree 82% Neutral 9%	Passing
Courts have adequate subpoena, contempt, and enforcement powers.	3.9	Disagree 9% Agree 82% Neutral 9%	Passing
The courts' subpoena, contempt, and enforcement powers are utilized and supported by other branches of government.	3.8	Disagree 5% Agree 77% Neutral 18%	Passing
Other branches of government do not override or ignore court decisions, or if they do, they are subject to legal action.	3	Disagree 36% Agree 41% Neutral 22%	Neutral

¹⁴ The World Bank financed the construction of the NLC building.

of judges - such that loyalty to the president supersedes all else in the selection of judges. That said, a number of experts distinguished between Supreme Court Judges, who tend to be highly qualified, and lower court judges, many of whom are not.

Mongolian courts do not appear to lack in formal authority or power – and indeed received higher marks here than in any other category. Much of the authority of the Mongolian Courts is vested in the Courts by the Constitution itself. For example, Article 47(1) provides that, “The judicial power shall be vested exclusively in courts.” Article 50(2) provides that decisions made by the Supreme Court shall be a final judiciary decision and shall be binding upon all courts and other persons. And Article 50(3) empowers the Supreme Court, “to examine and take decision on matters related to the protection of law and human rights and freedoms therein.”

In addition, Mongolia has a separate and independent¹⁵ Constitutional Court, or Constitutional Tsets, that has “supreme authority”¹⁶ to interpret the Constitution and the power to invalidate “laws, decrees and other decisions of the State Ih Hural and the President as well as Government decisions and international treaties concluded by Mongolia” that are incongruous with the Constitution.¹⁷

Nevertheless, 50% of experts surveyed disagreed with the statement, “Court decisions are respected and enforced by other branches of government.” Similarly several experts who were interviewed indicated that the executive branch often does not honor court decisions with which it disagrees. For example, one attorney gave a specific example of the tax authority ignoring a Supreme Court decision because the attorney convinced the tax authorities that the Supreme Court was wrong in its interpretation. This raises the concern that the Supreme Court does not in fact have final authority to interpret the law and that government, and even tax inspectors, are free to ignore Supreme Court decisions with which they disagree. Indeed, the Constitution itself seems to undermine the “final authority” ostensibly given to the Supreme Court. Specifically, Article 50(2) provides, “If an interpretation made by the Supreme Court is incompatible with a law, the latter shall have precedence.” What is left unclear by the Constitution is who has the authority to decide that the Supreme Court’s interpretation is incompatible with the law.¹⁸

Resources and Infrastructure is another area where the Mongolian Judiciary has made considerable strides – thanks in significant part to the largess of the interna-

¹⁵ See Article 62 (2). The Constitutional Tsets and its members in the execution of their duties shall be guided by the Constitution only and shall be independent of any organizations, officials or anybody else.

¹⁶ Article 62(1)

¹⁷ Article 66(4)

¹⁸ Though the Constitution suggests that the Supreme Court itself would have to make that decision, that is not the reported practice in Mongolia. See Article 50(2) (“The decision made by the Supreme Court shall be a final judiciary decision and shall be binding upon all courts and other persons. If a decision made by the Supreme Court is incompatible with law, the Supreme Court itself shall have to repeal it. If an interpretation made by the Supreme Court is incompatible with a law, the latter shall have precedence.”)

RESOURCES AND INFRASTRUCTURE – MARGINALLY SUFFICIENT

The overall budget of the courts is adequate to satisfy the demand for court services.	2.8	Disagree 33% Agree 29% Neutral 38%	Failing
The overall budget of the courts has increased proportionately with the growth of the national budget.	3	Disagree 19% Agree 23% Neutral 58%	Neutral
The judiciary receives a share of the national budget reflective of its position as co-equal branch of government	3.2	Disagree 19% Agree 47% Neutral 33%	Passing
Offices provided to judges and court administrators are adequate to allow performance of their duties	3.2	Disagree 41% Agree 50% Neutral 9%	Passing
The court system operates with a sufficient number of computers and other equipment to enable it to handle its caseload in a reasonably efficient manner.	3.9	Disagree 5% Agree 78% Neutral 18%	Passing
Each judge has the staff support necessary to do his or her job, e.g., adequate support staff to handle documentation and legal research.	3.7	Disagree 10% Agree 80% Neutral 10%	Passing
A system exists so that new court positions are created as needed	2.8	Disagree 28% Agree 19% Neutral 52%	Failing
Judges' salaries are adequate. (Judges salaries meet some reasonable proportion of good wage in private sector, are generally sufficient to attract and retain qualified judges, enabling them to support their families and live in a reasonably secure environment, without having to have recourse to other sources of income).	2.0	Disagree 36% Agree 46% Neutral 18%	Neutral
Court buildings provide a respectable environment for the dispensation of justice with adequate infrastructure.	2.1	Disagree 63% Agree 5% Neutral 32%	Failing

tional donor community. USAID has for example modernized and equipped (with computers, furniture and audio equipment) the Capital City and 8 district courts and the World Bank LJRP funded the repair and new furniture for courtrooms of the Supreme Court and Capital City Administrative courts and Darkhan-Uul aimag. As a result, over 78% of experts agreed that “The court system operates with a sufficient number of computers and other equipment to enable it to handle its caseload in a reasonably efficient manner.”

Mongolia has also made significant strides in improving judicial support staffing

– with the recent addition of court clerks for each judge. As a result, 80% of experts agreed that judges have “the staff support necessary to do his or her job, e.g., adequate support staff to handle documentation and legal research.”

Judicial salaries have also improved recently to around US\$300-400 per month for lower court judges, and around \$700 per month for Supreme Court Judges. This amount is generally sufficient for judges to support their families and live in a reasonably secure environment – though just barely. Even so, judicial salaries compare unfavorably to private sector wages for professionals. And when compared to the salaries of top corporate attorneys in Ulaanbaatar - who can bill as much as \$200 an hour – judicial salaries are woefully insufficient to attract the best and the brightest attorneys. Nor is a judicial position sufficiently prestigious in Mongolia to compensate for the low salary (though, as will be discussed below, opportunities to supplement one’s judicial salary through corrupt activities may be).

Furthermore, despite recent improvement to some courtrooms in Mongolia, a significant majority of experts surveyed (63%) reported that court buildings as a whole still do not provide a respectable environment for the dispensation of justice with adequate infrastructure.

Finally, the budget of the judiciary remains low both in real numbers and in comparison to other branches of government - constituting less than .5 percent of the national budget (a percentage that is subject to change up or down each year.) As a result, only 29% of experts surveyed agreed that “The overall budget of the courts is adequate to satisfy the demand for court services.” Nevertheless, the Legislature has repeatedly rejected proposals to tie the judicial budget to a percentage of the national budget – whether 3, 2, or even 1 percent. The result is a budget that is not only minimal at best (and actually less than the amount the courts generate in user fees each year), but also subject to manipulation by the other branches of government.

Thus, despite significant improvement in the resources and infrastructure of the courts, this is an area where much remains to be done and where the situation is marginally sufficient at best. On the other hand, it is also an area that continues to be a focus of efforts by the international donor community – meaning that further improvement can be expected.

Though, as discussed above, Mongolian judges do not lack in formal authority, are constitutionally independent from the other branches of government, and are guaranteed life tenure, the reality of judicial independence leaves much to be desired. Indeed, only 19% of experts agreed that “Court decisions are free from political influence from other branches of government or other public officials.”

Experts interviewed widely shared the view that high ranking government officials (particularly the President) exert considerable influence over Supreme Court and lower court decisions. Moreover, some experts were able, off the record, to identify specific instances of high ranking government officials interceding directly with judges

INDEPENDENCE – INSUFFICIENT

<p>The court system has sufficient input and control over its own budget. (The courts have a meaningful opportunity to influence the amount of money allocated to the courts by the legislative and/or executive branches, and, once funds are allocated to the courts, the courts have control over their own budget and how such funds are expended).</p>	3.1	<p>Disagree 32% Agree 41% Neutral 27%</p>	Passing
<p>The selection and appointment process fosters the selection of independent, impartial judges. (Judges are appointed based on objective criteria, such as passage of an exam, performance in law school, other training, experience, professionalism, and reputation in the legal community. While political elements may be involved, the overall system fosters the selection of independent, impartial judges).</p>	2.7	<p>Disagree 54% Agree 32% Neutral 14%</p>	Failing
<p>Judges are provided adequate security. (Sufficient resources are allocated to protect judges from threats such as harassment, assault, and assassination).</p>	2.5	<p>Disagree 55% Agree 14% Neutral 32%</p>	Failing
<p>Judges have guaranteed tenure. Judges are appointed for fixed terms that provide a guaranteed tenure, which is protected until retirement age or the expiration of a defined term of substantial duration.</p>	3.9	<p>Disagree 9% Agree 77% Neutral 14%</p>	Passing
<p>Judges are promoted through the court system on the basis of objective criteria such as ability, integrity, and experience.</p>	3.1	<p>Disagree 23% Agree 36% Neutral 41%</p>	Passing
<p>Judges may be removed from office or otherwise punished only for specified official misconduct and through a transparent process, governed by objective criteria.</p>	3	<p>Disagree 32% Agree 41% Neutral 27%</p>	Neutral
<p>Once assigned to a case, a judge may be removed only for good cause, such as a conflict of interest or an unduly heavy workload.</p>	3.1	<p>Disagree 32% Agree 50% Neutral 23%</p>	Passing
<p>A judges' association exists, the sole aim of which is to protect and promote the interests of the courts, and this organization is active.</p>	2.3	<p>Disagree 40% Agree 5% Neutral 40%</p>	Failing
<p>Court decisions are free from political influence from other branches of government or other public officials.</p>	2.5	<p>Disagree 43% Agree 19% Neutral 38%</p>	Failing

to arrange specific judicial outcomes. This is not to say that government officials interfere in run of the mill cases. Indeed, most cases are likely free from political interference. But the same cannot be said when the personal, political, or business interests of government officials are at stake.

The disparity between the formal independence of the courts on one hand, and the degree of political influence over court decisions on the other, suggest that formal structures and rules may be less important in how the courts actually function than informal institutional rules and norms, particularly to the extent such informal norms contradict the notion of an independent judiciary.

One such informal institutional norm, that is at least relatively common in Mongolia, is clientelism. Clientelism can be understood as “a special case of dyadic (two person) ties involving a largely instrumental friendship in which an individual of higher socio-economic [or political] status [the patron] uses his own influence and resources to provide protection or benefits, or both, for a person of lower status [the client] who, for his part, reciprocates by offering general support and assistance, including personal services, to the patron.” Patron-client relationships may extend well beyond two individuals and involve many actors at various hierarchical levels – in a type of pyramid where every person, except those at the very top and bottom, are both a client and a patron at the same time. Such pyramids of patron-client relationships might also be called “social exchange networks” – in which the behavior of each member in the network is highly constrained by an informal but deeply embedded norm of reciprocity.

Regardless of the extent to which such clientelism, or “social exchange corruption,” is prevalent in Mongolia, it certainly seems to play a distorting role in judicial appointments and judicial decision making. At the risk of oversimplification, judicial positions appear to be a type of patronage given to some individuals by high ranking government officials (primarily the President, but also key others instrumental in the appointment) in exchange for the implicit promise of future support and loyalty. Thus when the government official suggests that the judge – directly or through an intermediary - render a particular decision, the tendency is to comply. Because such reciprocity is an informal though deeply internalized social norm, formal guarantees of judicial authority and life tenure have minimal appreciable impact on judicial independence in such cases.¹⁹

Moreover, to the extent that clientelism is endemic and systematic in Mongolia,

¹⁹ As Christopher Steffes explains in *Understanding Post-Soviet Transitions: Corruption, Collusion and Clientelism*, clientelism, or social exchange corruption, can effectively thwart the development of new formal institutions, such as that of an independent judiciary:

...in the post-Soviet context the informal institutions of systemic corruption, like clientelism and collusion, have been a prevalent legacy of the pre-1991 era. They play a strong role in enabling the behaviour of state officials and citizens. At the same time, they counteract the development of formal political and economic institutions, because where informal institutions are already established, formal institutions might face a difficult time to develop. ... in transitional regimes informal rules often supercede formal institutions, leaving little room for strengthening the rule of law and constitutionalism.

judicial decisions are likely to be influenced by a particular judge's various other social exchange networks – particularly when the party, or their lawyer, is part of a social exchange network that includes the judge. Thus the often repeated refrain that a good lawyer in Mongolia is a well-connected lawyer.

Unfortunately, judicial reform in Mongolia has done little to directly address the role of clientelism in judicial appointments and decision making. Worse, certain features of the current system seem to reinforce rather than restrict its corroding influence.

First, the President has disproportionate power over the appointment, removal, and promotion of judges – and the processes for each lacks sufficient transparency. Indeed, one expert expressed the opinion, backed by substantial evidence, that the disciplinary process for judges is more often used to punish judges who are too independent than to punish or remove judges who are unethical or incompetent.

Second, the budget of the judiciary, as well as judges own salaries, are subject to decrease in any given year. Thus, in the words of one Supreme Court judge, “the judicial budget depends on maintaining good relations with those in the legislative and executive branch who control budgetary decisions.”

Third, the Judicial Code of Conduct does not prohibit judges from discussing pending or future litigation before the court in private with other public officials (or other non-parties), who are free to convey to judges their preferred outcomes.

INTEGRITY – GROSSLY INSUFFICIENT			
Court decisions are not influenced by payments, gifts, or favors from litigants or other interested parties.	2.0	Disagree 77% Agree 0% Neutral 23%	Failing
Family, social, business, or other relationships do not influence judges’ conduct or judgment.	2.0	Disagree 73% Agree 9% Neutral 18%	Failing
Court decisions are free from the appearance of impropriety. Judges refrain from hearing cases in which the judge’s family, social, business, or other relationships may create the appearance of a conflict of interest, whether or not such a conflict actually exist.	2.3	Disagree 59% Agree 9% Neutral 32%	Failing
Judges refrain from ex parte communications. (Judges refrain from substantive communication with parties and their attorneys regarding matters before the court outside the presence of the other parties or their attorneys).	2.0	Disagree 82% Agree 9% Neutral 0%	Failing
Trial court decisions are reached without any undue influence from senior judges within the courts (e.g., chief judges, Supreme Court judges, etc...).	2.3	Disagree 64% Agree 14% Neutral 22%	Failing

Among experts surveyed by OSF, there was near universal agreement that court decisions are influenced by improper payments and judges' own personal interests. A full 77% of experts disagreed (with none agreeing) with the statement that "Court decisions are not influenced by payments, gifts, or favors from litigants or other interested parties." 73% of experts disagreed (with only 9% agreeing) with the statement that "Family, social, business, or other relationships do not influence judges' conduct or judgment."

This latter role of family, social and business interests in judicial decisions is in keeping with the role, discussed above, that informal rules and social exchange corruption play in influencing judicial decisions. Indeed, to the extent that deeply embedded social norms, such as social and familial reciprocity, conflict with the still developing norm of "rule of law," one can expect that informal – and socially accepted – norms of reciprocity will frequently influence judicial decisions.

But while one might expect (and should thus guard against) a certain degree of relational influence over judicial decision making (particularly in a country as small as Mongolia), the prospect that court decisions are influenced "by payments, gifts, or favors from litigants or other interested parties," suggests a degree of outright bribery and corruption that cannot be rationalized on the basis of culture. Such corruption is facilitated, at least in part, by the practice of judges meeting privately and separately with parties and their attorney(s) outside the presence of the other party or their attorney(s).

Real or perceived corruption among Mongolia judges poses a profound and debilitating threat to the development of rule of law and democracy in Mongolia. Judicial corruption denies citizens the basic right to a fair and impartial trial, deprives individuals of equal treatment before the law, and undermines the very anti-corruption efforts that the courts are ultimately expected to enforce. Judicial corruption effectively makes graft itself the informal "rule of law."²⁰ In other words, weeding out corruption in the judiciary is a critical, and indispensable, aspect of ensuring the rule of law. Indeed, this was a recurring theme with experts interviewed by OSF – who described judicial corruption as pervasive and gave, albeit off the record, numerous examples of judges trading decisions for personal or family gain.

Unfortunately, none of the major international agencies which fund or support judicial reform in Mongolia has sought to address corruption directly. Indeed, one high level official of a major donor funded judicial reform project denied in interview with

²⁰ See Global Corruption Report 2007, Transparency International, p. xxi (Cambridge University Press)(Noting, "It is difficult to overstate the negative impact of a corrupt judiciary: it erodes the ability of the international community to tackle transnational crime and terrorism; it diminishes trade, economic growth and human development; and, most importantly, it denies citizens impartial settlement of disputes with neighbours or the authorities. When the latter occurs, corrupt judiciaries fracture and divide communities by keeping alive the sense of injury created by unjust treatment and mediation. Judicial systems debased by bribery undermine confidence in governance by facilitating corruption across all sectors of government, starting at the helm of power. In so doing they send a blunt message to the people: in this country corruption is tolerated.)

the author that corruption is a problem at all in Mongolia.²¹ This denial was echoed by justices of the Supreme Court, one of whom blamed the perception of corruption within the judiciary on an irresponsible press and told the author that the real problem is that “there is too much media freedom” in Mongolia. Another justice blamed the perception of corruption on incompetent lawyers who accuse judges of taking bribes to cover their own inadequacies as lawyers. Similarly, it was suggested that incompetent lawyers try to bribe judges because they do not know how to prepare or argue a case. When asked if judges take these bribes, the Supreme Court Justice smiled and replied, “It’s like you say in America. If you can’t prove it, it didn’t happen.” This head in the sand approach to judicial corruption is perhaps the central failure of judicial reform in Mongolia.²²

JUDICIAL CODE OF ETHICS – INSUFFICIENT			
The code of ethics for judges adequately defines and prohibits judges from hearing cases in which they have a conflict of interest.	2.5	Disagree 55% Agree 23% Neutral 23%	Failing
The code of ethics for judges prohibits ex parte communications.	2.3	Disagree 53% Agree 14% Neutral 33%	Failing
The code of ethics for judges prohibits judges from engaging in political activity.	3.0	Disagree 32% Agree 32% Neutral 36%	Neutral

Both actual judicial corruption and the perception of corruption are facilitated by a vague and weak judicial code of ethics that does not adequately define or prohibit judicial impropriety – nor guard against the appearance of impropriety. For example, the judicial code of ethics does not prohibit ex parte communications between judges and parties and 82% of experts agreed that judges do, in fact, meet privately with parties and/or their lawyers. Regardless of their actual content, such ex parte communications create an opportunity for corruption and contribute to the general suspicion toward the courts. Additionally, the judicial code of ethics does not prohibit – other than in the vaguest terms - judges from hearing cases in which they have a conflict of interest. As such, judges frequently hear cases in which the judge’s family, social, business, or other relationships create a conflict

²¹ This official went on to explain that in “ten years” of working with the Courts, he had never seen “any evidence” of judicial corruption or improper influence.

²² On the other hand, the extent of corruption in the Mongolian judiciary also reflects the general level of corruption in Mongolian society as a whole – suggesting that judicial reform cannot take place in a vacuum, but must rather must take place in the context of broader, and determined, efforts to weed out corruption at all levels of government. See *id.* (“The justice system is also embedded within society: the reality is that general levels of corruption in society correlate closely with levels of judicial corruption. This appears to support the contention that a clean judiciary is central to the anti-corruption fight; but might also suggest that the quality of the judiciary and the propensity of its members to use their office for private gain reflect attitudes to corruption in society more broadly.”)

of interest. Regardless of whether judicial decisions are actually influenced by such conflicts, they create an appearance of impropriety that no doubt contributes to the public perception of corruption within the courts. Moreover, anecdotal evidence suggests that these conflicts also frequently influence judicial outcomes.

ACCOUNTABILITY – INSUFFICIENT			
A meaningful process exists under which other judges, lawyers, and the public may register complaints concerning misconduct by individual judges.	2.8	Disagree 41% Agree 27% Neutral 32%	Failing
Complaints of misconduct by judges are adequately investigated.	2.5	Disagree 46% Agree 23% Neutral 31	Failing
Complaints of misconduct by judges are investigated without political interference from other branches of government.	2.7	Disagree 32% Agree 19% Neutral 50%	Failing
Investigations of misconduct by judges are not influenced by unofficial payments, gifts, or favors from judges or other interested parties.	2.7	Disagree 41% Agree 18% Neutral 41%	Failing

Aside from a weak judicial code of ethics that leaves room for considerable “non-prohibited” impropriety, even judges who engage in clearly prohibited activities, such as taking bribes, are rarely – if ever - held accountable.

Though Mongolia has established a Judicial Disciplinary Committee, many experts expressed concern that the Disciplinary Committee is used primarily to punish judges who are too independent rather than those who abuse their power to solicit or accept bribes, or otherwise further their own self interest. For example, one judge was reportedly brought before the Disciplinary Committee for publicly disagreeing with the Chief Judge of the Supreme Court that judges should “work as a team,” and for arguing instead that judges should exercise independent judgment.

Experts also expressed concern – both in face-to-face interviews and in the OSF survey - that investigations of judicial misconduct are tainted by political interference and graft. Because Judicial Disciplinary proceedings lack transparency it is difficult to substantiate such concerns. However, general statistics released by the Committee illustrates that the vast majority of complaints against judges are dismissed without action or explanation. For example, 22 of 28 complaints against judges in Ulaanbaatar between 2003-2005 were so dismissed.²³

²³ Assessment Report of the Strategic Plan for Justice System of Mongolia, Judicial Reform Program, USAID (2006).

No information is publicly available as to what happened to the other six. In the absence of public transparency, or even an independent audit, one is left to suspect whether the high dismissal rate is the result of inadequate enforcement or the lack of actual judicial misconduct. Given the widespread perception of corruption with the judiciary, the former is a distinct possibility.

Additionally, because Mongolian law does not provide whistleblower protection to individuals who report corruption, individuals from whom judges successfully solicit bribes risk prosecution should they report the corruption to authorities. Additionally, given the growing misuse of defamation law in Mongolia to silence those who report corruption (including the high profile jailing of several reporters who have reported on specific incidences of corruption), few individuals are willing to come forward even when they themselves are not implicated.²⁴

The silencing of those who would report judicial corruption reflects a broader climate of systemic corruption and lack of accountability in Mongolia. While the goal of judicial reform in such a political context should be for the courts to become an oasis of non-corruption to which the public can turn for justice, judicial reform in Mongolia has focused much more on improving infrastructure than demanding accountability from judges.

TRANSPARENCY – GROSSLY INSUFFICIENT			
Supreme Court and significant appellate opinions are subjected to academic scrutiny.	2.3	Disagree 68% Agree 19% Neutral 13%	Failing
Supreme Court and significant appellate opinions are subjected to scrutiny by the media and the general public.	2.7	Disagree 50% Agree 41% Neutral 9%	Failing
Judges are assigned to cases by an objective method, such as by lottery, or according to their specific areas of expertise.	2.6	Disagree 41% Agree 18% Neutral 41%	Failing
Courtroom proceedings are open to the public and the media.	2.5	Disagree 59% Agree 23% Neutral 18%	Failing
Courtrooms have adequate space to accommodate the public and the media.	2.0	Disagree 82% Agree 9% Neutral 9%	Failing
Court decisions are generally a matter of accessible public record.	2.5	Disagree 68% Agree 23% Neutral 5%	Failing

²⁴ One public official even warned the author of this report that he would risk prosecution for defamation if he conducted a survey on judicial corruption and identified particular judges who were reported as the most corrupt by members of the bar.

Supreme Court and significant appellate opinions are published.	2.2	Disagree 86% Agree 14% Neutral 0%	Failing
Transcripts or some other reliable record of courtroom proceedings are maintained and are available to litigants and their attorneys.	3.5	Disagree 14% Agree 69% Neutral 17%	Passing
Transcripts or some other reliable record of courtroom proceedings are maintained and are available to the media and general public.	2.2	Disagree 63% Agree 14% Neutral 23%	Failing
Court users have easy access to information on the status of their case.	1.9	Disagree 82% Agree 9% Neutral 9%	Failing
Current law is distributed and indexed. (There is a nationally recognized system for indexing current domestic laws and jurisprudence and identifying and organizing changes in the law).	2.7	Disagree 45% Agree 41% Neutral 14%	Failing

One explanation for the high level of perceived or real corruption in the Mongolian Court is the glaring lack of transparency to how courts actually make decisions. Lack of transparency not only allows corrupt judges to hide impropriety, it also causes individuals to suspect corruption even in its absence. Given the systemic nature of corruption in Mongolia, one can hardly fault a losing litigant for, in the absence of a cogent decision, suspecting that the judge may have been bought. The only way to fight this perception of corruption is through a resolute commitment to absolute transparency. Regrettably, agencies dealing with judicial reform in Mongolia have failed to make transparency a sufficient priority. As evidence of this failure:

- Only 18% of experts agree that judges are assigned to cases in a transparent and objective manner.
- Though courtroom proceedings are technically open to the public, in practice, courtrooms have inadequate space to accommodate the public and members of the public are routinely excluded by judges or their clerks from hearings and trials.²⁵
- Supreme Court and significant appellate opinions are rarely published – and, when published, not widely circulated.
- District court decisions are never published, and are not otherwise available to the public.

²⁵ Final Report, Court Observer Program by Otgontenger University (2005).

- There are no transcripts of trial court proceedings for archive. The only available records of trial court proceedings are court-produced summaries of the trial testimony that provide, at best, an incomplete and, at worst, a distorted record for appeal.
- Even these incomplete court-produced summaries of trial court proceedings are not available to the media or the general public.
- 82% of experts indicate that court users do not have easy access to information on the status of their cases.²⁶
- District courts simply pronounce outcomes and rarely explain the reasoning behind their decisions in terms of the facts and the law - leading to a sense of inscrutability as to the basis of court decisions.
- Supreme Court and significant appellate opinions are rarely subject to academic scrutiny, which contributes not only to sloppy and unclear decisions but also lack of accountability in that questionable decisions go unexposed.²⁷

EFFICIENCY – INSUFFICIENT

The court system maintains an effective and accessible case filing and tracking system that ensures cases are heard in a reasonably efficient manner.	2.7	Disagree 50% Agree 27% Neutral 23%	Failing
Procedural rules for handling cases are standardized and time limits are set for the completion of various stages of litigation.	2.4	Disagree 54% Agree 32% Neutral 14%	Failing

Due to the fact that a number of internationally-funded judicial reform projects are focusing on improving judicial efficiency through better case management, improved computer capabilities, and judicial performance reviews (based on the timeliness of court decisions, but not their substance), efficiency was not a primary area of concern for OSF. However, the OSF survey revealed that only 27 percent of experts agreed that, “The court system maintains an effective and accessible case filing and tracking system that ensures cases are heard in a reasonably efficient manner” (with a full 50% disagreeing). Similarly, 54% disagreed that

²⁶ This is despite new public access terminals in many court houses that have been touted by USAID as evidence of the progress of judicial reform in Mongolia. See Assessment Report of the Strategic Plan for Justice System of Mongolia, Judicial Reform Program, USAID (2006). In reality, however, public access computers are often turned off, broken, or otherwise inaccessible to court users. Final Report, Court Observer Program by Otgontenger University (2005).

²⁷ One expert explained this lack of scrutiny by the fact that, given their low salaries, most law professors must also practice law in order to survive and fear that criticizing the courts would threaten their livelihood. Most academics, the expert explained, “are in the pockets of the judges.”

“Procedural rules for handling cases are standardized and time limits are set for the completion of various stages of litigation.” The focus on improving efficiency is thus not misplaced.

PREDICTABILITY – GROSSLY INSUFFICIENT

Judges follow and enforce procedural rules.	2.2	Disagree 68% Agree 14% Neutral 18%	Failing
Rules of evidence exist as to what evidence judges may or may not consider.	2.4	Disagree 63% Agree 23% Neutral 14%	Failing
Judges follow any existing rules of evidence (Judges do not consider improper evidence nor exclude proper evidence).	2.3	Disagree 63% Agree 23% Neutral 14%	Failing
Court standards for evaluating legal arguments exist and are applied in a predictable fashion.	2.1	Disagree 64% Agree 14% Neutral 14%	Failing

Though some significant progress has been made in the training of judges, solid majorities of experts surveyed indicated that judges do not enforce procedural rules, do not follow rules of evidence, and do not apply legal standards or rules in a predictable fashion. The unpredictability and unevenness of judicial decision making is reflected in a reversal rate of district court decisions approaching 80% in appealed cases.²⁸ This reversal rate is persuasive evidence that district court judges are either unqualified, continue to be inadequately trained, or decide cases on the basis of external factors (such as political influence and/or receipt of bribes). It should go without saying, of course, that lack of predictability and the apparent arbitrariness of judicial decisions greatly undermine the rule of law, and the role of courts in promoting both social justice and economic efficiency.

ALTERNATIVE DISPUTE RESOLUTION – INSUFFICIENT

The pre-trial settlement of disputes is encouraged but not forced.	3.2	Disagree 28% Agree 58% Neutral 14%	Passing
Established alternative dispute resolution mechanisms such as mediation and arbitration provide a viable alternative to court processes.	2.5	Disagree 54% Agree 23% Neutral 13%	Failing

²⁸ Only 3% of civil cases are actually appealed. Interview with Justice L. Byambaa, Supreme Court of Mongolia. Possible explanations for this low rate of appeal despite a reversal rate that would seem to encourage appeals are lack of financial resources to appeal, lack of information about the right to appeal, or – as one expert suggested – only those who are well-connected enough to be able influence the appellate courts bother to appeal.

Mongolia has taken a number of positive steps to promote alternative dispute resolution. First, as a way of encouraging but not forcing the pre-trial settlement of disputes, filing fees are cut in half for parties who settle before trial. Additionally, Mongolian law allows for voluntary, but binding, arbitration of any civil dispute – either before established tribunals such as one set up by the Chamber of Commerce or an ad hoc tribunal agreed upon by the parties. Additionally, in May 5, 2006, a mediation center, which is staffed by 9 attorneys, was established with the assistance of JICA.

However, several experts interviewed gave the mediation center low marks in terms of the quality of mediators and others seemed to be unaware of both the center's existence and what mediation entails. Moreover, mediation is not formally recognized as a form of dispute resolution in Mongolian law, there are no court-annexed mediation programs (which might elevate the status of mediation as a form of dispute resolution), and judges lack the power to order parties to attempt settle their dispute in mediation before continuing with litigation.

RECOMMENDATIONS

What follows are recommendations to address the major concerns raised in this report. These recommendations are intended as a starting point for further discussion – and are not exhaustive. Rather they represent the author’s assessment of the types of measures that will be necessary to reach the goal of an effective and independent judiciary that is free from corruption. These recommendations are premised on the firm conviction that judicial reform must ensure transparency, demand accountability and aggressively root out corruption, or it is doomed to fail.

Most of the proposed reforms cannot be implemented by the Open Society Forum alone and will be possible only with widespread consensus and a great deal of political will. Such consensus can hopefully grown from common assessment of the pressing need to address the perception, well-grounded or not, of widespread corruption within the judiciary. Stakeholders (including judges themselves) need not agree, however, on whether judicial corruption is a real or imagined problem. Rather, stakeholders need only agree that the ultimate goal is a court system in which the public can rightly have confidence.

Thus, the first recommendation is to publish and distribute this report (or some version of it) and to invite key stakeholders – including judges - to participate in formulating a strategy for moving forward. On the other hand, it is important to remember that the key stakeholder in judicial reform is the public writ large. The role of civil society organizations such as the Open Society Forum is to promote the public’s interest above all others. One fundamental conclusion of this report is that the agenda of judicial reform in Mongolia has been co-opted by elements within the judiciary and the government that benefit from a judiciary that is neither wholly independent nor wholly immune from being bought. In the face of such resistance, this report recommends unwavering advocacy of transparency and accountability – and a few other common sense measures designed to protect against the temptations of corruption. Specifically, this report recommends that OSF push for the following:

REFORMS TARGETED AT THE QUALITY AND TRAINING OF JUDGES

1. Judges should be subjected to periodic judicial performance evaluations. (See Appendix C, *Transparent Courthouse: A Blueprint for Judicial Performance Evaluation*²⁹) Evaluations should be based upon confidential surveys completed by members of the bar who have actually appeared before the judges. These surveys should, at a minimum, evaluate each judge's integrity and fairness, temperament, legal knowledge and legal reasoning, and diligence and professionalism. (See Appendix C, p.43 for a sample attorney survey) Judges' overall scores on these periodic surveys should be made public and judges publicly ranked (as is the practice in Colorado in the United States). Ideally, such evaluations should be administered by an independent commission – though with the full backing of the General Council of Courts, the Judiciary, and the Mongolian Bar Association. However, if such backing is not forthcoming, the OSF should conduct the performance evaluations independently. OSF should also widely publicize the results. Such evaluations might then serve as further evidence of the need for the types of reforms proposed in the rest of this report. Indeed, given that there will certainly be fierce resistance to the proposed reforms by those who benefit from the current system, a first round of judicial performance evaluations conducted by OSF, with perhaps the Bar Association, might well be the most sensible way to proceed.
2. Minimum qualification requirements should be established for newly appointed judges. At a minimum, judges should be required to have graduated from a law school,³⁰ have passed the bar exam, and have at least three years experience as an attorney or prosecutor.
3. Selection of judges should be based on objective criteria, such as scores on a civil service exam with only the highest scorers eligible for appointment. For example, the system might be designed so that when there is an opening on the court, the name of the applicant with the highest score on the civil service exam would be forwarded by the General Council of Courts to the President for appointment (with no Presidential discretion to refuse the appointment). Such a system would not only ensure that the most qualified individuals were appointed to the bench, but also mitigate social exchange corruption pressures inherent in the current appoint-

²⁹ Available at OSF's website www.forum.mn

³⁰ Ideally judges should be required to have graduated from an accredited law school, but Mongolia currently does not have an accreditation process for law schools – leading to a proliferation of law schools of questionable quality. Though not directly related to reform of the courts, Mongolia should also implement accreditation standards for law schools.

ment system and thereby help ensure judicial independence. The author leaves to experts on Mongolian constitutional law whether such a system would be permissible under the current constitutional framework or would require a constitutional amendment.

4. In order to incentivize good judging, promotions within the court system (for example, from district court judge to appellate court judge), and the level of a judge's pay, should be merit-based – at least in some significant way. For example, scores on Judicial Performance Evaluations could be used to determine both promotion and increases in salary.
5. Judges should be required to undergo a substantial training course prior to assuming the bench. This course should include instruction on the judicial code of ethics, rules of evidence, legal reasoning and decision writing, the role of the judge in society and basic substantive and procedural areas of the law.
6. Every judge should be required to complete at least 20 hours of continuing judicial education during each calendar year.

REFORMS TARGETED AT JUDICIAL AUTHORITY AND INDEPENDENCE

1. The Constitution should be amended to clarify that only the Supreme Court or the Tests (in the case of a constitutional question) has the authority to decide that a previous interpretation of the law by the Supreme Court was incorrect. Government agencies should be bound by decisions of the Supreme Court regardless of whether the government agency believes that the decision is inconsistent with the law.
2. Judges' salaries should be significantly improved to the USD\$1000 to \$3000 range – with a judge's actual pay within that range determined by merit. Additionally, judges' salaries should, by law, never decrease – except for demotions with the defined pay range (USD\$1000 to \$3000) for judicial misconduct. The rationale for such a significant increase in current salaries is that judges' salaries should be sufficiently high to attract the best legal minds and also high enough that judges will be reluctant to engage in corrupt activities and thereby risk their jobs. Salaries should also incentivize good judging. However, the proposed increases in salary should not take place until the judiciary adopts a no tolerance policy toward corruption and puts in place specific mechanisms designed to ensure judicial transparency and accountability (see below for suggested mechanisms).
3. The budget of the courts should be permanently tied to a percentage of the national budget - ideally 2 to 3 percent at minimum - in order to protect against the misuse of the budgetary process to control the courts.

4. A clear set of rules for removal of judges from office should be developed to ensure that judges may be removed from office or otherwise punished only for specified official misconduct through a transparent process, governed by objective criteria.

REFORMS TARGETED AT TRANSPARENCY

1. A transparent system for the assignment of cases, such as a lottery, should be developed. Once assigned to a case, the rules should provide that a judge may be removed only for good cause, such as a conflict of interest.
2. Notices should be posted on every courtroom that all proceedings are open to the public, regardless of whether the member of the public has any connection to the case being heard. Judges and clerks should be censured for failing to allow open access.
3. District courts should be required by law produce *written decisions* that discuss the relevant facts and law and explain the reasoning behind their decisions.
4. All court decision and court filings should be made available on a daily basis in a public access or media tray at each courthouse, so that the media or other members of the public can review the filings and decisions and thereby monitor the daily activities of the court.³¹
5. Verbatim transcripts should be produced of all court proceedings. These transcripts should be available to both litigants and any member of the public for a reasonable fee – and should be provided free to indigent litigants who need the transcripts for appeal.
6. An official reporter system should be established to collect and publish all district court, appellate court, and Supreme Court decisions. Preferably, the reporter system should be electronic and online to ensure broad access, reduce costs, and enable timely publication. There should also be free computer access terminals to the reporter system at the National Legal Center in Ulaanbaatar and other convenient locations in each Aimag or Soum for use by attorneys and other members of the public.
7. The public should be provided meaningful access to information about the status of cases before the courts. Such information should be provided in the form of a “docket sheet,” which should, for example, list the title and date of all court filings, list all actions taken by the court such as hearings

³¹ Copies machines should be available so that media organizations, civil society organizations, and other members of the public can, for a reasonable fee, make copies of court filings and decisions. Media organizations, and possibly civil society organizations, should assign “court reporters” the responsibility of checking the public access or media tray on a daily basis.

and rulings on motions, and the date of any future hearings or court deadlines. These docket sheets should be available not only via public access terminals in the court houses, but also online via a subscriber system.

8. A court observer program should be instituted to ensure that judges are not excluding the public from hearings and are following proper procedures. Observers should also evaluate judges on their fairness, temperament, and professionalism. A previous Court Observer Program conducted by law students at Otago University could be revamped and revived for this purpose.
9. De novo appeals should be eliminated. Rather, appellate review should be limited to reviewing the trial court record for errors of law and clearly erroneous findings of fact as evident from verbatim transcripts of trial court proceedings.
10. Uniform rules of evidence should be adopted and published separately in their own volume. These rules of evidence should be trans-substantive and applied in all court proceedings.
11. A uniform code of civil procedure should be adopted and published separately in its own volume titled. The code of civil procedure should be trans-substantive and applied in all civil proceedings.
12. Upon termination of trial court proceedings, all court users should be given an easy to understand pamphlet explaining their right to appeal and describing clearly the necessary steps and deadlines to file such an appeal. The pamphlet should also inform individuals of the right to receive a copy of the trial court's written decision and, if they are unable to pay for it, a free copy of the record of trial court proceedings.

REFORMS TARGETED AT ACCOUNTABILITY

1. A separate body should be established for investigation of judicial misconduct – or the current Judicial Disciplinary Committee should be reconstituted. No judges should be on the Committee – nor should it be headed, as is currently the case, by the Chief Justice. Members of the Committee should not be politically appointed, but rather selected by civil service exam or some other objective measure. The Committee should have investigative and subpoena powers and the resources to conduct investigations, including undercover operations.
2. Independent audits of the Judicial Disciplinary Committee should be conducted to ensure the proper and consistent investigation of complaints of judicial misconduct. The results of these audits should be made public.
3. The procedures and rules for investigating and disciplining judges should be revamped in accordance with best international practices so that: the disci-

plinary process is more transparent and fair, with strict and exacting standards; the standard of proof is not so high as to effectively shield judges from a finding of misconduct; judges who are eventually found to have engaged in misconduct are publicly identified; and if there is a finding of corruption, the judge is prosecuted as matter of policy and practice.

4. Revise the Judicial Code of Ethics in keeping with international best practices. At a minimum, amend the judicial code of conduct to:
 - Prohibit ex parte communications with parties or their lawyers
 - Prohibit high court or senior judges from discussing pending or prospective cases with junior or lower court judges.
 - Prohibit judges from hearing any case where a relative was involved in any part of case, including as lower court judge hearing the case, a prosecutor trying the case, or an attorney or party on either side of the litigation.
 - Prohibit judges from engaging in any employment other than as a judge, or from owning, in whole or in part, any business enterprise.
 - Clearly define what constitutes a conflict of interest and prohibit judges from hearing any case in which there is a real or apparent conflict of interest.
 - Prohibit judges from discussing pending or prospective litigation with any individual outside the court, whether a private individual or government official.
5. Require rigorous asset and income disclosures. Place the burden on judges to document lawful sources for all income and assets.
6. Require judges to disclose the identities of all relatives (including their degree of relation) who are, or were, previously judges, prosecutors, or attorneys.
7. Construct and publicize a “family tree” to highlight family connections with the judiciary and to help monitor conflicts of interests.

SPECIAL ANTI-CORRUPTION MEASURES

1. Implement a jury system in Mongolia – at least in more serious criminal cases and in civil matters where the amount in dispute is over Tug 10 mil-

³² Some Mongolians with whom the author has discussed this idea have argued that a jury system is impractical in a small country like Mongolia because people are likely to know each other. However, there is a high statistical likelihood of being able to empanel an impartial jury with no relation to the parties in larger cities in Mongolia such as Erdenet, Darhan and, particularly, Ulaanbaatar, where the population is around one million people. Additionally, as demonstrated throughout rural America, even in small towns juries can still function to check corruption by leaving factual decisions of guilt and liability to a group rather than a single person.

lion. A significant body of literature suggests that jury systems can be quite effective in checking corruption by taking the final decision out of the hands of a single judge, who is more easily corrupted, and putting it in the hands of a jury, who because of its size and uncertain composition until the start of trial, is not as easily bought or influenced.³²

2. Implement laws guaranteeing whistle blower protection to individuals who report judicial corruption. Such protection must include immunity from prosecution for any complicity by the individual reporting the corruption in the alleged act. Additionally, such protection must include immunity from civil or criminal liability for defamation should the corruption not ultimately be substantiated (at least in absence evidence of actual knowledge by the individual that the allegation was false at the time he or she made it).
3. Rotate judges to different courts, including courts in different aimags and soums in order to mitigate the corrupting effect of social exchange relationships. Such rotations should ideally require, as in Japan, judges to move to a different court every few years. A less disruptive alternative, however, might be to require judges to rotate during parts of the year (such as during the summer months) to courts in different aimags or soums.



1. Judges are well-qualified. (Judges have formal university-level legal training and have practiced before tribunals before taking the bench.)	1	2	3	4	5
2. Judges are well-trained. (Before taking the bench judges are required to take relevant courses concerning basic substantive and procedural areas of the law and the role of the judge in society.)	1	2	3	4	5
3. Judges receive adequate continuing legal education. (Judges must undergo, on a regular basis professionally prepared legal education courses, which adequately inform them of changes and developments in the law.)	1	2	3	4	5
4. The number of judges who are members of ethnic and religious minorities adequately reflects the percentage of ethnic and religious minorities in the overall population.	1	2	3	4	5
5. The number of male and female judges is roughly equal at all levels of the court system.	1	2	3	4	5
6. Court decisions are respected and enforced by other branches of government	1	2	3	4	5
7. The courts provide adequate oversight over the administrative practices of the executive branch. (In other words, the court has the power to review administrative acts and to compel the government to act where a legal duty to act exists – and it exercises this power when appropriate.)	1	2	3	4	5
8. Court decisions may be reversed only through the appellate process.	1	2	3	4	5
9. Courts have adequate subpoena, contempt, and enforcement powers.	1	2	3	4	5
10. The courts' subpoena, contempt, and enforcement powers are utilized and supported by other branches of government.	1	2	3	4	5
11. Other branches of government do not override or ignore court decisions, or if they do, they are subject to legal action.	1	2	3	4	5
12. The overall budget of the courts is adequate to satisfy the demand for court services.	1	2	3	4	5
13. The overall budget of the courts has increased proportionately with the growth of the national budget.	1	2	3	4	5
14. The judiciary receives a share of the national budget reflective of its position as co-equal branch of government	1	2	3	4	5

15. Offices provided to judges and court administrators are adequate to allow performance of their duties	1	2	3	4	5
16. The court system operates with a sufficient number of computers and other equipment to enable it to handle its caseload in a reasonably efficient manner.	1	2	3	4	5
17. Each judge has the staff support necessary to do his or her job, e.g., adequate support staff to handle documentation and legal research.	1	2	3	4	5
18. A system exists so that new court positions are created as needed	1	2	3	4	5
19. Judges' salaries are adequate. (Judges salaries meet some reasonable proportion of good wage in private sector, are generally sufficient to attract and retain qualified judges, enabling them to support their families and live in a reasonably secure environment, without having to have recourse to other sources of income).	1	2	3	4	5
20. Court buildings provide a respectable environment for the dispensation of justice with adequate infrastructure.	1	2	3	4	5
21. The court system has sufficient input and control over its own budget. (The courts have a meaningful opportunity to influence the amount of money allocated to the courts by the legislative and/or executive branches, and, once funds are allocated to the courts, the courts have control over their own budget and how such funds are expended).	1	2	3	4	5
22. The selection and appointment process fosters the selection of independent, impartial judges. (Judges are appointed based on objective criteria, such as passage of an exam, performance in law school, other training, experience, professionalism, and reputation in the legal community. While political elements may be involved, the overall system fosters the selection of independent, impartial judges).	1	2	3	4	5
23. There is adequate security for judges. (Sufficient resources are allocated to protect judges from threats such as harassment, assault, and assassination).	1	2	3	4	5
24. Judges have guaranteed tenure. Judges are appointed for fixed terms that provide a guaranteed tenure, which is protected until retirement age or the expiration of a defined term of substantial duration.	1	2	3	4	5
25. Judges are promoted through the court system on the basis of objective criteria such as ability, integrity, and experience.	1	2	3	4	5

26. Judges may be removed from office or otherwise punished only for specified official misconduct and through a transparent process, governed by objective criteria.	1	2	3	4	5
27. Once assigned to a case, a judge may be removed only for good cause, such as a conflict of interest or an unduly heavy workload.	1	2	3	4	5
28. A judges' association exists, the sole aim of which is to protect and promote the interests of the courts, and this organization is active.	1	2	3	4	5
29. Court decisions are free from political influence from other branches of government or other public officials.	1	2	3	4	5
30. Court decisions are not influenced by payments, gifts, or favors from litigants or other interested parties.	1	2	3	4	5
31. Court decisions are free from impropriety. Family, social, business, or other relationships do not influence judges' court conduct or judgment.	1	2	3	4	5
32. Court decisions are free from the appearance of impropriety. Judges refrain from hearing cases in which the judge's family, social, business, or other relationships may create the appearance of a conflict of interest, whether or not such a conflict actually exist.	1	2	3	4	5
33. Judges refrain from ex parte communications. (Judges refrain from substantive communication with parties and their attorneys regarding matters before the court outside the presence of the other parties or their attorneys).	1	2	3	4	5
34. Trial court decisions are reached without any undue influence from senior judges within the courts (e.g., chief judges, Supreme Court judges, etc...).	1	2	3	4	5
35. The code of ethics for judges adequately defines and prohibits judges from hearing cases in which they have a conflict of interest.	1	2	3	4	5
36. The code of ethics for judges prohibits ex parte communications.	1	2	3	4	5
37. The code of ethics for judges prohibits judges from engaging in political activity.	1	2	3	4	5
38. A meaningful process exists under which other judges, lawyers, and the public may register complaints concerning misconduct by individual judges.	1	2	3	4	5

39. Complaints of misconduct by judges are adequately investigated.	1	2	3	4	5
40. Complaints of misconduct by judges are investigated without political interference from other branches of government.	1	2	3	4	5
41. Investigations of misconduct by judges are not influenced by unofficial payments, gifts, or favors from judges or other interested parties.	1	2	3	4	5
42. Supreme Court and significant appellate opinions are subjected to academic scrutiny.	1	2	3	4	5
43. Supreme Court and significant appellate opinions are subjected to scrutiny by the media and the general public.	1	2	3	4	5
44. Judges are assigned to cases by an objective method, such as by lottery, or according to their specific areas of expertise.	1	2	3	4	5
45. Courtroom proceedings are open to the public and the media.	1	2	3	4	5
46. Courtrooms have adequate space to accommodate the public and the media.	1	2	3	4	5
47. Court decisions are generally a matter of accessible public record.	1	2	3	4	5
48. Supreme Court and significant appellate opinions are published.	1	2	3	4	5
49. Transcripts or some other reliable record of courtroom proceedings are maintained and are available to litigants and their attorneys.	1	2	3	4	5
50. Transcripts or some other reliable record of courtroom proceedings are maintained and are available to the media and general public.	1	2	3	4	5
51. The court system maintains an effective and accessible case filing and tracking system that ensures cases are heard in a reasonably efficient manner.	1	2	3	4	5
52. Court users have easy access to information on the status of their case.	1	2	3	4	5
53. Current law is distributed and indexed. (There is a nationally recognized system for indexing current domestic laws and jurisprudence and identifying and organizing changes in the law).	1	2	3	4	5



54. Procedural rules for handling cases are standardized and time limits are set for the completion of various stages of litigation.	1	2	3	4	5
55. Judges follow and enforce procedural rules.	1	2	3	4	5
56. Rules of evidence exist as to what evidence judges may or may not consider.	1	2	3	4	5
57. Judges follow any existing rules of evidence (Judges do not consider improper evidence nor exclude proper evidence).	1	2	3	4	5
58. Court standards for evaluating legal arguments exist and are applied in a predictable fashion.	1	2	3	4	5
59. The pre-trial settlement of disputes is encouraged but not forced.	1	2	3	4	5
60. Established alternative dispute resolution mechanisms such as mediation and arbitration provide a viable alternative to court processes.	1	2	3	4	5

Please add any comments relating to any of your responses above. In particular, we would be very interested in your thoughts as to the most pressing issues that need to be addressed in ensuring the independence, accountability, and transparency of the Mongolian Courts. Please use additional pages as necessary.

APPENDIX B

RESULTS OF SURVEY OF THE STATUS OF COURT REFORM IN MONGOLIA

1. Judges are well-qualified.
(Judges have formal university-level legal training and have practiced before tribunals before taking the bench.) Av. = 2.4

Strongly disagree	14%
Disagree	52%
Neutral	14%
Agree	20%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	66%
Agree/Strongly Agree	20%

2. Judges are well-trained.
(Before taking the bench judges are required to take relevant courses concerning basic substantive and procedural areas of the law and the role of the judge in society.)
Av. = 2.4

Strongly disagree	19%
Disagree	38%
Neutral	24%
Agree	19%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	57%
Agree/Strongly Agree	19%

3. Judges receive adequate continuing legal education.
(Judges must undergo, on a regular basis professionally prepared legal education courses, which adequately inform them of changes and developments in the law.) Av. = 3.3

Strongly disagree	0%
Disagree	19%
Neutral	33%
Agree	43%
Strongly Agree	5%
<hr/>	
Strongly disagree/Disagree	19%
Agree/Strongly Agree	48%

4. The number of judges who are members of ethnic and religious minorities adequately reflects the percentage of ethnic and religious minorities in the overall population. Av. = 2.5

Strongly disagree	26%
Disagree	16%
Neutral	37%
Agree	21%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	42%
Agree/Strongly Agree	21%
<hr/>	

5. The number of male and female judges is roughly equal at all levels of the court system. Av. = 2.0

Strongly disagree	29%
Disagree	48%
Neutral	19%
Agree	5%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	77%
Agree/Strongly Agree	5%
<hr/>	

6. Court decisions are respected and enforced by other branches of government. Av. = 2.7

Strongly disagree	9%
Disagree	41%
Neutral	18%
Agree	23%
Strongly Agree	9%
<hr/>	
Strongly disagree/Disagree	50%
Agree/Strongly Agree	32%
<hr/>	

7. The courts provide adequate oversight over the administrative practices of the executive branch.
(In other words, the court has the power to review administrative acts and to compel the government to act where a legal duty to act exists – and it exercises this power when appropriate.)
Av. = 2.3

Strongly disagree	18%
Disagree	46%
Neutral	18%
Agree	18%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	64%
Agree/Strongly Agree	18%
<hr/>	

8. Court decisions may be reversed only through the appellate process. Av. = 3.8

Strongly disagree	4.5%
Disagree	4.5%
Neutral	9%
Agree	73%
Strongly Agree	9%
<hr/>	
Strongly disagree/Disagree	9%
Agree/Strongly Agree	82%
<hr/>	

9. Courts have adequate subpoena, contempt, and enforcement powers. Av. = 3.9

Strongly disagree	4.5%
Disagree	4.5%
Neutral	9%
Agree	59%
Strongly Agree	23%
<hr/>	
Strongly disagree/Disagree	9%
Agree/Strongly Agree	82%
<hr/>	

10. The courts' subpoena, contempt, and enforcement powers are utilized and supported by other branches of government. Av. = 3.8

Strongly disagree	0%
Disagree	5%
Neutral	18%
Agree	68%
Strongly Agree	9%
<hr/>	
Strongly disagree/Disagree	5%
Agree/Strongly Agree	77%
<hr/>	

11. Other branches of government do not override or ignore court decisions, or if they do, they are subject to legal action. Av. = 3

Strongly disagree	9%
Disagree	27%
Neutral	22%
Agree	36%
Strongly Agree	5%
<hr/>	
Strongly disagree/Disagree	36%
Agree/Strongly Agree	41%
<hr/>	

12. The overall budget of the courts is adequate to satisfy the demand for court services. Av. = 2.8

Strongly disagree	14%
Disagree	19%
Neutral	38%
Agree	24%
Strongly Agree	5%

Strongly disagree/Disagree	33%
Agree/Strongly Agree	29%

13. The overall budget of the courts has increased proportionately with the growth of the national budget. Av. = 3

Strongly disagree	5%
Disagree	14%
Neutral	33%
Agree	42%
Strongly Agree	5%

Strongly disagree/Disagree	19%
Agree/Strongly Agree	47%

14. The judiciary receives a share of the national budget reflective of its position as co-equal branch of government. Av. = 3.2

Strongly disagree	5%
Disagree	14%
Neutral	33%
Agree	42%
Strongly Agree	5%

Strongly disagree/Disagree	19%
Agree/Strongly Agree	47%

15. Offices provided to judges and court administrators are adequate to allow performance of their duties. Av. = 3.18

Strongly disagree	0%
Disagree	41%
Neutral	9%
Agree	41%
Strongly Agree	9%

Strongly disagree/Disagree	41%
Agree/Strongly Agree	50%

16. The court system operates with a sufficient number of computers and other equipment to enable it to handle its caseload in a reasonably efficient manner. Av. = 3.9

Strongly disagree	0%
Disagree	5%
Neutral	18%
Agree	64%
Strongly Agree	14%
<hr/>	
Strongly disagree/Disagree	5%
Agree/Strongly Agree	78%
<hr/>	

17. Each judge has the staff support necessary to do his or her job, e.g., adequate support staff to handle documentation and legal research. Av. = 3.7

Strongly disagree	0%
Disagree	10%
Neutral	10%
Agree	62%
Strongly Agree	18%
<hr/>	
Strongly disagree/Disagree	10%
Agree/Strongly Agree	80%
<hr/>	

18. A system exists so that new court positions are created as needed. Av. = 2.8

Strongly disagree	14%
Disagree	14%
Neutral	52%
Agree	19%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	28%
Agree/Strongly Agree	19%
<hr/>	

19. Judges' salaries are adequate. (Judges salaries meet some reasonable proportion of good wage in private sector, are generally sufficient to attract and retain qualified judges, enabling them to support their families and live in a reasonably secure environment, without having to have recourse to other sources of income). Av. = 3

Strongly disagree	9%
Disagree	27%
Neutral	18%
Agree	32%
Strongly Agree	14%
<hr/>	
Strongly disagree/Disagree	36%
Agree/Strongly Agree	46%
<hr/>	

20. Court buildings provide a respectable environment for the dispensation of justice with adequate infrastructure. Av. = 2.1

Strongly disagree	27%
Disagree	36%
Neutral	32%
Agree	0%
Strongly Agree	5%

Strongly disagree/Disagree	63%
Agree/Strongly Agree	5%

21. The court system has sufficient input and control over its own budget. (The courts have a meaningful opportunity to influence the amount of money allocated to the courts by the legislative and/or executive branches, and, once funds are allocated to the courts, the courts have control over their own budget and how such funds are expended). Av. = 3.1

Strongly disagree	0%
Disagree	32%
Neutral	27%
Agree	36%
Strongly Agree	5%

Strongly disagree/Disagree	32%
Agree/Strongly Agree	41%

22. The selection and appointment process fosters the selection of independent, impartial judges. (Judges are appointed based on objective criteria, such as passage of an exam, performance in law school, other training, experience, professionalism, and reputation in the legal community. While political elements may be involved, the overall system fosters the selection of independent, impartial judges). Av. = 2.7

Strongly disagree	18%
Disagree	36%
Neutral	14%
Agree	27%
Strongly Agree	5%

Strongly disagree/Disagree	54%
Agree/Strongly Agree	32%

23. There is adequate security for judges. (Sufficient resources are allocated to protect judges from threats such as harassment, assault, and assassination). Av. = 2.5

Strongly disagree	14%
Disagree	41%
Neutral	32%
Agree	14%
Strongly Agree	0%

Strongly disagree/Disagree	55%
Agree/Strongly Agree	14%

24. Judges have guaranteed tenure. Judges are appointed for fixed terms that provide a guaranteed tenure, which is protected until retirement age or the expiration of a defined term of substantial duration. Av. = 3.9

Strongly disagree	0%
Disagree	9%
Neutral	14%
Agree	68%
Strongly Agree	9%
<hr/>	
Strongly disagree/Disagree	9%
Agree/Strongly Agree	77%

25. Judges are promoted through the court system on the basis of objective criteria such as ability, integrity, and experience. Av. = 3.1

Strongly disagree	5%
Disagree	18%
Neutral	41%
Agree	36%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	23%
Agree/Strongly Agree	36%

26. Judges may be removed from office or otherwise punished only for specified official misconduct and through a transparent process, governed by objective criteria. Av. = 3

Strongly disagree	5%
Disagree	27%
Neutral	27%
Agree	41%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	32%
Agree/Strongly Agree	41%

27. Once assigned to a case, a judge may be removed only for good cause, such as a conflict of interest or an unduly heavy workload. Av. = 3.1

Strongly disagree	0%
Disagree	32%
Neutral	23%
Agree	50%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	32%
Agree/Strongly Agree	50%

28. A judges' association exists, the sole aim of which is to protect and promote the interests of the courts, and this organization is active. Av. = 2.3

Strongly disagree	20%
Disagree	20%
Neutral	40%
Agree	5%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	40%
Agree/Strongly Agree	5%
<hr/>	

29. Court decisions are free from political influence from other branches of government or other public officials. Av. =2.5

Strongly disagree	19%
Disagree	24%
Neutral	38%
Agree	19%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	43%
Agree/Strongly Agree	19%
<hr/>	

30. Court decisions are not influenced by payments, gifts, or favors from litigants or other interested parties. Av. = 2.0

Strongly disagree	23%
Disagree	54%
Neutral	23%
Agree	0%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	77%
Agree/Strongly Agree	0%
<hr/>	

31. Court decisions are free from impropriety. Family, social, business, or other relationships do not influence judges' court conduct or judgment. Av. = 2.0

Strongly disagree	32%
Disagree	41%
Neutral	18%
Agree	9%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	73%
Agree/Strongly Agree	9%
<hr/>	

32. Court decisions are free from the appearance of impropriety. Judges refrain from hearing cases in which the judge's family, social, business, or other relationships may create the appearance of a conflict of interest, whether or not such a conflict actually exist. Av. = 2.3

Strongly disagree	18%
Disagree	41%
Neutral	32%
Agree	9%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	59%
Agree/Strongly Agree	9%
<hr/>	

33. Judges refrain from ex parte communications. (Judges refrain from substantive communication with parties and their attorneys regarding matters before the court outside the presence of the other parties or their attorneys). Av. = 2.0

Strongly disagree	27%
Disagree	55%
Neutral	9%
Agree	9%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	82%
Agree/Strongly Agree	9%
<hr/>	

34. Trial court decisions are reached without any undue influence from senior judges within the courts (e.g., chief judges, Supreme Court judges, etc...). Av. = 2.3

Strongly disagree	23%
Disagree	41%
Neutral	23%
Agree	14%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	64%
Agree/Strongly Agree	14%
<hr/>	

35. The code of ethics for judges adequately defines and prohibits judges from hearing cases in which they have a conflict of interest. Av. = 2.5

Strongly disagree	14%
Disagree	41%
Neutral	23%
Agree	23%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	55%
Agree/Strongly Agree	23%
<hr/>	

36. The code of ethics for judges prohibits ex parte communications. Av. = 2.3

Strongly disagree	24%
Disagree	29%
Neutral	33%
Agree	14%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	53%
Agree/Strongly Agree	14%
<hr/>	

37. The code of ethics for judges prohibits judges from engaging in political activity. Av. = 2.9

Strongly disagree	5%
Disagree	27%
Neutral	36%
Agree	32%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	32%
Agree/Strongly Agree	32%
<hr/>	

38. A meaningful process exists under which other judges, lawyers, and the public may register complaints concerning misconduct by individual judges. Av. = 2.8

Strongly disagree	9%
Disagree	32%
Neutral	32%
Agree	27%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	41%
Agree/Strongly Agree	27%
<hr/>	

39. Complaints of misconduct by judges are adequately investigated. Av. = 2.5

Strongly disagree	23%
Disagree	23%
Neutral	31%
Agree	23%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	46%
Agree/Strongly Agree	23%
<hr/>	

40. Complaints of misconduct by judges are investigated without political interference from other branches of government. Av. = 2.7

Strongly disagree	14%
Disagree	18%
Neutral	50%
Agree	14%
Strongly Agree	5%
<hr/>	
Strongly disagree/Disagree	32%
Agree/Strongly Agree	19%
<hr/>	

41. Investigations of misconduct by judges are not influenced by unofficial payments, gifts, or favors from judges or other interested parties. Av. = 2.7

Strongly disagree	5%
Disagree	36%
Neutral	41%
Agree	18%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	41%
Agree/Strongly Agree	18%
<hr/>	

42. Supreme Court and significant appellate opinions are subjected to academic scrutiny. Av. = 2.3

Strongly disagree	27%
Disagree	41%
Neutral	14%
Agree	14%
Strongly Agree	5%
<hr/>	
Strongly disagree/Disagree	68%
Agree/Strongly Agree	19%
<hr/>	

43. Supreme Court and significant appellate opinions are subjected to scrutiny by the media and the general public. Av. = 2.7

Strongly disagree	18%
Disagree	32%
Neutral	9%
Agree	36%
Strongly Agree	5%
<hr/>	
Strongly disagree/Disagree	50%
Agree/Strongly Agree	41%
<hr/>	

44. Judges are assigned to cases by an objective method, such as by lottery, or according to their specific areas of expertise. Av. = 2.6

Strongly disagree	9%
Disagree	32%
Neutral	9%
Agree	36%
Strongly Agree	5%
<hr/>	
Strongly disagree/Disagree	41%
Agree/Strongly Agree	41%

45. Courtroom proceedings are open to the public and the media. Av. = 2.5

Strongly disagree	18%
Disagree	41%
Neutral	18%
Agree	23%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	69%
Agree/Strongly Agree	23%

46. Courtrooms have adequate space to accommodate the public and the media. Av. = 2

Strongly disagree	27%
Disagree	55%
Neutral	9%
Agree	9%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	82%
Agree/Strongly Agree	9%

47. Court decisions are generally a matter of accessible public record. Av. = 2.5

Strongly disagree	18%
Disagree	50%
Neutral	5%
Agree	23%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	68%
Agree/Strongly Agree	23%

48. Supreme Court and significant appellate opinions are published. Av. = 2.2

Strongly disagree	27%
Disagree	59%
Neutral	0%
Agree	14%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	86%
Agree/Strongly Agree	14%
<hr/>	

49. Transcripts or some other reliable record of courtroom proceedings are maintained and are available to litigants and their attorneys. Av. = 3.5

Strongly disagree	5%
Disagree	9%
Neutral	17%
Agree	64%
Strongly Agree	5%
<hr/>	
Strongly disagree/Disagree	14%
Agree/Strongly Agree	69%
<hr/>	

50. Transcripts or some other reliable record of courtroom proceedings are maintained and are available to the media and general public. Av. = 2.2

Strongly disagree	27%
Disagree	36%
Neutral	23%
Agree	14%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	63%
Agree/Strongly Agree	14%
<hr/>	

51. The court system maintains an effective and accessible case filing and tracking system that ensures cases are heard in a reasonably efficient manner. Av. = 2.7

Strongly disagree	9%
Disagree	41%
Neutral	23%
Agree	27%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	50%
Agree/Strongly Agree	27%
<hr/>	

52. Court users have easy access to information on the status of their case. Av. = 1.9

Strongly disagree	36%
Disagree	46%
Neutral	9%
Agree	9%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	82%
Agree/Strongly Agree	9%

53. Current law is distributed and indexed.
(There is a nationally recognized system for indexing current domestic laws and jurisprudence and identifying and organizing changes in the law). Av. = 2.7

Strongly disagree	18%
Disagree	27%
Neutral	14%
Agree	36%
Strongly Agree	5%
<hr/>	
Strongly disagree/Disagree	45%
Agree/Strongly Agree	41%

54. Procedural rules for handling cases are standardized and time limits are set for the completion of various stages of litigation. Av. = 2.4

Strongly disagree	27%
Disagree	27%
Neutral	14%
Agree	32%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	54%
Agree/Strongly Agree	32%

55. Judges follow and enforce procedural rules. Av. = 2.2

Strongly disagree	23%
Disagree	45%
Neutral	18%
Agree	14%
Strongly Agree	0%
<hr/>	
Strongly disagree/Disagree	68%
Agree/Strongly Agree	14%

56. Rules of evidence exist as to what evidence judges may or may not consider. Av. = 2.4

Strongly disagree	18%
Disagree	45%
Neutral	14%
Agree	23%
Strongly Agree	0%

Strongly disagree/Disagree	63%
Agree/Strongly Agree	23%

57. Judges follow any existing rules of evidence (Judges do not consider improper evidence nor exclude proper evidence). Av. = 2.3

Strongly disagree	27%
Disagree	36%
Neutral	14%
Agree	23%
Strongly Agree	0%

Strongly disagree/Disagree	63%
Agree/Strongly Agree	23%

58. Court standards for evaluating legal arguments exist and are applied in a predictable fashion. Av. = 2.1

Strongly disagree	32%
Disagree	32%
Neutral	23%
Agree	14%
Strongly Agree	0%

Strongly disagree/Disagree	64%
Agree/Strongly Agree	14%

59. The pre-trial settlement of disputes is encouraged but not forced. Av. = 3.2

Strongly disagree	14%
Disagree	14%
Neutral	14%
Agree	58%
Strongly Agree	0%

Strongly disagree/Disagree	28%
Agree/Strongly Agree	58%

60. Established alternative dispute resolution mechanisms such as mediation and arbitration provide a viable alternative to court processes. Av. = 2.5

Strongly disagree	18%
Disagree	36%
Neutral	23%
Agree	18%
Strongly Agree	5%

Strongly disagree/Disagree	54%
Agree/Strongly Agree	23%
