

Getting Continuing Judicial Education Started in a Developing Country

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The Mongolia Judicial Reform Program (JRP) is a five-year National Center for State Courts activity funded by the United States Agency for International Development to assist Mongolia in its transition from communism to democracy and a free market economy. One of our principal tasks is to assist in the establishment of Mongolia's National Center for Legal and Judicial Research, Training and Information, (called the National Legal Center or NLC) by building its capacity so that it can sustain continuing legal education for lawyers and judges after donor support ends. The NLC was established by a resolution of the Minister of Justice in September 2002 to be the primary organization for professional re-training and continuing professional development for judges, prosecutors, advocates, and legal advisors. The NLC also has research, library, and public education functions.

Center goals/mission

With the assistance of the JRP, in 2003 the NLC drafted a strategic plan. In the strategic plan, it defined its prime goal as 'to set up a democratic, steady, effective system of continuous legal education for lawyers, to conduct quality trainings to meet the needs of lawyers, and to support the development of an independent, fair judicial system.' The NLC provides entry level education for new judges and continuing professional development. In 1992, Mongolia peacefully rejected communism and adopted a new, democratic constitution. This change has necessitated many new laws, particularly in the areas of business and finance. In September 2002, new Criminal, Criminal Procedure, Civil, and Civil Procedure Codes went into effect. Judges and lawyers all needed CJE/CLE or "retraining" on new laws.

Organizational location

The NLC is a government-owned non-profit organization that operates within the jurisdiction of the Ministry of Justice and Home Affairs. The Minister of Justice is in charge of monitoring its activities. However, it has its own budget, separate from the Ministry's. Mongolia is a country with a large amount of land but small population (2.7 million), nearly a million of whom are concentrated in the capital, Ulaanbaatar. The country has fewer than 450 judges. The number of lawyers in actual practice is less than 2,000. It was therefore decided to consolidate continuing professional development in one center instead of having both a judicial training center (JTC) and a lawyers' training center. This lowers overhead, raises efficiency, improves coordination, maximizes limited resources, and minimizes duplication of effort. The various branches of the profession (such as the General Council of the Courts, General Prosecutors Office, Mongolian Advocates Association, and Mongolian Notaries Association) can still present in-house CLE for their own constituents. The disadvantage of this is that the Ministry of Justice has overall supervision of judicial education, as well as CLE for private lawyers, and judges take some classes with prosecutors and advocates. However, to date there has been no governmental interference with judicial education or CLE. Joint judge/ lawyer classes are broadening the judicial perspective and have been a positive outcome.

Structure overall

The NLC has a Governing Board, a General Training Committee, and subcommittees on judicial, prosecutorial, and advocate's education. The Governing Board is chaired by the State Secretary of the Ministry of Justice and Home Affairs. The subcommittee chairs and members are chosen from their own branch of the profession. The current chair of the Judicial Education subcommittee is a Supreme Court Justice.

Top management

The staff consists of a Director, an Academic Secretary, department heads, and various training managers, researchers, Information Technology experts, and support staff. Many Mongolians have more than one job, so many of the staff are also lecturers at law schools or taught CLE before the NLC was established. The Director is appointed by the Minister of Justice based on recommendations from the Governing Board. Must have a doctorate (the Mongolian law degree is an undergraduate degree) and be a professor. The current Director of the NLC is a judge on the Constitutional Court. He is responsible for day to day operations of the center approving the Center's workplans, monitoring their implementation, coordinating the departments and units, and improving the qualifications of trainers and staff, manage the Center's budget and property, appoint, promote and penalize Center staff, and conclude agreements with foreign and domestic organizations. The Academic Secretary is appointed by the Director and implements the Center's research and training and organizes the units' workplans and agreements with other organizations. They are all employees at will. They can resign or be terminated at any time.

Gaining legitimacy

In Mongolia, the General Council of the Courts is responsible for the administration of the courts. The Professional Committee of the GCC, chaired by a Supreme Court Justice, administers the judicial qualification examination, which applicants must pass in order to be considered for judicial appointment. The Chair of the Professional committee is currently the Chair of the Judicial Education subcommittee of the NLC. The other members are all Supreme Court, appellate or trial court judges. They advise the NLC Director of Training on course content and faculty selection. So, the judiciary has a vested interest in the success of NLC. The interaction is such that there has been little or no rivalry between the GCC and NLC. Rather, they are mutually supporting. The problem the NLC had in the beginning was that many of the trainers were young staff people. They had insufficient work and life experience to teach sitting judges about new laws. The NLC rapidly changed to having part-time faculty who are experts on their topic, and now the courses are well received. The best way to achieve acceptance is by presenting needed courses that are taught well.

Needs assessment/program evaluations

The NLC ran focus groups of both urban and rural judges in 2003 to determine their educational priorities. The Judicial Education subcommittee discusses training needs with NLC staff. Mongolia never had any transition education for new judges going on the bench, so the JRP helped the NLC put on the first "baby judges" course in 2003. The participants in the first course gave feedback on future topics.

The NLC already evaluates each course on a daily basis. There is some resistance to evaluating individual speakers because culturally Mongolians all want to help and support each other. Because of that, they hate to criticize others in writing. As the Academic Secretary of the NLC said, if the meal tastes good, you know the cook is good, so they may decide to evaluate by topic only. With

input from the JRP, it is now developing post-course evaluation surveys to be administered three or six months after a course. The post-course evaluations the JRP has done ask not only the participants whether they have changed their behavior based on the educational experience, but also asks their colleagues if they have observed behavior changes. For instance, in 2003 we asked judges whether they had seen any change in the conduct of advocates in court after the advocates took JRP courses. The NLC is also going to devise some form of independent auditing of course quality, probably through having course monitors who are not NLC staff.

Resources

An efficient court system with an independent judiciary is critical to sustain democracy and to attract foreign investment in developing countries. That fact can attract donor assistance for rule of law projects, in particular judicial reform and education. Thanks to its transition to democracy, Mongolia receives rule of law donations and assistance from many sources: two German organizations, Japan, Sweden, the Soros Foundation, the World Bank., World Vision, the American Bar Association, UNDP, Asia Foundation, and USAID through the NCSC. Donor coordination is one of the JRP's top priorities.

The NLC receives assistance from the JRP, the World Bank, and to a far lesser extent, GTZ, one of the German donors. The NLC also receives a budget from the government. However, the funding is inadequate, partly because CLE trainers, even judges, expect to be paid. This is another reason that part-time faculty are better for CJE. You pay them only when they are needed, not year round, and you they have low overhead because they do not need year round office space or supplies. To generate income, the NLC is now selling publications, charging for a bar review course, and charging private lawyers for some courses. It may also rent out its state-of-the-art classrooms to other entities when they are not in use and rent out part of its garage.

USAID funded the JRP because of direct request from the president of Mongolia to the US ambassador about five years ago for assistance on justice system reform and implementation of Mongolia's strategic plan on justice system reform. The JRP has been very well received. When the current president of Mongolia was visiting Washington, DC, he told President Bush that the Mongolian Judicial Reform Program was the most important USAID project and asked for it to continue. Pending proposal approval, USAID will probably extend the JRP to 2008. So, asking a potential donor country for help is a very effective method for recruiting outside resources. However, our practice is not to give cash but to fund projects, trainers' fees, trainer or participant travel, or writing and printing of publications. Donations in kind from foreign businesses, such as computer equipment, are a possibility, but that could lead to conflict of interest for the judges. Our project has found it easier to get donations of time and publications to our project for the NLC or the GCC from US CLE administration experts, US CLE organizations, and experienced lawyers.

There is always a danger that a donor will try to impose a system of law or agenda on the recipient. Mongolia is a civil law jurisdiction, based largely on the German system, so the JRP teaches almost no law. The US consultants we have brought to Mongolia teach almost exclusively skills. The NLC has devised its own curriculum and written its own strategic and action plans with our advice and input but without our mandating anything.

Staff

The NLC has 51 staff members, but many of them work on research or in the library. The Training Department has 10 staff, including the Director of Training. For organization of CJE, management ability is the most important criteria, not knowledge of the law itself or teaching ability. A few of the training staff not only organize courses but also teach, however only within their personal area of expertise. Mongolian salaries are very low, so in order to get good staff, the NLC has to give

them a flexible schedule that allows them to have other jobs, such as teaching at a university or having clients. The NLC is blessed with a brand new building, so they have the added benefit of a clean, modern working environment.

Faculty

The JRP strongly encouraged the NLC to have part-time faculty who teach several times a year in their area of expertise rather than a residential faculty. In August 2002, the Director of the NLC and its Training Director attended the annual conference of the Association for Continuing Legal Education. There, they met over one hundred professional CLE administrators, virtually all of whom have only part-time faculty, which as mentioned above cost less. More importantly, they are active in their profession so they possess not merely theoretical but also practical skills.

The JRP has presented numerous Training of Trainers workshops in the last three years. In a country transitioning to democracy, TOT is two-pronged. It consists of teaching presentation skills and of teaching new substantive or comparative law. The JRP has not only taught both kinds of TOT, often in cooperation with GTZ, the major German donor, but recruited Mongolian faculty so that TOTs are sustainable. We identified two Mongolian psychologists who teach pedagogy. They have participated in our TOTs for a year and half teaching some culturally based topics such as Gender Differences in Communication Styles and Generational Difference in Communication Style. I have taught basic adult learning theory, creation of learning objectives, and presentation skills. We brought an expert from the US to Mongolia twice to teach advanced learning theory and courtroom communication skills. The Mongolian psychologist and our Mongolian Program Coordinators give constructive critiques of the practice teaching sessions at the end of each TOT. We have also consolidated all our Mongolian TOT course materials and Power Point on CD-ROMs so that the NLC can replicate TOTs for future trainers, with these psychologists teaching the courses

In Mongolia, most judicial applicants have worked in the court system for three years as assistants to judges, so they have in a way had an apprenticeship. They are law graduates. Since January 2004, they have to have passed a lawyer qualification examination to be considered for the judiciary, in addition to a judicial selection examination administered by the GCC. They now have a "baby judges" course that is taught once a year. Still, the education a new judge receives is much less intense than in the typical civil law system. Mongolian judges are entitled by law to fourteen days training a year, and most are eager to attend it in full. The NLC is devising a training cycle for continuing judicial education that emphasizes CJE instead of transition education.

Physical plant

Mongolia was lucky to receive a loan from the World Bank that included funding for a new building dedicated to the NLC, into which it moved in June 2004 after a year and a half in temporary quarters. The building is magnificent and in a central location, with state-of-the-art classrooms, flexible furniture, computers, and sophisticated audio-visual equipment. However, its upkeep is a large portion of NLC's budget. There are great economies of scale in not moving course materials all over town and in being able to self-cater tea breaks instead of paying hotel prices or hauling refreshments to a university. The NLC still has to do off-site courses in the aimags (provinces). It is far more important for a new JTC to start developing curriculum, training trainers, and presenting courses than to divert resources into construction and maintenance if they have to fund and supervise it themselves. In Mongolia's case, the World Bank handled almost everything, so very little NLC staff time was diverted.

Distance education

The NLC has already started videotaping its live course in the capital for viewing in the aimags. Another part of our project has installed computers in all courts in Mongolia except that one without electricity, so there is a potential for using CDs. We are producing a CD with the NLC on the new domestic violence law that will be available in winter 2005. If the infrastructure is there, distance education saves not only travel funds but time in a place like Mongolia where towns are long distances from the capital, roads are poor, particularly in winter, and there are few daily flights. The NLC hopes to present its first videoconference in 2005, probably with donor assistance.

Partnerships/liaisons

The NLC formally cooperates and coordinates with the General Council of the Courts, the General Prosecutors Office, the Mongolian Advocates Association, and the Mongolian Notaries Association. Several of its staff and trainers are also on the faculty of the National University, private law schools, or Police Academy, which is considered a law school. These partnerships assist in needs assessment and curriculum development. They also provide a source for new faculty and authors. In addition, a new JTC may be able to borrow classroom space and audio visual equipment from existing organizations. However, an organization that is solely a JTC could create the appearance of conflict of interest by having a partnership with other branches of the profession.

Conclusion

A new JTC cannot operate in a vacuum. It needs to coordinate and cooperate with the courts and other existing entities to maximize limited resources and avoid duplication of effort. An efficient court system with an independent judiciary is essential to attract foreign investment in developing countries. That can attract donor assistance for rule of law projects, in particular judicial reform and education.

The opinions expressed in this paper are solely those of the author and do not reflect an official opinion of the Mongolia Judicial Reform Program, the National Center for State Courts, the National Legal Center of Mongolia, or the US Agency for International Development.