

# THE CURRENT STANDING OF LEGAL AID IN MONGOLIA

Speaker: Ch.Jadamba

Co-author: D.Yanjinkhorloo

# LEGAL ENVIRONMENT FOR PROVIDING LEGAL ASSISTANCE TO INDIGENT CITIZENS

- Constitution of Mongolia (1992)
- Law on legal aid for the indigent defendants (2013)
- Law on Legal status of Lawyers (2013)
- Criminal Procedure Law (2017)

# CONSTITUTION OF MONGOLIA (1992)

- 14.1: “All persons lawfully residing within Mongolia shall be equal before the law and the courts”,
- 16.14: “The right to appeal to the court to protect such rights if he/she considers that the rights or freedoms as prescribed by the laws of Mongolia or by international treaties have been violated;.....right to receive legal aid; to have the documents of evidence examined; right to a fair trial; right to be tried in his/her own presence; right to appeal against court decisions and right to request pardon”,

## CONSTITUTION OF MONGOLIA (1992)

- 19.1: “The State shall be accountable to the citizens for the creation of economic, social, legal and other guarantees for ensuring human rights and freedoms, and shall restore such infringed rights”,
- 55.2: “The accused shall be accorded with professional legal aid in the exercise of the above right at his/her request or as prescribed by law.”

# LEGAL STATUS OF LAWYERS

According to “The Law on Legal status of Lawyers” (2013), Lawyer is defined as a person, who is certified to practice lawyers’ duties.

A person who passed the bar exam, held once a year, organized by Mongolian Bar Association, can register with the Supreme court and can become attorney.

Requirements to give bar exam: Bachelors degree in law, 2 years of experience in certain positions such as assistant to judge, prosecutor, attorney, consultant/legal assistant to the member of parliament, government and private organizations.

# LEGAL AID ORGANIZATIONS

## LEGAL AID CENTER

- Operating according to “The Law on legal aid for the indigent defendants” (2013)
- Total 52 State Attorneys in Mongolia working in 31 branches (Provinces and 6 districts of Ulaanbaatar city)
- Legal aid Center is coordinates and organizes duties of “State Attorneys”, chooses “State attorneys”
- Legal aid is provided to defendants in the **criminal cases only**
- Financed by government, budget is fixed

## Legal aid and advocacy services provider for Indigent citizen’s committee next to Mongolian Bar Association

- Operating according to “The Law on Legal status of Lawyers” (2013)
- Total 141 lawyers/attorneys with a voluntary membership
- Legal aid and legal assistance could be provided to **criminal, civil and administrative cases**
- Lack of incentive system for members of this committee for providing legal assistance, legal aid

# LEGAL AID ATTORNEYS

## LEGAL AID CENTER

- Attorneys who have passed Bar exam and acquired right to represent in Court and are genuinely willing to aid indigent citizens could apply to become “State Attorney”
- Legal Aid Center chooses and appoints State attorneys according to Development Strategy of Legal Aid Center (2014), Charter and other relevant regulations of Legal Aid Center.

## Legal aid and advocacy services provider for Indigent citizen's committee next to Mongolian Bar Association

- Total 141 attorneys with a voluntary membership of the Committee
- Due to lack of incentive system for members of this committee, Mongolian Bar Association rewards Committee members by freeing them from Continuing Lawyers Trainings etc.

# **LEGAL AID ATTORNEYS**

Generally, legal status of attorneys (no matter where the attorneys work), rights and responsibilities during their Practice of law is the same.

Legal status of Lawyers is regulated by laws such as Legal status of Lawyers, Criminal Procedure Law, Civil Procedure Law, Administrative Procedure Law and as well as Charter of “Lawyers professional activities”.



# LEGAL AID CENTER

To exercise the rights such as, free legal aid and all are equal before the law & court, which are guaranteed by the Constitution of Mongolia, The State has provided the conditions and opportunities for indigent defendants to defend their rights and receive legal aid by appointing them defense attorneys with the status of “State attorney”

# LEGAL AID CENTER

In the “Law of Legal aid for indigent defendants” the legal aid is defined as legal consulting, attorney’s services. However, the state attorneys will be limited to only providing legal aid to the defendants, charged with the crimes and under the investigation in accordance with this law.

## **THE LEGAL AID AND ADVOCACY SERVICES PROVIDER FOR INDIGENT CITIZEN'S COMMITTEE**

The legal aid and advocacy services provider for indigent citizen's committee is operating in the Mongolian Bar Association as specified in the Article 45.1.11 of the Law on Legal Status of Lawyers and "... To organize provision of the advocacy services to the indigent citizens". Hence, the legal aid is provided to those who cannot afford an attorney's fees through: "Legal aid center" and "Legal aid and advocacy services provider for the indigent citizen's committee", located next to Mongolian Bar Association

## **THE LEGAL AID AND ADVOCACY SERVICES PROVIDER FOR INDIGENT CITIZEN'S COMMITTEE**

This committee has 141 lawyers with a voluntary membership registration and even though in the paragraph 45.2 of Article 45 of Law on legal status of lawyers it states that "...the state shall bear costs of advocacy services for indigent citizen", it didn't clearly specify from where and how this financing would be funded and how to allocate such funds.

## **THE LEGAL AID AND ADVOCACY SERVICES PROVIDER FOR INDIGENT CITIZEN'S COMMITTEE**

Since there is lack of incentive system for the attorneys with a voluntary membership to provide legal aid for indigent citizen, it reduces the enthusiasm to perform pro bono or not perform altogether, which is creating circumstances where the rights and legitimate interests of the citizens are not always protected effectively.

## DEFINITION OF INSOLVENCY

According to the Law on legal aid for indigent defendants the insolvency is determined as follows:

- Member of the household, registered with the household information database according to the method approved by the competent authority and the household's living standard are under the current poverty line;
- Individuals, who are not registered with the household information database, but validated themselves as with the income below the poverty line;
- As specified in the Law on Child Protection to provide legal aid to children in perilous conditions

## CLASSIFICATION OF CRIMES

The classification and percentage share of cases resolved in court or before going to the court by state attorneys in 2017 as follows:

- Theft – 744 or 38,7%;
- Causing of light, heavy and serious intentional injury to human health - 435 or 23%;
- Disturbance of public peace - 129 or 6.7%;
- Robbery - 120 or 6%;
- Violation of vehicle safety and operational rules - 97 or 5%;
- Murder - 69 or 3.6%;
- Other crimes - 326 or 17%

# **SUMMARY**

The figures show that 39.6% of those who received advocacy services free of charge are involved in the crimes against the rights of ownership, which indicates that the citizens, who reached out to State attorney's services. On the one hand are directly related with their low living standards, unemployment and lack of awareness of the significance and accountability of their actions.



# SUMMARY

Since the legal reforms of 2013 and the enactment of new laws regulating Legal aid in Mongolia current legal aid system is quite new for us, some aspects and regulations concerning legal aid needs to be improved, such as:

- Distinguish jurisdiction of criminal cases between Legal aid Center and the Committee
- Improve working conditions and salary of “State attorneys” of Legal aid Center
- Improve incentive system for attorneys with voluntary membership to provide legal aid for indigent citizen Committee of Mongolian bar association
- Research and implement more effective system of Legal Aid if needed..