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including the right to development**

Visit to Mongolia

Report of the Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite*

Summary

The Special Rapporteur on the independence of judges and lawyers undertook a visit to Mongolia from 6 to 15 November 2023. The aim of the visit was to examine the progress made by the country in implementing its obligations under human rights law to ensure the independence and impartiality of judges and prosecutors and the free exercise of the legal profession.

The Special Rapporteur recognizes the efforts of Mongolia, and its many achievements, in reforming its judiciary since the country's transition to democracy and the adoption of its Constitution in 1992. She noted that efforts were also in progress to review the Criminal Codes and that a new bill on the establishment of courts was under consideration, providing an opportunity to address the importance of timely and unhindered access to counsel, as a guarantee of the right to a fair trial, and to ensure that no detention was arbitrary.

During her visit, the Special Rapporteur observed that the Constitutional amendments of 2019 and related reforms had taken Mongolia in the right direction. However, procedural reforms and increased financial resources are needed before the full effects will be evident. The Special Rapporteur considers that more enduring structural change is advisable to secure the long-term financial independence of the judiciary.

The prosecution service must take steps to come into line with international human rights standards. The ability of defence advocates to play their crucial role is still stymied by procedural and administrative hurdles that can have an impact on the right to a fair trial.

The Special Rapporteur concludes the report by offering a number of recommendations aimed at further strengthening the independence of judges and prosecutors and the free exercise of the legal profession.

* The summary of the report is being circulated in all official languages. The report itself, which is annexed to the summary, is being circulated in the language of submission only.



Annex

Report of the Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite, on her visit to Mongolia

I. Introduction

1. At the invitation of the Government, the Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite, visited Mongolia from 16 to 15 November 2023.
2. During her mission, the Special Rapporteur met with representatives of the Ministries of Foreign Affairs, Justice and Home Affairs, the National Human Rights Commission of Mongolia, members of the State Great Khural (parliament of Mongolia), magistrates from the Constitutional Court and the Supreme Court and judges from the Administrative Appeals Court, the Chair and members of the General Judicial Council, the Office for Safeguarding Judicial Independence and the Judicial Disciplinary Committee, as well as prosecutors from the office of the State General Prosecutor. She also met with the President's Legal Adviser, the General Executive Agency of Court Decision, the National Legal Institute and the Independent Authority against Corruption. She met with judges and prosecutors from lower courts and prosecution services in the Chingeltei and Sukhbaatar districts of Ulaanbaatar, in Selenge province, in Mandal *soum* and the cities of Dharkhan-Uul and Baganuur.
3. The Special Rapporteur met with a wide range of civil society representatives, including from non-governmental organizations, members of the Bar Association and associations of judges, defence advocates, academics and representatives of the international community.
4. The Special Rapporteur wishes to reiterate her gratitude to the authorities of Mongolia for the invitation and for their support in the preparation of the visit and to the United Nations Resident Coordinator, the United Nations Development Programme and the human rights adviser for the support that they provided before, during and after the visit. She would also like to express her appreciation to all the judges, prosecutors, lawyers, academics and civil society activists who took the time to share their expertise and opinions with her.

II. Legal and institutional framework

A. International obligations

5. An efficient, independent and impartial judicial system is essential for upholding the rule of law and ensuring the protection of human rights and fundamental freedoms. The independence of judges and the free exercise of the legal profession are enshrined in a number of international human rights treaties to which Mongolia is a party, including the International Covenant on Civil and Political Rights. The Basic Principles on the Independence of the Judiciary contain the measures that States should adopt in order to secure and promote judicial independence, and the Guidelines on the Role of Prosecutors contain the measures to promote the effectiveness, impartiality and fairness of prosecutors.
6. Mongolia is party to nine core universal human rights instruments. It ratified the International Covenant on Civil and Political Rights in November 1974. Mongolia issued a standing invitation to all special procedures of the Human Rights Council in April 2004, and it has received 13 visits since then.
7. The Special Rapporteur commends Mongolia on its engagement with the universal human rights mechanisms. This speaks to the commitment of Mongolia to its human rights obligations.

B. National framework for the justice system

8. The independence of the judiciary is an essential requirement of the democratic principle of separation of powers. According to this principle, the Constitution, laws and policies of a country must ensure that the justice system is truly independent from other branches of the State.

9. Within the justice system, judges, lawyers and prosecutors must be able to carry out their professional duties without political interference and must be protected, in law and in practice, from attack, harassment or persecution as they carry out their professional activities.

10. In 1992, Mongolia adopted its first democratic constitution, which divided State power into three branches, including the judiciary. In article 16 of the Constitution, the right to a fair trial is recognized. Chapter III (IV) of the Constitution, addresses the establishment and functions of the judiciary and notes that the judicial power is vested exclusively in courts. It does not make explicit mention of the independence of the judiciary vis-à-vis other branches. Nevertheless, article 49 of the Constitution provides that judges must be impartial and subject only to law and prohibits any interference with the discharge of judicial duties, including by government or State officials.

11. Article 10 of the Constitution provides that international treaties to which Mongolia is a party become effective as domestic legislation upon the entry into force of the laws on their ratification or accession. However, the Constitution does not include any provisions stating that international treaties or standards on human rights take precedence over national legislation in case of conflict.

12. In 2019, the Constitution was amended to introduce different legal principles and functions relating specifically to the judiciary. A new Law on the Judiciary was adopted on 15 January 2021. The Law governs the organization and functions of the judicial system, the eligibility requirements and criteria for judges and their legal status, as well as the mandate, organizational structure, functions and procedures of the Judicial General Council and Judicial Disciplinary Committee.

13. These reforms sought to address concerns that had been expressed, both domestically and by the international community, including the mandate holder at the time, over “problems of corruption, political and executive influence and lack of judicial independence and of public trust in the judiciary in Mongolia”.¹ During the Special Rapporteur’s visit, many of these provisions were just taking shape, and Mongolia had yet to determine their complete impact.

14. The Special Rapporteur welcomes the recognition by Mongolia of the need to revise judicial procedures to reduce inefficiencies, including by reviewing the civil procedure code to introduce more simplified procedures for reviewing civil claims.

15. In October 2023, the parliament passed initial revisions to the Criminal Procedure Code. The Special Rapporteur was pleased to learn that Mongolia was considering reviewing prosecutorial oversight, in particular in relation to investigative procedures, the pretrial phase and the collection of evidence.

C. Current structure of the judiciary in Mongolia

16. Mongolia is divided into 21 provinces (*aimags*) and the capital Ulaanbaatar. Secondary subdivisions outside Ulaanbaatar are called *soum*, while Ulaanbaatar is divided into nine *diüüregs*. Mongolia has three levels of ordinary courts.

17. *Soum*, inter-*soum* and *diüüreg* level courts have jurisdiction in first instance cases for both criminal and civil matters. *Aimag* level courts, found in the *aimag* capitals, and the Capital City Court in Ulaanbaatar, have first instance jurisdiction in cases of more serious

¹ Organization for Security and Cooperation in Europe (OSCE), Office for Democratic Institutions and Human Rights, Opinion on the Laws on Courts, on Judicial Administration and on the Legal Status of Judges of Mongolia, 3 March 2020, para. 9.

crimes and in civil matters where the amount in dispute is over 10 million tugriks. They also hear appeals from the lower-level courts. At the highest level is the Supreme Court in Ulaanbaatar, which has jurisdiction over any matters at first instance that are not specifically within the jurisdiction of the other courts, as well as appeals from decisions of the *aimag* level courts and the Capital City Court.

18. In addition to its appellate and original jurisdiction, the Supreme Court² provides official interpretations for the correct application of all laws except the Constitution. It also maintains the official record of registration of political parties. The Court has three chambers, civil, administrative and criminal, and 25 justices.

19. Mongolia also has administrative courts, first established in June 2004 and regulated by the Law on Administrative Procedure. Any disputes which arise from an administrative act, and which may affect a person's rights, may be challenged before these courts. The Administrative Court of Appeals was established in 2010. In addition to hearing appeals from the lower administrative courts, it is the court of first instance for challenges to decisions made by the President, the parliament, the Government, the election committee and the Central Bank.

20. The country has a Constitutional Court (Tsets) whose role is to examine and settle constitutional disputes at the request of the parliament, the President, the Prime Minister, the Supreme Court, the General Prosecutor, on its own initiative or on the basis of petitions received from citizens. The nine judges of the Tsets panel are appointed by the parliament for a term of six years. Three are nominated by the parliament, three by the President and three by the Supreme Court. Decisions on the conformity of laws, decrees or international treaties with the Constitution must be submitted to the parliament for approval. If approval is refused, the Tsets will reconsider with a full panel. The decision is then final and binding.

1. General Judicial Council

21. The Judicial General Council was created in 1993. Its functioning and composition are governed by the amended Law on Courts. The Council has 10 members. Five members are elected from among judges, and the five remaining non-judge members are appointed by the parliament on the basis of open selection.³ According to the revised Law on Courts, the Judicial General Council has five functions:

- (a) Ensuring the impartiality and independence of the judiciary;
- (b) Providing human resources for the judicial system;
- (c) Protecting the legal status and interests of judges;
- (d) Enabling the financial and economic independence of the judiciary;
- (e) Providing information and training for judges.

22. The role of the Judicial General Council includes submitting proposals to the parliament with respect to the judiciary's budget, personnel and court buildings, recommending candidates for appointment to the judiciary and making payments to judges and court officials. However, it does not have the power to initiate legislation and must rely on the Ministry of Justice to submit any bills for parliamentary consideration. The Special Rapporteur considers that, with respect to the budget, this may present an obstacle to the independence of the judiciary.

2. Judicial Disciplinary Committee

23. The Judicial Disciplinary Committee was established by the Constitutional amendments of 2019,⁴ with its powers and procedures enumerated in the Law on Courts.⁵ The Committee is an independent body with the function of suspending, dismissing and

² Constitution of Mongolia, art. 50.

³ Law on Courts of 2021, art. 76 (2).

⁴ Constitution, art. 49 (6).

⁵ Law on Courts, chap. 15.

imposing other disciplinary sanctions against judges.⁶ It has nine members, four of whom are judge members, selected by secret ballot from the Assembly of All Judges. The remaining five non-judge members are selected from among lawyers and appointed by the parliament on the basis of open selection.⁷

III. Positive developments

A. Continuing judicial reform

24. The Special Rapporteur recognizes the efforts of Mongolia, and its many achievements, in reforming its judiciary since the country's transition to democracy and the adoption of its Constitution in 1992.

25. Before 2021, the scope of presidential power over the judiciary was too broad, as the President appointed the members of the Judicial General Council, which in turn selected judges to be appointed by the President. Within the Council, there was a committee dealing with discipline and misconduct.

26. Constitutional amendments in 2019 and the enactment of the new Law on Courts in 2021 brought several key changes to strengthen the independence of the judiciary. The 10 members of the Judicial General Council are no longer appointed by the President. An independent Judicial Disciplinary Committee has been established.

27. A working group set up by the Standing Committee on Justice in Parliament is now responsible for selecting non-judge members of the Judicial General Council and the Judicial Disciplinary Committee. The working group consists of representatives of the majority and minority parties in the parliament, the President, the Government, representatives of the National Human Rights Commission, the Bar Association, the Association of Mongolian Advocates, legal training and research organizations and law schools.⁸

B. Judicial zoning and reform of the Criminal Code

28. During her visit, the Special Rapporteur noted with interest that the State Great Khural was discussing a draft law on the establishment of courts.

29. The proposed legislation envisages reducing the number of courts from 116 to 73 and introduces circuit zoning at the appellate level nationwide, since only 6 per cent of civil cases are appealed and 13 per cent of criminal cases are appealed. The draft would also create two new types of court, a special family court and a simplified procedural court. The objectives of the draft law are to balance judges' workloads, enable the digitization of legal procedures, strengthen judges' professional capacity and improve the accessibility and transparency of courts. This draft also proposes the 24-hour availability of a judge, an innovation that could do much to minimize the risk of arbitrary detention resulting from arrests without a court warrant.

30. However, the Special Rapporteur observes that the closure of local second-instance courts risks impeding access to justice. For example, the Special Rapporteur heard that the appeal court in Bagannur may be closed, leaving no access for the population within a 100 km radius. Traveling these distances may be complicated for many people in Mongolia.

31. Efforts are also in progress to review the Criminal Codes. This proposed reform provides an opportunity to reiterate the importance of timely and unhindered access to counsel, as a guarantee of the right to a fair trial, and to ensure that no detention is arbitrary.

⁶ Constitution, art. 49 (6).

⁷ Law on Courts, art. 95 (4).

⁸ Ibid., art. 77 (2).

C. Legal innovation

32. The National Legal Institute, established in 2002, is one of 13 agencies affiliated with the Ministry of Justice and Home Affairs. Its main function is to conduct legal and policy research, and its second key function is to make legal information accessible and available to stakeholders and the public.

33. The Institute operates an online legal information portal, a legal aid hotline, a chatbot and a Facebook page, and it disseminates expert advice through a weekly podcast. It has also trained a network of 2,500 legal guides, including some community justice workers nationwide. The Special Rapporteur welcomed the innovative work of the Institute and its world-class approach to public legal education.

IV. Challenges to an independent and impartial justice system

34. The Special Rapporteur appreciated the efforts to reform the judiciary, through the Constitutional amendments in 2019 and the new Law on Courts in 2021, but noted that there had been obstacles to the entry into force of some key provisions.

35. The Law on Courts and other laws governing the selection and appointment of key figures in the justice system,⁹ have been subject to challenge before the Constitutional Court. The provisions challenged encompassed those creating procedures for the parliament to appoint non-judge members to the Judicial General Council and the Judicial Disciplinary Committee on the basis of open selection, including through a public hearing,¹⁰ and amendments establishing public hearings for appointment of Constitutional and Supreme Court Justices and the Prosecutor General. The Court ruled that conducting a hearing for the appointment of Constitutional Court and Supreme Court Justices and the Prosecutor General would violate the principles of judicial independence and freedom from parliamentary oversight. However, although the Court held that a public hearing for non-judge nominees of the Council and the Committee was also a violation, it later annulled this finding. To date, the Constitutional Court has not issued its final decision on this matter.

A. Judiciary

36. Article 49 of the Constitution states that judges are to be impartial and subject only to law, while prohibiting any interference by any person or entities in the exercise of duties by judges. Nevertheless, in practice, the Special Rapporteur heard concerns that the protection of judges from interference was insufficient.

37. Since 2013, Mongolia has required judges to submit disclosures of attempts or acts of undue interference. Furthermore, when cases concern politically exposed persons or those holding high positions in public office, judges are required to make and submit a note of any meetings held with these individuals to the Judicial General Council, through the Committee for Safeguarding Judicial Independence and Legal Interests. Once a disclosure is received, the Council will convene a meeting of its members and discuss the case. If they find evidence of a criminal act or another issue of concern, they refer the matter to the relevant investigatory agency, such as the police or the Independent Authority against Corruption. This organization is required to report back to the Council within 30 days on any action taken. The Council also analyses and reports on undue interference disclosures.

38. In practice, this disclosure procedure has been used mostly to prevent corrupt actors from influencing judges. However, the procedure also has a role to play in protecting judges from instances of harassment and incitement to violence. Harassment and abuse, which compromise the independence of judges, was frequently reported as happening on social

⁹ Law on Parliamentary Oversight, Anti-Corruption Law, Law on the Constitutional Court and Law on the Procedure of Parliamentary Sessions.

¹⁰ Law on Courts, arts. 76 (2), 77 (1)–(11) and 95 (4), (5) and (7).

media platforms. The Judicial General Council is responsible for referring such cases to the police.

39. The Special Rapporteur was concerned that, although the Judicial General Council has jurisdiction on matters relating to impartiality or independence of the judiciary, representatives of the Council reported that it was dependent on other institutions to investigate allegations of interference and impose sanctions. The Special Rapporteur advises that the Council and other agencies formulate a plan of action to ensure that appropriate action is taken in any cases of alleged interference.

1. Selection and appointment

40. Judges should be appointed through the application of clear, objective, merit-based standards.¹¹ Pursuant to the Law on Courts, robust procedures for judicial selection have been set up in Mongolia and are administered by the Judicial General Council, including a specialized examination for proposed judges that, in line with good practice, includes an assessment of both the knowledge and the professional capacity of candidates. Nevertheless, the Special Rapporteur recognized that challenges remain.

41. The President of Mongolia appoints lower-level judicial nominees following their selection by the Judicial General Council, and apex court nominees following open hearings in the parliament.¹² However, the Special Rapporteur was told by the President's Office that he views it as within his discretion to review nominees and to reject them if he considers that they do not meet the legal conditions and requirements set out by law.¹³ In such cases, the candidate's documents are returned to the Council for review. In a number of cases, the Council has renominated the candidate following such a presidential return. However, it is not clear what would happen if the President should decide not to appoint the judge on renomination. The Special Rapporteur is of the view that this interpretation of the law creates a significant risk of executive interference in judicial appointments.

42. The Special Rapporteur welcomed the organization of open hearings in the parliament to consider certain important appointments, including apex court judges and the non-judge members of the Judicial General Council and the Judicial Disciplinary Committee. Such hearings permit the track record and professional history of candidates to be disclosed and openly discussed. The general public can scrutinize those candidates on the merits of their experience and capacity. The Special Rapporteur recalls the benefits of public hearings for high-level positions and encourages Mongolia to find ways to address public calls for transparency.

43. The Judicial General Council reported additional difficulties in the selection of ideal candidates. It found that interest in becoming a judge had waned, as the job no longer carried a high status. This could be explained by the salary scale, working conditions, workload and lack of respect accorded to judges.

2. Instances of the removal of judges

44. During her visit, the Special Rapporteur heard of several instances of the unresolved removal of judges.¹⁴ She recalled that judicial irremovability is protected in Mongolia,¹⁵ and that the removal of judges, even by legal means, must ensure their right to a fair hearing and judicial review. Judges are entitled to fair resolution of their cases in accordance with international human rights standards. In the following cases, these standards were at issue.

45. In 2013, when regulations on zoning were first introduced, around 20 judges were appointed to new posts without their consent, 13 judges were left unappointed and reportedly did not receive a reason and others were reportedly unduly transferred. Although the unappointed judges lodged legal claims, only four were reinstated in their posts; for some,

¹¹ A/HRC/38/38, para. 49.

¹² Constitution, art. 51.

¹³ Law on Courts, arts. 36 (4) and (5); and Constitution, art. 51 (2).

¹⁴ See communication MNG 1/2024. All communications mentioned in the present report are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

¹⁵ Constitution, art. 51 (4).

this process took 10 years. Some were compensated but were found to have been legally dismissed. Legal disputes related to this process continue to date.

46. The Special Rapporteur was concerned to hear from a judge who fought for more than eight years to be reinstated. When the judge was finally reinstated to an inter-*soum* court pursuant to a court ruling, the Judicial General Council did not have the funds to cover the salary. The judge then had to work at another court, far from family and with an extra travel burden. The court ruled that the judge should be provided with back pay, but the order stands unfulfilled, owing to a lack of funding. The court ruling did not cover social benefits or pension entitlements.

47. More recently, multiple judges faced removal or suspension as a result of a presidential decree. On 26 March 2019, the then-Speaker of the parliament issued a decree to amend, at the request of the President of Mongolia, the parliamentary agenda to include discussion of amendments to the Law on the Legal Status of Judges, the Law on the Office of the Prosecutor General and the Anti-Corruption Law. The Speaker stated that an “order” from the National Security Council of Mongolia dated 25 March 2019 had prompted the President to submit the amendment proposal. On 27 March 2019, the proposed amendments were adopted in an emergency session by a majority of the parliament. They entered into force on the day of adoption, without any *vacatio legis*. The following day, on 28 March 2019, the Chief Justice of the Supreme Court, along with the Prosecutor-General and the Deputy Prosecutor, were reportedly dismissed by presidential order, issued upon recommendation of the National Security Council.¹⁶

48. On 26 June 2019, the then-President of Mongolia issued a decree on the suspension of some chief justices and other court judges. Some of the suspensions related to the Salkhit silver mine case, in which judges and judicial institutions had been investigated by the Independent Authority against Corruption since 2018. Seventeen judges were suspended on that day.¹⁷ The Special Rapporteur stresses that the executive branch should not interfere with the security of judicial tenure and that disciplinary processes must follow fair, objective procedures established by law.

49. The Special Rapporteur was concerned to hear that some of the judges who were removed in recent years were subject to allegations of misconduct or disciplinary offences, while in other cases, no reasons were given. The lack of clarity in a number of such cases led to the suspicion that some were unjustly dismissed. In the light of the recent judicial reforms in Mongolia, the Special Rapporteur trusts that the summary removal of judges, whether by the executive, the legislature or through zoning, will not recur, as such removals would likely be in violation of the separation of powers and/or the rights of individual judges.

3. Working conditions

50. The Special Rapporteur finds that underfunding has had a devastating impact on the conditions of work for judges and on people seeking justice through the courts.

51. The Special Rapporteur was informed that judicial salaries were not commensurate with the dignity of judges’ office. There has been no significant increase in the judicial salary scale since 2013 and, when compared with other sectors, judicial pay is not competitive.

52. Currently, there are 518 judges practising in Mongolia. In 2016, the parliament identified that the State required 699 judges. However, the Judicial General Council has been unable to hire the 181 additional judges required to meet this quota, because the salary fund for these judges has not been approved. This shortfall means that the judges of Mongolia are facing an unreasonable workload. The understaffing and frequent turnover of administrative and support staff is also a problem; judges informed the Special Rapporteur that they do not have adequate human resources to support their work. The Law on Courts requires that each judge should be provided with an assistant, support staff and a typist, but many judges reported receiving less support.

¹⁶ See MNG 1/2019.

¹⁷ See <https://president.mn/en/2019/06/26/president-suspends-some-chief-justices-and-other-court-judges/>.

53. The Special Rapporteur heard many opinions that, currently, the reputation of judges is at its lowest point. Due to the low salary, high workload and poor conditions of work, recent law graduates are not willing to take on this work or take it on for a few months and then leave. This contributes to a situation where many courts are unable to fill vacancies for roles as judges or judges' assistants, due to a lack of applications. As a result, many courts operate without a full complement of judges. In some courts, in particular in Ulaanbaatar, this situation has further compounded the unmanageable workload for judges and their staff.

54. For example, at the Sukhbaatar first-instance court, the Special Rapporteur heard that there was a 13 per cent increase in the caseload of the whole court every year. That averages around a 10 per cent increase per judge per year. Sukhbaatar district court should have 14 judges, but in the past two years, the actual number of judges working was between 7 and 10.

55. Judges are also grappling with deficient infrastructure. In the courts that she visited in Ulaanbaatar, the Special Rapporteur heard that, because of limits on courtrooms, judges can carry out a trial only two days per week. There are 23 judges making arrangements to use 11 courtrooms. To address this difficulty, the court administration leased the first floor of a residential building; this court now runs trials in converted apartments and the basement of that building. Many of the courtrooms in that space were noticeably cramped, underresourced and poorly laid out. In Selenge province, with one of the largest populations in Mongolia, one building houses four different first-instance and appellate courts. Only three courtrooms are available, and only two have consultation rooms for judges. The Special Rapporteur is of the view that these limits have an impact on judges' workload, the timely progression of cases and the right to a fair trial in Mongolia.

56. The Special Rapporteur also saw that poor court design and a lack of personnel created security risks for judges, staff and court users. In some courts, judges and staff are required to use the same entrances as case participants to access the court building, exposing them to a risk of attack or harassment. During her visit to the inter-*soum* court building in Mandal Soum, the Special Rapporteur learned that the judges themselves had funded and built an additional entry door for judges only. The small size of many courtrooms means that judges and participants are required to sit in close proximity to one another. In some cases, witnesses and survivors of serious crimes are placed next to the alleged perpetrator of those crimes, threatening their safety and risking revictimization.

57. The Special Rapporteur learned that, in the past, there was a dedicated marshal service charged with ensuring the security of courts. However, this body was dissolved in 2016, and the responsibility for the security of judges and the courts was transferred to the police. The Special Rapporteur notes that requiring the judiciary to depend on an agency supervised by the executive branch for security could in some circumstances compromise the independence of judges, exposing them to the risk that security could be withdrawn or underfunded. In addition, existing rules and regulations about court security are not fully implemented because of a lack of budgetary resources. Some judges reported that, due to inadequate funding and limited human resources, an insufficient number of police officers was present to ensure the safety of judges and court users.

58. Judges are provided with life insurance and health insurance through the Judicial General Council. However, the Special Rapporteur was concerned that that insurance coverage was not sufficient to satisfy basic requirements.

59. Adequate pay and working conditions are vital to securing judicial independence and access to justice. The Special Rapporteur considers that more must be done to ensure that material and human resources for the judiciary are increased and maintained at appropriate levels.

4. Disciplinary rules and actions

60. The main goals of the new Judicial Disciplinary Committee are to restore public trust in the judicial system, to engage citizens and other stakeholders and to strengthen impartiality of the system, as well as to enable conditions for the just resolution of matters handled by the courts.

61. Judges found to have engaged in misconduct on professional or ethical grounds are subject to sanctions by the Judicial Disciplinary Committee. The Committee may issue open or closed reminders and order reductions in salaries and temporary or permanent suspensions.

62. The discipline of judges is governed by chapters 9 to 12 of the Law on Courts. The Special Rapporteur is concerned that some provisions in article 50 of the Law on Courts, which are currently under review by the Constitutional Court, appear to characterize issues of judicial competence, including potential grounds of appeal to a higher court, as misconduct. For example, article 50 (1) (23) prohibits “action or inaction violating seriously or repeatedly the clear understandable provision of the law”. Article 57 provides that the range of disciplinary punishments for violating this provision includes dismissal.

63. During her visit to the Judicial Disciplinary Committee, the Special Rapporteur learned that the four most common violations are:

- (a) Failure to issue a timely decision;
- (b) Obvious breach of a legal provision;
- (c) Abuse of power, giving a privilege to one party over another;
- (d) Interaction with the case party.

64. She was informed that the Judicial Disciplinary Committee was suspending any complaints for obvious breach of a legal provision, pending the Constitutional Court’s decision. She noted with concern that some of the complaints submitted to the Committee may relate to substandard premises, which make it difficult for judges to entirely avoid interaction with parties, or may be due to the delay brought about by the extreme caseload and inadequate judicial support staff in some districts. She heard from judges that they performed their duties under fear of being subjected to scrutiny from the Committee for matters that are beyond their control.

65. Furthermore, the Special Rapporteur considers that the new disciplinary procedure requires further refinement to protect judges’ rights. Judges who are subjected to sanctions and wish to appeal can file a complaint to another committee within the Judicial Disciplinary Committee, with only procedural issues being appealable to the Supreme Court.¹⁸ There thus appears to be no judicial oversight for substantive decisions of the Committee. She also agrees with the opinion, shared by a number of interviewees, that the body considering professional misconduct should be composed of a majority of judges.

66. In addition, the right of judges to bring a defence advocate to disciplinary hearings is not protected by law, and the complainant is permitted to attend only as an observer, with no right to speak.

67. The budgetary constraints on the judiciary also affect disciplinary hearings, given that the Judicial Disciplinary Committee uses trial recordings as evidence. Often the recording quality is insufficient, or there is video but no audio or no recording at all, because the courtroom was not equipped with proper technology. In those cases, the Committee must close the case on the basis of insufficient evidence.

68. The Special Rapporteur urges the Mongolian authorities to undertake reforms of disciplinary rules and procedures to ensure that disciplinary actions against judges are both fair and effective.

5. Budget and lack of capital investment

69. One of the most important safeguards of impartiality and the separation of powers is the provision of adequate budgetary independence to the judiciary. Chronic underfunding was by far the most frequently reported problem during the Special Rapporteur’s visit. The Special Rapporteur was concerned to hear that there had been no nationwide capital investment in court or judicial infrastructure for a decade.

¹⁸ Law on Courts, art. 115.

70. The law provides that the Judicial General Council submits its proposed budget for the judiciary to the parliament, following review by the Legal Standing Committee. However, this provision has not yet been fully implemented. The Special Rapporteur heard that, in the moment of consolidation of budgets by the Ministry of Finance, the Council budget proposal may be subject to amendments and reductions. She calls upon the Great Khural to seriously consider the Council's proposal to earmark up to 2 per cent of the State budget for the judiciary.

6. Lack of public trust and access to justice

71. The Special Rapporteur was concerned to hear from many counterparts about the lack of public trust in the judiciary. According to one survey, the judiciary is consistently named as the most corrupt institution within law enforcement.¹⁹

72. Although the justice system includes judges, prosecutors, lawyers, police officers and support staff, the Special Rapporteur noted that the judiciary has the highest public profile in the administration of justice and suffers the greatest reputational damage when controversial cases or issues are brought to the courts.

73. The Special Rapporteur observes that increased knowledge and understanding are vital to increasing trust in judicial processes; therefore, greater transparency may increase faith in the justice system. She welcomes the fact that many judges are taking proactive steps to increase transparency and support public understanding, for example, by providing a simple summary of court decisions. Deficiencies in infrastructure contribute to lack of trust, by preventing the public or civil society from observing or participating in justice processes due to a lack of appropriate space in courtrooms. Furthermore, adaptations are required to permit persons with disabilities to participate in investigations and court proceedings. Many courtrooms are not accessible to wheelchair users, and people with visual and hearing impairments were often not provided with materials in Braille or sign language interpretation.

74. Trust is also enhanced when court processes are viewed as an effective and potent means of achieving a just outcome. Civil society analysis of court cases concerning intimate partner violence demonstrates a lack of security measures for complainants, including separate entrances and waiting rooms, security checks and security escorts. This analysis also documented retraumatizing treatment, such as victim-blaming and reliance on gender stereotypes, including by some judges. The Special Rapporteur heard that discrimination cases concerning the lesbian, gay, bisexual and transgender communities are not even reaching the courts, due to ambiguity in the law and the need for additional education and training for justice personnel. In addition, members of those communities find it difficult to locate legal support.

75. The Special Rapporteur recalls that particular obstacles exist for rural communities, including herders and those affected by extractive industries. The Special Rapporteur heard about committed judges travelling to bring justice services to remote rural communities; this practice is commendable. However, judges reported that they received no additional funding to carry out this work. It is neither appropriate nor sustainable to rely on the goodwill and private resources of judges to provide services.

76. The Special Rapporteur was also concerned about the quality and clarity of judgments and criticism from many parts of society, including political actors, about different judgments being made in similar cases. She shared the Supreme Court's hope that the training institute would help the judiciary to address these problems, including through research and case study. She welcomed the guidance from the Supreme Court on the methodology for preparing court judgments.

77. Mongolia has set up the General Executive Agency of Court Decision to enforce all decisions of the judiciary. The Special Rapporteur recalled that experiences with the implementation and enforcement of decisions and sentences also have an impact on public trust. The Agency receives around 45,000 court enforcement decisions per year. For example,

¹⁹ Independent Authority against Corruption, "Overview of the situation of corruption in judicial institutions of Mongolia", available at <https://en.iaac.mn/post/146247>.

as of November 2023, it had 50,797 notification sheets issued from the courts, equalling 2.5 trillion tugriks. Of those, 25,368 were executed, equalling 524.9 billion tugriks. That includes both administrative and civil decisions. The Special Rapporteur is of the view that Mongolia must address the challenges that the Agency faces in enforcing decisions. She recalls that the Agency does not have the power or authority to seek clarity in relation to a decision.

78. The Special Rapporteur was concerned to learn of challenges in enforcing administrative court decisions. She was of the view that the Agency's letter conveying the decision of the court in such cases should be sufficient to compel compliance, since such cases often involve civil servants or government officials who are already bound to follow the relevant law.

79. The Special Rapporteur advises the Government of Mongolia to take a holistic approach to improving public trust in the judiciary, which encompasses increased transparency, improved legal education and enhanced effectiveness and responsiveness of the justice system.

7. Social media and the judiciary

80. The Special Rapporteur repeatedly heard that judges faced extreme pressure through social media. Many judges described experiencing anxiety about the online publication of their personal details and, in some cases, information about their families, alongside disparaging comments about their judgments and their conduct of court cases. The Special Rapporteur observed that, like other citizens, judges are entitled to protection from misinformation, harassment, the malicious sharing of personal information (doxing) and incitement to violence on social media.

81. The Special Rapporteur recalls that, in line with the right to freedom of expression, it is unlikely to be appropriate to restrict discourse about judges, including on social media, which does not fall within these prohibited categories of conduct. Public commentary about public figures is an inescapable feature of a free democratic society, and such speech is protected under the International Covenant on Civil and Political Rights. However, although judges are lawfully subject to public critique, as well as to requirements concerning transparency and accountability, they do not entirely waive their right to privacy.²⁰ The Special Rapporteur stresses that judges and their families must be protected from threats from any quarter and that representatives of the Government should refrain from any public criticism of or commentary on the judiciary that could be perceived as undermining judicial independence. She also observes that more could be done by government officials and the Judicial General Council to support judges and correct negative perceptions of the judiciary.

B. Prosecutors

82. The Office of the Prosecutor General in Mongolia is headed by the Prosecutor General. There are 41 prosecutorial offices, including the Office of the Prosecutor General, the metropolitan office, district offices and transport and provincial offices. The office has eight districts within Ulaanbaatar, 21 provincial offices and eight inter-*soum* offices. Some 610 public prosecutors practice throughout Mongolia, with 200 assistants and 520 administrative or service staff.

83. Prosecutors enjoy independence under the law, and various legal provisions are directed to ensuring that prosecutors are not subjected to inappropriate influence.²¹ A prosecutor is not obliged to provide information to any person other than those individuals involved in the crime and resulting case. The Special Rapporteur was informed that, if anyone, including the chief prosecutor, attempts to influence fellow prosecutors, prosecutors

²⁰ European Commission for Democracy through Law and OSCE Office for Democratic Institutions and Human Rights, Kyrgyz Republic: Joint Opinion on the draft law on introduction of amendments and changes to the Constitution, endorsed by the Commission at its 108th session (14 and 15 October 2016).

²¹ Law on Prosecution Service of 2017, arts. 1, 7 and 56.

should make a declaration of undue influence to their supervising prosecutor.²² Prosecutors are required to provide information about a case that they are working on to their superior only when a case participant makes a complaint about the handling of a case.²³ In such cases, supervising prosecutors review the approach taken and determine whether the impugned action was just or unjust. If the supervising prosecutor's decision is appealed, it will be reviewed by the upper level of the Office of the Prosecutor General, which can revoke an "ungrounded" decision of the lower-level prosecutor.

84. Despite these protections, the Special Rapporteur raises a concern about the prosecutors' vertical line of command and notes the need to ensure that prosecutors are not vulnerable to undue interference by prosecutors of a higher rank. In the same way as the Law on Courts enhanced the independence of the judiciary, legal changes are now required to protect the prosecution service from undue interference, whether through internal lines of supervision or through external interference.

85. With regard to funding, the Special Rapporteur heard that the Office of the Prosecutor General had been securing sufficient funding for their operations. Compared with the judiciary, prosecutors have achieved two rounds of salary increases in recent years and do not experience significant challenges related to premises. However, she stresses that, as for the judiciary as a whole, remuneration for prosecutors should reflect the importance of their task and is an element of independence and impartiality that should not be overlooked.

86. Prosecutors also reported challenges connected to misinformation on social media concerning ongoing cases. However, the Special Rapporteur was not given evidence of specific threats, attacks or harassment against prosecutors. The Office of the Prosecutor General takes steps to ensure that prosecutors are protected, including through providing a security escort where necessary, housing arrangements and adequate remuneration.

87. During her visit, the Special Rapporteur heard echoes of the concerns expressed by the Working Group on Arbitrary Detention, which noted that prosecutors conducted arrests without judicial oversight, relied excessively on confessions in investigations and failed to provide access for defence lawyers to defendants and to their files in a timely manner.²⁴ The Special Rapporteur understands that amendments to the Criminal Procedure Code have also placed a limitation on first-instance court judges by providing that, if the defendant and prosecutor make a deal, the court cannot reject it unless there has been a grave procedural error. The Special Rapporteur is of the view that judges should have broader discretion to verify the factual and legal underpinnings of any plea bargain.

1. Selection and appointment

88. The Prosecutor General and the Deputy Prosecutor General are appointed by the President²⁵ with the consent, by simple majority, of the parliament for a six-year term with the possibility of reappointment for one consecutive term. If the parliament declines the appointment of a nominee, the President nominates another candidate. The Special Rapporteur considers that the President and the parliament have overly broad discretion in making decisions concerning the appointment of a Prosecutor General. Apart from the general requirements, such as age and legal and prosecutorial experience, there are no specific criteria or rules for the selection of nominees.

89. As in the case of high-level judicial appointees, recent reforms created a new system of open parliamentary hearings for candidates for the position of Prosecutor General. The Constitutional Court ruled that conducting such a hearing was a violation of the Constitution.

90. The Special Rapporteur notes that there is currently no examination, apart from the Bar Exam, that contributes to the selection of prosecutors, and that there is no independently established body to make decisions on the appointment of prosecutors. She observes that it

²² Ibid., art. 57 (1).

²³ Ibid., art. 56 (6).

²⁴ Working Group on Arbitrary Detention, "Preliminary findings from its visit to Mongolia (3–14 October 2022)", available at www.ohchr.org/sites/default/files/documents/issues/detention-wg/country-visit/2022-10-13/EOM_statement_Visit_Mongolia_14Oct2022_EN.pdf.

²⁵ Constitution, art. 56.

is important that the method of prosecutorial selection maintains public confidence and the respect of the judiciary and the legal profession. A holder of this mandate has previously recommended²⁶ that the appointment of a Prosecutor General resulting from cooperation among different governmental bodies is preferable to appointment by a single body.

2. Disciplinary rules and actions

91. The Guidelines on the Role of Prosecutors provide that disciplinary offences of prosecutors are to be based on law or lawful regulations and that prosecutors have the right to a fair hearing, with any disciplinary decision subject to independent review.²⁷ Furthermore, disciplinary proceedings should guarantee an objective evaluation and decisions.²⁸

92. The Law on Prosecution Service provides that there are two bodies, the Prosecutor's Professional Council and the Prosecutor's Ethics Council, with the right to examine and make conclusions on issues relating to the professional activities of prosecutors and violations of the code of ethics, respectively.²⁹ The prosecutor's professional rules and code of conduct, and the working procedures of both Councils, are approved by the President.³⁰ Based on the conclusions drawn by these Councils, the Prosecutor General decides whether to impose disciplinary sanctions on prosecutors.³¹ The prosecutor's disciplinary rules are also approved by the President.³²

93. A prosecutor sanctioned under these rules can complain within one month to the Prosecutor General, unless the sanction was directed by the Prosecutor General, in which case an appeal can be brought to the court.³³ General prosecutors at the province, capital, district, *soum* or sub-*soum* levels can also impose certain sanctions (warnings or reductions in salary) on subordinate prosecutors.³⁴

94. The Special Rapporteur is concerned that these disciplinary rules and procedures do not do enough to insulate prosecutors from political interference and inappropriate sanctions. They grant a high level of involvement to the President in approving rules of professional and ethical conduct and rules of disciplinary procedure. These procedures also vest an excess of power in the hands of the Prosecutor General and to superiors within the prosecutorial hierarchy.

95. The Special Rapporteur notes that there is a need for an internal independent mechanism executing any disciplinary decisions towards prosecutors who breach their norms of conduct.

C. Advocates

96. The Constitution of Mongolia enshrines the right to a fair trial, including the rights to be presumed innocent, to examine evidence, to be present at trial, not to testify against oneself and to appeal and seek pardon (art. 16 (14)). The Constitution also provides the right to a public trial (art. 54) in a person's native language (art. 53) and to professional legal aid (art. 55). In order for these rights to be effective, the free exercise of the legal profession must also be protected in law.

97. Lawyers who have the right to represent clients before the court are known as advocates.³⁵ This profession is governed by the Law on Advocacy of 2019, which provides that such lawyers must pass a separate advocacy examination and be registered and granted the right to engage in advocacy by the Association of Advocates of Mongolia (art. 7). The

²⁶ A/HRC/20/19, para. 64.

²⁷ Guidelines on the Role of Prosecutors, guideline 21.

²⁸ Ibid., guideline 22.

²⁹ Law on Prosecution Service, arts. 64 (1) and 65 (1).

³⁰ Ibid., arts. 64 (2) and 65 (2).

³¹ Ibid., art. 66 (3).

³² Ibid., art. 67 (3).

³³ Ibid., art. 67 (4).

³⁴ Ibid., arts. 67 (1) and 67 (2).

³⁵ Law on Advocacy of 2019, art. 3 (1).

Law on Advocacy makes provision for the rights of advocates, including but not limited to being provided with the opportunity to meet the client individually (art 13 (1) (3)) and to review documents and evidence gathered in the adjudication proceedings of cases and disputes, make notes, copy and duplicate necessary materials at his or her own expense (art. 13 (1) (5)). The rights of advocates are also enumerated in the Criminal Procedure Code (art. 41).

1. Obstacles to their work

(a) Access to clients and files

98. Advocates stated that they were frequently not provided with full access to their clients' files. Even when access to case files is granted, defence lawyers may be given inadequate time and facilities to become familiar with complex or voluminous evidence or to make copies or obtain electronic versions. For these rights to be effective, and in the absence of electronic files, advocates reported that they required a dedicated room in which to review files, as well as sufficient time and access to a photocopier. Advocates described facing particular problems when files were held in certain premises, including police stations, the Anti-Corruption Agency and the General Intelligence Agency, where they might be required to leave their mobile phones outside evidence storage rooms. In the absence of photocopying facilities, or the capacity to take photographs, advocates may have no choice but to copy many pages of evidence by hand.³⁶

99. In addition, the Working Group on Arbitrary Detention observed that suspects were not always given prompt access to a lawyer from the outset of a deprivation of liberty and, as a result, many suspects confessed prior to seeing a lawyer.³⁷ Furthermore, in cases where arrest and detention take place without a warrant, the legal grounds or circumstances may not be provided prior to the first hearing, leaving advocates underprepared to defend their clients. Mongolia must ensure that advocates have timely access to their clients, information and legal documents and evidence as a matter of right.

(b) Threats and sanctions

100. The Special Rapporteur was informed that advocates and their families faced public harassment, in particular on social media, for taking action that fell within their professional duties. The Mongolian Bar Association Safeguarding Committee of the Interests of Lawyers receives information and complaints, conducts analysis and issues public statements concerning violations of the general legal interests of lawyers and may also transfer cases to an investigative agency. The Bar Association also provides defence services to lawyers aimed at restoring their reputation and protecting them from libel and slander.

101. The Special Rapporteur heard allegations that some advocates had also faced threats and sanctions from government personnel and State agencies for carrying out their work.

102. Notwithstanding protections in law, the Special Rapporteur was told that advocates may experience high levels of interference, in particular in cases with a high political profile. She heard allegations that such advocates had faced the suspension of their licences, or even criminalization and fines, as a result of complaints made against them by prosecutors or judges in the context of proceedings. The Special Rapporteur was also informed that defence advocates had been subject to illegal inspections of their premises and the confiscation of case documents by authorities.

103. The Special Rapporteur heard concerns that proposed revisions to the Criminal Procedure Code could increase the risk of sanctions against defence advocates. Under these provisions, persons, including advocates, could be subjected to criminal prosecution and an extended term of imprisonment for making public information that has been classified under the jurisdiction of the General Intelligence Agency. Advocates told the Special Rapporteur that they were afraid that the provisions could be used to criminalize them, even when they were raising legitimate concerns that accused persons had been subject to unfair interrogation

³⁶ A/HRC/54/51/Add.2, para. 51.

³⁷ Ibid., para. 48.

processes or even torture. The Special Rapporteur stresses that the Government must ensure that advocates are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference and that advocates must not suffer from sanctions or the threat of sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

2. Legal aid schemes

104. In addition to the constitutional guarantee of the right to counsel, legal aid in Mongolia is governed by the Law on Legal Aid for Indigent Defendants, the Law on the Status of Lawyers and the Criminal Procedure Code.³⁸ A revision to the Law on Legal Aid, which made provision for working conditions of State attorneys, was approved in 2022. However, the State attorneys of six districts in the centre of Ulaanbaatar are located in one room with inadequate heating. Advocates do not have their own desks, they lack Internet connectivity and there is no private room to meet with clients. As with regard to the judicial system more broadly, the Government should take steps to provide sufficient funding and adequate infrastructure for free legal aid services and ensure that such services are available to communities throughout the territory of Mongolia.

D. Rebuilding public trust in the judiciary

105. The Special Rapporteur highlights that the present moment is a good occasion for the Government to better explain to the public the crucial role that the judiciary and advocates play in upholding the right to a fair trial.

106. The Special Rapporteur encourages measures to improve the general public's understanding of the administration of justice in Mongolia.

107. The Special Rapporteur heard in particular that the public was less likely to engage in slander, online attacks or threats when provided with accurate information about the law and legal procedures. This was also crucial in combating disinformation or misinformation about judges and the judiciary in the media or on social media. The Special Rapporteur encourages the Judicial General Council to carry out sensitization and training work with journalists and reporters, especially investigative journalists, so they may improve the coverage of justice issues.

108. Transparency is key to developing trust. In this light, the Special Rapporteur welcomes the publication of court decisions on court.mn. She emphasized that all court decisions should result in reasoned judgments that explicitly reference any applicable provisions of human rights law. Innovations aimed at ensuring the transparency of decisions and proceedings, such as the publication of summaries of proceedings and simplified decisions and improving the accessibility and openness of courtrooms and proceedings, should be enhanced. Access, including online access, to all published judicial decisions and public court records is very important. Prosecutors should consider taking similar steps to make their work more transparent and understandable.

109. Technology can increase transparency, but it can also make processes more opaque or complicated. The Special Rapporteur heard that 14 software platforms had been introduced for court use. Some, however, were not interoperable. She is concerned that, instead of easing and opening the work of courts, this has complicated matters and increased the workload of technical staff.

110. Regrettably, the Special Rapporteur noted that funding shortfalls had had a negative impact on the transparency of the justice system. As already discussed, the inadequate size of some courtrooms makes it difficult, if not impossible, for the public, including journalists, to observe many hearings. Furthermore, the overwhelming workload experienced by many judges limits their capacity to provide written explanations of their decisions in a reasonable

³⁸ See https://www.laf.org.tw/ifla2018/upload/2018/10/National%20Report%202-6_Mongolia_Prof.%20Chimedbaldir%20Jadamba_all.pdf.

time. Adequate funding for the operational budget and capital investment in the judiciary will also work towards rebuilding public trust.

111. The Special Rapporteur calls upon Mongolia to make known the measures already available to address allegations of misconduct, including corruption, in the judiciary. All information on this procedure is publicly available on the Judicial General Council website, but it may also need to be shared directly with journalists and others who can inform the public of the import of such innovations.

112. A judiciary that is widely representative of society helps to show that the system is legitimate and open to all. The Special Rapporteur calls upon Mongolia to combat discrimination and welcome members of all communities into the legal profession, the judiciary and the prosecution service. She encourages the Government of Mongolia to collect and report on data concerning the diversity of the judiciary and prosecution service.

113. The Special Rapporteur would like to address three additional areas that can contribute to building trust in the judiciary.

1. Enhanced public involvement and scrutiny in appointments

114. Transparency in appointments, especially high-level appointments, is vital to promote public trust. The Special Rapporteur learned about the decision of September 2023, in which the Constitutional Court ruled that conducting a hearing in the parliament for the appointment of Constitutional Court and Supreme Court Justices and the Prosecutor General would violate the Constitution and the principles of judicial independence and judicial freedom from parliamentary oversight. The Special Rapporteur encourages Mongolia to continue to find ways to ensure public involvement in high-level appointments.

2. Tone from the top

115. The Special Rapporteur recalls that politicians and public officials play an important role in shaping the media agenda, public debate and opinion and that, as a result, ethical behaviour and attitudes on their part, including in their public communications, are essential for promoting the rule of law, the protection of human rights, media freedom and intercultural understanding and for ensuring public trust in democratic systems of governance.³⁹

116. She highlights the importance of those holding public office ensuring that their statements are in line with international human rights standards, especially as related to the independence of the judiciary.

3. Partnering with the public on the work of the judiciary

117. Mongolia has a valuable resource in the National Legal Institute. Civil society has also worked on improving trust in the judiciary through the creation of indexes, surveys and reporting. Local courts have tried to increase public awareness, for example, judges of the *aimag* level courts in Darkhan attend local community meetings and introduce the work of the judiciary to citizens.

118. The Special Rapporteur encourages Mongolia to capitalize on these initiatives and replicate them at national and local levels.

V. Conclusions

119. During her visit, the Special Rapporteur observed that the constitutional amendments of 2019 and related reforms have taken Mongolia in the right direction. However, procedural reforms and increased financial resources are needed before the full effects will be evident.

³⁹ Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the OSCE Representative on Freedom of the Media, the Special Rapporteur for Freedom of Expression of the Organization of American States and the Special Rapporteur on Freedom of Expression and Access to Information in Africa of the African Commission on Human and Peoples' Rights, Joint Declaration on Politicians and Public Officials and Freedom of Expression, 2021.

The Special Rapporteur considers that more enduring structural change is advisable to secure the long-term financial independence of the judiciary. The prosecution service must take steps to come into line with international human rights standards. The ability of defence advocates to play their crucial role is still stymied by procedural and administrative hurdles that can have an impact on the right to a fair trial.

VI. Recommendations

120. Further steps should be taken to ensure that the role of the President in appointing judges does not risk undermining the separation of powers or the professional pathway to the judiciary that Mongolia has established.

121. With regard to the budget, Mongolia should:

(a) Present the budget proposal prepared by the Judicial General Council to the parliament without amendment by the Ministry of Finance to ensure sufficient resources that allow for the coverage of operational costs, the improvement of facilities and adequate access to justice;

(b) Benchmark a percentage of the State budget to the judiciary and enshrine this allocation in law, taking into consideration the Council's proposed benchmark of 2 per cent of the national budget;

(c) Ensure that judges' salaries are increased commensurate with their status and regularly review and increase judicial salaries in line with the rising cost of living.

122. With regard to the removal of judges:

(a) The executive branch should not interfere with the security of judicial tenure;

(b) The cases of judges who were suspended or removed from their position as judges in 2013 or 2019 for allegations that are not considered a legal basis for suspension, and remain unappointed to this day despite efforts by the Judicial General Council, should be immediately resolved.

123. With regard to disciplinary issues:

(a) Any ambiguity in the distinction between issues of professional conduct and competence should be remedied in the Law on Courts. Judges should not be disciplined for possible errors that are properly remedied by appeal or for issues that are due to procedural or infrastructure limitations;

(b) Rules of disciplinary procedure should be reviewed to ensure their fairness, including the right of legal representation at hearings, and appropriate avenues for the judicial review of substantive disciplinary decisions of the Judicial Disciplinary Committee;

(c) The Committee should be composed of a majority of judges.

124. With regard to the proposed law on the establishment of courts:

(a) Decisions about the rezoning of courts must be based on transparent, objective and impartial criteria set out in law. Moreover, rezoning plans must ensure that courts remain accessible and that users, especially those already located far from court centres, will not bear the burden of greater distances to travel;

(b) Any amendments to the current court system must be accomplished through a participatory process that takes into account the views of affected parties, including judges and local court users;

(c) Judges must be safeguarded from improper transfer or removal. Rezoning does not suspend the requirement that judges may be removed only for reasons of proven incapacity or behaviour that renders them unfit to exercise their duties and only following appropriate procedures carried out by the Judicial Disciplinary Committee.

125. **With regard to the prosecution service:**

(a) **Mongolia should take steps to create a transparent, merit-based prosecutorial career path based on publicly available, objective criteria. In relation to ordinary prosecutors, a public competitive selection process, with publicly available criteria and safeguards against appointment based on partiality or prejudice, is recommended as an objective way to ensure the fair appointment of qualified candidates to the prosecution service;**

(b) **The appointment process for the Prosecutor General should be reformed to include the participation of different governmental bodies;**

(c) **Mongolia should consider the creation of an independent body, similar to the Judicial General Council, for the prosecution service, empowered to oversee appointment, discipline and dismissal.**

126. **With regard to the issue of verbal and written attacks against judges and the judiciary in the media and on social media:**

(a) **Public officials should refrain from making statements that are likely to promote disinformation or misinformation and should instead take advantage of their leadership positions to uphold and advance the independence and dignity of the judiciary;**

(b) **Mongolia should ensure that public authorities make every effort to disseminate accurate and reliable information, including about their activities and matters of public interest;**

(c) **Mongolia should ensure that judges are protected from harassment, doxing and incitement to violence on social media.**

127. **With regard to advocates:**

(a) **Defence advocates must have timely access to clients and evidence as a matter of right and must be able to make copies of relevant documentation and make appropriate use of evidence;**

(b) **Digitalization should be prioritized, to permit the disclosure of case files, evidence and court documents to advocates in electronic form;**

(c) **Mongolia should increase the budget and staff of the Legal Aid Centre, ensuring that it has adequate funds to fully meet the needs of attorneys and their clients, including adequate provision of meeting rooms and Internet connectivity.**

128. **With regard to access to justice and restoring public trust:**

(a) **Mongolia should continue to take steps to improve the transparency of decisions and court proceedings and enhance the accessibility and openness of courtrooms;**

(b) **The Special Rapporteur encourages Mongolia to continue to find ways to allow for the public to hear from nominees to high judicial office, as a measure to build public trust;**

(c) **The Judicial General Council should take steps to sensitize and train journalists to improve the coverage of justice issues;**

(d) **Provisions to protect lesbian, gay, bisexual and transgender people and persons with disabilities from discrimination in the administration of justice should be brought into line with international standards to ensure adequate protection and access to courts;**

(e) **The Government must ensure that courts are located so as to facilitate access for rural communities, and judges working with rural communities should receive systematic funding and support, where necessary, to bring justice services closer to communities;**

(f) **Mongolia should continue to provide, and expand, support for community-level programmes to improve legal literacy and enhance trust in the judiciary.**

129. **Mongolia must combat discrimination and welcome members of all communities into the legal profession, the judiciary and the prosecution service. The Government should collect and report on data concerning the diversity of the judiciary and prosecution service.**
