

QUESTIONNAIRE ON THE ROLE, COMPOSITION AND FUNCTION OF BAR ASSOCIATIONS

- 1. Please provide information on the way the legal profession is organized and regulated in your country. What are the legal bases for its establishment (e.g. constitutional provisions; ordinary law or other)? Please also indicate the main legal provisions protecting the right of lawyers to freely join or create a local, national or international association, and mention the existing associations.**

In Mongolia the legal profession is made up of judges, prosecutors, advocates, notaries and other legal practitioners each of whom is represented by their own respective organizations which regulate the rules and requirements. But all lawyers are brought together under the Mongolian Bar Association (MBA) which is the key professional body of lawyers with mandatory membership. It was established on 7 September 2013 under the Law on Legal Status of Lawyers as a self-governing body and, in addition to the before-mentioned law, abides by the Civil Code, Law on State Registration of Legal Entity, International treaties and the Rule of the Mongolian Bar Association.

The Constitution of Mongolia and the Law on Legal Status of Lawyers provide the legal framework for the establishment of MBA. Article 49.4 of the Constitution reads "The Judicial General Council, without interfering in the activities of courts and judges, shall deal exclusively with the selection of judges from among legal professionals, protection of their rights and other matters pertaining to the ensuring of conditions for guaranteeing the independence of the judiciary".

The Law on Legal Status of Lawyers, enacted by the Parliament on 7 March 2012, sets forth the legal grounds for legal status of lawyers, professional license to practice law, professional reputation of lawyers and accountability system, and functions and organization of the professional, self-governing body of lawyers. The Law, in force since 15 April 2013, governs the bar examination, continuous legal training, issuance of professional license to practice law, provision of legal aid and counsel, implementation of activities of the professional, self-governing body of lawyers, investigation of disputes related to violations of professional conduct and disciplinary action for misconduct of lawyers.

The main legal provisions protecting the right of lawyers to freely join or create a local, national or international association are stipulated in the Constitution and the Law on Non-Governmental Organizations (NGOs). Article 16.10 of the Constitution guarantees the right to form a party or other public organization and unite voluntarily. Article 5.1 of the law on NGOs, enacted on 31 January 1997, stipulates that citizens of Mongolia and legal persons except State bodies have the right to establish, individually or collectively, non-governmental organizations on the basis of their interests and opinions without the permission of any State body.

Pursuant to the Law on Legal Status of Lawyers, lawyers can establish a non-governmental organization on a voluntary basis but prohibits judges and prosecutors to unite except for the purposes of enhancement of professional reputation and responsibility, and support to the development of jurisprudence and legal education.

As of today, there are several NGOs of lawyers such as the Mongolian Judges' Association, Association of Mongolian Prosecutors, Association of Mongolian Advocates, Mongolian Women Lawyers' Association, Mongolian Law Society and Lawyers without Frontiers.

2. Does a professional association of lawyers play a role in the regulation of the profession? If so, please provide information on:

- a) the exact denomination of the body;**
- b) the legal basis for its establishment (e.g. constitutional provisions; ordinary law or other);**
- c) whether the association has been established as an "independent" and self-governing association;**
- d) the composition and appointment process of the executive body of the association.**

- a) Yes. The Mongolian Bar Association (MBA) is the professional body of lawyers established under the Law on Legal Status of Lawyers. Denomination in Mongolian is "Монголын Хуульчдын холбоо".
- b) Please see the related information in answer to Question 1.
- c) Pursuant to the Law on Legal Status of Lawyers and the Rule of MBA, MBA is a self-governing association with functions independent from any political parties, political and religious activities. To ensure its independence and autonomy the funding for MBA's activities comes from membership and training fees. The membership fee is determined by the Congress of MBA in respect of the minimum wage level. Members currently pay a monthly fee of 20,000 MNT (8.3 USD).
- d) MBA implements its functions, as stipulated in Article 49.1 of the Law on Legal Status of Lawyers, through its functional and optional committees.

The Board, governing body of MBA, establishes the functional committees except for the Professional Disciplinary Committee. Functional committees, each in charge of specific functions of MBA, include:

1. Professional Disciplinary Committee – It has 30 members composed of 18 judges, 6 prosecutors and 6 advocates who are nominated and elected in online voting;
2. Committee on the Bar Examination – It has 13 members (2 judges, 2 prosecutors, 2 advocates, 7 law professors);
3. Committee on the Continuous Legal Training – 13 members (2 judges, 2 prosecutors, 2 advocates, 7 law professors) approved by the Board;
4. Committee on the Rule of Professional Conduct and Ethics – 13 members who are selected by the Board following their request to become a member;
5. Committee for the Protection of the Rights and Legal Interests of Lawyers – 13 members (3 judges, 3 prosecutors, 3 advocates, 4 lawyers from optional committees for legal aid and the public good) approved by the Board;
6. Committee on Accreditation of Law Schools – 13 members (6-member lawyers of the Committee for Support to Development of Jurisprudence and Legal Education and 7 law professors);
7. Committee for Support to Development of Jurisprudence and Legal Education – 13 members (7 law professors and scholars, 2 judges, 2 prosecutors, 2 advocates) approved by the Board.

According to Article 49.4 of the Law on Legal Status of Lawyers, lawyers can form optional committees by voluntarily joining together under a specific branch of law, areas of expertise, or specific issues. Optional committees are approved by the Board of MBA, and are run by the Board of the Committee, which consists of the head and 3-12 members who are elected and appointed by the Committee members.

3. Please provide information on the relationship between the association of lawyers and Executive, Legislative and Judiciary powers. In particular, please provide information on the role of the Ministry of Justice and/ or the judiciary in relation to the establishment and functioning of this association.

Relationship between Executive powers and MBA:

After enactment of the Law on Legal Status of Lawyers in 2012, some of the government functions previously carried out by the Ministry of Justice and Home Affairs were transferred to MBA. MBA is now in charge of accreditation of law schools, administration of the bar examination and continuous legal training of lawyers.

Relationship between Legislative powers and MBA:

Pursuant to Article 59.1 of the Law on Legal Status of Lawyers, MBA may provide expert assistance in the legislative process based on the request from the State Great Khural (Parliament of Mongolia).

Relationship between Judiciary powers and MBA:

In accordance with Article 47.3.5 of the Law on Legal Status of Lawyers, the President of MBA has a right to recommend a candidate, nominated by the Committee of Judges, to become a member of the Judicial General Council of Mongolia to the President of Mongolia.

4. Please provide information on the role that professional associations of lawyers play with regard to:

- a) the admission process to the legal profession and the licensing of lawyers;
 - b) the conduct of disciplinary proceedings against lawyers;
 - c) the provision of legal aid;
 - d) the protection of individual lawyers from any form of intimidation, hindrance, harassment or improper interference in the exercise of their functions;
 - e) the development and implementation of legislation concerning the free exercise of the legal profession and the administration of justice.
- a) Law students upon graduation from law schools accredited by MBA are required to undertake professional training for a period of two years, after which they become eligible to sit the bar examination administered by MBA. Article 7.1 of the Law on Legal Status of Lawyers reads "the bar examination is to test the sufficiency of knowledge and skills required to render judgment on justiciable cases, to sit in trials and to provide legal assistance". The exam is organized by the Bar Examination Commission established by the Professional Examination Committee of MBA. The Commission is composed of judges, prosecutors, advocates and law professors. For admission to the legal profession successful candidates of the bar examination send membership request to MBA together with required documents specified in the Law on Legal Status of Lawyers and the Rule of MBA. MBA, upon examination and validation of the documents, registers the applicant who is then granted a professional

license to practice law. The bearer of the license is eligible for the title of "Lawyer", and can practice as an advocate, prosecutor and judge. The license is permanent unless there are grounds for suspension and annulment.

- b) Article 25 of the Law on Legal Status of Lawyers establishes "the Rule of Professional Conduct"; Article 26 specifies the obligations of lawyers, and Article 27 enumerates prohibited conduct for lawyers. In case of violations committed by lawyers of the Law on Legal Status of Lawyers and the Rule of Professional conduct, citizens and officers may make complaints, allegations to the Professional Disciplinary Committee, an independent functional Committee of MBA. Functions of the Professional Disciplinary committee defined in Article 63.1 of the Law on Legal Status of Lawyers include investigating and resolving cases related to professional and ethical misconduct, issuing legal opinion and taking disciplinary action, which may range from private and public warning to temporary or permanent suspension of the right to represent in court to temporary or permanent suspension of the professional license to temporary or permanent annulment of the license. In addition, the Professional Disciplinary Committee may impose additional penalties of compulsory training at the culprit's own expense. The Committee has 30 elected members with own administrative office. Around 200 complaints are received annually, majority of which are related to conduct of advocates.
- c) Provision of legal aid is one of the functions of MBA which is stipulated in Article 45.1.11 of the Law on Legal Status of Lawyers and which is implemented through MBA's optional Committees for the provision of Professional Service for the Public Good and for the Provision of Legal Aid and Counsel to Indigent People. Under the "Procedure on Professional Activities for the Public Good" approved by the Council of MBA, people eligible for legal aid are indigent people in civil and administrative cases; indigent victims and witnesses of crime; orphans, disabled, poor, street children, children living under abusive conditions, sexual assault and working in conditions dangerous to life. In addition, lawyers except for judges and prosecutors are encouraged to annually dedicate 40-hours to activities for the public good. Funding comes from MBA's budget and donation and assistance from individuals and legal entities.
- d) MBA, as a professional body of lawyers, is mandated to protect the rights and legal interests of member lawyers and established a functional Committee for the Protection of the Rights and Legal Interests of Lawyers in December 2018. The Committee has 13 members including judges, prosecutors, advocates and legal practitioners. The main function of the Committee is to protect the rights and legal interests of lawyers, common interest of lawyers, their freedom, uphold human rights, freedom and the rule of law. The procedure commences at the request from individual lawyers, initiative of MBA or its functional and optional Committees including Committee of Judges, Committee of Prosecutors and Committee of Advocates. Currently the Committee of Judges and Committee for the Protection of the Rights and Legal Interests of Lawyers are working in collaboration with the Judicial General Council on the dismissal case of 13 judges.
- e) MBA secures the free exercise of the legal profession and the administration of justice through its mission, principles and functions as set forth by the Law on Legal Status of Lawyers. MBA is mandated to establish general standards for professional reputation, conduct and responsibility of lawyers, protection of their rights and legal interests, and extension of their professional knowledge and skills. With a mission to uphold the rule of law and justice and principles of respecting human rights, freedom

and equality, MBA serves the legal interest of its member lawyers and provide them with equal access to all its activities and support their continuous professional development and education. The functions of MBA include administration of the bar examination and continuous legal training; protection of the rights and legal interests of lawyers; approval and enforcement of the rule of professional conduct; establishment of the Professional Disciplinary Committee; participation in the selection process of judges; accreditation of law schools; provision of expertise in the law making process; support to the development of jurisprudence and research work in court practice and legal policies; advocacy, provision of legal services for the public good and legal aid to indigent people; nomination of a candidate for the Judicial General Council.

5. Is membership in the professional association of lawyers mandatory to practice law in your country? In case membership is a prerequisite to practice law, please provide information on the measures the State has taken to ensure access to justice in cases where there is a shortage of lawyers in the whole country or part of its territory.

Yes. Membership is mandatory to be admitted to the legal profession. Please see answer to Question 4 (a) for more details.

The Board of MBA, under the Law on Legal Status of Lawyers, can establish and dissolve local branches of MBA in rural areas and approve the procedure pertaining to their function. MBA branches are headed by a branch coordinator who is appointed by the President of MBA for a term of two years and are in charge of providing support to local lawyers to carry out their duties including provision of legal advice and aid to local citizens, protection of their rights and interests, conciliation and mediation services, and representation in court. Currently there are MBA branches in all 21 aimags/provinces of Mongolia. Legal aid in rural areas is also delivered through the coordination of activities of the Committees for the provision of Professional Service for the Public Good and for the Provision of Legal Aid and Counsel to Indigent People with MBA branch coordinators. Please see Question 4 (c) for detailed information.

The nationwide mechanism to ensure access to justice is partially delivered by Legal Aid Centers (LAC) established under the Law on Legal Aid to Indigent Defendants enacted in 2013. As defined in Article 6 and 7 indigent suspects, defendants or inmates with living standards and income below the poverty line are eligible to receive legal aid. In addition, pursuant to the Law on the Protection of Children, children living under extreme and difficult conditions are eligible for legal aid.

There are 31 LACs throughout the country in all 21 aimags, 2 densely populated soums (Zamiin-Uud soum of Dornogobi, Mandal soum of Selenge aimag) and 8 districts of the Capital City with a total of 72 officers. The central branch of LAC has 13 administrative staff, 50 public defenders, 7 assistants to public defenders, and administers the provision of legal aid. In areas without LAC, LAC collaborates with respective local organizations to provide legal aid.

On 14 February 2018 a "National Programme on enhancing public legal education" was approved by Government Resolution No.50 of 2018. The purpose of the National Programme is to create a system which continuously enhances public legal education through provision of legal news and information to citizens based on their needs and demands through online and offline channels in open, accessible and simple form.

The National Programme is to be implemented in two stages for a period of 5 years. During the first stage in 2018-2020 a comprehensive system that supports continuous public legal education will be established, and evaluation and strengthening activities will be conducted during the second stage until 2023. Within the framework of the National Programme, numerous activities will be undertaken including development and dissemination of information, legal education to target groups such as persons with visual impairment, capacity building and legal empowerment of citizens, and advocacy campaigns based on human rights approaches.

The National Programme also aims at establishing a structure of legal guides and clinic training centers to deliver primary legal assistance and services to the public, development of specialized legal guides at government and non-governmental organizations in their respective sector, extension of legal services through the use of technology, expansion of database of the existing integrated system of legal information, strengthening collaboration among government organizations to enhance legal education of the public, and increasing the participation of local governor's office, legal aid centers and respective organizations in human rights trainings.