**Presentation on Mongolian & Canadian Prosecutor Exchange Program, International Association of Prosecutors**

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Good afternoon dear all,

Warm greetings of today!

First of all, I would like to express that it is my honor and privilege to be here as a speaker who represents Mongolian prosecutors in the Special Interest Group Session which is about the Prosecutors Exchange Program (PEP) of 24th International Association of Prosecutors (IAP) Annual Conference and General Meeting.

I am very pleased to emphasize that the Prosecutors Exchange Program of IAP has been successfully implemented twice for Mongolian prosecutors with the support of the Federal Public Prosecution Office of Canada by the generous grant of the Government of the United Kingdom of Great Britain and North Ireland in 2012 and the National Association of Attorneys General of the United States in 2019 as well.

Now, please let me share with you about the key successful points of these 2 projects in brief. Within the frame of the projects, totally 5 Mongolian prosecutors introduced with uniqueness of the Canadian legal system.

We learnt from each other by way of exploring legal systems of two countries focusing on adversarial system in criminal justice, sharing ideas and organised jointly 3 training sessions for Mongolian prosecutors. Obviously, we had some chances to observe trial procedures, meet and exchange ideas with officials of legal organizations and courts both in Mongolia and Canada.

**About PEP of 2012.**

First of all, uniqueness of legal tradition of Canada including investigation, prosecutor’s discretion and court hearing procedure was subject to interest. It can be described about a value of visit of Canada that introducing with adversary-based legal tradition helped visitors to organize training in Mongolia about what they learned and to develop guidelines on investigation checklist for prosecutors.

Based on both of the visit to Canada and the training in Mongolia, it could be concluded that even though Mongolian legal system becomes a mixture of civil and common legal tradition, there are things should be learned from original classic system in site. Furthermore, the project gave a good chance to both of Mongolian and Canadian prosecutors not just to learn from each other but also to look at their own system, evaluate and search ways to improve the situation for better human rights protection during prosecutorial supervision.

Comparing to Mongolian criminal procedure, followings are noticed during visit of Canada:

1. *First difference is getting a warrant from court.*

According to the Criminal procedure code of 2002, Mongolia, police get a warrant from court only in case accused has to be in detention center, while other criminal procedures which intend to limit human rights are regulated within both of investigator and prosecutor’s discretion. Although the procedure worked for saving time and expense, there were still cases violating human rights such as arbitrary detention.

On the other hand, Canadian police get all kinds of warrant from court in order to limit human rights during investigation.

1. *Second difference is way of collecting evidence.*

“Questioning” is not a main way to get evidence but using modern technical instruments and undercover operation is widely used there in Canada. Police investigates criminal cases independently especially in urgent exigent circumstances. Only prosecutor enjoy a right to initiate criminal investigation and indict defendant.

On the other hand, using technical tools was very limited in investigation due to lack of budget which encouraged questioning technique during investigation in Mongolia. Plus, materials or documents collected during undercover operation was not considered as part of evidence. Investigation is under super control of the prosecutor, while investigator had a right to initiate criminal investigation and charge defendant.

Based on the experience, we produced a suggestion for the new draft of the Criminal procedure Code of 2015 and is now approved and used in Mongolian practice. Now, we have a special room standard for questioning room, undercover documents are the part of evidence and only prosecutor have a right to initiate criminal investigation based on the investigator’s written suggestion.

1. *Difference between prosecutorial involvements to investigation.*

In Canada, prosecutor oversees the case and if he/she thinks that there are credible evidence, then give a file number to criminal case and prepare it for a court hearing. Until sufficient evidence, the case would not to be introduced to the prosecutor. Police submit a case file /with accused/ to prosecutor only when they think that investigation is done. In other words, Canadian prosecutor’s supervision does not exist during the procedure and police work independently from prosecutors for revealing facts of crime.

In opposite, Mongolian prosecutors play a key role in case building and criminal investigation proceeds. Except getting the court approval or warrant, prosecutors supervise and provide instructions during all investigation procedures from the beginning till the end of investigation due to Criminal procedure code of Mongolia.

We concluded that some advantages of Mongolian system could be considered for preventing from human rights’ violation during investigation procedure, saving time and doing a right charge assessment. However, we have to prevent still from possibilities that some prosecutors could care about only aggravating but not mitigating factors since they are subjects to prove defendant’s guilty in court.

 *4. Difference between ways of judge gets information about criminal case.*

In 2012, a criminal case file has to be delivered to judges in Mongolia before starting court hearing so that they could overview whether evidence is collected legally and all facts of crime defined. Based on that, judge does his/her own assessment on evidence and makes final decision in case whether guilty or not. It seems that the procedure appropriates with principle of beyond reasonable doubt, but the danger is that once judge got some description about the fact, he/she could be biased.

Canadian judges know nothing about a case until court trial begins. Since they do not get a paper file, decision would be based on only evidence presented to the court. Therefore, both of prosecutor and defense lawyer have to be well trained for introducing evidence and persuasive story telling art in court trial.

However, we did our contribution to the newly adopted Criminal procedure Code of 2015, about that there has to be a pretrial hearing whether evidence collected is sufficient or not.

  *5. Protection of victim and witness’s safety*

In 2012, protection of victim and witness of crime was not been regulated by separate legislation in Mongolia. At that time, all stakeholders of certain crime had a right to introduce with personal information of both victim and witness. In other words, when suspect or accused and defense lawyer introduce with case file, they got to know who witnessed about crime. So, there are cases sometimes which witness gives different statement or even do not come to court trial.

In Canada, personal information and safety of victim and witness are protected by law. For example, when disclosure is made, personal information of main witness has to be closed for defense lawyer. We learned Canada well and now there is special Law on Witness and Victim protection adopted in 2013 and separate Section in the Criminal procedure code of 2015 which prevents the defendant to know personal information of the witness.

 6*. About plea bargaining*

According to Mongolian Criminal procedure code of 2015, it is possible to make plea bargaining only in misdemeanor cases, while prosecutors had a right dismiss the case without any court trial if the defendant plead guilty and victim has no complaints anymore. Now, the defendant may plead guilty and make a request to the prosecutor for a simplified court proceeding.

In Canada, in order to care about accused’s rehabilitation, not only his personal information or both of aggravating or mitigating situation but also public interest must be considered when talk about sentencing. Prosecutor and defense lawyer can agree with each other about punishment of accused first and then give joint submission to judge which is namely plea bargaining.

Right now, two systems have similarities that since plea bargaining is done, there is no need to review all evidence or call witnesses. This court procedure is safe for accused and good for time and money saving.

 7*. Teaching in Mongolia*

Mrs. Wendy Kavanagh taught an introductory course on the Canadian Legal System and Advocacy three times while in Mongolia. Two sessions were held in Ulaanbaatar, and one in Khovd province for approximately 70 prosecutors. A number of interesting and quite crucial subjects for prosecutors such as judicial independence, prosecutorial discretion, plea bargaining, and cross-examination, were introduced.

Besides, it should be emphasized that the training was interesting and understandable for Mongolian prosecutors because the trainer herself was a prosecutor in practice and at the same time she is much experienced to teach criminal legal aspects. Observations and discussions greatly assisted Ms. Kavanagh’s understanding of the Mongolian criminal justice system. It also helped to provide insights on how it might be improved.

Based on her experience teaching in Mongolia, Mrs. Kavanagh was invited again for the training for Mongolian investigator and prosecutors again in 2017 to share about Canadian legal system and prosecutorial discretion.

***Conclusion for PEP of 2012***

1. The Mongolian and Canadian prosecutorial exchange illustrated the desire, and need, for further training in Mongolia. Many of the Mongolian prosecutors acknowledged the systemic weaknesses. Similarly, some senior members of the prosecutorial service, as well as government, recognized the need to revamp the courts and make them more adversarial. As a consequence of this input, it was suggested that prosecutors need to be trained further.

2. It has become apparent that there is a desire to move the Mongolian courts towards a real adversarial system. This is a considerable task which will require significant training on advocacy.

3. On the other hand, in order to change a whole system of police, prosecutor and court it will take long, so evidence should be changed at first. Some evidentiary rules which should be canvassed include: hearsay, opinion evidence, expert testimony, cross-examination on out of court statements, admissibility of witness/accused statements, and refreshing a witness’s memory. This will also require a significant amount of teaching time.

4. Furthermore, the program assisted us to produce appropriate prosecutors manual and guideline and organize trainings continuously. It was also very helpful to implement legislation effectively and rightly in practice. In other words, we imagine and consider that participating in the program was just the part of the further complex measures or project.

It could be concluded that steps of getting to the purpose of this project had been done.

***About PEP of 2019***

The most important point that observed our 2 prosecutors during the PEP in Canada is that they immediately noticed that number of certain similarities were found with the Canadian criminal justice system which may seem a result of PEP in previous years. In other words, it showed a great influence to new criminal legislations of Mongolia which was revised and amended recently within the framework for criminal justice system reform.

I have to mention that among Mongolian prosecutors who participated in the PEP, Mr. Erdenebat Ganbat as one of the Deputies of the Prosecutor General of Mongolia, included in the working group to produce draft law of newly adopted Criminal and Criminal procedure codes of 2015 and raised and contributed his voice successfully and actively on the all abovementioned issues.

Particularly, followings were newly or fundamentally changed under new criminal legislation.

1. A criminal case is initiated only after having a sufficient evidence regarding criminal conduct, which allows to take coercive measures such as arrest the defendant. Before that stage we have a preliminary investigation stage which allows investigators to gather evidence but not allowed to take coercive measures.

2. Also plea bargaining mechanism were introduced into the new Criminal procedure code in 2015 (CPC). However as compared to Canada, in Mongolia a plea bargaining is used only for minor crimes for individuals but not for organization. In contrary in Canada, it is widely used most of the crimes which helps to reduce costs and time of the investigation.

3. Moreover, under the new CPC, court warrant is required to takecoercive measures over the individuals who is defined as the defendant. Before, it was allowed for the prosecutors to take coercive measures except detention consent by judge but there was no court hearing process.

4. As mentioned before, significant differences also be considered such as in Mongolia, prosecutors exercise their functions and duty from the beginning of the investigation which is conducted by the direction of prosecutor while in Canada prosecutors and investigators are completely independent. Clearly, upon request of investigator, prosecutor in Canada provide legal advice on a variety of issues including evidence required to establish the components of an offence, the accused’s constitutional rights, the legality of investigative techniques.

5. Canada has a unique liability mechanism over organisation which lies somewhere between vicarious liability and identification. Canadian criminal corporation liability concept gives the right balance, which encourage corporations to create new due diligence system at senior management level. Entering a plea or remediation agreement is allowed for corporation which is important to investigate high profile cases.

In Mongolia, during the investigative stage, even if there is enough evidence to support the charges, investigators have to take all necessary actions for all prosecutable offences including damages and civil restitution. Criminal code (CC) of 2015 introduced new concept that if there is enough evidence to support a single offence of the offender could charge against him. But still burden proof of evidence make us difficult and investigate all the matters regarding the case. For example, the online fraud case, the victims were stays all over the world including, it is not necessary to ask all those victims, only certain victims can be asked.

To conclude from here, Mongolia should make a clear definition for whom acts can be attributable to a corporation. Under current CC, a company may be liable for the act or omission of its competent officials who made decisions independently or collectively on behalf of a company or in the interest of the legal entity. It can be understood that the alone individual or class of individuals whose act can be imputed to the company where the offence was committed on behalf of company or intended to benefit the company. Proving criminal intent and involvement of directing mind is usually difficult in situation lack of plea bargaining and other pre-trial measures.

6. Amazingly again, it was found out that questioning is not a main way to gather evidence but using modern technical utensils and undercover operation is widely used there in Canada.

7. There was a chance to introduce with newly introduced agency in Canada, which the model is complex for efficient handling serious and complicated fraud offences including detectives, surveillance, analytics, asset forfeiture sections and forensic accountants. It was clear that without this complex work investigation of high profile corruption and other economic cases could not attain success. Investigation and prosecution have jointly work with other adjunct services such as forensics, training and crime prevention, analytics and victim liaison.

It was also great to hear the Mongolian fellows that we can make direct contact for information sharing for the purpose of investigation of serious fraud offence in the prior stages of MLA channels.

***Conclusion for 2019 PEP***

1. As a result of PEP, two prosecutors conducted seminars among the prosecutors of Mongolia regarding corporate criminal liability of Canada with comparison of Mongolian legal regulation. PEP result was deliberated to the Prosecutor General, we agreed that there is a need to be revise related statutes of CCL in current Criminal Code. Until the revision, it is decided to develop guidance for prosecutors in regards with corporate criminal liability issues.

Since the law regulation limited, Office of the Prosecutor General amended and added independent chapter on Asset management in the Directive on complying Investigative Procedure within the scope of implementation MER findings during the observation period.

2. Direct contact was created not only by official way but informal channels was established in order to share information and obtaining assistance in criminal matters and asset recovery issues.

3. Following up this study trip, Mongolian side we would like to invite practitioners and prosecutors, and to conduct training with the theme of CCL to the Mongolian prosecutors.

Indeed, the PEP is considered as the crucial steps for Mongolian prosecutors for better understanding and learning from different legal systems. We would like to express our special thanks to International Association of Prosecutors, Federal Public Prosecution Office Canada, Government of UK, NAAG of the US for their vital support in the development of the Mongolian prosecutors. Greatly appreciate to all who supported us to be as Fellows for the PEP IAP.

Noting successful implementation and great significance of the PEP for Mongolian prosecutors again, I would like encourage all of you that this program should be continued for more countries and give the prosecutors great opportunity to explore and improve knowledge about different legal systems for better efficient and effective co-operation in this increasingly globalized world. Co-operation is all about learning, training, guiding, and changing attitude.

Thank you very much the conference host, the Attorney General's Office of the Autonomous City of Buenos Aires for organizing this wonderful Meeting.

Let us see you again during another PEP IAP. Thank you.