

ASIAN DEVELOPMENT BANK

GOVERNANCE:

Progress and Challenges in Mongolia

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CURRENCY EQUIVALENTS

(as of 31 August 2004)

Currency Unit	–	Mongolian Togrog (MNT)
MNT1.00	=	\$0.00084
\$1.00	=	MNT 1194

ABBREVIATIONS

ADB	–	Asian Development Bank
BOM	–	Bank of Mongolia
CGA	–	Customs General Administration
CMEA	–	Council of Mutual Economic Assistance
FMIS	–	financial management information system
FSU	–	former Soviet Union
GCC	–	General Council of Courts
GDNT	–	General Department of National Taxation
GDP	–	gross domestic product
GFS	–	Government Finance Statistics
GSC	–	Government Service Council
IMF	–	International Monetary Fund
MCCI	–	Mongolian Chamber of Commerce and Industry
MDG	–	Millennium Development Goal
MJHA	–	Ministry of Justice and Home Affairs
MOFE	–	Ministry of Finance and Economy
MP	–	member of parliament
MPRP	–	Mongolian People's Revolutionary Party
NAO	–	National Audit Office
NGO	–	nongovernment organization
NHRC	–	National Human Rights Commission
NSO	–	National Statistics Office
PSMFL	–	Public Sector Management and Finance Law
SAIC	–	State Audit and Inspection Committee
SEC	–	Securities and Exchange Commission
SOE	–	state-owned enterprise
SPIA	–	State Professional Inspection Agency
TA	–	technical assistance
UNDP	–	United Nations Development Programme
VAT	–	value-added tax

GLOSSARY

<i>aimag</i>	–	province: highest subnational administrative unit
<i>bag</i>	–	subdistrict: lowest administrative unit
<i>Ikh Hural</i>	–	national parliament
<i>hural</i>	–	local assembly
<i>khoroo</i>	–	subdistrict (Ulaanbaatar)
<i>soum</i>	–	district: administrative unit below aimag
<i>Unsdan Khuuliin Tsets</i>	–	Constitutional Court

NOTE

In this report, "\$" refers to US dollars.

Report preparation was supervised by R. Moyes.

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EXECUTIVE SUMMARY

The fundamental governance challenge facing Mongolia is to implement effectively the set of laws, rules, and regulations that have been put in place during the first decade of the nation's political and economic transition. The creation of an environment that enables equitable economic growth is essential if poverty is to be reduced, and state and society have key roles to play in achieving this goal.

Mongolia's constitution, adopted in 1992, sets out the basic principles of good governance. According to Article 16, citizens have the rights to participate in politics by voting and standing for office, to enroll in political parties and other voluntary associations, and to submit petitions to the state; and are entitled to freedom of thought, opinion, expression, speech, press, and assembly. Moreover, through its Good Governance for Human Security Program¹ and its Action Program, 2000–2004,² the Government has committed itself to reform. The Good Governance Program emphasizes the participation of “all relevant actors and stakeholders” (p. 11), which it defines to include not only government officials, but also mass media, academic and research institutes, nongovernment organizations (NGOs), citizen-based organizations, individual citizens, and the community.

In Mongolia, the achievement of good governance depends on a number of factors, including improved public financial management; enhanced public administration, which encompasses civil service, legal, and judicial reform; effective management of privatization and enhanced corporate governance; and a more substantial role for civic organizations and NGOs.

A. Public Sector Reform Strategy

To enhance the efficiency and effectiveness of its services, the Government has adopted a comprehensive public sector reform strategy relying on a new contract-based system to achieve enhanced accountability, governance, fiscal management, and professionalism.³ The approach is embodied in the Public Sector Management and Finance Law (PSMFL), which parliament approved in June 2002 after extensive debate and which has been implemented gradually since January 2003.

The Government envisages the existing system of public administration as being replaced by the new contract-based system. The main challenge inherent in this approach is that public administration in Mongolia is characterized by informal markets and arrangements; that is, although elaborate rules and regulations govern the management of public finance and public personnel administration, informal practices diverging significantly from these rules and regulations are the norm. A contract-based system relies on a strong, rules-based government and robust markets, conditions that will require a substantial amount of time to develop in Mongolia.

¹ Government of Mongolia. 2001. *Good Governance for Human Security Program Policy Document*. Ulaanbaatar.

² Government of Mongolia. 2000. *Action Program of the Government of Mongolia 2000–2004*. Ulaanbaatar: Interpress.

³ Schick, Allen. 1998. Why Most Developing Countries Should Not Try New Zealand Reforms. *World Bank Research Observer* 13(1): 123–31.

B. Public Financial Management

Systems for estimating future revenues are basic, but appropriate, in that the Government has been making well-thought-out and conservative estimates of revenues for several years. Revenue collections as a proportion of gross domestic product are high and have grown sharply recently. Although they tend to reflect high and, in some instances, increasing tax rates, they can also be attributed to improved management and administration of the tax system. Nevertheless, the efficiency of collections could be improved.

Whereas budget formulation has improved somewhat, substantial consolidation and support are needed. Macroeconomic forecasting should be improved to guide medium-term budget formulation. Reforms are also needed to privatize or consolidate the more than 4,000 budget entities. Such reform would help the key ministries articulate broad sectoral priorities. Some agencies have adopted the use of strategic business plans and output-based budgeting at the sector level. The nature of future reforms will depend on implementation of sectoral policies and programs imbedded in the PSMFL, a process being undertaken in gradual sequences.

Budget approval processes are basically sound, with reasonable roles for executive and legislative branches. Recent reforms have focused on improving the articulation of national priorities and on providing harder budget preparation ceilings early in the budget formulation process. These changes should allow ministries to play a greater role in budget formulation and approval, a role in line with their likely future involvement in the preparation of sectoral strategic plans and performance-based budgets. A primary goal should be timely publication of a comprehensive budget document to improve transparency and accountability in public sector financial management.

Most tension in public expenditure management relates to the extent and nature of the centralization of budget management responsibilities and the accountability arrangements pertaining under the PSMFL. The treasury single-account approach suggests that entity managers are not to be trusted and cannot be held accountable and that aggregate expenditure control is a major problem requiring strong central control. In an environment where rules are being adopted only gradually, however, and where revenue realities dictate stronger expenditure discipline, the treasury single account is a necessary step.

Tension is also evident in regard to the future role of regional and local governments in managing and implementing budgets. The PSMFL emphasizes the decentralization of management responsibilities not only with enhanced incentives, but also with improved accountabilities and checks and balances adequate to meet aggregate expenditure control needs. To some extent, neither the single treasury account nor the PSMFL adequately reflects central or local political aspirations for increasing local government responsibilities.

The institutional and legal arrangements introduced for procurement are modern and appropriate. The immediate need is to enhance systems and training to permit effective implementation across the country.

Public sector accounting is moving gradually toward international accrual standards although recent progress has been somewhat slow. Accounting reforms have been introduced in a number of pilot agencies but generally have occurred in the absence of modern accounting software and systems. Delays in finalizing the procurement of software and hardware under the financial management information system (FMIS) have hindered the comprehensive rollout of

new accounting approaches. Asian Development Bank (ADB) loan assistance is being arranged with three major components, one of which is designed to enhance institutional capacity focused on PSMFL implementation and financial management reforms. The end result of this component should be improved accountability and transparency.

Recent initiatives by the International Monetary Fund aim to enhance central controls by strengthening the role of the treasury. Strategies include propagating the use of a treasury single account and the placement of treasury accountants in key locations throughout the public sector.

Except where internal audit systems have been established, controls are exercised by the Ministry of Finance and Economy (MOFE), by local and central budget entity accountants, and externally by the State Professional Inspection Agency (SPIA; formerly State Financial Inspection Agency) and the National Audit Office (NAO) (formerly State Audit and Inspection Committee [SAIC]). These agencies are well established and perceived generally as honest and diligent. Given the past emphasis on inspecting and auditing financial transactions, the functions of these agencies overlap a good deal, in relation both to the entities that they inspect and/or audit and to their methodologies. Senior management of the institutions recognizes the existence of these overlaps and understands that the system can be made more efficient either by defining the roles of each body clearly or by gathering some, or even all, their activities under an umbrella organization.

The respective roles, powers, and accountabilities of different levels of government require clarification. The constitution and laws pertaining to budget, taxation, and territorial units aim to set out these roles, powers, and accountabilities, but ambiguity and disagreement are substantial. Adoption of the PSMFL may alleviate some problems.

Although the PSMFL generally takes an incentives-based and decentralized approach to entity management, many individuals perceive it as taking a recentralization approach to local government. The PSMFL leaves basic municipal functions to the provincial and regional governments (*aimag* and *soum*, respectively) and allows for the negotiation of responsibilities for other important functions, such as education, health, and law enforcement, through performance arrangements with central portfolio ministries.

C. Public Administration

The Government is committed to reforming public administration processes and institutional arrangements. In 2000, it established the Good Governance for Human Security Program, a framework within which it intends to introduce the main principles of good governance, i.e., the rule of law, accountability, transparency, and participation, into its policymaking and policy coordinating processes. Strengthening the roles of certain institutions may help. At the central Government level, the Cabinet Secretariat plays a crucial role by developing and implementing government decisions and coordinating the activities of administrative organizations at central and local levels.

Participation in the policy process has been hampered on the one hand by a lack of transparency and on the other by the inability of NGOs to participate in the policy process. Indeed, while the constitution and various laws identify citizens' rights, in practice citizens have few opportunities to influence policymaking. Thus, mechanisms must be developed to enable the exercise of these rights.

Mongolia's current civil service system, introduced in 1995, is still being institutionalized. Although the constitution and the Civil Service Law provide a legal framework for managing the civil service, the legal framework of the civil service and the institutions involved in managing it need strengthening. Violations of the principles of civil service neutrality have been widespread, and many career civil servants have been dismissed. Designed to protect the merit system, the Government Administrative Service (renamed the Government Service Council [GSC] in 2002) has been unable to discharge its duties effectively.

Nevertheless, civil service reform has been effective in certain PSMFL pilot entities supported by ADB. As a result of ADB's Governance Reform Program, merit-based recruitment practices have been in place for 2 years in some entities, and relations between agency heads and subordinates are governed by performance contracts. As the PSMFL is implemented, these experiments will be extended to all other government agencies.

D. Legal and Judicial Systems

For 10 years, Mongolia has been undergoing both economic and legal transitions based primarily on its constitution, which was promulgated in January 1992. The constitution and numerous new laws have allowed Mongolia to reform its legal system extensively, and Mongolia has put in place the basic legal structure required for a market economy and the rule of law to operate. Although major revisions of key laws were introduced in 2002, significant gaps remain in the legal framework.

The legal and regulatory system is evolving. Many legal professionals—lawyers, prosecutors, and judges—cannot operate effectively within the new system because of their unfamiliarity with the new legal concepts and rules. Reforms of legal education have not remedied this situation. Remedial education for midlevel professionals is available but has not been institutionalized widely. Although those trained before the transition are beginning to be replaced, younger lawyers receive inadequate training because educational funding is limited.

Draft laws and government regulations are being made publicly available, but overall a lack of thoroughness in drafting is evident, and accessibility to laws and regulations is inconsistent. More general shortcomings, however, affect the institutions' personnel and efficiency. For example, the lack of authoritative and reliable legal information diminishes the ability of professionals to use and to analyze the law. Additionally, statistics suggest that the courts are overextended and that the quality of justice is compromised. Courts also lack the administrative and information technology resources that industrial countries take for granted.

Legal professionals need to understand how to put the legal system to work as intended. Misunderstandings and abuse of the exercise of legal power can be found among all elements of the legal system. Police abuse authority on a daily basis, and prosecutors routinely exercise discretion in granting pretrial detention orders.

The constitution establishes the authority of the prime minister and ministers to issue what amounts to subordinate legislation, e.g., resolutions and ordinances, but provides no guidance on the ambit of regulations issued by the Government. In practice, individual ministries administer the laws and any relevant regulations for which they are responsible. Faults in legislative drafting often lead to a lack of clarity regarding administrative responsibility.

The legislative process entails an unnecessary level of secrecy that prevents proper scrutiny of policy options and regulatory procedures under consideration. The sheer volume of

legislative and regulatory activity accompanying the transition, however, means that the transparency of the regulatory system must be questioned. A forthcoming World Bank project will enhance access to legal information. ADB has provided training to familiarize lawyers with Internet research.

The accountability of government activity is limited. Information about regulatory actions and the activities of public agencies is provided only to related ministries and the Government. Annual reports and financial accounts are unavailable to civil society.

Although Mongolia's legal and judicial systems still bear traces of the socialist system from which they emerged, wide-ranging legal and judicial reform is evident. The judicial system is strained, but the civil law system seems to function reasonably well and the Government has tried to strengthen enforcement mechanisms. Serious concerns remain about the state of the entire criminal law system. The main question is how to support qualitative improvements in the legal and judicial framework and in legal professionals' understanding of their respective roles within it. Current and proposed legal education programs will improve the legal environment over time, and there is broad scope for additional efforts.

E. Civil Society and the Development of NGOs

During the last decade, NGOs have formed an entirely new sector of society. The limited history of democracy and the absence of civic culture, however, pose major obstacles to implementing the law on NGOs. It is vitally important to strengthen civil society so that NGOs can be competent and influential advocates of the people. So far, the Government has played a comparatively minor role in building civil society.

F. Priorities for the Government and Donors

In the near term, reform should focus on moving Mongolia toward more formal markets. Reforms should focus on strengthening and promoting the newly emerging private sector and professionalizing and rationalizing the well-entrenched public sector.

Donor assistance should be better coordinated and should be in accord with the government program. Of crucial importance is capacity building in MOFE to sustain and expand upon successful public sector reform pilots. Additionally, reforms should focus on creating a more supportive environment for lead reform agencies in the public and the private sectors. It may be more useful to refocus on these general preconditions for reform.

The literature and the most recent reviews on Mongolia generally have supported slow and steady reform. Limited resources may leave little option but to proceed gradually; the reform effort may flag, however, if broadly based progress has not been achieved within 5 years. The speed of implementation will depend heavily on the extent to which computing and accounting infrastructure can be rolled out and on the resources available for capacity building.

1. Capacity Building

Additional resources should be invested in improving the capacity of MOFE to plan, to coordinate, and to carry out assigned functions. Among important MOFE departments requiring focused attention is the treasury. Other MOFE departments, especially those in charge of planning and budgeting, also are in need of strengthening. All must be resourced appropriately with funding and project management skills.

Close consideration should be given to continuing ADB support of the General Department of National Taxation and the Customs General Administration, in view of their pivotal revenue collection roles and the need for them to be at the forefront of management and technical reforms. The same applies to the State Professional Inspection Agency (SPIA) and the NAO and in particular to the latter, whose capacity to undertake financial statement audits must be enhanced.

The National Statistical Office (NSO) has important responsibilities to provide information and serves as a foundation for many aspects of the reform program. Further development of systems and capacities within the office represents a major challenge likely to require considerable additional resources.

The Government also needs to strengthen the GSC. Many reforms of public financial management agencies are human resource related and require a strengthened council.

2. Central-Local Relations

Because of the importance of central-local fiscal relations, the Government is encouraged to re-examine and to resolve issues such as

- (i) clarifying the respective roles and responsibilities of the different levels of government,
- (ii) agreeing on transparent tax-sharing and/or expenditure transfer mechanisms between central and local governments, and
- (iii) assessing the extent to which new accounting and computing systems to be rolled out under the FMIS will reach the various levels of local government.

3. Public Policy Process

Although the Government has attempted to improve transparency in making and implementing policy, more could be done. Increased transparency would permit consideration of a wider range of policy options and would help ensure implementation. The Government may consider establishing think tanks complemented by national consultants and experts to enhance policy development and to facilitate continuity of government policy.

Policy coordination could also be improved. More effective coordination could be achieved if policy proposals were submitted to the Cabinet Secretariat and if the Cabinet considered them in consultation with pertinent agencies. Proposals could be returned to the initiating ministry for further work if problems were discovered. This process would ensure that relevant interests were consulted before the proposals appeared on the official Cabinet agenda. In addition, a law on the legal status of government ministries would facilitate inter-ministerial coordination.

4. Civil Service Reform

Given the central role of the civil service, Government may consider strengthening institutions and revising relevant laws and regulations in the following ways:

- (i) Vigorously enforcing the Civil Service Law by taking steps to institutionalize a neutral civil service. In this way, the authority, status, and investigative and enforcement powers of the GSC can be strengthened.

- (ii) Making the GSC nonpartisan by increasing its size from three to six permanent members and by ensuring that opposition party members hold an appropriate number of seats.
- (iii) Decreasing the size of the civil service, by carefully defining the appropriate role of government and by divesting noncore agencies. Encouraging voluntary retirement, implementing selective hiring freezes, contracting out services are additional strategies. At the same time, the government must actively recruit appropriately qualified new staff after implementation of PSMFL.

Part of the savings from civil service downsizing could be used to improve the remuneration of staff needed to implement reforms. Establishment of a senior executive service would encourage interagency mobility among senior officials and could improve policy coordination.

Although efforts have been made to curb corruption, further steps may be taken in this direction.

- (i) Current laws on corruption should be prosecuted vigorously.
- (ii) Within its ability to pay, the Government might consider increasing the compensation of public officials such as judges.
- (iii) A set of criteria and a code of conduct on ethics for civil servants might be considered.

5. Legal and Judicial Systems

Universities and other educational institutions are valuable resources that could improve the quality of legal training for lawyers and judges. The Government could work more closely with such institutions to improve education and training of legal professionals and judges. The Government should enhance the language and translation skills of government lawyers and others working to reform the legal system. The effectiveness of international assistance is hampered by language barriers and the almost complete absence of a body of professionally translated national laws. Significant resources are needed to improve legal dialogue with the international community.

Easily accessible, authoritative, and reliable legal information is essential for a well-functioning market economy. Improving the transparency of the country's regulatory regime should therefore be a high priority.

The Government could consider supporting further efforts to strengthen the capacity of the judiciary and the operations of courts. Donor support might be especially helpful here. Detailed studies of access to justice would be valuable, as would a comprehensive trial observation program. Reporting and publishing of key judgments, which will guide the entire legal system, should be improved quickly.

6. Civil Society and NGOs

The position and contribution of NGOs can be enhanced by more clearly defining government policies, strategies, procedures, and guidelines for collaborating with NGOs. In light of the fact that the government has passed the Law on NGOs, this recommendation refers to practical guidelines for civil servants making and implementing policy.

One way for development partners to engage NGOs on policy development and implementation may be to involve NGOs in monitoring government expenditures and procurements within major international aid programs and loans. The pro forma participation of NGOs in public affairs could evolve into true public participation. A number of NGOs already possess the capacity to carry out such projects.

Further research on the organization, size, and financial and human resource capacities of NGOs would provide a baseline for assistance efforts for NGOs. NGOs recognize the need for such a study, and the public would benefit from an improved understanding of changing society. Such a study would have to be updated regularly to allow for targeted support of and effective participation by NGOs in public affairs.

G. Recommendations for ADB

Given its involvement in drafting and piloting the PSMFL, ADB should consider a high priority the building of capacity in the agencies on which successful implementation of the PSMFL depends (including MOFE, NSO, SAIC, and GSC). Considerable resources already have been spent on improving these agencies, but additional resources are required. Strengthening the role and the capacity of the GSC is arguably the most important need. High quality human resources are needed for successful implementation of the PSMFL.

Another possible area of ADB involvement would be in facilitating efforts to decrease the multiple layers of public administration at central and local levels, a change that should result in savings from public expenditure. Such efforts may consist of formulating an appropriate framework to consolidate (i) contiguous aimags on a selective basis; (ii) selected soums within the same or other aimags; and (iii) selected public sector administrative units, agencies and institutions, and service delivery functions in the selected aimags and soums. Moreover, ADB may support the Government in implementing these consolidation measures.

ADB also might consider supporting efforts to mainstream governance reforms, for example, by enhancing civil service culture and confidence in public institutions. Strategies might include (i) developing a code of conduct on ethics for civil servants, (ii) implementing rigorously the newly developed recruitment and selection system, (iii) adopting a grievance or dispute settlement system, and (iv) strengthening the performance evaluation system.

ADB can help in establishing sound public sector accounting and auditing systems, promoting private pension schemes to alleviate fiscal pressures on the budget that stem from the public pension system, and supporting efforts to improve incentives for the enforcement of rules, regulations, and laws. ADB could work with regulatory agencies such as the Bank of Mongolia and the proposed Financial Regulatory Commission to create incentives for enforcement and could support strengthening of the incentives for regulation and law-abiding behavior in other key systems such as banking, taxation, and customs.

I. INTRODUCTION

1. The fundamental governance challenge facing Mongolia is to implement appropriate laws, rules, and regulations to provide an environment enabling economic growth, the only means through which the country can decrease poverty levels. State and society have key roles to play in achieving this goal.

2. The state's role is to organize efficient and effective markets, to remedy market failures, and to develop human resources, which are all necessary for sustained development. In transition economies such as Mongolia, the state has an obligation to mitigate the hardships caused by transition.¹ State capacity to fulfill this obligation must be enhanced.

3. Economic growth also depends on society's efforts and therefore requires that the state create an environment encouraging participation by a range of nonstate organizations, including quasi-government, nongovernment, not-for-profit, and community-based organizations and the private sector. Economic growth depends on effective partnerships between state and society.

4. Good governance, or simply governance, is a specific approach to managing state and state-society relations that enables the state to carry out its many roles effectively. The approach calls for (i) accountability on the parts of organizations and individuals; (ii) public participation; (iii) transparent policies, rules, regulations, and laws, as well as processes for implementation; and (iv) predictability and continuity of the development policies, rules, regulations, and laws governing development. Such an approach is the most effective way both to secure the markets necessary for economic growth and to enable nonstate actors to contribute to development.²

5. In market economies, effective markets, which depend on a range of economic and non-economic factors, are a necessary condition for long-term, sustainable poverty reduction and therefore a long-standing objective of both the Government of Mongolia and the Asian Development Bank (ADB). Because effective markets are characterized by a level playing field for all players, they can channel investment to pro-poor growth and poverty interventions.³

A. Mongolia's Transitional Economy

6. On 12 March 1990, in the face of widespread popular unrest, the Politburo of the Mongolian People's Revolutionary Party (MPRP), the communist party that had ruled Mongolia since 1921, resigned. This paved the way for a transition to democratic politics and a market economy. For most of the period 1924–1990, Mongolia depended heavily on economic aid and political support from the former Soviet Union (FSU). By the late 1980s, 95% of Mongolia's trade was with Council for Mutual Economic Assistance (CMEA) countries, the trade bloc established by the FSU and Eastern European countries, and 85% of trade was with the USSR. Mongolia was part of the FSU electricity grid; shared the FSU railway gauge; and had established its power plants, factories, and mines according to FSU designs and using CMEA equipment. With the 1989 shocks in Eastern Europe, CMEA gradually disintegrated as members demanded to be paid in hard currency for exports. Starting in 1989, the USSR began withdrawing troops and

¹ United Nations Development Programme (UNDP). 2001. *China Human Development Report, 1999*. New York.

² UNDP. 2002. *Concept of Governance and Its Application in Mongolia Study Report*. Ulaanbaatar.

³ ADB. 2001. *Key Governance Issues in Four Greater Mekong Subregion Countries: Cambodia, Lao PDR, Thailand, and Viet Nam*. Manila.

some of its 13,000 technicians from Mongolia.⁴ By 1991, the FSU had stopped providing aid to Mongolia, and—apart from a few barter deals—trade had dried up. The Mongolian economy nearly collapsed as a result; gross national expenditure fell an estimated 40%–50%, followed by a huge fall in government revenues. The Government reacted by increasing the money supply, which resulted in high inflation rates and devaluation of the togrog. According to Pomfret, “The economic decline in Mongolia in 1991 must be one of the most severe ever in peacetime. The reform process [took place] under conditions of extreme economic decline” (footnote 4, p. 81).

7. In January 1992, Mongolia adopted a new constitution that allowed free elections with a multiparty system, abolished the MPRP’s monopoly role, adopted a parliamentary system of government, and created new government institutions. Elections were held in June 1992; and a new legislature, still dominated by the MPRP, which won 86% of the seats, met in September 1992 to form a new government.

8. Mongolia’s transition to a market economy through rapid privatization has been distinctive. Launched in May 1991, privatization has proceeded more rapidly than in many other former communist countries. In July 1991, the Government began issuing vouchers to every citizen born before 1 July 1991: one “blue” voucher to purchase shares in large companies, and three “pink” vouchers with significantly less face value than the “blue” vouchers, to purchase shares in smaller companies. Companies employing a total of 74,925 people have been privatized (footnote 4, p. 83).

9. Although per capita gross domestic product (GDP) has grown rapidly since 1992, the early 1990s saw a contraction of the economy (as the Government carried out its “privatization first” policy) and high rates of inflation, which peaked at 268.4% in 1993. The economy began growing again in 1994 and 1995, at 2.3% and 6.3%, respectively, mostly because of an increase in the world price for copper, a relation that illustrates Mongolia’s vulnerability to changes in the external environment. Still, compared to most Central Asian transition economies, Mongolia has recovered quickly.

10. By the late 1990s, macroeconomic stability had, for the most part, been restored. Inflation was only 1.6% in 2002, and after two years of stagnation prospects for the economy had improved. In spite of being affected by climatic shocks and unfavorable conditions in the world market for its exports, the economy grew at 3.9% as a result of the performances of industry and service sectors. A milder-than-expected winter helped cushion losses in the livestock subsector although agricultural output declined 10.5% in 2002. (This figure represented an improvement from the 18.5% decrease in output in 2001). Despite dynamic manufacturing activity, principally in textiles and meat processing, industrial output grew moderately at 4.7%, down from 11.9% in 2001, a decrease reflecting the poor performance of the mining sector. Decreased copper production triggered by falling prices in international markets depressed both industrial output and export receipts. Construction expanded by 11.0% as a result of the ongoing real estate boom in Ulaanbaatar. Services grew 12.0% as a result of development in financial services, transport and communications, and wholesale and retail trade. The current account deficit, excluding transfers, remained high, at 16% of GDP.

11. Declining living standards are reflected in Mongolia’s low showing on the United Nations Development Programme’s (UNDP) Human Development Index, where in 2003 Mongolia

⁴ Pomfret, Richard. 1996. *Asian Economies in Transition: Reforming Centrally Planned Economies*. Cheltenham: Edward Elgar.

ranked 117th out of 175 countries (Table 1). Mongolia's achievements in terms of life expectancy, literacy, educational attainment, and adjusted real income place it, in development terms, well behind other Central Asian transition economies.

Table 1: Selected Economic Indicators, Central Asia and Mongolia, 2002

Country	Population ^a (millions)	GDP Growth ^b %	Inflation ^b %	Fiscal Balance (%GDP)	Current Account Balance ^b (%GDP)	Size of Private Sector (%)	UNDP HDI Rank ^d
Azerbaijan	8.2	10.6	2.8	(2.2)	(12.6)	60	89
Kazakhstan	14.8	9.5	5.9	0.0	(1.0)	65	76
Kyrgyz Republic	5.0	(0.5)	2.0	(5.9)	(2.0)	60	102
Tajikistan	6.4	9.1	14.5	(0.2)	(4.1)	50	113
Turkmenistan	5.8	8.6	8.8	na	na	25	87
Uzbekistan	25.4	4.2	27.6	0.5	0.6	45	101
Mongolia	2.4	3.9	1.6	(5.6)	(16.0)	75	117

GDP = gross domestic product, HDI = Human Development Index, UNDP = United Nations Development Programme
Note: n.a. – not available

Sources: ^a Asian Development Bank Key Indicators 2003

^b Asian Development Outlook 2003

^c European Bank for Reconstruction and Development Transition Report 2002

^d United Nations Development Programme Human Development Report 2003

12. Mongolia's Millennium Development Goals (MDGs),⁵ adopted in 2000,⁶ recognize that significant progress must be made in eradicating poverty and hunger, achieving universal primary education, promoting gender equality, decreasing childhood mortality, improving maternal health, providing improved access to reproductive health services, and ensuring environmental sustainability. As assessed in 2002, five of the MDGs seem achievable. Good progress has been made in achieving the targets for universal primary school enrollment (MDG 2, which already has been achieved) and decreasing infant and child mortality rates by two-thirds (MDG 4, which nearly has been achieved). Other goals present greater challenges but seem achievable. These are decreasing maternal mortality by three-fourths (MDG 5) and providing universal access to reproductive health services (MDG 6). National strategies for sustainable development (MDG 7) are reflected in government policies and actions. Halving the proportion of people living in extreme poverty (MDG 1) seems unrealistic at present. Regarding the elimination of gender disparity in secondary school by 2005 (MDG 3), Mongolia is unique among developing countries given its reverse gap, with higher achievement and enrollment among females at the post elementary level than among males.

⁵ In signing the United Nations Millennium Declaration in September 2000, 147 heads of state and Government, and 189 nations in total, committed themselves to halving the number of people who live on less than one dollar a day by the year 2015. To help track of progress, the UN Secretariat as well as representatives of IMF, the World Bank and OECD defined a set of time-bound and measurable goals and targets—the Millennium Development Goals—for combating poverty hunger, disease, illiteracy, environmental degradation and discrimination against women. These are: Goal 1—Eradicate extreme human poverty and hunger; Goal 2—Achieve universal primary education; Goal 3—Promote gender equality and empower women; Goal 4—Reduce child mortality; Goal 5—Improve maternal health; Goal 6—Combat HIV/AIDS, malaria and other diseases; Goal 7—Ensure environmental sustainability; and Goal 8—Develop a global partnership for development.

⁶ The National Task Force on Millennium Development Goals is co-chaired by the Ministry of Foreign Affairs and the President's Office.

B. The Concept of Governance and the Government's Commitment

13. ADB's experience in the Asia-Pacific region indicates that sustainable development depends on the quality of decisions made in relation to development and reform and also on the manner in which these decisions are made and carried out. In 1995, ADB members agreed to apply this fundamental lesson in a more systematic way to ADB's overall operations. This policy stresses the importance of good governance, which is one of the three pillars of ADB's Poverty Reduction Strategy.⁷ Without good governance, efforts to diminish poverty will be ineffective. Poverty reduction requires economic growth and effective markets, which in turn depend on a basic foundation of capable institutions and good governance.

14. Mongolia's 1992 constitution sets out the basic principles of good governance. According to Article 16, citizens have the right to participate in politics by voting and standing for office; are entitled to freedom of association in political parties and other voluntary associations; can submit petitions to the state; and are entitled to freedom of thought, opinion, expression, speech, press, assembly, and so forth. Moreover, through its Good Governance for Human Security Program⁸ and the Action Program of the Government of Mongolia, 2000–2004⁹, the Government has committed itself to principles of good governance (Box 1). The Good Governance Program emphasizes the participation of "all relevant actors and stakeholders," which it defines not only as government officials, but also as media, academic and research institutes, nongovernment organizations (NGOs), citizen-based organizations, individual citizens, and the community.

Box 1: Good Governance for Human Security

- (i) To develop a democratic civil society with strong ethics that secures citizens' basic rights and fundamental democratic principles by facilitating independence of the judiciary and a free mass media;
- (ii) To undertake comprehensive measures to improve the legal basis for authority and the structure of the judiciary and to deepen judiciary reform to ensure the independence of the judiciary and to improve its reputation;
- (iii) To establish conditions for the equal exercise of human rights;
- (iv) To facilitate the outreach of state policy to citizens by improving legislation related to mass media freedom;
- (v) To create an effective system of rule of law;
- (vi) To improve citizens' understanding of the law;
- (vii) To improve responsibility mechanisms for public service and to decisively combat corruption and crime; and
- (viii) To improve the management of public relations, to ensure the transparency of public organizations, and to provide the utmost support to the establishment of good relations with NGOs within a partnership scheme.

Source: Government of Mongolia. 2001. *Good Governance for Human Security Program Policy Document*. Ulaanbaatar.

15. The Action Program calls for expanding the involvement of NGOs in development and implementation of government policy; forming partnerships between government, trade unions,

⁷ ADB. 1995. *Governance: Sound Development Management*. Manila.

⁸ Government of Mongolia. 2001. *Good Governance for Human Security Program Policy Document*. Ulaanbaatar.

⁹ Government of Mongolia. 2000. *Action Program of the Government of Mongolia 2000-2004*. Ulaanbaatar.

and employers' associations; involving NGOs in executing certain government functions and services on a contractual basis; strengthening the legal system, especially by establishing a national human rights organization; improving the transparency of government institutions; and fighting corruption.

16. In February 2001, the Government established the National Human Rights Commission (NHRC), which adopted a strategic plan in September 2001. One of the NHRC's crucial functions is to publicize human rights abuses; to that end, it issued a report in October 2001.¹⁰

17. These actions and the fact that Mongolia is party to 29 different human rights treaties all attest to the Government's commitment to good governance principles.

18. In an attempt to help the Government craft strategies to better manage, to minimize, or to eliminate the effects of non-economic factors potentially hindering economic development, this assessment seeks to identify ways in which ADB could assist directly in improving Mongolia's governance.

¹⁰ NHRC. various years. *Human Rights Situational Analysis in Mongolia*. Ulaanbaatar.

II. STRUCTURE OF GOVERNMENT

19. Mongolia's 2.4 million people are spread over 1.6 million square kilometers, making it one of the least densely populated countries in the world. Some 85.0% of the population are Mongol; 7.0% are Turkic; 4.6% are Tungusic; and 3.4% are of other ethnicities, including Chinese and Russian. Ninety-six percent practice Tibetan Buddhist Lamaism. Average literacy rates are high, at 97%.

20. Mongolia is a parliamentary democracy selecting leaders through universal suffrage in open, competitive elections. According to the 1992 constitution, parliament (*Ikh Hural*) is the highest organ of state power and holds elections by popular suffrage once every 4 years. The president, also directly elected for a 4-year term, is the head of state and nominates the prime minister to parliament "in consultation with the majority party or parties in the National Parliament if none of them has a majority of seats" (Article 33[2]). The prime minister, in consultation with the president, nominates members of the cabinet from members of parliament and others outside parliament and submits nominations to parliament for approval. Parliament appoints, replaces, or removes the prime minister and members of the cabinet.¹¹

21. The separation of powers provides that the president is the head of state and has the power to veto, partially or wholly, laws or other decisions passed by parliament. The president's veto may be overturned by a two-thirds majority of parliament. Acting on findings of the Constitutional Court (*Unsdan Khuuliin Tsets*),¹² parliament may remove the president. Under certain circumstances, the president may dissolve parliament.

22. The constitution provides for an independent judiciary, at the apex of which is the Supreme Court. The president appoints judges of the Supreme Court after their presentation to parliament by the General Council of Courts (GCC), a body set up to select judges and to preserve the independence of the judiciary.¹³ The Constitutional Court handles constitutional issues.

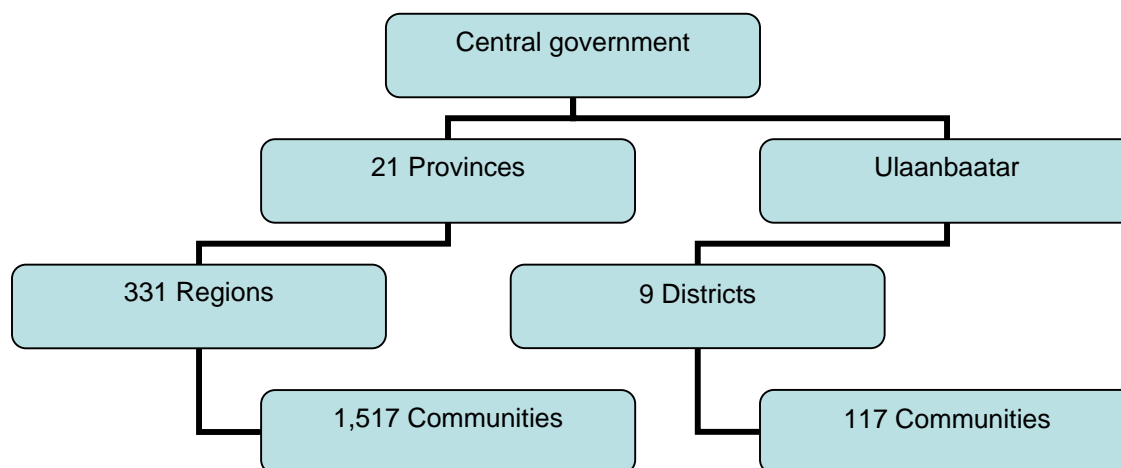
23. Mongolia is a unitary political system divided administratively into 21 provinces (*aimags*) and the capital city (Ulaanbaatar) (Figure 1). The provinces are divided into 331 districts (*soums*), which in turn are divided into 1,517 subdistricts (*bag*). The capital, Ulaanbaatar, is divided into nine districts (administratively equivalent to regions), which are subdivided into 117 subdistricts (*khoroos*) (administratively equivalent to communities). The average number of regions per province is 18, but the number ranges from about 14 to 27. In late 2004, the Government has developed a draft Action Plan, which will guide administration policies for the next four years. The new Action Plan includes an administrative consolidation plan that will create five regions, each with selected cities that will function as growth pillars.

¹¹ The Law on the Government of Mongolia (1993) sets out the relation between the prime minister, the president, and parliament.

¹² The Constitutional Court is established separately from the judiciary and consists of nine members appointed for 6-year terms (the terms are deliberately not coterminous with the term of the Government). Parliament appoints three members of the Constitutional Court, three are appointed by the president, and another three by the Supreme Court, according to the Law on the Constitutional Court (1994) (<http://www.indiana.edu/~mongsoc/mong/constcrt>).

¹³ According to the State Law of Courts (1994), the GCC consists of the chief justice of the Supreme Court, the general prosecutor, the minister of justice, and the secretary general of the General Council, who is appointed by the president. Parliament and the president also each nominate a member, and two members are drawn from courts, whose candidacies are submitted according to rules endorsed by the State Supreme Court (<http://www.indiana.edu/~mongsoc/mong/courts>).

Figure 1: Mongolian Government Organization



Source: Constitution of Mongolia (Article 57); National Statistical Office 2001, p. 22.

24. Even though the constitution provides local governments with a great deal of autonomy (for example, they may make independent decisions in relation to socioeconomic issues), in practice their autonomy is curtailed severely. Most local governments lack the capacity to raise revenues and therefore depend heavily on transfers from the central government.

25. According to the constitution, governors appointed by the prime minister exercise state power in the provinces and Ulaanbaatar. The governors in turn appoint the executive authorities of lower-level administrative units. According to the Law on Mongolian Administrative and Territorial Units and Their Governance (1992), the provinces and Ulaanbaatar and the regions and districts are responsible for such matters as local economic and social development, budgets, financial activities, operational reports, and discussion and evaluation of governors' work reports.

26. Local assemblies (*hurals*), directly elected through universal suffrage, do play a role in governance. They are constitutionally self-governing bodies charged with making independent decisions concerning socioeconomic issues. Local assemblies have the authority to nominate candidates for governor to higher authorities. Governors are principally representatives of higher authority and have the right to veto decisions made by local hurals. Nevertheless, local hurals may override the veto by majority vote, whereupon governors may resign. Governors have a long list of duties that include approving and implementing budgets and undertaking measures to realize territorial policies in relation to finance, loans, and taxes.

A. The Legislature

27. Mongolia's parliament, a unicameral national legislature, consists of 76 members elected for 4-year terms by universal suffrage. The history of contested parliamentary elections dates from May 1990, when the constitution in effect at that time was amended to permit free elections

with a multiparty system and to abolish the MPRP's leading role.¹⁴ The Law on Political Parties, adopted at the same time, guaranteed citizens the right to form parties and to communicate with each other on the basis of equal rights.

28. The 1992 parliamentary elections saw the ruling MPRP, with only 56.9% of the vote, maintain its position. Mongolia's winner-take-all electoral system allowed the MPRP to win 71 of the 76 seats. In 1996, however, a coalition of opposition forces led by the Mongolian National Democratic Party and the Mongolian Social Democratic Party won 50 seats, ousting the MPRP and marking "the first time an Asian Leninist party had voluntarily relinquished power."¹⁵ In the same elections, however, the MPRP managed to retain 52.4% of delegates to local assemblies. The MPRP regained control of parliament in 2000, sweeping 72 of 76 seats with just greater than half the popular vote (Table 2). The MPRP also dominated local assemblies, winning 569 of 693 seats, or 82%. This configuration effectively meant that parliamentary decisions would be made by a caucus of the MPRP. In both 1996 and 2000 parliamentary elections, voter turnout was high (92.1% and 82.4%, respectively). Turnout in local assembly elections was somewhat lower (72.1% and 65.9%, respectively), but still high by many standards.

Table 2: Mongolian Parliamentary Seats Won by Political Party, 1990–2000

Party	1990	1992	1996	2000
Mongolian People's Revolutionary Party	33	69	25	72
Mongolian Democratic Union of the Mongolian National Democratic Party and the Mongolian Social Democratic Party	0	0	50	0
Mongolian Social Democratic Party	4	1	0	0
Mongolian Democratic Party	13	5	0	0
Mongolian National Progress Party	3	0	0	0
Mongolian United Traditional Party	0	0	1	0
Mongolian Social Democratic Party	0	0	0	1
Mongolian Citizens' Will Party and Mongolian Green Party	0	0	0	1
Mongolian Democratic Union of the Mongolian National Democratic Party and the Mongolian Religious Democratic Party	0	0	0	1
Independent	0	1	0	1
Total	53	76	76	76

Source: Mongolian Information Bureau. N.d., p. 151; National Statistical Office 2001, p. 31.

29. From 1992–2000, the average age of parliamentarians increased somewhat. In 1992 and 1996, the largest group was 36–45 years old, but in 2000 the largest group was 46 years old or older. Women held 10.5% of seats in 1996 and 2000, up from 3.9% in 1992. While economists and accountants dominated the professional makeup of parliamentarians in 1992 and 1996, they lost ground to engineers, the largest occupational group in the 2000 parliament. In 1996 and 2000, teachers were the second largest occupational group, followed by lawyers.

¹⁴ Heaton, William. 1991. Mongolia in 1990: Upheaval, Reform, But No Revolution Yet. *Asian Survey*, 38:51–52.

¹⁵ Ginsberg, Thomas. 1997. Mongolia in 1996: Fighting Fire and Ice. *Asian Survey*, 60.

30. Parliament elects a speaker and vice speaker for 4-year terms. The speaker convenes sessions of parliament and determines the budget. According to the Law on the State Great Hural of Mongolia, sessions of parliament are open to the public. Parliament's functions include defining the state's financial, credit, tax, and monetary policies; laying down basic guidelines for the country's economic and social development; and approving the government's program of action, the state budget, and the report on budget execution. Parliament has been especially active in exercising its legislative functions, passing an annual average of 80 laws or amendments to laws between 1992 and 1995, and 116 between 1996 and 2000.

31. Parliament has set up seven powerful standing committees—national security and foreign policy; nature, the environment, and rural development; social policy; state structure; the budget; legal affairs; and the economy—each of which has at least 12 members. Standing committees have the right to conduct examinations and surveys, to obtain information, to receive explanations, and to audit government agencies, that is, to hold the government accountable. Some standing committees have established subcommittees, such as the Ethics Subcommittee and the Local Self-Governing Principle Subcommittee of the Standing Committee on State Structure, and the Budgetary Expenditure Control Subcommittee of the Standing Committee on the Budget. These committees hold hearings and review proposals from the government in a process that often results in amendments to legislation.

32. A secretariat presided over by a secretary general provides support to parliament and its standing committees. Three secretaries, one each for legal matters, administrative issues, and finances and technical efficiency, head divisions reporting to the secretary general (Appendix 1). Parliament also has established a number of crucial subordinate bodies reporting directly to it, namely, the Constitutional Court, the General Election Committee, the State Audit and Inspection Committee (SAIC), the National Statistical Office (NSO), the Bank of Mongolia (BOM), the central bank, the Securities and Exchange Commission (SEC), the NHRC, and the Government Service Council (GSC).¹⁶

B. The Executive

33. Mongolia's president serves as head of state. The Government consists of the Cabinet, which is led by the prime minister. The president, elected every 4 years, has come from the MPRP in two of three elections.

34. Since 1990, Mongolia has had nine prime ministers. The period of greatest political instability was in 1998, when that position changed hands four times as a result both of infighting within the democratic coalition that ousted the MPRP in 1996 and of political and constitutional obstacles raised by President Bagagandi of the MPRP (first elected in 1997, and re-elected in 2001 with 58% of the vote) and MPRP members of parliament (MPs). Two contentious issues were whether MPs could hold ministerial posts concurrently (at first, the decision was that they could not; this position was later reversed) and what the role of the president should be in vetoing or approving candidates for prime minister. Delays in selecting a prime minister were especially prevalent in 1998–1999, when the president vetoed one nominee seven times. In December 1999, parliament amended the 1992 constitution to clarify two these issues, but the president vetoed the measures, in part because parliament had failed to consult the Constitutional Court. In November 2000, the Constitutional Court ruled that the amendments

¹⁶ Mongolian Information Bureau. N.d. *The State Great Hural of Mongolia 2000–2004*. Ulaanbaatar.

were unconstitutional, a position rejected by the MPRP-dominated parliament a month later.¹⁷ In practice, MPs do serve as Cabinet ministers.

35. In 1998, allegations of corruption led the coalition government to accuse and indict three MPs who were coalition supporters. The MPs were tried and convicted in October 1999 of taking bribes of tens of thousands of dollars in exchange for favoring a particular casino in a tender and were sentenced to multiple-year prison terms (footnote 17). (To date, these are the only MPs to have been convicted of corruption. All have been released from prison). Because of its overwhelming position in parliament from 2000 to 2004, the MPRP was able to restore political stability.

36. Although the size of the Cabinet has fluctuated during the past decade, it has included the heads of 12 ministries (Foreign Affairs; Finance and Economy; Justice and Home Affairs; Environment; Defense; Education, Culture and Science; Infrastructure; Social Welfare and Labor; Industry and Trade; Food and Agriculture; and Health) since 2000. The Cabinet is served by the Cabinet Secretariat, which is headed by a chief secretary and two deputy chiefs, one responsible for the Central Government Department (with 10 employees) and the other for the Local Government Department (7 employees) (Appendix 2). Reporting to both are the heads of four divisions: the Monitoring and Evaluation Division (7 employees); the Organizational Division or Protocol Office (34 employees); the Human Resources Division (7 employees); and the Legal Division (5 employees). The Human Resources Division is the staff office for the GSC, which functions as a civil service commission designed to protect the merit system.

37. From 1996 to 2000, only one ministerial position was held by a woman, and women have held only two senior political positions (a vice ministerial position and an ambassadorship) since 2000, prompting the NHRC to observe that participation by women at the highest level of executive power is nearly nonexistent. This pattern belies the increasing participation of women in the labor force.

C. The Judiciary

38. According to the constitution, courts are established at three levels: the Supreme Court; the provincial and Ulaanbaatar courts; and the regional, interregional, and district courts. As of May 2002, parliament had authorized 362 judicial positions, of which 346 (just greater than 95%) had been filled. The Supreme Court is composed of 17 justices. Courts at the provincial and the regional levels are located in 21 provincial capitals and towns and staffed by 237 judges. There are, in addition, 92 judges in Ulaanbaatar and district courts. Overall, these figures represent an increase in the number of judges by approximately 7% since 1998.¹⁸ Approximately 62% of all judges are women. Women predominate in the lower jurisdictions, where they fill more than 75% of positions. In contrast, they fill less than 25% of positions on the Supreme Court.

39. Courts at all levels can hear cases at first instance: regional and district courts handle matters of a less serious civil and criminal nature (claims under MNT10 million [\$8,375]; provincial courts are responsible for matters of a more serious criminal nature and larger civil claims (MNT10 million (\$8,375) and more; and the Supreme Court is responsible for all other matters; footnote 18). Regional and district are the lowest courts, with provincial and

¹⁷ Severinghaus, Sheldon R. 2000. Mongolia in 1998 and 1999: Past, Present, and Future at the New Millennium. *Asian Survey*, 41:132–33.

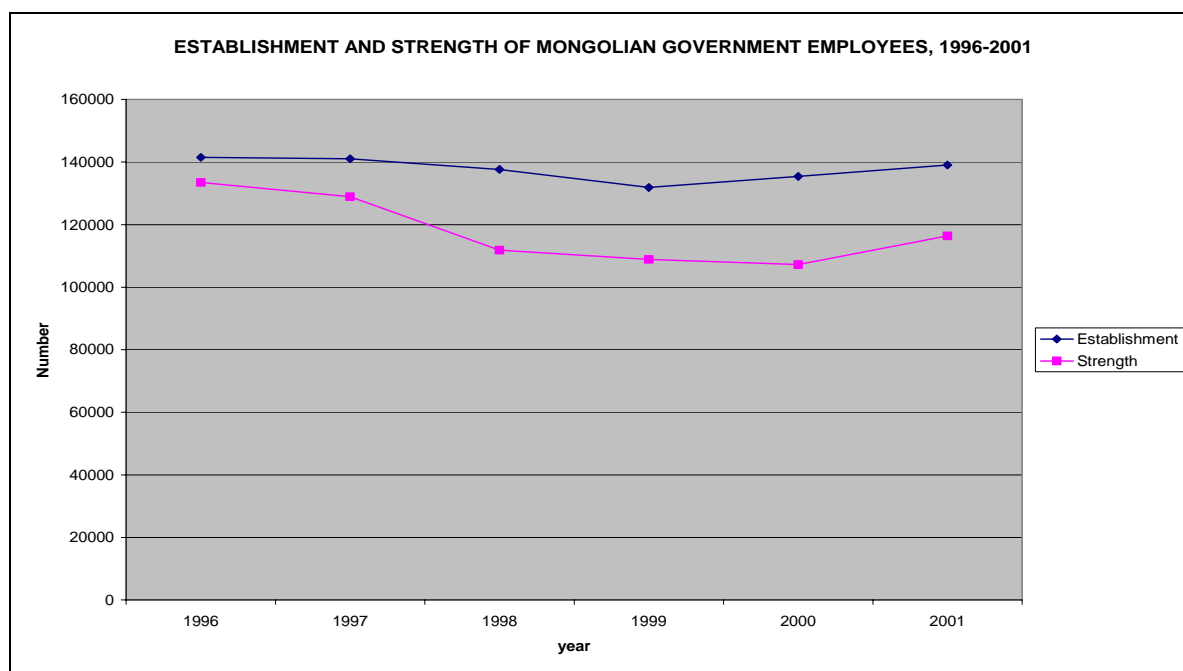
¹⁸ General Council of Courts. 1998. *The Mongolia Benchbook: A Practical Manual for Judges*. Ulaanbaatar.

Ulaanbaatar courts exercising appellate jurisdiction from that level. The Supreme Court exercises the next level of appellate jurisdiction and hears appeals arising from its own decisions. The Supreme Court has jurisdiction to consider matters of legislative interpretation, which must be referred to it by lower courts, except for constitutional matters, which are the responsibility of the Constitutional Court.

D. The Public Service

40. In 2001, 139,000 positions (about 83%) of the 166,700 positions in Mongolia's public sector were set aside for the Government. The largest government sectors were education (40.0%), followed by health (19.5%) and defense (13.1%). This distribution has changed little in recent years. According to the NSO, in 2001 the government actually employed about 116,410 people, indicating a vacancy rate of about 16% (Figure 2).¹⁹ From 1996–1999, total number of positions were cut from 141,467 to 131,878. Large cuts were made in education, health, the courts, and veterinary services, while the number of central and local administrative officials, defense staff, police officers, and taxation officials increased. In 2000 and 2001, however, the Government increased the number of established positions by about 4,000 per year. The Government evidently has had difficulty filling certain positions, especially those outside Ulaanbaatar, and the vacancy rate was a substantial 17%–20% during 1998–2000.

Figure 2: Establishment and Strengthening of Government Employees, 1996–2001



Source: Government Service Council report, 2002, p. 6.

41. According to the Civil Service Law (1994, 2002), government employees are organized into four broad classes: political, administrative, special, and support. Political posts include policymaking positions filled by political appointees after a change of government, such as the president, the prime minister, ministers, and MPs. The scope of political posts has

¹⁹ Government Service Council. various years. *Handbook on Government Service of Mongolia: Statistical Overview*. Ulaanbaatar.

changed dramatically in recent years,²⁰ enabling the Government to conceal the true extent of political positions.

42. Local governments also have political posts, including the chairs of presidia of provincial and Ulaanbaatar assemblies. The mayors of regions, districts, cities, and towns may be considered political posts by law.

43. Administrative posts were created under the Civil Service Law and were first filled in 1996. In that year, 7,294 such posts were created, and by 2001 the number had increased to 7,782. The career structure for the administrative service consists of five positions, ranging from leading officers at the top to assistant officers at the bottom (Table 3). Within each position, officials may hold either a ranked²¹ or a nonranked post. The proportion of administrative service officers holding ranked positions has increased in recent years, from approximately one-third in 1997 to one-half (46.8%) in 2001. The greatest increase in ranked positions probably has been for those at the assistant officer level.

Table 3: Administrative Service by Rank of Mongolian Employees, 1996–2001

Rank	1996	1997	1998	1999	2000	2001
Leading officer	60	52	48	57	36	45
(%)	(0.8)	(0.6)	(0.6)	(0.7)	(0.5)	(0.6)
Principal officer	250	216	210	239	220	253
(%)	(3.4)	(2.7)	(2.6)	(2.9)	(2.8)	(3.2)
Senior officer	1030	1 162	1120	1187	1180	1318
(%)	(14.1)	(14.5)	(13.8)	(14.3)	(15.1)	(17.0)
Executive officer	3346	3680	3875	3979	3749	3634
(%)	(45.9)	(45.8)	(47.9)	(47.8)	(48.0)	(46.7)
Assistant officer	2068	2913	2841	2862	2624	2532
(%)	(35.8)	(36.4)	(35.1)	(34.3)	(33.6)	(32.5)
Total	7294	8023	8094	8324	7809	7782
(%)	(100)	(100)	(100)	(100)	(100)	(100)

Source: Government Service Council, various years.

44. Another category of government employee represents those holding special posts, such as judges and prosecutors; members of the Constitutional Court; chair and members of the Election Commission; officers and sergeant majors of the armed forces; employees of the police force and the prison service; governor of the BOM and governor's deputies; chair and members of the SEC; and other employees in the NSO, National Audit Office (NAO), General Department of National Taxation (GDNT), and Customs General Administration (CGA) (Law on Government Service and interviews in Ulaanbaatar. Each agency has its own job classification system, rank and grading structure, management methods, and compensation system, as laid down in various laws and regulations. In 2001, the government had about 29,600 special service positions, which represented 21% of all government positions. The number of special service positions increased gradually from 1994 to 1998, was cut back in 2000, and then expanded

²⁰ In early 1996, under the MPRP, the political service included vice ministers and heads of special agencies and a relatively small category for "others." This definition made the scope of the political service fairly transparent. By early 1997, however, under the Democratic Coalition, the positions of vice minister and heads of special agencies disappeared from the list, but the number of "other" posts shot up to 308, a 250% increase. In 1998, another 100 "other" posts were added. This number peaked at 455 positions in 1999, was cut back to 405 in early 2000, and has remained largely unchanged since that time (GSC, footnote 19; 1997, p. 5; and 2002, p. 10).

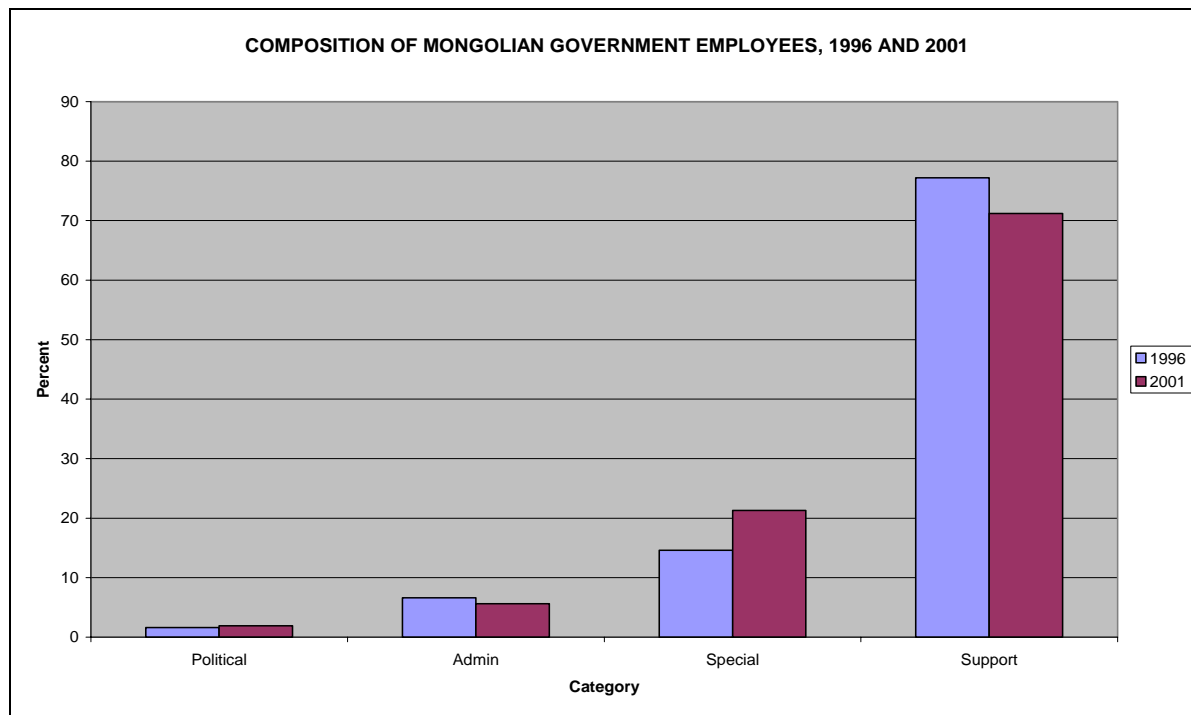
²¹ According to the Civil Service Law, ranks are granted based on seniority and qualifications.

significantly, in part because of an increase in the number of tax and customs officials, judges, and prosecutors. Many departments employing special service staff are regulatory or monitoring in nature and essential for macroeconomic management; the number of staff in such departments has been expanding.

45. Support service posts include positions in government-affiliated press and information organizations; in training and research agencies; and in education, science, health, culture, and the arts; administrative positions in state-owned enterprises (SOEs) also are included. In 2001, there were 99,110 support service posts throughout the country, a figure down from 111,300 in 1996. Unlike other categories of public servant, support service employees have labor contracts, and their legal status is determined mainly by the Labor Law.

46. In 2001, political posts accounted for less than 2.0% of all government posts, administrative posts for 5.6%, special posts for 21.3%, and support service posts for 71.2%. Since 1996, the proportion of political and special posts has increased (Figure 3).

Figure 3: Composition of Mongolian Government Employees, 1996 and 2001



Source: Government Service Council 1997, p. 1, and 2002, p. 6.

47. The backgrounds of civil servants differ widely (Table 4). Women make up from approximately 28% of all employees in the Environmental Protection Agency, to 60% in the Ministry of Social Welfare and Labor. Ages and turnover rates of civil servants in various agencies and ministries also differ significantly.²² Most civil servants, however, have university degrees.

²² Some ministries, such as Social Welfare and Labor, seem to have many more long-serving employees than do other agencies such as the Meteorological Agency and the Environmental Protection Agency, in which nearly half the employees have served 10 years or less.

Table 4: Characteristics of Mongolian Employees in Selected Central Government Agencies, 2001

Ministry/Agency	Total Number of Employees	Percentage of Women	Percentage Aged 36–50	Percentage with More Than 10 Years of Service	Percentage with Higher Education
Ministry of Social Welfare and Labor	45	60.0	44.4	46.6	97.8
Ministry of Nature and the Environment	54	53.7	51.8	37.2	94.4
Ministry of Land Administration Authority	29	48.3	55.2	37.9	75.9
Ministry of Environmental Protection Agency	18	27.8	44.5	27.8	77.8
Ministry of Meteorological Agency	29	31.0	55.2	20.7	86.2
Ministry of State Financial Inspection Department	40	32.5	37.5	37.5	78.0

Source: ADB. 2002. *Technical Assistant to Mongolia for Initial Phase of Public Administration Reform*. Manila.

E. Conclusion

48. Mongolia's political institutions have developed rapidly, though in some areas constitutional vagueness and contradictions remain. These weaknesses have fueled confusion about the role of the president to appoint prime ministers and to veto legislation. They have also permitted conflict between the Constitutional Court and the Parliament. Mongolia's civil service system has evolved from one developed under socialism. After imposing cuts on the civil service from 1996–1999, the Government has expanded the service in recent years (including political posts). The civil service is organized into a complex structure of grades and ranks. The percentage of posts held by women in the crucially important Administrative Service has grown in recent years, but most senior positions are held by men.

III. SELECTED GOVERNANCE ISSUES

49. In Mongolia, good governance requires paying attention to issues such as improving public financial management; enhancing public administration, including civil service, legal, and judicial reform; managing privatization effectively and upgrading corporate governance; and providing a more substantial role for NGOs.

A. Public Sector Reform Strategy

50. The Government has adopted a comprehensive public sector reform strategy relying on a new contract-based system to achieve high levels of accountability as well as improved governance, fiscal management, and professionalism to enhance the efficiency and effectiveness of government services.²³ The approach is embodied in the Public Sector Management and Finance Law (PSMFL), which parliament approved in June 2002 after extensive debate. The law, which lays down the framework for long-term public expenditure management and public sector modernization, has been in effect since January 2003.

51. The PSMFL focuses on key governance processes, including budgeting, personnel management, intergovernmental relations, and financial governance and auditing. It covers all organizations financed from central and local budgets and all SOEs that are majority owned by the state, except the police, the intelligence apparatus, and other security and the armed forces.

52. The PSMFL's budget management provisions lay down the guiding principles for fiscal management, which require that annual priorities be identified in business plans and that outputs be delivered based on agreements (or contracts). Planning is based on a 3-year, medium-term, rolling budget framework. The law also lays down procedures for budget preparation and approval, and processes such as monitoring the delivery of outputs of budget bodies, setting and implementing accounting policies, administering a centralized cash management system, and monitoring the overall performance of relevant SOEs.

53. A key function of the PSMFL is establishing performance agreements with general managers of all budgetary bodies and monitoring the outputs of these bodies. Under such arrangements, general managers are accountable to portfolio ministries for delivering services, implementing business plans, and managing expenditures.

54. The PSMFL requires, in addition to changes in the management of the budget, changes in public personnel management, e.g., that civil servants be hired only on a merit basis and that general managers be responsible for managing staff performance. The GSC is responsible for human resource policies. The PSMFL strengthened the authority of GSC, as did amendments to the Civil Service Law, which also were passed in 2002. Under the PSMFL, the GSC is responsible for selecting nominees for senior executive and managerial positions, including general managers of budget entities. The GSC assesses performance agreements, sets recruitment standards (but does not actually recruit), and submits recommendations on compensation levels to the Government. General managers are responsible for determining performance bonuses within their agencies.

²³ Schick, Allen. 1998. Why Most Developing Countries Should Not Try New Zealand Reforms. *World Bank Research Observer* 13(1): 123–31.

55. The PSMFL includes provisions for the management of local government and stipulates that local governments control local revenues. As at the central level, general managers, who are appointed by local governors, draft business plans. The law prohibits local government leaders from exceeding budget and appropriation estimates or from using funds for outputs not included in contracts.

56. These arrangements imply a key role for contracts and an effective incentive system, including a strong regulatory regime, to ensure that contracts and performance agreements are adhered to. One of the key challenges facing the Government will be adherence to the PSMFL implementation plan, which should modernize the public sector, improve service delivery, and support fiscal integrity.

57. The approach embodied in the PSMFL is comprehensive, for it ties the budget preparation process to strategic, focused, output- and performance-oriented business plans. The approach redefines the roles of ministers and their managers and makes the latter accountable to the former for outputs defined in contracts. Under this strategy, managers have considerable discretion, which extends to personnel management within their organizations, to fulfill contracts within contracted budget ceilings. Although ministers are warned not to “usurp” managers’ powers, they are required to review managers’ performance and may dismiss them if it is unsatisfactory. The strategy calls for employee appointments to be based on meritocratic principles, but the PSMFL cautions that even a vastly strengthened GSC “has no authority to interfere with [the] employment powers of general managers.”

58. The strategy extends the system of performance contracts to the management of SOEs and to local governments so that central-local relations will be determined largely by contractual relations. In the debates that preceded passage of the PSMFL, the extension of the system to local governments was especially contentious. New Zealand has adopted a similar system, yet even there the effects of and requirements for implementing the “new contractualism” are being re-examined. Given this fact, and in light of more recent experiences illustrating the difficulties of implementing such systems, caution is appropriate.

59. Even though elaborate rules and regulations govern the management of public finance and personnel administration in Mongolia, informal practices differing significantly from these rules and regulations have been the norm (footnote 23). An International Monetary Fund (IMF) study²⁴ identified many causes of weak financial discipline in Mongolia’s public sector, including a lack of commitment to achieving such discipline; an unreliable, unstable, and unpredictable budget management framework; a widespread acceptance of the violation of budget rules, which are seen as unrealistic and excessively demanding; a weak budget preparation process lacking hard budget constraints; and a lack of Ministry of Finance and Economy (MOFE) control over government payments and cash resources. The World Bank²⁵ concurred with this view.

60. The review of public personnel administration undertaken as part of ADB’s governance assessment also reveals widespread violation of open and competitive hiring rules, a weak and generally ineffective GSC, rather widespread violations of civil service neutrality, uncompetitive salaries, and corruption. Additionally, the legal and judicial systems suffer from serious weaknesses, including lack of professionalism among lawyers, inadequate training and

²⁴ Tandberg, Eivind, and others. 2001. *Mongolia: Improving Intergovernmental Fiscal Relations and Accelerating Budget Reform*. International Monetary Fund, Fiscal Affairs Department. Washington, D.C.

²⁵ World Bank. 2002. *Mongolia Public Expenditure Review*. Washington, D.C.

compensation for judges, and corruption. Despite best efforts, informal markets are still prevalent within the government.

61. To be implemented effectively, the contract-based PSMFL requires a strong, rules-based government that enforces contracts and is characterized by robust markets—conditions that for the most part do not yet exist in Mongolia. Mongolia’s experience of markets is limited to barely more than one decade. And experience in other countries indicates that “if contracts and the rule of law are underdeveloped in business relations, it is highly improbable that they can be effectively applied in the conduct of the government’s business. It would be foolhardy to entrust public managers with complete freedom over resources when they have not yet internalized the habit of spending public money according to prescribed rules” (footnote 23, p. 127).

62. Mongolia’s experiments with performance-based reforms in the public sector have, nonetheless, achieved some successes. In the NSO, GDNT, CGA, and NAO (former SAIC), for example, authorities have introduced performance-based business plans, and pilots have been especially successful in the NSO and the NAO, which are small departments attached to parliament. The head of the NSO is also the general manager; and in the NAO, the secretary general (the general manager) has signed a performance agreement with the chair of the NAO. In 2001, for the first time, the NSO and the NAO used new, open, competitive recruitment processes quite successfully. The agencies also have produced budgets tied to business plans, and their annual reports indicate that outputs are produced according to these plans. In both instances, ministers evaluate business managers’ performances, again, according to the plans. The GDNT also has piloted reforms that have been successful in the main. Yet the public still perceives corruption as a problem. Even though the CGA has produced business plans and budgets based on the new principles, it also seems to operate according to informal practices. Moreover, various business surveys have identified corruption as a problem in the CGA.

B. Public Financial Management

63. A well-functioning public financial management system is based on three components: (i) a healthy revenue mechanism producing revenues sufficient to finance the government in a neutral, nondistortionary, transparent manner; (ii) a budget management system managing public resources efficiently and minimizing opportunities for graft and corruption while allocating resources so as to reflect overall government priorities; and (iii) a bureaucracy delivering services cost effectively.

1. Revenue Administration

64. Tax revenue projections are undertaken principally by the Revenue Section of MOFE’s Fiscal Policy and Coordination Department. Since the movement in 2001 to an approach based on a medium-term fiscal framework backed by 3 years of forward estimates, tax revenue estimates have been prepared 3 years in advance (the budget year plus 2 years). The Revenue Section also compiles 3-year projections for all other revenue sources, including import and other trade taxes, excise taxes, and nontax revenues. In preparing the estimates, MOFE consults with the GDNT, the CGA, and certain large taxpayers.²⁶ Although there is scope for such input, no body systematically presents alternative projections. In theory, the Minister of Finance and Economy, the Government, the Budget Standing Committee of Parliament, and/or

²⁶ Recently, external reviews of MOFE projections have been made by, among others, visiting ADB and IMF missions. In the final analysis, MOFE takes responsibility for the projections although medium-term projections in the current Poverty Reduction and Growth Facility were agreed on jointly by the Government and IMF.

the full legislature in parliament could overturn revenue projections and call for new ones, but this has not happened in any significant way. In short, MOFE's projections usually are accepted.

65. Recent tax forecasting has been mixed (Table 5). In 1998 and 1999, forecasts proved overly optimistic; actual collections were influenced by the Asian crisis and climatic conditions (harsh winters followed by dry summers). Since 2000, however, forecasts have been more conservative. Improved forecasting has resulted mainly from the use of more detailed and cautious approaches, but no forecast has captured fully the strong performance of tax revenues since 2000.

Table 5: A Comparison of Budgeted Taxes and Actual Taxes Collected in Mongolia, 1997–2001

Item	1997	1998	1999	2000	2001
Total taxes budgeted	158,846.9	184,409.2	255,983.8	250,141.0	316,763.0
Actual taxes collected (MNT)	163,971.1	160,763.5	181,232.6	274,109.2	328,203.2

Note: Excludes non-tax revenues and grants.
Source: Ministry of Finance and Economy data.

66. For the Government as a whole (central government and local governments), taxes as a percentage of GDP are high by both regional and comparable per capita income standards. Table 6 shows general government revenues as a percentage of GDP, from 1997–2002. The ratio of general government taxes to GDP was high in the early 1990s, largely because of sharp post-transition declines in GDP levels, and then leveled off at approximately 20% from 1995–1999. The ratio has risen sharply in recent years and now is nearly 30%.

Table 6: General Government of Mongolia Revenues as a Percentage of GDP, 1997–2002

Item	1997	1998	1999	2000	2001	2002
Taxes	19.7	19.7	19.6	26.2	29.0	27.4
Nontax revenues	5.0	5.3	7.2	6.3	9.0	8.5
Tax and nontax revenues	24.7	25.0	26.8	32.5	38.0	35.9

GDP = gross domestic product

Note: Excludes grants.

Source: Ministry of Finance and Economy data.

67. Most tax data available for international comparisons are based on central government revenue levels only, which can be misleading insofar as they can mask significant variations resulting from differing levels of importance of regional and local tax collections. International comparisons with other central governments (Table 7) confirm that at their recent high collection levels, taxes in Mongolia are comparable to or significantly higher than those in certain industrial countries and to those of countries with more extensive social welfare systems.

Table 7: Central Government Tax Levels in Selected Countries, 2001

Country	Central Government Tax Revenues to GDP Ratio
<i>Mongolia</i>	29.0 ^a
<i>Neighboring countries</i>	
Japan	13.7
Thailand	14.4
People's Republic of China	17.2 ^a
Republic of Korea	17.3
Malaysia	18.9
Sweden	35.8
<i>Other low-income countries</i>	
Myanmar	4.5
Georgia	4.6
India	8.6
Viet Nam	15.8
Malawi	18.0

GDP = gross domestic product

Note: ^aThese tax revenues refer to consolidated central, provincial and local governments; all other tax revenues refer to the central government.

Sources: World Bank 2001b; Ministry of Finance and Economy data.

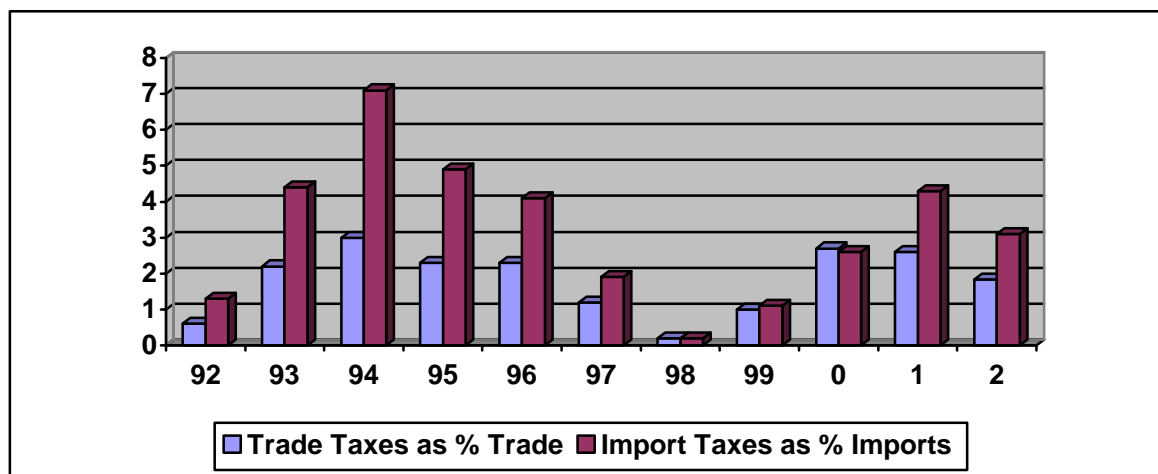
68. Perceptions of the efficiency of the tax collection system come not from surveys of the business community,²⁷ but from government interactions with taxpayers through three recently established tax centers whose aims include educating and engaging in dialogue with taxpayers. Independent external reviews of the GDNT carried out by the IMF in 2001 and by the Korea Institute of Public Finance in 2002 suggested that although tax rates are high in Mongolia, considerable scope still exists for raising collection levels by improving tax administration practices and efficiency. The Korean study made recommendations in a number of efficiency-related areas, including (i) enhancing computerization; (ii) improving staff recruitment and training practices, including integrity and ethics training; (iii) simplifying the tax system, especially value-added tax (VAT) procedures; (iv) paying increased attention to assessing and auditing activities, especially compliance; (v) improving coordination with other government regulatory agencies; (vi) preparing manuals to standardize legal interpretations and decrease inspectors' discretionary powers; and (vii) bringing more small businesses into the tax net through notional assessments and other means. More efficient tax collection and streamlined tax rules would provide scope for overall tax reduction.

69. Significant trade liberalization has occurred in Mongolia, and trade taxes are fairly low. Mongolia's ratios of trade taxes to trade and of import taxes to imports are extremely low compared with those of nearly all its neighbors and also in relation to countries with similar per capita GDP levels. These ratios, as Figure 5 indicates, have fluctuated significantly over the past ten years and result mainly from tax rate changes. Improvements between 1999 and 2001 are related to management and administrative enhancements in the CGA. Total trade taxes

²⁷ Surveys of the business community have tended to view the taxation system as arbitrary and predatory and as a source of petty corruption. The World Bank has identified this as a key constraint to foreign investment.

have been quite low in all years, reflecting the overall opening up of the economy, with the ratio of trade taxes to trade turnover operating within a band of 0.2%–2.7% (Table 8).

Figure 4: Trade Taxes as a Percentage of Trade in Mongolia and Import Taxes as a Percentage of Imports, 1992–2001



Note: Excludes value-added tax collected on imports,
Source: National Statistical Office various years.

70. Whereas in recent years imports have accounted for the bulk of trade taxes, with a negligible contribution from exports, data suggest that import taxes collected fall short of their potential still. For example, in 2000, when the standard import duty rate was 5.0%, the ratio of duties to imports was only 2.6%; and in 2001, when the standard import duty rate was 7.0%, the ratio of duties to imports was only 4.3%. Shortfalls seem related to a combination of exemptions, collection inefficiencies, and corruption.

Table 8: Ratio of Trade Taxes to Trade Turnover, 1997–2002

Year	Trade Taxes (MNT millions)	Value of Exports and Imports (MNT millions)	Trade Taxes as a Percentage of the Value of Exports and Imports (%)
1997	8,790.6	746,831.6	1.2
1998	1,509.0	663,006.9	0.2
1999	9,013.4	890,078.4	1.0
2000	31,932.0	1,163,196.6	2.7
2001	27,018.7	1,031,794.1	2.6
2002	25,107.9	1,365,556.7	1.8

Note: Excludes value added tax collected on imports.
Source: National Statistical Office, various years.

71. Overall, the revenue administration systems for estimating future revenues are basic but appropriate in that for several years estimates of revenues have been well thought out and conservative. The proportions of revenue collection to GDP are rather large and have increased sharply in recent years due both to high, and sometimes growing, tax rates and to improved management and administration of taxation. Nevertheless, the business community has complained of predatory behavior by tax collectors in certain local governments. Improving tax

administration involves not only improving efficiency but also identifying arbitrary and illegal practices.

72. The main immediate challenges for revenue administration are to consolidate and to extend the management and administrative advances of the last 2 years. If the Government can sustain efficiency gains and if expenditure rationalization can proceed concurrently, decreasing key tax rates may be possible. Trade-related taxes likely will remain low although no immediate further downward movement is likely.

2. Public Expenditure Management

a. Budget Formulation

73. The Government's overall strategic development priorities are outlined in the Development Vision for 2003–2005, the Economic and Social Development Guidelines for 2002, and the Action Plan of the Government of Mongolia for 2000–2004 (Government Action Plan). In 2002, for the first time, budget documents incorporated a medium-term fiscal framework statement, which covered 2002–2004. In May 2003, the State Great Hural approved the medium-term fiscal framework statement for 2004–2006. This rolling document is linked closely to other important documents, including the Government Action Plan and the medium-term macroeconomic policy framework statement. A working group, led by the Minister of Finance and Economy, has been established to elaborate the Government's medium-term reform strategy.

74. The medium-term fiscal framework is prepared by MOFE and finalized by the Public Expenditure Review Committee, which is chaired by the prime minister. Based on priorities determined in the statement, hard ceilings (both current and capital) are determined for key entities for the next budget year. Forward estimates for 2 additional years, prepared on a costing of existing policies approach, also are considered.

75. In theory, the links between policy, planning, and budgeting have been established under the medium-term fiscal framework approach. The arrangements are new, however, and the documentation prepared for the 2002 and 2003 budgets represent first steps. Considerable further work will be needed to articulate national and strategic priorities better and to link them more closely to budget allocation decisions. Best practice processes have been put in place, but they cannot be improved and sustained without considerable work and ongoing assistance.

76. Mongolia is an open democracy. The Government Action Plan, which underpins most of the priorities outlined in the fiscal framework statement, was promoted aggressively before the 2000 election, and the electorate widely endorsed its priorities. But given existing resource constraints and the need for further deficit reduction, the Government cannot afford many of the policy priorities listed in the action plan. Thus, one of the major planning challenges facing any Government is to refine priorities so as to rationalize expenditures while retaining the support of the electorate and civil society.

77. The government has set targets for deficit-to-GDP ratio for more than a decade in the context of annual budgets but has considered debt-to-GDP ratio seriously only recently, with the emergence of potential debt problems. To date, targets for debt-to-GDP ratios have been expressed in general terms, along the lines of aiming to stabilize and gradually to decrease existing high ratio levels.

78. Fiscal deficit levels have been excessively high throughout the past decade. In most years, this situation has existed because high deficit levels have been budgeted for, and not because of blowouts in budget forecasts. Blowouts did occur in 1995, 1996, 1998, and 1999, however; and better-than-budgeted deficit performance occurred in 1997, 2000, and 2001 (Table 9).

Table 9: Actual Deficits Compared with Budgeted Deficit Levels, 1995—2001^a
(% of GDP)

Year	Budgeted Deficit	Actual Deficit
1995	(2.0)	(5.2)
1996	(4.4)	(2.6)
1997	(9.2)	(9.1)
1998	(10.1)	(14.3)
1999	(9.8)	(10.6)
2000	(9.2)	(7.7)
2001	(7.3)	(4.5)

GDP = gross domestic product

^a The actual deficit for 2002 was (5.8)% of GDP, and the estimated deficit for 2003 was (5.9)%, according to NSO data.

Source: Ministry of Finance and Economy; National Statistics Office.

79. At the aggregate level, hard budget constraints have been reasonably credible, especially since 1999 (Table 9). In earlier years, underperformance in relation to revenue collections was masked by forced expenditure constraints, especially capital and development expenditures. Achievement of close to overall targeted levels was the result of tremendous effort. At different times, payment arrears have emerged as significant problems.

80. At the sectoral level, control in relation to budgeted amounts has been acceptable, especially for the current budget. Nevertheless, forced underspending in relation to budgeted capital and/or development expenditures has been a problem for many sectors. Overspending in relation to budgeted levels has occurred in others but has been masked in the form of arrears.

81. The hope is that the medium-term fiscal framework approach being introduced will deliver more realistic aggregate and sectoral hard ceilings much earlier in the budget formulation process than has been the case to date. The objective of treasury reforms currently being implemented is to gain control over expenditures during the budget execution phase.

82. For most of the past decade, the budget has been prepared on an annual basis. But, as noted earlier, the budget year has been presented with 2 years of forward estimates since the 2001 budget. So far, development of forward estimates has been limited, and considerable technical strengthening is needed, especially to deepen the involvement of all budget entities in the estimation process and to expand the use of estimates in policymaking and policy planning.

83. The forward estimates system is still too new for analysts to determine the stability of estimates over time. The system has not been designed as a system of forward planning ceilings, but rather as one of forward estimates based on costing the existing policy framework, and thus one would not expect complete stability in relation to future-year ceilings and estimates. A major challenge for the forward system is to refine policy priorities to levels manageable in terms of current and future resource availabilities.

84. Exercises to fully cost the Government Action Plan reveal unsustainability in forward years. This problem raises difficult political and technical questions regarding what exactly constitutes existing government policies and how they should be costed over time. These challenges are being worked through by MOFE and the Public Expenditure Review Committee, but an affordable policy stance may not be articulated and costed fully for some years. MOFE currently is considering a number of potentially important expenditure rationalization decisions in relation to the formulation of the 2003–2005 fiscal framework statement.

85. Until recently, line agencies have had little flexibility in determining the programs and projects to be funded over the medium term. This was especially true for the recurrent budget, which essentially has been centrally controlled, incremental, and severely constrained, thereby limiting opportunities for new initiatives. A little more flexibility has been evident for projects under the capital and development budget, under which entities may compete for a pool of available funds. Domestic funding for this purpose, however, has been quite limited, meaning that the degree of project flexibility has depended to a great extent on the ability to attract funding from foreign donors.

86. The PSMFL, and the recently introduced medium-term fiscal framework approach, aim over time to increase ministries' flexibility to determine which programs and projects they wish to fund within a given hard resource constraint. For the first year of the medium-term fiscal framework (the 2002 budget), entities were given limited flexibility, partly because of the great number of budget entities given ceilings, many of which will be able to do little more than survive. It is hoped that eventually the number of ceilings will be decreased sharply and that they will cover only major ministries and entities, thereby providing ministers with more flexibility to change expenditures, as through the elimination of non-priority budget entities and activities.

87. Until recently, Mongolia's public investment program was prepared in a somewhat ad hoc way on an essentially annual basis, although medium-term estimates were presented from time to time, especially in relation to foreign projects for which medium-term presentations are prepared periodically for consultations with donors and others.

88. Starting with preparation of the 2002 budget, the authorities have attempted to integrate capital and recurrent budgets more closely, both of which are being presented for the medium term. Newly developed operational regulations for the public investment program require each approved project to provide estimates of costs and cash flows, including estimates of ongoing maintenance and capital expenses, over the project's lifespan. Furthermore, approved procedures in relation to forward estimates require all ongoing recurrent costs of capital projects to be included in recurrent forward estimates.

89. For domestically funded programs and projects, the extent of formalized monitoring and evaluation has been limited for the past decade. Some ministries, such as MOFE, are beginning to recognize the need to undertake monitoring and evaluation more systematically and are setting up special performance monitoring units to that end. Furthermore, as a result of having to develop strategic business plans and annual reports for their organizations, many pilot agencies under the Public Administration Reform Program have been involved in enhanced monitoring and in reviews of existing activities. Most major foreign-funded projects involve an element of monitoring and evaluation. Likewise, the Aid Coordination and Public Investment Program sections of MOFE are beginning to formalize and to enhance ad hoc approaches to project monitoring and evaluation.

90. Even though privatization has been widespread, Mongolia still has more than 120 SOEs. Whereas explicit subsidies to these enterprises have to a large extent been removed from the national budget, a number conduct quasi-fiscal activities through indirect subsidies, and a significant web of arrears exists between SOEs and organs of the state. Government price controls, especially on utilities such as energy, heat, and water, also indirectly affect SOEs' fiscal affairs and profitability. Such practices often affect tax revenues and have been prevalent in the energy and the state-owned banking sectors. This being said, important reforms are underway.

91. Before 1998, Mongolia had a large number of off-budget funds, of which the Road Fund was the most significant. In 1998, however, 13 special funds were shifted to accounts at the BOM and subsequently have come more or less under government and budget control. The major remaining significant off-budget funds are the five social security funds (pension, disability, sickness, unemployment, work benefits) and a number of special donor trust accounts.²⁸ The activities of the five funds are captured reasonably fully through the revenue and the expenditure sides of the budget although more comprehensive public reporting of accrual and balance sheets would be valuable. Through the budget process, the Government is attempting to capture the activities of special donor trust accounts and grants more completely.

92. For the past few years, under IMF conditionality, the Government has made pilot attempts to introduce a stronger, centralized treasury system, to which the treasury single account approach is integral. In early 2002, the Cabinet passed the Resolution on the Introduction of the Single Treasury Account System, a centralized payment system and all budget entities began using the system after July 2002. All budget organizations were forced to close existing bank accounts and operate through treasury ledger accounts or subaccounts. This practice applies to all budget organizations, central and local, though there are risks of legal challenges to central treasury officials' rights to control the funds and assets of provincial and regional governments. In the IMF's view, these requirements will tighten expenditure control and improve cash management practices and profitability.

93. A weakness of the budget is that it does not reflect costs to the Government of contingent liabilities that may become real. As of 2001, however, the authorities have attempted to study and to document contingent liabilities. The ADB TA for public expenditure management did not uncover a significant number of contingent liabilities. The 2002 budget made an initial attempt to identify contingent liabilities, and two special reserve appropriations were established to cover unforeseen events such as the effects of court decisions and extremely severe winter weather and other natural disasters. The intent is to identify and to place a value on potential contingent liabilities in the context of the budget. Poverty Reduction and Growth Facility conditionality requires such reserve appropriations (initially at 0.7% of GDP), to act as a buffer against unforeseen events and especially against adverse weather conditions such as those affecting Mongolia recently.

94. The budget prepared by the executive is neither published nor made available to the public or media; an abridged version approved by parliament, however, is publicly available. Budget documents generally are regarded as confidential before discussion and approval by the

²⁸ Whereas most donor debt financing is captured explicitly through the budget, the great bulk of donor grant funding, both capital and TA, is still off budget although attempts are being made to maintain databases to capture grant trends.

Cabinet, parliamentary standing committees, and parliament.²⁹ In conjunction with the 2002 central budget, for the first time a fiscal framework statement (covering 2002–2004) was published and widely distributed. It contained fairly comprehensive information on the budget and forward estimates.

b. Budget Approval

95. MOFE prepares the budget, which after consideration by the Cabinet undergoes extensive debate in parliament, including review by the budget committee and by other specialized parliamentary committees before approval by parliament. Local budgets go through stages of approval that commence with parliament, followed by approvals by provincial and, where relevant, regional representative assemblies.

96. The extent to which the budget approved by parliament differs from that submitted by the executive differs from year to year, but changes usually are made in the margins rather than wholesale. The expectation is that the legislature will not alter the aggregates of the budget greatly but will make adjustments that are fairly neutral with respect to the bottom line. Nevertheless, legislators are empowered to alter the nature of the budget and at times have done so.

97. Parliament and local assemblies conduct hearings on the budget, and debate is extensive. Detailed review is undertaken by parliament's Budget Standing Committee and its subcommittees. No direct link between these hearings and the preparation of the subsequent year's budget is evident. But during hearings the legislature and its committees can and do provide views to the Minister of Finance and Economy and to the minister's staff and thus have the potential to influence future policies and budgets.

c. Budget Execution

98. To facilitate budget execution, the government operates a form of general ledger at budget entity levels, with consolidations progressively undertaken at the regional, provincial, and central levels. At entity levels in particular, and especially in rural locations, accounting and ledger systems are based on a hybrid of old Russian and modern international standard accounting practices. Higher-level consolidations using basic accounting and computing techniques, and in many instances incorporating extensive Excel spreadsheets and basic software, occur at provincial and central levels.

99. The capacity of line agencies to manage their own budgets is limited because cash availability is determined by transfers from the central MOFE and can be erratic. In theory, a number of restrictions on making adjustments between different appropriation votes, particularly to prevent increases in wage and salary appropriations, exist. In practice, MOFE has a limited ability to monitor agency spending closely, a fact providing scope for flexibility in resource management, sometimes in explicit ways and sometimes through covert shifting and accounting. The State Professional Inspection Agency (SPIA), which reports to the Prime Minister, conducts regular biannual inspections that emphasize deviations from approved budgets. The agency has a legislated role to study all variances between budgets approved by the different legislatures

²⁹ Individual requests for access to the budget are considered. For much of the 1990s, budget documents considered confidential were not distributed, but this secretive approach seems to be breaking down. A fiscal framework statement covering 2003–2005 is being prepared for publication, and publication of full sets of budget documents is possible in future years.

and the actual budgets as implemented and reports all significant variances to the Minister of Finance and Economy. The agency can and does impose fines and other penalties. The NAO, the higher-level auditing authority, also conducts audits in relation to variations and reports directly to the local assemblies (regional, provincial, or local). Local assemblies at various levels are ultimately responsible for expenditure of public monies.

100. MOFE can hold line agencies accountable for their use of their own budgets. The ministry can play an interventionist role but lacks the capacity to do so, given the great number of budget entities. The aim of the single treasury account approach is to increase control over and accountability for the budget. All budget entities eventually report back to MOFE for consolidation purposes.

101. Supplementary budget bills occasionally have addressed revenue shortfalls. Such bills have been submitted to parliament, either to raise new revenues or to cut appropriated expenditures (or sometimes to do both). The more common approach has been to manage cash outflows closely in relation to cash available. When cash is short, fund releases are constrained. When revenue shortfalls are temporary, then cash releases later in the year tend to catch up with appropriated levels. In certain, not recent, instances, shortfalls have been comparatively permanent because agencies have received less cash than appropriated, largely because of decisions made by MOFE. Often the brunt of unbudgeted expenditure restraints has fallen on the domestic component of the public investment program, at times because it is being implemented slowly, and at others because it is being starved of domestic funding.

d. Procurement

102. Since April 2000, procurement has been governed by the Public Procurement Law, a modern law prepared with ADB TA and considered to represent best practice in terms of transparency and competitiveness.³⁰ The law applies to all levels of government, central and local. It directly covers all major categories, including civil works; goods, supplies, and materials; contractual services; and consulting services, with the exception of some build-operate-transfer and public-private partnership arrangements, which are covered by a special government resolution adopted in 2001.

103. A cadre of six professionals is being trained in MOFE's relatively new Procurement, Policy, and Coordination Department. An ADB TA activity has provided on-the-job training, as well as short courses taking place for approximately one month abroad (footnote 30). An extensive training program aiming to reach all budget entities (approximately 4,000) over the next 3 years has been developed. Full funding for the proposed initiatives has not been secured yet, and funds for training abroad are especially needed.

104. Although in practice procurement is decentralized to line agencies and budget entities, a number of tender committees have been established under the new legislation, some of which involve members from central agencies. This practice applies especially to larger procurement exercises, with the law defining thresholds above which higher-level tender committees are required.

³⁰ ADB. 1998. *Technical Assistance to Mongolia for Development of Procurement Legislation and Guidelines*. Manila. This TA that helped the government prepare the law involved a broad review of international practice and sought to provide high levels of transparency and competitiveness.

105. Public competitive bidding is the main form of procurement, especially for medium and larger procurements as defined by thresholds in the law, which also allows for other forms of prescribed purchasing. Alternatives are limited tenders, quotation comparisons, and direct contracting.

106. The time needed to complete a public bidding exercise depends on the nature and the complexity of the contract. Civil works contracts tend to take longer than other categories of contracts, but most recent domestically financed contracts have achieved reasonable time efficiency. Bidders usually are given 4–6 weeks to prepare bids, and evaluation and selection usually take another month. For domestically financed projects, the total process rarely lasts longer than 2 or 3 months. Contracts externally financed by bilateral or multilateral donors usually must be tendered internationally in line with the requirements of the international funding agency. These processes tend to be much more time consuming.

107. The law does not mandate publicizing the outcomes of bidding, but the results of major tenders are made public and unsuccessful bidders are informed of results. MOFE's Procurement, Policy, and Coordination Department intends to post most procurement bidding on a web site currently under construction.

108. The law provides procedures for bidders and suppliers to lodge complaints and specifies the manner in which they should be resolved.³¹ Discussion is ongoing as to whether MOFE is sufficiently independent to resolve such complaints, and the introduction of a more independent complaint resolution body is being considered. Another option is to make MOFE's Procurement, Policy, and Coordination Department more autonomous, though perhaps still accountable to the Minister of Finance and Economy.

109. The legislation does not provide for any formal blacklisting procedure. Consideration is being given to developing guidelines for such a list, which the Government would then consider endorsing as a resolution. The Procurement, Policy, and Coordination Department is concerned that such a list should be based on well-documented cases, perhaps involving legal proceedings.

110. Given the newness of the legislation, detailed cost comparisons between government procurement prices and retail prices are unavailable. For small procurements, a minimum requirement is that selective quotations be obtained. This process tends to ensure that the procurement prices of such items are competitive with retail prices. Larger tenders involve items not obtained easily at the retail level in Mongolia, making direct comparison of procurement and retail prices difficult. Yet most tender exercises to date have generated a good deal of interest and multiple bids, which augurs well for price competitiveness.

e. Overall Assessment

111. Public expenditure management practices underwent an abrupt change after 1990 and yet, while somewhat rudimentary, have been commendably functional.

112. In recent years, Mongolian practitioners and external observers have tended to agree on the need to upgrade public expenditure management practices significantly, so as to move beyond the basic approaches established in the years immediately after the transition. Reforms being considered and implemented aim to address such fundamental issues as (i) the need to

³¹ Complaints go first to the relevant tender committee, then to MOFE, and then to the courts.

decrease deficit and debt levels sharply; (ii) the importance of improving resource allocation decisions, including rationalizing budget entities and expenditures in the interests of improved prioritization and deficit reduction; and (iii) the need, at all levels, to improve efficiency and to receive better value for money.

113. Our overall conclusions are as follows

- (i) Improvements in budget formulation are being introduced at the macro level under the broad umbrella of moving to a medium-term fiscal framework approach, based on improved articulation of national priorities and supported by medium-term macroeconomic forecasts, 3-year forward estimates, closer integration of capital and recurrent budgets, and periodic preparation of public expenditure reviews. At agency and sector levels, recent reforms have been based on pilot approaches to introducing strategic business plans and output budgets (and related budgeting, accounting, and computing improvements). Further work is needed at the macroeconomic level to strengthen forecasting techniques and capacities, which must provide the foundation for improving medium-term budget formulation. Work is also needed to rationalize the large number of budget entities—probably by consolidating many under key ministries, which increasingly will become the basis for articulating broad sectoral priorities.
- (ii) Budget approval processes are fairly sound, with reasonable roles for executive and legislative branches. Recent reforms have focused on improving the articulation of national priorities and providing hard budget ceilings early on in the budget formulation process. Such a reform would give ministries a much more substantial role in budget formulation and approval and would be in line with their future involvement in preparing ministry and sectoral strategic plans and performance-based budgets.
- (iii) Most tension in public expenditure management relates to the extent and the nature of the centralization of budget management responsibilities and the accountability arrangements that will apply. The treasury single account approach implies that entity managers are not to be trusted and cannot be held accountable and that aggregate expenditure control is a major problem in need of strong central control. The PSMFL, although technically capable of accommodating a single treasury account approach, philosophically places greater emphasis on decentralizing management responsibilities, with enhanced incentives.
- (iv) The proposed financial management information system (FMIS), to be purchased under the World Bank fiscal TA, will provide the budgeting and accounting infrastructure to support whatever budget execution system finally emerges. Currently, budget execution, especially in rural areas, tends to be based on cash payments, and movement to noncash payment systems will improve efficiency and accountability. The FMIS will need to adapt to a range of emerging budget execution approaches. Additionally, tension is evident in regard to the eventual role of regional and local governments in the managing and implementing of budgets. To some extent, neither the single treasury account nor the PSMFL adequately reflects central or local political aspirations for increasing local government responsibilities, and these issues must be resolved.

- (v) Recently introduced institutional and legal arrangements for procurement are modern and appropriate. The immediate need is to enhance systems and training to permit effective implementation nationwide.

3. Public Sector Accounting

114. Mongolia's budget classification system meets international standards. Thus, in December 2001, the IMF concluded that "the budget classification is broadly consistent with Government Finance Statistics (GFS) principles and the general Government deficit summarizes the Government's financial position on a cash basis. A new chart of accounts designed to meet revised GFS standards has been tentatively approved and is being tested on a pilot basis." Both World Bank and ADB TA activities³² have done substantial work on revising charts of accounts and budget classifications to meet revised GFS standards. Many plans remain to be implemented, however, in part because acquisition of the proposed software and hardware (under the World Bank fiscal TA) has been delayed. Nevertheless, basic cash-based classifications have been in place since the early 1990s.

115. The Law on Accounting, revised in early 2002, provides for a Standards Committee responsible for setting private and public accounting standards and for monitoring their implementation. The law indicates that the Standards Committee will adopt international best accounting practices for the public sector when the committee deems that Mongolia is ready for such a change. To date, Mongolia has adopted approximately half of the 40 or so public standards, and the plan is to introduce most of the remainder as conditions permit. Mongolia has adopted a modified cash basis of accounting, which is likely to prevail for some years before the introduction of full accrual accounting.

116. MOFE is responsible for the ultimate reconciliation and consolidation of all public sector budget accounts. Consolidation involves amalgamating central and local government accounts to prepare the country's general consolidated accounts. Each year, the State Property Committee consolidates SOE accounts separately, but these are not consolidated with the accounts of budget entities. The SPIA and the NAO are responsible for inspecting and auditing individual agency accounts and the general consolidated accounts and for reporting differences or irregularities. Scope exists for recovering funds and imposing penalties, which can include fines, dismissal, demotion, and imprisonment (through the courts). Although not all irregularities are uncovered and not all those uncovered are dealt with severely, a significant numbers of cases are revealed and acted upon annually.

117. Usually, individual departments' financial statements are neither made available to the public nor published routinely. Citizens, researchers, and others can apply to see the accounts and generally will be allowed to do so if they provide valid reasons. The PSMFL requires budget entities to prepare and to publish annual financial reports. A number of pilot agencies operating under the ADB-supported Public Administration Reform Program have prepared annual financial statements.

118. In general, the private sector is progressing toward international accrual and accounting standards more rapidly than the public sector, but many small and medium private businesses still rely on cash-based and mixed Russian and Western forms of accounting. If the Law on Accounting is implemented successfully, eventually both the public and the private sectors will

³² ADB. 2002. *Technical Assistance to Mongolia for Capacity Building for Accounting and Auditing Professionals*. Manila.

move toward international standards. As an indicator of progress in this direction, the BOM and SOEs are required to prepare financial statements in accordance with international standards.

119. Other than a small number of agencies piloting international best accounting practices, public sector entities do not prepare Western-style balance sheets. Some quasibalance sheet information is collected under the old mixed Russian and Western accounting system but is not compared easily with Western-style balance sheet information, and the results are not used or consolidated widely.

120. Public accounting is moving gradually, though slowly, towards international accrual standards. Accounting reforms have been introduced in a number of pilot agencies but have tended to occur in the absence of modern accounting software and systems, and long delays in finalizing procurement of software and hardware have hindered a comprehensive rollout of new approaches. Except in those few instances in which internal audit systems have been established, controls are exercised by MOFE, local and central budget entity accountants, and externally by the SPIA and the NAO. The single treasury account now required by the Cabinet aims to enhance central controls by strengthening the role of the central treasury and by placing treasury accountants in key locations throughout the public sector.

4. Public Sector Auditing

121. Mongolia has two audit bodies whose functions and activities overlap somewhat—the SPIA and the NAO.

122. The SPIA reports and is accountable to the prime minister. It operates more as an inspection agency than a modern audit body. Financial inspection of budgetary bodies, a task previously carried out by the State Financial Inspection Agency operating under MOFE, is the heart of SPIA activities. The Law on State Inspection, amended in 2003, guides the activities of the SPIA, which was established under the prime minister's office in early 2003 by the merging of all inspection agencies in various line ministries. SPIA's finance and control division, entrusted by the PSMFL with undertaking internal financial inspection of the Government, employs 250 inspectors who check for irregularities and deviations from budgeted funding levels. It issues signed reports after each inspection, but these do not reflect full audits and are not certified as such. No value-for-money, management, or performance auditing is undertaken.

123. The State Audit Law, amended in 2003, provides the basic legal framework for financial and performance audits of all budgetary bodies. The NAO is structured more along the lines of a modern, Western audit authority and operates under the State Audit and Inspection Law, which was amended in January 2003. The NAO, Mongolia's supreme audit institution, is entrusted with implementation of the State Audit Law. The State Great Hural appoints the chairperson of NAO, who in turn appoints the heads of NAO's 22 provincial boards. These report to and are accountable directly to the local hurals. As per the PSMFL, NAO, which has a capacity of 275 staff at central and local levels, shall conduct certification audits of the annual financial statements of all budgetary bodies and most SOEs. The NAO reports to and is accountable directly to parliament whereas local boards report to and are accountable directly to their respective provincial assemblies.

124. The NAO has broad powers to audit all government and quasigovernment entities, including SOEs, and audits the personal financial affairs of senior government officials. It also can conduct special audits on its own initiative or after a complaint.

125. The NAO is aiming to move beyond simple financial inspection although much of its work is of a rudimentary nature and in some respects overlaps with the work of the SPIA. Most organizations (aside from the pilot agencies under the ADB-supported public administration reform TA) have accounting and budgeting systems that are out of date and unamenable to modern forms of auditing and financial presentation. In the medium- to long- term, the NAO plans to become a modern auditing agency conducting a full range of management and performance-based audits and eventually presenting fully audited accrual accounts and balance sheets for all public entities.

126. Both the SPIA and the NAO tend to conduct their inspections at the budget entity level and to look at all of an entity's programs rather than at individual completed programs. Current policies aim for every central and local public entity to be inspected every 2 years by each of the two audit institutions. Generally, both bodies limit themselves to enforcing compliance with administrative rules and rarely look into efficiency or effectiveness issues. Occasionally, the NAO undertakes audits of certain programs or activities. It also audits foreign assistance projects and programs, and tends to do so in a timely fashion.

127. The SPIA's reports go first to the head of the agency and then, in summary form, to the prime minister. The agency usually prepares its reports within a few weeks of inspection. It does not make reports public and has not received requests from the public to view them. It does, however, have a policy of providing details about major irregularities and prosecutions to the media. NAO reports, on the other hand, are public documents available to parliament and its committees. NAO annual reports are provided to parliament, local assemblies, and the public. The report on central-level entities is published in Mongolian and English. Reports on individual entities are not published.³³ The PSMFL requires all designated public entities to publish audited annual reports. Parliament and its standing committees can request the NAO to audit organizations, programs, and activities. The NAO periodically submits to parliament individual audit reports prepared at parliament's request as well as on its own initiative. Parliament discusses and, if necessary, makes decisions on NAO recommendations.

128. The SPIA does not apply international accounting and auditing standards to its inspections. It sets its own inspection standards internally although these standards should eventually be legislated. Moving to full international standards would require upgrading staff skills and facilities as well as moving away from the mixed Russian and Western accounting system prevalent in most budget organizations, toward international accounting and reporting methods. By contrast, the NAO is a full member of the International Organization of Supreme Audit Institutions and of the Asian Association of Supreme Audit Institutions. It also has close bilateral relations with sister organizations in eight countries. It clearly aspires to move toward full international accounting and auditing standards but recognizes that this will take some years, especially in light of Mongolia's more rudimentary current accounting systems.

129. The SPIA, while accountable to the prime minister, has close links with the Budget Expenditure Subcommittee of parliament's Budget Committee although the subcommittee does not review the agency's performance directly. The NAO also maintains close links with the Budget Expenditure Subcommittee and with pertinent parliamentary working groups.

130. A significant number of SPIA reports reveal minor irregularities or deviations from budgeted levels. In such instances, responsible parties are required to repay the amounts in

³³ State Audit Board and Inspection Committee. 2002. *Annual Report 2001*. Ulaanbaatar.

question. In 2001, SPIA uncovered around MNT8 billion (\$7.2 million) in irregularities, equivalent to about 2% of total expenditures. It uncovers fewer major deviations and irregularities, with about 50 a year elevated to the police and to the courts. All major deviations and irregularities are prosecuted if the agency finds sufficient evidence. In 2001, central and local branches of the then SAIC uncovered irregularities of MNT17.5 billion (\$14.66 million), of which 38.3% were payment claims and 61.7% were violations. Some 85% of irregularities were resolved and/or settled. The board referred more serious cases, involving 158 people and MNT706 million (\$591,290) to the police and the courts; a further 98 serious cases involving MNT412 million (\$345,059) were resolved.

131. The basic inspection and audit agencies are well established and perceived generally as honest and willing to pursue irregularities. Given the past emphasis on inspecting and auditing financial transactions, the functions of the two audit bodies overlap significantly, in relation both to the entities they inspect and/or audit and to their methodologies. Senior management of the organizations recognize the existence of these overlaps and the potential scope for efficiencies, either by clearly defining the role of each body or by merging some, or even all, their activities into a single organization.

132. The PSMFL endorses a more decentralized and incentives-based management system requiring improved capacities on the part of audit and inspection services. The World Bank (footnote 25, p. 135) has pointed out, however, that “The absence of clear and transparent legal and administrative institutions to enforce recommendations of the auditors has further contributed to weaken the system and increase inefficiencies, as evidenced by rising arrears and high budget overruns.”

133. The main future needs of inspection and audit services are in the areas of broad-based capacity building, including strengthening of the core accounting and financial systems throughout the public sector; and of more directly addressed systems and equipment, personnel recruitment, training, and development needs within audit agencies.

5. Local Government and Intergovernmental Fiscal Relations

134. As we have seen, Mongolia is a unitary state comprised of a central government and three levels of local government (aimag/city, soum, and bag). For financial management, budgetary, and accounting purposes, activities of the bag and the soum are aggregated at the soum level. Aggregation of all the soums and the aimag centre within an aimag represents the local government activities of that particular aimag. Aggregation of all the aimags in Mongolia represents the activities of all local governments in the country.

135. The main laws that influence local administration and government in Mongolia are (i) the constitution; (ii) the Law on Government; (iii) the Law on Administrative and Territorial Units and their Governance; (iv) the Budget Law; (v) the Law on Property; (vi) the PSMFL (PSMFL 2000); and (vii) Law on State Audit (January 2003).

136. The PSMFL is likely to generate significant changes to central–local government arrangements in Mongolia and to current laws of relevance. But because long and uncertain transitional arrangements have been provided for, the precise timing and nature of such changes remain uncertain. Implications of the PSMFL are, to some extent, spelled out in the remaining sections of this paper. The new Action Plan (para. 23) places greater emphasis on the regional development concept, which aims to reduce the trend of rural to urban migration by putting rural areas on more equal footing with urban centers through better market access, other

infrastructure to support economic development such as power generation, and more equitable delivery of social services.

a. Local Government Responsibilities

137. Local governments have their own legislative and executive branches. Local assemblies may be viewed as local parliaments, and governors may serve as the executive. Local governments have a degree of autonomy to manage affairs within their territories, as stated by the Law on Administrative and Territorial Units and Their Governance (1992). Local assemblies are exclusively responsible for the following:

- (i) undertaking local economic and social development, overseeing local budgets and financial activities, and preparing operational reports;
- (ii) undertaking checks of the credentials of local assembly representatives;
- (iii) electing local assembly chairs, secretaries, and presidium members;
- (iv) proposing candidates for governor to the next level of government and making recommendations for dismissing the governor;
- (v) discussing the governor's activity report, evaluating government activities as necessary;
- (vi) discussing proposals to establish, reorganize, or dissolve the territorial unit or to change its borders; and
- (vii) accepting or refusing to accept the governor's veto of local assembly decisions.

138. Local governments are responsible for providing education and health care; developing culture, art, and science and technology; and protecting historical and cultural sites, natural resources, and the environment. Local governments have the right to make policies in relation to the supply of water and electricity and to implement such policies in cooperation with concerned bodies; to involve organizations and citizens in protecting the genetic sources of livestock; to introduce veterinary and sanitary control; to prevent the spread of infectious and parasitic diseases; to build, restore, and maintain roads and bridges; to collaborate with law enforcement agencies to prevent and deal with crime; to regulate labor contracts among citizens; to assist lower-income groups; and to improve housing conditions.

139. According to the Law on Administrative and Territorial Units and Their Governance, governors of provinces, regions, and districts have the right to approve and to implement budget proposals and territorial economic and social development plans; to implement territorial policy on finance, loans, and taxes; to ensure that organizations and economic entities subordinate to higher authorities obey the territory's laws; and to appoint and dismiss managers of organizations subordinate to local government within the territory.

140. Citizens elect local assembly representatives for 4-year terms. Local assemblies propose candidates for governors of regions, communities, and districts; and higher-level governors nominate them for 4-year terms. Provincial and Ulaanbaatar local assemblies propose candidates for governor, and the prime minister nominates them for 4-year terms. Local elections are regulated by the Law on Elections for Local Assemblies of Citizens' Representatives of Provinces, the Capital City, Regions, and Districts (1996). Expenses related to holding elections are covered by the state budget, but election campaigns of individual candidates are financed by their political parties and supporters.

141. An examination of provincial budgets underscores the substantial support provided by transfers from the central Government budget (Table 10). In 2001, local revenues exceeded

budget transfers from the center only in Darkhan, Govisumber, Orkhon, Selenge, Tuv, and Ulaanbaatar. The ratios of local revenues to total expenditures differed substantially but averaged only 61.6%. Local government dependence on the central Government stems from this imbalance.

142. According to the General Taxation Law, national taxes comprise both state and local taxes. State taxes, introduced by parliament and the central government and collected on a nationwide basis, include (i) business entity and organization income taxes, (ii) customs duties, (iii) value-added tax (VAT), (iv) excise taxes, (v) gasoline and diesel fuel taxes, and (vi) payments for the use of mineral resources.

Table 10: Composition of Provincial Budgets, 2001

Province	From the Central Government (MNT million)	Local Revenues Collected (MNT million)		Total Expenditure (MNT million)		Ratio of Local Revenues Collected to Total Expenditures (%)	
		Planned	Actual	Planned	Actual	Planned	Actual
		Arkhangai	3,265	1,691	1,992	5,187	5,409
Bayan-Ulgii	3,461	1,481	1,551	4,942	5,012	30	31
Bayankhongor	3,345	1,496	1,830	4,841	5,175	31	35
Bulgan	2,678	1,881	1,636	4,559	4,545	41	36
Govi-Altai	3,834	1,066	1,167	4,900	4,951	22	24
Dornogovi	2,250	1,806	1,902	4,056	4,183	44	46
Dornod	2,632	1,853	2,042	4,485	4,781	41	43
Dungovi	2,052	1,280	1,294	3,332	3,263	38	40
Zavkhan	3,474	1,408	1,835	4,882	5,562	29	33
Uvurkhangai	3,205	1,560	2,542	5,406	5,767	29	44
Umnugovi	2,241	1,178	1,455	3,418	3,668	34	40
Sukhbaatar	2,920	904	1,030	3,824	4,225	24	24
Selenge	2,324	4,735	5,303	7,056	7,580	67	70
Tuv	2,945	2,928	3,756	5,874	6,920	50	54
Uvs	3,676	1,244	1,963	4,921	5,800	25	34
Khovd	3,367	1,507	1,716	4,874	5,438	31	32
Khuvsgul	4,090	1,886	2,249	5,976	6,575	32	34
Khentii	3,052	1,576	2,001	4,628	5,400	34	37
Darkhan	1,013	5,169	5,568	6,181	4,466	84	125
Ulaanbaatar	2,556	41,128	47,338	43,684	50,894	94	93
Orkhon	372	5,536	5,265	5,536	5,523	100	95
Govisumber	640	711	1,069	1,351	1,591	53	67
Total	59,392	84,025	96,505	143,912	156,723	58	62

Source: Government data.

143. Local taxes are introduced by local assemblies of provinces and Ulaanbaatar and collected in their respective territories. Sources of revenue for local governments include (i) personal income taxes, (ii) firearms taxes, (iii) capital city settlement taxes, (iv) dog taxes, (v) inheritance and gift taxes, (vi) immovable property taxes, (vii) state stamp duties, (viii) payments for the use of water and mineral springs, (ix) transport and vehicle taxes, (x) license fees for the use of natural resources other than minerals, (xi) payments for the use of natural plants, (xii) payments for the use of other widely spread minerals, (xiii) license fees for hunting, (xiv) land payments, and (xv) payment for the use of forest timber.

144. The Government defines the percentage of excise and VAT income to be returned to local budgets. For example, Government Resolution Number 25 of 19 February 2002 decrees that 80% of VAT collected in the central budget from domestic goods should be distributed to local budgets, depending on the ratio of the population of the province to the total population. Thus, Ulaanbaatar receives the largest portion (32.7%) of the VAT, and Govisumber the smallest (0.6%). Percentages for other provinces range from 2%–5%. The resolution also decrees that 50% of excise taxes collected from domestic alcohol be returned to local budgets.

145. Local budgets are prepared by local governments without consultation with community groups, but approved local budgets usually are published in local newspapers. Local television and radio stations also publicize budgets. In principle, local budgets are available for public scrutiny on request.

146. Both local and central governments are bound by the Law on Procurement (2000). Before the adoption of this law, officials in government agencies frequently bought expensive assets, goods, and services from their friends without tendering. The law has made this practice illegal. We have no information on how widely it may be violated, however.

147. Local government accounts are audited by 22 provincial-level audit and inspection committees established in 1995 by the Law on State Audit and Inspection. The committees audit local government agencies, report to provincial-level local assemblies, review budget execution reports prepared by provincial governors, and submit findings to local assemblies. The NAO provides local committees with professional and methodological guidance and has the right to request audits. In addition, the Government has set up divisions under SPIA control in each province. These may audit local government bodies, and their reports go to the governor, to whom they are answerable. Audit and financial control agency reports usually are published in local newspapers and available to interested parties on request. In part because of cost, the Government rarely publishes audit reports. According to NAO, provincial-level audit and inspection committees audited 1,223 organizations and 8,705 individuals in 2001 and uncovered violations amounting to MNT4.8 billion (\$4.4 million), of which more than 90% were settled during the year.

148. Because of Mongolia's unitary political structure, there is no separate local civil service. Civil servants employed by local governments follow the same regulations and are hired and promoted in the same way as those employed by the central government. Although local governments must follow the same recruitment procedures as central governments, the Civil Service Law allows them to appoint people for up to one year who have not passed the government service qualification test. Compensation for local government employees is determined in a manner similar to that for central government employees and therefore also lags behind compensation in the private sector.

b. Local Government Finance: Revenues

149. Until 2002, certain taxes assigned to local governments were far from certain and fluctuated from year to year, mainly at the whims of the State Great Hural and the Minister of Finance and Economy. Tax assignments by level of government were determined not so much by type of tax, but rather in relation to the location and the buoyancy of certain taxpayers. This situation led to extreme unpredictability in formulation and management of both central and local budgets.

150. The most volatile taxes were corporate income taxes, VATs, and excise duties. From 2002, all three types have been designated central Government taxes though initially a central/local sharing arrangement only for 2002 was developed for VATs and excise duties. Interim 2002 arrangements were replaced with a more permanent tax sharing and/or formula-based transfer mechanism after 2003.

151. Once the above three taxes are removed from the equation, tax and nontax revenues available to local governments are fairly modest. The main remaining taxes include personal income tax, livestock head tax, stamp tax, gun tax, dog tax, and various user fees and charges. Following the PSMFL, such local taxes will be applied solely to the provision of local level municipal services, and any national functions performed by local governments will need to be funded by the central Government, probably under specific grant arrangements contracted between central portfolio ministers and aimag governors.

152. Numerous studies have shown that there is extreme variation (and inequity) in the expenditures of different aimags, soums, and bags throughout the country. For example, the IMF, using 1999 data, estimated per capita expenditures by aimag. Expenditure range was extreme, from a low of MNT30,864 (\$28) in Uvurhangai Aimag to a high of MNT57,256 (\$52) in Govi-Altai Aimag (a ratio of minimum to maximum of almost 2:1). Similar studies conducted with 1992 and 1995 data revealed similar ratios, of 1.8 and 2.5 respectively. Such variances can be expected to change after introduction of the PSMFL and new expenditure assignments. Until such assignments (and the related tax sharing and transfer mechanisms) are defined more clearly, however, distributional implications will remain unclear, and the capacities of many aimags and soums to provide basic municipal services under the new expenditure assignment arrangements will remain limited. But aimags with higher revenue raising capacities will have scope to improve local municipal services.

c. Local Government Finance: Expenditures

153. At present, local governments have a wide range of expenditure responsibilities, including nationally important functions such as health, education, and policing. As the PSMFL is introduced, direct expenditure responsibilities will shrink dramatically, to become activities of local municipal management only, with direct responsibilities for national functions transferred to central portfolio ministers.

d. Deficits and Financing of Local Governments

154. In the past, significant financing gaps (after receipt of health insurance payments) at the local government level have been financed primarily by transfers from the central government budget. This situation changes now that PSMFL has been introduced. In particular, non earmarked transfers are expected to become less common as local governments become increasingly responsible for self-funding local municipal activities, which are their primary expenditure responsibility under the Act. On the other hand, earmarked grants should increase for nationally important functions such as education, health, and policing.

e. Overall Assessment

155. Intergovernmental fiscal relations have been unsatisfactory for long periods in Mongolia. There has been an inability to agree on important matters, including

- (i) The respective roles, functions, powers, and accountabilities of different levels of government. The constitution and laws on budget, taxation, and territorial units aim to clarify matters, but substantial ambiguity and disagreement persist.
- (ii) Taxation assignments and revenue sharing arrangements. The 2002 budget provided for considerable further centralization of taxing powers by making it clear that taxes are assigned by type rather than taxpayer, and by further centralizing collection powers for corporate taxes, excise taxes, and VATs. Such changes have had broad support for some time, based on administrative efficiency arguments regarding where taxes should be collected. In return, however, a quid pro quo in the form of an improved tax-sharing arrangement or a more effective subsidy transfer mechanism was expected for local governments. In the event, an ad hoc sharing system was agreed on for the 2002 budget, but no effective long-term tax sharing or transfer mechanism was put in place. Most local governments believe that they are assigned important expenditure responsibilities under the constitution and budget law and that they therefore should have an automatic right to agreed-upon and predictable levels of national taxes, rather than having to haggle with the central Government annually, as is currently the case.
- (iii) The PSMFL. Although generally taking an incentives and decentralized approach to entity management, the PSMFL is perceived by many as taking a re-centralization approach in relation to the affairs of local governments. The law assigns only very basic municipal functions to aimag and soum governments and places key future responsibilities for current important local functions such as education, health, and policing with central portfolio ministers. The single treasury account approach being implemented likely will be equally unpopular at all levels of local government because of the perception that the central treasury is attempting to gain control over local government resources (including tax and other sharing arrangements and assets). Implementation arrangements for local government reforms under the PSMFL have not yet been spelled out clearly and will need to be designed and implemented carefully if reform implementation efforts at local levels are to succeed.

156. Notwithstanding passage of the PSMFL, resolution of the foregoing longstanding issues likely will be a challenge. The nature of any final resolution will be important for the implementation of public sector reforms at local levels. If intergovernmental fiscal relations can be put on a sound footing, local governments remain ready, capable, and interested in pursuing modern management and administrative reforms. The nature of such reforms (as required under the PSMFL) should be equivalent to management and administrative reforms to be implemented at the central level and should include the following components: (i) management; (ii) strategic planning; (iii) computing; (iv) accounting; (v) budgeting; and (vi) considering a broad range of public expenditure management issues, especially rationalization of the number of soums and aimags within regions (and rationalization of governmental activities undertaken).

6. Summary Conclusion

157. Given the scope of Mongolia's transition, expecting a rapid emergence of sustainable fiscal affairs would have been unrealistic. Whereas Mongolia made excellent policy and administrative progress in the first half of the 1990s, progress faltered in the second, and the risk of long-term fiscal unsustainability seemed a possibility. Fiscal performance in 2000 and

2001, however, has been encouraging, especially in light of the adverse weather conditions that affected agriculture and other rural industries. In recent years, reforms in thinking and in systems of public expenditure management and related areas have contributed to improved performance. But reforms are nascent and will require consolidation and strengthening for many years. If Mongolia perseveres, reforms will provide useful tools and approaches for further deficit reduction over time while allowing the Government to pursue priorities.

158. Important reform components being introduced are (i) clearer articulation of national priorities through annual improvements to the medium-term fiscal framework statement, (ii) better articulation of ministries' priorities through the use of strategic plans and performance-based budgets, (iii) closer consolidation of great numbers of budget entities under key ministries, (iv) better technical preparation of forward estimates and wider policy and planning use of such estimates, (v) earlier and more certain finalization of ministries' expenditure ceilings, (vi) further improvements linking capital and current budgets, and (vii) closer coordination of official development assistance with government priorities.

159. A major problem with the current system is that the Government is attempting to undertake too much with too few resources, a situation leading, in many instances, to poor-quality services. If expenditures can be rationalized on an ongoing basis, quality should improve. Although many public services are delivered on a shoestring and the scope for cost efficiencies may be limited, new public administration planning, accounting, and performance-budgeting systems being pursued at the entity level will improve cost efficiencies over time.

160. An ADB loan, the Governance Reform Program 1,³⁴ was implemented with the objective of encouraging sustained reform of the public financial management system of Mongolia. The second phase of Governance Reform Program³⁵ is currently being implemented with three major components: (i) enhancing institutional capacity by focusing on PSMFL implementation and financial management reforms; (ii) improving fiscal stability by focusing on pension reforms and reduction of the multiple layers of public administration at central and local levels; and (iii) mainstreaming governance reforms by focusing on SOEs and other key public institutions.

C. Public Administration

161. A well-functioning system of public administration should have efficient and effective policymaking and policy implementation processes affording the community opportunities for participation. Moreover, institutions and processes should be performance oriented, and the civil service should be managed on meritocratic principles, which motivate by attempting to ensure fairness, and provide an environment encouraging ethical governance.

1. The Policy Process

162. According to the constitution, the prime minister determines the Government's domestic and foreign policies, though he/she is subject to laws and regulations, the Government Action Program, and guidelines approved by parliament. The Civil Service Law clearly defines ministers' powers to include the authority to craft state policy on issues for which they are

³⁴ ADB. 1999. *Report and Recommendation of the President to the Board of Directors on a Proposed Loan to Mongolia for Governance Reform Program*. Manila.

³⁵ ADB. 2003. *Report and Recommendation of the President to the Board of Directors on a Proposed Loan to Mongolia for Second Phase of Governance Reform Program*. Manila.

responsible; to implement laws, presidential decrees, and government decisions on behalf of the Government; and to be solely answerable to the prime minister and to parliament.

163. Mongolia's policymaking process has become more coherent recently. The Law on the Procedure for Developing and Submitting Draft Laws and Other Decisions of the National Parliament, amended in 2001, and the Civil Service Law define the processes for developing such policy documents as laws and parliamentary and government resolutions. As the procedure is legalized, it becomes mandatory for everyone. These laws are published in the journal *State News* and can be accessed easily by citizens and media

164. Inter-ministerial consultations on policy proposals, often reflected in draft laws, take place in various ways. Ministries prepare draft laws first by consulting the Ministry of Justice and Home Affairs (MJHA), with consulting ministry and MJHA jointly approving a concept for the proposed laws. Draft laws developed in accordance with this process are distributed to other ministries for comments and proposals, which are to be attached to the draft law when submitted to a government meeting. Inter-ministerial consultation also may involve setting up a working group of ministry and agency representatives to develop specific policy proposals before presenting them to the cabinet.

165. Ministries consider the financial implications of their proposals, and regulations require prior agreement with MOFE regarding the need for and the availability of additional resources. Ministers also must consider the legal implications of proposed policies. All ministries have their own legal advisers or counselors who review proposals and for their compliance with existing laws and regulations. MJHA and the Legal Department of the Cabinet Secretariat also review the legal implications of proposed policies before submitting them to government meetings or to parliament. The Civil Service Law states that the chief cabinet secretariat should verify the compliance of cabinet decision before the prime minister signs it. The system for controlling the compliance of proposed policies is basically reliable and effective.

166. Within 60 days of taking office, the Government is required to submit a draft program of action to parliament and to submit guidelines for economic and social development at a time fixed by the parliament. The Government Action Program sets out the Government's fundamental goals and the main measures to be taken in relation to economic and social development and public administration during its terms of office whereas the guidelines delineate objectives and measures for the coming year. Because a government's term of office is 4 years, the Government Action Program can be considered a medium-term plan, and guidelines a short-term plan. Both are approved by parliament.

167. The Government carries out its activities based on the principle of the collective responsibility of the Cabinet, and the main form of organization of Cabinet activities is cabinet meetings. Inter-ministerial disagreements about policy issues, e.g., decisions about laws to be submitted to parliament, and drafts of international treaties, can be discussed at such meetings and settled by majority vote.

168. When the Government submits a draft decision, ministries' opinions must be attached. Ministries may support or reject the draft decision; for example, MOFE may reject proposals requiring additional resources. If ministries cannot resolve disagreements, the cabinet meeting may send the proposal back to the ministry initiating the draft decision and request a revision.³⁶

³⁶ For instance, in 2001, of 742 submissions discussed at government meetings, 32 were sent back to the originating ministries (Cabinet Secretariat, 2001).

169. The Government has set up various councils, committees, and commissions to study specific issues, but these have not been especially effective. The Cabinet Secretariat recently prepared a submission intended to decrease their number.³⁷

170. The Cabinet Secretariat is the working apparatus of the Government (Box 2). Under the Cabinet Secretariat is the Department of Government Logistical Services, which has the status of a government implementing agency.

Box 2: Duties of the Cabinet Secretariat

The Cabinet Secretariat is responsible for the following:

- (i) supporting the development and implementation of government decisions and, in connection with this, coordinating the activities of ministries and agencies;
- (ii) managing human resources and common services;
- (iii) supporting implementation of strategic management and planning activities and managing the Government's financial resources;
- (iv) providing the prime minister and members of the Government with advice and services in a timely manner;
- (v) documenting government decisions and making them public;
- (vi) dispatching government decisions to organizations and officials in charge of implementing them and monitoring their implementation; and
- (vii) overseeing implementation of laws, regulations, and government decisions.

Source: Civil Service Law, 1994 and amended in 2002.

171. As part of the requirement that the Cabinet Secretariat provide the cabinet with advice and services as required, the Civil Service Law requires the establishment of an advisory group on economic strategy and planning, which has yet to be set up. Nevertheless, the prime minister does have five full-time advisers on economic and social policies, international relations, and politics, as well as three part-time advisers.

172. In 1990, the government established the Research Center for State Policy and Social Issues. In 1994, the Center was merged with the Institute of Administration and Management Development; in 1996, it was abolished. Despite donor, and notably UNDP, attempts to encourage the establishment of think tanks, Mongolia currently has none. Instead, certain projects and programs financed by donor agencies include the provision of proposals and recommendations.

173. Ministers are involved in key decisions such as reviewing policy priorities and their budget implications, setting spending limits at aggregate and sectoral levels, and resolving inter-ministerial disputes on budgetary matters. The Law on the Budget clearly lays down the processes for budget preparation, approval, and execution; and ministers can be involved throughout. First, ministers the executors of the budget for their ministries and respective areas, and are responsible for submitting draft budgets to MOFE. At draft stage, ministers consult with MOFE and explain their priorities and main programs for the coming year. Second, ministers

³⁷ The Cabinet Secretariat has identified 91 government commissions, committees, and national councils established since 1997 and plans to decrease their number to about 46.

can present their proposals at cabinet meetings when discussing the overall draft budget consolidated by MOFE. MOFE may have changed a certain ministry's budget proposals and cut its budget based on MOFE's spending limits, but at cabinet meetings ministers can lobby for funds. If the majority of ministers support the request, MOFE must change the draft budget before submitting it to parliament.

174. Subsequent efforts by individual ministers to obtain more funding may affect cabinet solidarity adversely and are discouraged. During budget discussions at standing committee meetings of parliament, however, as well as during general parliamentary sessions, ministers can explain their need for increased funding.

175. Even after parliament's approval of the budget, ministers still may obtain additional funding. The Government has a right to spend two budget lines at its own discretion: the government reserve fund and the unallocated expenditures of the central budget. Although the Law on the Budget has defined the main purposes of the former, much of that fund has been used for other purposes.³⁸

176. The policy preparation cycle includes mechanisms to assess policies' budgetary, economic, social, and environmental effects as well as feasibility. According to the Law on Procedure for Developing and Submitting Draft Laws and Other Decisions to the National Parliament, ministries' submissions of draft laws must include an assessment of their possible social, economic, and legal effects as well as proposals for mitigating such effects, along with draft amendments to other laws, pertinent studies, and estimates of required budgetary and financial resources.

177. Moreover, the Law on the Government requires that draft government decisions be submitted to a cabinet meeting only after they have been reviewed and judged to have been prepared adequately by the ministers concerned. Draft government decisions must conform to laws, regulations, and presidential decrees; and the minister concerned must certify that the decision is satisfactorily elaborated and based on appropriate research. There is no law requiring an assessment of the possible effects of draft government decisions at the ministerial level.

178. According to the Law on the Procedure for Developing and Submitting Draft Laws and Other Decisions to the National Parliament, a draft law may be developed by any entity having the right to initiate legislation, including a working group, a juridical person, or citizens. Additionally, according to the same law, MJHA enjoys the following exclusive powers in preparing draft laws:

- (i) developing draft guidelines for improving laws, drafting laws regulating general matters such as laws on state structure, and drafting criminal and civil laws;
- (ii) approving jointly with the relevant central administrative body concepts for draft laws initiated by the Government;
- (iii) reviewing the concepts of draft laws initiated by the president and MPs;
- (iv) preparing draft proposals and conclusions in relation to draft laws initiated by the president and MPs and submitting them to government meetings for consideration; and

³⁸ 44.7% in 1999, and 75.9% in 2000 (former SAIC. 2002, p. 18).

- (v) reviewing the final versions of draft laws initiated by the Government and granting permission to discuss them in government meetings or to submit them to parliament.

179. MJHA's Department on Legal Policy, whose 24 lawyers are considered sufficient to cope with this workload under Mongolia's current circumstances, prepares draft legislation.

180. A variety of agencies exercise oversight functions in relation to the policy process. According to the constitution, parliament has the power to approve the state budget, to report on its execution, and to supervise the implementation of laws and other parliamentary decisions. In addition to the standing committee system, parliament relies on the NAO to oversee policy and budget execution processes. The Government submits an annual report on the previous year's budget execution and on the next year's draft budget to parliament for approval. In discussing these documents, parliament also considers the evaluation of the NAO regarding budget execution and draft budget proposals.

181. Bureaucratic oversight is exercised through parliament's power to determine and to change the structure and composition of its own standing committees and of other bodies directly accountable to it, including the cabinet itself; to appoint, replace, or remove the prime minister, members of the cabinet, and others responsible and accountable to parliament; and to determine the legal basis of the system, structure, and activities of local self-governing and administrative bodies. Insofar as parliament has exclusive power to supervise the implementation of laws and other parliamentary decisions, the formal areas subject to its financial and bureaucratic oversight are extremely broad. Its capacity to execute oversight functions remains in doubt, however. As a result of its lack of staff and expertise and—in the case of budgetary matters—time,³⁹ parliament has failed to realize its oversight authority.

2. Participation in Policymaking and the Legislative Process

182. By law, MJHA is responsible for developing draft guidelines for improving laws; these guidelines are submitted to parliament for approval after discussion in government meetings. Parliament approved the *Guidelines for Improving Mongolian Laws and Regulations until the Year 2004* in 2001, and they were published subsequently in the official journal *State News*. These guidelines conform fully to the Government's Action Program.

183. Citizens have the right to be aware of parliament's activities but for several reasons have little opportunity to observe parliamentary discussions. To begin, parliament is housed in the same building—the Government House—as the president and the prime minister and their secretariats, and the Department of Government Logistical Services. Before the Law on Government House was passed to restrict the number of agencies that could use the building, even more organizations were working there. For security reasons, authorities have restricted free access by citizens to Government House. Citizens wishing to attend a general session of parliament must notify the Secretariat in advance, and a secretariat staff member escorts them to the public balcony in Parliament Hall. Citizens also have access to public rooms in the Museum of History, which is located next to Government House, where they may meet with MPs, familiarize themselves with laws and other decisions by parliament, discuss draft laws and decisions, and watch live transmissions of parliamentary general sessions on closed circuit television.

³⁹ The time allotted for discussing and approving the annual budget does not permit thorough reviews.

184. The mass media regularly inform the public about parliamentary sessions. Reporters representing virtually all the major newspapers, and television and radio stations are accredited by the Secretariat and permitted to attend sessions of parliament freely.

185. Although not routinely done, publication of draft legislation is among donors' recommendations for improving participation in and transparency of the policymaking process. Nevertheless, provisions dating back to before the 1990s are in place for consulting the public about draft legislation. For example, the initiator of draft legislation may propose to parliament that the law be discussed publicly,⁴⁰ a proposal that may be accepted if the law is likely to have a significant effect on society. Such proposals are discussed by parliament and approved by majority vote. If parliament decides to organize a public discussion, it must decide which members of the public to consult and provide for the financing of the consultative exercise. A draft law may be discussed by representatives of the general public, by specific social or professional groups, and/or within a limited territory. The Government is responsible for implementing the consultation and informing parliament of its results. Under such circumstances, local assemblies are responsible for organizing public discussions within their respective territories. Thus, while provisions for broad-based public discussion of draft legislation do exist, the process is onerous and undoubtedly militates against citizen participation. In short, the role of civil society in the policymaking process is extremely limited in practice.

186. Yet citizens have various ways of informing politicians about their needs and preferences. According to the constitution, citizens have the right to freedom of association in political parties or other voluntary organizations on the basis of social and personal interests and opinions; the right to petition state bodies and officials; and the right to freedom of thought, opinion, expression, speech, press, and peaceful assembly. As of May 2002, 18 political parties and 2,586 NGOs had registered with the State Supreme Court and MJHA, respectively. Citizens can use these political parties and NGOs to make politicians aware of their needs and preferences. Moreover, the country's four national television stations, nine radio stations, seven cable television networks, and 250 newspapers facilitate their participation.

187. In 1995, parliament passed a law elaborating citizens' constitutional rights to petition the state and its officials and to bring complaints against them. According to the law, citizens have a right to receive answers to their petitions and complaints, to present evidence and explanations pertaining to their petitions and complaints, and to complain to higher-level officials if they do not agree with the answers provided. The law also defines the responsibilities of state bodies and officials. Petitions and complaints are to be resolved within 30 days, but agency managers can, if necessary, extend this period for another 30 days. Answers to a petition containing proposals can be provided within 90 days.

188. According to research by the NHRC, Mongolian citizens addressed 8,612 requests and complaints to 11 ministries in 2000, of which the government claimed about 90% were resolved and responded to within the legally specified period of 30 days. Most complaints not resolved (94.8%) were addressed to the Ministry of National Defense or the Ministry of the Environment. At the provincial level, authorities received about 79,000 requests and complaints, 24% of which were forwarded to Ulaanbaatar. The commission observed that local governments claimed to have responded to these complaints on time. From 1996 to 2000, citizens also lodged 6,400 complaints with parliament (about 1,600 per year), most of which were requests for assistance.

⁴⁰ See the Law on the Procedure for Developing and Submitting Draft Laws and Other Decisions to the National Parliament. Those who initiate laws are required by law only to solicit the opinions of related government agencies.

The commission observed that in their letters to parliament, citizens wrote “about heavy bureaucracy and injustice of the courts, police and detective agencies and how these organizations violate citizens’ rights and interests” (footnote 10). The NHRC pointed to a substantial discrepancy between its own data and the Government’s self-reported timeliness in resolving citizen complaints. According to the Law on the Procedure for Developing and Submitting Draft Laws and Other Decisions to the National Parliament, citizens and any juridical person may present their proposals on draft laws to the initiators of the law, and if the initiators consider the proposals worthwhile, they may amend the draft or initiate a law on the issue. Political parties also attempt to develop election programs in line with citizens’ needs and opinions in order to win votes. For this purpose, the parties conduct surveys. Citizens may express their views to politicians during election campaigns. The winning party may include its election platform as well as the views of its supporters in the Government Action Program.

189. Nongovernment professionals may be called on for expert advice on government policy. Parliament, the president, and the Government frequently set up working groups to develop specific policy proposals and invite scholars, representatives of NGOs, and entrepreneurs to participate. The Government also works in close cooperation with the Mongolian Chamber of Commerce and Industry (MCCI). Notwithstanding, many NGOs complain that they have been shut out of the policymaking process.

190. Parliament adopts resolutions as well as laws. The process of drafting and submitting resolutions is regulated by the Law on the Procedure for Developing and Submitting Draft Laws and Other Decisions to the National Parliament, according to which the Government may issue a resolution on any issue within its jurisdiction and the prime minister may issue ordinances on urgent matters. In making policy decisions, parliament, the president, and the Government consider the views of relevant stakeholders; and seminars and workshops on policy issues are fairly common. Officials rarely publish draft resolutions and other decisions, however; and, in that sense, the process is less transparent than in the case of decisions leading to the adoption of laws. Nevertheless, policy documents such as laws, resolutions of parliament and the Government, and decrees of the president are published in *State News*. Certain policy papers may be published as books.

191. The policy process has been evolving, but policymaking and policy implementation continue to suffer from inadequate coordination. At the central Government level, the Cabinet Secretariat plays a crucial role by helping develop and implement decisions and coordinate the activities of administrative organizations at both central and local levels. Recently, ministers have begun bypassing the Cabinet Secretariat and submitting proposals directly to the Cabinet.

3. Civil Service Management

192. Management of the civil service is governed by the 1994 Civil Service Law (amended in 2002), which provides a framework for the management of the administrative service and, since 2002, the special service.⁴¹ According to the law, any citizen seeking an administrative or special service post must pass the government service qualification test, which is officially designed to “select candidates on a competitive basis.” Those scoring highest should be selected first. Candidates are appointed probationarily and then permanently. The service qualification test was held first in July 1996 and has taken place annually since.

⁴¹ Separate laws govern the political service. Where no legal provisions cover a certain activity or issue, the Law on Government Service applies. Support service employees are governed by the Labor Law.

193. The GSC is responsible for recruiting and managing administrative and special services. The council's principal function is to ensure the integrity of the merit system. Council membership is conferred on either a permanent or a nonpermanent basis. Parliament appoints three permanent members who hold their position in their own right on a nonpartisan basis, for a period of 6 years (so as not to coincide with the Government's 4-year term). The Parliament Secretariat, the Cabinet Secretariat, and the GCC each nominate one of the three permanent council members. Each nominee must have at least 10 years of government service to be considered for the position; that is, the permanent members all come from within the civil service. Upon completion of a first 6-year term, a member may be reappointed to the council only once. Parliament appoints the council chair from among the permanent members after nomination by the prime minister and with the consent of the president. Nonpermanent members are the Secretary General of the Secretariat of the National Parliament, Deputy Chief of the Office of the President, Deputy Chief of the Cabinet Secretariat, and Secretary of the GCC.

194. The Government has attempted to ensure the neutrality of the GSC. According to the Law on Government Service (Article 34 [9]), "[P]ermanent staff . . . shall refrain from party affiliation. No two of the three permanent staff members of the Council shall be from the same party or have come from the same native place or have been school classmates." In practice, however, party politics has influenced the council's work. When it was established in 1996, two of the three permanent members were members of the Democratic Coalition, and currently all three are from the MPRP. The 2002 amendments provided for administrative support for the council in the form of a dedicated secretariat, which could strengthen the council's capacity. Previously, support was provided by the Human Resources Division of the Cabinet Secretariat, which is staffed by only 10 employees.

195. In addition to its function as guardian of the merit system, the council is charged with the following:

- (i) enforcing government service legislation, especially the Civil Service Law;
- (ii) building up an integrated system of files and records on government employees. This task is necessary because before 1990, as was common in communist states, the ruling party held government employee personnel files. When the MPRP lost its majority position, it maintained that the files were its own property and should not be handed over to the new Government;
- (iii) assessing the need for government administrative employees and ensuring that needs for staff are met. Presumably, the council performs this task jointly with MOFE and other agencies; and
- (iv) overseeing training, submitting proposals on compensation and staffing levels, analyzing the performance of government employees, submitting appraisals of senior members of the administrative service who are being considered for various appointments, and fulfilling other personnel management functions. The council has laid down formal personnel procedures respecting training, appraising performance, compensating, resolving disputes, and so forth.

196. Promotion is based on seniority and performance. Performance appraisals are carried out annually. According to the regulations, the results of performance appraisals determine training, enrollment, rank, remuneration, and demotion. The Government approved a civil service training and capacity building program in 1999. In 2000, guided by this program, the GSC and the Cabinet Secretariat jointly approved a plan for training, retraining, and upgrading civil servants that was to be implemented by the Academy of Management. Some 2,381 and 2,263 civil servants were enrolled in domestic training programs in 2000 and 2001, respectively.

According to the NHRC (footnote 10; 2001, pp. 4–5), the council received 165 complaints from July 1995–June 2001, many from civil servants who believed they had been dismissed unjustly. In 93 cases, the council was able to have the complainant reinstated or provided with a new job. Civil servants may also complain to the courts. During the same period, the courts reinstated 16 civil servants.

197. Mongolia's unified civil service compensation system provides salaries that seem lower than those offered outside the government, especially in Ulaanbaatar, a situation undoubtedly contributing to low morale and corruption. Civil service compensation is determined by employee positions and is based on the following components: post remuneration, supplementary payments for special working conditions, length of government service, rank, and academic qualifications. According to the Civil Service Law, government employees should be paid according to the principles of equal pay for equal work, and pay levels should be both commensurate with the average national standard of living and comparable with those in the private sector.

198. Each group of government officials (parliamentary [that is, those officials who work for standing committees or working groups of parliament or agencies set up by parliament, e.g., the NAO], administrative, special, and support) has its own basic pay scale. In 2001, the basic scale for parliamentary or working group officials (including MPs; political appointees; Supreme Court and Constitutional Court judges; prosecutors; members of the NHRC; and staff of the NAO, the NSO, the SEC, and the GSC) consisted of 11 ranks, each with a number of steps ranging from as few as 11 near the top to 25 closer to the bottom. Base pay ranged from MNT42,784 (\$38.89) per month to MNT85,155 (\$77.13) per month.

199. Even though the BOM is subordinate to parliament, bank salaries are reported to be considerably higher than salaries on this scale.⁴² Those of ministers and the prime minister are not included but are also approved by parliament. In 2002, ministers' basic salary was approximately MNT100,000 (\$84) per month. This compares with a base pay for the Chief Justice of the Supreme Court of about MNT98,544 (\$83), to which is added a 70% supplement, for a final salary of MNT165,553 (\$139) per month. Based on the chief justice's administrative rank, which is below that of the prime minister but above that of a minister, the prime minister and the president probably receive between MNT170,000 (\$142) and MNT200,000 (\$168) per month, including salary supplements.

200. Base pay for the administrative service was only slightly lower than that for the parliamentary service and ranged over 13 ranks, with between 13 and 25 steps in each rank. In 2002, top pay in the administrative service was MNT82,025 per month (\$69), compared with MNT35,144 (\$29) at the bottom, giving a vertical compression ratio of 1:2.3. Ranked administrative service officers receive allowances in addition to base pay. Though paid at approximately the same levels as administrative service employees, special service employees receive pay ranging over more ranks with fewer steps. Top pay for special service employees was also MNT82,025 per month (\$69), but the bottom level was MNT32,640 per month (\$27). The support service pay scale is a few thousand togrog per month lower. Pay levels were raised in 1999 and again in 2001, and in 2001 top base pay for the administrative service was raised about 3%.

⁴² Monthly salaries at the BOM ranged from MNT32,000 (\$27) (plus an MNT15,000 [\$13] subsidy for supervisors, and food and transport subsidies), to MNT110,000–MNT160,000 [\$92–\$134; plus a 30% premium]).

201. Civil servants receive, in addition to base pay, allowances that are mainly position-based for the administrative service (Table 11). The Government provides supplementary payments of 10% of base salary to ranked administrative service officers under “special working conditions,” as well as supplementary payments for seniority, academic degree, and grade (Table 11).

Table 11: Supplementary Payments for Civil Service Employees, 2002

Category	Percentage of Monthly Salary
<i>Seniority (length of government service, years)</i>	
26 and longer	25
21–25	20
16–20	15
11–15	10
5–10	5
<i>Academic qualifications and positions, administrative service staff</i>	
Doctorate	20
Professorship	10
Subdoctorate	15
Assistant professorship	5
<i>Ranked administrative service officers</i>	
First-grade officer	
Leading	35
Principal	30
Senior	25
Executive	20
Assistant	15
Second-grade officer	
Leading	33
Principal	28
Senior	23
Executive	18
Assistant	13
Third-grade officer	
Leading	32
Principal	27
Senior	22
Executive	17
Assistant	12
Fourth-grade officer	
Leading	30
Principal	25
Senior	20
Executive	15
Assistant	10

Source: Mongolian government data.

202. In addition to providing position, seniority, and qualification-based supplements, government agencies may pay bonuses or provide other types of performance-based compensation. They may also pay cash bonuses based on yearly and quarterly performance appraisals. Agencies must finance bonuses from savings from their own budgets. The NAO and the NSO do not pay such bonuses; the CGA and the GDNT do.

203. The Government also provides retirement pensions, but they are inadequate due to Mongolia's economic difficulties and substantial budget deficit.

204. Because public sector wage increases have been either across the board or designed to help the least well off, vertical compression has narrowed since 1997 (footnote 25, p. 34). As a result, the compensation of lower-paid staff in the public sector sometimes exceeds that of private sector workers, and the morale of midlevel technical and professional staff has been undermined.

205. By law, the difference between compensation of public servants and of private sector employees cannot exceed 5%. Whether the GSC has conducted any pay level surveys to compare compensation levels in the public and the private sectors is unclear; evidence indicates, however, that civil servants' salaries cannot compete with private sector salaries. For example, surveys conducted by the NSO show that civil servants' average salaries were approximately 22% below average salaries for the country as a whole in 2001 (Table 12); this gap was almost 39% in 1997.

Table 12: Difference Between Average and Government Salaries in Mongolia, 1996–2001

Category	1996	1997	1998	1999	2000	2001
National Average salary (MNT/month)	31,900	37,800	48,100	55,400	62,300	67,400
Average Government Employee Salary (MNT/month)	21,293	23,170	35,349	37,263	50,067	52,715
Difference (%)	33.3	38.7	26.5	32.7	19.6	21.8

Sources: Government Service Council 2002, p. 7; National Statistical Office 2002.

206. Low compensation for civil servants creates recruitment and retention problems, especially for well-trained specialists. Many former civil servants are working in the private sector because of the higher levels of remuneration or to participate in projects and programs financed by international aid agencies. Nevertheless, opportunities in the private sector are limited and those in the public sector are highly sought after. Additionally, low base salaries are somewhat compensated for by allowances and other payments, secure employment prospects, and rent seeking opportunities provided by informal markets.

207. MOFE controls staff number and personnel costs, including salaries and allowances, and provides each agency with a detailed breakdown of its annual budget and staff. These data usually are used for official purposes and are not published. As part of ADB's Public Administration Reform Program, however, some agencies, including the NAO, the NSO, and the GDNT, have published annual reports including detailed budgets which reveal that personnel costs are slightly less than half (47%) of total budgeted expenditure. According to MOFE data, in 2001 the government salary bill was about 18.5% of total budget (footnote 19). The same data reveal that the salary bill has ranged from a low of 16.3% of total budget in 1998 to a high of 21.1% in 1996.

208. As the World Bank (footnote 25, p. 26) has observed, the public sector wage bill is a major source of fiscal pressure on the budget. Amendments to the government's 2002 budget included a 20% wage and pension increase for the civil service, and the plan is to provide for similar increases in 2003 and beyond; compensatory savings in the budget have not been

identified, however. The resulting budget deficit will be difficult for the Government to bridge and may lead to unsustainable levels of domestic debt and increased inflation.

209. Because the Government acts as an employer of last resort, the civil service is considerably overstaffed, and the number of public servants is large in relation to the population. During the mid- to late 1990s, public spending on personnel increased significantly, rising from 6.3% of GDP in 1995 to 8.2% in 2000. Whereas government wages as a share of GDP compared favorably with the share in other transition economies before 1997, this share rose substantially in the late 1990s, making it among the highest in small, open, transition economies (footnote 25, p. 30). Mongolia's primary public administration challenge is to bring the wage bill under control while recruiting and retaining high-quality civil servants.

210. Widespread violation of merit principles is an indication of the weakness of the GSC as an enforcer of government service legislation. Despite the requirement that government staff pass the service qualification test, government agencies evidently employ some staff based on personal connections alone. This type of abuse seems especially serious in the filling of special service posts. Interviewees in Ulaanbaatar told us of many instances in which vacancies were not advertised and candidates submitted their applications based on word of mouth and were selected based on ascriptive rather than achievement criteria. Such employment practices occurred even in agencies performing the most important regulatory, enforcement, and strategic functions. The extent of such abuse is unknown.

211. Of the 165 complaints lodged with the GSC from July 1995 to June 2001, some were from citizens who had been refused jobs even though they had passed the government service qualification test. The council was able to remedy the situation in only 56.3% of cases. These and other facts led the NHRC (footnote 10; 2001, pp. 4–5) to conclude that “violations of the rights of public servants are quite wide-spread.”

212. The legal requirement that the civil service be politically neutral also has been violated widely. In 1996, when the Democratic Coalition assumed power, and again in 2000 when the MPRP regained it, thousands of administrative service officers were dismissed, evidently for political reasons and in violation of the Law on Government Service. According to the law, administrative service officers may be dismissed for inadequate performance of their official duties, conviction of a crime, failure to discharge their duties, or abuse of power. According to the constitution, administrative service officers may not be dismissed or otherwise discriminated against for belonging to a political party or other civic organization. Yet convincing evidence suggests that such dismissals occurred in both 1996 and 2000. According to the GSC, “[The two elections since 1996 led to an abrupt shift of power from one political force to another, [and] governments changed many times, which had a highly negative effect on public servants” (footnote 10; 2001, p. 6).

213. The 1996 dismissals occurred not only at the central but also at the local level. In Khovd province, at least 850 people have been dismissed since 1992 as a result of party affiliation. In Arkhangai province, three deputy governors and heads of departments, four region deputy governors, and five inspectors have been fired or transferred for the same reason. In 1996 in Tuv province, new governors were appointed in six regions, which was followed by the firing of all administrative officers and the hiring of new staff based on party affiliation.⁴³

⁴³ Mongolia Online. 2002, 18 April. Available: <http://www.news.mol.mn>.

214. The NHRC (footnote 10, p. 6) reports that the “same kind of discrimination by party affiliation was repeated after the 2000 elections when the MPRP won the majority.” According to the GSC, in the central government at least five of the nine secretaries of state and many heads of ministry departments and divisions were dismissed at this time. According to one source, 15,000 civil servants lost their jobs nationwide because of political affiliation (footnote 43). A member of the GSC conceded that the press reports probably were true.

215. The official reasons given for dismissals did not mention political affiliation, making lawsuits extremely difficult to bring. According to the chair of the GSC, 12,104 public sector workers were dismissed from the public sector from 2000–2002, “mainly as a result of their inefficiency.” Of these, 1,359 were members of the political service and 10,745 were employed in either the administrative or the special service. About one-third of administrative and special service civil servants (3,638, Table 13) were employed at the central level, of which 3.2% were MPRP members, 2.7% were members of other parties, and 94.1% were unaffiliated.

Table 13: Reasons Given for Dismissals of Administrative Service and Special Service Civil Servants, 2000–2002

Reason	Number
Resigned	1,497
Committed Administrative Violations	573
Poor performance	530
Structural changes	413
Failure to meet job requirements	172
Health	119
Other	334
Total	3,638

Source: *Mongolia This Week*. 2002, 14 May, p. 3.

216. At a May 2002 meeting of the Standing Committee on State Structure of the National Parliament to discuss dismissals from the civil service, the MPRP majority voted down a draft resolution calling for an end to the practice of dismissing public employees for political reasons. According to a news report,⁴⁴ “MPs from the MPRP said that dismissals on political grounds happen during the tenure of every government and that it cannot be prevented.” Many parliamentarians, however, recognize that frequent changes of career civil servants for political reasons are unhealthy.

217. The problems discussed in the foregoing paragraphs have hit key agencies such as MOFE especially hard. After the 2000 election, many civil servants in leadership positions throughout the ministry were changed. According to one estimate, approximately 20% of the ministry’s roughly 100 employees were changed, but not always on the basis of meritocratic hiring practices. In the Treasury Department, which employs one chief accountant and five accountants, none has more than 2 years of experience. Although they are well trained and knowledgeable, the department employs too few accountants, and quality control is weak. As a result, MOFE accounting capacities are limited and cost accounting is, for all practical purposes, nonexistent. In many instances, essential documentation does not occur.

218. It is recognized widely inside and outside the Government that the number of career civil servants dismissed for political reasons reflects ineffectiveness in the GSC, a situation that the

⁴⁴ *Mongolia This Week*. 2002, 14 May, p. 3.

PSMFL and the Civil Service Law have sought to remedy. The PSMFL permits portfolio ministers to dismiss secretaries of state (general managers) if they fail to implement performance agreements satisfactorily. The same law requires that ministers choose a new secretary of state from among three to five candidates whose names are supplied by the council.

219. To some extent, the problems of public personnel management in Mongolia are outcomes of the failure to enforce existing rules and regulations. From 1990–1995, before the Civil Service Law came into force, a period of comparative anarchy characterized personnel administration. The MPRP was stripped of its authority to make government personnel appointments through the party's nomenklatura system, but a new system had not yet been introduced. During these years, ministries made appointments on their own using their own criteria, and similar informal arrangements were probably in effect at the local level. Understandably, when the Democratic Coalition took power in 1996, it was keen to make a clean sweep of the bureaucracy. Equally understandably, when the MPRP regained power in 2000, it sought to replace the new Democratic Coalition civil service appointees with those who would be more responsive to its own agenda. Breaking out of this cycle will be difficult. The advent of a "Grand Coalition" encompassing the two major political blocs in 2004 may be the chance to break this destructive cycle.

4. Integrity in the Public Service

220. Mongolia's laws, rules, and regulations all strongly condemn corruption. The country's anticorruption regulatory regime includes the Anticorruption Law (1996), the Criminal Code, and the Civil Service Law. These prohibit engaging in bribery, undertaking official travel paid for by business entities, receiving gifts in exchange for performing official duties, embezzling state assets, operating a business, abusing authority, illegally influencing the actions of other officials, and "undertaking other activities aimed at acquiring illegal income or abusing one's position" (Law on Anticorruption 1996, Article 7). The Law on Government Service includes an expanded list of prohibited activities. Parliament also has a national anticorruption program.

221. A survey conducted in 1999 by J. E. Austin and Associates ranked Mongolia 131st out of 136 countries and indicated that corruption was considered a serious problem because it undermines competitiveness.⁴⁵ According to a 1999 UNDP-commissioned survey carried out by the Academy of Management, 48.8% of respondents thought that corruption was "everywhere" in Mongolia, and 44.2% thought that it was growing.⁴⁶ In a nationwide survey of 1,386 people, which was carried out by the MCCI in 2002, respondents listed corruption as Mongolia's fourth most serious social problem, after drunkenness, unemployment, and poverty (MCCI 2002, p. 26). More than half the respondents (53.4%) believed that corruption had increased either somewhat or sharply in the recent past. In the UNDP survey, respondents identified the most corrupt institutions as the CGA (73.5% of respondents), the banks (63.8%), the judiciary and the courts (48.8%), the education system (45.5%), the parliament (42.4%), and the GDNT (39.0%). Other surveys also have identified these agencies as among the most corrupt.

222. The MCCI and UNDP surveys addressed the perceived causes of corruption. The UNDP study found that the most important cause was "poor public accountability and too much power wielded by bureaucrats" (54.8%), followed by "unfair privatization practices" (49.8%), lack of

⁴⁵ Taylor, Nancy L., and L. Tur-Od. N.d. *Concept Paper for the UNDP Support Project Document to the National Program of Action to Combat Corruption*. Ulaanbaatar. Mongolia was not included in Transparency International's 2001 corruption perception index, nor was it included in the World Economic Forum's global competitiveness index.

⁴⁶ Academy of Management. 1999. *Public Perceptions and Attitudes Survey on Corruption in Mongolia*. Ulaanbaatar.

confidence in the existing anticorruption mechanisms (42.2%), declining social morality (41.2%), and declining living standards (36.3%). The MCCI study, however, identified other causes, the most significant of which were low official salaries (also identified by Quah, p. 17⁴⁷) and weak implementation of the law (Table 14). These data seem to support the view that corruption in Mongolia is mostly petty and that Mafia-type, or syndicated, corruption has not taken root there.

Table 14: Perceived Causes of Corruption, 2002

Cause	Percentage of Respondents
Low salaries	74.5
Weak implementation of the law	57.4
Unfairness	40.0
Strong centralization of power	35.0
Licensing arrangements	33.2
Weak ethics of civil servants	31.7
Low living standards	30.6
Low social morality	27.6
Poor monitoring of courts and the judiciary	22.0
Other	19.0 or fewer

Source: Mongolian Chamber of Commerce and Industry. 2002, p. 13.

223. The authorities have not established an independent organization to handle corruption. Rather, all state organizations are charged with this responsibility, and investigative powers are spread among several agencies, including MJHA, the prosecutor general's office, the police, and the NAO. Although they constitute only one of many organizations involved, the police have established an economic crimes division, for which they employ officers throughout the country.

224. Public servants rarely have been punished for corruption. In 1997, three MPs were convicted of corruption and imprisoned for taking bribes in connection with the approval of a casino tender. But officials in the CGA, one of the most corrupt departments according to the 1999 UNDP survey, reported that even though 43 people had been dismissed in 2001 after audits of their work, none had been dismissed on grounds of corruption.

225. Mongolia's anticorruption regime depends greatly on provisions of the 1996 Anticorruption Law, which requires senior officials upon taking office to file statements of assets and income. These statements are supposed to include details of the officials' own and their families' incomes, properties, securities, savings, animals, and other income generating assets. Certificates of registration of immovable property prepared by the real estate registration agency must be attached, and statements must be updated each February.

226. A peculiarity of these statements is that no central agency is responsible for collecting, maintaining, or checking them. Collection responsibilities are distributed among various agencies; for example, the Standing Committee on State Structure of the National Parliament collects statements for officials appointed by parliament, including the president, the prime minister, the chair and deputy chair of parliament, and MPs; the GCC, for judges at all levels; and the GSC, for officials appointed by the Government. Such arrangements make it unlikely that violations of the law will come to light, let alone be prosecuted. Moreover, statements are

⁴⁷ Quah, Jon. 1999. *Combating Corruption in Mongolia: Problems and Prospects*. Working Paper no. 22. National University of Singapore, Department of Political Science. Singapore.

neither made public nor audited although the Law on Anticorruption (Article 11 [3]) contains a weak provision for those who receive them to hand suspected false statements to “the appropriate body” (presumably the police) for investigation.

227. Government Resolution Number 58 (1999) laid down ethical norms for the administrative service, but to date parliament has not enacted codes of ethics for the political and the support services, which should be specified by law. The ethical norms for government employees laid down in the Civil Service Law (Article 13 [9]) include the requirement that they “not tolerate any illegal or unfair actions of officials.” Whistle-blowers are not protected, however.

228. The Anticorruption Law also specifies penalties for corruption, but these involve extremely modest fines ranging from MNT5,000–MNT40,000 (\$5–36) and do not provide for imprisonment or other penalties.

229. The Government has established the National Council on Anti-Corruption (NCAC), which is headed by the prime minister and provides, with support from the UNDP under the Good Governance for Human Security Program, mechanisms for addressing public grievances. Public confidence in key public institutions, including the GDNT and the CGA, however, continues to be low. In March 2003, the NCAC adopted an Action Plan on Anti-Corruption, which focuses on improving confidence in public institutions.

230. Mongolia’s transition to a market economy has outpaced the development of effective monitoring institutions to curb abuses such as corruption. Moreover, “[M]ost national institutions, from the legal system to the tax collection system to NGOs and civil society are not sufficiently robust to achieve the role they play in more mature market economies. There are serious deficiencies in public sector management systems, procedures and controls” (footnote 45, p. 5). Recommendations from business groups for practical reforms to eliminate opportunities for corruption and to improve transparency indicate that much remains to be done (Box 3).

Box 3: Recommendations for Reform in Mongolia

The United States-Mongolian Business Council recommends the following reforms:

- (i) require all ministries and parliament to publish draft legislation on the Open Government web site 30 days before parliament is to consider it;
- (ii) establish a system for recording judicial decisions on tax cases and making them publicly available;
- (iii) amend the tax laws and relevant implementing regulations to ensure that taxpayers’ due process rights (rights with respect to tax assessment and tax collection procedures) have been protected before seizure of taxpayer assets, including bank accounts maintained at Mongolian commercial banks, by the General Department of Taxation;
- (iv) require all inspectors (health, fire, tax, and so forth) to show a signed, numbered letter from their respective agencies that orders them to conduct each inspection; and
- (v) require that licenses and registrations be valid for the longest reasonable time for the activity and base renewal requirements only on safety, health, or environmental concerns.

Source: United State-Mongolian Business Council.

231. Mongolia’s current civil service system, introduced in 1995, is being institutionalized. The constitution and the Civil Service Law provide a legal framework for managing the civil service, but these need to be strengthened considerably. Violations of the principles of civil service

neutrality have been widespread, and many career civil servants have been dismissed. The GSC, which was created to protect the merit system, has been unable to discharge its duties effectively.

232. Nevertheless, civil service reform has been effective in some of the PSMFL pilot entities supported by ADB's Public Administration Reform Program. As a result of this program, merit-based recruitment practices have been in place for more than 2 years in some entities, and relations between agency heads and their subordinates are governed by performance contracts. The most successful cases are the NSO, the NAO, and the GDNT. As the PSMFL is implemented, these experiments will be extended to all other government agencies.

D. The Legal and Judicial System

233. An effective legal system operates according to the rule of law, includes an independent judiciary and well-trained and professional lawyers, and is transparent and predictable. The regulatory framework is transparent, user friendly, and effective; and to ensure its effectiveness, it relies to a great extent on consultation with those being regulated. Mongolia has some way to go before it achieves these objectives.

234. Until the adoption of the 1992 constitution, the legal system incorporated the substantive and the procedural doctrines of socialist law.⁴⁸ Observers generally believe that socialist legal systems could not attain the rule of law as understood in the context of European or common law systems, primarily because the judiciary did not act independently in the administration of justice but was subjugated to the political, or party, agenda.⁴⁹ The 1992 constitution established the essential framework for a rule of law system and was a key step in the political transition from socialism. Article 1(2) of the constitution states that the "supreme principles of the activities of the State shall be to give effect to democracy, justice, freedom, equality and national unity and respect of law."

235. The constitution clearly delineates the roles of and relationships among the branches of Government and establishes an independent judiciary. The Government has five branches: the president, the parliament, the prime minister and government, the judiciary, and the Constitutional Court. The separate Office of the Prosecutor General effectively adds a sixth branch, but this is a remnant of the socialist procuracy and arguably should fall under MJHA.

236. Judicial review of legislation is entrenched through the independent judiciary. The Supreme Court has the power to interpret legislation, but the Constitutional Court is the ultimate arbiter of constitutional questions, including the constitutionality of all laws and decrees. Donors and the Government are committed to improving Mongolia's legal and judicial system, and especially the effectiveness of the judiciary. The recent Strategic Plan for the Justice System of Mongolia, endorsed by parliament, denotes the first "fundamental value" of the system to be independence of the judiciary.⁵⁰ The largest international program, the Judicial Reform Program, is a multimillion dollar US Agency for International Development effort including components aimed at improving the efficiency of the court system and educating judges and lawyers. In May 2002, parliament introduced a new program to promote the effectiveness of the judicial system.

⁴⁸ Fenwick, Stewart. 2001. The Rule of Law in Mongolia: constitutional Court and Conspiratorial Parliament. *Asian Law* 1.

⁴⁹ Zweigert, K., and H. Kotz. 1987. *An Introduction to Comparative Law*. Oxford, U.K.: Clarendon Press. See also the previous footnote, Fenwick, p. 3).

⁵⁰ Ministry of Justice and Home Affairs and General Council of Court. 2000. Strategic Plan for the Justice System of Mongolia. Ulaanbaatar: Ministry of Justice and Home Affairs.

237. The effect of institutional, educational, and administrative reforms on the rule of law, and the impact on individuals, businesses, and local and foreign investors, can be assessed only over time. A 1998 Freedom House survey of political rights and civil liberties⁵¹ ranked Mongolia on a par with India, Philippines, and Thailand, with only Japan and the Republic of Korea ranking higher on a seven-point scale.⁵²

238. Indications are that the rule of law is becoming established at the highest level. During 1999–2000, the Government, parliament, and Constitutional Court were embroiled in a constitutional crisis that tested the functioning of the new legal framework and the attitudes of the legal and political leadership (footnote 48). The crisis centered on constitutional amendments altering the balance of power among president, parliament, and government. The dispute also tested the relation between Constitutional Court and parliament after the former rejected amendments made to the constitution by the latter. The issues at stake were an amendment allowing MPs to become ministers of state—an issue the Constitutional Court already had ruled against in 1996—and the Constitutional Court's belief that it should be consulted on all constitutional amendments, which had not happened in this instance.

239. Because legal processes were used to test high-level political and constitutional issues, the crisis can be seen as an indication that Mongolia is becoming familiar with its democratic institutions and processes. The crisis also shows, however, that political tensions and partisan attitudes influence the actions and legal interpretations of both parliament and the Constitutional Court. Thus, while appropriate rules and institutions are in place, Mongolia needs to exercise discipline and to mature in the use of its institutions. Until then, only a qualified assessment can be made of the state of the rule of law.

1. The Legal Framework

240. Members of the judiciary and of the Constitutional Court are protected by the constitution and the Law on the Constitutional Court from interference in their work. Officials are subject to criminal law without immunity, but legislators, the president, the prime minister, and Cabinet members have immunity from prosecution. The constitution outlines the basic protections for the legislature and the executive. Nature and extent of immunity generally are not specified although Article 42 refers to “personal” immunity in regard to members of the government. MPs can be prosecuted for crimes, but their arrest must be sanctioned first by parliament, which may suspend them while they are being prosecuted and terminates their membership if they are found guilty. The prosecutor general can be prosecuted only with the president's permission. No immunities are extended to provincial governors and lower-level officials.

241. All those in the Government, including politicians and civil servants, are subject to the 1996 Law on Anticorruption, as are the management and executives of NGOs. Punishment for corruption is regulated by the Criminal Code, and fines may be levied when officials fail to register required statements of assets and income.

⁵¹ Since 1978, Freedom House has conducted an annual comparative assessment of the state of political rights and civil liberties in 192 countries and 18 related and disputed territories. The Survey rates political rights and civil liberties separately on a seven-category scale, 1 representing the most free and 7 the least free. In 1998, Mongolia, India, Philippines and Thailand scored 2,3,F (“free”) on political rights, civil liberties and status. Japan scored 1,2,F and Korea 2,2,F.

⁵² Bruun, Ole, and others. 2001. *Mongolia: Transition from the Second to the Third World?* Report prepared for the Swedish International Development Cooperation Agency. Stockholm: Nordic Institute of Asian Studies.

242. The US State Department believes that petty corruption is a problem in Mongolia and that the judiciary is prone to corruption because of low salaries.⁵³ No published accounts of private citizens taking legal action against public officials are available; however, according to the Law on Administrative Responsibility and the Civil Code, citizens have the right to bring charges against politicians and government officials. Scope exists for independent prosecution of corruption insofar as the prosecutor general reports to the president, and the Office of the Prosecutor General is independent as established under the constitution. To date, however, the evidence suggests otherwise. The murder of the high-profile MP and anticorruption campaigner Zorig Sanjasuuren in 1998 remains unsolved. Zorig was murdered the day his nomination for the post of prime minister was approved, and investigations into the crime have failed to make substantial progress.

243. The constitution establishes many basic legal rights, including the right to a fair trial, the presumption of innocence, and the right of appeal. The constitution entrenches the right to receive "legal assistance," and the poor are provided with advocates free of charge and by a waiver of stamp duty fees when filing cases. For citizens with potential claims, support is provided by small-scale advocacy programs within NGOs such as the Mongolian Women's Lawyers Association and the National University. Although these programs allow individuals to obtain free legal advice, public interest advocacy is basically unknown.

244. Human rights and the proper functioning of the state are subject to scrutiny by the NHRC, a body established in February 2001 and given a broad jurisdiction, including the power to review laws and practices, to make recommendations on human rights issues, and to investigate complaints by individuals concerning breaches of human rights. The commission cannot hear cases but can submit claims to the courts when human rights have been violated (footnote 10). Although it commenced reporting by heavily criticizing the government's handling of pretrial detention, its reports are not readily accessible to outside observers such as local civil society organizations, and its operations are limited in scope and effectiveness because of budget constraints. During 2001, the commission received assistance from the United Nations High Commission for Human Rights to develop a funding strategy to ensure effective operation. The Government's inability to fund the commission is discouraging, and the commission should not have to rely on international funding in the long term.

245. No formal mechanism exists for public involvement in the legislative process. In fact, until recently the activities of parliamentary committees responsible for developing or reviewing draft laws were inaccessible to the public (footnote 53). The prime minister has established a Web site intended to allow public review of forthcoming legislation and to provide links to draft laws, but most Mongolians cannot access the Internet, and the site is not updated regularly.

246. NGOs have the right to prepare draft legislation for consideration by parliament. Their management is regulated by law, they are required to have boards of directors, and private citizens are actively involved in running them.⁵⁴ NGOs may carry out work on the Government's behalf if they wish, but a more commonplace example of interaction between government and nongovernment sectors is the presence of representatives of civil society on government boards and commissions.

⁵³ US State Department. 2000. *FY2001 Country Commercial Guide: Mongolia*. Washington, DC: US Foreign and Commercial Service.

⁵⁴ ADB. 1995. *Developing Mongolia's Legal Framework: A Needs Analysis*. Manila.

247. Citizens have the opportunity to contribute directly to the legal system by playing a formal role in the adjudicative process. The jury system as understood in the West does not exist in Mongolia, but the constitution enshrines the right of citizens' "representatives" to participate in court proceedings. According to the State Law on Courts, the role of such representatives includes the power to contribute to the collective decision of the court and to appeal the decision. In practice, this applies in criminal and civil matters and does not necessarily result in fairer or more transparent hearings, as the citizens' representatives do not play an active role during hearings (personal observation by the author). Mongolian courts have not departed fully from socialist era institutions insofar as the involvement of citizens' representatives was a feature of the prior court system (footnote 54).

248. Originally introduced in the 1926 constitution, representatives actually represented individuals in court; the State Law on Courts, however, introduced the adversarial system of trial. Thus a hybrid system now operates. Familiarity with the adversarial system is limited although litigants are represented by advocates, particularly in commercial matters.

249. Citizens have few alternatives to the formal court system, but in the case of consumer rights they can request dispute resolution free of charge from a consumer union. Citizens are somewhat aware of alternative methods of dispute resolution, but in practice these are restricted to arbitration arising from large commercial disagreements. The MCCI houses the Arbitration Court, which uses a panel of arbitrators. Figures from the mid-1990s indicate that the court has taken on about 15 arbitrations per year. It is responsible only for disputes between Mongolian and foreign entities (footnote 54).

2. Regulatory Regimes

250. The constitution establishes the authority of the prime minister and ministers to issue what amounts to subordinate legislation, that is, resolutions and ordinances, but the constitution provides no guidance on the ambit of regulations issued by the Government. Individual ministries administer the laws for which they are responsible and any relevant regulations, but faults in legislative drafting often lead to a lack of clarity about administrative responsibility (footnote 54). For example, a law referring to the need for registration may not set out the procedure for registering. The Cabinet approves implementing regulations, and any consequential legislative interpretations are submitted to the relevant parliamentary committees for review (footnote 53).

251. No legal information system or register of laws and regulations exists, and a high level of secrecy generally attends the legislative process (footnote 53, p. 20); thus scrutiny of policy options and regulatory procedures under consideration is prevented.

252. Although government regulations are not always consistent, they are reasonably clear and once passed are accessible in print (in the Legal Information Bulletin and in newspapers). The sheer volume of legislative and regulatory activity that has accompanied transition, however, suggests that the transparency of the regulatory system should be questioned. An upcoming World Bank project will help remedy this through the establishment of a center for legal and judicial research.⁵⁵ ADB has provided training under its DIAL project⁵⁶ to familiarize lawyers with researching law on the Internet. This project will be of greater assistance when Mongolia's laws are collated thoroughly in electronic form.

⁵⁵ World Bank. 2001. *Initiatives in Legal and Judicial Reform*. Washington, DC.

⁵⁶ ADB. 1998. *Regional Technical Assistance to Mongolia for Development of the Internet for Asian Law*. Manila.

253. In the early years after transition, few regulatory mechanisms were put in place. The 1991 Banking Law, for instance, did not introduce a banking regulatory system. Whereas the central bank was given authority as a regulator, a transparent system to ensure consistency of policies and procedures was not established (footnote 54). The collapse of two state banks after the 1997 Asian economic crisis inspired reform of central bank functions. Thus, in 1998 the Banking Law was amended to increase minimum capital requirements, to empower the central bank to promote better bank management and financial disclosure, and to impose a legal basis for bank audit standards. The authorities also took steps to improve prudential regulation.⁵⁷

254. The SEC was established in 1994 (footnote 57, p. 478). The insurance industry is regulated by the Insurance Regulatory Agency,⁵⁸ but no reports about its efficiency or capacity are available. The Law Prohibiting Unfair Competition establishes guidelines for government intervention to ensure fair competition and to regulate natural monopolies and makes the courts responsible for dispute settlement and legal remedy (footnote 57, p. 480), but no independent agency monitors market activity. Press ownership is being liberalized. A 1999 law effectively banned state ownership of media assets although progress with implementing a new ownership regime has been slow (footnote 57, p. 469). A press institute monitors press standards and independence.

255. The GDNT implements and executes tax law. The courts heard 1,672 taxation disputes during 1998–2001 and recently held talks with the Supreme Court regarding the need for the court to interpret tax laws. The court intends to produce tax interpretations in areas including the definition of *taxpayer*, the imposition of taxes on immovable property, and the procedures and rules for taxing investment.

256. Prices for utilities and public services are unregulated. The Price Consensus Commission, which had set prices informally for certain basic commodities, was abolished in 1996. Starting in 1997, when price controls were removed completely, the Government used commodity purchasing decisions and other informal means to influence market prices. The Government also continued to set power and heat tariffs but raised them significantly and established an automatic increase mechanism to offset the effects of inflation and currency fluctuations (footnote 57, p. 478). Thus, by mid-1997 most prices, even those not formally market determined, were related to costs much more closely than before.⁵⁹

257. About half the population is supplied by electricity and heat from the centralized energy system, a state-owned monopoly. The Law on Energy, adopted in February 2001, introduced a legal framework for restructuring the sector and commercializing energy generation, transmission, distribution, and supply systems. The framework also regulates relations among generators, suppliers, and consumers; regulates the licensure and operation of energy providers; and establishes the Energy Regulatory Agency. The agency is responsible for setting energy prices and tariffs based on consumer purchasing power, but no information about its effectiveness is available.⁶⁰ The Government plans to continue privatizing transportation services, establishing the legal environment for such services, increasing the share of private

⁵⁷ Karatnycky A., and others. 2000. *Nations in Transit, 1999–2000: Civil Society, Democracy, and Markets in East Central Europe and the Newly Independent States – Mongolia Country Report*. Washington, DC: Freedom House.

⁵⁸ World Bank. 2000. *Mongolia: Legal Needs Assessment Report*. Ulaanbaatar.

⁵⁹ Nixon, Frederick, and Bernard Walters. 2000. *The Transition to a Market Economy: Mongolia 1990–1998. International Journal of Economic Development* 2(1).

⁶⁰ Government of Mongolia. 2001. *Interim Poverty Reduction Strategy Paper*. Ulaanbaatar.

sector services, and encouraging competitiveness (footnote 60, p. 28). Privatization of other SOEs, such as the Trade and Development Bank, Agricultural Bank, and the State Department Store, has been carried out.

258. In 1998, after several years of debate, parliament approved the Law on Environmental Assessment, which provides for the establishment of the Ministry of Environment and the conduct of environmental impact assessments for new and existing enterprises, services, buildings, and other projects using natural resources. The Government believes that the newness of this concept has led to difficulties in implementing the law. For example, remaining SOEs are carrying out few environmental assessments because of funding shortages, and the legal framework for environmental assessments is weak. Amendments to this law are being considered (footnote 60).

259. Accountability for government actions is limited. Information about regulatory actions and the activities of public agencies is provided only to relevant ministries and the government. Because annual reports and financial accounts are unpunished, they therefore are usually unavailable to the public and to civil society.

260. In December 2002, parliament passed the Law on Administrative Procedure, which provides a legal basis for individuals and legal entities complaining that certain administrative acts are illegal. The law allows a review of government decisions, and authorities have discussed the possibility of setting up an ombudsman's office.

261. Care needs to be exercised when addressing administrative law in the context of Mongolia's legal system. The 1992 Law on Administrative Responsibility retains a strong socialist flavor by including provisions on a range of issues not considered administrative in Western legal systems. For example, the legislation contains provisions for conducting "administrative hearings" that may be appealed to the courts and for the imposition of penalties by officials. Although the constitution provides for the establishment of administrative courts, no system of administrative review has been established to date. Nevertheless, citizens may, under the 1995 Civil Code, take administrative matters to the general courts, and the NAO is reported to have undertaken thorough investigations of alleged malfeasance by public officials (footnote 57, p. 473; footnote 53, p. 22). The recently approved World Bank legal and judicial reform project (footnote 55) will establish a nationwide court system to handle cases related to the infringement of citizens' rights by any agency or government official. The intent is to empower the new institution to handle proceedings and to issue mandatory decisions on administrative acts. Care will be needed to ensure that the jurisdiction of the proposed court is not defined too narrowly. To gain the confidence of foreign businesses and investors, the rights to seek redress under administrative law should not be restricted to Mongolian nationals. Mongolia continues to develop laws and regulations at a steady pace although not as rapidly as during the early years of transition. The Government recently resolved to decrease the volume of regulations passed and to address their lack of consistency. The volume of legislation does not, by itself, necessarily impede efficient and effective administration. More of a hindrance is lack of transparency, which results from the absence both of reliable and up-to-date information about regulations and of a formal process for challenging administrative decisions.

3. Property Rights

262. After the transition, authorities introduced property rights associated with a market system. The 1995 Civil Code, amended in 2001, details the nature and the operation of basic contractual relations, which are based on a Continental European division of movable and

immovable property. The code also distinguishes between possession and ownership rights. Mongolia's situation is unusual, however, in that the country had no experience with modern commercial rights and relations before the socialist era. Until transition, the bulk of judicial work was criminal, but in 1994 two-thirds of claims were estimated to be civil—and largely commercial. Clearly, this change has important implications regarding the quality of decision-making (footnote 54). The lack of formal use of precedent means that judges have no body of law or practice to turn to, aside from the principles set out in the Civil Code, when determining property-related cases. The general courts handle such matters regularly, commonly hearing, for instance, disputes about possession of apartments, or small commercial claims.

263. Although a framework exists for the full range of property rights, all land, whether urban or rural, remains in state hands. Until 2002, the Land Law had no implementing provision that actually allocated private rights to land.⁶¹ But in May and June 2002, parliament passed two new land laws including provisions for private ownership of land. Long-term and transferable rights to possess land now exist although evidently only use rights can be transferred. In practice, and certainly in the minds of Mongolians, urban property is bought and sold regularly, much as in any market system. One major difference is that the use of mortgages for property transactions is limited because banks charge prohibitive interest rates and can foreclose on and seize land as an asset in the event of nonpayment of mortgage. In urban areas, parcels of land are being fenced off progressively and rapidly for private use. (the Land Law provides for a maximum area of 500 square meters (footnote 61, p. 20). The Land Law was changed in early 2002 to introduce long-term possessory tenure over land, partly to increase certainty for herders, and Mongolians now have the right to hold 99-year leases. The Civil Code made local state authorities in which specific parcels of property exist responsible for registering land (footnote 61, Annex 2–3). The Land Law requires state authorities to maintain land records, including information about possession, use, and area; and records must include a map. But all told, these provisions do not amount to a modern titling system, and provisions for registration and for land management are scanty.

264. Mongolia possesses the broad legal and institutional framework of a rule of law system. The lack of an administrative law system supporting judicial review of government actions has been previously noted by observers as a major weakness. With passage of the Code of Administrative Procedure in December 2002, there has been a substantial strengthening of administrative law.

265. Mongolia's experience with deregulation has followed a rather ad hoc path, and the regulatory environment is not entirely healthy. The range of regulatory bodies is limited, and no coherent mechanism for redress is available. Overall responsibility for regulatory action seems lacking, and the Government may generally be unable to review and to regulate corporate activities, or pricing and market activities.

266. Transparency of legislative and regulatory activities is limited but improving. The authorities are gaining experience with publishing draft laws, and government regulations are being made available publicly. Yet drafting suffers from a lack of thoroughness, and accessibility to laws and regulations is inconsistent. International projects are assisting in this area, and the Government has acknowledged the need to address the extent of legal and regulatory changes, which will be a major task. The public is reasonably well served by an active civil society, but the

⁶¹ Hanstad, Tim, and Jennifer Duncan. 2001. *Land Reform in Mongolia: Observations and Recommendations*. Report on Foreign Aid and Development no. 109. Seattle: Rural Development Institute.

lack of transparency in agency functioning and reporting leaves a gap in accountability. Corruption is being addressed, but experience with prosecutions to date is not consistently encouraging.

267. These areas of difficulty are of concern, for they affect knowledge of and accessibility to the law, as well as transparency of the law and of government activity. These specific shortcomings can be addressed, however, by improved resources and training aimed at increasing institutional capacity. Key areas requiring improvement are the capacities for drafting and developing laws and regulations in ministries and parliament, and the development of a clear understanding of the functions of both administrative and regulatory agencies. Other means of improving accessibility and transparency that require support are the development of comprehensive legal and regulatory collections that can be accessed easily by the public, civil society, and legal professions in private and in public practices. Finally, a legal education should help legal professionals perform effectively in the post-transition system. The level of remedial training provided to current judges and lawyers must be matched as soon as possible by improvements in tertiary legal schools to ensure that young professions gain appropriate knowledge and skills.

4. The Judicial System

a. Organization of the Court System

268. Working conditions for the judiciary in the mid-1990s were assessed as poor generally, especially in the regions outside of Ulaanbaatar (footnote 54). Working conditions in Ulaanbaatar now seem adequate, and a renovated building serves the Capital City Court. Regional courts are less adequate, some lacking office equipment and modern administrative systems although international projects have included court administration improvement. Courts are underserved with information technology, which only the Khairkhan District (Ulaanbaatar and Songino) courts use. This situation reflects the poor standard of information technology support for the legal system as a whole. Reform efforts are under way through international projects.

269. An ADB project has provided training on the use of the Internet for legal research. Internet access and connection speeds tend to be inadequate, however. Public and private databases of Mongolian laws and regulations do exist but are not comprehensive. The use of precedent is limited because of the primacy of the civil law system and sources of local jurisprudence, beyond basic restatements of legislation and code law published by local lawyers and academics, are nearly nonexistent. German funding recently supported publication of the decisions of the Constitutional Court; but the publishing of a comprehensive set of decisions will take some time. Decisions of the Constitutional Court are published in the Government Gazette and in newspapers (footnote 54).

b. Budget, Finances, and Accountability

270. According to the State Law on Courts, MJHA holds administrative authority for the courts and therefore is responsible for organizing, financing, and supporting the judiciary. The constitution seeks to guarantee the judiciary's economic independence by requiring that the state provide for court financing from the budget. The responsibilities of the GCC, established to ensure the independence of the judiciary, are set out in the State Law on Courts. The council can advise parliament on establishing or closing courts, make proposals on the size and the

remuneration of the judiciary, draft budgets for court administration, and propose candidates for judicial office to the president.

271. An official manual on judicial policy and procedure for judges (footnote 18) describes the minister of justice and home affairs as the chair of the council. This does not seem a legal requirement, for under the State Law on Courts the minister is an ex officio member and the council must vote to appoint a chair. Additional confusion arises because although the law describes the council as “collectively led,” the chair presides, decides when to hold meetings, and so on.

272. The State Law on Courts authorizes the GCC to prepare for the judiciary a draft budget to be submitted directly to parliament, and the law suggests that parliament must approve it. Between 1993 and 1995, the judicial budget quadrupled, from around MNT114 million (\$250,000) a year to just under MNT 456 million (\$1 million) a year (footnote 54). The council also supervises the Judicial Disciplinary Committee, which is responsible for dealing with members of the judiciary who have committed moral or ethical breaches (but not criminal acts) while discharging their duties. The council’s figures on turnover among judges between 1993 and 2001 do not indicate whether discipline is a significant issue: although dismissals seem to have increased recently. The number of judges removed by the Judicial Professional Committee for failing to achieve a “satisfactory” performance rating increased from one in 1998 to seven in 2001. In 2001, approximately 3.75% of the Mongolian judiciary was dismissed or removed from office.

273. The State Law on Courts requires all judges to refrain from political activity during their terms of office. Correspondingly, the constitution requires that judicial duties be independent and free from interference by president, prime minister, and MPs. The GCC is responsible for judicial pay and conditions, and judicial salaries can be set only by parliament. In late 2001, parliament approved a new salary scale for judges (Resolution Number 80, 8 November 2001). Approximate basic salaries range from MNT83,580 (\$70) per month for a judge at the regional level, to MNT90,744 (\$76) per month for a provincial court judge, to MNT101,490 (\$85) per month for a Supreme Court judge. The highest basic judicial salary available, for Supreme Court judges, is approximately MNT 117,012 (\$98) per month.

274. In practice, judicial salaries are higher because of a system of supplements awarded under an earlier parliamentary resolution (Resolution Number 48, 7 June 2001). Supplements are calculated as percentages of judges’ incomes, which depend on judiciary level. The chief justice of the Supreme Court earns a 70% supplement (which increases total salary to approximately MNT197,010 (\$165) per month) whereas Supreme Court justices and district court judges earn a 66% supplement. The lowest total judicial salary totals approximately MNT128,952 (\$108) per month. By comparison, the new salary scale for prosecutors ranges from MNT82,386 (\$69) per month, to MNT114,624 (\$96) per month for the general prosecutor. Although these salaries are generally in line with civil service salaries, they compare unfavorably with private sector legal and professional salaries. Mongolian professionals engaged by the United Nations and lawyers engaged by international projects can command salaries on the order of MNT358,200–716,400 (\$300–\$600) per month.

275. All legal professionals in Mongolia are served poorly by the legal education system. In particular, many if not most judges were educated and trained before the transition. Accordingly, an in-depth understanding of the legal system over which they preside cannot be assumed. In the last 10 years, many projects have provided remedial training in commercial law and legal and judicial procedure, and many such projects are ongoing. In addition, a judges’ manual

(General Council of Courts 1998) published with international assistance provides basic guidance on all aspects of judicial responsibilities and on the new legislation.

276. The constitution sets out basic qualifications for appointment to the judiciary. Candidates for appointment to the Supreme Court must be over 35 years old and have a higher legal education and at least 10 years of professional experience; candidates for lower courts must be at least 25 years old and have a higher legal education and at least 3 years of legal experience. Over time, of course, the proportion of judiciary trained in post-transition law will increase. Despite the constitutional requirement for a higher legal education, a recent report (footnote 58) revealed that not a single judge held a master's level or higher qualification.

c. Efficiency and Effectiveness

277. The consistent government and donor emphasis on judicial reform and training stems from the need to help the judiciary evolve from its socialist era role to independent arbiter. Appropriately assessing the functioning of the judiciary is difficult because of the paucity of data, and the task is complicated by the need for a qualitative assessment of both the attitudes of members of the judiciary and their understanding of their roles. Willingness of the Government and of legal professionals to change may not necessarily be matched by a thorough comprehension of the changes required. For example, a 1999 strategic planning conference revealed that justice officials have a narrow view of the meaning of judicial independence and are not aware of the many aspects of judicial administration needed to make a court system accountable. The thinking of legal professionals is influenced by the belief that writing a law automatically creates the desired change. This misconception limits their understanding of the roles of interpretation and discretion.⁶²

278. According to information provided to the World Bank (footnote 55), in 1998 the courts handled 10,500 criminal cases. Figures recently released by the Supreme Court indicate that 11,080 criminal cases were filed in 2001, a decrease of just under 4% compared with the previous year, when judgments were issued in 9,880 cases. In 2001, 33,522 civil claims were filed, an increase of 7% over the previous year, and judgments were issued in 23,252 cases. The ratio of civil cases to criminal cases has remained approximately 2:1 (footnote 54). If the current number of judges (346) is used as a rough guide, each judge presides over an average of 96 cases annually. Panels of three judges frequently hear cases at first instance, however; and in fact the World Bank (footnote 55) quotes a figure of 705 cases per judge per year, which would suggest that the court system is under strain. Informal assessment indicates the same likelihood; for example, a first-instance murder trial observed by the author took only 90 minutes to try, including 20 minutes for deliberation by the three-member judicial panel and final sentencing.

279. Fairly few legal provisions govern the handling of cases by the courts. The previous Criminal Procedure Law and Civil Procedure Law held that investigations into cases should be concluded within 30 days, with no time limits set for other procedures. In practice, civil cases, such as landlord and tenant disputes, usually are disposed of within 2 months.

280. The Court Decision Enforcement Agency operates under MJHA, and a new law came into effect in September 2002 on the agency's role and function.⁶³ The agency's mandate cuts

⁶² Weller, Steve, and others. N.d. *Towards an Independent Judicial System in a Democratic Mongolia*. Report by the National Center for State Courts. US Agency for International Development.

⁶³ Rule of Law Newsletter. 2002, 15 February.

across criminal and civil law, for to date no system had been put in place for voluntary enforcement of civil claims or for enforcement by the parties themselves (footnote 54). The agency reported its effectiveness in enforcing court orders in 2001 at 52%, a 10% improvement over 2000. (However, in 1995 the bailiffs assessed their effectiveness at approximately 65% [footnote 54]).

281. The agency's broad mandate is evidenced by its report on its own operations in 2001, which included production by prison labor (38%–65% of the prison population) of approximately \$50,000 worth of goods for sale, the proceeds of which do not go to the prisoners but do help reduce their sentences (footnote 53). According to the Rule of Law Newsletter (footnote 63), the value of court orders enforced in 2001 was approximately MNT363 million (\$304,020), with a total of more than MNT2.75 billion (\$2.3 billion) orders in the process of being enforced. Under the new law on enforcement of judgments, bailiffs are to be offered incentives based on a percentage of the value of the judgment amount. This system will need to be closely monitored to prevent abuse.

282. Observers from both within Mongolia and abroad consistently have criticized the operation of the police force and prisons (footnotes 10 and 54).⁶⁴ The general perception is that the police abuse their powers. They are poorly paid by civil service standards (salaries for junior police officers are approximately MNT 33,000 (\$28) per month and the service seems overstuffed. Police routinely engage in low-level corruption, for example, by extorting "fines" for minor breaches of traffic laws. It seems that working relations between police and prosecutors are good but that prosecutors misunderstand the appropriate exercise of their own powers. The most common excess is a notorious overuse of pretrial detention. The previous Criminal Procedure Law allowed detention for up to 24 months (footnote 63, p. 31), and prosecutors extend detention times almost as a matter of course to give the police time to investigate. Prosecutors themselves perceive that this leads to breaches of human rights but believe that the only solution is to amend the law to decrease the time allowable for extending pretrial detention. A more effective solution would be to exercise discretion in favor of suspects or to introduce a bail system.

283. Prison conditions are poor by international standards. Prisoners are alleged to have been beaten and to have died from disease and starvation, and the rights of those detained before trial are restricted (footnote 52, p. 13; and footnote 53). Reports reveal other evidence of a poor-quality criminal justice system, including the signing of blank search and arrest warrants (footnote 63, p. 31). Because prison sentences were handed down in more than 75% of criminal trials in 2001, Mongolia is one of five Asian countries with the largest prison populations per capita (footnote 63, p. 6). As of January 2002, 6,642 prisoners were being held in Mongolian jails (footnote 63).

d. Overall Assessment

284. A comprehensive assessment of the extent to which Mongolia has achieved the rule of law can emerge only over time. The overall framework is in place, with future work on administrative law likely to improve the quality of the legal structure. The concerns that remain reflect primarily a degree of immaturity in the workings of the new system.

⁶⁴ The National Human Rights Commission's first report to the Government of Mongolia was about prison conditions and pretrial detention.

285. Troubling anomalies are evident in both the legal framework and the actions of legal professionals. Despite these anomalies, which seem to derive from the influence of the former socialist legal system, a wide-ranging legal and judicial reform program is under way. Government and the legislature are working to revise laws and to introduce new programs optimizing the legal framework and ensuring that the judiciary, in particular, is able to enforce that framework effectively. The judicial system is under strain, but the civil law system is functioning reasonably well, and authorities have tried to strengthen enforcement mechanisms. The GCC seems to be maintaining the quality of the judiciary adequately. Serious concerns remain about the state of the entire criminal law system, but these evidently are being acknowledged.

286. The main issue is how to support qualitative improvements in the legal and judicial framework and in legal professionals' understanding of their respective roles within it. Existing and forthcoming legal education programs will contribute to an improved legal environment, but there may be scope for alternative efforts. Support needs to be provided to ensure that reforms to continuing legal education are deepened to include tertiary training.

287. No independent forum for reviewing central issues of legal and constitutional policy seems to exist. The Constitutional Court clearly has such a function, but the 2000 constitutional crisis demonstrated that neither the Constitutional Court nor parliament can obtain a clear mandate in relation to advice on reform. MJHA may prefer to carry out reforms but has no transparent, accessible system for undertaking them. Thus, creation of a central, representative, legal reform body making recommendations on important unresolved issues may be justified.

288. Improved coordination among Mongolian ministries and agencies, among donors, and among the Government and donors would contribute to the coherence of reforms. Coordination could be achieved by a legal reform body or by procedures agreed to by reformers. Coordination, and quality of reform efforts generally, would be improved by an enhanced understanding of the effectiveness of institutions. There is no shortage of reform programs, government strategies, or donor recommendations, but useful data to support reform seem in short supply. Qualitative and quantitative studies are needed to investigate the overall effectiveness of the judiciary and court operations. Detailed studies of access to justice would be valuable, as would a comprehensive trial observation program. To the extent possible in a civil law system, the reporting and publishing of key judgments should occur as quickly as possible, for such information provides crucial guidance to the entire legal system.

289. A further means of enhancing coherence and coordination would be to support the Government's new approach to lightening the regulatory burden. Harmonization and amendment of existing laws are linked conceptually, and perhaps practically, to the idea of a legal reform program. International support will continue to be a core factor in reform, and to a degree solutions will be based on international legal models. The effectiveness of international assistance is hampered currently by a language barrier and by the almost complete absence of a body of professionally translated national laws, a situation complicated by Mongolia's difficulties in deciding which language or languages to choose for this task. Mongolia would greatly benefit from dialogue with the international community on legal issues.

E. Civil Society and the Development of NGOs

290. The state of civil society in a country is a measure of the extent to which the Government respects human rights. A vibrant civil society is supportive of participative political processes and high levels of accountability. Healthy NGOs enable the government to co-produce public

services and to achieve more efficient service delivery. NGO participation in public policymaking also facilitates the search for practical solutions to development problems. Mongolia's experience with both civil society and effective NGOs is rather brief.

291. Since the promulgation in 1992 of its new democratic constitution, which provides for significant political freedom, regular elections, and alternation of power between genuinely different political groupings, Freedom House (footnote 52) has characterized Mongolia as a "free" country. In recent years, however, political developments have been marked more by stagnation than by transformation, and according to Carothers,⁶⁵ the country falls in the category of "feckless democracies," in which "democracy remains shallow and troubled." The judiciary remains the weakest branch of government, and in terms of prestige falls far below the legislative and the executive branches.

292. A distinct characteristic of government is its tendency toward centralization. Based on a 2001 national human rights survey, almost a quarter of print media, and most television and radio stations remain government-owned and controlled. After the 2000 parliamentary elections, the Government reviewed newspapers' activities, and MJHA closed down three newspapers without a court decision.⁶⁶

293. Civil society and especially citizen-initiated NGOs are the engines for consolidating democratic culture that underpin and ensure the effectiveness of formal democratic institutions. The concepts of civil society and NGOs have been omitted from academic and political debates, and the country still is struggling to digest the formal institutional basics of democratization. Thus, the private nonprofit sector has been left on its own to define the concept and role of civil society and to realize its aspirations for better governance, transparency, justice, and accountability.

1. Background

294. Mongolian NGOs are associated historically with the so-called "organizations of the public" that existed under the communist regime and that compelled mass membership of groups such as children, youth, the elderly, and women. There were other "official" NGOs, such as trade unions, the Red Cross, and "knowledge distribution associations." The Government established official NGOs by decree, appointed their leadership, instructed and controlled their activities, and fully funded them. They had a strictly vertical national structure, with branches in each province and continuing down to almost each factory, organization, and cooperative. Internally, they had a vigorous, multi-layered structure of governing, executive, and control bodies. The government at all levels considered NGOs an extension of Government/Party, and the official NGOs themselves saw their mission as serving the Government and working under its guidance.

295. Truly citizen-initiated NGOs began emerging in 1992 and, understandably, could not avoid the influence of the official NGO culture as manifested in their own membership, structure, activities, and management, or in government expectations. Nonetheless, in the last decade, citizen-initiated NGOs have had a significant positive effect⁶⁷ and introduced the concept of

⁶⁵ Carothers, Thomas. 2002. The End of the Transition Paradigm. *Journal of Democracy* Vol. 13:10.

⁶⁶ See the Newspaper Association's Web site at <http://www.owc.org.mn>.

⁶⁷ Under the influence of citizen-initiated NGOs, old mass organizations began emulating organizations of a voluntary civic nature. The first citizen-initiated NGOs to emerge were women's groups. Under their influence and competition, the Mongolian Women's Federation started its transformation in the early 1990s. It managed to adjust to the new environment so successfully that its former patron, the currently ruling MPRP, withdrew patronage.

independent citizen organizations even before Mongolia adopted its Law on NGOs.

296. Old mass organizations such as the Women's Federation evolved into organizations quite distinct from citizen-initiated NGOs: they inherited assets such as youth and children's centers and trade union halls, which made them more economically independent than the citizen-initiated NGOs, who had only ideas, energy and commitment.

297. Understandably, the NGOs of the early 1990s had strong affiliations with political parties, but they quickly declared neutrality. The public and the Government, and especially local governments, still perceive NGOs as politically affiliated.

2. Number and Types of NGOs

298. In 2002, Mongolia had approximately 2,500 NGOs. According to UNDP (1997),⁶⁸ MJHA, and World Bank data, before the adoption of the Law on NGOs, Mongolia had 580 NGOs. This number quadrupled over the next 5 years, rising to 1,358 in 1999, 1,750 in 2000, and 2,170 in 2001.

299. NGOs are categorized officially either as public benefit organizations,⁶⁹ which are exempt from taxes on earned income, or as mutual benefit organizations, which are not.

300. Most NGO activities are in the fields of health, the arts, culture, sports, education and science, humanitarian activities, international cooperation and friendship, and legal services, as well as in such new areas as human rights, the environment, information and research, business, social and regional development, and NGO support services. NGOs are more involved in advocacy, policy issues, and public education, where they are more efficient, than in service delivery. Activities such as community organizing, grant making, research and information exchange, and networking are "notoriously neglected" (footnote 70), but there is evidence that NGOs are becoming more active on these fronts.

301. MJHA registration information indicates that in addition to NGOs, Mongolia has 999 media organizations, 419 apartment owners' associations, 46 legal bureaus, and 168 religious organizations. As of the end of 2001, 19 political parties were registered with the Supreme Court.

3. Geographic Distribution and Membership

302. As in other countries, NGOs are concentrated in urban areas, with 90% located in Ulaanbaatar. Almost half of NGOs, notably former government agencies, have branches; some have them in every province, and a few reach out to even lower administrative units. Notwithstanding the outreach of NGOs, integration with beneficiaries is not guaranteed. Criticism of many NGOs' top-down approach and "disappointingly poor" beneficiary outreach is common (footnote 70).

303. Data on NGO membership are unavailable. The largest NGO is probably the Red Cross, which has 245,000 members in Mongolia. Generally, membership in NGOs is voluntary; membership in some,⁷⁰ however, is compulsory.

⁶⁸ UNDP. 1997. *Mongolian NGO Capacity Survey to Support Human Development*. New York.

⁶⁹ Includes foundations and accounts for at least 80% of NGOs.

⁷⁰ For example, the Attorney's Union, the Notaries' Bureau, and the Certified Auditor's Union

4. Financing, Economic Activities, and Taxes

304. Greater than 90% of financial support for NGOs (less for rural NGOs) comes in the form of project funding from international and foreign donors. Membership fees and corporate contributions are important for urban NGOs; individual donations and business income are more important for rural NGOs. When financial sustainability is a challenge, NGOs should be able to obtain government funding, which is a common practice even in wealthy Western democracies. Despite the extensive talk since 1995 about contracting out certain public services to NGOs, government policies for funding voluntary groups are nonexistent, as is actual government funding. A diversity of funding sources is equally important. More than 25% of NGOs in Ulaanbaatar and 15% in rural areas have more than two funding sources.

305. NGOs generate tax-exempt income. Corporate donations are tax exempt but no longer tax deductible, leaving the nonprofit sector without this important form of leverage. Hence, few NGOs enjoy contributions from private businesses. There is a general assumption that nonprofit status prohibits profits, and the notion is reinforced by tax practices. Although NGOs do not pay income taxes, some have complained of harassment by tax inspectors, mainly as a result of a lack of understanding of the sector. In their quarterly reports to tax departments, NGOs fill out the same tax forms as businesses do.

5. International NGOs

306. Many international NGOs in Mongolia give grants to national NGOs and, according to a 2001 UNDP survey, assess the capacities of national NGOs as good. International NGOs are positioned to contribute to Mongolia's development by sharing knowledge, engaging in participative design of development approaches, and providing practical, hands-on experience. Their function as role models for institutional and project management is crucial. Initial steps have been taken to facilitate partnerships between national and international NGOs to address issues such as organizing within a community and working with beneficiaries.

6. Regulatory Framework

307. The legal framework for civil society organizations currently consists of the Law on NGOs; laws on trade unions, political parties, religious organizations, and the media; and more than 80 specific laws on the Red Cross, consumer and professional associations, and so on. International human rights and nonprofit law experts have assessed the Law on NGOs as progressive legislation that meets international standards designed to promote the development of NGOs. The law defines an NGO as "independent from the state, self-governing, not-for-profit and established voluntarily." Citizens can form NGOs to engage in any lawful purpose. By creating a legally registered NGO, founders obtain limited liability. Furthermore, an NGO can exist in perpetuity and be eligible for tax exemption on membership fees, donations, and earned income.

308. Some NGO's advocate amending the law, in order to clarify non-profit status, and to add emphasis to the right of access to government information. Both concerns, which probably could be dealt without amending the law, require improving law enforcement; clarifying public administration laws, policies, and government agency procedures; and educating public officials about the nature and the role of NGOs and civil society.

309. Other issues arising from the Law on NGOs are (i) the requirement for centralized registration with MJHA,⁷¹ (ii) an implicit limitation on economic activities other than those related to the NGO's mission, and (iii) corporations' inability to deduct contributions from their taxes. The latter two issues affect the financial sustainability of NGOs.

310. MJHA maintains a database on NGOs, but information is accessible only upon official request. This lack of information sharing extends to exchange among government agencies; for example, tax departments still have on their NGO lists newspapers and journals removed from the NGO registry some years ago.

7. Surveys

311. No comprehensive study covering the origins and development, current status and future trends, activities, strengths and weaknesses, and role in strengthening the rule of law has been undertaken on Mongolian NGOs. The need for such a study has been emphasized by the Government, donors, and NGOs themselves.

312. A 1997 UNDP survey of the capacity of NGOs to support sustainable human development studied their beneficiary and poverty outreach, institutionalization, strategies and planning, and service delivery; and concluded that NGOs' capacities are "as yet too limited to allow for any major bilateral or multilateral aid disbursements to be channeled through the NGO sector at any time in the near future." The survey warned the Government of the danger of relying too heavily on NGOs for public service delivery and expressed high expectations of the Government's "extensive decentralization." The study recommended establishing an NGO facilitating body and a government focal point, exposing NGO staff to other countries with developed civil societies, initiating NGO-led baseline studies of target groups, and establishing a partnership fund to link international and Mongolian NGOs. None of these recommendations was implemented, and the issues remain.

313. A 2000 UNDP-sponsored survey of projects implemented by NGOs in the social sector provides detailed data on 80 NGOs and notes that NGOs continue to face major challenges, including unclear missions and goals, weak bookkeeping and accounting, and insufficient human resources. The survey describes the current role of NGOs as facilitation (information distribution, education, and research) rather than implementation and suggests that the Government pursue transfer of its service delivery functions to NGOs aggressively and develop an open and transparent bidding process.

314. A 2001 World Bank review of civil society in Mongolia focused on the environment enabling relations between the Government and civil service organizations. Characterizing that collaboration as "fairly active . . . in poverty reduction and the social sector," the review cites needs to improve consultative mechanisms for dialogue on policy issues as well as to increase inclusion across political parties and other civil society organizations. One of the major frustrations of NGOs, government agencies, and donors is a lack of information about civil society. Despite initiatives to improve information sharing among NGOs by networking, building coalitions, and so on, NGOs require assistance in publicizing their activities and the contributions they are making to development. The review noted that although the Law on NGOs does contribute to an environment enabling civil society, it should incorporate "clearer guidelines and increased transparency."

⁷¹ This is an important flaw that may have prevented the institutionalization of rural NGOs; as a result, grassroots, community-based NGOs are nearly absent.

315. In 2001, the Asia Foundation randomly surveyed a small group of urban and rural NGOs and government agencies in regard to their awareness of and practices in relation to the Law on NGOs. Legal awareness among NGOs is minimal, as is civil society's awareness about government agencies. The assessment notes a need to review the law in light of recent social developments. A major concern among the NGO community relates to government duties and responsibilities toward NGOs and the lack of policies and procedures in government agencies and local governments.

8. Capacity to Participate in Policymaking and Policy Implementation

316. Almost all NGOs (95%) carry out activities related to government policies and programs. Indeed, the real instigator of citizen-initiated NGOs in 1992 was political transformation. Public education on the basics of democracy, the rule of law, human rights, and women's rights later expanded to development and service delivery, advocacy, oversight, participation in policymaking and policy implementation, and research and other activities.

317. No systematic assessment or survey of the capacities of NGOs or their participation in public affairs has been carried out. An important strength of most NGOs is the motivation, dedication, commitment, and general education level of their staff although knowledge and skills tend to be insufficient, especially in relation to analysis, research, and program development. NGOs carry out their activities by drawing on foreign expertise at every stage. Such consultancies are a major source of learning for NGOs, and donors and consultants have continued to be willing to provide this kind of help. NGOs often form ad hoc or permanent coalitions and networks to participate in and to maintain ongoing education and training programs for partner NGOs.

318. NGOs are engaged actively in public education and raising awareness about a host of different issues, from cancer to voters' rights, and in many instances these activities also empower the citizenry by providing it with knowledge and skills needed to assert its rights. NGOs have a history of successful legislative advocacy on a wide range of concerns.⁷²

Box 4: Success Stories of Mongolian NGOs

The Convention on Elimination of All Forms of Discrimination Against Women Watch Network, which has evolved into a coalition of 14 women's NGOs, monitors the implementation of this United Nations' convention and of other plans important to women.

By appealing to the Constitutional Court regarding laws and national and local government decisions that it believes violate the constitution, Tsekhi has introduced a mechanism for citizen oversight on implementation of the constitution.

The **Women for Social Progress** in Uvurhangai province published a manual of practical guidelines for local councils and rural NGOs on how to put forth issues on the local agenda and how to institutionalize public participation. This manual is being used widely by other NGOs advocating transparency and accountability at the local level.

⁷² For example, for almost 5 years the Consumer Protection Association led the NGO community initiative to lobby for a progressive law on NGOs, and in 2001 an ad hoc group of NGOs not only successfully blocked the proposed elimination of NGOs' tax exemption, but also expanded the tax exemption to include income from any source. In 1999, the Network of Women's NGOs mobilized to promote changes in the laws on domestic violence, joint property, equal property rights, and social benefits. NGOs have also been involved in the adoption of laws on elections, media, and employment.

Box 4—Continued

The **Political Education Academy** studies the constitution, its organic laws, and the effects of these laws on different branches of the Government. This NGO not only has made a significant contribution to the development of constitutional studies, but also has recommended practical changes promoting government effectiveness, transparency, and accountability.

The **Gender Center for Sustainable Development**, in addition to providing information and networking services to women's NGOs, has carried out a national survey of the status of women's economic rights with the methodological assistance of an Australian institute.

The **Women for Social Progress** concluded a trilateral agreement with the Parliament Secretariat and the National History Museum on providing citizen access to information on parliament. Based on this agreement, the NGO will provide the public with information about parliament, including agendas, drafts of laws, and MP voting records, all of which are to be provided by the Parliament Secretariat. This project has helped open the legislative process to the public and has provided citizens with the means to hold representatives accountable.

The **National Center Against Violence** project, initiated by three women's NGOs, have established an institution that provides shelter services for battered women and children, educates the public and law enforcement agencies, surveys the status of domestic violence, and works with the central and local governments to address the causes of domestic violence.

Source: Asian Development Bank Research.

319. Yet despite these successes, the Government generally resists cooperation with NGOs. The main reasons are its distrust of NGOs and a lack of information about credible NGOs, resulting in the perception of an "NGO mess" that should be cleaned up by decreasing the number, exerting stronger control over their activities and financing, and establishing a governmental supervisory body.

320. Certain NGOs provide support services for others. The Center for Citizen Education trains NGO staff on budgeting, preparing budgets, reporting, and fundraising; the Women Lawyers Association helps NGOs write bylaws, register, and comply with other aspects of the Law on NGOs; the Zorig Foundation, the Mongolian Fund for Women, and others help NGOs establish contacts with donors and obtain funding; and the Gender Center for Sustainable Development and networks of NGOs working in specific areas provide information sharing and other services to the community.

321. NGOs are making important contributions to raising public awareness of political issues and of the services that NGOs provide in helping vulnerable groups receive assistance with education, health, etc. NGOs' employment and income-generation projects make tangible contributions to the economic welfare of the population, particularly of the poor and the disadvantaged, and in this way contribute to economic growth.

322. Because they also help citizens exercise their rights, NGOs play a moderating role in society. For example, in numerous instances of egregious violations by state law enforcement agencies, victims have turned to NGOs rather than to violent ways of expressing their dissatisfaction. Similarly, civil society organizations can be credited with the peaceful turnover of power after elections during the last decade.

9. Overall Assessment

323. NGOs have evolved into an entirely new sector of society. The limited history of democracy and the absence of a civic culture, however, have posed major obstacles to implementation of the Law on NGOs. The goal for the next decade is to strengthen civil society, for which NGOs are an influential voice and advocate. To date, the Government has played a comparatively minor role in building civil society.

IV. RECOMMENDATIONS AND IMPLICATIONS

324. In the near term, reform should focus on moving Mongolia toward more formal markets. In the newly emerging private sector, the objective should be to ensure the rule of law, including the independence and professionalism of the judiciary, as well as the predictability, transparency, and effectiveness of legal and regulatory systems. Interaction between businesses and state through such institutions as GDNT and CGA should also be predictable, transparent, and effective. In the well-entrenched public sector, the merit system should be institutionalized in the civil service, external regulatory agencies should be overhauled and considerably strengthened, and institutions able to prevent corruption should be established. Public financial management should be strengthened through capacity building in crucial government agencies such as MOFE. Reforms should be part of a comprehensive and coherent strategy led by the government and implemented in an appropriately sequenced manner.

325. Donor assistance should be coordinated with the Government's program. Of crucial importance is capacity building in MOFE to sustain public sector reform pilots. The literature on and the most recent reviews of Mongolia have tended to support slow and steady reform, and levels of available resources may leave little option but to proceed in this way. Reform efforts might flag, however, if broadly based progress has not been achieved within, say, 5 years. The speed of implementation will depend greatly on the extent to which computing and accounting infrastructure can be rolled out and on the levels of resources available for capacity building.

A. Capacity Building

326. **Recommendation. The Government should support improvements in the capacity of key public financial management and human resource agencies.** Additional resources could be invested in improving MOFE's capacity to plan, to coordinate, and to carry out its assigned functions, with a focus on its planning, budgeting, and treasury departments. Currently, the treasury department, which is responsible for, among other things, the long-delayed implementation of FMIS and the implementation of major IMF-supported reforms, is under-resourced in terms of skilled personnel, new systems, and funding. Unless sufficiently resourced, the department likely will continue to founder, thereby slowing the entire reform effort. TA of a significantly longer-term duration likely will be required.

327. Given the pivotal roles of the GDNT and the CGA⁷³ in collecting revenue needed to run the public finance system and the continuing problems with corruption in both agencies as revealed by the UNDP, reforms introduced under the ADB TA should be reinforced as the new FMIS is rolled out. Earlier work on accounting, reporting, and budgeting reforms was fairly rudimentary because appropriate accounting and budgeting software, networks, and hardware were absent. As the FMIS advances, the authorities should ensure that systems implemented for collecting tax and customs revenues are adequate and interface appropriately with new treasury software. Close consideration should be given to including both the GDNT and the CGA as key agencies warranting ADB support in view of their pivotal revenue collection roles and of the need for them to be at the forefront of management and technical reforms.

328. Responsibilities and duties of the NAO and the SPIA overlap. An option is to merge some or all their responsibilities eventually. If activities are not merged, the organizations'

⁷³ Both were initial pilot agencies for the planning, accounting, budgeting, and performance management systems introduced mainly with the help of ADB TA (ADB. 1999. *Technical Assistance to Mongolia for Public Expenditure Management*. Manila).

respective roles, powers, and responsibilities should be clarified. Accordingly, a study should be undertaken (i) to review the need for any amendments to the legislation governing the two institutions; (ii) to assess the need for staff training and development; and (iii) to determine whether capacity building support currently being provided by countries such as Australia, Germany, and the United States is adequate and whether ADB funding should be used for long-term capacity building in human resources.

329. Development of NSO systems and capacities is important in light of the organization's responsibilities to provide information, including medium-term macroeconomic and fiscal framework statements that serve as a basis for many aspects of the reform program; strategic plans and priority statements at the national, sectoral, and budget entity levels; and performance-based output budgets and assessments.

330. The Government should overhaul and strengthen the GSC to ensure that it can carry out its tasks of protecting the merit system while ensuring the political neutrality of the civil service. Because many reforms of public financial management agencies are human resource reforms, strengthening the GSC is a precondition for enacting them.

B. Central-Local Relations

331. **Recommendation 1.** Because of the importance of central-local fiscal relations, the Government is encouraged to re-examine and resolve these key issues:

- (i) The respective roles and responsibilities of the different levels of government should be clarified, a step that could be made a prerequisite for further ADB assistance.
- (ii) Transparent tax-sharing and/or expenditure transfer mechanisms should be agreed on by central and local governments.
- (iii) The extent to which new accounting and computing systems to be rolled out by the World Bank fiscal TA will reach down to the various levels of local government should be assessed. FMIS may reach down only as far as the provinces, leaving the issues of management, administration, planning, budgeting, accounting, and computing reforms unresolved at the regional and community levels.

332. ADB concluded that, given the likely high costs (approximately MNT1.19 billion (\$1 million) over 2 years per aimag and its soums) and limited resources, intensive pilot reform efforts initially should be undertaken in two provinces and subsequently spread to other provinces and their regions by less costly methods.

333. **Recommendation 2. The central government should assist local governments in improving their capacities to manage their own affairs and to hold their own officials accountable.** This would be critical for the Government to effectively implement the new Action Plan. Currently, the accountability system is underdeveloped in the provinces. Additional measures could include

- (i) further decentralizing administrative power to lower-level governments, to improve the delivery of public services;
- (ii) ensuring that the administrative consolidation would not disrupt the quality of, or access to, public services;
- (iii) improving transparency of the transfer system and imposing hard budget constraints on local governments to curb the growing arrears problem; and

- (iv) providing local governments with additional sources of revenue so that they can become less dependent on the central government, for example, by promoting tourism and transferring certain properties to lower-level self-governing organizations.

C. Public Policy Process

334. **Recommendation 1. The Government should attempt to improve the transparency of policymaking and of policy implementation processes.** The Government might establish think tanks staffed by national consultants and experts to enhance policy development and to facilitate continuity of government policy. The Academy of Management and NGOs might be encouraged to play this role. Donors such as the UNDP have worked in this area, but additional sources of sustainable support are needed.

D. Civil Service Reform

335. **Recommendation 1. Given the crucial role of the civil service, the Government should consider strengthening civil service policy and management institutions, revising relevant laws and regulations, downsizing, and taking additional steps to improve staff morale.** The Civil Service Law should be enforced vigorously, specifically by institutionalizing a neutral civil service. In this way, the authority, status, and investigative and enforcement powers of the GSC could be strengthened. To carry this out and to implement the PSMFL, the government could give the council oversight functions over the dismissal of senior civil servants. That is, even though portfolio ministers may recommend the dismissal of general managers for failure to implement performance agreements, only the council should have the authority to confirm dismissals. Additional related suggestions include

- (i) The GSC should be made nonpartisan, which could be affected by increasing its size from three to six permanent members and ensuring that opposition party members hold an appropriate number of seats.
- (ii) The overall size of the civil service should be cut by encouraging voluntary retirement, implementing selective hiring freezes, contracting out some services, and reviewing the state's functions. At the same time, the Government should actively recruit appropriately qualified staff to ensure that the PSMFL can be implemented. New hiring should be carried out in such a way that the overall size of the civil service declines to an affordable level.
- (iii) The savings from downsizing the civil service could be used in part to improve the remuneration of staff needed to implement reforms.
- (iv) Establishment of a senior executive service would encourage interagency mobility among senior officials and could improve policy coordination.

336. **Recommendation 2. Although efforts have been made to curb corruption, additional steps could be taken in this direction by enhancing confidence in public institutions and by vigorously enforcing current laws on corruption.** Although the Civil Service Law and codes of ethics for public officials promulgated by the Government require that civil servants exercise power impartially and with integrity, petty corruption is a fairly serious problem in certain government agencies. It is important that

- (i) Existing laws on corruption are enforced vigorously.
- (ii) The government considers increasing, within its ability to pay, the compensation of public officials such as judges.

- (iii) A set of criteria and a code of conduct on ethics for civil servants are developed.

337. Although donors have been active in supporting efforts to eliminate corruption, more work needs to be done in this area. Donors could consider working with NGOs to educate the public about the dangers of corruption.

E. Legal, Judicial, and Regulatory Systems

338. **Recommendation 1. In the absence of an independent forum to review key legal and constitutional policy issues, the Government should both re-examine the process for resolving constitutional disputes to ensure that it is appropriate for a rule of law system and consider establishing a central, but representative, law reform body.** No independent forum for reviewing significant issues of legal and constitutional policy seems to exist. The Constitutional Court clearly has such a function, but neither it nor parliament can obtain a clear mandate in this regard, and MJHA has no transparent and accessible system for such reviews. Thus, there may be scope for a law reform body that can review and make recommendations pertaining to unresolved issues.

339. A further means of enhancing coherence and coordination is to support the Government's new approach to lightening the regulatory burden. Harmonization and amendment of existing laws are linked conceptually to the idea of a law reform program and might form a part of one.

340. **Recommendation 2. Universities and other educational institutions are a valuable resource that could improve the quality of legal training for lawyers and judges. Accordingly, the Government could work more closely with universities and other institutions to improve education and training of legal professionals and judges.** The Government should support the enhancement of the language and translation skills of government lawyers and others working to reform the legal system. Effectiveness of international assistance is hampered currently by language barriers and by the almost complete absence of a body of professionally translated national laws.

341. **Recommendation 3. Easily accessible, authoritative, and reliable legal information is essential to a well-functioning market economy. Improving transparency of the regulatory regime should be a high priority.** The lack of authoritative and reliable legal information resources diminishes the ability of professionals to use and to analyze the law. Additionally, courts are overextended, a fact that seems to be affecting quality of justice; and they lack the administrative and information technology resources that industrial countries take for granted. Information about regulatory actions and about the activities of public agencies is provided only to related ministries and the Government. Annual reports and financial accounts are not published and therefore are not generally available to the public or to civil society.

342. **Recommendation 4. Although considerable resources have been spent on improving the capacity of the judiciary, more needs to be done. The Government should consider supporting efforts to strengthen the capacity of the judiciary and the operations of the courts.** Detailed studies of access to justice would be valuable, as would a comprehensive trial observation program. Reporting and publishing of key judgments should be improved as quickly as possible, for such information will provide much-needed guidance to the entire legal system. Donor support for these activities should be encouraged.

F. Civil Society and NGOs

343. **Recommendation 1. The position and contribution of NGOs could be enhanced by defining the Government's policies, strategies, procedures, and guidelines for collaborating with NGOs more clearly.**

344. **Recommendation 2. The Government should consider ways to contract NGOs more effectively for service delivery.** Improvement would benefit the most disadvantaged social groups in particular. Donors could be encouraged to support these activities.

345. **Recommendation 3. Building more collaborative relation between the government and NGOs depends in part on fostering understanding of NGOs by the Government, for instance, by supporting training of civil servants on the nature and the role of civil society and NGOs in public administration reform.** Such education and training should include case studies of government-NGO collaborations, both from within Mongolia and abroad, and develop practical skills in managing, monitoring, and evaluating such collaborations.

346. **Recommendation 4. Capacities of NGOs to contribute to national development should be strengthened. Efforts to build institutional capacity among NGOs, particularly in the areas of policy advocacy and service delivery, should be supported.** One way to engage NGOs with the Government in relation to policy development and implementation by donors might be to involve NGOs in monitoring government expenditures and procurements in the context of major international aid and loans. A number of NGOs already possess the capacity to carry out such tasks.

347. **Recommendation 5. Further research on the organization, size, and financial and human resource capacities of NGOs would provide a baseline for efforts to assist NGOs in building capacity.** NGOs recognize the need for such a study, which would help the public, the government, donors, and NGOs themselves understand the changing civil society. The study would have to be updated regularly to allow targeted support of and effective participation by NGOs in public affairs.

G. Recommendations for ADB

348. Given the involvement of ADB in drafting and piloting the PSMFL, ADB should consider a high priority the building of capacity in those agencies (including MOFE, NSO, NAO, and GSC) on which successful implementation of the PSMFL depends. Considerable resources already have been spent on improving these agencies, but reform still is needed. Strengthening the role and the capacity of the GSC is arguably the most pressing need. Effectively utilizing high-quality human resources is a necessary condition for implementing the PSMFL successfully.

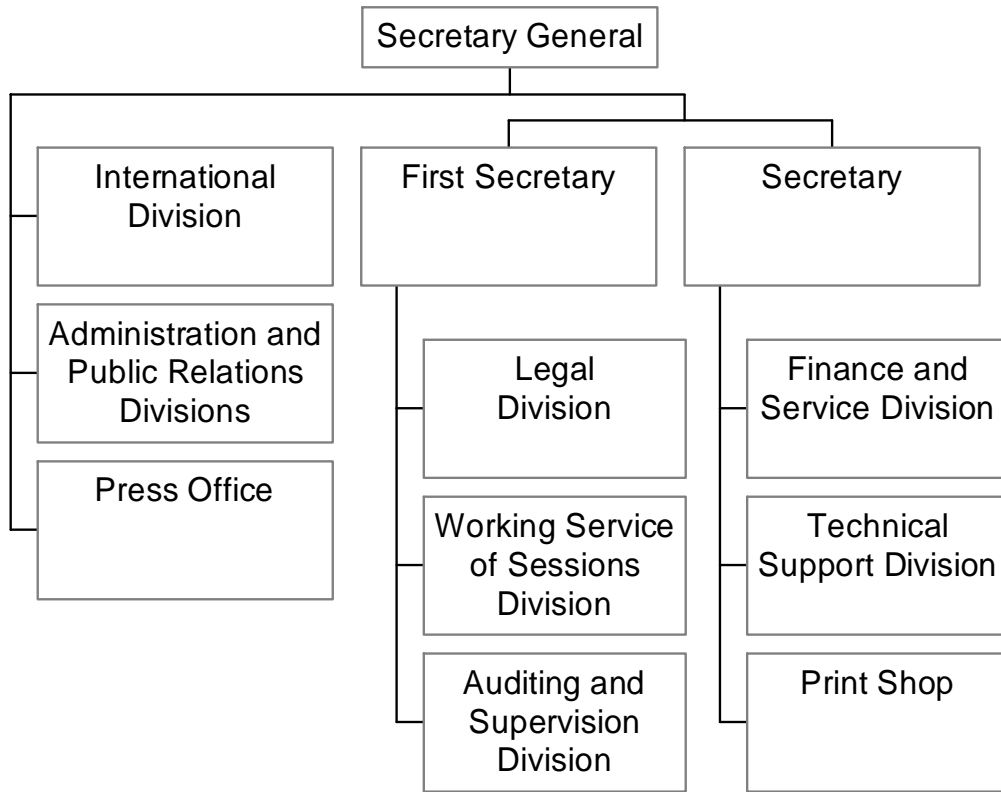
349. ADB might consider facilitating government efforts to reduce multiple layers of administration at central, regional, and local levels. This assistance could consist of formulating an appropriate framework to consolidate (i) contiguous aimags on a selective basis; (ii) selected soums within the same or other aimags; and (iii) selected public sector administrative units, agencies and institutions, and service delivery functions in the selected aimags and soums. ADB might support the Government in implementing these consolidation measures.

350. ADB might also consider supporting efforts to initiate mainstreaming of governance reforms, for example, by enhancing civil service culture and by undertaking measures to enhance confidence in public institutions. Enhancing civil service might require the following

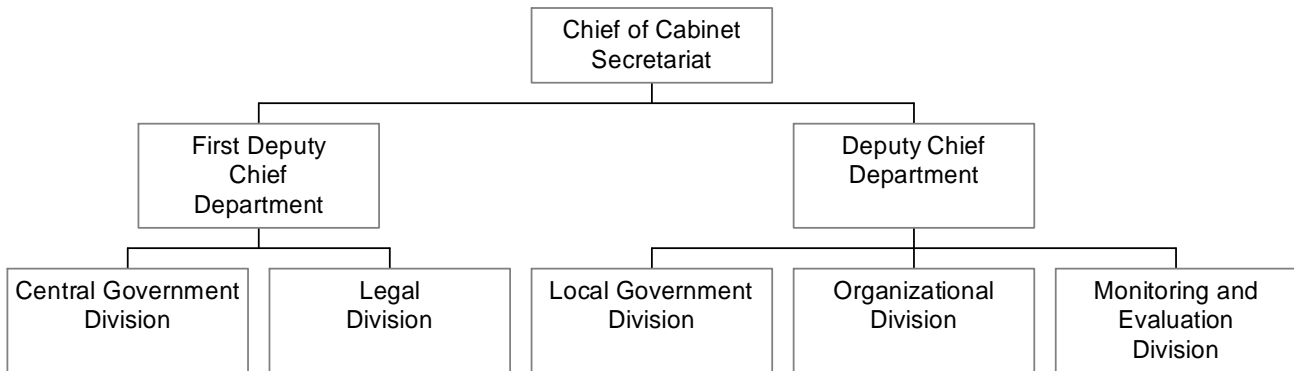
measures: developing a code of ethical conduct for civil servants, implementing rigorously the newly developed recruitment and selection system, adopting a grievance or dispute settlement system, and strengthening the performance evaluation system.

351. Other activities ADB should consider are establishing sound public sector accounting and auditing systems; strengthening the social security system to alleviate fiscal pressures on the budget that stem from the public pension system; and supporting efforts to improve incentives for the enforcement of rules, regulations, and laws. ADB could work with regulatory agencies such as the Bank of Mongolia and the proposed Financial Regulatory Commission to create incentives for enforcement and could support strengthening of the incentives for regulation and law-abiding behavior in other key systems such as banking, taxation, and customs.

ORGANIZATION OF THE PARLIAMENT SECRETARIAT



ORGANIZATION OF THE CABINET SECRETARIAT



DONOR MATRIX, 2002

	Value (\$ million)	Sectoral/ Capacity Bldg.	Public Finance	Public Admin	Clean Gov't	Law & Reg.	Private Sector	Corp. Gov.	Civil Soc.	Poverty	Partici- pation	Acctg & Audit
ADB Loan 1508– Education Sector Development Program 1997–2002	8.212	X		X								
ADB Loan 1510– Upgrading Skills and Systems of Commercial Banks 1997–2002	2.707	X					X					
ADB Loan 1560– Provincial Towns Basic Urban Services Project 1997–2002	6.479	X		X								
ADB Loan 1569–Health Sector Development 1998–2003	11.314	X		X								
ADB Loan 1836–Social Security Development Project 2001–2005	8.008	X		X								
ADB Loan 1837–Social Security Development Program 2001–2007	4.004	X		X								
ADB Loan 1847– Housing Finance Sector Program 2001–2007	14.838	X	X	X		X						
ADB Loan 1848–Rural Finance 2001–2009	8.606		X				X				X	
ADB Loan 1548– Ulanbaatar Heat Efficiency 1997–2003	37.207	X		X			X					

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Appendix 3—Continued

Programs/Projects	Value (\$ million)	Sectoral/Capacity Bldg.	Public Finance	Public Admin	Clean Gov't	Law & Reg.	Private Sector	Corp. Gov.	Civil Soc.	Poverty	Participation	Acctg & Audit
ADB Governance Reform Program Loan I 1999–ongoing	23.057		X	X		X						
ADB Governance Reform Program Loan II 2002	1.800											
ADB Second Financial Sector Program Loan 2002-2005	14.4		X		X							X
ADB TA Retraining of Legal Professionals in Market Economy	1.000					X						
ADB TA 3316—Initial Phase of Administrative Reforms 1999–2003	1.100		X	X	X							
ADB TA 3317—Public Expenditure Management 1999–2001	0.583		X		X							
ADB TA 3318—Study of Central-Local Government Reform 2000–2001	0.247		X	X								
ADB TA Implementation of PSMFL 2002	0.800		X	X								
ADB TA 1847—Housing Finance, 2001	15.0	X	X									
ADB TA 3031—Development of Procurement Legislation and Guidelines, 19998	0.550											

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Appendix 3—Continued

Programs/Projects	Value (\$ million)	Sectoral/Capacity Bldg.	Public Finance	Public Admin	Clean Gov't	Law & Reg.	Private Sector	Corp. Gov.	Civil Soc.	Poverty	Participation	Acctg & Audit
ADB TA 3090—Institutional Strengthening of the Housing Sector, 1998	0.700											
EU Strengthening the Standardization and Measurement Office 1997—ongoing	1.032			X								X
EU Strengthening Democracy 1997—ongoing	0.232								X		X	
EU Strengthening of Services to Support SME Access to Foreign Investment, 1998—ongoing	1.624	X										
EU Support to the National Statistical Office in Mongolia 1998—ongoing	0.754	X		X								
EU Strengthening NGOs to Foster Public Awareness of the Need for Legislation to Protect Women and Children from Violence 1998—ongoing	0.208					X			X			
EU Improving the Financial Management of the Health System 1999—ongoing	1.160	X	X									

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Appendix 3—Continued

Programs/Projects	Value (\$ million)	Sectoral/ Capacity Bldg.	Public Finance	Public Admin	Clean Gov't	Law & Reg.	Private Sector	Corp. Gov.	Civil Soc.	Poverty	Participation	Acctg & Audit
EU Strengthening of IAMD 1999–2001	0.928	X										
EU Extension of SME Development Activities 1999–2001		X										
EU Support to the Energy Sector for the Implementation of Energy Conservation Program and Rational Use of Energy 1999–2001		X										
EU Development of Responsibility and Pluralization of the Mongolian Media 1999–2001									X	X		
EU Improving the Financial Management of the Health System 1999–2001	ECU 1.000	X	X									
EU Strengthening of the Institute of Administration and Management Development 1999–2001	ECU 0.800			X								
GTZ Advisory Service to the Reform of Commercial Laws in Mongolia I 1995–2001	5.089	X				X						

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Appendix 3—Continued

Programs/Projects	Value (\$ million)	Sectoral/Capacity Bldg.	Public Finance	Public Admin	Clean Gov't	Law & Reg.	Private Sector	Corp. Gov.	Civil Soc.	Poverty	Participation	Acctg & Audit
GTZ Establishment of Rural Finance System 1995–ongoing	2.800											
GTZ Assistance for Tax Administration 1999–ongoing	1.120		X	X								
GTZ, Legal Advice, Support to Improve Rule of Law/Legal Environment for Market Economy—1999–2001	1.000					X						
GTZ Hans Zeidel Foundation 1995–ongoing												
Japan Study on the Support for Economic Transition and Development, 1998–ongoing		X	X	X								
Japan Nonproject Grants 1999–ongoing		X										
Japan Study on Tax Collection Enhancement 1999–2001		X	X									
Netherlands Environment Public Awareness Program, Ongoing	0.950	X									X	
Netherlands Enterprise Restructuring—ongoing	2.800						X					

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Appendix 3—Continued

Programs/Projects	Value (\$ million)	Sectoral/Capacity Bldg.	Public Finance	Public Admin	Clean Gov't	Law & Reg.	Private Sector	Corp. Gov.	Civil Soc.	Poverty	Participation	Acctg & Audit
Soros Foundation Court Administration Information Networking Project, 1999–2001	0.100			X		X						
Soros Foundation Competition on Support of Open and Effective Activities of NGOs 1999–ongoing	45.5								X			
UNDP National Poverty Alleviation Program Policy Management and Institutional Strengthening 1995–ongoing	0.516			X						X		
UNDP Decentralization and Democracy Support: Local Self-Governance 1997–2000	1.040	X		X							X	
UNDP Consolidation of Democracy Through Strengthening of Journalism 1997–ongoing	0.230	X							X			
UNDP Capacity Building of Governing Institutions: Support for Democratic Governance 1997–2000	0.500	X		X					X		X	
UNDP Capacity Building for Poverty Alleviation 1997–2000	0.555	X								X	X	

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Appendix 3—Continued

Programs/Projects	Value (\$ million)	Sectoral/Capacity Bldg.	Public Finance	Public Admin	Clean Gov't	Law & Reg.	Private Sector	Corp. Gov.	Civil Soc.	Poverty	Participation	Acctg & Audit
UNDP Partnership for Progress Support 1997–2000	0.460	X										
UNDP Strategic Support for Economic and Social Growth—A Think Tank Facility 1997–BD	0.250			X					X			
UNDP Support to Coordination and Management of External Development Resources 1998–TBD	0.300	X	X									
UNDP Information Communication Technology for Sustainable Human Development 1997–1999	0.550	X									X	
UNDP Support to the Economic Transition Via Strengthened Financial Transparency and Accountability 1998–2000	0.250		X		X							
UNDP Strengthening National Infrastructure for the Promotion and Protection of Human Rights in Mongolia 1998–2001	0.220	X		X		X			X			

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Appendix 3—Continued

Programs/Projects	Value (\$ million)	Sectoral/Capacity Bldg.	Public Finance	Public Admin	Clean Gov't	Law & Reg.	Private Sector	Corp. Gov.	Civil Soc.	Poverty	Participation	Acctg & Audit
UNDP Good Governance for Human Security Program 2001–2003	0.520	X		X		X			X			
UNDP Parliament Strengthening for Democratic Governance 2001–2003	0.640	X		X		X						
UNDP Human Rights Strengthening in Mongolia Phase 1 2001–2003	0.600	X		X		X			X			
UNDP Developing the Capacity of the National Human Rights Commission of Mongolia 2002–2005	0.650	X		X		X			X			
UNFPA Strengthening the NSO 1997–2001	0.763	X		X								
UNFPA Population Policy and Research 1997–2001	0.656	X										
UNFPA Capacity Building for Poverty Alleviation 1997–1998	0.80			X						X		
UNICEF Media and Advocacy Activities (SPR part) 1996–1997	0.140								X		X	

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Appendix 3—Continued

Programs/Projects	Value (\$ million)	Sectoral/ Capacity Bldg.	Public Finance	Public Admin	Clean Gov't	Law & Reg.	Private Sector	Corp. Gov.	Civil Soc.	Poverty	Participation	Acctg & Audit
UNICEF Media and Advocacy Activities at the Country Level 1996–1997	0.30								X		X	
USAID Economic Policy Support Project 1995–TBD	8.358	X										
USAID Mongolia Privatization Program 1998–2000	5.200	X					X					
USAID International Republican Institute Political Party and Parliament Assistance 1998	0.449			X							X	
USAID Buy-in to CEPPS and the International Republican Institute 1998–2001	1.350			X							X	
USAID International Development Law Institute 1997–ongoing	0.645					X						
USAID Development Alternatives, Inc. 1999–2001	3.900	X	X			X						
USAID Democracy Program ongoing	0.300			X							X	

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Appendix 3—Continued

Programs/Projects	Value (\$ million)	Sectoral/Capacity Bldg.	Public Finance	Public Admin	Clean Gov't	Law & Reg.	Private Sector	Corp. Gov.	Civil Soc.	Poverty	Participation	Acctg & Audit
USAID Rural Civil Society Program 1998–ongoing	2.400	X							X			
USAID Civil Society Program/Gobi Regional Economic Growth Initiative 1999–2004	9.996	X							X			
USAID Barents Assistance to State Property Committee's Privatization Program 1998–2001	5.242	X				X	X				X	
WB Strengthening Institutional Capacity of the National Statistical Office, Ongoing	0.350	X										
WB Public Expenditure Review 1999–2009 (phased)			X		X							
WB TA Treasury Financial Management Information System 2000–2002			X		X							
WB Banking, Enterprise and Legal Technical Assistance Credit 1997–2000	2.000	X				X		X				
WB Fiscal Technical Assistance Credit II 1999–ongoing	5.000	X	X									

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Appendix 3—Continued

Programs/Projects	Value (\$ million)	Sectoral/ Capacity Bldg.	Public Finance	Public Admin	Clean Gov't	Law & Reg.	Private Sector	Corp. Gov.	Civil Soc.	Poverty	Participation	Acctg & Audit
WB Legal Reform Project 2000–ongoing	5.000					X						
WHO National Health Policy and Strategy 1997–1999	0.485	X										
WHO District health system 1997–ongoing	0.191	X										

Note: The matrix includes only those projects listed as ongoing.

Sources: Asian Development Bank.

ADMINISTRATIVE EMPLOYEES IN GOVERNMENT SERVICE

1. According to the Civil Service Law (1994), government employees are organized into four broad classes: political, administrative, special and support.
2. The career structure for the administrative service consists of five posts ranging from leading officer at the top to assistant officer at the bottom.
3. Leading officers make up less than 1% of the administrative service and are generally employed as secretaries of state in ministries or in other similar posts. Only about 52% of leading officers are ranked. Principal officers generally serve as directors and deputy directors of ministry departments, while senior officers are heads and deputy heads of ministry divisions and sections. Inspectors and experts employed in ministries are generally executive officers. Almost half of those in the administrative service are executive officers, and many remain in that position for their entire career.

Table A4: Administrative Service by Rank, 1996—2001
(number)

Rank	1996	1997	1998	1999	2000	2001
Leading officer	60 (0.8)	52 (0.6)	48 (0.6)	57 (0.7)	36 (0.5)	45 (0.6)
Principal officer	250 (3.4)	216 (2.7)	210 (2.6)	239 (2.9)	220 (2.8)	253 (3.2)
Senior officer	1030 (14.1)	1162 (14.5)	1120 (13.8)	1187 (14.3)	1180 (15.1)	1318 (17.0)
Executive officer	3346 (45.9)	3680 (45.8)	3875 (47.9)	3979 (47.8)	3749 (48.0)	3634 (46.7)
Assistant officer	2068 (35.8)	2913 (36.4)	2841 (35.1)	2862 (34.3)	2624 (33.6)	2532 (32.5)
Total	7294 (100)	8023 (100)	8094 (100)	8324 (100)	7809 (100)	7782 (100)

Note: Figures in parentheses are percentages.

Source: Government Service Council reports, various years.

4. The number of opportunities for promotion to the leading officer level has been unstable, which may have affected morale. Similar changes also occurred at the principal officer level. At the same time the number of positions at the senior officer and executive officer levels expanded from 1996 to 2001. The number of overall administrative positions increased from 1996 to 1999 during the tenure of the Democratic Coalition, but has been cut back since 1999, perhaps to fulfill the government's pledge to reduce personnel costs.
5. Most administrative service officers work at the local level. In 1997, 26.8% worked for the central government, falling to 21.8% in 1998. Since that time, however, the percentage has been creeping upward, so that by 2001, 25% worked at the central government level. Of those that work for local governments, about half are employed at the regional and district level, down from about 60% in 1997.

WOMEN IN GOVERNMENT

Parliament. Women held 10.5% (8 of 76) of seats in Parliament in 1996 and 2000, up from 3.9% (3 of 76) in 1992, but one third the percentage in the 1980s.

Executive. From 1996 to 2000, only one ministerial position (out of 11 cabinet posts) was held by a woman, and since 2000 women have held only two senior political positions (a vice minister position and an ambassadorship), prompting the NHRC to observe that participation by women at the highest level of executive power is virtually nonexistent.

Judiciary. As of May 2002, Parliament had authorized a total of 362 judicial positions, of which 346 (just over 95%) had been filled. The Supreme Court is composed of 17 justices. Approximately 62% of all judges are women. Women predominate at the lower jurisdictions, where more than 75% of judges are women. In contrast, women fill less than 25% of Supreme Court positions.

Public service. The representation of women varies from as few as 25% of all employees to 60% in the case of the Ministry of Social Welfare and Labor.

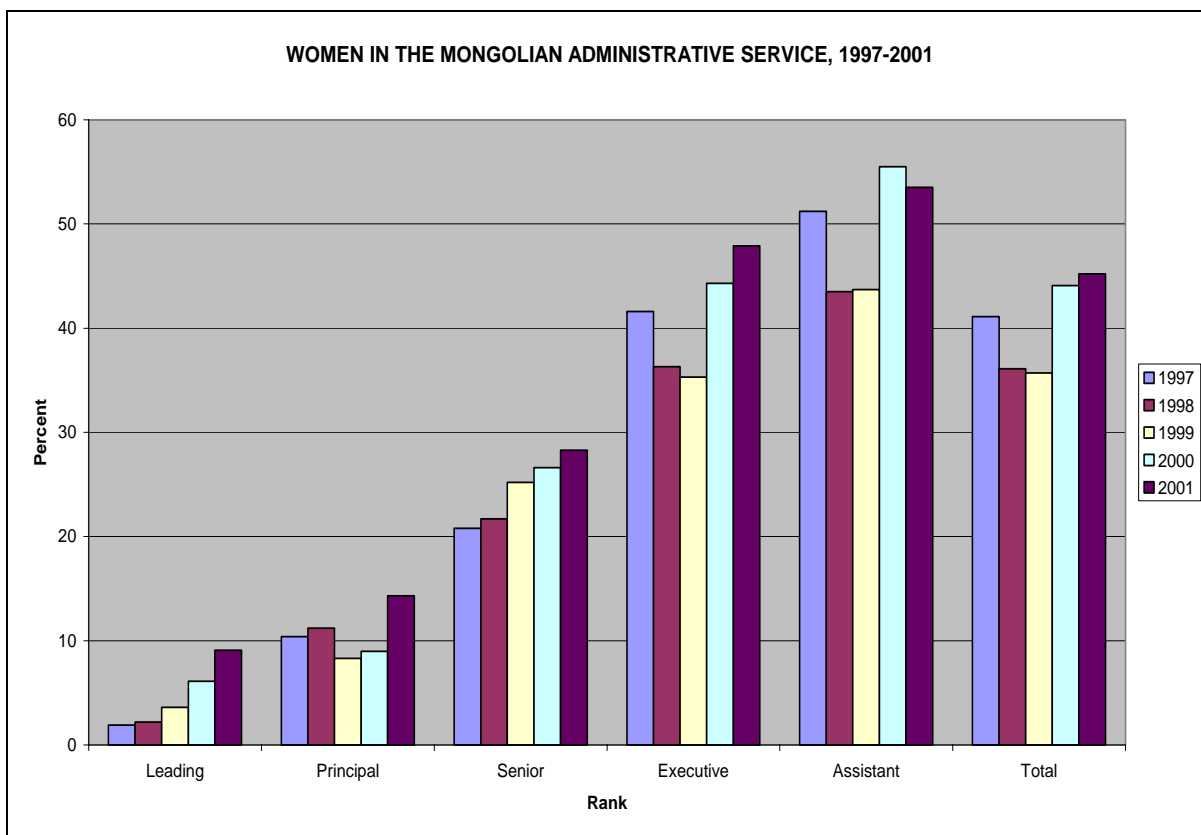
Table A5.1: Women in Selected Central Government Agencies, 2001

Agency	Total number of employees	Percentage of women
Social Welfare and Labor	45	60.0
Nature and the Environment	54	53.7
Land Administration Authority	29	48.3
Environmental Protection Agency	18	27.8
Meteorological Agency	29	31.0

Source: ADB. 2002. *Public Administration Reform Project*. Manila.

Women hold relatively few top positions in the administrative service, although their numbers are growing. Thus in 2001 women held only 4 of the 45 leading officer posts and 35 of the 253 principal officer positions. Nevertheless, despite some setbacks in 1998 and 1999, the percentage of women in the administrative service has clearly increased (Figure 1), and currently women hold about 45% of all administrative service positions.

Figure 1: Percentage of Women in the Administrative Service by Position 1997–2001



Source: Government Service Council reports, various years.

Data from a few agencies (Table A5.2) indicate that women are relatively well represented among special service employees in these departments

Table A5.2: Women in Selected Special Services Departments, 2001

Department	Total number of employees	Percentage of women
General Department of National Taxation	98	36.7
Customs General Administration	981 ^a	54.6
National Statistical Office	76	62.0

^a Of whom 725 were state customs inspectors rather than general administrators.

Source: ADB. 2002. *Public Administration Reform Project*. Manila.

LOCAL GOVERNMENT FINANCE

A. Revenues

1. Tables A6.1 and A6.2 provide summary information on revenue collections of Local Governments during the Nineties. Some specific comments that can be made are:

- (i) Trends observed up to 2002 will change greatly following the introduction of new tax assignments in 2002 and as the Public Sector Management and Finance Law (PSMFL) is introduced. Thus past trends are more of historic interest;
- (ii) Total revenues and grants available to local governments declined sharply as a proportion of gross domestic product (GDP) soon after the transition to the market economy. Whereas this ratio was 27.0% of GDP in 1990 it had fallen to 7.3% by 1993 and thereafter stabilized in a band between 5.5% and 7.5% over the following decade. Much lower ratios can be expected in future years;
- (iii) Most local revenues have derived from tax collections with non tax revenues and grants (excluding central government transfers) making up less than 25% of the total in most years;
- (iv) Real growth in per capita revenue collections has been flat for the past decade. Real (1995) per capita collections were MNT14,072 in 1993 and an estimated MNT14,196 in 2001 (due to high inflation the relevant nominal numbers were MNT5,516 in 1993 and MNT25,511 in 2001); and
- (v) Central government revenues have grown more rapidly than local government revenues. In 1993, local revenues and grants were 23.7 of general government revenues and grants while in 2001 this ratio had fallen to 18.4% (note that general government equals central government plus local government).

2. A number of studies have indicated that there is extreme variation (and inequity) in the revenue collection capacities of different *aimags* (provinces), *soums* (districts) and *bags* (subdistricts) throughout the country. For example, the International Monetary Fund (IMF), using 1999 data, made estimates of per capita revenue collections by aimag. The range of collections was extreme, from a low of MNT5,698 in Arhangai Aimag to a high of MNT44,985 in Ulaanbaatar (a ratio of minimum to maximum of almost 8 to 1). Such wide variances can be expected to change following introduction of the PSMFL and new tax assignment and sharing arrangements. However, until such arrangements are more closely defined over time it will not be clear what the distributional implications will be. Certainly many aimags and soums will remain in an impoverished situation with regard to their capacities to provide basic municipal services under the new expenditure assignment arrangements. However, many aimags and soums currently assist to fund national functions and will be better off under the new arrangements.

**TABLE A6.1: Summary of Local Government Fiscal Operations
1995 – 2002**

	1995	1996	1997	1998	1999	2000	2001 Rev. Budget
Tax Revenues	26,072.9	31,611.1	44,094.9	48,916.4	45,253.7	51,099.2	53,635.5
Non Tax Revenues	5,139.0	6,677.3	9,661.2	9,851.9	12,688.3	14,236.5	12,016.6
Total Tax and Non Tax Revenues	31,211.9	38,288.4	53,756.1	58,768.3	57,942.0	65,335.7	65,652.1
Minus Expenditure and Net Lending	53,412.5	66,925.4	89,611.3	104,998.4	106,982.1	136,696.3	134,261.5
Equals Financing Gap	(22,200.6)	(28,637.0)	(35,855.2)	(46,230.1)	(49,040.1)	(71,360.6)	(68,609.4)
Financed By:							
Central Transfers / Subsidies	16,571.3	20,441.3	27,398.6	27,984.7	37,303.5	49,458.3	56,660.8
Other (mainly health insurance receipts)	5,629.3	8,195.7	8,456.6	18,245.4	11,736.6	21,902.3	11,948.6
Memorandum Items							
As % of GDP							
- Tax Revenues	4.7	4.9	5.3	6.0	4.9	4.9	4.6
- Non Tax Revenues	0.9	1.0	1.2	1.2	1.4	1.4	1.0
- Total Tax and Non Tax Revenues	5.7	5.9	6.5	7.2	6.3	6.3	5.7
- Expenditure and Net Lending	9.7	10.4	10.8	12.8	11.6	13.1	11.6
- Financing Gap	(4.0)	(4.4)	(4.3)	(5.7)	(5.3)	(6.8)	(5.9)
- Central Transfers / Subsidies	3.0	3.2	3.3	3.4	4.0	4.7	4.9
- Other Financing	1.0	1.3	1.0	2.2	1.3	2.1	1.0

Source: MOFE reports and Asian Development Bank estimates.

**TABLE A6.2: Analysis of Total Local Government Revenue and Grants
1990–2002**

Year	Nominal Growth Total R & G (%)	Real Growth Total R & G (%)	Nominal Per Capita R & G (T)	Real (95) Per Capita R & G (T)	Nominal Total R & G As % of GDP	Nominal Total R & G As % of General R & G
1990			1,342.4	63,924.5	27.0	43.5
1991	-3.7	-38.7	1,266.9	38,389.8	14.3	44.8
1992	78.8	-57.5	2,221.8	15,984.4	10.2	43.0
1993	153.0	-10.3	5,516.1	14,071.8	7.3	23.7
1994	68.1	0.9	9,102.7	13,939.8	7.3	24.9
1995	51.5	-1.0	13,547.0	13,547.0	5.7	21.7
1996	22.5	6.7	16,353.8	14,245.5	5.9	23.6
1997	40.3	13.3	22,633.0	15,916.3	6.5	24.2
1998	12.9	19.1	25,203.4	18,696.9	7.4	25.3
1999	-0.4	-9.2	24,750.4	16,745.9	6.5	24.1
2000	11.5	-0.2	26,407.0	15,994.5	6.5	19.2
2001 (Revised Budget)	1.0	-7.2	25,510.7	14,196.3	5.9	18.4
2002 (Preliminary Budget)	5.0	-2.6	25,626.3	13,229.9	5.5	17.2

Note: 1. Local estimates for 2002 are prior to any centralization of: (a) VAT; (b) Company Tax; (c) Excise

2. Estimates are solely of local tax and non tax revenue collections and exclude central transfers and Health Insurance

Source: MOFE reports and Asian Development Bank estimates.

B. Expenditure

3. It is likely that the future expenditure accounts of local governments will progressively change dramatically from the accounts of the past decade. Past trends which are captured in Tables A6.3, A6.4, and A6.5 will in future be of mainly historic interest. Notwithstanding this, some of the main trends in local expenditures over recent years have been:

- (i) Total expenditures of local governments declined sharply as a proportion of GDP soon after the transition to the market economy. Whereas this ratio was 32.2% of GDP in 1990 it had fallen to 13.9% by 1993 and thereafter stabilized in a band between 9.7% and 11.9% over the following decade. Much lower ratios can be expected in future years;
- (ii) Real growth in per capita expenditures has been flat for the past decade. Real (1995) per capita local expenditures were MNT26,580 in 1993 and an estimated MNT27,966 in 2001 (due to high inflation the relevant nominal numbers were MNT10,419 in 1993 and MNT50,254 in 2001);
- (iii) Central government expenditures have grown more rapidly than local government expenditures. In 1993 local expenditures were 32.4% of general government expenditures while in 2001 this ratio had fallen to 29.3%;
- (iv) In economic format terms (Table A6.4), around 50% of local expenditures are outlaid on wages and salaries (including social security) with most of the remainder spent on goods and services. Capital expenditures are generally low (below 6% of total local expenditures in most years); and
- (v) In functional format terms (Table A6.5), the bulk of local expenditures have been related to community and social services (especially education and health). Between 1995 and 2001 the share of community and social services in total local expenditures ranged from 71.1% to 76.3% (the share of education ranged from 35.9% to 44.1% while the share of health ranged from 21.1% to 29.6%). Administrative expenses on general public services have been relatively high at between 10% to 13% of total over this period.

**Table A6.3: Analysis of Total Local Government Expenditure
and Net Lending, 1990–2002**

Year	Nominal Growth Total E & L (%)	Real Growth Total E & L (%)	Nominal Per Capita E & L (T)	Real Per Capita E & L (T)	Nominal Total E & L As % of GDP	Nominal Total E & L As % of General E & L
1990			1,600.2	76,200.0	32.2	49.4
1991	15.0	(26.8)	1,804.3	54,676.3	20.3	43.3
1992	68.6	(60.0)	2,982.9	21,460.1	13.8	41.1
1993	256.0	26.2	10,419.4	26,580.0	13.9	32.4
1994	44.6	(13.2)	14,783.4	22,639.2	11.9	24.4
1995	59.1	3.9	23,094.3	23,094.3	9.7	35.8
1996	25.3	9.1	28,514.1	24,838.0	10.4	31.7
1997	33.9	8.1	37,658.1	26,482.5	10.8	31.2
1998	17.2	23.6	43,513.6	32,280.1	12.8	30.7
1999	1.9	(7.1)	43,730.4	29,587.6	11.6	29.6
2000	27.8	14.4	53,468.2	32,385.3	13.1	33.3
2001 (Revised Budget)	(1.8)	(9.8)	50,254.4	27,965.7	11.6	29.3
2002(Tentative Budget)	2.4	(5.0)	49,237.1	25,419.2	10.6	27.6

Note: Estimates include all local expenditures; including those financed from; (a) Local Revenues; (b) Health Insurance funding; and (c) Central Subsidies and Transfers to Local Governments

Source: MOFE reports and Asian Development Bank estimates.

**Table A6.4: Analysis of Local Expenditure in Economic Format,
1993–2002**

	1993 Actual	1994 Actual	1995 Actual	1996 Actual	1997 Actual	1998 Actual	1999 Actual	2000 Actual
A. IN CURRENT PRICES (TOGROG 000)								
TOTAL EXPENDITURE and NET LENDING	23,227.9	33,577.5	53,412.5	66,925.4	89,611.3	104,998.4	106,982.1	136,696.3
CURRENT EXPENDITURE	22,673.2	32,638.2	50,481.0	63,487.0	84,308.9	98,729.3	100,047.2	129,707.6
Wages and salaries	5,925.0	10,193.9	17,494.1	24,094.5	29,016.8	35,712.8	37,821.3	51,366.0
Employer contributions to Social Security	624.2	1,514.1	3,058.6	4,200.5	6,845.3	7,693.3	7,876.1	14,670.1
Other Goods and Services	13,517.9	19,313.6	26,083.6	34,375.7	46,821.1	53,837.2	52,535.4	61,954.0
Subsidies and current transfers	2,606.0	1,616.6	3,844.7	816.3	1,445.0	1,486.1	1,814.5	1,717.5
CAPITAL EXPENDITURE and NET LENDING	554.8	939.3	2,931.5	3,438.5	5,302.4	6,269.1	6,934.9	6,988.7
B. AS PERCENTAGE OF TOTAL LOCAL (%)								
TOTAL EXPENDITURE and NET LENDING	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
CURRENT EXPENDITURE	97.6	97.2	94.5	94.9	94.1	94.0	93.5	94.9
Wages and salaries	25.5	30.4	32.8	36.0	32.4	34.0	35.4	37.6
Employer contributions to Social Security	2.7	4.5	5.7	6.3	7.6	7.3	7.4	10.7
Other Goods and Services	58.2	57.5	48.8	51.4	52.2	51.3	49.1	45.3
Subsidies and current transfers	11.2	4.8	7.2	1.2	1.6	1.4	1.7	1.3
CAPITAL EXPENDITURE and NET LENDING	2.4	2.8	5.5	5.1	5.9	6.0	6.5	5.1
C. AS PERCENTAGE OF GDP (%)								
TOTAL EXPENDITURE and NET LENDING	13.9	11.9	9.7	10.4	10.8	12.8	11.6	13.1
CURRENT EXPENDITURE	13.5	11.5	9.2	9.8	10.1	12.1	10.8	12.4
Wages and salaries	3.5	3.6	3.2	3.7	3.5	4.4	4.1	4.9
Employer contributions to Social Security	0.4	0.5	0.6	0.6	0.8	0.9	0.9	1.4
Other Goods and Services	8.1	6.8	4.7	5.3	5.6	6.6	5.7	5.9
Subsidies and current transfers	1.6	0.6	0.7	0.1	0.2	0.2	0.2	0.2
CAPITAL EXPENDITURE and NET LENDING	0.3	0.3	0.5	0.5	0.6	0.8	0.7	0.7

Note: Data provided by Local Government Unit, MOFE. Total expenditures for 2001 and 2002 are moderately higher than estimates set out in Tables 1 and 3 which come from the 2002 budget surplus.
Source: Ministry of Finance and Economy.

Table A6.5: Analysis of Local Expenditure in Functional Format, 1995–2002

	1995 Actual	1996 Actual	1997 Actual	1998 Actual	1999 Actual	2000 Actual	2001 Revised Budget	2002 Preliminary Budget
A. IN CURRENT PRICES (TOGROG 000)								
TOTAL EXPENDITURE	53,412.5	66,434.7	89,611.3	104,998.4	106,982.1	135,889.5	144,446.7	141,316.6
I. GENERAL GOVERNMENTAL SERVICES	8,585.8	11,503.7	17,725.6	20,688.9	21,751.6	27,672.6	28,116.4	23,511.2
General public services	5,347.2	7,124.8	12,045.1	13,645.9	13,881.2	17,156.4	16,671.5	12,322.7
Public order and safety	3,238.6	4,378.9	5,680.5	7,043.0	7,870.4	10,516.2	11,444.9	11,188.6
II. COMMUNITY AND SOCIAL SERVICES	37,982.5	50,693.8	66,658.2	76,875.4	76,785.6	96,899.5	104,874.0	110,562.0
Education affairs and services	19,162.3	26,498.1	35,497.9	41,179.9	44,497.8	57,968.9	63,642.1	67,980.0
Health affairs and services	14,727.8	19,659.3	24,678.7	28,421.3	22,952.3	28,653.3	30,983.3	34,183.0
Social security and social assistance	247.7	258.5	695.9	607.0	596.2	767.6	917.1	811.6
Housing and community amenities	1,752.7	1,342.6	2,059.3	2,346.1	4,271.4	3,239.4	2,973.5	1,549.0
Recreation, cultural affairs	2,091.9	2,935.2	3,726.4	4,321.0	4,467.9	6,270.3	6,358.0	6,038.4
III. ECONOMIC SERVICES	5,677.9	2,791.0	3,135.3	4,482.6	4,536.1	5,835.5	7,408.4	6,261.9
Fuel and energy affairs	3,452.8	435.8	156.9	165.8	165.0	116.4	190.6	95.7
Agriculture and forestry affairs	1,099.6	1,222.0	1,492.3	725.0	727.3	905.3	1,200.7	1,398.4
Transportation and communication	578.7	312.1	293.5	383.3	656.9	1,677.3	2,397.1	1,600.0
Other economic affairs and services	546.7	821.2	1,192.6	3,208.5	2,986.9	3,136.4	3,619.9	3,167.8
IV. MISCELLANEOUS AND UNCLASSIFIED	1,166.2	1,446.2	2,092.2	2,951.5	3,908.8	5,481.9	4,047.9	981.5
B. AS PERCENTAGE OF TOTAL LOCAL (%)								
TOTAL EXPENDITURE	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
I. GENERAL GOVERNMENTAL SERVICES	16.1	17.3	19.8	19.7	20.3	20.4	19.5	16.6
General public services	10.0	10.7	13.4	13.0	13.0	12.6	11.5	8.7
Public order and safety	6.1	6.6	6.3	6.7	7.4	7.7	7.9	7.9
II. COMMUNITY AND SOCIAL SERVICES	71.1	76.3	74.4	73.2	71.8	71.3	72.6	78.2
Education affairs and services	35.9	39.9	39.6	39.2	41.6	42.7	44.1	48.1
Health affairs and services	27.6	29.6	27.5	27.1	21.5	21.1	21.4	24.2
Social security and social assistance	0.5	0.4	0.8	0.6	0.6	0.6	0.6	0.6
Housing and community amenities	3.3	2.0	2.3	2.2	4.0	2.4	2.1	1.1
Recreation, cultural affairs	3.9	4.4	4.2	4.1	4.2	4.6	4.4	4.3
III. ECONOMIC SERVICES	10.6	4.2	3.5	4.3	4.2	4.3	5.1	4.4
Fuel and energy affairs	6.5	0.7	0.2	0.2	0.2	0.1	0.1	0.1
Agriculture and forestry affairs	2.1	1.8	1.7	0.7	0.7	0.7	0.8	1.0
Transportation and communication	1.1	0.5	0.3	0.4	0.6	1.2	1.7	1.1
Other economic affairs and services	1.0	1.2	1.3	3.1	2.8	2.3	2.5	2.2
IV. MISCELLANEOUS AND UNCLASSIFIED	2.2	2.2	2.3	2.8	3.7	4.0	2.8	0.7
C. AS PERCENTAGE OF GDP (%)								
TOTAL EXPENDITURE	9.7	10.3	10.8	12.8	11.6	13.0	12.5	10.9
I. GENERAL GOVERNMENTAL SERVICES	1.6	1.8	2.1	2.5	2.4	2.6	2.4	1.8
General public services	1.0	1.1	1.4	1.7	1.5	1.6	1.4	1.0
Public order and safety	0.6	0.7	0.7	0.9	0.9	1.0	1.0	0.9
II. COMMUNITY AND SOCIAL SERVICES	6.9	7.8	8.0	9.4	8.3	9.3	9.1	8.5
Education affairs and services	3.5	4.1	4.3	5.0	4.8	5.5	5.5	5.3
Health affairs and services	2.7	3.0	3.0	3.5	2.5	2.7	2.7	2.6
Social security and social assistance	0.0	0.0	0.1	0.1	0.1	0.1	0.1	0.1
Housing and community amenities	0.3	0.2	0.2	0.3	0.5	0.3	0.3	0.1
Recreation, cultural affairs	0.4	0.5	0.4	0.5	0.5	0.6	0.6	0.5
III. ECONOMIC SERVICES	1.0	0.4	0.4	0.5	0.5	0.6	0.6	0.5
Fuel and energy affairs	0.6	0.1	0.0	0.0	0.0	0.0	0.0	0.0
Agriculture and forestry affairs	0.2	0.2	0.2	0.1	0.1	0.1	0.1	0.1
Transportation and communication	0.1	0.0	0.0	0.0	0.1	0.2	0.2	0.1
Other economic affairs and services	0.1	0.1	0.1	0.4	0.3	0.3	0.3	0.2
IV. MISCELLANEOUS AND UNCLASSIFIED	0.2	0.2	0.3	0.4	0.4	0.5	0.4	0.1

Notes: 1. Data provided by Local Government Unit of MOFE.

2. The Expenditure by Function totals differ modestly from Expenditure by Economic Format totals in Table 4 in some years due to data consolidation differences

Source: Ministry of Finance and Economy.

C. Financing Budget Deficits

4. The historical information with regard to local financing gaps 1995 to 2002 reveals:

- (i) The range of total financing gaps between 1995 and 2001 was from 4% of GDP to 6.8% of GDP. Around 1% to 2% of GDP was financed through the Health Insurance Scheme. Financing through central transfers ranged from 3% of GDP to 4.9% of GDP over this period;
- (ii) Although central transfers have typically been negotiated in ad hoc ways the negotiated outcomes have generally led to higher transfers going to poorer aimags with lower revenue-raising capacity, so providing for some (but not total) equalization in the expenditure capacities of aimags. Thus in the IMF study outlined above, using 1999 data while Arhangai aimag had only one eighth of the per capita revenue raising capacity of Ulaanbaatar, its per capita expenditures were approximately 70% of those in Ulaanbaatar. In this year Ulaanbaatar received zero central transfers whereas Arhangai received transfers equivalent to MNT20,900 per capita;
- (iii) All but a small number of the aimags and cities currently rely on central government transfers and in most cases the reliance is a significant one. In 2000 and 2001 approximately 50% of total local expenditure was funded by central transfers. The range of central subsidization is from zero in a small number of cases up to around 85% of total in the case of the poorest aimags;
- (iv) At present, transfers are determined annually by the central Ministry of Finance and Economy (MOFE) in fairly ad hoc ways. All 22 regional government units submit their future year budgets to the MOFE around September each year; including estimates of own revenues and financing sought by way of central transfers. The MOFE then reviews these budgets and enters into a negotiation with each local government following which transfer amounts are tentatively agreed. The negotiations take into account forecast revenue and expenditure needs, particularly in key areas such as education and health (where there are standards as to levels of expenditure that will be supported). These tentative agreements are then further debated by the cabinet and the Parliamentary Budget Committee before eventual discussion and approval by the full National Parliament; and
- (v) While the Budget Law is somewhat ambiguous in relation to local borrowing powers the common interpretation is that with the exception of Ulaanbaatar (which has borrowing powers under its own Law), regional governments (aimags and capital cities) can only borrow with approval of the central Minister of Finance and Economy. This approval has rarely been given for any long term borrowing so the great bulk of local governments carry no long-term debt on their books. On occasion short-term loans have been made by the central MOFE to help smooth cash flow difficulties of particular local units. In most cases these largely represent a bringing forward of central transfers due later in that year and the situation is usually normalised before the end of the year. However, in some cases the arrangement has carried over for more than one year resulting in some local units carrying short to medium term debt from the central government on their books. Lower levels of government (soums

and bags) have no apparent powers to borrow but do receive subsidies from their respective higher levels of government. At different times all levels of local government have taken on quasi debt in the form of arrears in payments. In general the private sector will only provide goods and services to local governments on a cash basis. Accordingly, most arrears accumulated are in the form of wages and salaries and for goods and services provided by state enterprises and agencies (particularly heating, electricity, communications and fuel).

PROFILE OF MONGOLIA'S LOCAL GOVERNMENT SYSTEM

1. Important institutional elements of the current local government system include
 - (i) *Aimag* (province) and capital city governors hold political positions, appointed by the Prime Minister (lower level governors are appointed by their immediate higher level governor). In both cases appointments are made following nominations from the relevant *hural* (local assembly). Significant downward control occurs through powers of political appointment;
 - (ii) Representative *hurals* are composed of elected officials at the *aimag*, *soum* (district) and *bag* (subdistrict) levels. *hurals* possess powers in the passing of local level budgets and laws that are subordinate to (or provided for) under central government laws. Partly due to human and financial capacity constraints and partly because of overriding powers held by Governors and the Central Government, the role played by many *hurals* has often been limited and disappointing;
 - (iii) Governors typically (but not always) retain a relatively more powerful status compared to the *hurals*, especially given their close relationship with the central government which retains financial and law making ascendancy in a unitary state. However, Governors need to exercise substantial degrees of dual allegiance to the central government and their local constituencies as represented by local *hurals*. The Governor can veto decisions of the local *hural* but the *hural* can override this veto by a majority vote, in which case the Governor may offer his/her resignation;
 - (iv) Until recently local governments have been provided (mainly under the Budget Law) with an extensive list of functional responsibilities reflecting the role of the Governor carrying out the functions of the single unitary government at the local level;
 - (v) The Public Sector Management and Finance Law (PSMFL) has at first glance much more closely redefined the functional responsibilities of local governments to those purely of a local municipal nature (such as maintaining local roads, sewerage, water, local infrastructure and so on). However, the PSMFL still provides rights and opportunities to the central government to negotiate output contracts with Governors of local governments to provide a broader range of services of national importance (delivery of health and education services are likely to be the most important of these);
 - (vi) In the past all levels of local government have been forced to adhere to a rigid centrally imposed organizational structure which is common to all units of the same level. Administrative numbers are high with around 6,500 local level civil servants, a ratio of around one administrator for every 350 persons;
 - (vii) Planning and budgeting systems have generally been fraught with difficulties. Most local governments have limited revenue-raising capacity and rely heavily on the central government (or higher levels of local government) for transfers to finance local activities. The system of central transfers (and also transfers from higher to lower levels of local government) has generally been based on ad hoc bargaining with only limited consistency or equity in outcomes achieved. The PSMFL does

not address issues of central transfers and tax sharing arrangements, which will need to be pursued independently; and

- (viii) There has been limited discretionary authority at local levels to plan and design services as required by local communities. The PSMFL has introduced a requirement for enhanced strategic planning at local levels, though within the context of the delivery of a narrow range of local municipal services. Limited discretionary authority exists notwithstanding that aimags and soums do have constitutional rights to take independent decisions in matters of socio-economic life in their respective jurisdictions; and they also enjoy nominal budgetary autonomy.