

# WORLD GOVERNANCE SURVEY IN MONGOLIA

## 1. GENERAL BACKGROUND

The country has coped with a double transition - from an authoritarian state to a democracy, as well as from a centralized to a market economy. The political reform and democratisation in Mongolia have been remarkably swift, smooth and thorough. After almost seventy years of socialist rule in virtual isolation from the outside world (except for the COMECON countries), Mongolia stands out as one of the front-runners in political and institutional reform. An open and democratic society has been established and is being consolidated at all levels.

Mongolia's 1992 Constitution grounds sovereignty in democracy, justice and freedom (Article 1.2), outlaws illegal seizure of state powers (Article 3.2), respects the rights of national minorities (Article 8.2), and provides for separation of religion and the state (Article 9). A constitutional court has been established as a mechanism to safeguard the Constitution and there have been several free and fair elections for both Parliament and the Presidency.

The Constitution of Mongolia, adopted in 1992, divides the powers of the state into Legislative, Executive and Judicial Powers. The Constitution defines the unicameral Parliament (the State Great Hural) as the highest organ of the state and the supreme legislative power, providing it with wide-ranging authority to enact and amend laws, to determine domestic and foreign policies, fiscal and monetary policies, and to approve the state budget. The parliament has the power to approve and amend the country's administrative and territorial divisions and the power to determine the legal basis for local self-governing authorities.

Local governments play a key role in translating reform policies into practical realities, as they bear the burden of interpreting and explaining reforms to the local population. The present administrative system divides Mongolia into 21 *aimags* (provinces), 342 *soums* (communes) and (urban) districts, and 1,681 *baghs* (rural settlements).

As part of this system, the Constitution protects the independence of the judiciary, judges being subject only to the law. This principle is further guaranteed through the Judiciary Act, the Code of Civil Procedure, the Code of Criminal Procedure and the Advocates Act. A modern constitution guaranteeing human rights and civil liberties within a democratic political system is in place and respected in all quarters.

The human rights base for human development in Mongolia is established in the goals and articles of the 24 human rights conventions that have been ratified by the Government of Mongolia, including,

- The International Covenant on Civil and Political Rights (ICCPR) (adopted in 1966 and ratified in 1974)
- The International Covenant on Economic, Social and Cultural Rights (adopted in 1996 and ratified in 1974)
- ILO Convention on Equal Remuneration, 1951 (adopted in 1951 and ratified in 1969)
- Convention on the Political Rights of Women (adopted in 1952 and ratified in 1965)

- ILO Convention Concerning Maternity Protection, 1952 (adopted in 1952 and ratified in 1969)
- ILO Convention Concerning Discrimination (Employment and Occupation), 1958 (adopted in 1958 and ratified in 1969)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (adopted in 1979 and ratified in 1981)
- Convention on the Rights of the Child (adopted in 1989 and ratified in 1990)
- ILO Convention on the Worst Forms of Child Labour, 1999 (adopted in 2000)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (adopted in 2000)

There is a strengthening and growing legal and institutional framework in support of these human rights commitments made by Mongolia. Most recently a National Human Rights Commission has been established.

The Constitution upholds equality of every person before the law. It clearly states that the accused has the right to a defence and to legal assistance, that court trials should be open to the public and that every person should be presumed innocent until proven guilty.

Self-organisation of people is a major tool of empowerment, and the government has created the necessary framework for non-governmental organisations to be legally established and registered.

The country has a free and thriving private mass media and both political debate and public protest are active. Since transition started, all these sectors have been actively participating in civil affairs. NGOs engaged in service delivery have a tendency to replace former government services, thus partially compensating for the recent breakdown of these services. The number of voluntary associations in Mongolia has increased in ten years from about 30 in 1989 to 1,700 by mid 2000. This new movement towards a strong civil society testifies to the Mongolian public's growing appreciation of NGOs and other voluntary organisations as embodiments of the freedom of association and expression on the one hand, and the generally constructive attitudes of the government towards community participation on the other. The Law on NGOs, which came into effect in March 1997, is universally recognised as being geared towards creating an enabling environment for the nascent voluntary sector. Under this law, non-profit organisations are tax-exempt and a tax concession is given for contributions to NGOs working in the field of education.

## **2. THE MAIN FINDINGS**

### **Part one**

- The highest scores have been identified in this field, especially in terms of freedom of expression and freedom of peaceful assembly and association. However, there are some reservations with regards to discrimination in politics and facilitation of public discussions on major shifts in policy
- Many public officials were dismissed from their posts and positions after the last political elections, which took place in 1996 and 2000. When coming into power, the new government tends to discharge state civil servants on the basis of their political opinions.

Because there are no all round guarantees for their smooth functioning, there is a tendency for good civil servants to cross over to the private sector. These factors diminish the stability of government employment.

- There is lack/absence of effective mechanisms for consultation on formulation of public policy and information is still considered to be an attribute of power, frequently kept carefully under wraps. The TV news programmes typically cover only parliamentary sessions and newspapers publish results of roll call voting. Live broadcasts of parliamentary deliberations and hearings are still special occasions. In 1999, the parliamentary process was further opened up to public scrutiny by amending the law to enforce roll-call voting on matters unrelated to “state secrets” and placing parliamentary minutes in public libraries.
- The importance of a free media, which has a high standard of professionalism and is accountable, should not be ignored. Secrecy and lack of transparency creates a foundation for irresponsibility in governance. While the country has a thriving private print media, their market is confined largely to Ulaanbaatar. The largest national radio and TV company that provides access to information to approximately 90% and 70 % of the total population respectively, is still government owned. The survival of a truly independent media is vulnerable due to underdeveloped markets and a strong divide along political party lines.
- Strong principles of openness, transparency and integrity for all those active in the public sphere are needed. For example MPs and high-ranking government officers are not currently required to make public their income statements. Annual submission of activity and financial reports by NGOs to the relevant regulatory agencies, although required under the NGO law, is not effectively implemented. The Civil Service Council, called upon to monitor and enforce the Code of Ethics for the civil service, needs strengthening. Equivalent mechanisms for the NGO and private sectors are still missing in Mongolia.
- With the existing limitations on information flows, the participation of stakeholders in decision-making and the monitoring and enforcement of laws, the levels of accountability throughout the political system of Mongolia do not meet all public expectations.
- Increased rate of crime and lower level of tax collection reflects into the rating for questions 5 (respect for system of rule-making).

## **Part two**

- Gender issues are not considered a major problem in Mongolia, even though there is still much progress that needs to be made in terms of political and economic opportunities. There have been only eight women out of 76 members, in the last two parliaments. There has only been one female minister since the beginning of the transition process. Unfortunately, neither the government nor other political parties are implementing any specific measures to support female candidates, and attitudes towards gender within the parties seem to be based on traditional customs.
- In addition, the representative functions of Members on behalf of the Mongolian people are not well articulated within the legal framework governing the Parliament. As Parliamentarians generally have little experience in communicating with their

constituents, and few formal mechanisms have been established to obtain the views and perspectives of citizens on matters of national or local priority, it is less likely that Parliamentarians will represent true public opinion. This lack of genuine representation is exacerbated by the fact that the general public has limited knowledge of the role, functions, and responsibilities of their elected officials.

- The participatory principles in the rules and procedures governing Standing Committees are not translated into effective and responsive processes. Under the previous government, political factions provided weak legislative leadership, especially in managing the legislative agenda and issues before Standing Committees. The process was also hampered by limited capacity for research and analysis of draft legislation, especially the economic, social, gender, cultural and budgetary implications of new laws.
- The Parliamentary process overall, with its multiple steps back and forth between Standing Committees and Plenary sections, is unduly complicated creating an inaccessible process for the general public. Given the heavy emphasis on the passage of legislation over the past eight years, comparatively little attention has been placed on the oversight function of Parliament, especially holding the Government accountable for the effective implementation of legislation and its regulations (including cost-effectiveness and value for money of Government operations).
- There is a strong competition between political parties before and during the elections, but it is important to ensure internal democracy within the parties, including the party in power.

### **Part three**

- A major challenge for the Mongolian Government during the transition period has been to reform its institutional structure in such a way that the Government and the public sector are able to provide the necessary leadership and management for the conduct of public affairs. Mongolia inherited a large bureaucratic machinery from the previous command system of public administration, as well as entrenched obstructive, bureaucratic attitudes and behaviour within the civil service.
- Domestic violence has become a critical issue, yet there is no effective state mechanism to regulate domestic violence. A lack of information and training on issues of domestic violence has contributed towards victims remaining silent. Unfortunately, homes are, for many people, places in which their human rights are grossly violated. One result of the high level of domestic violence is an increasing number of homeless children, which has reached 3,000. No mechanisms to protect victims and punish perpetrators have been established so far.
- Establishing a system of capable and representative local-level government is one of the most important, but also the most difficult, institutional challenge in the democratisation. Local governments in Mongolia have been particularly ill-equipped to assume the leadership role required of them. In the past, they were nominally responsible for providing local services, such as education, housing and basic health care. However, they functioned merely as extensions of the central power and their main function was to execute orders from above and report back.

- Despite the economic and political reforms of the 1990s, local communities have in many respects suffered a disempowerment. This has been the result of a de facto centralisation of decision-making power, dwindling budgets and decreasing economic self-sufficiency. The local governors at the *aimag* level are appointed by the Prime Minister, and by *aimag* governors at the *soum* level. This means of appointment results in diminished autonomy for local decision-making, as well as lowered levels of accountability of governors to the local Hural of Citizens' Representatives. *Aimag hural*s nominate candidates for approval by the Prime Minister whose second refusal to accept a nomination overrides the local *hural*'s choice. This power was exercised in late 1996 when some of the *aimag* governors were appointed in opposition to local choices.

#### **Part four**

- Power given to specialised agencies to formulate policy is very limited.
- The excessive role of political parties in bureaucratic appointments at all level of public administration contradicts the principles of merit based system of recruitment and equal access to public service
- Since the structure of accountability at all institutional levels is underdeveloped, the transparency and responsiveness of all public administrative authorities are low.

#### **Part five**

- The economic transition required less government ownership, but more government competence to facilitate a successful market economy, especially promotion of newly emerged property rights - a "transition paradox".
- As result of the privatisation process, a new mentality on property rights has been generally introduced, but there are some strong criticism and public complaints regarding the ways and forms of privatisation, as well as its social and economic consequences.
- Rules and regulations in the field of national economy should be stabilised and improved to facilitate equity and justice among public and private sectors, small, medium sized and large enterprises.
- Patronage and bribery are wide spread phenomena in getting business licences for commerce, industry and other services in the country.
- An effective mechanism for consultation between public and private sector actors has not been established yet. Very little or no efforts have been made to facilitate consensus building on national development strategies.

#### **Part six**

- Despite legislative protection of human rights, a lack of knowledge and experience in both state and non-governmental organisations has led to slow progress on law enforcement. This lack of awareness, along with the influence of entrenched traditional attitudes among the general public, make human rights training essential.

- Factors that adversely affect fair judgements under the law are still present. These include low salaries and unsatisfactory social guarantees within the judiciary, in conjunction with the spread of bribery and corruption, which are affecting impartiality; the absence of a national system for the examination and selection of lawyers and judges is an obstacle to bringing highly talented lawyers, who respect and abide by the professional code of ethics, into the judiciary.
- Unstable decisions in lower level courts resulted in a lack of trust of court decisions within the general public in the last few years. This instability has also led to an increase in attempts to solve disputes, particularly business and commercial disputes, outside the court. Independent mechanisms for solving disputes involving business units with foreign investment are in place (including the arbitration courts). However, there is a lack of trust in the stability and the decisions of these courts.
- There is a high degree of inadequate enforcement of court decisions. It has become common for people to have to wait for years to get their damages compensated; this contributes to the lack of trust in the court system. Not only is law enforcement weak, but because lawmakers and legislative drafters have not properly researched the economic basis for laws prior to their introduction, many laws are impossible to implement due to economic constraints.
- A few human rights categories, including freedom of thought, speech and association rest on a sound footing now, and the conditions that foster their realisation have progressed. However, there is room for improvement in these areas. There are many prisoners who are being held in poor conditions for extended periods without being charged, and sentenced prisoners face conditions that are unacceptably harsh. Appropriate terms for juvenile justice still require definition in order to reduce the number of children who are imprisoned for misdemeanours or on the basis of perceived threats to public security.

Corruption among leadership continues to be problematic and the justice system has not been able to adequately stem this tide, although efforts are ongoing to rectify this. For the public, freedom from fear, from both human and environmental threats, is not wholly realised. Crime and theft accompanied by violence has emerged as a special concern.

### **3. CONCLUSIONS**

There have been positive developments in the level of governance in Mongolia. The overall drive towards democracy and a market economy is undoubtedly a national commitment and an irreversible process. Some results have been achieved in strengthening the institutions and mechanisms of government over the past few years, and in putting into place mechanisms for redressing mismanagement and inefficiency

However, the incomplete reform of governance mechanisms including accountability, minimal public participation and access to governance information, has hindered progress in realising human rights - including freedom from discrimination, freedom for decent work, and freedom to develop human potential at both individual and community levels.