

## **THE POLITICAL PARTY AND ELECTION CAMPAIGN FINANCING ASSESSMENT STUDY -MONGOLIA<sup>1</sup>**

### **1.1 CONTEXT FOR THE ASSESSMENT STUDY**

Political campaign funding is one of the main loci of corruption in democracy. In Mongolia as in many countries around the world, private interests have bought off politicians and bureaucrats to shape legal, policy and regulatory environments to their own ends. One area particularly prone to such influence is the financing of the political system. It is very expensive to operate a political party, particularly during an election campaign, and public funding is seldom adequate. Dependence of politicians and political parties upon contributions from a small number of economic actors distorts public policies and breeds public cynicism about the political system.

The problem of corruption in campaign finance is donations to parties, whereby in return the donor would receive service, such as passing of legislation that is advantageous to the donor. In addition, parties that exercise control over public resources may also use those resources to conduct election campaigns.

### **1.2 OBJECTIVE OF THE ASSESSMENT STUDY**

The objective of the research is to study an area and environment of campaign finance, party funding regulation, and campaign expenditure, exercise of control over state resources and channels of private interests to secure advantages.

The study will

- Review the political and institutional context
- Make analysis of all the legal and administrative regulations
- Set out the facts about the patterns of political financing in the country
- Provide recommendations for areas or activities that require further development in campaign financing

### **1.3 FRAMEWORK OF THE ASSESSMENT STUDY**

#### **1.3.1 General Background**

Article one of the new democratic Constitution of Mongolia adopted in 1992 provides that “the fundamental principles of the state operations shall be democracy, justice, freedom, equality, national unity and the rule of law”. The State power is vested in the people, who shall exercise it through their direct participation in state affairs as well as through the representative bodies of State power elected by them.

The Constitution of Mongolia divides the powers of the state into Legislative, Executive, and Judicial powers. The Head of the State is the President, who is directly elected by the people for a term of four years. In comparison with some other countries, Mongolian President has little powers than those in Presidential states, but has more powers than the symbolic powers of Presidents in Parliamentary states. Therefore, Mongolia is a Parliamentary Republic by definition. The Constitution defines the unicameral Parliament (the State Great Khural) of 76 members who are directly elected for four-year term as the supreme legislative power, providing it with wide-ranging authority to enact and amend laws, to determine domestic and foreign 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

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<sup>1</sup> The Voter Education Center, *Assessment study*, commissioned by the Mongolian Foundation for Open Society.

legal basis for local self-governing authorities. Regular sessions are convened every six months and not less than 75 working days. A session is considered valid with two thirds of all members present. A citizen who has reached the age 25 is eligible to be elected to the State Great Khural on the basis of common free electoral right.

The government, or executive body of the State, is comprised of the Prime Minister and cabinet members, who are accountable to the State Great Khural.

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 1681 *baghs* (rural settlements). Local Parliaments or Khurals of Citizen Representatives govern all these geographical sub-units. Governors, who are nominated by the local Khural and appointed by the State Government Office, administer State authority in the aimags.

As a part of this system, the Constitution protects the independency 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.

Mongolia is a member of the United Nations and a State Party to the *International Covenant on Civil and Political Rights*. Human rights are protected in the 1992 Constitution, and in late 2000 a law was adopted establishing a National Human Rights Commission.

Mongolia is a large country of about 1.5 million square kilometers with a comparatively small population of approximately 2.4 million people. It is sandwiched between two large powers – Russia and China. About one-third of the population lives in Ulaanbaatar, the capital city, and a significant proportion of the population in rural areas continues to live a nomadic lifestyle.

Mongolia is a low-income country and the average annual income per capita is estimated to be US\$390. Economic growth remains relatively low and unemployment is high.

Corruption is widespread in most areas of Mongolian public life. The most affected areas include the customs, banking institutions, judiciary, the Parliament, taxation authorities and political party financing.

### **1.3.2 The legal environment**

Since 1992, Mongolia has seen through three Parliamentary, two Presidential and Local Government Elections. Parliamentary elections were held in 1992, 1996 and 2000. The Mongolian Peoples' Revolutionary Party (MPRP) won 71 of 76 seats in the 1992 election, but in the 1996 election the Mongolian Democratic Coalition won 50 seats, with the MPRP retaining only 25. In 2000, however, the MPRP was back in power, winning 72 of 76 seats.

Mongolian elections are currently governed by three separate laws, with substantial amount of repetition and overlapping of provisions. The election laws are to some extent ambiguous. The terms used in the elections have neither been clearly defined nor interpreted clearly. (Mongolian State Great KKhural Election Law was adopted in 1992, the Local Government Elections Law was adopted in 1993, the Presidential Election Law was adopted in 1993 by the State Great KKhural /SGK)

Due to non-transparent campaign financing, office-selling, undue influence of business on politics, and corruption are accusations that should be addressed to maintain the credibility of the electoral and democratic processes. The activities prohibited during election campaigns are different under the three existing laws.

There is no separate law or regulation on Campaign financing or Public Disclosure. There is no Official Information Act or Freedom of Information Law in Mongolia.

The National Program for Combating Corruption, which was adopted by the Parliament on July 4, 2002, provided that the National Program was to be implemented in the direction of electoral system reform:

- Establishing a procedure for political parties' participation in elections to report to the General Election Committee and inform the general public about their election expenditure and donations before that elections are held;
- Establishing a limit on the amount of donations given by citizens and legal entities to the election campaign work;
- Establishing a procedure for declaring to the general public annual statement of assets and income by a person who has been elected a member of the State Great Khural (Parliament) or appointed as a member of the Government Cabinet or to other public high offices, before taking the oath of that office and during the term of office.

The National Program on Human Rights, adopted by the Parliament on 24 October, 2003, provides for the voters' right to have access to any information about candidate and elected members activities, including campaign financing and donations.

Although the National Program for Combating Corruption was adopted by Parliament one and half year ago, almost none of its provisions have been implemented or endorsed into laws until now. No progress has been made towards fighting corruption at the level of the Government, the Parliament and political parties. There is minimal regulation in the area of conflict of interests in Mongolia and almost none for MP's. There are no specialized anticorruption agencies in Mongolia, with the exception of a unit to fight organized crime at the Ministry of Justice and Home Affairs. Moreover, there are no specialized anticorruption units for fighting corruption with the prosecution offices or courts.

Political party financing and election campaign financing are extremely underregulated areas. Liberal rules on donations, a non-transparent system for determining State subsidies and the virtual absence of supervision probably underpin widespread illegal funding and corruption, although direct evidence of corruption is scarce.

#### □ **The electoral system**

The electoral system has been criticized on the grounds that the election results over the years have been vastly disproportionate, characterized by polar swings in terms of the number of seats of the majority party. The political electoral system has generally been a majoritarian system, but with multi-member mandates or single-member mandates. It shifted from the Block Vote system (1992) to the Party List and Candidate List (1996) to First Past the Post System (2000). The majoritarian system is generally considered to be less representative of the public opinion than other alternatives.

In 1992 parliamentary elections, the coalition of Mongolian Democratic Party, Mongolian National Progress Party and Mongolian Green Party gained 17,5 per cent of votes and took 4 seats of 76 which constituted 5,3 per cent of all seats. MPRP gained 56,9 per cent of all votes and occupied 72 seats, in other words 94,7 per cent of the seats in the parliament. After the 1996 elections, MPRP won the 40,48 per cent of the votes and gained 25 seats which means 32,89 per cent of the total number of seats. The Democratic Coalition won 46,48 per cent of the votes and gained 50 seats which means 65,78 per cent of the seats in Parliament. After the 2000 elections, MPRP won 51.6 per cent of the votes and gained 72 seats, which amounts to 94,7 per cent of the parliament seats.

The provision in the election law provides that the minimum threshold of voters should be 25 per cent, further allowing for the potential establishment of the government without representation of three fourths of eligible voters.

The first local elections were conducted in 1992, and subsequently local elections took place in 1996 and 2000. The law for elections of these institutions was adopted in 1992. However, local election law was

modified twice in 1996 and 2000, just 2-3 months prior to the local elections. Hence, all three local elections were conducted under different electoral regulations.

In 1992, baghs held public meetings and elected a Soum Citizens' Representatives' Khural member representing the bagh. The Soum CRKs held meetings to elect an aimag CRK member representing the soum in 1996, voters voted by party and candidate lists. In 2000, voters voted by purely majoritarian system.

2004 is the election year for Mongolia, with new Parliament and Local Government elections.

#### □ **Definition of the election campaign**

*Article 7* in the State Great Khural Election Law indicates that "The State Great Khural shall fix and announce elections for the State Great Khural not less than 75 days before the polling day".

Parties, coalitions, candidates, who have announced about their intent to participate in the election and had registered (65 days before polling day, *article 19.1*), shall have the right to start Pre-election Campaign (*article 21.1*) and close their campaign 24 hours prior to the elections (*article 21.2*). The law defines the election campaign as a period, starting 65 days before the election and ending up 24 hours before the polling day.

In case, the candidates, their personal assistants and election officers of parties and coalitions' violate the procedures prescribed in par.1, 2 of Article 21 of this law, demands of ceasing unlawful acts shall be issued. If violations continue to take place, the court shall impose fines up to 250,0 thousand tugrugs (about 220US\$) on parties, or other involved organizations, and up to 50,0 thousand tugrugs (about 45US\$) on individuals. If a candidate is found guilty, the General Election Committee shall have the right to remove his/her name from the list of candidates (*article 6.6*)

Parties, coalitions and independent candidates shall form an election campaign fund and open an account with a bank and inform the General Election Committee of this action and announce it to the public (*article 5.5*). But this article does not elaborate on the time frame when such an election campaign fund could be set up.. After Polling day, during the time of the review of election expenses, parties', coalitions' and independent candidates' transactions to-from accounts of election campaign funds shall cease (*article 5.6*)

The Presidential Election Law says that "The State Great Khural shall determine an election date not later than 60 days before the polling day" (*article 9*). The Candidate for President, who formally registers with the General Election Committee and acquires a certificate (47-55 days before the polling day) shall have a right to conduct an election campaign, that shall end 24 hours before the polling day (*article 20.1, article 23.1,2 article 28.1.2*). There are no sanction guidelines, if candidate's campaigns start before that period. In cases of violating procedures described in par.2 of Article 28, i.e., campaign not being ceased 24 hours before the polling day, a fine of 4 000-50 000 tugrugs shall be imposed by the court on candidates, officials and party election officers for their failure to comply with the election Committee demands to stop violating the provisions. (*article 8.5*)

The nominating party shall establish election campaign funds within five days upon the registration of its nominee (42-50 days before the polling day), open a bank account for the funds, and inform the General Election Committee and the public thereof. After the polling day. the bank account transactions of the candidate's election campaign funds shall cease (*article 7.7*)

#### □ **Disclosure rules for party income**

There are no disclosure rules, regulations for party income including political contributions, public financing or subsidy, and other sources. There is no disclosure law or rule which requires itemization of cash or in-kind contributions by donor name, address and amount or cash-value and itemization of loans by lender name, address, and amount. There is no requirement for public disclosure before an election takes place.

According to the Articles 10 and 11 of the Law on Political Parties, political parties of Mongolia shall operate on the basis of self-financing principle, and party property and income should consist of membership fee and donations, citizen and organization donations, and profit of entrepreneurs by the party, profit out of party activities. This provision allows the political parties to receive contributions from foreign citizens and parties, but they should inform the public about the amount (*article 11*); so far, no party has disclosed such a donation.

#### ❑ **Disclosure rules for campaign expenditure**

According to the *Article 5* of State Great Khural Election Law, parties, coalitions and independent candidates shall forward the reports on spending of the election funds to the General Election Committee within one month after the elections are over. The General Election Committee shall examine the reports and shall have published the results in the official gazette within 3 months after the completion of the election. There are no clear provisions or regulations about the penalty, if parties, coalitions and independent candidates fail to submit their election campaign funds operation report. For example, in 2000 parliamentary election, 5 Political Parties didn't bring their campaign expenses report. See the attachment.

There are no disclosure rules which require itemization of campaign expenditures by vendor name and address, amount, and product or services purchased. See the attachment.

#### ❑ **Restrictions on donations**

Donation is the main source of funding of political parties in Mongolia. Donations increase during the pre-election campaigns. For political parties with higher probability of success, donations are higher and they alone allow to pay for all expenses incurred during the election campaign and fund party activities for some time. Recently, it became customary for politicians to receive donations, for business sector to make donations for a nominee or a political party.

**Contribution Limits:** The existing laws for the Parliamentary and Local elections do not define limits for campaign contributions, nor do they establish procedures for reporting campaign contributions received by candidates, political parties and coalitions as well as information on the financiers (individual as well as institutional).

February 1, 2001 amendment to *article 7.5* of the Law on Presidential Election limits donation amounts at 10 million tugriqs for legal entities and 5 million for individuals. The current laws cover the issue of cash or monetary contributions only, saying that they should go through the election expense funds, and should be reported, but the soft money or in-kind contributions, although they comprise a significant part of donations, are not prescribed to be reported. Also, there is no mechanism for controlling such donations. However, there are no specific provisions in elections laws on disclosure of contributions by donor name, address, amount. There are no provisions about penalty, if a violation occurs regarding this amendment

There are no restrictions on total amount of donations a party may receive in a given year, or restrictions on total income from donations, and no strict limits on the maximum size of donations from a single entity.

**Contribution Bans:** The law prohibit certain individuals like foreigners and stateless persons, and institutions such as public organizations, institutions sharing state property (with the property of the state), foreign enterprises, including foreign partners of joint ventures, from contributing to the election purpose during the process of the election preparation (from the date of announcement to the end of the elections). The laws prohibit in-kind or cash money donations, individuals and organizations may take only monetary contributions for the election purpose and shall transfer them to the account of the election fund of the parties, coalitions and independent candidates (*article 5.5*). But according to the Political Party Law, there are no bans on donations from abroad like foreign citizens and parties outside the period of election campaign. Candidates are not allowed to receive, give and spend election contributions through other channels than the election fund account.

**Contribution Threshold:** The laws don't require or establish the value level at which contributions must be reported. The Law on Presidential Election specifies that the threshold applies to aggregate contributions for one election

□ **Restrictions on spending**

Mongolian legislation does not set any spending limits. There is no restriction or limit on total spending or certain types of spending. There are no legal limits defined aggregate or by amount per voter.

The Election Law does not prohibit paid political advertising on radio and TV.

There is a ban on spending of the election campaign fund for non-campaign items, the general prescription allowing for expenses related to propaganda of candidates, organization of meetings, interviews, stationery, postage, communication, transport and official trips of candidates, his/her associates and election officers of parties and coalitions, and other expenses authorized by the General Election Committee.

The campaign spending's increasing election by election, if one looks at the following data\*. In 1992 elections, 137 082 million tugriqs, in 1996 elections, 209 349.1 million tugriqs, and in 2000 parliamentary elections 1 841 679.8 million tugriqs were spent respectively (incomplete data ).

□ **Media regulation<sup>1</sup>**

**Media Coverage of Elections:** The Electoral Law of the SGK of Mongolia, the Mongolian Presidential Election Law, the Law on Elections of Citizens' Representatives' Khurals of Aimags, the Capital City, Soms and Districts all provide for media coverage of elections.

**Voter Education:** *Article 6.2* of the Presidential Election Law provides that the State media have a duty to inform the public about the preparation for and results of the election. The Electoral Law of the State Great Khural and the Law on Elections of Citizens' Representatives' Khurals of Aimags, the Capital City, Soms and Districts do not provide for voter education

**Balance and Impartiality:** *Article 4* of the Electoral Law of the State of Great Khural provides that information and reports of the central and local mass media shall be "correct and objective". *Article 21.5* of the same law forbids media other than those owned by political parties from engaging in exclusive propaganda on behalf of one party, coalition or candidate. *Article 6.3* of the Presidential Election Law also provides that information published by the mass media must be "true and correct", but does not have a provision specifically forbidding state-owned media from engaging in exclusive propaganda in favor of one candidate. The Law on Elections of Citizens' Representatives' Khurals of Aimags, the Capital City, Soms and Districts do not have any of such provisions. *Article 3.3* of the draft Law on Public Radio and Television requires the public broadcaster not to promote any particular political party or force.

**Direct Access Programmes :** The Electoral Law of the State Great Khural (*article 21.3*), the Presidential Election Law (*article 28.3*) and the Law on Elections of Citizens' Representatives' Khurals of Aimags, the Capital City, Soms and Districts (*article 23.2*) all grant direct and free access to airtime for political parties and/or candidates in the public media. They do not, however, include provisions ensuring that the scheduling of this time is fair, as some time slots (prime time) are obviously far more influential than others.

**Paid Political Advertising:** The Electoral Law of the State Great Khural (*article 21.4*), the Presidential Election Law (*article 28.4*) and the Law on Elections of Citizens' Representatives' Khurals of Aimags, the

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<sup>1</sup> Mongolia in Transition – An Analysis of Mongolian Laws Affecting Freedom of Expression and Information” ARTICLE 19/ Globe International, July 2002, Ulaanbaatar

Capital City, Soums and Districts (*article 23.3*) all provide for commercial advertising by political parties, but do not impose the conditions set out above.

**Content Restrictions:** None of the election laws exempt the media from legal liability for unlawful statements.

**Right of Reply:** None of the election laws provide for a right of reply, or to a correction or retraction can provide a particularly timely and effective remedy in these circumstances.

**Opinion Polls and Election Projections:** Opinion polls can exercise particular influence on the outcome of elections and can also be quite distorting. None of the election laws require opinions polls or election projections to provide information such as:

- name the political party or other organisation or person which commissioned or paid for the poll;
- identify the organisation conducting the poll and the methodology employed;
- indicate the sample and margin of error of the poll;
- indicate the date and/or period when the poll was conducted.

**Monitoring and Complaints Body:** Although there is a General Election Committee, which has the power to allocate airtime,<sup>2</sup> it does not appear that it has a mandate to hear and take action on complaints.

#### □ State funding of political parties

**Direct State assistance to parties:** *Article 12* of the Political Party Law and *Provision 5.10* of the SGK Election Law provides, "Parties represented at the State Great Khural shall be financially supported from the state budget according to the number of seats they hold. The amount of financing and the procedure thereby shall be determined by the State Great Khural". This provision allows the political party dominating in the parliament to receive support from the state budget in a favorable way. For instance, MPRP, which obtained 72 seats (94.7 per cent) in the State Great Khural changed the amount of 1 million tugrign support for each seat and now MPRP is receiving 2.5 million tugrigns for each seat.

The amount of financing for the political parties from the state budget is quite different in proportion to the seats they hold in Parliament or based on the votes gained by them in the election. After the 1992 election MPRP gained 56,9 per cent of the votes and took 72 seats, in other words 94,7 per cent of the seats in the parliament. After the 1996 election MPRP won 40,48 per cent of the votes and gained 25 seats which amounts to 32,89 per cent of the seats. The Democratic Coalition won 46,48 per cent of the votes and gained 50 seats, which means 65,78 per cent of the seats in Parliament. After the 2000 election MPRP won 51.6 per cent of the votes and gained 72 seats which means 94,7 per cent of the parliament seats.

**Indirect State assistance to parties:** The General Election Committee arranges for free broadcast on national TV and radio during the election campaign period only. According to the SGK Election Law (*article 21.3*), the Mongolian State Radio and Television shall treat equally each party, coalition, and independent candidates contesting in the same constituency in terms of free service, duration and opportunities of conducting agitation and propaganda by parties, coalitions and independents.

#### □ Accounting requirements for political parties

Although the Law on Political Parties prescribes that parties submit their annual financial reports to the Government, so far no party has done in accordance to the law, and the Government never requires execution of this provision.. Financial accounts of political parties are closed to the public. There are no regulations where, how and to whom, which agency or ministry of government the reports should be made. There have been no checks on funding sources and accounts of political parties to date..

<sup>2</sup> See Article 21.4 of the Electoral Law of the State of Great Hural and Article 23.3 of the Law on Elections of Citizens' Representatives Khurals of Aimags, the Capital City, Soums and Districts.

Soft money or in-kind contributions, which comprise a significant part of donations, are not prescribed to be reported in the laws. Also, there is no mechanism for controlling them.

□ **The legal framework for public administration**

In Mongolia, public officials are largely political party appointees rather than appointed on merit-based criteria, and, therefore, do not enjoy job security. Ruling party uses public employees and other state resources for campaign purposes.

The parties and candidates associated with the government are not supposed to suspend own job duties while participating in the elections. It leads to the cases when government officials regularly abuse their power and influence, exploit civil servants in the election campaigns, and enjoy dominance in utilization of public TV and other media outlets. They also try to attract voters by promising construction of houses, distributing donations by using state budget resources during the election campaigns.

On 10 January, 2002 the Civic Will Party inquired the General Election Commission of Mongolia, responsible for monitoring of the transparency and fairness of elections, about the following questions regarding the Parliamentary by-election conducted in election district 11:

1. The Prime Minister of Mongolia, the Deputy Speaker of the State Great Khural, 4 heads of parliamentary standing committees and about 20 MPs and other officials participated in the election campaign by traveling on a plane. Was the travel cost financed by the state budget or by the MPRP funds or by the campaign fund of the candidate?
2. During the election campaign Prime Minister N. Enkhbayar promised on 4 January 2002 to donate 50 million tugriqs assistance. Where will this money come from, the state budget or from the MPRP funds? If it is from the state budget, is it in breach of the relevant laws?
3. Could the promotion of one candidate on the national TV and Radio be considered as violation of provision 5 of Article 21 of the Election Law?

The Budget Standing Committee of the State Great Khural responded in the following way to the above questions: “ the issues in first two questions don’t refer to the jurisdictions of the General Election Commission, and the work of the Prime Minister and the government officials in Bulgan aimag was needed to stop the false information about Parliament and the Government activities spread during the by-election conducted in election district 11, and the business trip of the Parliament and the Government members to the rural areas didn’t breach the laws”.

Source:

*Letter #2 of January 10, 2002 of the Civic Will Party to the General Election Commission.*

*Letter #9/331 of January 16, 2002 of the Budget Standing Committee of SGK to the GEC.*

## **Institutions**

➤ **Political parties / elected politicians, candidates party officials**

Political party funding is non-transparent, uncontrolled and probably highly corrupt. Political parties are leading the list of corruption-prone organizations as the results of survey show. On prevalence of corruption in political parties, 37.4 per cent of respondents think “prevalent”, 27 per cent “average”.



16 political parties and coalitions participated in 2000 parliamentary elections. According to the law on Political Parties, parties should be registered by the Supreme Court.

*Article 10 and 11* of the Law on Political Parties provide that a political party shall conduct its activities on a self-financing principle, and that party property and income shall consist of membership fee and donations the supporter-citizens and supporter-organizations of Mongolia; other incomes generated by party activities, funds coming from affiliated enterprises' registered capital. According to this law, if the political parties receive contributions from foreign parties and citizens, they should inform the public about the amount only (*article 11*). There are no requirements on reporting of foreign contributions by donor name, address.

Some political parties in Mongolia are 100 per cent funded by a single business entity. Examples are Mongolian Republican Party and the Motherland-New Democratic Socialist Party of Mongolia. Most of the funding of political parties comes from donations. Especially prior to the elections, it is common that businesses donate significant moneys to political parties. The parties with better chances of winning in the elections can fund all their campaign expenses and finance the party using the contributions. It has become a common understanding that politicians receive donations and that businesses should make contributions to the candidates and political parties. Mongolian Peoples Revolutionary Party, now in power, has recently become an object of mass criticism over assignment of its sponsors or their protégés in high and medium level positions in the executive branch (as Deputy Ministers, heads and deputies of government agencies).

Rental income from buildings owned by the parties constitutes a larger funding source for the ruling MPRP, that inherited a few nice buildings from the socialist times and that are leased out and generate substantial amount of party income.

The State does not offer any tax relief to political parties or donors.

#### ➤ **The Electoral Commission**

The General Election Commission (GEC) is not adequately structured in the laws in terms of composition, structure, power, and no proper provisions have been made for an internal checks and balance system. Consequently, there have been instances when more than 70 per cent of the election commission members have belonged to a single political party. For example, during the 1996 elections, 72 per cent of election district commission members, 96 per cent of commission chairs and 64 per cent of secretaries were members of MPRP – the ruling party at that time. Due to the absence of the political party membership consideration for the GEC appointment, the GEC is usually comprised of the members and supporters of the party dominating at the State Great Khural at that time.

10 out of 15 members of GEC appointed in 1992 were MPRP members and 5 were non-partisans. The GEC formed in 2001 had 8 MPRP members out of 11.

The composition of the election district commissions is decided by the GEC on the local Citizens' Representative Khural nominations by considering the workload and representational capacities.

Election site committee members are appointed by the election district committees. The Citizens' Representative Khurals, responsible for nomination of committee members, don't provide representation of a variety of political parties'.

The GEC is legally a permanent organ, but then it is unclear who should be responsible for organizing elections in local areas, and when the mandates of the election district and site committees expire. The GEC doesn't have a right to monitor election campaign financing and funding of political parties, and to

address the complaints connected with the financing issues. Because the law doesn't specify the activities to be undertaken by the GEC in between the elections, the important activities such as organization of research, training, provision of citizen with information, improvement of voters' education and monitoring of election finance reports are not reflected in the jurisdiction of GEC. Consequently, it is not clear how the GEC should run its work between elections, or outside the elections, or how the operations of the GEC are to be financed in non-election years. The following are the provisions under the law about GEC power related to the campaign financing:

- The General Election Committee in consultation with the Ministry of Finance, shall approve of the procedures regarding clearing election funds, expenditures and reporting (*article 5.7*);
- Parties, coalitions and independent candidates shall forward to the GEC the reports on spending only of the election campaign funds within one month after the completion of the elections. The GEC shall examine the reports and shall have published the results in the official newspaper within three months after the completion of the elections. (*Article 5.8*);
- The GEC shall organize a special service of financial control headed by one of its members on an ad-hoc basis. The Service shall exercise the powers of state organs of financial control and shall supervise the transactions of election expenses. If necessary, it shall also investigate financial documents. The service of financial control shall recruit expertise in the examination and investigation of matters. (*article 11.5*).

### ➤ **Supreme Audit Institution**

There are no law requirement on auditing party finance and campaign finance.

A form of an independent auditing body was formed for the first time in 1995, the State Auditing Committee. The main mission of the committee is to undertake financial auditing in organizations financed by state and local budgets. The State Auditing Committee does not undertake auditing of incomes and expenditures of the government itself, although there are no legal restrictions to do so. The Committee mainly conducts financial auditing of government agencies and organizations.

According to the law, the head of the committee (Auditor General) is appointed by the parliament for the term of 6 years. The law has provisions on appointment of the head of the committee based on professional experience and guarantees against groundless dismissal. It is legally possible for the Auditor General to be independent. The probability that a ruling party's protégé would be appointed on this position is somewhat high.

### ➤ **Tax authorities**

The State does not offer any tax relief to political parties or donors. There is no Freedom of Information Act in Mongolia, under which source of information on party finances, or parties' tax declarations are required.

### ➤ **Parliament**

The Parliament of Mongolia is a unicameral parliament with 76 members. The last election was held in July, 2000. As a result, MPRP gained 72 seats, Mongolian Democratic Party 2 seats, Citizens Will Party 1 seat and Mongolian New Socialist Party gained a 1 seat out of 76 seats.

The Parliament approves the state budget annually. Fiscal year starts from January 1. The Government submits the budget proposal to the Parliament. Parliament examines and approves the budget having examined each item. If necessary, it may make amendments to the state budget in the middle of the year (usually in April).

The Government and the Ministry of Finance submit budget report to the Parliament. But there are shortfalls in improving budget control. For example, there is no proper parliamentary body to analyze the budget and control its spending, in most cases budget spending is approved as submitted by the Government and the Ministry of Finance. Though the state budget goes through 4 rounds of panel

hearings, it could be said that there is no regular control of budget spending on the part of the Parliament and mechanism of financial control through auditing institutions. The Parliamentary subcommittee on checking the budget spending is headed in the current parliament by the majority party MP. Parliament does not scrutinize public finances effectively.

The Parliament does not function as an effective anti-corruption mechanism. Regulation on conflict of interests and lobbying is non-existent

There no laws guaranteeing citizens' concrete right to information, prohibiting conflict of interests, or allowing for public hearings or for citizens or NGOs to monitor the activities of lawmakers or officials regularly.

The Parliament of Mongolia doesn't have a role of controlling party and campaign financing. The Parliament has a power to change the amount and procedure of state financing for the political parties represented in the Parliament.

### ➤ **Government**

According to the Constitution of Mongolia, the Parliament forms a cabinet for the term of four years. Cabinet has 13 members headed by the Prime Minister. Current cabinet was formed in July 2000. Now it has 11 ministries and 42 agencies.

The Cabinet and its ministries are accountable to the Parliament and required to provide members of Parliament with information on implementation of the cabinet's action program and on matters of the moment in line with provisions of the Law on Government and Law on Parliament.

Cabinet members are obliged to report on their assets and income according to provisions of the Law against Corruption and the Law on Government. However, there are no regulations and requirements to make these reports known to the public. Also, there are no follow-up and checks procedures as to the honesty of income declarations and disparities between the consecutive declarations.

Although the Law on Political Parties prescribes that parties submit their annual financial reports to the Government, so far no party has done so and the Government never requires execution of this provision. Financial accounts of political parties are closed to the public. There are no regulations and requirements of where, how and to whom, which agency or ministry of government the reports are to be made. There have been no checks on funding sources and accounts of political parties till date.

Soft money or in-kind contributions, which comprise a significant part of donations, are not prescribed to be reported in the laws. Also there is no mechanism for controlling them

### ➤ **Media<sup>3</sup>**

In the Constitution, Law on Freedom of the Press and Media, and other related laws, there are plenty of provisions guaranteeing freedom of publication and speech. In 1999, a law was adopted to the effect of prohibiting state ownership over media and establishing a public broadcasting media.

**Television and Radio:** Despite the Law on Freedom of Media, which prohibits State ownership of the media, many television and radio broadcasters continue to be owned and operated by the State or local government or assemblies. The only national television and radio stations – Mongolian National TV (established in 1967) and Mongolian Radio (established in 1934) – are run by the Radio and Television Authority of the Government of Mongolia and are under the Prime Minister's jurisdiction. There are also a few cable channels. Local governments and assemblies predominantly run local television stations

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<sup>3</sup> "Mongolia in Transition – An Analysis of Mongolian Laws Affecting Freedom of Expression and Information" ARTICLE 19/ Globe International, July 2002, Ulaanbaatar

outside Ulan Bator, although private stations also exist. The party in power effectively controls national as well as local television and radio stations.

**The Print Media** The number of newspapers and magazines has also been increasing steadily in recent years, although the number of daily newspapers and weekly magazines has remained constant. As of December 2001, 178 newspapers and 50 magazines were in circulation. Unlike in the broadcasting field, the national State-owned newspapers, “The People’s Liberty” and “the Government News”, have been privatized. In the provinces, however, local assemblies continue to own the print media. Mongolia has five daily newspapers with nationwide circulation: four privately owned (“Zuuny medee”, “Mongolyn medee”, “Udriin sonin” and “Unoodor”) and one (“Unen”) owned by the governing Mongolian People’s Revolutionary Party.

**The Economic Climate:** The economic climate for the media is difficult. Although 1090 newspapers, 234 magazines and 120 television and radio stations were registered with the Ministry of Justice and Home Affairs, only 178 newspapers, 50 magazines, 31 television stations, 37 radio stations and 9 cable television operators were active in 2001. According to a recent survey, only 20 per cent of television stations reported making a profit, while 40 per cent covered their expenses and 40 per cent incurred losses. In radio broadcasting, only 5 per cent of stations reported making a profit, while 95 per cent only covered expenses. In the print media, 68.75 per cent of newspapers reported that they only covered expenses, while 31.25 per cent incurred losses.

A new Law on Advertising was adopted on 30 May 2002. Presently, most advertising goes to the State-owned national television and radio stations and large newspapers. Many media outlets also complain that the tax system undermines their financial viability. The media reportedly have to pay a wide variety of taxes – such as VAT, customs duties and income tax on staff salaries – with few, if any, exemptions or breaks.

**Use of Laws against the Media:** The Mongolian media report two major areas of concern in recent years, namely the steady increase in defamation cases and the closure of media outlets by the government.

The number of defamation cases in Mongolia has increased substantially since the early 1990s. In 1991, there were seven civil defamation cases, while in 2000 there were 39. There were also four criminal defamation cases between 1999 and 2001. Moreover, between 1999 and 2001, 59.5 per cent of defendants were found guilty in civil defamation cases and 29.1 per cent confessed to their offence and settled the case with the plaintiff. In four criminal proceedings during the same period, six journalists were tried and found guilty, although only one was sentenced to imprisonment, which was then suspended subject to probation.

In September 2000, the Ministry of Justice and Home Affairs, the National Taxation Office and the Press Institute inspected 150 newspapers, 50 magazines and 70 other media outlets to identify whether their activities were in conformity with the Law on Prevention of Crimes, the Law on Measures Against Obscenity, the Law on Anti-Alcoholism and the Law Against Harms of Tobacco. Fines were imposed on 21 newspapers and one television station, and three tabloids had their registration revoked and were closed down.

#### ➤ NGOs

The number of voluntary associations in Mongolia has increased in 14 years from about 30 in 1989 to 3200 by 2003. This new movement towards a strong civil society testifies to the Mongolian public’s growing appreciation of NGOs and other voluntary organizations. The Law on NGOs, which came into effect in March 1997, is universally recognized as being geared towards creating an enabling environment for the nascent voluntary sector. Article 5.1 of this law states that, “Citizens and legal entities of Mongolia may without any permission from state agencies establish non-governmental organizations individually or collectively based on their own interests or views”. Under this Law, non-profit organizations are tax-exempt.

Article 16.17 of the Constitution states that “ Every citizen has the right to seek and obtain information from the State and its organs on matters which are not classified confidential and are protected by the State”. In reality, access to information is restricted, because there are no concrete regulations or procedures which would tell us who possesses which information and how to get it. Under development is a draft law on Freedom of Information, which was initiated and developed by Globe International, a local NGO.

Very few NGOs have carried out monitoring of party and campaign financing or related issues.

The Voter Education Center (VEC), Women for Social Progress, is working on draft laws of Parliamentary and other elections with more effective election organization management and campaign financing reform. VEC conducted voter education and advocacy programs for the 1996 and 2000 parliamentary elections, and 1997 and 2001 Presidential elections. It has done analyses of the Election Law and the Law on Parliament in terms of insuring voter's rights and responsibilities and promoting transparency and effectiveness of the political system and developed and distributed questionnaires about candidates on 22 issues (access to law making and human rights, etc.) during 1996 and 1997 parliamentary and Presidential election. The nation's first presidential debate that was broadcast nationwide over TV and radio stations, was part of this program.

### **Recommendations**

It is appropriate to attach greater importance to and take actions about the following issues to conduct successful political financing reform in Mongolia.

- Creation of efficient screening and monitoring mechanism of political parties and election campaign funding and make relevant amendments such as:
  - To have disclosure rules for party income and financing, legally regulate political parties' annual report on the finances, sources of funding, revenues and expenditures and avail the reports to the public;
  - To audit and report the election contributions to candidates, parties and coalitions, election campaign revenues and expenditure to the public. To clearly identify the details of procedure on reporting: whom to report, what information to include, reporting period, phase, provision for easy access to reports and information;
  - To determine limits and restrictions on the monetary, cash and in-kind contributions from individuals, organizations and companies to the election expenses of political parties, coalitions and candidates;
  - To authorize the GEC to examine issues connected with the campaign financing and funding of political parties and to operate a permanent financial control unit;
  - To provide support from the state budget to the political parties in correspondence with the votes obtained during the elections. In case of modifying the amount of financing or amending the procedures, those amendments shall become valid after the completion of the term of the Parliament, which issued the amendment.
- Strengthen non-governmental organizations as a main component of a civil society with special focus on those non-governmental organizations actively involved in anti-corruption campaigns, whereby, NGOs will become one of the most important tools in increasing the public awareness, supporting educational campaigns against corruption, which will contribute to corruption prevention and monitoring.
- **Recommendations<sup>3</sup> for media coverage of elections :**

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<sup>3</sup> “Mongolia in Transition – An Analysis of Mongolian Laws Affecting Freedom of Expression and Information” ARTICLE 19/ Globe International, July 2002, Ulaanbaatar

- The Electoral Law of the SGK of Mongolia and the Law on Elections of Citizens' Representatives Khurals of Aimags, the Capital City, Soms and Districts should require the public media to provide voter education during their respective election periods.
- The Presidential Election Law, the Law on Elections of Citizens' Representatives Khurals of Aimags, the Capital City, Soms and Districts should have provisions requiring the public media to be balanced and impartial during elections.
- The Law on Refrendum should provide for free and direct access to airtime on a basis of equality, including in relation to the timing of slots distribution; other election laws should require direct access slots to be equitable, including in relation to the timing of these slots.
- The Electoral Law of the SGK, the Presidential Election Law and the Law on Elections of Citizens' Representatives Khurals of Aimags, the Capital City, Soms and Districts should require any media offering commercial political advertising to do so on an equal and non-discriminatory basis, regardless of political or party affiliation. Furthermore, such advertisements should clearly be identified as such, so that the public is aware that the message is a paid political advertisement
- .All the election laws should:
  - exempt the media from legal liability for unlawful statements during direct access programmes;
  - provide for a right of reply during election campaigns;
  - require opinion polls or election projections to provide the information set out above; and ensure prompt and effective oversight by an independent body which has a mandate to hear and take action on complaints about media coverage of elections.

Election observers from the International Republican Institute recommended to the Government of Mongolia to take immediate measures to strengthen public confidence in non-partisan nature of the Government owned media outlets. There could be established as an independent Council on Election Promotion consisting of representatives of the Government and political forces that will resolve the conflicts arising in connection with media and information. Because the Government hires observers to the Government owned media outlets, they are economically dependent on the ruling part. This situation leads to the loss of public confidence in independence of public media.

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