

# **VOTERS' EDUCATION CENTER**

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## **IMPROVEMENT OF ELECTION LAWS**

**Research Report**

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## Introduction

Article 3 of the Constitution of Mongolia, approved in 1992, stipulated that “State power shall be vested in the people of Mongolia. The people shall exercise state power through their direct participation in State affairs as well as through the representative bodies of state power elected by them” and Article 16 saying that “citizens of Mongolia shall be guaranteed the privilege to enjoy the right to take part in the conduct of State affairs directly or through representative bodies. The right to elect and to be elected to state bodies. The right to elect shall be enjoyed from the age of eighteen years old and the age eligible for being elected shall be defined by law according to the requirements in respect of the bodies or posts concerned” have provided guarantees for democratic elections. Since that time Mongolia has conducted three times each the State Great Hural’s, Presidential and Citizens’ Representative Hural’s elections. To Mongolia, which aims to establish democratic and civic society, the legal provisions on the free and fair elections have a significant importance for advancement of democratic processes.

Universal, equal, direct, fair and free elections serve as a measurement of the level of democracy in the country. There are some internationally recognized indicators of free and fair elections<sup>1</sup>:

- Are the elections the responsibility of an independent and fully professional body of high public standing and enjoying public confidence? In particular, are the processes of appointments to the Elections Commission such as to command the support of the political parties themselves as well as of the wider public?

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<sup>1</sup> Transparency International sourcebook, 2000.

- Are parties and candidates acceptably free to campaign for support for their policies? Do all major parties have a reasonable chance to get their message across through the mass media, and particular any media which state owned or controlled?
- Are the polling procedures to be rendered more transparent but is in ways, which do not intrude upon the secrecy of the ballot? Are political parties aware of their own role in checking the various stages of the polling process and thereby playing an essential part in guaranteeing its integrity?
- Do the election laws reflect best international practice in their openness and transparency? Are there effective procedures to ensure that government assets and funds are not used by a government in support of its election campaign?
- What are realistic limits to political party expenditure, both during an election campaign and at other times? Is there effective monitoring of political parties' income and expenditure?
- If civil society through non-partisan observer groups have a role to play in observing national and other elections, do present electoral laws enable them to do so?
- All in all, does the electoral process (however imperfect it may be and whatever the advantages to the ruling party of its incumbency) offer a means by which public opinion can in fact be expressed in ways which bring about a change in the administration?)

This report aims to review the implementation of the election principles based on the above mentioned indicators of free and fair elections, such as whether the election system, management and organization in Mongolia could be considered as fair, free, and transparent and if the election laws could guarantee the citizen's right to elect and get elected as stipulated in the Constitution.

## 1. Principle of universal elections

As stipulated by provision 9 of Article 16 of the Constitution, citizens of Mongolia shall enjoy a right to elect from the age of eighteen.

A. *There are some limitations prescribed by the laws regarding the principle of universal elections.* For example:

- *Age limitations.* Right to elect can be exercised from the age of 18, but the right to be elected is limited by 45 years for the Presidential and by 25 for the State Great Hural elections.
- *Citizenship limitations.* The rights to elect and get elected are limited by the laws only to the citizens of Mongolia.
- *Residential limitations.* The Mongolian laws provide that “only citizens residing on the territory of Mongolia on the day of elections” can enjoy the right to elect. This provision imposes direct limitation on the right to elect of citizens, who are on business or personal trips to other countries or living in foreign countries.
- *Limitations on exercising election rights.* The election laws provide that the persons, who have been proved insane by medical expertise and/ or court decisions, cannot participate in the elections.
- *The persons, who are incarcerated according to the court decisions, cannot exercise the election rights.*

B. *Voters' Lists.* The voters' list plays a significant role in implementation of the principle of universal elections. Because the implementation of the principle of universality depend on who and how developed the voters' list. These are the principles on how to develop the voters' list and what issues should be reflected in the list<sup>2</sup>:

- *Who should develop the voters' list?*
- *When to develop it?*
- *Whom to register in the voters' list?*

*Who should develop the voters' list?* - The election law prescribes the soum and district governors to develop the voters' list. Due to the fact that the soum and district governors

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<sup>2</sup> “Increasing the voters' active participation in the elections: by J. Narantuya, International conference on Improvement of Election Laws, 2002, Ulaanbaatar

are political officials and the role and participation of political parties are high in the activities of the Citizen’s Representative Hural there is a vital issue whether this regulation is appropriate?

*Experiences of other countries:*

In France the voters’ list is developed by the local representatives together with a representative from the higher-level court.

In Britain there is an official in charge of performing this function.

When to develop the list? - The Governors include the people as permanent and temporary residents into the voters’ lists 50 days in advance of the Election Day. The lists become available for the public 15 days prior to the elections. Then why the list developed 50 days in advance should be hidden for 35 days or more than a month? Making the voters’ lists available to the voters as early as possible will provide an opportunity for them to check their presence in the list, and establish favorable conditions for the election observers to monitor the fairness and universality of the elections<sup>3</sup>.

Whom to register in the voters’ list? – It is prescribed that the voters’ list should contain the names of persons, who are residing permanently or temporarily in Mongolia. Then how the people living abroad or traveling can exercise own election rights?

If every person of the election age can be registered in the voters’ list? Let’s analyze the following figures:

Election years	Number of election age persons	Number of voters registered in the lists	Number of voters, who cast ballots	Number of voters not registered in the Voters’ List		Number of election age persons, who didn’t cast ballots	
				Number	Percentage	Number	Percentage
1992	1,183,041	1,085,129	1,037,392	97,912	8.3	145,649	12.3
1996	1,217,227	1,147,260	1,057,182	69,967	5.8	160,045	13.1
2000	1,361,529	1,247,033	1,027,985	114,496	8.4	333,544	24.5
2001	1,365,000	1,205,885	1,000,110	159,115	11.6	364,890	26.8

The above table shows that there is a hesitation on implementation of the principle of universal elections. We need to study by which reason some voters cannot be registered in the list and cannot enjoy the election rights.

<sup>3</sup> “Election observation report” International Republicans’ Institute, 2000, Ulaanbaatar

If to consider that according to the unofficial statistics around 60,000 persons are living abroad, 4,000 persons are on domestic travel and 7-8 thousand persons are incarcerated then it is interesting to know where are the rest of the voters.

**Suggestions:**

- In order to comply with the principle of universal elections and guarantee the implementation of citizens' Constitutional right to vote it is needed to establish election sites at the Embassies of Mongolia in other countries and to allow the people living or traveling abroad to vote via post. These measures should improve implementation of the citizens' election right to elect.
- The laws should define clearly on whom, when, how and in which sequence should register the voters' names (in many countries voters' lists are developed on the basis of residents' register instead of the list of names in alphabetical order).
- The timeframe prescribed by the law on making the voters' list available to the citizens should be extended.

## **2. Principle of direct elections**

Mongolian citizens elect the President, the State Great Hural (Parliament) and the Citizen's Representative Hurals (local assemblies) directly without representatives. This principle is guaranteed by the Constitution and the election laws.

## **3. Principle of equality**

Provision 1.2 of Article 1 of the Constitution of Mongolia stipulated the principle of equality as one of the fundamental principles of governance. The law on the State Great Hural election doesn't contain a provision on the equality principle of election processes, but it says "citizens qualified to vote shall participate in the elections on the basis of universal, free and direct suffrage of secret ballot". The other election laws also don't have specific provisions on the equality. But this principle should be one of the most important and fundamental ones. This principle is in accordance with the principle of universality and should be implemented in close relationship with the principle of free elections. It should be implemented not just during the moment of voting, but also in a way that a voter can cast ballot only once at an election, and all voters have the same voting rights, all votes have equal weigh and the number of voters is similar for each election site. In other words this principle is related to all processes including self-nomination, election preparation, inactive election rights,

counting of ballots and distribution of mandates. Examples of violations of the principle of election equality:

- ◆ Because the *election laws don't regulate the issue of donations* companies and individuals can make donations in unlimited amounts. It leads to the situation, when wealthier donors have more influence on the elected representative in comparison with ordinary voters.
- ◆ The situation, when *not all votes are considered equally during the distribution of mandates*, or the current majority election system don't provide sufficient grounds for implementation of the principle of equality. The provision in the election law, saying that the minimum threshold of votes should 25 per cent, allows establishment of the government without representation of three fourths of the voters. Only the votes for the candidates, who obtained enough number of votes at own election sites, are considered in formation of the Parliament. All other votes are ignored. The following facts can illustrate how many votes were ignored during the last elections conducted in Mongolia:

✓ The 76 Parliament members elected in 1992 represented only 57.8 per cent of the voters, and remaining 42.2 per cent of votes were for the non-elected candidates and were not considered in distribution of mandates<sup>4</sup>.

✓ The 76 Parliament members elected in 1996 represented only 53.7 per cent of the voters, and remaining 46.3 per cent of votes were for the non-elected candidates and were not considered in distribution of mandates.

✓ The 76 Parliament members elected in 2000 represented only 52.2 per cent of the voters, and remaining 47.8 per cent of votes were for the non-elected candidates and were not considered in distribution of mandates.

Parliamentary elections	Number of voters		Counted valid votes				
	Present in the voters' list	Actually Voted	Total 100 per cent	Votes related to the elected candidates		Votes related to the non-elected voters	
				Number of votes	%	Number of votes	%
1992	1,085,129	1,037,392 95.6%	3,023,234	1,748,544	57.8	1,274,690	42.2
1996	1,147,260	1,057,182 92.15%	1,010,157	542,947	53.7	467,210	46.3
2000	1,247,033	1,027,985 82.43%	1,002,554	523,566	52.2	478,988	47.78

<sup>4</sup> "Election system of Mongolia and implementation of laws" International Conference, Political Education Academy, 1994, Ulaanbaatar



Results of the 1992, 1996 and 2000 parliamentary elections regarding the distribution of seats are shown in the attachment. These facts show that the current majority system of elections is not compliance with the principle of equality where all votes are considered equally<sup>5</sup>.

◆ The ratio “voters per mandate in an election district” also refers to the principle of equality. For example:

✓ **In 1992** the number of listed voters in an election district varied from 25,220 (at districts with 2 mandates) to 66,667 (at districts with 4 mandates), which means the difference was 20-30 per cent.

✓ **In 1996** the number of listed voters in election district 29 was 11,082 while in district 60-21,194, which means the difference was 10,112 votes or 90 per cent.

✓ **In 2000** the number of listed voters in election district 59 was 27,418, while in district 36 it was 11,043 which means the difference was 148 per cent (difference by 1.5 times).

It is needed to consider the equal number of voters in each district while establishing election districts. Because the laws don't specifically prescribe about who and how establishes the election districts the Parliament members and the ruling party can establish or change the districts in a way favorable for their interests just prior to the elections. This issue is also related to the principle of election equality.

*Experiences of other countries:*

There is an independent agency that makes decision on the change of election districts based on the results of the population census conducted every 10 years by the Statistical Office of Germany. In some countries, like Denmark, the administrative units serve as election districts.

**Suggestions:**

The election laws should reflect the issues such as the types of election districts, responsible institution, timeframe and principles of establishment. It is wise not to establish new districts or change them just prior to the elections. In case of a change the new districts shall start operating in the next election after the coming one.

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<sup>5</sup> “Election system of Mongolia and implementation of laws” International Conference, Political Education Academy, 1994, Ulaanbaatar

- ◆ Political parties and candidates participating in the elections should be provided with similar competition conditions and equal opportunities. Political parties and candidates should have equal opportunities regarding the access to public media.

In our country there is one government owned TV and radio broadcasting all over the country, and they are under the Prime Minister's jurisdiction. This situation prohibits implementation of the above-mentioned principle. 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 requested answers from the General Election Commission of Mongolia, which is responsible for monitoring of the transparency and fairness of elections, to 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 Hural, 4 heads of parliamentary standing committees and about 20 MPs and other officials participated in the election campaign by traveling on a plane. If the travel cost was financed by the state budget or by the MPRP property or by the expense fund of the candidate?
2. During the election campaign Prime Minister N. Enkhbayar promised on 4 January 2002 to donate 50 million tugrigs assistance. Where this money will come from: from the state budget or from MPRP funds. If it is from the state budget whether it breaches the relevant laws?
3. If the promotion of one candidate on the national TV and Radio can be considered as violation of provision 5 of Article 21 of the Election Law?

The Budget Standing Committee of the State Great Hural 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 SGH to the GEC.*

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 an independent Council on Election Promotion consisting of representatives of the Government and political forces that will resolve the conflicts raised 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.

Article 33.3 of the State Great Hural Election Law says that the names of political parties and the coalitions should be listed on the ballot paper in the order in which they were registered with the State Supreme Court. This provision allocates the right to be listed on the first place to MPRP that was registered first in May 1990. But the rotated positions of candidates on the ballot paper for the presidential election gives an opportunity of equal competition to the candidates.

#### **Suggestions:**

- ◆ There is a need to have a specific provision in the law prohibiting usage of state budget resources, abuse of power and government positions during the election campaigns by political parties and candidates.
- ◆ Ballot placement for parties by lottery, held in a public venue, or rotation method should be utilized<sup>6</sup>.
- ◆ The laws should provide for independence from the government of the public TV, radio and other media outlets.

#### **4. Principle of secret balloting**

Voters shall have a right to secret balloting in order to be protected from potential suppression.

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<sup>6</sup> “Observation report” International Republican Institute, 2000, Ulaanbaatar

Secret balloting provides opportunity to voters to be free from anybody's influence and express own opinion through conscious decision-making.

The Election law permits to those, who can't mark on the ballot paper, to use assistance of others. The absence of the detailed procedures on the secret balloting during the use of mobile boxes or assistance of others can create at least "suspicions" on implementation of this principle.

## 5. Principle of free elections

The principle of free elections can be implemented when people can choose whether to vote or not to, express own opinion without anybody's pressure and refuse the candidate. Provision 21.6 of the Election Law says that it is prohibited to engage in propaganda calling to refuse participation in the election. This provision eliminates the opportunity not to participate in the elections.

According to the current election laws it is prescribed to vote for any of the candidates otherwise the ballot is considered as invalid. In other words, if the voter didn't vote for any of the candidates, his/her ballot is invalidated. It violates the principle of free elections, thus the ballots not supporting any candidates should be considered as valid<sup>7</sup>.

### *Experiences of other countries:*

In case of a refusal to support any of the candidates listed on the ballot paper voters can write the names of other candidates participating in the same elections, but proposed in other election districts (for example in the US).

The principle of free elections is directly connected to the level of active participation of voters. It is important to consider if the media, the most vital factor for voters' choices, reaches the people. It is impossible to make a choice without an access to information. Therefore, the timing of election processes should be identified based on the time needed to deliver the information to voters.

The current election laws limited the time for election promotion activities and organization of mass events involving the public. This situation can be considered as constraints for creation of free election environment and for free expression of opinions

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<sup>7</sup> J. Byambadorj. Election system in Mongolia: strengths and weaknesses, paper presented on the International Conference. 2002, Ulaanbaatar

by voters, political parties and candidates. Thus, the provision should be abolished in the future<sup>8</sup>.

## **6. Principle of fair management of election processes**

The election processes should be managed by the principle of rule of law and justice.

The role of institution organizing the election processes and its committees should be an important factor for guaranteeing free and fair elections. The Election Commission should be capable to manage fair and free elections, and for this purpose the election laws shall provide establishment of fair and free election system, right management, proper balance and distribution of power. Although the authorities of the General Election Commission and its district committees are prescribed by the State Great Hural Election Law, but there is still a need to define in details the scope of their activities, structure. Composition, status and rights and obligations.

### *A/ Independent Election Commission and elements enhancing its independence:*

The independence of the General Election Commission (GEC) and its district committees responsible for organization of election processes shall be shown through their political and administrative independence, as well as impartiality and neutrality.

**Political independence-** The GEC of the Parliament shall be a permanent organ having duties to carry out elections for the State Great Hural and presidential elections as prescribed by provision 11.1 of the SGH Election Law.

Provision 11.2 says that GEC shall consist of a Chairman, a Secretary and members. The Commission shall be appointed by the SGH for a term of 5 years. The members of the GEC shall serve on an ad-hoc basis and the Chairman and the Secretary shall be full-and part-time depending on the workload.

Provision 11.3 prescribes the Chairman, Secretary and members of the GEC shall not be candidates for election to the State Great Hural.

Although GEC organizes parliamentary elections it's dependent on the State Great Hural in terms of appointment, budget and power. The laws don't provide specifically on who should nominate to the GEC members, so the practice was to nominate by SGH under influence of the ruling party without involvement of other political parties and citizens.

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<sup>8</sup> "Reforms in the election laws: theoretical and practical aspects" by R. Gonchigdorj, International Conference, 2002, Ulaanbaatar

The current practice shows that it was decided just during the process of appointment how many members should the GEC have, and the people of certain positions were appointed as members. For instance, representatives from the Parliament Secretariat, the Cabinet Secretariat, Supreme Court, Ministry of Finance, General Police Department, National Statistical Office etc.

But recently the representation of the civil society got included in the membership. Because there is no legal provision on resignation of members due to the changes in their official positions occupied at the time of appointment, the ad-hoc members of GEC don't change in case of shifting to other jobs. This situation leads to the destruction of the membership principle based on the position and representation.

Before the GEC members were considered as special civil servants, but the newly approved law on the "Civil Service" GEC made the members no longer special civil servants. But the Chairman and the Secretary remain in this category, and the staff members of GEC are considered as state administration officers.

**Administrative independence-** The budget of the GEC is approved by the SGH and the expenses for the regular and by-elections are approved by SGH prior to the elections. The GEC had no full time office until 2001.

Although the law prescribes that GEC shall be a permanent organ, but only the Chairman can work full time, and the Secretary- part time. It was supposed that during the election times the SGH Secretariat staff could work part-time helping to the organization of elections.

It was unclear what the GEC activities should be during the elections, and also there was no budget provided for GEC in between the elections. So there were no legal and economic guarantees for permanent operation of GEC. Since 2001 the GEC has obtained an office with 5 full-time staff and received annually 43-45 million tugrigs budget for the non-election years. 100% of the money is used for staff salaries and administrative costs.

Although there was established a full time office, it is still unclear what activities shall be conducted in between the elections, and there is no budget proposed for these activities.

**Neutrality-** Because the law didn't provide specifically on whether the GEC Chairman and members should be non-partisan or whether there should be equal representation of

political parties, the party membership is temporarily suspended for the Chairman, Secretary and members.

Due to the absence of consideration of the political party membership of the GEC members before their appointment the GEC is usually composed of the members and supporters of the party dominating at the State Great Hural at that time.

10 out of 15 members of GEC appointed in 1992 were MPRP members and 5 didn't belong to any parties. The GEC formed in 2001 had 8 MPRP members, 1 each MNDP, MSDP and non-partisan members.

The law didn't provide any regulations except that the GEC Chairman, Secretary and members shall not run in parliamentary elections. This provision allows them to be candidates for other elections, as well as to participate on the name of political parties in the local elections and hold political positions, although it is prescribed to suspend the political party membership.

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

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

For instance, during the previous parliamentary, presidential and local elections the Representative Hurals composed of a single party membership or with dominance of one party were able to form district and site election committees from own political party members or supporters. The criteria for the district and site election committee members were not clear, it just said that representational capacities should be considered. That is why this provision was considered as being implemented by including few people from the other parties. For example, during the 1996 elections 72% of election district committee members, 96% of committee chairs and 64% of secretaries were members of MPRP- the ruling party of that time.

Neutrality of the physical election sites is also refers to this issue. Location of banners advertising political parties in the election site venues, as well as location of the sites in the local headquarters of political parties, destroys the neutrality of the election sites. For example, during the 2000 elections Khan-Uul district election site 7 was located at the MPRP local headquarters.

***Suggestions:***

- To establish the GEC in a way of an independent organizations;
- In order to make the GEC and its committees fair, independent and impartial bodies to comprise them of indecent from political parties, non-partisan and qualified people (not considering their official positions), or to establish GEC according to the internal control principle with equal representation of political parties or with participation of the civil society;
- To create a mechanism where the Committee Chairs and Secretaries would belong to different political parties;
- To stipulate by laws the number of members in GEC (because this issue is not reflected in the law, it is decided under the influence of the ruling party);
- To Clearly define the procedures for nomination and appointment of the GEC Chairperson, Secretary and members, their operational guidance and code of ethics, and to identify the GEC member status;
- To make transparent the process of nomination to the GEC and stipulate in the law who shall be the subject authorized to nominate. In order to eliminate a possibility of dependence on the ruling party the nomination could be done by an organ comprised of the Parliament Speaker, Head of the Parliament minority group and the President<sup>9</sup>.
- To include in the organ, authorized to establish election district committees and nominate their members, representation of both the majority and minority of the political forces.

**B/ Composition.** If the GEC is a permanent organ then it is unclear who should be responsible for organization of elections in local areas, also it not clear when the mandates of the election district and site committees shall expire.

***Suggestions:***

- ◆ To provide the GEC with the committee and executive structures;
- ◆ To define the number of members in the election committees, and the authorities of the committee chairs, secretaries and members;
- ◆ It would be appropriate if the local Citizens' Representative Hural Chairperson serves as a non-political civil servants. In this case the election related issues could be arranged in between the elections by the local Hural secretaries.
- ◆ To stipulate in the laws the term of expiration of the election district and site authorities.

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<sup>9</sup> “Comments on the election draft law of the Voters’ Education Center: by Fridrich Erikson (independent consultant on counter corruption), 2002, Ulaanbaatar



**C/ Authority and scope of activities.** The main activities of the organization responsible for elections should focus on the following 4 areas:

- Administrative functions,
- Preparations for elections,
- Organization of elections,
- Post-election activities.

But, according to the laws, only the preparations to elections and organization of elections are in the GEC jurisdictions. The GEC doesn't have a right to monitor the election campaign financing and funding of political parties, and to address the complaints connected with the financing issues. Also the law didn't define who should check the criteria for candidates.

Because the laws didn't provide anything about the activities to be done by the GEC in between the elections the important activities such as organization of research, training, provision of citizens with information, improvement of voters' education and monitoring of election finance reports are not reflected in the jurisdiction of GEC.

**Suggestion:** To add to the GEC jurisdictions and allocate budgets for organization of the activities to be conducted during and in between the elections.

## **7.Principle of transparency in organization of election processes**

If elections serve as a measurement of the level of democracy all the processes, except secret balloting should be transparent<sup>10</sup>.

**A. Transparency of election committees.** The fact that GEC meetings are closed from public and media contradicts to the principle stipulated in provision 4.1 of the State Great Hural Election Law: "Preparatory work for the election of the State Great Hural shall be conducted openly. This provision shall not affect the secret balloting by electors". Also the meetings of the election district and site committees are conducted in closed manner.

In order to introduce transparency into the organizational procedures of the GEC meetings the following provisions should be added:

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<sup>10 10</sup> J. Byambadorj. Election system in Mongolia: strengths and weaknesses, paper presented on the International Conference. 2002, Ulaanbaatar

***Suggestions:***

- To make clear in which cases the election committee meetings can be done in closed manner, to provide that all other meetings shall be open, also to identify the decision making processes: whether a consensus is needed for making a decision, or it shall be made upon the simple or absolute majority of votes etc. To reflect in the bylaws the opportunities to observe the open meetings by media, political parties and candidates.
- To announce the election district and site committee meeting agenda to the public;
- To provide opportunities to the public to access the minutes and decisions of the open meetings;
- To identify the responsibility and mechanisms of accountability for the actions and non-actions by the elections committees.

**B. Observation and monitoring-** Observation, both national and international, is a key part of ensuring election integrity. Observers can detect and deter problems through their close watch on the process. They increase transparency through their presence and through their public reporting on their observations. They make a judgment on the integrity of the elections which can help ensure the credibility and legitimacy of the results and they can recommend procedural or policy changes to improve the process. There are usually two different types of observers- “monitors” and “observers”<sup>11</sup>.

Monitors usually given the right to intervene in the process they are observing (and are usually limited to agents watching the process on behalf of a contesting party or candidate) while observers do not intervene and only observe.

The current election laws of Mongolia don’t contain specific provision about monitors, and observers can be the ones appointed by the political parties or independent nominees, and the observation can take place only on the Election Day. Non-governmental organizations and civil society members don’t have a right to observe elections.

Provision 34.2 of the Parliamentary Election and provision 32.2 of the Presidential Election Laws said ”The observers shall register with electoral, district commission or sub-commission and secure certificates. The observers shall have the right to watch only from the outside if polling, counting the votes and compiling the results are being done in conformity with the election law and regulations, and shall not interfere in the work of

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<sup>11</sup> Sue Nelson, The Asia Foundation Consultant: Comments on the Draft Election Law developed by the Voters’ Education Center, 2002, Ulaanbaatar

the election commissions. The participation of foreign observers shall be decided by the General Election Commission in consultation with the organs of external relations.”

*Experiences of other countries:*

Laws usually provide a separate section for the rights of political party and candidate monitors who have a special status in an election. They are usually allowed to question the process if they think the election law or procedures are not being implemented correctly and to challenge things such as the way a ballot is being counted.

Agents present also usually sign the forms used to open and close the polls, sign the count at the polling table and at the consolidation of the count at all of the higher levels. In some countries, party agents help ensure the integrity of the process by also signing the back of the ballot when it is issued to a voter.

The specific rights of international observers are usually included. This can include who can observe (is it bilateral or multilateral delegations, international NGOs, or others), whether they need an official invitation and, if so, who does the inviting (is it election commission, government or other body). It should also state their privileges and immunities as international observers.

Rights of the party or candidates agents mainly cover the issues of questioning the election organization and of being involved in particular parts of election processes. It is quite often when party observers sign the counting results.

In some countries political parties can participate in organization of elections and they sign the election documents and participate in the process.

“Observers shall have the right to watch only from the outside” conflicts with international standards on the rights of accredited observers<sup>12</sup>. Limiting access of observers raises many questions such as the degree of commitment to transparency, accountability and to a genuinely free, fair and accurate process.

The rights and responsibilities of observers and monitors should be clearly and adequately defined in the legislation. The following elements should be included in an election law:

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<sup>12</sup> Sue Nelson, The Asia Foundation Consultant: Comments on the Draft Election Law developed by the Voters’ Education Center, 2002, Ulaanbaatar

### ***Suggestions:***

- *Who can observe.* (Is it political party and candidate agents, representative of civil society groups or others?)
- *What they can observe.* This is normally the entire process and is not limited to polling day and the count;
- *How they can observe* (meaning the right to obtain information and ask questions from election administrators, political parties, candidates and others in relation to election events, but that observers do not have the right to intervene in operations or the process. It should also clearly state that accredited observers have access to election sites. In a few cases, sometimes the number of observers allowed into a polling station at any time is limited because of the small size of a station. However, in principle, the legislation should allow any validly accredited observer unhampered access to any electoral sites;
- *How they get accredited.* The law should state who issues the accreditation and the duration of the accreditation. Only accredited observers should be given access into a polling station or where sensitive electoral materials, such as ballots, are stored. This is a security mechanism to prevent the entry of unauthorized persons.
- *Their roles and responsibilities* (observers usually sign the opening/closing and tally sheets if they are observing at the time, observers usually do not intervene in any electoral operations or disputes, they must obey the laws of the country, etc.)
- *When accreditation can be withdrawn* (Usually related to breaking the law or seriously interfering with the process, etc.)
- *Right to issue public reports* on what they have observed without interference or influence on the timing, content, etc. of the report.)
- Election commissions should emphasize the rights of international observers to be present during the opening of polling sites, observe balloting and witness the counting of ballots and tabulation of results<sup>13</sup>.
- To reflect in the laws the differences between the rights of the official party and candidates agents and of other observers.

**C. Dispute resolution mechanisms and procedure on bringing complaints.** One of the vital elements of the free and fair elections is the right of any person to bring complaints to the relevant authorities if it considered that there was some wrongdoing in the election processes. It provides conditions for accountable, transparent, neutral and fair performance. There are many complaints and disputes occurring during the elections. But Election laws of Mongolia don't provide answers to the questions such as who should bear responsibility, who should ensure accountability, in which term

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<sup>13</sup> "Parliamentary Elections 2000" Observation report, International Republican Institute, 2000, Ulaanbaatar

the disputes shall be resolved and how to define jurisdictions for resolution of disputes. Election related disputes are not resolved during the elections, and due to the absence of clarity on who, when and how should resolve problems it has become common that people don't know where and to whom to refer in case of the breaches of laws. Also people don't have a confidence in justice in relation to the election disputes, so prefer to be silent.

***Suggestion:***

- ◆ To shorten the term for resolution of disputes and make the procedures clear, and to establish an independent and fair system of conflict resolution (for example, to stipulate for resolution by the courts of the disputes related to elections a maximum term of 14 days).

## **8. Campaign financing**

The information on where the political parties and candidates obtain their election campaign finance should be an important tool to identify possible sources of influence on their policies. Since 1990 the State has not been funding the whole expenses for election campaigns. Today the election campaign funds consist of the following:

- Property of parties and coalitions
- Personal property of candidates
- Donations from supporting organizations and companies
- Donations from citizens.

During the previous elections the GEC provided certain amount of free of charge promotion time on the state owned radio and TV. This is a form of partial State financing.

The main article in the State Great Hural Election Law governing campaign financing is provision 5.5, which says that "Election expenses of the candidates of parties and coalitions shall be borne by the respective parties and coalitions. Independent candidates shall bear election expenses by themselves. Parties and coalitions and independent candidates shall form an election fund and open an account with a bank".

Provision 5.8 of the same law stipulates: "Parties, coalitions and independent candidates shall forward to the General Election Commission the reports on spending of the election funds within one month after the completion of the election. The General Election Commission shall examine the reports and within three months after the completion of the election shall have published the results in the official newspaper".

There is no limitation on the donations from citizens, organizations and companies to the candidates, parties and coalitions, and provision 5.5 just provides that “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. Candidates are not allowed to receive, give and spend election contributions not through the election fund account, as well as to receive contributions during the process of the preparation of the election (from the announcement to the end of the elections) from state budget organizations and institutions sharing state property (from the property belonging to state), foreign enterprises, (including foreign partners of joint ventures), foreigners and stateless persons”.

Provision 5.9 says “Contributions given, received and spent, and sums spent for the purposes other than election expenses in violation of procedures described in par. 6, 8 of this article as well as sums remaining in the account of the election funds of the parties, coalitions and independent candidates who did not report on time, shall be collected for state revenue”.

February 1, 2001 amendment to provision 7.5 of the Law on Presidential Election limits donations to the candidates at 10 million tugriks for legal persons and 5 million for individuals.

The current laws cover the issue of only hard money or monetary contributions saying that they should go through the 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 them.

Some political parties in Mongolia are 100% funded by a single business entity. Examples are the Mongolian Republican Party and the Motherland- New Democratic Socialist Party of Mongolia.

The GEC doesn't have a right to examine the composition of political parties and candidates' campaign revenues and expenses, as well as the election contributions and non-bank donations.

The ad-hoc Financial Monitoring Unit of GEC has a right to control only the movements in the election expenses funds. There is no legal mechanism for the control on campaign financing, and GEC can just rely on the political parties and candidates that “they would report on the expenses”.

**Political parties' financing**<sup>14</sup>. Article 10 and 11 of the Law on Political Parties say that political parties of Mongolia shall operate on the basis of self-financing principle, and each Parliament member from a political party shall receive 1 million tugriqs a year from the state budget. Provision 5.10 of the SGH Election Law provides “Parties represented at the State Great Hural shall be financially supported from the state budget according to the number of seats they hold. The amount of financing and the procedure therefor shall be determined by the State Great Hural”. 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%) in the State Great Hural changed the amount of 1 million tugriqs support and now each member is receiving 2.5 million tugriqs.

In Mongolia most of the funding of political parties come from donations. Especially prior to the elections it is common that businesses donate significant money to the political parties. The parties with better chances to win in the elections now can fund all their campaign expenses and finance the party for a while using the contributions. It has become a common understanding that politicians receive donations and businesses should make contributions to the candidates and political parties.

It has been widely criticized that the parties, which have won in the elections, appoint own donors and their representatives to the high and medium level positions in the executive branch of government (Deputy Ministers', heads and deputies of government agencies' positions).

- Owner of “Bayangol” hotel Genko Battulga is said to have spent quite a lot of money on politics for the last 10 years... He contributed to earning by Mr, Ts. Elbegdorj of the Prime Minister's throne. Thanks to the Democratic Coalition he became an owner of “Makhimpex company” and Bayangol hotel.
- He is said to having contributed 40 million tugriqs to MPRP upon consultation with the Party leader N. Enkhbayar... What he got in return? He managed to get Yo. Otgonbayar, director of his “Bayangol” hotel, appointed to the position of a Foreign Policy Advisor to the Prime Minister.

Source:

*“Playing cards of Genco Battulga” by A. Tsetsegdolgor.*  
*Mongol Times newspaper, January 2003, No. 02/047*

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<sup>14</sup> Integrity report. Political parties' financing, 2002, page 7

The Law on Political Parties prescribes that parties submit their annual financial reports to the Government. But there haven't been any parties implementing this provision so far. The Government also hasn't demanded for doing so. Financial accounts of political parties are not publicized. There hasn't been a case to check funding sources and accounts of political parties for the last 10 years.

In the future the following issues connected to the funding of political parties should be reflected in the election and political parties' laws:

***Suggestions:***

- To make political parties to report annually to the public on the financial situations, sources of funding and revenues and expenditures;
- To get audited and reported to public the election contributions to candidates, parties and coalitions, election campaign revenues and expenditure. To clearly identify the procedure on reporting: whom to report, what information to include, reporting period, phase, also there should be provided an easy access for all interested persons to the reports and information.
- To define limits on the monetary contributions from individuals, organizations and companies to the election expenses of political parties, coalitions and candidates.
- To allocate a right to the GEC to examine the issues connected to the campaign finance and funding of political parties; and to operate a permanent financial control unit.
- To provide support from the state budget to the political parties according to the number of seats in the parliament or in correspondence with the votes obtained during the elections. In case of making changes to the amount of financing or into the procedures, the amendments shall become valid after the completion of the term of parliament, which issued this decision.

*Experiences of other countries:*

No law varying the compensation for the services of the Senators and Representatives shall take effect until an election of Representatives shall have intervened.

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