



Open Society Forum

# MAKING LAWS IN MONGOLIA

A GUIDEBOOK FOR CITIZENS

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## OPEN SOCIETY FORUM

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## **The aim of this guide**

The Open Society Forum has been issuing a series of guidebooks for citizens designed to encourage civic participation, support transparency and increase accountability. We are pleased to present you with one of these guides “Basic Mongolian law making procedure”.

This guide has been written to provide simple, interesting, essential and comprehensive information for the understanding of law making and its enactment. It has been designed to raise the awareness of the citizens, and ultimately to encourage their participation in the formation and implementation of laws. The citizens’ participation can create the conditions for a more thorough formulation of state policy and its successful implementation.

The guide has its sources in current effective legislation, decrees, resolutions, rules and regulations of the government and local authorities.

I take this opportunity to express my gratitude to the Regional Development Initiative NGO for preparing this under the commission of the Open Society Forum.

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## FOREWORD

Mongolians have a saying: “A stable state ensures the tranquility of its people”. We are pleased to present this guide to raise your awareness and to bring a drop of wisdom to your sea of knowledge.

The guide “Making Laws in Mongolia” informs the reader about the role of citizens in a society ruled by law. It also provides information about opportunities for participation in law making. And it has been written to promote respect for the law and to encourage citizens’ to make significant contributions to state affairs.

You may be aware that in 1992 we adopted our democratic Constitution. The constitution guarantees human rights and freedom, the principle of equality before the law, the opportunity to participate in state affairs on an equal basis through the right to elect and be elected, and our noble mission to create a humanitarian and civil democratic society.

Every citizen may contribute and play a very important role in the achievement of our ultimate goal. In my view it is particularly important to acknowledge and realize our noble mission of allowing the citizens of this democratic state to benefit from the legal right to participate in law making. This is of course the primary mechanism to determine state policy, and to faithfully devote our spirit to the development of the society.

It is my belief that although a state may construct a legal system to protect the rights of citizens, and to preserve the social order for everyone involved, this does not necessarily mean that the state can address all of the issues by itself. Democratic states have made considerable achievements by allowing its citizens to participate widely in policy formulation and law making. The participation of the local citizenry, the widespread dissemination of information and effective advice and counsel among other activities may have a tremendous influence on the formulation of state

policy and its effective implementation. It will thereby raise the credibility of the nation and further the consolidation of democracy.

Let me extend on behalf of all of our readers my appreciation to the Open Society Forum for the initiation of this publication and its guidance and care in the procurement of funding arrangements.

I feel deeply confident that our esteemed readers will find this guide useful and explore the many opportunities for its proper application.

*The sea is made of drops,  
Knowledge comes from listening*

*Editors' team:*

*D. Tsolmon*

*L. Luvsanjamts*

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# CHAPTER 1.

## Law: a basic definition

### 1.1 The impact of law upon our daily lives

### 1.2 Categories of law

Within this chapter we will learn about the norms of law, its revelation, its fundamental concepts, its impact and role within our lives, its categories, and its strength and interdependency.



## 1.1 THE LAWS' IMPACT UPON OUR DAILY LIVES

### Basic legal concepts

Before we learn about how a law comes into being, we however must be able to understand its' basic nature, its' particularities, and its' impact upon our lives and the various functions it serves within the society.

Every human being has to enter into numerous social relations in order to live and survive. There are many types of norms regulating our daily relationships, and legal norms are just one of them. A norm can be understood as an order to be followed while pursuing any act or activity as it is intended to have a psychological impact upon the thought process of an individual. If we consider this phenomenon it is quite amazing when come to realize just how many norms we must follow in our daily lives.

**A norm** is an order to be followed while pursuing any act or activity as it is intended to have a psychological impact upon the thought process of an individual



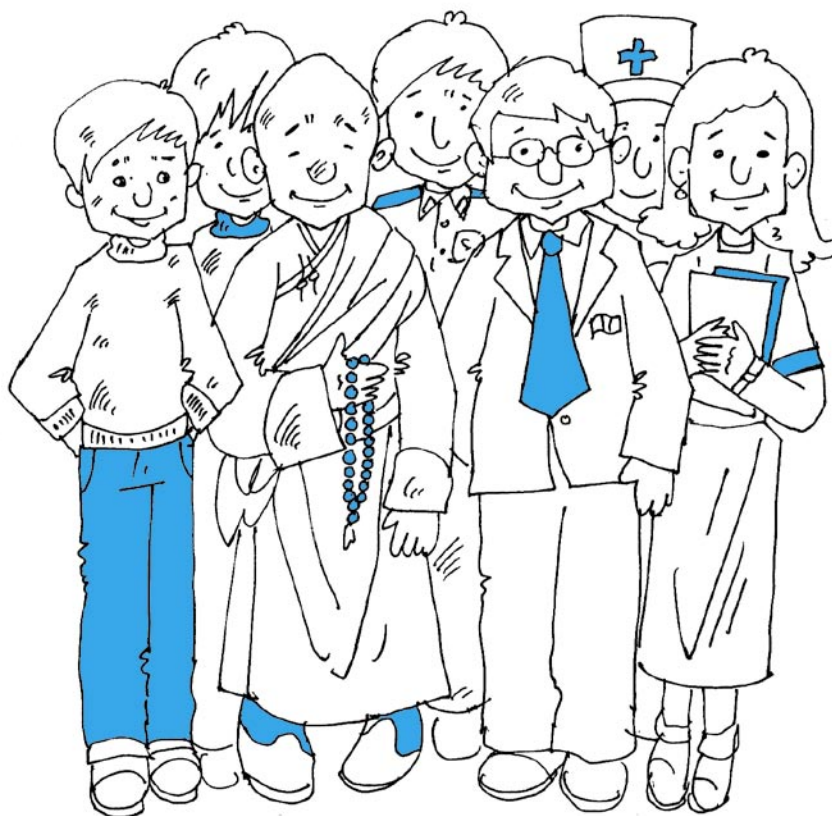
**Social norms may be categorized as:**

- customary
- political
- economic
- ethical
- religious
- aesthetic
- legal

It is important to differentiate legal norms from social norms. This distinction will illustrate the conditions in which an individual must observe legislation passed by the state.

**The Law** During our daily lives we are constantly involved in various legal relationships. But the perception of the law itself has been subject to changes in social development that have occurred over various periods of time. The Law is designed to guarantee democracy, human rights, freedom, equality, security, and serves a very important function for the regulation of social relations in any society. It is able to regulate human relations through the establishment of norms.

The law is in fact a body of mandatory legal norms established by the state to regulate the social relations of its citizens.



*The law regulates social relations*

A legal norm does not regulate every facet of a social relationship it however, has a substantial impact upon the relationship as a whole. Legal norms are like other social norms that may be derived from the customs, ethics, politics and religion of a particular society. They work in unison with a variety of values that are perpetuated by various social institutions to regulate the relations of its citizens.

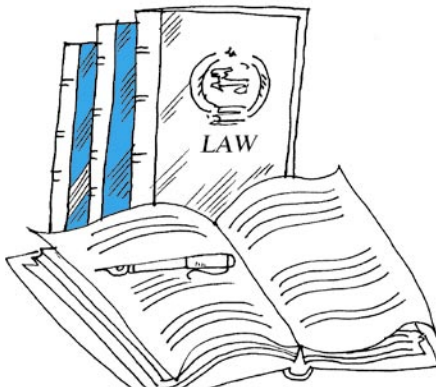
In other words a number of social norms play a vital role for the regulation of any interest. They establish a general order and various standards of social behavior to be followed by the citizens of the society in all of their daily interactions.

Only the man who perceives his rights in relation to his duties can be just.

**J.Lakorder**

The difference between legal norms and other social norms

### 1. Law must emanate from the state and must be formulated in writing



A legal norm may be distinguished from other social norms as it is a product of the state. Its norms emanate from an electorate that acquires its authority through the state's legal process. Mongolia's Great Hural, the state's freely elected parliament, is the only authority in our country to enact a law. This procedure is described

in the proceeding chapter " Law: a basic definition ". In this chapter we also distinguish the written and unwritten law.

An unwritten law is derived from the societies' fundamental customs, ethics and a number of social norms that might otherwise govern social relations. These unwritten laws regulate social relations but may also evolve in response to societal development. The written law on the other hand is legislated by the state. It is written because it would be impossible for the general public to follow and implement its basic tenets without such a form.

**Example: A norm**

*We, Mongolians, have an established custom to show our respect to our elders by paying homage to them during the “Tsagaan sar (White moon)” festivities. Under our Labor law the first and second days of the first spring month are designated as as official holidays. This custom creates a duty on the behalf of employers to provide employees with time away from work. This also provides employees with an opportunity to adhere to their religious traditions during the designated days. Respecting and honoring one’s ancestors is, however, not regulated by law but by other social norms such as customs, religion and ethics.*

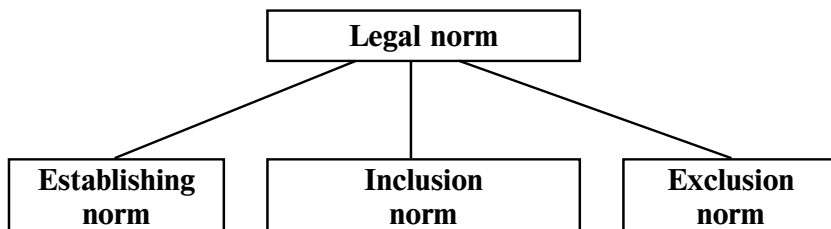
This example demonstrates that a law must be in written form. This will insure that all people within the society benefit from equal protection under the law, but at the same time they have a responsibility to observe and follow its tenets. To create such conditions the law must be officially published in a written form. This matter will be discussed at a further point within this text.



It is essential that citizens cherish the customs, traditions and ethics of the society as they maintain their allegiance to the nations’ law.

## 2. Establishment and acceptance of social relations by legal norms

The law regulates social relations and provides protection to its citizens by “*establishing*”, “*permitting*” and “*excluding*” particular actions. The states’ regulative function is served by specific legal norms that establish and include specific acts. And the states protective function is served by excluding specific acts.



The very meaning of the right to establish a legal norm suggests the capacity of an individual to modify the legal relationship to pursue a particular goal or interest. It brings with it an understanding of the need to comply with a rule. This norm refers to a duty to assume responsibilities. A duty to assume responsibilities as specified within the law is an inherent part of this process.

Citizens have the duty to abide by the provisions established by law

### Example: A legal norm

*The Law of the Great Hural, Mongolia’s state parliament states’ that “tenure of elected officials in parliament will be **4 years**”. This duration can be shortened or extended only through amendments to current law.*

*The Labor Code of Mongolia stipulates’ that “**any labor contract must be concluded in a written form**”. This regulation does not pertain to the inclusion or exclusion norm rather it assumes a performance of duties. If it is feasible to conclude a labor contract in writing, the regulation will allow the parties concerned to make an agreement in written form and then conclude it verbally.*

*The Civil Code states that citizens may stipulate in their **mutual loan agreement for payment of interests**. The provision of interest can then be stipulated as an inclusion norm. On the other hand if in the provision “an interest is stipulated, the loan agreement has to be concluded in written form. In case of non-compliance with this requirement there will be no right to an interest” – the provision that **must be concluded in written form** is an establishing norm.*



The example above demonstrates that a duty to fulfill an obligation is specified in the establishing norm. Non-fulfillment of this duty leads to liability, and moreover to conditions that may

cause a party to lose specific rights.

By comparison an inclusion norm refers to a legal right granted by the state to its citizens, economic entities, organizations and officials to perform an action or undertake an activity.

In other words the permitting regulation provides a legal opportunity that may be exercised if it is considered beneficial to the person involved, moreover it specifies particular choices that are available. The inclusion norm as specified in the law frequently contains language such as “have the right”, and “it is allowed”.

### **Example: Inclusion norms**

*Rights giving regulation can be seen in any law, for example the Criminal Procedure law refers to the rights of a suspect, as follows: “... the rights to give a testimony, to refuse to give a testimony; to give a testimony in native or known language, to have the services of interpreters; to make a request in order to reject and dismiss the case compiler, the investigator, the prosecutor, the translator, the interpreter or the expertise person; to defend one’s self, to have a defense attorney in accordance with the law; to meet the defense attorney in private,” etc.*

On the other hand, the regulation expressed by the word “will”, may signify an establishing norm in addition to an inclusion norm.

### Example: Permitting and establishing norms

*The Civil Code of Mongolia permits “the citizens aged 16-18 years old to be members of cooperatives” under its Article 16.4, and “a citizen to conclude a contract expressing their own desire and interest” in accordance with Article 39.2. By comparison, an example illustrating an establishing norm expressed by the word, “it is allowed”, can be found in Article 15.1 of the same law stating: “A citizen will attain full civil legal capacity, which may be defined as the capacity of a citizen to acquire one’s own rights or assume duties through ones’ own actions when he/she reaches the majority or 18 years of age.”*



The permitting regulation suggests that “Everything is permitted unless it is prohibited by law”, which is an inherent opportunity that is granted by a democratic state.

For example, Article 26.7 of the Civil Code says: “For-profit companies, cooperatives and persons shall be entitled to engage in any activity not prohibited by law or not in conflict with common behavioral norms.”

“Only the person, who rejoices while fulfilling his duty can be truly free”

Cicero

### Example: Exclusion norms

***There are exclusion norms such as:*** “In a case where the contract of employment is not specified in writing, work performance is forbidden.” (**Labor Code**); “The promisor shall be obligated to notify in advance to the possessor of the promise the possible sale of the promise, as well as its price. The pledge shall not be sold within fourteen days of its notification.” “The total amount of tort shall not exceed 50 per cent of the value of the non-performed obligation.” (**Article 232.4. Civil Code**)

*It is important for participants in a legal relationship to correctly understand the nature of legal norms that establish, include and exclude specific actions while they enjoy particular rights and duties.*



### 3. Any person assumes legal liability for breaking a legal norm

Breaking a legal norm is an act or inactivity which constitutes a violation of a norm established by the state.

The most important feature characterizing the force of the legal norm is legal liability. It is imperative that legal liability be imposed for breaking a legal norm established by the state. The conditions for such a consequence must however be defined in the law. And liability may not be imposed for actions not foreseen by law.





## There are four basic types of legal liability

- Civil law or Property liability
- Criminal liability
- Administrative liability
- Disciplinary liability

Each of the liabilities mentioned above is reflected in its respective legislation. Ultimately liability established by law can only be imposed by a competent official authorized by law, in accordance with a valid decision under the law.



“May you live your life as if the maxim of your actions were to become universal law.”

Kant

### Example: Liability

*We all know that the Labor Code establishes disciplinary liability penalties. For example: censure, a fine deducted from wages for a period up-to three months, and dismissal. Article 161 Criminal Code:” Engaging in the prohibited production, services or trade or engaging in the production, services or trade in a large amount that requires licensing from a competent authority shall be punishable by a fine equal to 100 to 250 tg, or equivalent amounts of minimum salary with or without confiscation of property or by incarceration for a term of more than 3 to 6 months”. Article 30, Administrative Responsibility Law: “If the convicted person, witness, victim, plaintiff, defendant, expert, interpreter or other person called by the court in order to administer the court proceeding intentionally does not appear they shall receive a fine equal to 5000 to 25000 tg or by incarceration for a term of 7-14 days. ”*

#### 4. Consequences for violating the law are imposed by the state

It is mandatory for the state to impose consequences when legal liability is incurred because of a violation of the law. The special interests of the guilty party may not be a factor in the states' official response to their actions. The enforcement of the law is put into effect by specific bodies of the government. They have been authorized and have received their mandate from the states' legal process and procedures. *For example the implementing office is responsible for the official enactment of the court's decisions.*



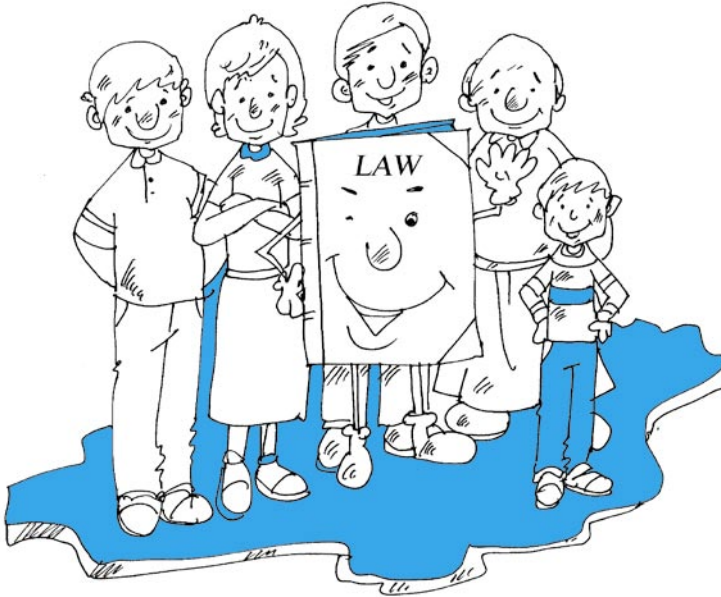
A legal norm is different from other social norms as a result of the four basic features as described above. The fulfillment and observance of such non-legal norms may however be influenced by the character, maturity, interests and the intentions of the individual concerned.

Our contemporary legal regulation is gradually being transformed. Legal changes have occurred in response to changes in the mentality and culture of our people in our democratic state. We shaped our own perception of this process from the legal concepts that have been described in this chapter.

## The impact of the law upon our lives

A law becomes substantial through the establishment of legal norms that are contained within a particular act of legislation. Everyone must abide by the laws that are enacted by the state. This process is referred to as the rule of law. It is one of the fundamental characteristics of a democratic state. And it is compulsory for the state, its officials, citizens, legal persons, economic units and organizations to abide by this law and carry out their activities within the proscribed framework of the law.

A Law is a document adopted by the state for general application. The state is the supreme power for establishing legal norms.



It is true that many people will inevitably have their own perceptions, judgments and ideas about the role and impact of the law upon our lives.

The law serves many functions in the regulation of our social lives. We will consider some of the basic functions of the law.

### 1. Safeguarding the tranquility of social relations

This is the most important function and purpose of the law. In other words the law is created to safeguard the natural and normal state of social relations for the establishment of its development and stability.

The natural and normal state of social relations is safeguarded to prevent the violation of human rights. To create such a condition legal culpability is imposed if such violations occur. In this regard the Penal Code plays an essential role in any country regardless of its legal system.

**Example: Safeguarding social tranquility**

*The purpose of the Criminal Code of Mongolia shall be to protect from criminal encroachment the individual's rights, public and private property, freedom, national wealth, environment, security, legal order, independence, and state institutions for the peace and security of mankind.*

The following procedures have been enacted to determine who will impose penalties, administer justice, and establish rights of recourse for individuals whose rights have been violated.

Consider the following case. You lent someone some money under a loan contract. The loan was not repaid in due time. Your repeated warnings failed. How do you address the situation?

Ultimately if there is no attempt by the borrower to comply with his initial promise you go to court. The court will take measures to restore your violated rights in accordance with the Civil Code in accordance with established legal procedures for civil cases.

Your neighbor upstairs' water leak caused damages to your property. Your requests for payments for damages were never met. Again you choose to go to court as you intend to protect your rights in accordance with the aforementioned laws. Of course, numerous examples may be called to mind, and you can certainly describe interesting cases yourself.

## **2. Checks and balances on state power guaranteeing the freedom of citizens**

This aspect of the law directly promotes equal consideration before the law, abidance of the law and the rule of law. This means that both citizens and the state must abide by the legislation enacted by parliament. It also means that the state must follow the law it adopted.

The power vested in the state and its' various bodies are proscribed by the law. And the relations of the state and its citizens are also embodied in the same law. In short the state assumes responsibilities for its citizens and the citizens are responsible for maintaining the various functions of the state.

It is apparent that if the power of the state is vested in the hands of one person, or just one group of individuals, this condition will result in the reign of unrestricted authority, the promotion of authoritarian rather than democratic systems of control, and moreover the systematic violation of human rights would become a fact of life.

A citizen has the right to seek justice

Therefore the establishment of three branches of power: the legislative, executive and judiciary having mutual control and balance represent a system of government established in accordance with the universally recognized system of the division of state power.



Human rights and freedom are guaranteed by law and everyone is equal before the law

### Example: Protection of civil rights

**Article 19 of the Constitution says:** *The State shall be responsible for the creation of economic, social, legal and other guarantees for ensuring human rights and freedoms, and for the prevention of the violation of human rights and freedom and to restoration of infringed rights.*

**Also Article 14 says:** *“All persons lawfully residing within Mongolia are equal before the law and the court. No person shall be discriminated on the basis of ethnic origin, language, race, age, sex, social origin and status, property, occupation and post, religion, opinion or education. Every one shall be a person before the law.”* And Article 16 specified the fundamental rights and freedoms of the citizens of Mongolia.

Specific laws are enacted in order to implement the rights embodied in the Constitution.

### 3. Advancement of economic development through encouragement of fair competition

The foundation of any nation is directly linked with its economic development and growth. There are many laws regulating property and economic relations. The promotion of fair competition certainly plays an important role.

### Example: Ensuring economic growth

**Article 5 of the Constitution stipulates:** *Mongolia shall have an economy based on different forms of property operating in conjunction with both universal trends of world economic development and the unique characteristics of the nation. The state shall recognize all forms of both public and private property and shall protect the rights of the owner by law. The State shall regulate the economy of the country to ensure the nation's economic security, the development of all modes of production and the social development of the population.*

For this specific reason many laws regulating economic relations have been enacted.



#### 4. Ensuring social justice and equality

The legislature has a special interest in protecting the interests of weak parties within the greater system of the nations vast network of social relations.

Example:

The Labor Code has enacted special regulations to ensure the balance of the rights among employers and employees. A labor contract is agreed to and concluded by the parties concerned, and it has provisions for creating a misbalance due to the privileged position of the employer. Furthermore, we can mention many laws containing specific provisions concerning the civil rights of minors, children, elderly and people with disabilities.

The establishment of legal guarantees for the implementation of rights of assembly, expression of opinion and freedom of assembly also promote justice and individual human rights.

## 5. Protection of the environment

The need for the law to protect the environment has become increasingly apparent in an era of rapid scientific advancement and technological development. This is one of the urgent points of concern throughout the world.

**Article 16 of the Constitution says:** Citizens have *the right to a healthy and safe environment, and should be protected against environmental pollution and ecological imbalance*. There are many laws and regulations on protection and rehabilitation of nature operating in our country, and these laws established rights and duties of the state, organizations, economic units and citizens.

We just reviewed the most important functions of the law in social relations. In some cases the functions of law are in conflict.

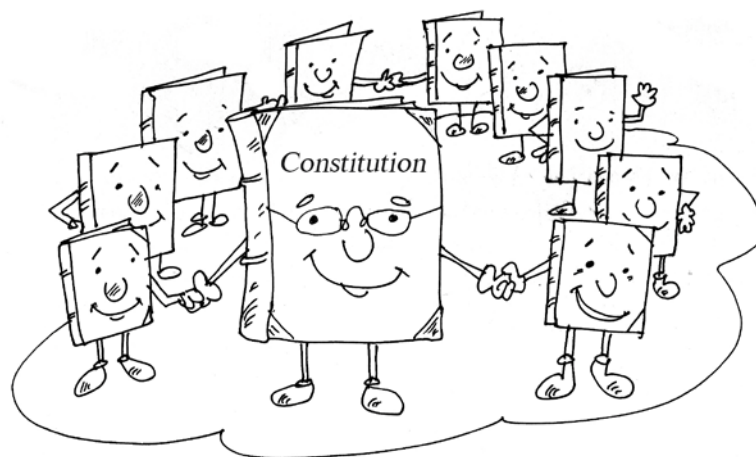
For example, encouragement and regulation of economic development clash with the protection of the environment. It is obvious that both issues are important.

In this case the legislator must focus on the general goals of the society to maintain a proper balance.



## 1.2 LEGAL CATEGORIES

Any law and regulation adopted by the state are of general application. All laws enacted by the State Parliament must conform to the Constitution.



All other laws must have their origin in the Constitution and conform to it

We specify the Constitution adopted on 13 January 1992 as “democratic and new”. You are aware that this is because of fundamental changes in the Constitution that are not part of the previous Constitutions enacted in 1924, 1940 and 1960. The legislation is categorized as follows according to the seniority and scope of social relations:

- Constitution
- Specific law
- International treaty
- Other legislative acts

**Constitution** The Constitution defines and establishes the foundation of social and economic relations, state power, human rights and relations between the state and citizens. The Constitution has the supreme legal power. All laws and other legal acts must be in conformity, not in violation of the Constitution.



## Laws enacted by the branches of government

The purpose of the laws enacted by the various branches of the state government is to guarantee the implementation of human rights and freedom proclaimed by the Constitution and to specifically regulate various social relationships. For example, there are currently over 280 valid laws such as the Law on Education, the Labor Code, the Law on Land Ownership for Mongolian Citizens, and Tax Law, etc.

## International Treaty

International law is an integral part of the states legal system. International law is devised to address issues of global concern that require resolution and consensus. This area of the law has become increasingly in demand in the age of globalization.

Ignorance or misapprehension of the law is not an excuse for wrongful acts nor is it a cause for immunity from the law.

### Example: The Constitution of Mongolia

**Article 10, The Constitution stipulates:** *“Mongolia shall adhere to the universally recognized norms and principles of international law and pursue a peaceful foreign policy. Mongolia shall fulfill in good faith its’ obligations under international treaties to which it is a Party. The international treaties of which Mongolia is a part shall become effective as domestic legislation upon their entry into the states’ body of laws on their ratification or accession. Mongolia shall not abide by any international treaty or other instruments incompatible with its Constitution.”*

Therefore the international treaty of which Mongolia is a Party shall become effective as domestic legislation. And the court is entitled to deliver a decision on protection of the violated rights as enunciated in the international treaty, in addition to the remedies provided by the national legislation to protect citizens’ rights.

Mongolia is a party to approximately 180 treaties, governing a broad variety of issues such as human rights, international trade, intellectual property, and international relations, among other areas.

**Other legislative acts** Other legislative acts serve to regulate specific social relations. This means that a person authorized by law may issue an act establishing norms within his/her field of expertise. For example, the Great Hural, Mongolia's Parliament, the Government and the Citizens' Representatives have meetings to issue resolutions; and the President and Governors issues decrees. Needless to say all these activities must conform to the Constitution and other relevant laws.

**Interpretation of law** Although it is clear that everyone must abide by the law on occasion it may require interpretation as a means to provide a uniform understanding and application of the law.

The interpretation of the law may be official and unofficial dependent on its application. Under the Constitution the official interpretation is provided by competent bodies authorized by the law, having the Supreme Court to give interpretations for correct application of all other laws except the Constitution. In other words, the courts and law agencies have the duty to apply the official interpretations as they apply other laws.

The following example shows how the Supreme Court of Mongolia interpreted some provisions of Article 35, Criminal Code, by its resolution No.10, 2003.

#### **Example: A Supreme Court interpretation**

*“An instigator” is interpreted as the person who has masterminded, and actively performed the necessary acts in order to create every opportunity to commit the crime. He has assumed the leading role in the organization thereof, and coordinated the tasks such as when, where and how to commit the crime, and engaged in acts to conceal the commission of the crime through the planning of criminal acts and the assignment of roles and accomplices.*

An unofficial interpretation is not a mandatory guideline for the person implementing the law, however it is of great scientific and social interest as it is derived from a host of experts, scholars, scientists and researchers. Accordingly this kind of interpretation is usually very broad and comprehensive. The unofficial interpretation has the greatest impact upon the legal community and the general understanding of the nations' citizens.

In 2000 Professor G. Sovd, Honoured Lawyer, PhD, made the unofficial interpretation of the Constitution of Mongolia. In 2002 Dr. B. Urantsetseg made the unofficial interpretation of the Labor Code.

# CHAPTER 2

## Phases of law making

**2.1. A proposal for law, phases of drafting the proposal for law**

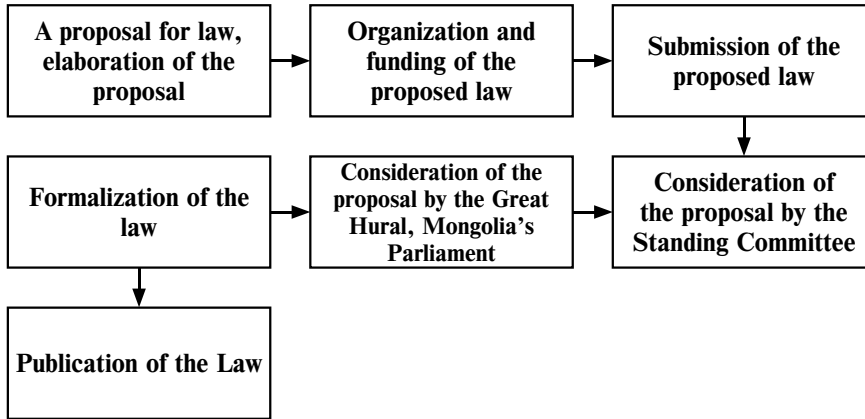
**2.2. Organization and funding of the proposed law**

**2.3. Submission of the proposed law**

The previous chapter provided us with specific knowledge about the law. This chapter is however about how a law is proposed, its initial draft, how it is elaborated, and the preliminary conditions for the enactment of the law.

## 2.1 A PROPOSAL FOR LAW

The enactment of a law goes through the following general phases:



### How a law is proposed

Most endeavors typically proceed from an initial proposal to an official enactment. It is clear that a law does not somehow just appear. In the case of an enactment of law, a proposal for the regulation of a new set of circumstances, governing a set of social relations must occur before a proposed law is officially sanctioned.

The party who proposes the law may be defined as the person who is able to implement the rights concerning the advisability of having a new law, making amendments to the existing law, and abolishing the law, among other matters. The Constitution of any country regulates the issue as to who possesses the power to propose a law.



A proposal for law should not be confused with the elaboration of the proposed law.

G.Sovd

**A proposal for law** In Mongolia the President, the Great Hural- the parliament, and the government enjoy the right to propose a law. In each instance, one of these three powers puts forward a proposal for having a specific law, makes the final review of the draft law as reviewed by various experts and submits the document to parliament for consideration.

The proposal for law should not be confused with the elaboration of the proposed law. In other words the person who proposes the law is not necessarily the person who elaborates upon the specifics of the proposal. The person who proposes the law does however have the right to formally submit<sup>1</sup> the proposed law to the parliament for consideration.

The person who proposes the law must meet the following requirements before the law is proposed:

- A basic identification of the need for the law with proper justifications for its enactment
- A specification of the requirements for adopting the new law, which may include amendments to the existing law, and consideration of the existing social relations, its implementation and its impact upon existing laws
- A formulation of the concept of the proposed law
- Elaboration of proposals on further measures for the implementation of the law, the budget and financial expenditures
- In addition to the president and parliament, there must be comments and opinions from other bodies in charge of the implementation of the law, and supervision of the entire process

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<sup>1</sup> Interpretation of the Constitution of Mongolia. UB., 2000. Section 151

## Proposals for law initiated by private citizens

Private citizens and legal persons<sup>2</sup> may propose laws via an appointed third party by forwarding in writing<sup>3</sup> their suggestions about the proposed laws to an individual who has been granted the legal and official right to propose laws. If the proposal is well founded the individual who has been granted the legal right to propose the law will do so. The requirement that the law will be in writing does not exclude the possibility that a person may provide information in person. The written form requirement ultimately serves to identify the source of the proposal and to determine the future of consideration.

### Example: A proposal for law

**Article 23 indicates:** “A member of the parliament shall be an envoy of the people and shall represent and uphold the interests of all the citizens and the State”. And Article 26 of the Constitution indicates: “Citizens and other organizations shall forward their suggestions on proposed laws to those entitled to propose a law.”



<sup>2</sup> Article 25, Civil Code of Mongolia, 2002: “Legal person” shall be defined as a person with a concrete mission engaged in regular activities who is entitled to own, possess, use and dispose of its separable property. They can acquire rights and create liabilities in their own name, and who bears responsibility for consequences arising from their own activities with their own assets, and who is able to be a defendant or a plaintiff.”

<sup>3</sup> Article 3(2), “Law on the Procedure of Elaboration and Submission for Consideration of Law, and other decisions of the State Great Hural.”

For example, a citizen should address in writing to the member of the State Parliament, elected from the constituency concerned, the proposal for adoption of a new law, amendment to or abolition of the current law. Accordingly it means that the parliamentarian, after consideration of the proposal as well founded, can initiate a law based on your suggestion. In such a case, the requirement of “consideration as well founded” can be deliberated concerning the sound justification of the suggestion proposed by the initiator. The suggestion can be accompanied with the proposed law or it may to be included in a review by an official task force for an elaboration of the proposed law.

**Proposed law** A proposed law is a preliminary draft that may develop into substantive law. The “Law on the Procedure of Elaboration and Submission for Consideration of a Proposed Law and other Decisions of the State Great Hural (2001)” defines the proposed law as: “a text which shall be elaborated by professionals and submitted to the parliament by the person who has proposed the law”.

The proposed laws submitted to the parliament are classified as follows:

- an initial draft of a proposed law
- a proposed law amending an existing law
- a proposed law to rewrite an existing law

A proposed law is the text of an initial draft elaborated upon by professionals and submitted to the State parliament by the person who has proposed the law.

A proposed law indicates that there has been no law that has regulated the issue at hand. For example, the “Law on Land Ownership by Mongolian Citizens” was classified as the first proposed draft during its initial submission. In other words there was no specific law governing land ownership by citizens before the enactment of this law.

Although the enacted law is binding, changes are necessary to bring amendments, abolish or rephrase the law, due to developments within the society that create the conditions for such demands. Therefore, the concept for the proposed law in addition to the new draft should be included with an amendment and a rewriting of the initial proposal.

Citizens are well aware that amendments to the existing laws occur more frequently than the adoption of new laws. Laws are not chiseled in stone. On the contrary, to properly regulate the social relations within the society, periodic adjustments are necessary to promote social development.



## 2.2. ORGANIZATION AND FUNDING FOR THE PROPOSED LAW

The first part of this chapter told us about the process whereby an individual proposes a law. The proceeding section will provide specific information about the process and procedure of the proposal for law.

### Planning of the proposed law

The person who is officially appointed to submit the proposed law must review the text to assure that it will **improve the existing body of legislation**. To do so it is necessary to specifically indicate justifications for a new law or amendment with research on the implementation and consequences of the law for all parties concerned. Attention will be paid to the social relations that are the target of the legislation.

The State parliament is responsible for the legal process and quality of legislation

Proposals for law involve a specific period of time as suggested by the Ministry of Justice and Home Affairs after consideration of comments submitted by other agencies and in conformity with the plan of action of the Government. The Government discusses this proposal and whether it will improve the existing legislation at its' meeting and submits it to the parliament. The parliament is then responsible for the quality of legislation.

The parliament maintains a commitment to the improvement and quality of legislation as it makes decisions about the list of proposed laws. The official specifically appointed to propose a law may propose it even if the proposed law has not been established as a priority, if the situation is in fact urgent.

### Organization of the proposed law

The official who proposes the law is responsible for writing a proposal that will improve the quality of the existing legislation.

The official who proposes the law must complete the following activities:

1. the completion of a written proposal for law
2. the establishment of a task force consisting of experts, scholars and professionals from the agencies concerned;
3. the establishment of a legal contract for any duties by third parties for the completion of this task

### The right to propose a law

The person who proposes a law enjoys the full right to involve scholars and experts, provided there is agreement with their supervisors, to disseminate public information about the writing of the proposal, if it is considered necessary, and to convey comments made by organizations and individuals about the proposed law to the parliament, and to withdraw the proposal at any time if it will not improve the quality of existing legislation.

### Funding of the proposed law

It is clear that in some cases there may be additional expenses necessary to complete the aforementioned tasks. For example additional expenses may be incurred if extra research is necessary to meet the necessary standards to propose the law.



The person who proposed the law is responsible for the funding of the expenses for the proposal. In cases in which a law is proposed by legal persons or by individuals who propose a law as part of a contract, additional funding may be required. In such cases the funding must be granted by the Ministry of Finance and Economics, which is the state central executive body in charge of budgetary and financial issues.

A “legal person” or “non-profit organization” may propose a law. But private enterprises cannot propose laws as their involvement might influence the legislative process in a manner that could be considered unfair.

### Citizen participation in proposals for law

A classic example of citizen participation in a proposal for law is participation in a task force. During a task force legal persons and citizens must elaborate upon the proposed law in a manner that is consistent with the basic concept that is specified in the initial proposal.

The person who proposes the law should provide a rationale for the proposal.

This must occur before the proposal proceeds to the next stage and is elaborated upon. An explication of this rationale or justification for the law can be explicated by a group of people in a task force, specific legal persons, or private citizens, who are concerned about the implications of the proposed law.

The law stipulates that the comments and opinions of related specialized bodies, experts, scholars, NGOs, other organizations and private citizens may be taken into account during the proposal process.

As a consequence citizens and legal persons should provide comments and opinions with proper justifications and the citation of pertinent sources of research while taking part in this process. In such a process individuals may not only participate in the proposal of the law, they also have an opportunity to express their views about the proposed draft.

The members of the task force, legal persons and citizens involved in the proposal of the law must report to the official responsible for the proposal, and the body responsible for the organization of the initial draft. Citizens who participate in the formulation of the initial proposal and the subsequent review by the task force provide an excellent example of active participation in the legislative process.

The Ministry of Justice and Home Affairs, which is the state central administrative organ in charge of legal affairs, plays an important role in drafting the proposed law, moreover it has full power under the law. This includes the power:

- To handle the elaboration of proposed laws that do not fall under the jurisdiction of the executive branch of government, judicial or legislative branches, state organizations, and criminal or civil relations;
- To co-endorse with the state central administrative organ, the rationale for a proposed law as initiated by the government;
- To provide recommendations to the proposed law as elaborated by the President and the member of the state parliament;
- To elaborate and submit to the Government for consideration comments and opinions about the Government's compliance with the proposed law as elaborated by the President and the member of the state parliament in conjunction with the Constitution of Mongolia, other laws, legal policy and other legal requirements;
- To make a final review and to endorse the submission of an evaluation to the Government or the State Parliament about the proposed laws conformity the Constitution of Mongolia, other laws, legal policy and other legal requirements;
- To provide professional and methodological assistance to other state central administrative organs concerning the elaboration of a proposed law;
- To issue recommendations and methodological guidelines as to elaboration of proposed laws, the unification of legal terms and other matters.

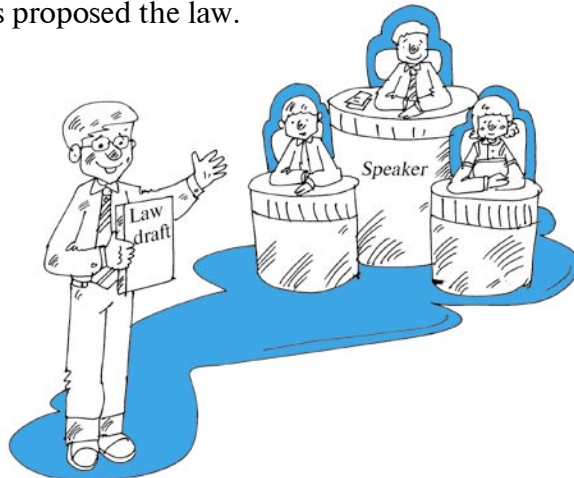
## 2.3. SUBMISSION OF THE PROPOSED LAW FOR CONSIDERATION

### Obtaining comments and opinion about the proposed law

The task force, legal persons and citizens present the proposed law to the official specifically authorized to enact its proposal upon completion of the initial draft.

The official who has been authorized to propose the law can provide comments and opinions from state central administrative organs and other organizations, experts, scholars, NGOs, other organizations and citizens, if they are considered pertinent.

The person specifically authorized to propose the law may receive comments about it from relevant parties by sending it to specific addressees, or by scheduling a meeting for discussion. The procedure for obtaining the comments and opinions is regulated by the law and depends upon the status of the person who has proposed the law.



### Obtaining the comments and opinions about the proposed law initiated by the President or the Member of the State Parliament

The President and the Members of the State Parliament acting as initiators have to send a draft of the proposed law to the Government and the other competent bodies in charge of implementation and supervision of the law. In this case these bodies consider the proposed law and deliver their conclusions in writing.

## Obtaining comments and opinions about the proposed law initiated by the Government

The ministry that regulates the issue that is addressed within the proposed law plays the primary role in the enactment of the law by the government. Comments and opinions from other ministries are obtained and considered in the draft proposal if they are considered well founded. The minister's council considers the elaborated draft and sends it to the member of the cabinet in charge of legal affairs for review. The member of the cabinet in charge of legal affairs makes the final review in compliance with the various legal requirements and delivers a written request for permission to submit the draft to the Government for its cabinet review or to the State Parliament for consideration.

The following procedures have been established to obtain the comments and opinions private citizens about a proposed law:

- Citizens may address to the State Parliament with written comments and opinions
  - Citizens may address the Promotion Center of the State Parliament with comments and opinions;
  - Citizens may go to the citizens reception hall of the State Parliament and deliver their comments and opinion;
  - Citizens may access the web site of the State Parliament and express comments and opinions;
  - The proposed law may be the subject of an open discussion and may be published in newspapers and other publications so the opinions of local citizens can be obtained;
  - Citizens may convey their comments and opinion through personal envoys to members of the State Parliament
- **Citizens may mail their opinions to the State parliament.**

This is a convenient procedure. The mailing address is The State Palace, UB-12. The name and title of the official should be posted on the envelope.



- **Opportunities to address the state parliament through promotion centers**

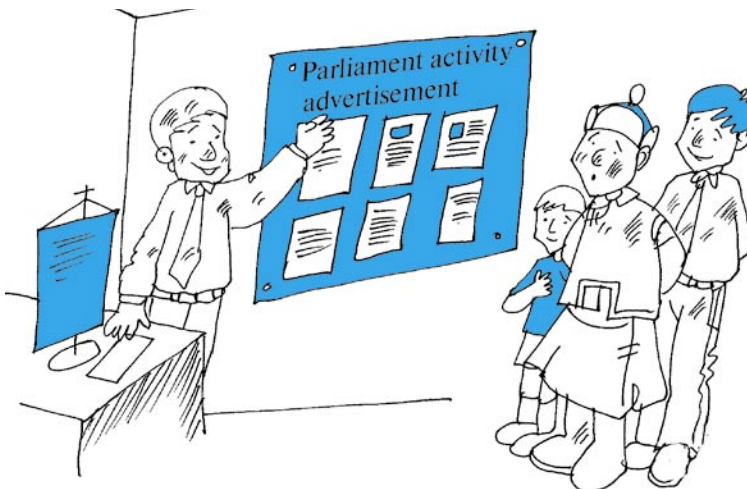
The promotion centers to introduce the activities of the State parliament to the general public were established within the project “Strengthening the parliament of the democratic governance”. They were created to increase the citizens knowledge and education about the State parliament, to make the activities of the State parliament more transparent for the general public and to promote the participation of citizens and NGOs in the law making and supervision process. These centers were established in the districts of Arhangai, Bayan Olgii, Darhan Uul, Dornod, Dornogobi, Orhon, Omnogobi, Uvs, Hovd; Sukhbaatar, Chingeltei, and Bayangol districts in the capital city. The promotion centers are located in the seats of chancelleries of aimags and districts governors.

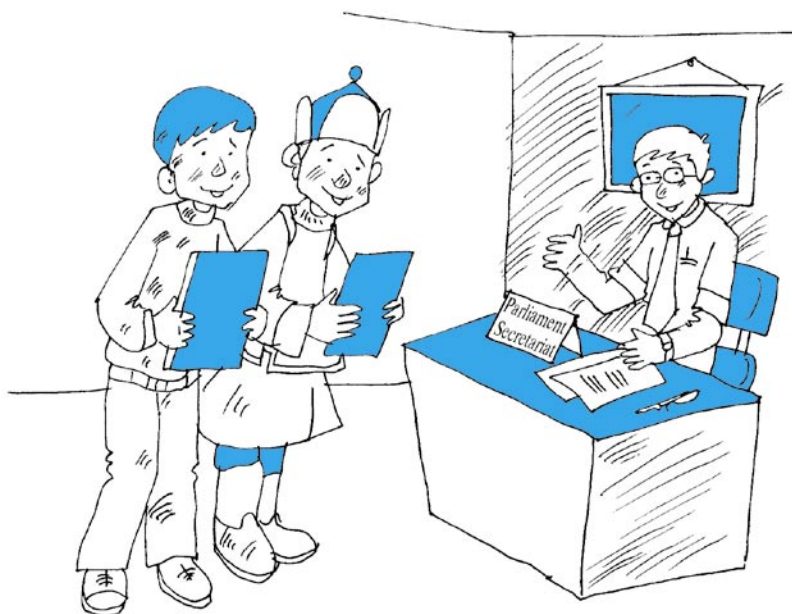
The Promotion Center of the State parliament fulfills the following duties:

1. They provide pertinent information about the laws and other decisions made by the state government and parliament to the general public and receive and deliver the comments, opinions and requests by citizens to the State parliament
2. They organize meetings of citizens and representatives to address specific concerns
3. They promote the activities of State parliament members;
4. They cooperate with the local media and press.

The Center collaborates with representatives and assistants of the State parliament.

Contact reference: *Administrative and Public relations division, Administrative Department, State Great Hural. 261377, 264834.*





“Although the endeavor is small in scope, there will be no result if a decision to start does not begin”  
B.Injinaash

- **Comments and opinion regarding the proposed laws may be sent to the Citizens reception hall of the State Parliament**

Office Hours for the Administrative Department of State Parliament are:

Monday	9.00-13.00	14.00-17.30
Tuesday	9.00-13.00	14.00-17.30
Wednesday	9.00-13.00	14.00-17.30
Thursday		14.00-17.30
Friday	9.00-13.00	14.00-17.30

- **Office Hours for the Administrative Office of the Government are:**

Monday	9.00-13.00	14.00-17.30
Tuesday	9.00-13.00	
Wednesday	9.00-13.00	14.00-17.30
Thursday	9.00-13.00	14.00-17.30
Friday	9.00-13.00	

- **Office Hours for The Office of the President are:**

Monday	10.00-12.30
Tuesday	10.00-12.30
Wednesday	10.00-12.30
Thursday	14.00-17.00
Friday	10.00-12.00



- **Conveying comments and opinions through members of the State Parliament who are elected by the citizens**
- The members of the state parliament receive and meet citizens at their request at the meeting room of the State Palace. These meetings are organized by the coordinator responsible for receiving citizens at the state parliament and the coordinator in charge of public relations. An appointment with members of the state parliament are fixed in advance and the office hours are as follows:

Monday	9.30-13.00	14.00-17.00
Tuesday	9.30-13.00	14.00-17.00
Wednesday	9.30-13.00	14.00-17.00
Thursday	11.00-11.20	14.00-15.00
Friday	11.00-11.20	14.00-15.00

If the parliament member is unable to personally meet with the citizen his or her assistant may receive the citizen and convey the request to the parliament member.

The meeting room for parliament members is located in room No.149, 1st floor, west wing of the State Palace, close to the north-west gate.



- **Comments and opinions may by computer via the state parliament web site**

The following web sites are available for receiving the comments and opinion

[www.parl.gov.mn](http://www.parl.gov.mn)

[www.open-government.mn](http://www.open-government.mn)

[www.forum.mn](http://www.forum.mn)

[www.pmis.gov.mn](http://www.pmis.gov.mn)

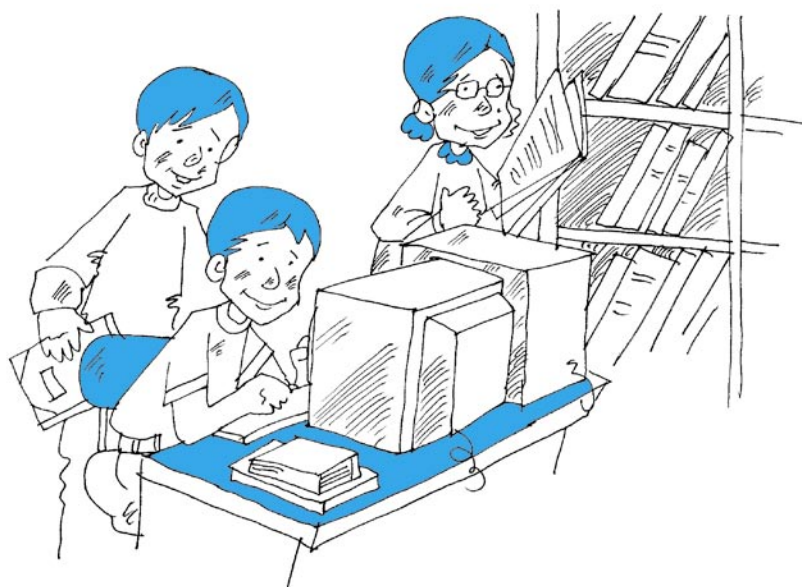
[www.monjustice.mn](http://www.monjustice.mn)

- **The proposed law that may be a topic for discussion may be published in newspapers and other media whereby the comments and opinions of citizens can be obtained**

The process for expressing comments and opinions requires active participation. Comments and requests can be addressed to the organizations or persons in charge of the open forum for the discussion of such matters. In the majority of the cases the Administrative Department of the State parliament handles this work. The mailing address is: State Palace. UB-12.

The public libraries play a considerable role in this endeavor. The public libraries are:

1. The National Legal Information Center Library at the National Legal Information Center. Address: The National Archives. No. 206



2. The Natsagdorj Central Library, Law Library
3. Educational Library. Address: Central Cultural Palace, next to the Painting Gallery.

In accordance with Article 15.5 of the Law on Special Permission for Economic Activities three organizations were selected in 2002 and authorized by the Minister for Justice and Home Affairs to make official publication of laws and regulations for Mongolia for the term of three years. The term ends in 2005 but does not include the government gazette. The authorized organizations are:

- The National Law Center
- “Interpress” Ltd.
- “Zuunii medee” newspaper

The citizens may choose any of these centers to provide their comments and opinions or exercise their legal remedies.

### Discussion of the proposed law by the general public<sup>4</sup>

Active participation during the discussion of the proposed law by the general public is encouraged to provide an open unrestricted means to elicit the comments and opinions of local citizens. If necessary the person authorized to propose the law, may forward an additional proposal to the state parliament, a list of the societies’ most important social issues to be discussed with the general public. If a citizen feels the necessity, he or she can communicate their opinion, and may make an express request to forward it to a parliament member.

Such discussion of the proposed law is considered during the plenary session of the State parliament, and a decision is made by the 2/3 of the majority votes.

“At first, think prudently, then make an analysis, and finally make a proper decision.”

Count  
Dulduitiin  
Danzanravjaa

<sup>4</sup> Article 19, Law on the Procedure of Elaboration and Submission for Consideration of Proposed Laws and other decisions of the State Parliament. 2001



Public debates of the proposed law may consist of:

- General public debates;
- Discussion by specific groups particularly experts
- Discussion by districts concerned about the law

The Government organizes the general public debates if the State Parliament makes such a request. The results from the public debates are reported to the plenary session of the State Parliament for consideration.

### **Discussions of the proposed law**

A series of public debates took place prior to the enactment of the Constitution in 1992. The general public debates were conducted from June 10th to September 1st, 1991. Many citizens took an active part in it.

Proposals of the Constitution of 1992 and the Labor Code, adopted on 24 January 1991, were discussed by the following organizations:

1. Public services
2. Institutions
3. Labor collectives
4. Ministries, state committees, special departments
5. Implementing agencies at the ministries
6. Central cooperatives

**Submission of the proposed law for consideration** As it is mentioned above, the next phase is a submission of the finalized proposal for law to the State Parliament for consideration after its final elaboration and after obtaining comments and opinions. The person authorized to propose the law before the government submits the draft to the chairperson of the State Parliament. Prior to this occurrence the proposed law and related documents are delivered to the General secretary of the Office of the State parliament. The General Secretary reviews the draft and related documents in 72 hours and informs the person to propose the law on the date of submission of the proposed law to the Chairperson of the State parliament.

## **CHAPTER 3.**

### **Consideration of the proposed law**

- 3.1. Consideration and adoption phases of the proposed law**
- 3.2. Preliminary consideration by the Standing Committee**
- 3.3. Consideration by the State Parliament**
- 3.4. Enactment, publication, promulgation**

The previous chapter provided information on the role of a person authorized to propose a law, a basic definition of a proposed law, its elaboration and submission to the State Parliament. This chapter will provide the reader with information about the phases of consideration and adoption of the proposal, its enactment as a formal law, the President's veto, the procedure governing the acceptance or rejection of the veto, and the publication and promulgation of the law.

## 3.1. CONSIDERATION AND ADOPTION PHASES



### *The General Secretary of the Office of the State Parliament*

The previous chapter described the procedure whereby the General Secretary receives and reviews the proposed law and related documents in 72 hours and informs the person who has proposed the law on the date of submission of the draft to the Chairperson of the State Parliament. The person authorized to propose the law submits it to the Chairperson of the State Parliament in

due time. The Chairperson of the State Parliament redirects the proposed law submitted by the person authorized to propose the law to the Standing Committee<sup>5</sup> concerned on the basis of the content and nature of the draft.

**The phases of consideration and adoption of the proposed law are as follows:**

#### **First phase:**

1. Conclusions of party, coalition groups and the Standing Committee concerned on advisability of consideration of the proposed law by the plenary session of the State Parliament
2. Voting at the plenary session of the State Parliament on advisability and consideration of the draft

#### **Second phase:**

1. Consideration and conclusions of parties, coalition groups and the Standing Committee about the proposed law
2. Voting at the plenary session of the State Parliament on advisability and consideration of the proposed law.

<sup>5</sup> The Standing Committee of the State Parliament is a component of the parliament with specific activities. It is responsible for an elaboration of the issues to be considered during the plenary session of the parliament, and for due consideration and conclusions, as well as administration of the State Parliament as specified by the law.

**Third phase:**

1. formulation of the decision in the first reading and preparation for the final reading of the proposed law
2. final reading of the proposed law at the plenary session of the State Parliament

**Fourth phase:**

1. formulation of the decision in the final reading and finalization of the texts of the law and the resolution
2. consideration of the final texts of the law and the resolution at the plenary session of the State Parliament
3. enactment of the decision
4. consideration of the Presidential veto on decisions made by the State Parliament



## 3.2 CONSIDERATION OF THE PROPOSED LAW BY THE STANDING COMMITTEE

### The Standing Committee of the State Parliament

The Standing Committee of the State Parliament is established according to its relevant field of activities. The Standing Committee is comprised of members of the State Parliament who are responsible for

- Security and foreign policy
- Environment issues and rural development
- Social policy
- State organization
- Budgetary issues
- Legal issues
- Economic issues

The Standing Committee has the power to establish the law and settle a range of issues under its jurisdiction. This includes decisions about proposed laws submitted for consideration. The Standing Committee may establish work groups composed of experts and specialists to receive assistance and to obtain comments and opinions from relevant bodies and the general public.

The Standing Committee's primary means to settle these issues is through a specific process in a joint meeting among the concerned parties. The issues under the standing committee's jurisdiction are considered within the meeting, and the decision is delivered by the majority<sup>6</sup> votes of the participating members.

<sup>6</sup> The majority or the simple majority votes means over 50% of the votes of the participating members, and the absolute majority means 2/3 of the votes.



### Consideration of the Standing Committee

*The Standing Committee conducts meetings as a means to settle a range of issues.*

A proposed law is submitted to the State Parliament then directed to the Standing Committee as concerned. The Standing Committee considers the proposed law at its meeting and the members of the State Parliament belonging to that Standing Committee cast their votes. Members of the State Parliament belonging to other Standing Committees may participate in the meeting without the right to cast a vote.

Members of the State Parliament have the right to put forward a proposal for law or to make a decision on the existing proposal, to conduct a vote on the existing proposal, and to express any dissenting opinions at the conclusion of the Standing Committee meeting.

The person authorized to propose the law may face a questions and answers session during the deliberations at the meeting of the Standing Committee. Members of the standing committee must listen to the comments and opinions of various members of the government if the adoption of the proposed law will lead to extra expenditures in the state budget for the fiscal year concerned. This process is considered the best possible means to enact the law.

Recommendations made by members of other Standing Committees on the proposed law are considered at the conclusion of the meeting. The Standing Committee members must consider the President's written comments about the proposal.

Although members of the Standing Committee should be present at such meetings, he/she may convey his/her opinion in writing in advance if he/she is unable to be present. In this case the absent Standing Committee member will have an appointed person express their opinions.

The Standing Committee conducts meetings as a means to settle a range of issues.

### Conclusion of the Standing Committee about the proposed law

The Standing Committee reaches conclusions about the proposed law in two specific stages of action. It makes a decision on the advisability of the proposed law to the State Parliament. And it designates a member to summarize the conclusion at the plenary session.

If it is decided that it is advisable to consider the draft at the plenary session of the State Great Parliament, the Standing Committee prepares the first reading and makes a decision about the proposed law. It then appoints a member to elaborate upon the decision at the plenary session.

These conclusions can be made concurrently. If it is then considered necessary, the proposed law can be reviewed in a joint meeting of the Standing Committees concerned. They in turn will make a joint decision.

Based upon the comments received from the general public, and the considerations of the Standing Committee, it may invite citizens or representatives of these citizens to issue comments or opinions that will be included in the law.

Provision 22.9 of the Rules of Procedure for Sessions of the State Parliament (2001) forbids the making of amendments to the proposed law during its deliberations at the meeting of the Standing Committee, without the consent of the person who has been authorized to propose the law. This means that the Standing Committee may not reach a decision without consideration of the pertinent parties.

In addition however the person authorized to propose the law, the considering Standing Committee, and other Standing Committees may assign experts to formulate conclusions or hear the opinions of the relevant members of the cabinet, or other officials in order to reach a consensus as to principal disagreements.

If there are two proposals for law on the same issue the Standing Committee may combine them and submit them to the plenary session subject to the consent of the person authorized to propose the law. If the person authorized to propose the law does not consent to combining the two documents the Standing Committee has to make separate conclusions on each of the drafts.

### Obtaining the public opinion on the proposed law

If it is considered important during the plenary session the Standing Committee it may publish the comments and opinions about the advisability of the law made by the general public in the press before the first reading of the text.



The Standing Committee and the Office of the State Parliament may propose a referendum. A referendum may be held if there are concerns about the publication of the proposed law. The process may include debates and of course an analysis of the results.

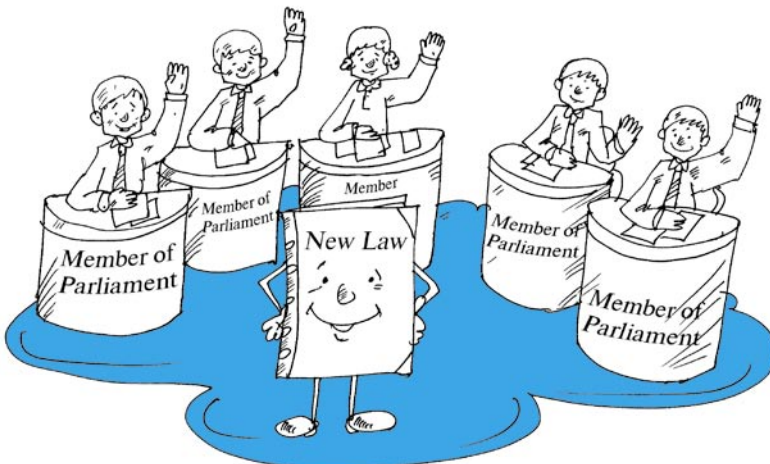
The publication of the proposal for law in the daily press should indicate the deadline for a decision on the proposed law and the Standing Committee responsible for the decision.

On the basis of these comments and opinions the Standing Committee may invite the citizen or the representative of the legal person who provided a comment or opinion about the proposed law to the official Standing Committee meeting, or if unknown inquire about their whereabouts. And to conduct these activities the State Parliament has an annual budget that has monetary allocations for these activities.

### 3.3 CONSIDERATION OF THE PROPOSED LAW BY THE STATE PARLIAMENT

The State Parliament considers the proposal for law submitted by the person authorized to propose the law, which is decided upon in the plenary session and included in the agenda.

If a draft not included in the agenda is submitted during the plenary session, the advisability of its consideration is decided by the majority of votes of participating members to the session on the basis of the conclusions of the State Organization Standing Committee and the relevant Standing Committee.



**Decisions on the advisability of the proposed law are made during the plenary session of the State Parliament upon:**

- Hearing the presentation of the person who proposes the law. This is followed by a Q&A session by members of the State Parliament.
- Hearing the conclusions of the Standing Committee, party, coalition groups, and other pertinent groups about the proposed law.
- Voting on the advisability of the proposed law by the plenary session of the State Parliament.

If the outcome of the vote favors a rejection of the proposed law during the plenary session of the State Parliament, there will be a resolution for the withdrawal of the draft. This resolution should specify the reason for the withdrawal.

**Hearing the conclusion of the Standing Committee**

**The decision on advisability of the proposed law during the plenary session of the State Parliament will include:**

- Hearing the presentation of the person authorized to propose the law followed by a Q&A session by members of the State Parliament.
- Hearing the conclusions of the Standing Committee, party, coalition groups and other pertinent groups about the proposed law
- Voting on the advisability of the proposed law during the plenary session of the State Parliament.

If the voting favors a rejection of the proposed law during the plenary session of the State Parliament, there will be a resolution for a withdrawal of the proposed law. The resolution should state the reason for the withdrawal.

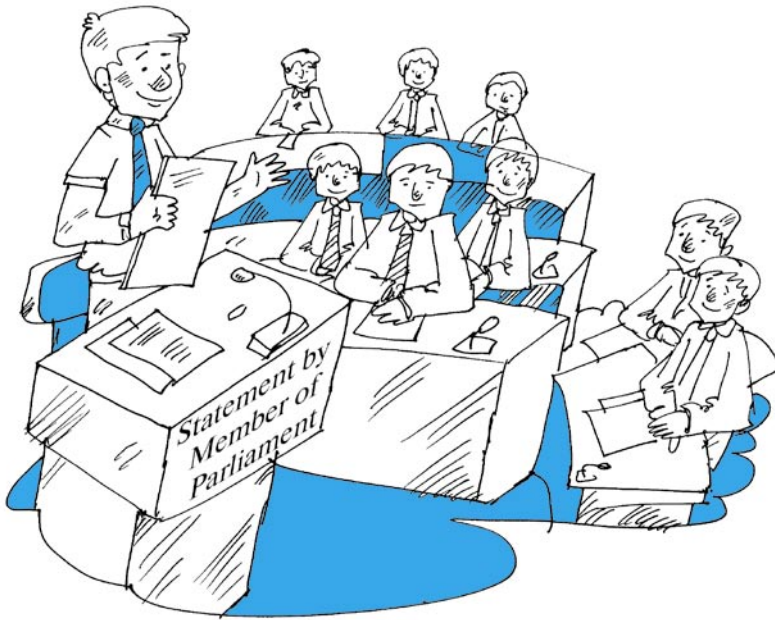
Following is a summary of the rules for the first reading of the proposed law at the State Parliament.

**Hearing the conclusion of the party, coalition groups**

The Standing Committee responsible for the proposed law is responsible for a decision about its advisability during the plenary session of the State Parliament. The presentation must not be over 15 minutes. This conclusion must address the purpose of the proposed law, and be consistent with state policy, the required terminology and language, and provide justifications and explanations for opposing the provisions within the proposed law.

**Statements and reservations by members of State Parliament**

The Standing Committee concerned has to inform all members of State Parliament about amendments to the proposed law, and provide pertinent information about any substantial opposition from any member of the parliament concerned.



### Substantial opposing view

In the case of an opposing view such positions must be documented during the deliberations. Procedures for a substantial opposing view may consist of:

- a) an opinion which reflects an opposing view must be submitted by all of the members of the Standing Committee;
- b) an opinion of a member of the State Parliament which is discussed which reaches no consensus during the meeting of the Standing Committee;
- c) an opinion contained in the conclusions as substantial by the majority, minority parties, coalition groups and the State Parliament.

The parliament member who expressed an opposing view may provide an explanation. And one member supporting and one member opposing the proposed law may make statements according to the rule of procedure<sup>7</sup>. The member of the State Parliament who has an opposing view should submit a written statement of their view at the conclusion of the Standing Committee.

### Voting over the opposing view

If an opposing view is expressed the chairperson conducts a vote on each position. The final decision is based upon the outcome registered by the majority of votes.

If the President delivers a message to the State Parliament which contains a comment about the proposed law it must be distributed in advance to the members of the State Parliament. Proposals by the president will receive a vote at a later point in time.

<sup>7</sup> Provision 23.5.3. of the rules of procedure of the State Great Hural. 2001

“privilege is the most uncompromising enemy of the right”.

Ebner-Eshenbakh

The chairperson may set the time for the vote about the opposing view and inform members accordingly. If the time of voting is set and members are properly informed they must appear in person and participate in the process.

After the vote the following procedures take place:

- a) preparation of the whole draft for the final reading; or
- b) a rejection of the proposal. In this case the State Proposal adopts a resolution to withdraw the proposal.

### Submission of the draft for the final reading

If there was no opposing view the final reading of the proposed law will take place.

The State Parliament may establish a joint working group consisting of its members and the person who is authorized to propose the law who may also make amendments or revise the proposal while transferring the draft to the Standing Committee for the preparation of the final reading.

The chairperson will then assign tasks for the completion of the proposed law. The chairperson will consider the amount of work required as well as the range of tasks that are necessary to complete this phase.

Decisions about changes from the first reading of the proposed law are integrated into the text for the final reading:

- the person authorized to propose the law and the Standing Committee are responsible for the final elaboration of the draft at the working group;
- Based on the decisions made during the first reading at the Standing Committee concerned, every proposal formulated by members of the State Parliament, and the person authorized to propose the law, is considered. Necessary amendments are made to the draft and due consideration is given to the writing style and proper use language. A final version of the text is then completed.

The President may send a written comment after the first reading of the draft. The Standing Committee considers the comments with proper documentation of the comments in the summary.

### The rules of procedure related to the final reading

- The presentation of the Standing Committee on the draft of the proposal for the proposed law should not exceed 10 minutes;
- A Q&A session may occur after the presentation of the Standing Committee;

### Voting at the final reading will take place:

- a) if there are issues and provisions left to be decided after the first reading;
- b) if 1/3 of the participants at the plenary session supported the members of the Standing Committee who decided to propose a revote after the first reading had already taken place;
- c) if the Standing Committee concerned and the Legal Standing Committee indicated that a provision of the proposed law is in violation of the existing law or other provisions in the draft, there must be a revote on every issue mentioned above.

However members of the State Parliament who made the proposal may provide an explanation or a statement on this matter. Members of the State Parliament may make opposing statements as well.

### Adoption of the proposed law

After the final reading the proposed law is then scheduled for a final phase of which its enactment will be considered. The chairperson determines the time needed to initiate the voting for this phase of the proposed law.

The draft of the proposed law is then given to the person authorized to propose the law. If it is necessary resolutions are adopted for the final reading.

The final text of the law and the resolution adopted during the final reading is presented to the State Parliament within 6 days after the deliberations. The General secretary of the Office of the State Parliament is responsible for the presentation of the final text.

## Procedures for voting

Members of the State Parliament have no right to demand reconsideration of the outcome of a vote based upon his/her absence during the voting.



The voting is open unless the Constitution and other laws stipulate the need for a secret ballot. The voting is conducted by raising the hands or other forms which may include electronic calculation. The outcome of a secret ballot is recorded through the tabulation of ballot sheets or by electronic calculation.

Members of the State parliament who were officially registered during the plenary session must be present at the time of voting except for valid reasons. Members of the State parliament have no right to demand reconsideration of the outcome of a vote based upon his or her absence during the voting process.



Members of the State Parliament may respond to a vote only by answering “for” or “against”. Members who participate in the meeting but refuse to vote will be cast as a vote “against” the proposed law.

Members of the State Parliament may cast only one vote on his/her own behalf on the issue considered during the plenary session of the State Parliament.

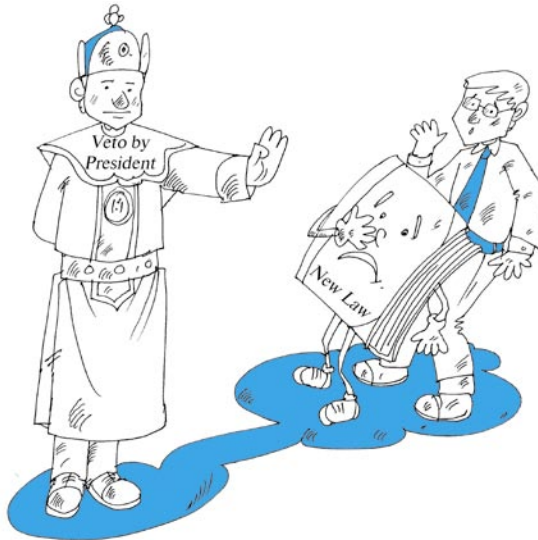


### 3.4. ENACTMENT, PUBLICATION, PROMULGATION

Enactment, publication and promulgation of the law, which went through the final reading and was subsequently adopted at the plenary session of the State Parliament, is regulated by specific procedures.

#### Enactment of the law, Presidential veto over the law

Enactment, publication and promulgation of the law, which went through the final reading and was subsequently adopted at the plenary session of the State Parliament, is regulated by specific procedures.



The President of Mongolia shall be the Head of State who embodies the unity of the people.

The decision of the State Parliament is delivered to the President within 24 hours after its enactment.

Article 33 of the Constitution stipulates that the President enjoys the prerogative right to veto, partially or wholly, the proposed laws and other decisions made by the State parliament. The laws or decisions shall remain in force if two thirds of the members of the State Parliament present do not accept the President's veto.

The President must decide whether to confirm or veto the law within 5 days after the Chairperson of the State Parliament signed and enacted the law. A confirmed law will then enter the next phase.

The President enjoys the right to veto, partially or wholly, laws adopted by the State Parliament. The grounds for a veto may involve various laws, social customs or other societal factors that may include the lifestyle of the nations citizens, and may involve a violation of the Constitution, other laws, international treaty provisions to which Mongolia is a party to, or eminent prejudice to the national security, and non compliance with the national customs, or backwardness and immaturity resulting in unrealistic expectations or violation of the law making procedure and process.

President of Mongolia Mr. N.Bagabandi has vetoed 27 resolutions from the State Parliament since 1997. Out of these vetoes the State Parliament accepted 19 presidential vetoes and rejected 8.

### Consideration of the Presidential veto by the State Parliament

Upon receipt of the presidential veto the State Parliament immediately considers it and decides whether to accept or reject it. If the majority of parliament members oppose the veto immediately upon its consideration, or 2/3 of the members oppose the veto during the subsequent plenary session, the law enters the next phase of development. The veto of the President will then become invalid.

### Acceptance of the Presidential vetoes

If 2/3 of the members accept the veto, pertaining to the law, its relevant parts, articles or other provisions, it will become invalid and must be changed. In some instances the President may veto several provisions of the law, and the State Parliament may accept some of them, but reject others.

#### For example:

*The State Parliament accepted the veto imposed on Article 9.1.5 of the Amendments to the Law on Civil Service by the official notification E/4 dated on 8 January 2003. The State Parliament rejected the veto imposed on Article 15.2 of the Courts Law by the official notification E/37 dated on 22 July 2002.*

The decision of the State Parliament on the rejection of the veto of the President is final. On the other hand, if the State Great Parliament rejects the veto of the President pertaining to the violation of the Constitution, the President is entitled to address to the Constitutional Court for review, and this refers also to the duty of the President to fulfill the oath.<sup>8</sup>

<sup>8</sup> G.Sovd "Explanatory notes to the Constitution of Mongolia" UB., 2000. section 169

**Proce-  
dures to put  
new laws  
into effect**

A new law becomes binding as it applies to all.

There are however two regulations which guide this process:

1. The regulations that specify the process whereby a law is put into effect are designated as the law is adopted. For example the new civil Code of Mongolia was adopted on 10 January 2002. Its date of entering into effect by a law as set forth from September 1st 2002.
2. If the decision of the State Parliament does not contain the aforementioned regulation, the law becomes effective 10 days after the official publication.

**Official  
publication  
of the law**

An enacted law must be published. You may recall that a legal norm must be specified in writing as indicated in the first chapter. This chapter specifies publishers who are eligible to print the text. It also indicates who is in charge of this task. The Office of the State Parliament must edit the text, provide the proper form, publish the text and disseminate the adopted law. The office of the State Parliament must publish the law in the “Government Gazette”, as it is considered an official publication. The “Government Gazette” publishes the entire text of each of the laws. It also includes a written description of decisions made by the State Parliament, specific Presidential decrees, resolutions by the Government, decisions of the Constitutional Court, official interpretations by the Supreme Court, and other acts issued by ministries and agencies, establishing legal norms for general application.

**Increas-  
ing public  
awareness of  
the plenary  
session of  
the State  
Parliament**

A written record of the course of events that took place during the plenary shall be displayed for the general public at the library of the State Parliament. Written reports from the plenary sessions of the State Parliament are recorded concurrently, with tape recordings. And if it is considered necessary the Office of the State Parliament will provide an official version of the information. The proceedings of the plenary sessions of the State parliament are kept on audio-visual tapes.

This information can be used for the preparation of material for plenary sessions, publication, for the press and media, and for the settlement of disputes.

As this chapter outlined the process whereby a law is adopted and put into effect it is apparent that the citizenry should respect and obey the law in all of their daily endeavors.

Furthermore it is critical that citizens enjoy the right to address the person authorized to propose the law, understand the various issues concerning the application of the law, amendments to the law, demands for new laws, and the need for discussion of the proposed law. Each of these developments is important for the implementation of the entire legal process.

## **CHAPTER 4.**

### **The participation of citizen's in the law making process**

#### **4.1 About citizen participation**

#### **4.2 Lobbying and the law**

This chapter provides important information about citizens' participation in the legal process, and various modes of decision-making, opportunities and means of participation, lobbying, and particularities of the entire procedure.



## 4.1 ABOUT CITIZEN PARTICIPATION IN THE LEGAL PROCESS

Active citizen participation in the governance of the people is the supreme value of a democratic society. This is a much broader notion than active citizen participation in the law making process.

The state involves itself in numerous endeavors, such as disseminating important information, the organization of meetings and debates, official orders to ensure citizen participation in activities that include policy making, the development of law and other decision making processes. Citizens on the other hand are required to contribute to the government of the state, as they are conscious of the rights of free expression, the election of representatives in a fair and impartial process and even the right to be elected.

Recent research revealed that our citizens participate in state affairs only once in four years as they vote in elections.

There are many ways in which the citizens can contribute their ideas to have an impact on the formulation of state policy and public affairs. The previous chapters referred to the participation of citizens in the law making process. This chapter deals with other forms of citizen participation.

There are two types of participation in our democratic country. Indirect participation means citizens have the right to make decisions through members of the State Parliament, through delegates of representatives of parliament members in “aimags”, local townships, the capital city, “soums”, smaller townships, and local districts. Direct democracy involves personal participation in the decision making process of any state impacting the state that may impinge upon issues that affect the society at large, or even issues that may have consequences for specific local communities. Direct participation in general meetings of fellow citizens in “bags” and “horoo”, local governmental units, are a fine example.

Citizens can benefit from the following forms of participation and can have an influence upon the states’ decision about public policy:

- Through members of the State Parliament
- Participation in a national referendum;
- Participation in general public debates about a proposed law;
- Participation in the Citizen Forum of the State Parliament and other General Meetings of Citizens;



### Participation through members of the State Parliament

Citizens may communicate urgent issues requiring quick solutions through personal meetings with representatives of members of the State Parliament who have specific obligations to local constituencies. It is relatively common for our citizens to ask for assistance to resolve payment problems in meetings with the members of the State Parliament. However under the law members of the State Parliament are not permitted to administer the budget and payment expenditures but he/she is the official authorized to propose a law, initiate the various phases for the adoption of a law and the formulation of state policy.

Parliament members have an obligation to represent the people's thoughts and ideas, which will provide them with an opportunity for direct participation in the states' affairs.

Members of the State Parliament must therefore maintain close links with the electorate, collaborate whenever necessary, and share the opinions of the local citizenry on state policy, and the various laws to be adopted as well.

### Participation in the national referendum

During a national referendum the State Parliament conducts express voting and adopts a resolution on the pertinent issue at hand. Under the Constitution of Mongolia, the national referendum is considered valid if the majority of people eligible to vote took part in it, and is to be decided by the majority of votes. “The law on national referendum” was adopted in 1995.

The eligible people participate freely and directly in the referendum and vote by secret ballot. The citizens, who have reached 18 on the day of casting the ballot have the right to participate in the referendum and vote without discrimination as to the ethnic origin, language, race, sex, social origin and status, property, occupation and post, religion, opinion or education. People determined to be mentally retarded by a valid decision of the court and those serving time in penitentiary institutions are not entitled to participate in the referendum.

#### Scope of the national referendum:

1. A referendum will be conducted in a location where a choice must be made about a particular issue related to state and foreign policy.
2. A referendum may be conducted concerning amendments to the Constitution.
3. The scope of one referendum may not exceed two issues.

### Participation in general public debates on proposals for law and other decisions of the State Parliament

The Standing Committee of the State Parliament organizes general public debates on important draft laws and other decisions to be considered by the plenary session of the State Parliament. Drafts of proposed laws and other decisions are published in the daily press. The citizens may come in person to the citizens’ reception hall of the State Parliament to express themselves or provide comments and opinions about the proposed law. Furthermore they can address the Standing Committee by mail, e-mail or fax.

Comments and requests delivered in due time during various deliberations are officially introduced to the Standing Committee, and the summarized version is published in the press. Citizens’ personal comments and opinions about the proposed law are also reported through the press. The second and third chapters of this book describe the process of proposing a law and the opportunities for citizens’ to participate in this process.

## Participation in the Citizens' Representatives Parliament and General Meetings of Citizens

Every citizen of Mongolia resides in and belongs to the jurisdiction of a specific administrative and territorial unit.

The governance of the administrative unit is based on the principle of combination of the state governance through the governor from the one side and the local self-governing system of the Citizens' Representatives Meeting and the General Meeting of Citizens. The Citizens' Representatives Parliament is situated in 21 "aimags", the capital city, 329 "soums" and 9 districts having 7475 elected delegates. Moreover, the General Meeting of Citizens is present in 1579 "baguuds" and 121 "horoods", and every citizen can participate directly in their meetings according to the domicile.



## The basic function of the Parliament of Citizens' Representatives and General Meetings

Any body of the parliament may consider and make decisions on social issues that impact local life that are within its field of competence except issues which fall under the jurisdiction of higher levels of parliament and other competent bodies. The scope of these matters may consist of economic and social development planning, budget and financial activities, public sanitation, waste disposal, fire fighting, water supply, and the repair of roads and infrastructure.



Furthermore they are qualified to deal with issues that may arise as candidates run for election and when governors advance to higher levels of office up to the position of prime minister. They may also consider and evaluate the work reports of the governor, the organization of debates on proposed laws and important issues related to the current state of social life.

**Scheduled meetings of the Parliament of Citizens' Representatives and pertinent rules for participation**

As its primary activity the Parliament of Citizens' Representatives conducts meetings. And during its recession members of its presidium carry out activities in their absence. The "aimag's" Parliament of Citizens' Representatives have 25-35 officials, the "soums" have 15-25 officials, the capital city have 40 officials, and large districts have 35 delegates respectively, depending upon the population of the unit concerned. The "bags" and "horoo's" parliament have 3-5 members in the presidium.

The meetings can be ordinary and extraordinary. The ordinary sessions of the "aimags", the "capital city" and district parliaments are held not less than two times a year in accordance with the law. The citizens may initiate the start of the meetings by addressing the authorities mentioned above.

Eligible citizens can participate directly in the General Meetings of Citizens. The decisions within these meetings are considered valid if 5 families per "bag", 10 families per "soun", with a population over 50 thousand, and 15 families per "horoo", delegate specific representatives who must be eligible to vote.

The citizens may communicate the issue to be discussed during the parliament meeting through the delegates, members of the presidium and mass organizations. The citizens can obtain the information concerning the agenda of the meeting by visiting the "bag" and "horoo" centers concerned, and in the majority of cases the officials of "horoo's" bring the information to the families.

**The governor and citizens**

Every "aimag", the capital city, "soun", district, "bag" and "horoo" has its own governor, who is a local representative of the state. The governors of "aimags" and the capital city are proposed by the Parliament of Citizens' Representatives and appointed by the Prime Minister, and the governors of "soums", districts, "bags" and "horoo's" are proposed by the respective Parliament of Citizens' Representatives and appointed by the governors in higher units of administration.

The governor in addition to implementing the decisions of the states higher units of administration, implement the decisions of the local Parliament of Citizens' Representatives. The citizens of “bags” and “horoos” are entitled to put forward the candidates of their choice to the governor, and as for the governors of other levels they can express their proposal through the delegates of the Parliament of Citizens' Representatives.

The citizens are entitled to address the governor and raise issues concerning the violation of the interests of the local people in the decisions of the various organizations and economic units.



The governors' areas of concern include education, health, social benefits and civil registration services. The citizens may address the governor directly about these issues or through an elected representative. Regular communication with the governors, especially lower units that consist of “bags” and “horoos”, and particularly the “horoos” meetings play an important role in strengthening the society through active citizen participation.

**Through  
NGOs**

The primary mechanism for guaranteeing the citizens' participation in a democratic society are the assembly of local citizens into voluntary coalitions, unions and NGOs based on common interests, reflecting and advocating their own opinions in the decision making process.

NGOs fall under the jurisdiction of the law. And currently more than 2700 NGOs are carrying out their activities in Mongolia. However most of these NGOs operate in Ulaanbaatar not in rural areas.



The NGOs are instrumental in representing the interests of vulnerable groups who may not otherwise have direct access to state organizations.

NGOs have a rich experience in communicating the interests of these citizens, as their primary means for active participation in the civil society may depend upon their participation in such organizations.

## 4.2 LOBBYING AND THE LAW

The word lobby recently came into Mongolia so there is currently no proper translation. The word “lobby” originally meant a vestibule or corridor, however its current meaning is much broader.

A “lobby” or the “vestibule” is where members of parliament concluded deals before or after hearings or deliberations. At that time this kind of lobby was crowded with people who wished to express their views on the issue at hand, gave opinions about legislation and met with legislators.



Some individuals and organizations consider people who make decisions about the law to be unreachable. Other people may find lobbying to be difficult to understand so they do not get involved.

Lobbying is however a way of expressing one’s own opinion to the decision maker on a specific issue, policy, or law. A person may therefore, based upon his or her own personal convictions, influence or achieve the desired outcome of the matter at hand.

Individuals may become involved in lobbying by making contact with legislators and policy makers, expressing their own ideas and thoughts clearly, making effective arguments against opposing views, citing supporting views and listing relevant legal guarantees. The considerable number of decisions issued by parliaments in Western countries represents the outcome of lobbying by their citizens, in coordination with officials authorized to propose laws, local business, entrepreneurs and various groupings.

### Eligibility requirements for lobbying

Anyone can do it. You do not have to be a representative of an organization. An ordinary citizen can talk over the phone, write a letter, or meet with a decision maker in order to express his/her own opinion on a specific law, legal issue and policy matter or to provide relevant information. Some countries have prohibited NGOs from lobbying.

### Procedures for lobbying

Lobbying should focus on a particular aspect of a political issue that is under consideration. It is important to research the issue and gather all of the information possible. It is also important to have a strong idea and self-confidence. But in order to be persuasive it is important to gather reliable information and materials from various sources (the press, books, research, statistics, documents, etc.). The most important consideration is the reliability of the information.

The desired change in the law and proposed activities should be defined with great decision. A request for assistance from a decision maker should be formulated very carefully. Since there might be bargaining and concessions it is wise to have an alternative plan. If it is considered necessary the assistance of expert people such as lawyers, doctors, and other professionals will be required.

It is important to introduce the issue briefly, orderly and logically. Always remember that the legislators may not have significant knowledge about the issue currently under consideration. Try to tell the truth, and don't exaggerate and overstate.

It is essential to understand in advance the principles and the phases of the decision making process as it pertains to lobbying. By understanding this process it is possible to monitor and anticipate the activities related to the issue.

Identify the main players in the decision making process and select the person whom you should approach. It is helpful to determine in advance who supports and who opposes your proposal, by inquiring about reports from the media, organizations and individuals. Don't count on one person. Furthermore, it is useful to anticipate who your opponents and who your supporters are.

It is important to investigate the position of every decision maker regarding your proposal, to obtain developing information on a continual basis and to keep an eye on the proposed laws and various opinions on the issue.

The timing for lobbying must be correct. The decision making process usually lasts throughout the year. Observe the process of people making unofficial decisions. The majority of official decisions are rendered during various kinds of gatherings and other unofficial events. Therefore you should know when such a meeting or conversation would happen, and what topics will be discussed. It is important to seize the opportunity to express your ideas at such meetings and discussion groups.

You should gather as much information as possible about the decision maker whom you intend to approach. It is always useful to know about the collaborators, interest groups, and strong and weak traits of the decision maker. It is important to know about their ratings and previous occupations.

### Methods of contacting a legislator

The most important phase in lobbying is determining how to contact a law- maker. There are three basic ways. Your choice will depend on your time and resources.

#### Personal Contact



Personal contact is the best way to lobby. However it might be difficult to meet and establish relations with a legislator. If possible make an appointment. You can meet him in formal or informal circumstances. In this situation you should introduce yourself and ask whether he has a little spare time to talk. Keep in mind the following pieces of advice as you make contact with the person:

## TIPS FOR HAVING SUCCESSFUL MEETINGS

- Be punctual and begin every meeting on time
- Make a comprehensive introduction for your self and organization, make the purpose of your visit clear. Explain the issue of interest and state your position. It is important to be well prepared. It is also important to be very kind.
- Appreciate the time involved in a particular project. Be friendly, do not harass.
- Do not be frustrated if must meet with a person other than the legislator of your choice. Legislators are busy people and their assistants usually meet guests and take and communicate messages. Good communication with the assistant may be one of the best ways to reach the decision maker.
- Express yourself clearly. If you came with friends make at least one of them talk. Express your ideas in few words.
- Tell the decision maker what activities are required and why.
- Emphasize on the importance of the outcome and why the decision maker should support you.
- Use documents to support your ideas.
- Be ready for questioning. Be frank if you do not have an answer to a question. Tell the researcher that you will conduct further research.
- Be ready to negotiate and make concessions.
- Be ready for a negative response. If your request is rejected try to split the issue into several parts and find solutions for them.
- Be a good listener. Give time to the decision maker or the assistant to express their point of view.
- Pay special attention to the decision maker favoring your position. Seek his advice on meeting and establishing contacts with other decision makers.
- It is important to request the decision maker to undertake some courses of action. Ask when and what could be done.
- If the decision maker or the assistant opposes your idea be reserved. You might meet them again.

### Talking over the phone

If you are pressed for time or you live far away you can talk to the decision maker over the phone. The advice mentioned above is still valid in this situation. However, it is essential for you be very kind, brief and precise in expressing your idea. You should also be well prepared in advance.



You should keep in mind that the decision maker is very busy. He has to talk over the phone with many people on a variety of subjects on any particular day. You should frame the issue in the most positive way.

### Writing letters



If you have very little time and resources you should write a letter to the decision maker, which is the most form of contact in this situation. You should express your thoughts correctly, and your letter must leave a positive memorable impression upon the recipient. After stating your problem provide a positive or negative position on the issue and specify which activities require urgent attention. Do not introduce unnecessary data or information.



It is advisable to start the letter with friendly tones by introducing yourself and giving insight into the issue in a deferential manner. The letter should end with appreciations for the kind attention, and it is important to indicate the mailing address and contact telephone. At present emails and fax are efficient tools to receive responses to letters.

**Always  
keep in  
mind**

You can write an acknowledgment letter after your meeting or telephone conversation. You should briefly mention the reason for your communication and promises the decision maker gave you. It is important to watch whether the decision and policy makers fulfill their promises.

It is important to evaluate your lobbying efforts, to analyze the achievements and failures, any lessons learned things, and to share your experience with your fellow colleagues and other people concerned.

Remember that the decision makers and elected parliamentarians attach attention to those who elected them. You are also important for them.

It is rewarding when you talk to people as much as possible, ask for their opinion and jointly promote the issue of interest. It is also very helpful for the lobby to benefit from the opportunities offered by the media and by inclusive publication and awareness of your issue.

One of the primary characteristics of a successful lobbying effort is to advance steadily on the issue. Even the smallest achievement may be the key to your progress. And in some cases despite failing to accomplish your entire objective, lobbying offers you an opportunity to enhance your self-confidence and participate in the decision making process. Lastly you need courage, patience, faith, and motivation, to assist in facilitating changes that will help the society.

**It is important to evaluate your lobbying efforts, analyze the achievements and, failures, any lessons learned, and to share your experience with your fellow colleagues and other people concerned.**

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