

Overall Score:

57 - Very Weak

Legal Framework Score:

70 - Weak

Actual Implementation Score:

43 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁶⁰Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

References:

Mongolian Constitution Article 16.10

Law on Non-governmental Organizations, Article 5

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

References:

Constitution Article 16.10

Law on Non-Governmental Organizations, Article 19

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | **NO**

Comments:

Non-governmental organizations are required to submit activity and financial reports to the Ministry of Justice that include sources of funding. They are also required to submit financial report, including sources of the funding to the tax authority. Neither of these clauses require public disclosure of these reports.

References:

Law on Non-Governmental Organizations

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

75

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | **75** | 50 | 25 | 0

References:

Report, State of Civil Society in Mongolia," Civil Society Index, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Watch, 2005 www.civicus.org

Report, World Bank, 2007, "Enabling Environment for Social Accountability in Mongolia," www.worldbank.org

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

Comments:

There is no formal mechanism for access to decision making processes at any level. There is no formal channel to access and deliver information to decision makers. Under these circumstances, CSOs largely rely on informal channels to influence in policy making.

References:

Report, State of Civil Society in Mongolia," Civil Society Index, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Watch, 2005 www.civicus.org

Report, World Bank, 2007, "Enabling Environment for Social Accountability in Mongolia," www.worldbank.org

Policy Study, Open Society Forum, Fellow Ya.Byambajav, 2007, "NGO Participation in Policy and Decision Making Process," www.forum.mn

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

References:

Report, State of Civil Society in Mongolia," Civil Society Index, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Watch, 2005 www.civicus.org

Report, World Bank, 2007, "Enabling Environment for Social Accountability in Mongolia," www.worldbank.org

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

References:

Report, State of Civil Society in Mongolia," Civil Society Index, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Watch, 2005 www.civicus.org

Report, World Bank, 2007, "Enabling Environment for Social Accountability in Mongolia," www.worldbank.org

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

Comments:

In these sources, there are no direct references to specifically anti-corruption non-governmental organizations, but they are mentioned in a general overall context.

References:

Report, State of Civil Society in Mongolia," Civil Society Index, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Watch, 2005 www.civicus.org

Report, World Bank, 2007, "Enabling Environment for Social Accountability in Mongolia," www.worldbank.org

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

Comments:

In these sources, there are no direct references to specifically anti-corruption non-governmental organizations, but they are mentioned in a general overall context.

References:

Report, State of Civil Society in Mongolia," Civil Society Index, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Watch, 2005 www.civicus.org

Report, World Bank, 2007, "Enabling Environment for Social Accountability in Mongolia," www.worldbank.org

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

75

4a. In law, citizens have a right to organize into trade unions.

YES | NO

References:

Law on Trade Unions

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

Trade unions and their organizers often face intimidation at work and retribution in the form of dismissal.

References:

Report, National Human Rights Commission, Human Rights and Freedoms in Mongolia, 2003, <http://www.mn-nhrc.org/iltgel>

Country Report, Freedom House, Mongolia 2007, www.freedomhouse.org

Report, State of Civil Society in Mongolia," Civil Society Index, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Watch, 2005 www.civicus.org

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

References:

Mongolian Constitution, Article 16.16

Law on Media Freedom

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

References:

Mongolian Constitution, Article 16.16

Law on Freedom of Media

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

100

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

References:

Interview with H.Naranjargal, President, Globe International Non-Governmental Organization, September 28, 2009, Ulaanbaatar, Mongolia

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | NO

Comments:

Instead of a license, applicants only need a registration to establish a print media outlet as a legal entity at the Ministry of Justice and Home Affairs.

References:

Law on Freedom of Media

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with H.Naranjargal, President, Globe International Non-Governmental Organization, September 28, 2009, Ulaanbaatar, Mongolia

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with H.Naranjargal, President, Globe International Non-Governmental Organization, September 28, 2009, Ulaanbaatar, Mongolia

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

38

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

The formation of a broadcast media outlet has a complicated and non-transparent registration procedure that ordinary citizens find hard to access. In particular, distribution of broadcast bandwidth is unclear and non-transparent.

References:

Interview with H.Naranjargal, President, Globe International Non-Governmental Organization, September 28, 2009, Ulaanbaatar, Mongolia

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | NO

References:

Law on Communication

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Due to complicated and non-transparent procedures, the formation and licensing process takes more than two months. Particularly, accessing bandwidth has a most complicated process that even involves the General Intelligence Agency.

References:

Interview with H.Naranjargal, President, Globe International Non-Governmental Organization, September 28, 2009, Ulaanbaatar, Mongolia

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The complicated process of obtaining a broadcast media license imposes unnecessary financial and logistical burdens on the organization. It is believed that the biggest burden on the organizations are the informal payments made to the government officials.

References:

Interview with H.Naranjargal, President, Globe International Non-Governmental Organization, September 28, 2009, Ulaanbaatar, Mongolia

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

References:

Interview with H.Naranjargal, President, Globe International Non-Governmental Organization, September 28, 2009, Ulaanbaatar, Mongolia

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

References:

Interview with H.Naranjargal, President, Globe International Non-Governmental Organization, September 28, 2009, Ulaanbaatar, Mongolia

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

83

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

References:

Criminal Code, Article 111

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

The media owners, who are mostly politicians or businesses, attempt to restrict media coverage of corruption-related issues that are in conflict with their political or business interests.

References:

Research, UNESCO, Overview of Media Sector in Mongolia, 2007

Monitoring report, Globe International, 2005, Monitoring of Violations of Freedom of Expression, www.monitoring.mn

Report, Globe International, 2007, Freedom of Media"

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

References:

Research, UNESCO, Overview of Media Sector in Mongolia, 2007

Monitoring Report, Globe International, 2008, Monitoring of 2008 Parliament Election Media Coverage, www.forum.mn

Monitoring report, Globe International, 2005, Monitoring of Violations of Freedom of Expression, www.monitoring.mn

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

20

10a. In law, print media companies are required to publicly disclose their ownership.

YES | **NO**

References:

There is no general broadcast law with disclosure requirements for print media companies.

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | **NO**

References:

There is no media broadcast law that requires broadcast (radio and TV) media companies to publicly disclose their ownership.

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | **25** | 0

Comments:

There is no formal journalistic code of conduct or self-regulation. There is widespread practice among journalists to report

favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. Editors or owners do not prevent or discourage this behavior.

References:

Research, UNESCO, Overview of Media Sector in Mongolia, 2007

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

All the media outlets have a persistent bias regarding some parties or independent candidates. Some parties are excluded from media coverage, or draw more negative coverage. The general public is familiar with different positions and biases of media outlets. The bias is mainly due to owners who are mostly politicians, businessman and main donors to political campaigns.

References:

Monitoring Report, Globe International, 2008, Monitoring of 2008 Parliament Election Media Coverage, www.forum.mn

Monitoring Report, Open Society Forum, 2007, Monitoring of 2004 Parliament Election Campaign Financing, www.forum.mn

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

In Mongolia, the state-owned media has been operating as public TV and radio outlets since 2003.

References:

Monitoring Report, Globe International, 2008, Monitoring of 2008 Parliament Election Media Coverage , www.forum.mn

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

References:

Monitoring Report, Globe International, 2005, Monitoring of Violations of Freedom of Expression

Report, Globe International, 2007, Freedom of Media"

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

References:

Monitoring Report, Globe International, 2005, Monitoring of Violations of Freedom of Expression

Report, Globe International, 2007, Freedom of Media"

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

References:

Monitoring Report, Globe International, 2005, Monitoring of Violations of Freedom of Expression

Report, Globe International, 2007, Freedom of Media”

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual’s work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

77
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

33

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

A freedom of information law has not been adopted yet, despite many years of advocacy. The law is expected to be adopted within one to two years.

References:

The Mongolian Constitution, Article 16.17

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

References:

A formal process regarding a right of appeal regarding access to a basic government record does not exist in any legal framework.

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | **NO**

References:

A formal mechanism regarding an established institutional mechanism through which citizens can request government records does not exist.

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

17

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

According to above reports there is a high tendency to wait longer period to obtain information, if they are not available online. It requires persistent effort to follow through complicated, bureaucratic systems to obtain necessary information, especially if it is politically sensitive. This is also partly due to the fact that officials can simply not locate information because they use less-developed archive system. National security exemptions are abused as described in the above-mentioned monitoring report.

References:

Report, World Bank, 2007, Enabling Environment for Social Accountability in Mongolia," <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/MONGOLIAEXTN/0,,contentMDK:21387839--menuPK:3>

Research Report, Globe International Non-Governmental Organization, 2007, Monitoring Access to Information and Secrecy

Report, Anti-corruption Agency, 2008, Monitoring of Openness and Transparency of Public Institutions, http://www.iaac.mn/pdf/toriin_baiguullagiin_il_tod_baidal.pdf

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Report, World Bank, 2007, Enabling Environment for Social Accountability in Mongolia," <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/MONGOLIAEXTN/0,.contentMDK:21387839--menuPK:3>

Research Report, Globe International Non-Governmental Organization, 2007, "Monitoring Access to Information and Secrecy"

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

References:

Report, Naranjargal Hashhuu, Freedom of Information, Mongolian Situation," http://portal.unesco.org/ci/en/files/18762/11139929561mongolian_situation.pdf/mongolian_situation.pdf

Report, World Bank, 2007, "Enabling Environment for Social Accountability in Mongolia," <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/MONGOLIAEXTN/0,.contentMDK:21387839--menuPK:3>

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Report, Anti-Corruption Agency, 2008, Monitoring of Openness and Transparency of Public Institutions," http://www.iaac.mn/pdf/toriin_baiquullagjin_il_tod_baidal.pdf

Research Report, Globe International Non-Governmental Organization, 2007, Monitoring Access to Information and Secrecy

Report, World Bank, 2007, "Enabling Environment for Social Accountability in Mongolia," www.worldbank.org

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

There are no regulations regarding appeals to information requests.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13f. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

References:

Report, Anti-Corruption Agency, 2008, Monitoring of Openness and Transparency of Public Institutions," http://www.iaac.mn/pdf/toriin_baiquullagjin_il_tod_baidal.pdf

Research Report, Globe International Non-Governmental Organization, 2007, Monitoring Access to Information and Secrecy

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁵⁰ Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

References:

Mongolian Constitution, Article 16.9

Law on Parliamentary Election, Article 6.1

Law on President's Election, Article 3.3

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

References:

Mongolian Constitution, Article 21.2

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

Voter turnout is considered high in Mongolia, which illustrates that there are fewer barriers to, and pressures on, voting. Some barriers face those citizens who live outside of the country, however.

References:

National Election Committee Voters Turnout statistics, <http://www.gec.gov.mn/>

Desk Study, University of Essex, 2005, "State of Democracy in Mongolia"

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Generally, citizens are able to vote in secret. However, during the counting, allegations often arise that ballots are tampered with. There are many allegations from all parties and candidates about tampering incidents during every election. Also, absentee ballots are prone to be tampered with during their transportation.

References:

Desk Study, University of Essex, 2005, "State of Democracy in Mongolia"

Monitoring Report, Civil Society Coalition, 2008, "Monitoring of Ballot Transporting During 2008 Parliamentary Election," www.sanal.mn

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

References:

Desk Study, University of Essex, 2005, State of Democracy in Mongolia.”

National Election Committee Voters Turnout statistics, <http://www.gec.gov.mn/>

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

80

16a. In law, all citizens have a right to form political parties.

YES | NO

References:

Mongolian Constitution, Article 16.10

Law on Political Parties, Article 3.1

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

References:

Constitution Article, 16.9

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

References:

Country Report, Freedom House, Mongolia 2007, www.freedomhouse.org

Report, National Human Rights Commission, Human Rights and Freedoms in Mongolia, 2002," <http://www.mn-nhrc.org/iltgel>

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

The extremely high cost of running a campaign bars the average citizens from running for office.

References:

Monitoring Report, Open Society Forum, 2007, Monitoring of 2004 Parliament Election Campaign Financing, www.forum.mn

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

In Mongolia, there are almost no opposition parties. The main opposition party has joined in the coalition with the majority party. There are a few minor parties, but they do not have significant influence on the proceedings of the legislature.

References:
Country Report, Freedom House, Mongolia, www.freedomhouse.org

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

18. Is the election monitoring agency effective?

25

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | **NO**

Comments:

The General Election Committee is charged with managing and facilitating elections. It is independent from the government by law. The committee lacks the mandate to report election abuses, which explains the NO score for this indicator.

As stated in indicator 17, according to the Central Election Body, the General Election Committee's mandate is to run the elections by setting up polling stations and counting the ballots. However, it is not mandated to report incidents of voter intimidation or fraud to the public. The courts take up election disputes.

References:

Law on Central Election Body

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | **25** | 0

References:

2004 Election Campaign Financing Monitoring Report

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The General Election Committee consists of non-permanent members. It has a limited staff, which is insufficient to carry out some functions, such as enforcement of voting laws and imposing penalties when they are violated.

References:

Not applicable

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

The General Election Committee usually makes reports on the results of the election. They are posted on the committee's website.

References:

General Election Committee website, www.gec.gov.mn

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Violations of rules occur often in regard to campaign donation or expenditure limits, reporting, etc. However, the General Election Committee does not proactively address these violations.

References:

Not applicable

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

67

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

Due to a overall weak registration system, voter registration is often not clear and transparent. There are many incidents of ghost" voting or eligible voters who are not included in the voter registration. It is believed by the public that this is done to affect voting.

References:

Monitoring Report, Fair Election Non-Governmental Organization Network, Voters Registration Monitoring Report 2008

Monitoring Report, Asia Foundation, Voters Registration Assessment Report 2008

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

Comments:

Political parties or candidates who have standing can file a claim with the administrative court to challenge election results or procedural violations that affected the election outcome.

References:

Law on Parliamentary Election, 57.2, 57.3

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

The electoral appeals mechanism often involves delays. There are several cases that took one to two years to receive a final judgment. This is mostly due to complicated legal procedures and a vague appeals mechanism for election disputes.

References:

Election Dispute Resolution Assessment Report, Ganzorig, National University of Mongolia, Open Society Forum, 2008.

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties. However, there was an incident during the aftermath of the last Parliament election. A public demonstration that was protesting the election results was tamped down by police and military forces after it turned violent.

References:

Monitoring Report, Human Rights Non-Governmental Organization Coalition, 2008, "Monitoring of Human Rights Violations During July 1 State Emergency."

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

References:

Law on Parliamentary Election, Article 46

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

References:

Vote Counting Observation Monitoring Report, 2009, Fair Election Non-Governmental Organization Network

Observers, Report, International Republican Institute (IRI), 2008, 2008 Parliamentary Election Observation," <http://www.iri.org/pdfs/Mongolia's%202008%20Parliamentary%20Elections%20-%20English%20Version.pdf>

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

According to the Central Election Body, the General Election Committee's mandate is to run the elections by setting up polling stations and counting the ballots. However, it is not mandated to report incidents of voter intimidation or fraud to the public. The courts take up election disputes.

References:

Law on Parliament Election

Law on Central Election Body

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

31
II-3. Political Financing

20. Are there regulations governing the financing of political parties?

100

20a. In law, there are limits on individual donations to political parties.

YES | NO

Comments:

Individuals can donate up to 1,000,000 mongolian tugriks (US\$700) to political parties.

References:

Law on Political Parties, Article 18.3

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

YES | NO

Comments:

Legal entities can donate up to 3,000,000 Mongolian tugriks (US\$2,100) to political parties.

References:

Law on Political Parties, Article 18.3

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on total political party expenditures.

YES | NO

Comments:

The General Election Committee decides the limit of campaign expenditures for each election. These limits are different for each constituency, depending on its size.

References:

Law on Parliamentary Election, Article 39

YES: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

NO: A NO score is earned if there are no limits on political party expenditures during an election. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

Comments:

The political parties are required to submit the financial reports, including all donations, to the General Election Committee. The Committee reviews and makes public the report within 45 days of the election. Also political parties should report publicly those individuals who donated more than 200,000 MNT (US\$140), and those legal entities donated more than 500,000 MNT (US\$350).

References:

Law on Parliamentary Election, Article 42.7

Law on Political Parties, Article 18.4

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

YES | NO

References:

Law on Parliamentary Election, Article 42.3

Law on Political Parties, Article 20.3

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

Comments:

The General Election Committee is mandated to monitor financing of political parties during election campaigns. The Committee reviews the financial reports and publicly announces the donors.

References:

Law on Parliamentary Election, Article 42.7

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

21. Are there regulations governing the financing of individual political candidates?

60

21a. In law, there are limits on individual donations to political candidates.

YES | NO

Comments:

Individuals can donate to candidates up to 1,000,000 MNT (US\$700).

References:

Law on Parliamentary Election, Article 41.1

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

YES | NO

Comments:

Legal entities can donate to candidates up to 3,000,000 MNT (US\$2,100).

References:

Law on Parliamentary Election, Article 41.1

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | NO

References:

Law on Parliamentary Election

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

YES | NO

References:

Law on Parliamentary Election

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

Comments:

The General Election Committee is mandated to monitor financing of individual candidates during an election campaign. The committee reviews the financial reports and publicly announce donors.

References:

Law on Central Election Body Article 7.3.10, 7.3.11

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

22. Are the regulations governing the political financing of parties effective?

8

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

The limit on individual donations to political parties was introduced only a few years ago. There is no existing research, nor have any reports been published, regarding enforcement of the limitation. The main problem is not that the limits are too high or too low, but the existing culture allows contributions to be made outside the system, and there is no enforcement mechanism to prevent this. There are also loopholes in the regulation regarding indirect support.

References:

Not applicable

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

The limit on donation was introduced only few years ago. There are no existing research or reports done on enforcement of the limitation. Mainly, companies give donations to the political parties rather than individuals. The main problem is not that limits are so high or so low; the problem is the existing culture that allows the making of contributions outside the system; there is also no enforcement mechanism. There are also loopholes in the regulations regarding indirect support.

References:

Not applicable

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

The limit on party expenditures was introduced only a few years ago. There is no existing research or nor are there published reports on enforcement of the limitation.

The problem is a lack of both enforcement and of an accountability mechanism. There are also loopholes in the regulation of indirect support such as volunteering and in-kind contributions.

References:

Not applicable

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The political party financing regulations were introduced only a few years ago. There is no existing research nor are there reports regarding enforcement of the regulation.

The General Election Committee has not conducted any investigations on campaign financing, mainly due to its weak capacity.

References:

Not applicable

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The political party financing regulations were introduced only a few years ago. There is no existing research nor are there published reports on enforcement of the regulation.

The General Election Committee lacks the capacity to enforce and impose penalties.

References:

Not applicable

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

References:

Monitoring report, Voters Education Center, 2007, "Monitoring of Political Party Financing," www.forum.mn

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

5

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

The limit on individual donations was introduced only a few years ago. There is no existing research nor are there published reports on enforcement of the limitation.

The main problem is not that the limits are too high or too low, but that the existing culture allows contributions to be made outside the system, and there is no enforcement of the mechanism. There are also loopholes in the regulation of indirect support.

References:

Not applicable.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

The limit on donation were introduced only a few years ago. There is no existing research nor are there published reports on enforcement of the limitation.

The main problem is a culture that allows contributions to be made outside the system, and there is no enforcement of the mechanism. There are also loopholes in the regulation regarding indirect support.

References:

Not applicable

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The campaign financing regulations were introduced only a few years ago. There is no existing research nor are there published reports on enforcement of the regulations.

The General Election Committee has not conducted any investigations on campaign financing, mainly due to its weak capacity.

References:

Not applicable.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The campaign financing regulations were introduced only a few years ago. There is no existing research nor are there published reports on enforcement of the regulations.

The General Election Committee lacks the capacity to enforce and impose penalties.

References:

Not applicable

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

There is no legal requirement for auditing the finance reports of individual candidates.

References:

Not applicable

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

13

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Monitoring Report, Voters Education Center, 2007, "Monitoring of Political Party Financing," www.forum.mn

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It is very difficult to obtain financial records from political parties. It usually takes more than a month to acquire them and there are delays in obtaining politically sensitive records. Political parties submit only election financing reports to the General Election Committee; this is public information.

References:

Monitoring Report, Voters Education Center, 2007, "Monitoring of Political Party Financing," www.forum.mn

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Accessing the financing records does not involve high costs. However, retrieving them requires several visits to a specific office and involves many bureaucratic obstacles, such as having to submit a formal letter with an explanation or justification for requesting the records, etc.

References:

Monitoring Report, Voters Education Center, 2007, "Monitoring of Political Party Financing," www.forum.mn

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

References:

Monitoring Report, Voters Education Center, 2007, "Monitoring of Political Party Financing," www.forum.mn

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There are no existing sources regarding financial support and expenditures of political candidates.

There is no legal requirement that individual candidates submit public reports on their financing.

References:

Not applicable

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no existing source for accessing the financial records of individual candidates.

There is no legal requirement that individual candidates publicly report on their financing.

References:

Not applicable

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Not applicable.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

References:

Not applicable

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category III. Government Accountability

III-1. ⁴⁰Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

63

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

References:

Report, World Bank, 2007, Enabling Environment for Social Accountability in Mongolia," www.worldbank.org

Policy Study, Open Society Forum, Fellow Ya.Byambajav, 2007, "NGO Participation in Policy and Decision Making Process," www.forum.mn

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

References:

Law on Constitutional Court

Law on Administrative Process

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

References:

Assessment report, Brant T White, Rotten to core? Judicial Reform Assessment,” 2008

Survey Teport, Sant Maral Foundation, “Trend Lines in Public Perception of Judicial Administration in Mongolia: Comparative Study Based on Nationwide Surveys 2001, 2003,2005, 2007”

Report, National Human Rights Commission, “Human Rights and Freedoms in Mongolia, 2002,” <http://www.mn-nhrc.org/iltgel>

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

References:

Most policies are adopted through the legislative process in order to make them actionable in the court. Executive orders, regulations and decrees are not enforceable by the court.

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

0

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

The president cannot be investigated, charged or prosecuted for criminal allegations during his time in office.

References:

Mongolian Constitution, Article 36, 42

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

The minister cannot be investigated, charged or prosecuted for criminal allegations, but prosecutorial immunity can be lifted.

References:

Mongolian Constitution, Article 42

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

25

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:

Law on Anti-Corruption, Article 10

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

Law on Anti-Corruption, Article 10

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:

Law on Anti-Corruption

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

References:

Law on Anti-Corruption

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

References:

Law on Anti-Corruption

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

References:

No regulations exist for restricting post-government private sector employment for heads of state and government and ministers.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

References:

No regulations exist for governing gifts and hospitality offered to members of the executive branch.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

References:

No regulations exist for auditing executive branch asset disclosures.

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

88

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

References:

Law on Anti-Corruption, Article 14.1

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Asset disclosures of the heads of state and government are published in the State Gazette and are posted on the website of the National Anti-Corruption Agency.

References:

National Anti-Corruption Agency, www.ciaa.mn

State Gazette

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Asset disclosures of the heads of state and government are published in the State Gazette and posted in the website of the National Anti-Corruption Agency.

References:

Report, National Anti-Corruption Agency, www.ciaa.mn

State Gazette

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The asset disclosure records of the heads of state and government are usually very general and not detailed, especially those in regard to politically sensitive investments or other financial arrangements in which the individual has an interest. The public believes that these records are often not accurate.

References:

Report, National Anti-Corruption Agency, www.ciaa.mn

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

26. In law, can citizens sue the government for infringement of their civil rights?

100

26. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

References:

Administrative Law, Article 12

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

50

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

It is a common practice that government funds, equipment and personnel are regularly used to support party activities, especially during the election campaign.

References:

Monitoring Report, Open Society Forum, 2007, Monitoring of 2004 Parliament Election Campaign Financing, www.forum.mn

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

50

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

References:

Law on Constitutional Court

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

The Constitutional Court can review the constitutionality of laws passed by the legislature only through a citizen's formal complaint, and they cannot proactively review them on its own. According to the Law on Constitutional Court, judgments shall be reviewed by the Parliament and can be revoked.

References:

Not applicable

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

No member of the national legislature can be investigated and prosecuted in criminal proceedings. But this immunity can be lifted

through a special legislative committee in the Parliament. This committee consists of members of represented parties in the Parliament and makes its decisions by majority vote.

References:

Mongolian Constitution, Article 29.3

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

14

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

Law on Anti-Corruption, Article 10

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

References:

Law on Anti-Corruption

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

References:

Law on Anti-Corruption

Law on Parliament

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

References:

Law on Anti-Corruption

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | **0**

References:

No regulations exist for restricting post-government private sector employment for national legislators.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off¹⁰ period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | **0**

References:

Requirements governing gifts and hospitality offered to national legislators do not exist.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Requirements regarding the auditing of national legislative branch asset disclosures do not exist.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

34. Can citizens access the asset disclosure records of members of the national legislature?

88

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

References:

Law on Anti-Corruption, Article 14.1

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Asset disclosures are published in the State Gazette and are posted on the website of the National Anti-Corruption Agency.

References:

Report, National Anti-Corruption Agency, www.ciaa.mn

State Gazette

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Asset disclosures are published in the State Gazette and are posted on the website of the National Anti-Corruption Agency.

References:

Report, National Anti-Corruption Agency, www.ciaa.mn

State Gazette

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The asset disclosure records of members of the national legislature are usually very general and not detailed, especially those regarding politically sensitive investments or other financial arrangements in which the individual has an interest. The public believes that these records are often not accurate.

References:

Report, National Anti-Corruption Agency, www.ciaa.mn

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

0

35a. In law, citizens can access records of legislative processes and documents.

YES | **NO**

Comments:

There is no legal right access records of legislative processes and documents, but access to them is not explicitly prohibited. Since there is no specific right stipulated in the law and there are no formal rules, the Parliament is not mandated to regularly provide information to the public. It also lacks an institutionalized mechanism to deliver records of legislative proceedings.

Accessing voting records is significantly difficult, since it is not regulated as public information. It is difficult to gain access to hearings because there is no public hearing mechanism in place. Transcripts and summaries of legislative debates and discussions that are posted on the website are inconsistent and out-of-date.

References:

Law on Parliament

Law on Drafting Process

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

Since legislative records are not mandated to be in the public domain, the information is inconsistently posted on the Parliament website. The only channel to accessing legislative records or voting records is through the Parliament Archive. This requires official permission from the head of the Parliament Secretariat upon the receipt of a formal request letter that explains and justifies the need. This process usually takes a month.

References:

There are no regulations regarding access to records of legislative processes and documents.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Accessing records of legislative processes and documents does not cost very much. However, retrieving them requires paying several visits and attending meetings to receive the necessary permission.

References:

There are no regulations regarding access to the records of legislative processes and documents.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

38
III-3. Judicial Accountability

36. Are judges appointed fairly?

8

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

National-level judge candidates are nominated by the General Court of Council, headed by the Ministry of Justice. The Mongolian President approves the nomination.

References:

Law on Courts

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

Most judges are nominated and selected based on personal or party relationships rather than professional qualifications. Because of this existing practice, judges are often unqualified. This situation is mainly due to the non-transparent nomination and selection process of judges.

References:

Report, Brent White, 2008, "Assessment of Judicial Independence in Mongolia," www.forum.mn

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

The approval process for national-level judges does not involve formal review.

References:

The Law on Courts

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

25

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

References:

The Law on Courts

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

Mongolia has a system of civil law. Judgments are usually very brief, about two to three pages. A judgment contains a brief description of the case, the main parties, the findings of the case, and the penalties imposed. In the finding section, a substantial reason for the decision is not provided. Dissents are not included in the judgment and, as a civil law system, precedents are not included.

References:

There are no regulations or requirements that members of the national-level judiciary give reasons for their decisions.

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

The disciplinary mechanism for national-level judges is called the Judicial Disciplinary Committee. It is specifically mandated to investigate breaches of the code of conduct only upon a citizen's complaint.

References:

Law on Courts, Article 46

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | **NO**

References:

The Law on Courts

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | **0**

Comments:

By law, the judicial disciplinary committee cannot initiate the case on its own.

References:

The Law on Courts

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

References:

Report, Brent White, 2008, Assessment of Judicial Independence in Mongolia, " www.forum.mn

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

14

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

References:

The Law on Anti-Corruption, Article 10

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

References:

The Law on Courts

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

References:

The Law on Anti-Corruption

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

References:

The Law on Anti-Corruption

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | **0**

References:

Regulations restricting post-government private sector employment for national-level judges do not exist.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off¹ period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | **0**

References:

Regulations governing gifts and hospitality offered to members of the national-level judiciary do not exist.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Requirement regarding the audit of national-level judiciary asset disclosures do not exist.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

75

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

Comments:

Only asset disclosures of the Chief Judge and Judges of the Supreme Court are mandated to be publicly available.

References:

Law on Anti-Corruption, Articles 14.1.5, 14.2

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

By law, only the asset declarations of judges of the Supreme Court and those of the Constitutional Court are mandated to be published on the website and the State Gazette. Declarations of judges of lower tier courts are available only upon request.

References:

National Anti-Corruption Agency website

State Gazette

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

National Anti-Corruption Agency website

State Gazette

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The asset disclosure records of the national-level judiciary are usually very general and not detailed, especially those regarding politically sensitive investments or other financial arrangements in which the individual has an interest. The public believes that these records are often not accurate.

References:

National Anti-Corruption Agency website

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

83

40a. In law, the legislature can amend the budget.

YES | NO

References:

The Law on Public Sector Management and Financing

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

References:

Index, International Budget Partnership, 2008, Open Budget Index Mongolia, www.openbudgetindex.org

Interview with N.Dorjdari, Field Researcher for Open Budget Index, September 4, 2009, Ulaanbaatar, Mongolia

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

References:

Index, International Budget Partnership, 2008, Open Budget Index Mongolia, www.openbudgetindex.org

Report, World Bank, Public Expenditure and Financial Management Review," 2002

Interview with N.Dorjdari, Field Researcher for Open Budget Index, September 4, 2009, Ulaanbaatar, Mongolia

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

50

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

There is no formal channel for CSOs and citizens to comment or contribute to the draft budget.

References:

Index, International Budget Partnership, 2008, Open Budget Index Mongolia, www.openbudgetindex.org

Report, World Bank, Public Expenditure and Financial Management Review," 2002

Interview with N.Dorjdari, Field Researcher for Open Budget Index, September 4, 2009, Ulaanbaatar, Mongolia

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

As noted previously, it is difficult to provide input to budget hearings due to lack of a formal channel or a mechanism. Often CSOs comment informally or contribute to a draft budget through their elected or closely related Ministers of Parliament.

References:

Index, International Budget Partnership, 2008, Open Budget Index Mongolia, www.openbudgetindex.org

Report, World Bank, Public Expenditure and Financial Management Review," 2002

Interview with N.Dorjdari, Field Researcher for Open Budget Index, September 4, 2009, Ulaanbaatar, Mongolia

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

In the past few years, there has been tremendous improvement in making the budget public. The draft budget, with itemized lists, is posted on the website of the Ministry of Finance. However, it is usually not promptly updated after every modification.

Also, only a few print copies are available. Last year there were 1,000 copies available; in 2009, only 250 copies were available.

References:

Index, International Budget Partnership, 2008, Open Budget Index Mongolia, www.openbudgetindex.org

Report, World Bank, Public Expenditure and Financial Management Review," 2002

Interview with N.Dorjdari, Field Researcher for Open Budget Index, September 4, 2009, Ulaanbaatar, Mongolia

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

References:

Interview with N. Dorjdari, Field Researcher for Open Budget Index, September 4, 2009, Ulaanbaatar, Mongolia

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

The Parliament Budget Standing Committee has almost equal representation of both majority and opposition parties. Currently, the Committee has 11 members from the Mongolian People's Revolutionary Party (MPRP), which is the majority party and 9 members from Democratic Party, which is the opposition party.

References:

Interview with N. Dorjdari, Field Researcher for Open Budget Index, September 4, 2009, Ulaanbaatar, Mongolia

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

References:

Interview with N. Dorjdari, Field Researcher for Open Budget Index, September 4, 2009, Ulaanbaatar, Mongolia

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

References:

The Parliamentary Committee on the Budget

The Law on Parliament

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

Category IV. Administration and Civil Service

IV-1. ⁵¹Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

Law on Civil Service, Article 13.1.8

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

Law on Civil Service, Articles 4.2.4; 17; 19

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

The Civil Service Board is the government's internal mechanism and adjudicates complaints brought by civil servants. The board consists of non-permanent members and secretariat staff. Civil servants can appeal decisions to the judiciary.

References:

Law on Civil Service, Article 35

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:

This law's provision does not directly prohibit employment of those who are convicted of corruption. It is a general clause that prohibits employment of any convicted criminal. In Mongolia, only some corrupt acts are considered to be criminal acts, while some are not considered to be criminal acts.

References:

Law on Civil Service Article, 16.2.1

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

39

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Appointments, promotions or removal of civil servants are mostly based on political or personal loyalties. Civil servants who have been fired from their posts on an unjustified or a politically motivated basis cannot have their cases remedied, even after court judgments.

References:

Policy Study, S. Bayaraa, 2005, Measures Against Abuse of State Power," www.forum.mn

Report, USAID, 2005 Assessment of Corruption in Mongolia, http://pdf.usaid.gov/pdf_docs/PNADE136.pdf

Monitoring Report, Mongolian Women Lawyers Association, 2008, "Monitoring of Equal Opportunity for Civil Service Employment," www.forum.mn

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Appointments and professional assessments often involve conflicts of interest due to personal and political loyalties.

References:

Unuudur Newspaper, Interview with B.Unubaatar, Member of Civil Service Board , September 2, 2009, http://csc.gov.mn/index.php?option=com_content&view=article&id=190%3A-2009-09-02&catid=50%3A2009-04-06-03-35-12&Itemid=106

Policy Study, S. Bayaraa, 2005, Measures Against Abuse of State Power," www.forum.mn

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

References:

Policy Study, S. Bayaraa, 2005, Measures Against Abuse of State Power," www.forum.mn

Report, USAID, 2005, Assessment of Corruption in Mongolia, http://pdf.usaid.gov/pdf_docs/PNADE136.pdf

Monitoring Report, Mongolian Women Lawyers Association, 2008, "Monitoring of Equal Opportunity for Civil Service Employment," www.forum.mn

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

By law, there are formal job descriptions. However, sometimes other duties that are not included in the job description can be assigned.

References:

Report, World Bank, Public Expenditure and Financial Management Review," 2002

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

According to the above-mentioned report, Increases in salary grades and promotions are discretionary and are not subject to transparent and objective evaluations. The level of allowances, rewards, and incentives in Mongolia is overly generous and not systematically merit-based. In addition to base salaries, bonus payments are regulated by law, and can amount to 40 percent of an employee's highest (in case of two jobs) base salary. Government employees are provided transportation, newspaper, telephone allowances, and travel allowances. Anecdotal evidence suggests that these extra spending perks are equal over 100 percent of some political service employee salaries."

References:

Report, World Bank, Public Expenditure and Financial Management Review," 2002

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

References:

Unuudur Newspaper, Interview with B.Unubaatar, Member of Civil Service Board , September 2, 2009, http://csc.gov.mn/index.php?option=com_content&view=article&id=190%3A-2009-09-02&catid=50%3A2009-04-06-03-35-12&Itemid=106

Monitoring Report, Mongolian Women Lawyers Association, 2008, Monitoring of Equal Opportunity for Civil Service Employment," www.forum.mn

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

The Civil Service Board receives complaints from civil servants regarding unjustified firings. However, the Board does not effectively redress these complaints, and almost all complaints are appealed to the court. The Board's decision is often ignored by the public officials. This is mainly due to the political sensitivity regarding the cases.

References:

Mongolian Civil Service Commission website, <http://csc.gov.mn/>

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

Report, World Bank, Public Expenditure and Financial Management Review," 2002

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

According to Civil Service Law, there are two requirements for civil service appointments: 1. more than 5 years have passed without a criminal conviction; 2. more than 1 year has passed without suffering disciplinary action. Therefore, anyone who passed more than 5 years without a criminal conviction can be appointed to the civil service.

References:

There is no direct prohibition against future government employment for those who are convicted of corruption, but there is generally for all crimes.

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

50

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

References:

Law on Anti-Corruption, Article 10

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

References:

Law on Civil Service, Article 15

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

Comments:

A civil servant cannot take positions in the private sector that were directly linked with a previous government position in which they worked for five years within two years after their termination. However, there are two exceptions — if the Civil Service Board has given permission; or, if permission is otherwise provided by the law.

References:

Law on Civil Service, Article 15.1.13

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

Comments:

Civil servants are prohibited from receiving gifts, money, loans, service benefits and other illegal treatment in exchange for favors. They also cannot receive travel benefits paid for by other individuals or companies, unless permitted by supervisors.

References:

Law on Civil Service, Article 15.1.5; Article 15.1.6

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

References:

Law on Anti-Corruption

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

The existing regulations are rarely or never enforced due to a vague enforcement mechanism and a weak institutional capacity to monitor enforcement.

References:

Report, USAID, 2005, Assessment of Corruption in Mongolia, http://pdf.usaid.gov/pdf_docs/PNADE136.pdf

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

The regulations governing gifts and hospitality offered to civil servants are routinely ignored and unenforced. This is mainly due to the lack of an enforcement mechanism and the weak capacity of the enforcement institutions.

It is common practice for civil servants to accept gifts and hospitality from outside interest groups for performing favorable actions or inactions.

References:

Report, USAID, 2005, Assessment of Corruption in Mongolia, http://pdf.usaid.gov/pdf_docs/PNADE136.pdf

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

References:

Policy Study, S. Bayaraa, 2005, Measures Against Abuse of State Power," www.forum.mn

Report, USAID, 2005, Assessment of Corruption in Mongolia, http://pdf.usaid.gov/pdf_docs/PNADE136.pdf

Monitoring Report, Mongolian Women Lawyers Association, 2008, "Monitoring of Equal Opportunity for Civil Service Employment," www.forum.mn

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:
There is no regulation that mandates the auditing of all civil service asset declarations.

References:
Law on Anti-Corruption

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

88

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

References:
Law on Anti-Corruption, Article 14.1

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The records of filed asset disclosures are published in the "Turiin medeelel" Gazette and posted online at the Anti-Corruption Agency website.

References:

"Turiin medeelel" Gazette

Anti-Corruption Agency Website, www.ciaa.mn

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records of filed asset disclosures are published in the "Turiin medeelel" Gazette and posted online at the Anti-Corruption Agency website.

References:

"Turiin medeelel" Gazette

Anti-Corruption Agency, website www.ciaa.mn

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The asset disclosure records are usually very general and not detailed, especially those regarding politically sensitive investment or other financial arrangements in which the individual has an interest. The public believes that these records are often not accurate.

References:
Turiin medeelel" Gazette

Anti-Corruption Agency, website www.ciaa.mn

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

IV-2. Whistle-blowing Measures

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

0

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

References:
Law on Anti-Corruption

Law on Public Service

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | **0**

References:
There is no requirement that civil servants who report cases of corruption, graft, abuse of power, or abuse of resources be protected from recrimination or other negative consequences.

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

References:
Law on Anti-Corruption

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | **0**

References:
There are no regulations that protect private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources from recrimination or other negative consequences.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

G.Erdenebat, Legal Assistant to the Mongolian President, Member of Public Council, National Anti-Corruption Agency, October 1, 2009, Ulaanbaatar, Mongolia

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

References:

G.Erdenebat, Legal Assistant to the Mongolian President, Member of Public Council, National Anti-Corruption Agency, October 1, 2009, Ulaanbaatar, Mongolia

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

All corruption-related complaints are received by the National Anti-Corruption Agency. There is an inconsistent approach in responding to the complaints. Some complaints are acted on, but some of them take longer to respond to and complaints are often dismissed.

References:

G.Erdenebat, Legal Assistant to the Mongolian President, member of Public Council, National Anti-Corruption Agency, October 1, 2009, Ulaanbaatar, Mongolia

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The main public criticism against the Anti-Corruption Agency is that it is usually unwilling to take on politically powerful offenders, given its small number of cases, and it is slow to act on suspicious incidents.

References:

G.Erdenebat, Legal Assistant to the Mongolian President, Member of Public Council, National Anti-Corruption Agency, October 1, 2009, Ulaanbaatar, Mongolia

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

Comments:

The National Anti-Corruption agency receives information or complaints through hot lines and letters from citizens. There is no specified internal mechanism for civil servants.

References:

National Anti-Corruption Agency, Article 18.4.6

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

54
IV-3. Procurement

51. Is the public procurement process effective?

53

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

The Law on Public Procurement prohibits procurement officials from seeking or receiving illegal offer for private interest, and to notify relevant institutions if such incidents occur. Officials are also obliged to refrain from the bidding process in cases that present a conflict of interest.

References:

Law on Public Procurement Articles 50.1.3; 50.1.4; and 50.1.5

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

References:

The Law on Procurement

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Conflict-of-interest regulations are not enforced and are often ignored due to lack of clear enforcement mechanisms and responsible institutions.

References:

Report, USAID, 2005, Assessment of Corruption in Mongolia, http://pdf.usaid.gov/pdf_docs/PNADE136.pdf

Policy Study, O.Munkhbat, 2009, Procurement and Corruption," www.forum.mn

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | **NO**

References:

The Law on Procurement

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | NO

References:

The Law on Procurement

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:

There is no explicit prohibition on sole sourcing in the law.

One of the procurement mechanisms is direct contracting without procurement for obtaining a specific skill or technology.

References:
The Law on Procurement

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:
Law on Procurement, Articles 54, 55, and 56

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:
Law on Procurement, Article 56

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

References:
Law on Procurement

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

References:

There are no requirements in law that prohibit companies guilty of major violations of procurement regulations (i.e. bribery) from participating in future procurement bids.

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

54

52a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

Tender announcements are to be posted in daily newspapers. If the tender is more than 1 billion MNT (US\$701,754), then it is to be posted in international newspapers. Tenders above the set threshold should be posted on the website. Accessing the actual procurement regulations requires a visit to government offices to meet with relevant public officials.

References:

Law on Procurement, Articles 21.1 and 21.4

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

Comments:

There is an obligation to announce the results of all public procurements. According to the article 21.4, if the tender is above the threshold price, then result of the procurement will be posted only on the website.

References:

Law on Procurement, 21.4

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Accessing public procurement regulations requires visiting the offices and meeting with the relevant public officials, which usually takes around two weeks or more.

References:

Policy Study, O. Munkhbat, 2009, Procurement and Corruption," www.forum.mn

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Accessing procurement regulations requires visiting offices and meeting with the relevant public officials, which involves significant costs.

References:

Policy Study, O. Munkhbat, 2009, Procurement and Corruption," www.forum.mn

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Some procurements are not advertised. The agencies intentionally choose the closed bidding procedure, which they are not required to announce publicly.

References:

Policy Study, O. Munkhbat, 2009, Procurement and Corruption," www.forum.mn

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

References:

Disclosure of the results of major public procurement bids is not required by law (though the opening of bids is regulated by law).

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

33

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

References:

Law on State and Local Property, Article 6

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | **NO**

References:

Law on State and Local Property

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | **0**

References:

There is no regulation regarding conflicts of interest for government officials involved in privatization.

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

20

54a. In law, citizens can access privatization regulations.

YES | **NO**

Comments:

Privatization rules are not officially secret, but they not mandated to be publicly available by law.

References:

Law on State and Local Properties

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Privatization advertisements are usually advertised in daily newspapers, the state gazette and the State Property Committee's website.

References:

Report, USAID, 2005, Assessment of Corruption in Mongolia, http://pdf.usaid.gov/pdf_docs/PNADE136.pdf

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

References:

Law on State and Local Properties

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Disclosure of privatization regulations is not required in law.

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Disclosure of privatization regulations is not required in law.

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁶⁹ National Ombudsman

56. Is the national ombudsman effective?

43

56a. In law, the ombudsman is protected from political interference.

YES | NO

References:

Law on National Human Rights Commission, Article 3

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman commission cannot effectively investigate politically sensitive cases.

References:

G. Tsend-Ayush, Executive Director, Human Rights and Law Center, Non-Governmental Organization (NGO), October 1, 2009, Ulaanbaatar, Mongolia

D. Erdenechimeg, Officer, Human Rights and Development Center, NGO, October 1, 2009, Ulaanbaatar, Mongolia

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Since ombudsman appointments are usually made based on political or personal loyalties, there is the potential risk of an ombudsman being removed because of politically sensitive conduct.

References:

G. Tsend-Ayush, Executive Director, Human Rights and Law Center, Non-Governmental Organization (NGO), October 1, 2009, Ulaanbaatar, Mongolia

D. Erdenechimeg, Officer, Human Rights and Development Center, NGO, October 1, 2009, Ulaanbaatar, Mongolia

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

It is related to the lack of funding capacity of the country. [. . .] the current staff of the National Human Rights Commission do not have sufficient experience in [the] human rights field": D.Erdenechimeg, Officer, Human Rights and Development Center, Non-Governmental Organization, October 1, 2009, Ulaanbaatar, Mongolia.

References:

G. Tsend-Ayush, Executive Director, Human Rights and Law Center, Non-Governmental Organization (NGO), October 1, 2009, Ulaanbaatar, Mongolia

D. Erdenechimeg, Officer, Human Rights and Development Center, NGO, October 1, 2009, Ulaanbaatar, Mongolia

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

G. Tsend-Ayush, Executive Director, Human Rights and Law Center, Non-Governmental Organization (NGO), October 1, 2009, Ulaanbaatar, Mongolia

D. Erdenechimeg, officer, Human Rights and Development Center, NGO, October 1, 2009, Ulaanbaatar, Mongolia

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The commission has regular funding, but it is always not enough to carry out its functions. Thus, the commission largely relies on external funding.

References:

G. Tsend-Ayush, Executive Director, Human Rights and Law Center, Non-Governmental Organization (NGO), October 1, 2009, Ulaanbaatar, Mongolia

D. Erdenechimeg, Officer, Human Rights and Development Center, NGO, October 1, 2009, Ulaanbaatar, Mongolia

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

References:

G. Tsend-Ayush, Executive Director, Human Rights and Law Center, Non-Governmental Organization (NGO), October 1, 2009, Ulaanbaatar, Mongolia

D. Erdenechimeg, Officer, Human Rights and Development Center, NGO, October 1, 2009, Ulaanbaatar, Mongolia

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman commission's investigations have been limited in their effectiveness. Their decisions are often ignored by other agencies.

References:

G. Tsend-Ayush, Executive Director, Human Rights and Law Center, Non-Governmental Organization (NGO), October 1, 2009, Ulaanbaatar, Mongolia

D. Erdenechimeg, Officer, Human Rights and Development Center, NGO, October 1, 2009, Ulaanbaatar, Mongolia

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

G. Tsend-Ayush, Executive Director, Human Rights and Law Center, Non-Governmental Organization (NGO), October 1, 2009, Ulaanbaatar, Mongolia

D. Erdenechimeg, Officer, Human Rights and Development Center, NGO, October 1, 2009, Ulaanbaatar, Mongolia

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman committee's annual reports are acted on by other agencies. But some issues are ignored due to the lack of financial and human resources of other agencies. Politically sensitive issues are prone to be ignored.

References:

G. Tsend-Ayush, Executive Director, Human Rights and Law Center, Non-Governmental Organization (NGO), October 1, 2009, Ulaanbaatar, Mongolia

D. Erdenechimeg, Officer, Human Rights and Development Center, NGO, October 1, 2009, Ulaanbaatar, Mongolia

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman commission receives a significant amount of complaints from citizens, but these complaints often take longer to be resolved or dismissed. This is mainly due to a lack of capacity and resources on the part of the institution and also its willingness.

References:

G. Tsend-Ayush, Executive Director, Human Rights and Law Center, Non-Governmental Organization (NGO), October 1, 2009, Ulaanbaatar, Mongolia

D. Erdenechimeg, Officer, Human Rights and Development Center, NGO, October 1, 2009, Ulaanbaatar, Mongolia

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

67

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

References:

Law on National Human Rights Commission, Article 20.2

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

G. Tsend-Ayush, Executive Director, Human Rights and Law Center, Non-Governmental Organization (NGO), October 1, 2009,

Ulaanbaatar, Mongolia

D. Erdenechimeg, Officer, Human Rights and Development Center, NGO, October 1, 2009, Ulaanbaatar, Mongolia

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Some politically sensitive reports are hard to retrieve or require a payment": G.Tsend-Ayush, Executive Director, Law and Human Rights Center, Non-Governmental Organization, October 1, 2009, Ulaanbaatar, Mongolia

References:

G. Tsend-Ayush, Executive Director, Human Rights and Law Center, Non-Governmental Organization (NGO), October 1, 2009, Ulaanbaatar, Mongolia

D. Erdenechimeg, Officer, Human Rights and Development Center, NGO, October 1, 2009, Ulaanbaatar, Mongolia

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

References:

Law on Human Rights Commission

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

75

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

References:
Law on Audit, Article 5.2

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:
In practice, all heads of the audit agency served their terms without prior termination.

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Annual Performance Report, Mongolian National Auditing Office, 2008, submitted to the Parliament

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Like any other civil service agency, appointments to the audit agency are made based on political or personal loyalties.

References:

Anonymous interview.

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Annual Performance Report, Mongolian National Auditing Office, 2008, submitted to the Parliament

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The audit agency makes regular reports available on its website, but they are mostly outdated.

References:

Mongolian National Auditing Office Website, <http://www.mnao.pmis.gov.mn/begin/repsubs/functions/index.jsp>

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

References:

Annual Performance Report, Mongolian National Auditing Office, 2008, submitted to the Parliament

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

References:

There is no systematic analysis that explores the audit agency's investigations. However, when looking at the pattern of the agency's investigations or its auditing performance, it can be seen that politically sensitive issues tend to be ignored.

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

42

60a. In law, citizens can access reports of the audit agency.

YES | **NO**

Comments:

In the law, the agency is not explicitly obligated to make its reports publicly available. The law provides that the agency may make available" such reports, which means the agency can decide what it will or will not make public with some discretion.

References:

Law on State Auditing, Article 23.1

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

The only venue where citizens can access audit reports is the Mongolian National Auditing Office website. But the content on this website is not regularly updated. Most of the website's reports are outdated.

References:

Mongolian National Auditing Office Website, <http://www.mnao.pmis.gov.mn/begin/repsubs/functions/index.jsp>

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Audit reports are posted on the website, but they are mostly outdated.

References:

Mongolian National Auditing Office website, <http://www.mnao.pmis.gov.mn/begin/repsubs/functions/index.jsp>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

References:

National Auditing Office

Law on Audit

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

72
V-3. Taxes and Customs

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Policy Study, G.Altanzaya, Tax Collection Mechanism, 2007," www.forum.mn

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Policy Study, G.Altanzaya, Tax collection Mechanism," 2007, www.forum.mn

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Monitoring Report, Zorig Foundation, 2006, Monitoring of Performance of Customs Agency"

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Monitoring Report, Zorig Foundation, 2006, Monitoring of Performance of Customs Agency"

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. In law, is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

Comments:

The agency is called the National Tax General Office.

References:

Law on General Taxation

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

63. In practice, are tax laws enforced uniformly and without discrimination?

25

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

The tax law is unequally applied. Some companies or citizens who have close connections with tax officers can evade taxes, and these violations are often ignored by tax authorities.

References:

Policy Study, G. Altanzaya, Tax Collection Mechanism," 2007, www.forum.mn

Global Competitiveness Index, 2009

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. In law, is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

Comments:

The agency is called the National Customs Office.

References:

Law on Customs

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

0

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

The custom law is unequally applied. Some companies or citizens who have close connections with customs officers can evade custom taxes, and these violations are often ignored by custom authorities.

References:

Monitoring Report, Zorig Foundation, 2006, "Monitoring of Performance of Customs Agency"

Survey, Mongolian Chamber of Commerce, 2003, "Corruption Index, www.mongoliachamber.mn

Global Competitiveness Index, 2009

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

45

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

Comments:

The State Property Commission is part of the government. The prime minister appoints the head of the commission and its members. The commission consists of eight non-permanent members, who are mostly high officials of other government ministries or agencies.

The Law on State Property does not contain any regulations regarding the political independence of the commission.

References:

Law on State Property Law

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The State Property Committee has eight non-permanent members and a staff of 65.

References:

State Property Committee Website, http://www.spc.gov.mn/index.php?option=com_content&task=view&id=15&Itemid=36

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Annual State Budget

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The National Auditing Office is mandated to audit the performances and finances of state-owned enterprises. This mechanism is not effective and is usually slow to act in initiating investigations.

References:

The agency overseeing state-owned companies cooperates with National Auditing Office.

National Auditing Office website, www.mnao.pmis.gov.mn

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The State Property Committee, together with the National Auditing Office, monitors financing and imposes penalties on offenders. However, there are not many cases that are investigated nor are many penalties imposed. This is mainly due to the lack of clear mechanisms and institutional capacity.

References:

Not applicable.

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

15

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

References:

Law on State Properties

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

State-owned enterprises are not obligated to make public their financial data. Therefore, in practice, information is not publicly available and is hard to obtain.

References:

There are no regulations regarding the updating of the financial records of state-owned companies.

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

According to the Law on State Auditing, all state-owned enterprises shall be audited by the National Auditing Office, and this auditing is performed regularly. However, the auditing might not fully meet international standards.

References:

Law on State Auditing

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

There are no regulations regarding the access to the financial records of state-owned companies within a reasonable time period.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

There are no regulations regarding the access to the financial records of state-owned companies at a reasonable cost.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

References:

State Property Commission

Law on State Property

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

53
V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

81

70a. In law, anyone may apply for a business license.

YES | NO

Comments:

A basic business license is not required. To start a business, only an official registration is required to become a legal entity. There are licenses for specific activities such mining exploration, medical services, etc. Each of these licenses have different requirements, and, depending on the requirement, anyone can apply for them.

References:

A basic business license is not required. For specific licenses, there are different respective laws such as the Law on Mining for applying for a mining license.

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

There is no special complaint mechanism for when a business license is denied. A general complaint mechanism exists within the administrative law procedure.

References:

Law on Administrative Law

Law on Administrative Procedure

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Index, International Finance Corporation (IFC), 2009, Doing Business, Mongolia," www.doingbusiness.org

Survey, IFC, 2004, "Enterprise Surveys, Mongolia," <http://www.enterprisesurveys.org/>

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | **50** | 25 | 0

References:

Index, International Finance Corporation (IFC), 2009, Doing Business, Mongolia," www.doingbusiness.org

Survey, IFC, 2004, "Enterprise Surveys Mongolia," <http://www.enterprisesurveys.org/>

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

0

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | **NO**

Comments:

There is no requirement in the Law on Standards and Regulations for making public health standards transparent and publicly available . All standards are available for review upon formal payment of a fee to the National Standardization and Regulation Office.

References:

Law on Standards and Regulations

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | **NO**

Comments:

There is no requirement in the Law on Standards and Regulations for making public environmental standards transparent and publicly available. All standards are available for review upon formal payment of a fee to the National Standardization and Regulation Office.

References:

Law on Standards and Regulations

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | **NO**

Comments:

There is no requirement in the Law on Standards and Regulations for making standards transparent and publicly available. All standards are available upon formal payment of a fee to the National Standardization and Regulation Office.

References:

Law on Standards and Regulations

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

25

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | **25** | 0

References:

Index, International Finance Corporation (IFC), 2009, Doing Business, Mongolia," www.doingbusiness.org

Survey, IFC, 2004, "Enterprise Surveys, Mongolia," <http://www.enterprisesurveys.org/>

Survey, Mongolian Chamber of Commerce, 2003, Corruption Index, www.mongoliachamber.mn

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Index, International Finance Corporation (IFC), 2009, Doing Business, Mongolia," www.doingbusiness.org

Survey, IFC, 2004, "Enterprise Surveys, Mongolia," <http://www.enterprisesurveys.org/>

Survey, Mongolian Chamber of Commerce, 2003, Corruption Index, www.mongoliachamber.mn

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Index, International Finance Corporation (IFC), 2009, Doing Business, Mongolia," www.doingbusiness.org

Survey, IFC, 2004, Enterprise Surveys Mongolia, <http://www.enterprisesurveys.org/>

Survey, Mongolian Chamber of Commerce, 2003, Corruption Index, www.mongoliachamber.mn

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁶⁹Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES | NO

References:

Criminal Code Article 32, 268

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

Comments:

Article 149 of Criminal Code describes extortion. According to this article, Demand to transfer property or the right of ownership, or to perform any actions of the property nature under a threat of violence in respect of the victim or his/her close relations, spreading of slanderous or libelous information about the victim or his/her close relatives, damage or destruction of their private property or the property in his/her custody or under guard, which could potentially cause a real damage shall be punishable by a fine equal to 251 to 300 the amount of minimum salary, incarceration for a term of more than 3 to 6 months or by imprisonment for a term of up to 3 years."

References:

Criminal Code

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:
Criminal Code, Article 269

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:
Criminal Code, Article 268

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

References:
Criminal Code

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

References:
Criminal Code, Article 263, 264, 265

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Criminal Code, Law on State Secrets

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

References:

Criminal Code, Article 268

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

Criminal Code, Article 37

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

75. Is the anti-corruption agency effective?

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

References:

Law on Anti-Corruption, Article 28

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

There is some suspicion among the public that the Anti-Corruption Agency might be subject to some political influence, since they have not addressed those important cases that have involved politicians.

Also, appointments to the agency were made without transparency or clear justification, thus creating grounds for suspicion in regard to party patronage or favoritism.

References:

G. Erdenebat, Legal Assistant to the Mongolian President, Member of Public Council of National Anti-Corruption Agency, October, 1, 2009, Ulaanbaatar, Mongolia

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

G. Erdenebat, Legal Assistant to the Mongolian President, Member of Public Council of National Anti-Corruption Agency,

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The main challenge is that appointments made to the Anti-Corruption Agency are often based on personal loyalties, family connections or party loyalties. There are no clear professional criteria or a transparent recruitment mechanism for new employees.

References:

G. Erdenebat, Legal Assistant to the Mongolian President, Member of Public Council of National Anti-Corruption Agency, October, 1, 2009, Ulaanbaatar, Mongolia

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Anti-Corruption Agency has sufficient staff to carry out its main function. As a new organization, it lacks capacity and experience. This is mainly due to its under-qualified staff who are unable to build themselves up to a professional capacity.

References:

G. Erdenebat, Legal Assistant to the Mongolian President, Member of Public Council of National Anti-Corruption Agency, October, 1, 2009, Ulaanbaatar, Mongolia

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

G. Erdenebat, Legal Assistant to the Mongolian President, Member of Public Council of National Anti-Corruption Agency, October, 1, 2009, Ulaanbaatar, Mongolia

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The Anti-Corruption Agency regularly publishes asset and income declarations as required by law. However, the agency does not regularly provide reports about their operations to the public. The agency's main information channel is their website, which contains some case statistics. Otherwise, it does not report proactively through different means of communications.

References:

G. Erdenebat, Legal Assistant to the Mongolian President, Member of Public Council of National Anti-Corruption Agency, October, 1, 2009, Ulaanbaatar, Mongolia

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

G. Erdenebat, Legal Assistant to the Mongolian President, Member of Public Council of National Anti-Corruption Agency, October, 1, 2009, Ulaanbaatar, Mongolia

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Anti-Corruption Agency is unwilling to take on politically powerful offenders and is slow to act on suspicious incidents.

References:

G. Erdenebat, Legal Assistant to the Mongolian President, Member of Public Council of National Anti-Corruption Agency, October, 1, 2009, Ulaanbaatar, Mongolia

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

25

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

G. Erdenebat, Legal Assistant to the Mongolian President, Member of Public Council of National Anti-Corruption Agency, October, 1, 2009, Ulaanbaatar, Mongolia

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of reprimand.

100 | 75 | 50 | 25 | 0

Comments:

Since there is no whistle-blower protection, there is often high risk or negative consequences for whistle-blowers. There is a recent case of a whistle-blower who was charged together

References:

G. Erdenebat, Legal Assistant to the Mongolian President, Member of Public Council of National Anti-Corruption Agency, October, 1, 2009, Ulaanbaatar, Mongolia

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

References:

Law on Anti-Corruption, Article 15

National Anti-Corruption Agency

The Anti-Corruption Agency is a special independent government body charged with raising anti-corruption public awareness and education; preventing corruption; carrying out undercover operations, inquiries and investigations in order to detect corruption; and to review and inspect assets and income declarations. The Mongolian President nominates and Parliament appoints the head of the agency.

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

65
VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

50

77a. In law, there is a general right of appeal.

YES | NO

References:

Mongolian Constitution, Article 16/14

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Assessment Report, Brant T. White, "Rotten To Core? Judicial Reform Assessment," 2008

Report, National Human Rights Commission, "Human Rights and Freedoms in Mongolia, 2002" <http://www.mn-nhrc.org/itgel>

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Report, National Human Rights Commission, Human Rights and Freedoms in Mongolia, 2002, <http://www.mn-nhrc.org/iltgel>

Report, Brent White, 2008, Assessment of Judicial Independence in Mongolia," www.forum.mn

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

25

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Bribery and corruption are the major issues regarding the influence on judgments that are made in the criminal system. These problems not only appear in criminal cases, but in all types of cases, including during the trial process.

References:

Assessment report, Brant T. White, Rotten to Core? Judicial Reform Assessment," 2008

Survey Report, Sant Maral Foundation, "Trend Lines in Public Perception of Judicial Administration in Mongolia: Comparative Study Based on Nationwide Surveys 2001, 2003, 2005, 2007"

Report, National Human Rights Commission, Human Rights and Freedoms in Mongolia, 2002, <http://www.mn-nhrc.org/iltgel>

Report, ODI, World Governance Survey in Mongolia, 2007 <http://www.odi.org.uk/projects/00-07-world-governance-assessment/docs/mongolia.pdf>

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. In practice, are judicial decisions enforced by the state?

50

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

References:

Report, ODI, World Governance Survey in Mongolia, 2007, <http://www.odi.org.uk/projects/00-07-world-governance-assessment/docs/mongolia.pdf>

Report, National Human Rights Commission, Human Rights and Freedoms in Mongolia, 2002, 2003, 2004, <http://www.mn-nhrc.org/ltgel>

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

50

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Law on Courts, Article 4.1

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence includes financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Assessment report, Brant T. White, Rotten to Core? Judicial Reform Assessment," 2008

Survey Report, Sant Maral Foundation, "Trend Lines in Public Perception of Judicial Administration in Mongolia: Comparative Study Based on Nationwide Surveys 2001, 2003, 2005, 2007"

100: National-level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised

or criticized by political figures.

75:

50: National-level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National-level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | **NO**

References:

Law on Court

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

Law on Court, Article 79

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

There have been no incidents of judges being physically harmed because of adjudicating corruption cases during the study period.

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:
There have been no incidents of judges being killed because of adjudicating corruption cases during the study period.

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

61

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:
There is, unfortunately, very little existing research or analysis of the impact of racial differences on judicial outcomes in the country. Anecdotally speaking, there have been no significant instances of racial discrimination in the courts.

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

References:

There is, unfortunately, very little existing research or analysis regarding female access to justice in Mongolia. Anecdotally speaking, this has not been a significant problem.

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

Law on Courts, Article 9.4

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

References:

Survey, United Nations Development Programme (UNDP), "Access to Legal Information, Its Dissemination and Legal Assistance," 2005

Report, National Human Rights Commission, "Human Rights and Freedoms in Mongolia, 2002, 2003, 2004," <http://www.mn-nhrc.org/iltgel>

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

The main cost in regard to bringing a legal suit is the long and complicated processes such as the constant travel to the courthouse and communications with the parties. The attorney fee is usually high. Also, in civil claims, there is a state's fee of 10 percent that is taken from the total claim.

References:

Survey, United Nations Development Programme (UNDP), "Access to Legal Information, Its Dissemination and Legal Assistance," 2005

Report, National Human Rights Commission, "Human Rights and Freedoms in Mongolia, 2003," <http://www.mn-nhrc.org/iltgel>

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

Index, International Finance Corporation (IFC), 2009, "Doing Business Mongolia," www.doingbusiness.org

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

References:

Survey, United Nations Development Programme (UNDP), Access to Legal Information, Its Dissemination and Legal Assistance," 2005

Report, National Human Rights Commission, Human Rights and Freedoms in Mongolia, 2002, 2003, 2004, <http://www.mn-nhrc.org/iltgel>

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

33

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

As in all civil service appointments, law enforcement appointments are often made based on personal or political loyalties.

References:

G. Erdenebat, Legal Assistant to the Mongolian President, Member of Public Council of National Anti-Corruption Agency, October, 1, 2009, Ulaanbaatar, Mongolia

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

G. Erdenebat, Legal Assistant to the Mongolian President, Member of Public Council of National Anti-Corruption Agency, October, 1, 2009, Ulaanbaatar, Mongolia

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Since appointments are often made based on political or personal loyalties, the investigative and enforcement work of the agency is prone to influence by patronage or personal relationships. There is no effective prevention and enforcement mechanism in place to deal with this issue.

References:

G. Erdenebat, Legal Assistant to the Mongolian President, Member of Public Council of National Anti-Corruption Agency, October, 1, 2009, Ulaanbaatar, Mongolia

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

75

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

References:

Human Rights Commission

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

G. Erdenebat, Legal Assistant to the Mongolian President, Member of Public Council of National Anti-Corruption Agency, October, 1, 2009, Ulaanbaatar, Mongolia

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

References:

Investigation Bureau of the General Prosecutor's Office

Law on Prosecution

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

The internal department of the General Prosecutors Office takes corruption cases related to law enforcement officials. The office can take cases only in response to relevant complaints from citizens. There is a widespread view among the public that the office is ineffective in dealing with cases because it is part of the system.

References:

G. Erdenebat, Legal Assistant to the Mongolian President, Member of Public Council of National Anti-Corruption Agency,

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

Law on Police

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

References:

G. Erdenebat, Legal Assistant to the Mongolian President, Member of Public Council of National Anti-Corruption Agency, October, 1, 2009, Ulaanbaatar, Mongolia

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.