

Overall Score:

61 - Weak

Legal Framework Score:

80 - Moderate

Actual Implementation Score:

43 - Very Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁷⁴ Anti-Corruption Non-Governmental Organizations

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

100

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes

|

No

Comments:

The Mongolian Constitution and the Law on NGOs give citizens a right to form NGOs. Freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Citizens of Mongolia enjoy the right to form parties or other mass organizations and the freedom to associate with these organizations on the basis of social and personal interests and opinion. Discrimination and persecution of a person for joining a political party or other mass organization or for being a member is prohibited.

References:

Mongolian Constitution, Article 16.10

Law on Nongovernmental Organizations, Article 5. www.legalinfo.mn

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. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

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.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

Comments:

In law, anti-corruption and good governance NGOs are not prohibited from accepting funding from any foreign or domestic source, though funds from groups with a history of violence or terrorism are banned. Article 19 in the Law on Nongovernmental Organizations allows NGOs to get funding from any citizen, legal entity, membership fee, donation or state subsidy.

References:

Law on Nongovernmental Organizations, Article 19. www.legalinfo.mn

Yes: A YES score is earned if anti-corruption/good governance NGOs 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 are any formal legal or regulatory bans on foreign or domestic funding sources for NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | No

Comments:

NGOs are required to publicly disclose their sources of funding if contributions are above 700,000 tugriks (around \$500). In general, NGOs are required to submit annual activity and financial reports, including sources of funding, to the Ministry of the Justice and Home Affairs. They are also required to submit financial reports, including their sources of funding, to the tax authority.

References:

Law on Nongovernmental Organizations, Articles 23.4 and 5.5

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

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

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

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

Comments:

As required by Article 6 of the Law on NGOs, NGOs become legal entities upon registration with the State Registry Office. NGOs focused on promoting good governance or anti-corruption can freely organize with little interaction with the government as long as they complete formal steps, such as registration.

References:

J. Enkhsaihan, Strengthening Good Governance of the Mongolian Civil Society. www.opensocietyforum.mn

P. Erdenejargal, executive director, Open Society Forum, NGO. Sept. 7, 2011, Open Society Forum office, Ulaanbaatar

B. Udval, deputy minister of Justice and Home Affairs, Sept. 6, 2011, Ministry of Justice and Home Affairs office, Ulaanbaatar

Parliamentary Network of World Bank, Mission Report, Nov. 12, 2009. www.worldbank.org

100: NGOs 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: NGOs 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 NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

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

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

In 2010, Mongolia passed several important decrees that give the public the right of participation. Key among these are Government Decree No. 11, Measuring Quality and Delivery of Public Service; Government Decree No. 119, Rule of Public Administrative Regulations; and Government Decree No. 143, Indicator of Transparency. Government Decrees No. 11, 119 and 143 have no compliance systems in place or penalties for ignoring or violating them. Mongolia has passed regulations aimed at promoting democratic principles but is failing to translate them into meaningful practice. Under these circumstances, NGOs largely use informal means to influence policy-making.

References:

E. Yunden, B. Zagdragchaa, Engaging Citizen E-Participation in the Parliamentary Legislative Processes, 2011

Interview with Kh. Temuujin, parliament member, Sept. 6, 2011, Government House, Ulaanbaatar

N. Ariunbold, researcher, Sept. 5, 2011, Voter Education Center office, Ulaanbaatar

S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Voter Education Center office, Ulaanbaatar

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

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs 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 NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes

| No

Comments:

There were no NGOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

References:

Interview with D. Tserenjav, journalist, Sept. 9, 2011, Ulaanbaatar

Interview with P. Erdenejargal, executive director, Open Society Forum, NGO, and member of the Public Council of the Anti-Corruption Agency, Sept. 6, 2011, Ulaanbaatar

Yes: A YES score is earned if there were no NGOs 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 NGO 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 NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO 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 anti-corruption/good governance NGO activists safe when working on corruption issues?

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | **No**

Comments:

There were no NGO activists imprisoned because of their work covering corruption.

References:

Interview with Kh. Temuujin, member of parliament, chair of Human Right Subcommittee, Sept. 6, 2011, Government House, Ulaanbaatar

Interview with D. Tserenjav, journalist, Sept. 9, 2011, Ulaanbaatar

Yes: A YES score is earned if there were no NGO 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.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | **No**

Comments:

There were no documented cases of physical harm to NGO activists covering corruption and good governance in the past year.

References:

Interview with Demberel, executive director, Chamber of Commerce and Industry, Sept. 9, 2011, Ulaanbaatar

Interview with Battuvshin, executive director, Political Education Academy, Sept. 8, 2011, Ulaanbaatar

Yes: A YES score is earned if there were no documented cases of NGO 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.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes

| No

Comments:

There were no documented cases of NGO activists being killed because of their work covering corruption in the past year.

References:

Interview with D. Tserenjavb, journalist, coordinator of Citizen Watch Budget, NGO, Sept. 9, 2011, Ulaanbaatar

Interview with P. Erdenejargal, executive director, Open Society Forum, NGO, and member of the Public Council of the Anti-corruption Agency, Sept. 6, 2011, Ulaanbaatar

Yes: A YES score is earned if there were no documented cases of NGO 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?

88

04a. In law, citizens have a right to organize into trade unions.

Yes

| No

Comments:

Trade unions are allowed by law, regardless of political ideology, religion or objectives. The Mongolian Constitution guarantees citizens the right to organize into trade unions. Article 16.10 states that the citizens of Mongolia are guaranteed the right to form parties or other mass organizations and the freedom to associate with these organizations on the basis of social and personal interests and opinion. All political parties and other mass organizations must uphold public order and state security and abide by the law. Discrimination and persecution of a person for joining a political party or other mass organization or for being a member is prohibited.

References:

Mongolian Constitution, Article 16.10

Law on Trade Unions, Articles 1, 3 and 4

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.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

Trade unions are common and an important part of the political process of dialogue with government and employer organizations. The rights of trade union organizers are widely understood. Trade unions are free from intimidation and violence. There is no story or case of barriers, intimidation or violence to a trade organization during the time period of this report (June 30, 2010, to June 30, 2011).

References:

Interview with D. Tserenjav, journalist, Sept. 8, 2011, Ulaanbaatar

Interview with B. Khishigsaikhan, lawyer and researcher, Sept. 6, 2011, Ulaanbaatar

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.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes | **No**

Comments:

Freedom of the media is guaranteed in law. Article 16.16 of the constitution guarantees citizens of Mongolia the rights and freedom of thought, opinion and expression, speech, press and peaceful assembly.

References:

Mongolian Constitution, Article 16.16

Law on Media Freedom, Articles 1 to 4

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.

05b. In law, freedom of speech is guaranteed.

Yes | **No**

Comments:

Freedom of individual speech is guaranteed in the Mongolian Constitution, Law on Media Freedom and Election Law, including for all political parties, religions and ideologies.

References:

Mongolian Constitution, Article 16.16

Law on Media Freedom

Election Law

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?

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

Print media entities can freely organize with little interaction with the government. Formation of print media groups is possible without burden on the media group, including registration and licensing requirements.

References:

Interview with Kh. Naranjargal, president, Globe International Mongolia, NGO, Sept. 8, 2011, Ulaanbaatar

Media Monitoring, Press Institute. www.pressinst.org.mn

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.

06b. 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 need only to register to establish a print media outlet as a legal entity at the State Registration Office. The Law on Registration of Legal Entity, Article 18.3, allows media outlets to have a formal process to appeal to the court a denied print media registration. The State Registration Office should respond within five working days to the request.

References:

Law on Registration of Legal Entity, Article 18.3

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.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Licenses can be obtained within two weeks if all the required documents are filled out correctly according to the instructions of the State Registration Office.

References:

Interview with Kh. Naranjargal, executive director, Globe International Mongolia, NGO, Sept. 8, 2011, Ulaanbaatar

Media Monitoring, Press Institute of Mongolia. www.pressinst.org.mn

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.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Licenses can be obtained at minimal cost — approximately \$10 — to the organization. Licenses cannot be obtained online or through mail. Before 2011, citizens were required to visit the national capital to obtain a license. Since 2011, citizens have been able to obtain a license at their province center.

References:

Interview with Kh. Naranjargal, executive director, Globe International Mongolia, NGO, Sept. 8, 2011, Ulaanbaatar

Media Monitoring, Press Institute of Mongolia. www.pressinst.org.mn

Interview with D. Tserenjav, journalist, Sept. 9, 2011, Ulaanbaatar

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

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

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

Comments:

Formation of broadcast media groups is possible, but there are some unofficial barriers. For example, the process of distributing broadcast bandwidth is unclear and nontransparent.

References:

Interview with Kh. Naranjargal, executive director, Globe International Mongolia, NGO, Sept. 8, 2011, Ulaanbaatar

Media Monitoring, Press Institute of Mongolia. www.pressinst.org.mn

Interview with D. Tserenjav, journalist, Sept. 9, 2011, Ulaanbaatar

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.

07b. 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

Comments:

There is no law.

References:

There is no law.

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.

07c. 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:

Licenses can be obtained within two months. But, it depends on the location and the limit of broadcasting licenses available in one province. For that reason, some groups who want to obtain a broadcast license spend more time, while other groups obtain permission within two months. For example, one group spent three months to obtain permission in the Huvsgul province. The response it received was that there was no space for new broadcasting in the Huvsgul province.

References:

Interview with Kh. Naranjargal, executive director, Globe International Mongolia, NGO, Sept. 8, 2011, Ulaanbaatar

Media Monitoring, Press Institute of Mongolia. www.pressinst.org.mn

Interview with Chimiddondog, manager, Press Institute, Sept. 8, 2011, Ulaanbaatar

Interview with D. Tserenjav, journalist, Sept. 9, 2011, Ulaanbaatar

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.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

**Comments:**

For citizens to obtain a broadcast media license, they must visit the national capital. This imposes a large cost burden. For example, Khuvsgul aimag people who visited the capital to obtain a local TV broadcast license for their province spent more than their monthly salary for the air ticket.

References:

Interview with Kh. Naranjargal, executive director, Globe International Mongolia, NGO, Sept. 8, 2011, Ulaanbaatar

Media Monitoring, Press Institute of Mongolia. www.pressinst.org.mn

Interview with Chimiddondog, manager, Press Institute, Sept. 10, 2011, Ulaanbaatar

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?

100

08a. In practice, the government does not prevent citizens from accessing content published on-line.

**Comments:**

The government does not prevent Internet users from accessing online content. The press freedom law prohibits the government from controlling citizen access.

References:

Interview with Kh. Naranjargal, executive director, Globe International Mongolia, NGO, Sept. 8, 2011, Ulaanbaatar

Media Monitoring, Press Institute of Mongolia. www.pressinst.org.mn

Interview with D. Tserenjav, journalist, Sept. 9, 2011, Ulaanbaatar

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.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

There is no documented story of the government removing online information or disabling servers due to their political content during the project time period.

References:

Interview with Kh. Naranjargal, executive director, Globe International Mongolia, NGO, Sept. 8, 2011, Ulaanbaatar

Interview with D. Tserenjav, journalist, Sept. 9, 2011, Ulaanbaatar

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?

75

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes

| No

Comments:

According to Article 111 of the Criminal Code, it is legal to report accurate news, even if it damages the reputation of a public figure.

Article 111.1 of the Criminal Code states that spreading knowingly false fabrications defaming another individual is punishable by a fine or incarceration. Article 111.2 states that spreading libel to the public by means of mass media or by a person who previously has received an administrative penalty for defamation or insult is punishable by a fine or incarceration. And Article 111.3 states that defamation connected with accusing an individual of committing a serious or grave crime is punishable by a fine or imprisonment.

References:

Criminal Code, Articles 111.1 to 111.3

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.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100

| 75

| 50

| 25

| 0

Comments:

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. Concerning violations of journalism rights, between May 2010 and May 2011, Globe International (GI) registered 30 violations affecting professional work involving 18 journalists and media outlets. Half of these cases involved threats and various other pressures from the police, courts and public institutions. GI claims that not all violations against journalists have been registered, and GI has been working with journalists who have approached it with unregistered cases.

Despite the existence of laws and regulations protecting freedom of the media, there were many contraventions in practice. Violations of freedom of the press and the work of professional journalists continue to occur. For example, there is pressure to influence the exercise of a journalist's professional work with threats of court action, denial of access to information by public officials, editorial censorship, demands to reveal information sources, and use of provisions of the Criminal and Civil Code by politicians, public figures and wealthy individuals against the media outlets and journalists to conceal wrongdoing. In Mongolia, the use by politicians and public officials of criminal defamation provisions to censor media outlets continues to increase. Seventy-five percent of those who violated journalists' rights were government authorities and public officials.

References:

Media Freedom Mongolia Report, 2010, Globe International, NGO. www.globeinter.org.mn

Freedom of Media Report, 2007, Globe International

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

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.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

There is no prior government restraint (censoring before publication) of corruption-related stories.

References:

Globe International's 2010 Media Freedom Report, June 7, 2011. http://www.ifex.org/mongolia/2011/06/07/mfr_2010.pdf

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?

45

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

Yes | **No**

Comments:

The renewed Mongolian National Security Concept, Article 3.6.1.4, says that a media organization shall disclose its ownership and affiliation to the public.

References:

Renewed Mongolian National Security Concept, adopted by parliament in July 2010, Article 3.6.1.4. <http://www.president.mn/mongolian/node/1204>

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**

Comments:

No law or formal regulation sets forth disclosure requirements that make broadcast media companies disclose their ownership to the public.

References:

No law is available.

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:

The General Regulatory Conditions and Requirements of Television and Radio Broadcasting, issued by the Communications Regulatory Commission, took effect March 1, 2011. Under this order, a television, radio or cable channel shall have a common professional ethical code; an ethical committee responsible for its implementation; and a regulatory committee to support the establishment of the ethical committee and its stable operations.

However, there is still no formal journalistic code of conduct or self-regulation. It is widespread practice among journalists to report favorable or unfavorable coverage in exchange for money, gifts or other remuneration.

References:

Media Freedom Report, 2010, Globe International, NGO, June 7, 2011. http://www.ifex.org/mongolia/2011/06/07/mfr_2010.pdf

Interview with D. Tserenjav, journalist, Sept. 9, 2011, Ulaanbaatar

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:

Globe International issued a report on media coverage of the May 24, 2009, presidential election. The NGO set forth several conclusions on the monitoring, as reported by the UB Post. TV channels did not provide an equal opportunity to the candidates. Mongolian electors could not receive real information about the candidates. TV channels had one-sided, polarized and biased information on the candidates. They failed to prepare news programs in a professional level. News programs turned into election advertisement, and almost half of news coverage was paid material. The coverage of news programs (paid-material) constantly increased during the monitoring session. It showed that voters' rights in receiving real information was very limited. The Mongolian National Public Broadcasting Television performed its duty properly compared with commercial TV channels.

References:

UB Post, Final Conclusion of Monitoring on Presidential Election, July 24, 2011. <http://weekend.mongolnews.mn/index.php/2011-07-24-01-47-35/24-opinion/3065-final-conclusion-of-monitoring-on-presidential-election>

Office of the High Commission for Human Rights, Mongolia — Stakeholders Submission on Right to Elect and to be Elected to OHCHR for UPR on November 23,

2010. http://lib.ohchr.org/HRBodies/UPR/Documents/session9/MN/WSP_WomenforSocialProgressMovement.pdf

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 2005, state-owned media became public television and radio outlets.

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: 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?

33

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

Yes | No

Comments:

Globe International registered a total of 30 violations of journalists' rights in 2010, including five cases of criminal defamation, detention or arrest.

Reporters Without Borders reported the arrest April 27, 2011, of two journalists, Gantumut Uyanga and her husband, Baviya Baatarkhuyag, after they criticized Nature, Environment and Tourism Minister Luimed Gansukh in the daily "Udriin Sonin" for moving with his family into a million-dollar house soon after the government signed an agreement with a Canadian firm, Ivanhoe Mines, to mine copper and gold at Oyu Tolgoi.

References:

Globe International, NGO, Media Freedom Report 2010, June 7, 2011. http://www.ifex.org/mongolia/2011/06/07/mfr_2010.pdf

Interview with D. Tserenjav, journalist, Sept. 9, 2011, Ulaanbaatar

Reporters Without Borders, Mongolia. <http://en.rsf.org/mongolia.html>

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

Comments:

Dolgor Chuluunbaatar, editor of the daily "Ulaanbaatar Times," was arrested in the capital of Ulaanbataar on March 24, 2011, and accused by the Sukhbaatar District Court of illegally privatizing the paper.

Reporters Without Borders reported the arrest on April 27, 2011, of two other journalists, Gantumut Uyanga and her husband, Baviya Baatarkhuyag, after they criticized Nature, Environment and Tourism Minister Luimed Gansukh in the daily "Udriin Sonin" for moving with his family into a million-dollar house soon after the government signed an agreement with a Canadian firm, Ivanhoe Mines, to mine copper and gold at Oyu Tolgoi. Uyanga and her husband were seized by four police, who pushed them into a van, forced her to kneel down and smashed her mobile phone. The Ulaanbaatar court upheld on May 5, 2011, the dismissal by the Sukhbaatar court on March 24, 2011, of a libel suit brought by the minister against Uyanga.

References:

Globe International, NGO, Media Freedom Report 2010, June 7, 2011. http://www.ifex.org/mongolia/2011/06/07/mfr_2010.pdf

Reporters Without Borders, Editor of Daily Paper Held for Two Months, May 26, 2011. <http://en.rsf.org/mongolie-editor-of-daily-paper-held-for-two-26-05-2011,40353.html>

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

Comments:

No journalists were killed in Mongolia during the reporting period.

References:

Globe International, NGO, Media Freedom Report 2010, June 7, 2011. http://www.ifex.org/mongolia/2011/06/07/mfr_2010.pdf

Interview with D. Tserenjav, journalist, Sept. 9, 2011, Ulaanbaatar

Reporters Without Borders, Mongolia. <http://en.rsf.org/mongolia.html>

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.

70

1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

100

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

Yes

|

No

Comments:

A freedom of information and access to information law was adopted June 16, 2011. It is called the Information Transparency and Right to Information Law.

References:

Mongolian Constitution, Article 16.17

Information Transparency and Right to Information Law

Yes: A YES score is earned if there is a formal right to request 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 a request for a basic government record is denied.

Yes

|

No

Comments:

The new Law on Freedom of Information and Access to Information passed on June 16, 2011. It allows citizens to have a right of appeal if a request for a basic government record from a higher level organization or official is denied.

References:

Law on Freedom of Information and Access to Information, Articles 17 and 25

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

Comments:

The Law on Freedom of Information and Access to Information authorizes state and local government organizations to organize the monitoring and implementation of legislation on information transparency and the right to information within the powers specified in laws. Measures to ensure information transparency are required to be reflected in the result-based contract between the chief budget manager and the general manager. This law passed on June 16, 2011. Before this law, there was no such formal mechanism or institution through which citizens could access government records.

References:

Law on Freedom of Information and Access to Information, Articles 3, 22, 23 and 24. www.legalinfo.mn

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 to information requests effective?

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

100 | 75 | 50 | 25 | 0

Comments:

The Law on Freedom of Information and Access to Information was adopted June 16, 2011, by parliament. For now, there is no assessment and monitoring report on the implementation of this law.

References:

International Freedom of Expression Exchange, Article 19 Welcomes Adoption of Freedom of Information Law, June 21, 2011. http://www.ifex.org/mongolia/2011/06/21/freedom_of_information/

Freedom House, Mongolian Parliament Passes Freedom Access Law.

<http://www.freedomhouse.org/article/mongolian-parliament-passes-freedom-access-law>

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 information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The new law states that the amount of service fees of records shall not exceed the direct expenses related to release of such information such as copying and delivery through mail. However, because the law passed only recently in June 2011, for the reporting period, records imposed a financial burden on citizens, journalists and NGOs. Retrieving records required a visit to a specific office and service fee, established by the Ministry of Justice. This made the cost much higher than the cost of photocopying.

References:

Law on Freedom of Information and Access to Information, Article 16, passed on June 16, 2011.

Kh. Ariunbold, lawyer of Zuv huuli law firm, Sept. 5, 2011, Ulaanbaatar

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 NGOs. 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 NGOs trying to access this information.

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

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

Comments:

The Law on State Classified Information restricts access to information possessed by public authorities. It can affect the business sphere by mandating declassification or regulating access to information for cases when investors request to classify technical, economic feasibility studies, which include reports on economic, social and environmental impact assessments.

References:

Interview with N. Ariunbold, policy researcher, Open Forum, Sept. 5, 2011, Ulaanbaatar

Interview with D. Tserenjav, journalist, Sept. 9, 2011, Ulaanbaatar

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 information requests within a reasonable time period.

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

Comments:

Government agencies often do not resolve appeals in a timely fashion. Appeals may be unacknowledged for many months. For

example, Ouyn Gombosuren submitted her request for a license for land ownership to the land office three times (August 8, 2009, June 4, 2019, and June 29, 2010, but she still has had no response.

References:

Corruption Index of Mongolia 2011, IAAC. <http://www.iaac.mn/index.php?coid=1534&cid=106>

Interview with Kh. Ariunbold, researcher, Sept. 5, 2011, Ulaanbaatar

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

Comments:

The appeals mechanism is not an affordable option to middle-class citizens seeking to challenge an access-to-information ruling. A resolution by the National Statistics Office on Jan. 9, 2007, requires the cost be limited to that of photocopying. However, the cost of copying one page was 1,000 tugriks, 20 times more than normal photocopying costs.

References:

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

Interview with Kh. Ariunbold, researcher, Sept. 5, 2011, Ulaanbaatar

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.

Comments:

The government does not regularly give reasons for denying an information request to the person making the request. Responses from government officers who deny access can often be vague. For example, N. Ariunbold requested information related to the last election from the General Election Commission in 2009; the response was delayed and rejected. He took his case to court, and the case is still ongoing.

References:

Interview with N. Ariunbold, policy researcher, Open Forum, Sept. 5, 2011, Ulaanbaatar

Interview with P. Erdenejargal, executive director, Open Forum, Sept. 7, 2011, Ulaanbaatar

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 2. Elections

2.1. ⁵⁸ Voting and Party Formation

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

Comments:

According to election laws, only citizens who reside in the country on the day of elections are allowed to vote.

Citizens of Mongolia who have reached the age of 18 have the right to vote, irrespective of their nationality, ethnic origin, language, race, sex, social origin and status, property, occupation and post, religion, conviction and education. However, those who have been certified insane and who are under detention shall not be eligible to participate in elections.

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

Comments:

The Mongolian Constitution requires presidential and parliamentary elections to be held at regular, four-year intervals. The last presidential election was in 2009.

References:

Mongolian Constitution, Articles 21.2 and 31.2

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?

67

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

100

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25

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0

Comments:

In practice, all adult citizens can vote. Generally, there are no barriers hindering men or women from voting, nor are there any ethnic or political barriers. Voter turnout is high in Mongolia.

However, disabled and overseas voters face some barriers. As stated in the Office of the High Commission for Human Rights report, 85 percent of 49,174 eligible, disabled voters have never cast a vote. Furthermore, 60 percent of those who do vote do not have access to objective, impartial information on election candidates and, thus, cannot make a free and informed choice due to their disability.

An informal survey established the number of eligible voters residing overseas at 250,000, 18 percent of the total number of voters. As prescribed by existing laws, only citizens living in the country are entitled to cast their votes in elections, thus denying voters residing overseas their right to participate in elections.

References:

National Report of Mongolia on the Situation of Human Rights, 2010. www.upr-mongolia.mn

United Nations Country Team in Mongolia, Universal Periodic Review, April 19, 2010. www.upr-mongolia.mn

Submission of the National Human Rights Commission of Mongolia to the Universal Periodic Review of the United Nations Human Rights Council. www.upr-mongolia.mn

Office of the High Commission for Human Rights, Mongolia Stakeholders Submission on Right to Elect and to be Elected to OHCHR for UPR on November 23,
2010. http://lib.ohchr.org/HRBodies/UPR/Documents/session9/MN/WSP_WomenforSocialProgressMovement.pdf

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:

NGO and individual monitoring shows that, in the 2008 parliamentary election, ballots were tampered with during counting. Several candidates raised this issue. For example, candidates M. Zorigt and M. Choidorj from the Civil Will Party submitted complaints to the General Election Commission on irregularities in Election District 7.

References:

Sukhgerel Dugersuren, Parliamentary Election in Mongolia, 2008

Office of the High Commission for Human Rights, Mongolia Stakeholders Submission on Right to Elect and to be Elected to OHCHR for UPR on November 23,
2010. http://lib.ohchr.org/HRBodies/UPR/Documents/session9/MN/WSP_WomenforSocialProgressMovement.pdf

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.

100 | 75 | 50 | 25 | 0

Comments:

Elections are always held according to a regular schedule. There is a formal process for parliament to call a new election and requirements for mandatory elections every four years.

References:

National Election Committee, voter turnout statistics. www.gec.gov.mn

Office of the High Commission for Human Rights, Mongolia Stakeholders Submission on Right to Elect and to be Elected to OHCHR for UPR on November 23,

2010. http://lib.ohchr.org/HRBodies/UPR/Documents/session9/MN/WSP_WomenforSocialProgressMovement.pdf

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?

75

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

Yes

| No

Comments:

The constitution guarantees the right to form a party or other mass organization. It also guarantees freedom of association to these organizations on the basis of social and personal interests and opinion. Discrimination and persecution of a person for joining a political party or other mass organization or being a member is prohibited.

References:

Political Party Law

Mongolian Constitution, Article 16.10

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

Comments:

Article 16.9 of the constitution guarantees the right to take part in the conduct of state affairs directly or through representative bodies and the right to elect and to be elected to state bodies. Anyone over 18 who meets each agency's requirements has the right to be elected.

References:

Mongolian 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

Comments:

In practice, all citizens are able to form political parties. A minimum of 801 members are needed to form a political party. There is no requirement of diversity of age, sex, location or ethnic representation. The Supreme Court registers political parties.

References:

Submission of the National Human Rights Commission of Mongolia to the Universal Periodic Review of the United Nations Human Rights Council. www.upr-mongolia.mn

Office of the High Commission for Human Rights, Mongolia Stakeholders Submission on Right to Elect and to be Elected to OHCHR for UPR on November 23,
2010. http://lib.ohchr.org/HRBodies/UPR/Documents/session9/MN/WSP_WomenforSocialProgressMovement.pdf

United Nations Country Team in Mongolia, Universal Periodic Review, National Report of Mongolia on the Situation of Human Rights 2010, April 19, 2010. www.upr-mongolia.mn

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 citizen from running for office. For example, if a party member wants to run as a candidate for the Democratic Party, that member must donate 50 million tugriks (about \$38,000) to the party. The average salary of a Mongolian citizen is 300,000 tugriks (about \$230).

Other requirements place barriers on the average citizen running for office. As stated in the Office of the High Commission for Human Rights report: To establish a party, one should collect signatures of 801 voters; there are no requirements for a timetable or the diversity of the voters; an independent candidate also must collect the same number of signatures from the electorate in seven days and represent all administration units in the election district.

References:

Office of the High Commission for Human Rights, Mongolia Stakeholders Submission on Right to Elect and to be Elected to OHCHR for UPR on November 23,
2010. http://lib.ohchr.org/HRBodies/UPR/Documents/session9/MN/WSP_WomenforSocialProgressMovement.pdf

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

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:

There are very few opposition parties in Mongolia, and they do not have a significant impact on the proceedings of the legislature.

References:

Interview with M. Natsagbadam, board member, Women for Social Progress, NGO, Sept. 5, 2011, Ulaanbaatar

Interview with D. Tserenjav, journalist, Sept. 7, 2011, Ulaanbaatar

English.news.cn, Mongolian Opposition Party Opposes Nuclear Waste Storage, Aug. 5, 2011. http://news.xinhuanet.com/english2010/world/2011-08/05/c_131032319.htm

M.A.D. Investment Solutions, Mongolian Opposition Parties Merge to Challenge Ruling Parties, Jan. 31, 2011. <http://www.mad-mongolia.com/news/mongolia-news/mongolian-opposition-parties-merge-to-challenge-ruling-parties-3910/>

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.

2.2. Election Integrity

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

100

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

Yes | No

Comments:

According to the election law, the General Election Commission is mandated to facilitate the process of voting and counting. This is according to the December 2011 amendment to the election law.

References:

Law on Parliament Election

Law on Central Election Body

Library of Congress, Mongolia: Election Law Amended, New Election System Adopted, Dec. 15, 2011, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402958_text

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.

18. Is the election monitoring agency effective?

35

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

Yes | No

Comments:

According to the law on Central Election Body, the General Election Commission shall adhere in its activities to the principles of rule of law, independence, political neutrality, joint decision-making, transparency and fairness. Any body, official or citizen shall be prohibited from interference with the exercise of powers by the General Election Commission or its members.

References:

Law on Central Election Body, Articles 3.4 and 3.8. www.legalinfo.mn

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

Comments:

Appointments of election commission members are often based on political considerations. Individuals who are appointed often have clear party loyalties. Although the General Election Commission organizes parliamentary elections, it depends on the State Great Hural in terms of appointment, budget and power. The laws don't specify criteria for whom should be nominated as GEC members, so the practice has been to nominate by SGH under the influence of the ruling parties without involvement of other political parties and citizens. Six of nine members of the current GEC were appointed based on Peoples Party loyalties, and the other three members were appointed based on Democratic Party loyalties. They were appointed in 2006 by the SGH based on these two parties' decisions.

References:

Forum Assessment of Monitoring of 2008 Election. www.forum.mn

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

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 Commission consists of non-permanent members. It has a limited staff, which is insufficient to carry out some functions, such as enforcement of voting laws, overseeing campaign finance and imposing penalties when laws are violated.

References:

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 7, 2011, Ulaanbaatar

Parliamentary Election Campaign Financing-Implementation Assessment, Voter Education Center, U.S. Embassy 2010

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 Commission usually makes reports and submits them to parliament, but they are not complete results of election voting and campaign finance. All annual reports of the General Election Commission (GEC) and commission regulations for previous elections are available on the GEC website. N. Ariunbold made a request to the GEC in 2009 for access to Election District Committee 24 and Polling Station committee resolutions of the 2008 election. Because the GEC refused his request, he complained to the Chingeltei District Court about it.

References:

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

General Election Commission. www.gec.gov.mn

Interview with N. Ariunbold, policy researcher on Election Justice in Mongolia, Open Forum, Sept. 7, 2011, Ulaanbaatar

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 often occur for campaign donations, expenditure limits, reporting, etc. However, the General Election Commission does not proactively address these violations. For example, punishment of violations on campaign expenditure reporting for the 2008 election was enforced for small parties but not for big parties.

References:

Interview with Kh. Ariunbold, researcher, Sept. 5, 2011, Ulaanbaatar

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

Voter Education Center, Campaign Finance Assessment Study, 2009

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?

54

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

100 | 75 | 50 | 25 | 0

Comments:

One of the most important components that ensures the principle of universal and equal suffrage is registration of all eligible voters in the voter register. Mongolia has not established the number of eligible voters. Its three institutions assigned to accomplish registration of voters came out with three sets of numbers, which have discrepancies as large as 20 to 24 percent of the total number of voters. The most recent case of this irregularity surfaced when the difference between the number of voters registered for parliamentary elections in June 2008 and October 2008 differed by 237,272 voters, or approximately 14 to 18 percent of the total number of voters.

The committees violate the terms of providing access to voter registers set by law, and thus restrict independent monitoring of voter registration by civil society organizations. Citizens' rights to vote and be elected were violated through illegal exclusion or overlapping of registration due to "apparent poor registration procedures, incomplete and noncertified registers." Monitoring of voter registration revealed the fact that the organizations entitled to list the voters can reduce or increase the number of voters by an average of 30 percent. For example, during the by-elections held in October 2009, the electorate had 98,747 registered voters. However, the polling station committee managed to omit 27,043 voters from the register. This denied citizens their right to vote in this by-election.

References:

Forum Assessment 2008. www.forum.mn

D. Sukhgerel, Monitoring findings of 2008 election, Office of the High Commission for Human Rights, Mongolia – Stakeholders Submission on Right to Elect and to be Elected to OHCHR for UPR on November 23, 2010. http://lib.ohchr.org/HRBodies/UPR/Documents/session9/MN/WSP_WomenforSocialProgressMovement.pdf

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:

Election Law on State Great Hural, Articles 57.2 and 57.3, provides: Political parties or candidates can challenge election results or procedural violations that affected the election outcome through the Constitutional Court.

References:

Election Law on State Great Hural, Articles 57.2 and 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.

Comments:

Courts are reluctant to incorporate provisions and mechanisms to protect the political rights of citizens in election laws and court procedures. Courts refuse to hear cases when complaints are filed. Election committees refuse to receive and resolve complaints or act on those received. Impunity for inaction by committee members results in the loss of complaints before they reach courts. Although the Constitutional Court may review decisions made by the General Election Commission (GEC), it is not mandated to adjudicate cases that the GEC fails to hear on appeal.

This explains why election law violations are not resolved in the courts and why committee members' "arbitrary action" goes unpunished. Furthermore, both the judiciary and the Constitutional Court have no procedures in place to penalize illegal and unconstitutional acts or inaction by electoral committee members. This shows why citizen rights to elect and to be elected are not protected by law.

References:

Forum Assessment 2008. www.forum.mn

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

Mongolia — Stakeholders Submission on Right to Elect and to be Elected to OHCHR for UPR on November 23, 2010. www.upr-mongolia.mn

Interview with Kh. Ariunbold, researcher, Sept. 5, 2011, Ulaanbaatar

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

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.

Comments:

There was an incident during the aftermath of the last parliamentary election in 2008. As reported in Freedom House's 2009 Freedom in the World report, initial results led to declaration of victory for the MPRP, which captured 44 of the 76 seats; the DP won 26 seats. The DP and its supporters, as well as other smaller parties, challenged the results. After heavy television coverage, small-scale political protests escalated into large demonstrations in the capital of Ulaanbaatar. The protests led to looting of the ruling party of MPRP headquarters, which was later set on fire; nearby buildings suffered similar destruction. Five people died in the unrest and scores of people were severely injured, including police officers; over 700 people were arrested. The government declared a four-day state of emergency on July 2. During these days, the police and army corps were not

provided with guidelines on how to perform the arrests in compliance with relevant laws and regulations. In violation of the law, the police and army corps performed a mass arrest, using excessive force, severely beating and injuring people.

The next parliamentary election will be held in June 2012.

References:

Monitoring Report, Human Rights Non-Governmental Organization Coalition, 2008

Monitoring of Human Rights Violations During July 1 State Emergency. www.forum.mn

Human Rights under State of Emergency Monitoring and Protection Statement, July 6, 2008. www.forum.mn

The Freedom House, "Freedom in the World 2009, Mongolia," 16 July 2009. Available at <http://www.unhcr.org/refworld/pdfid/4b8658472.pdf>

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

Comments:

International and local election observers nominated by political parties and candidates are allowed by law to observe parliamentary and presidential elections. But local NGOs and individual citizens are not allowed to observe the elections.

Election Law on State Great Hural, Article 46, states: Parties, coalitions and independent candidates shall appoint their election observers. Procedures for foreign observers and media organizations broadcasting and observing the election shall be passed by the General Election Commission (GEC). Bodies other than ones mentioned in 46.1 of this law cannot appoint observers, and this provision does not apply to 46.7 of this law.

References:

Election Law on State Great Hural, Article 46 (1), (7) and (8)

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

Comments:

Observation of elections is allowed only by partisan and candidates' observers. International observers also can observe the election. But, civic groups and citizens are not allowed to observe elections.

References:

Vote Counting Observation Monitoring Report, 2009, Fair Election Non-Governmental Organization Network Observers.
www.forum.mn

2008 Parliamentary Election Observation, International Republican Institute (IRI), 2008

Mongolia — Stakeholders Submission on Right to Elect and to be Elected to OHCHR for UPR on November 23, 2010. www.upr-mongolia.mn

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.

63

2.3. Political Financing Transparency

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 (\$800) 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 10,000,000 Mongolian tugriks (\$8,000) 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 also 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 Commission decides the limit of campaign expenditures for each election. These limits are different for each constituency, depending on its size and population.

References:

Election Law on State Great Hural, 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:

Political parties are required to submit financial reports, including all donations, to the General Election Commission. The commission 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 tugriks (\$140) and legal entities that donated more than 500,000 tugriks (\$350). Political party law requires parties' annual financial reports to be audited and disclosed publicly.

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

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

Comments:

The General Election Commission is mandated to monitor financing of political parties when parties submit their finance report with their registration to participate in an election. The commission has the power not to register a party to participate in an election if the party's finance report is false or incomplete.

The Law on Parliamentary Election, Article 42.7, states that a political party, electoral coalition and candidate shall file a public report on disposition of electoral funds with the General Election Commission within 45 days following the voting day together with the name and address of individuals who have made monetary donations of 200,000 or more tugriks and enterprises and entities who have donated 500,000 or more tugriks.

The Law on Political Parties, Article 20.3, states that parties shall get their annual financial activities audited and make the information public.

The Law on the Central Election Body, Article 7, states that the committee has the power to receive and check documents filed by political parties, electoral blocs and self-nominated candidates; to publicize information about the amount of funds spent by a political party, electoral bloc or candidate; to supervise the amount of donations and disposition of such donations; to publicize

income and asset statements of a candidate as well as information about indebtedness of a candidate; and to discuss the reports of a political party, electoral bloc or candidate on disposition of electoral funds.

References:

Law on Parliamentary Election, Article 42.7

Law on Political Parties, Article 20.3

Law on the Central Election Body, Article 7.1

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

References:

Election Law on State Great Hural, 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 non-governmental 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 up to 1,000,000 tugriks (\$800) to candidates.

References:

Election Law on State Great Hural, 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 up to 3,000,000 tugriks (\$2,400) to candidates.

References:

Election Law on State Great Hural, 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

Comments:

There are legal requirements mandating the disclosure of contributions over 200,000 tugriks (about \$150) from individuals and 500,000 tugriks (about \$380) from legal entities to independent political candidates, political parties and coalitions. There are no requirements mandating the disclosure of contributions to political candidates who are running as part of political parties.

References:

Election Law on State Great Hural, Articles 42.2, 42.4 and 42.7

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

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:

Election Law on State Great Hural

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 Commission is mandated to monitor financing of individual candidates during an election campaign. The commission reviews financial reports and publicly announces donors.

References:

Law on Central Election Body, Articles 7.3.10 and 7.3.11

Election Law on State Great Hural, 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 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 non-governmental organizations.

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

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 main problem is not that the limits are too high or 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:

Election Campaign Finance Report, Voter Education Center, 2007

Monitoring Political Party Finance, Voter Education Center, 2007

Assessment of Implementation on Campaign Finance Disclosure Regulation in 2008

Parliamentary Elections, Voter Education Center, 2010

Research, Independent Anti-Corruption Agency, 2009

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:

Existing limits are routinely bypassed or willfully ignored. The main problem is not that limits are so high or low; the problem is the existing culture allows making contributions outside the system; also, there is no enforcement mechanism.

References:

Election Campaign Finance Report, Voter Education Center, 2007

Monitoring Political Party Finance, Voter Education Center, 2007

Assessment of Implementation on Campaign Finance Disclosure Regulation in 2008

Parliamentary Elections, Voter Education Center, 2010

Research, Independent Anti-Corruption Agency, 2009

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 for the last parliamentary election in 2008. Existing limits are routinely bypassed or willfully ignored, as seen during the 2008 election. The majority of expenditures are made outside of the formal limitation system. The problem is lack of enforcement and accountability. There is no legal punishment for exceeding the limit on party expenditures. Also, there are loopholes in the regulation of indirect support such as volunteering and in-kind contributions.

References:

Election Campaign Finance Report, Voter Education Center, 2007. www.wsp.mn

Monitoring Political Party Finance, Voter Education Center, 2007. www.forum.mn

Assessment of Implementation on Campaign Finance Disclosure Regulation in 2008

Parliamentary Elections, Voter Education Center, 2010. www.wsp.mn

Research, Independent Anti-Corruption Agency, 2009. <http://www.iaac.mn/index.php?coid=678&cid=106>

Interview with D. Tserenjav, journalist, Sept. 6, 2011, Ulaanbaatar

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 General Election Commission has power, but it did not conduct any investigations on campaign financing for the last parliamentary election, mainly due to its weak capacity and will.

References:

Election Campaign Finance Report, Voter Education Center, 2007

Monitoring Political Party Finance, Voter Education Center, 2007

Assessment of Implementation on Campaign Finance Disclosure Regulation in 2008

Parliamentary Elections, Voter Education Center, 2010

Research, Independent Anti-Corruption Agency, 2009

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 General Election Commission lacks the capacity to enforce and impose penalties. The GEC and courts do not effectively penalize offenders. Legal regulation requires political parties to register with the GEC to participate in an election. There is legal requirement that, if a document is not complete or is false, the GEC has the power not to register that party to participate in an election. In practice, the GEC does not disclose documents to the public and does not exercise its power to investigate or monitor documents.

References:

Election Campaign Finance Report, Voter Education Center, 2007. www.wsp.mn

Monitoring Political Party Finance, Voter Education Center, 2007. www.forum.mn

Assessment of Implementation on Campaign Finance Disclosure Regulation in 2008

Parliamentary Elections, Voter Education Center, 2010. www.wsp.mn

Interview with Kh. Ariunbold, researcher, Sept. 5, 2011, Ulaanbaatar

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

Comments:

Legal regulation requires political parties to get their financial activities audited and certified on an annual basis and report the audit publicly, but there is no regular disclosure in practice. For example, the Citizen Will Party got its financial activities audited in 2005 and 2006, but it wouldn't make public the audit results, saying it was waiting for the Mongolian Peoples Revolutionary Party and Democratic Party to expose their results publicly. The DP got its financial statements in 2006 and first half of 2007 audited and reported audit conclusions publicly through its website, whereas the MPRP said it hadn't had its financial activities audited in recent years. The Republican Party declined providing specific information in this respect.

References:

Election Campaign Finance Report, Voter Education Center, 2007. www.wsp.mn

Monitoring Political Party Finance, Voter Education Center, 2007. www.forum.mn

Assessment of Implementation on Campaign Finance Disclosure Regulation in 2008

Parliamentary Elections, Voter Education Center, 2010. www.wsp.mn

Interview with S. Ouyntuya, Sept. 5, 2011, Ulaanbaatar

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?

0

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 to political parties was introduced in 2006. Existing limits are routinely bypassed or willfully ignored. The main problem is not that the limits are too high or low, but the existing culture allows contributions to be made outside the system, and there is no enforcement of violations. There are also loopholes in the regulation regarding indirect support.

Corruption Index Surveys in 2009 and 2010 by the Independent Authority Against Corruption of Mongolia show that one of most common forms of corruption is illegal campaign contributions and one of the most influential factors for increasing corruption in Mongolia is the current political campaign and party finance mechanism.

References:

Corruption Index Survey in Political Sector, 2009, 2010, Independent Authority Against Corruption of Mongolia.
www.iaac.mn/pdf/ssha/Uls_tur_2010.pdf

Election Campaign Finance report, Voter Education Center, 2007. www.wsp.mn

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 individual donations to political parties was introduced in 2006. Existing limits are routinely bypassed or willfully ignored. Mainly, companies give donations to the political parties rather than individuals. The problem is not that limits are too high or low; rather, the problem is the existing culture allows making contributions outside the system; also, there is no enforcement mechanism. There are also loopholes in the regulations regarding indirect support.

The 2009 and 2010 surveys by the Independent Authority Against Corruption of Mongolia show that one of most common forms of corruption is illegal campaign contributions. Some 3.9 percent of entities with public shares have given contributions to political parties. This finding demonstrates that the leaders of entities with state investment offer financial support to politicians and political parties in an attempt to stay at their posts. Also, according to survey data, one third of foreign investment entities and joint ventures, as well as one fourth of export companies, have paid a bribe to public officials during the last 12 months.

References:

Corruption Index Survey in Political Sector, 2009, 2010, Independent Authority Against Corruption of Mongolia.
www.iaac.mn/pdf/ssha/Uls_tur_2010.pdf

Mongolian Corruption Index, Summary, 2009, Independent Authority Against Corruption of Mongolia. http://www.iaac.mn/pdf/ssha/Abstract_Corruption%20Index_eng.pdf

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 problem is lack of enforcement and accountability. The General Election Commission has the power to monitor political financing but has not conducted any investigations, mainly due to its weak capacity and will.

References:

Election Campaign Finance Report, Voter Education Center, 2007. www.wsp.mn

Monitoring Political Party Finance, Voter Education Center, 2007. www.forum.mn

Assessment of Implementation on Campaign Finance Disclosure Regulation in 2008

Parliamentary Elections, Voter Education Center, 2010. www.wsp.mn

Interview with Kh. Ariunbold, researcher and lawyer, Zuv huuli law-firm, Sept. 5, 2011, Ulaanbaatar

Interview with D. Tserenjav, journalist, Sept. 8, 2011, Ulaanbaatar

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, thought 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 problem is a lack of enforcement and accountability. There are also loopholes in the regulation of indirect support such as volunteering and in-kind contributions. The General Election Commission lacks the capacity to enforce and impose penalties. It is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

References:

Election Campaign Finance Report, Voter Education Center, 2007. www.wsp.mn

Monitoring Political Party Finance, Voter Education Center, 2007. www.forum.mn

Assessment of Implementation on Campaign Finance Disclosure Regulation in 2008

Parliamentary Elections, Voter Education Center, 2010. www.wsp.mn

Interview with Kh. Ariunbold. researcher and lawyer, Zuv huuli law-firm, Sept. 5, 2011, Ulaanbaatar

Interview with D. Tserenjav, journalist, Sept. 8, 2011, Ulaanbaatar

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:

Monitoring Political Party Finance, Voter Education Center, 2007. www.forum.mn

Assessment of Implementation on Campaign Finance Disclosure Regulation in 2008

Parliamentary Elections, Voter Education Center, 2010. www.wsp.mn

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

Comments:

Political parties rarely or never publish their sources of funding or expenditures. Politically sensitive information is regularly withheld from the public, findings show.

References:

Election Campaign Finance Report, Voter Education Center, 2007. www.wsp.mn

Monitoring Political Party Finance, Voter Education Center, 2007. www.forum.mn

Assessment of Implementation on Campaign Finance Disclosure Regulation in 2008

Parliamentary Elections, Voter Education Center, 2010. www.wsp.mn

Interview with S. Ouyntuya, Sept. 5, 2011, Ulaanbaatar

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 regularly 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 election financing reports to the General Election Commission; this is public information.

References:

Election Campaign Finance Report, Voter Education Center, 2007. www.wsp.mn

Monitoring Political Party Finance, Voter Education Center, 2007. www.forum.mn

Assessment of Implementation on Campaign Finance Disclosure Regulation in 2008

Parliamentary Elections, Voter Education Center, 2010. www.wsp.mn

Interview with Kh. Ariunbold, Sept. 5, 2011, Ulaanbaatar

Interview with S. Ouyntuya, Sept. 5, 2011, Ulaanbaatar

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 making several visits to a specific office and overcoming many bureaucratic obstacles, such as having to submit a formal letter with an explanation or justification for requesting the records.

References:

Election Campaign Finance Report, Voter Education Center, 2007. www.wsp.mn

Monitoring Political Party Finance, Voter Education Center, 2007. www.forum.mn

Assessment of Implementation on Campaign Finance Disclosure Regulation in 2008

Parliamentary Elections, Voter Education Center, 2010. www.wsp.mn

Interview with Kh. Ariunbold, Sept. 5, 2011, Ulaanbaatar

Interview with S. Ouyntuya, Sept. 5, 2011, Ulaanbaatar

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 NGOs. 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 NGOs 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

Comments:

When they are available publicly, records of political parties' finances are so incomplete or overly general that they are useless in understanding a party's sources of income and expenditures. Only one party's annual finance report, the Democratic Party, was available on its website. But it was overly general and useless. Other parties, who received state subsidies, refused to provide their annual finance report upon request.

References:

Assessment of Implementation on Campaign Finance Disclosure Regulation in 2008

Parliamentary Elections, Voter Education Center, 2010. www.wsp.mn

Interview with Kh. Ariunbold, Sept. 5, 2011, Ulaanbaatar

Interview with S. Ouyntuya, Sept. 5, 2011, Ulaanbaatar

Interview with D. Tserenjav, journalist, Sept. 6, 2011, Ulaanbaatar

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:

Interview with Kh. Ariunbold, Sept. 5, 2011, Ulaanbaatar

Interview with S. Ouyntuya, Sept. 5, 2011, Ulaanbaatar

Interview with D. Tserenjav, journalist, Sept. 6, 2011, Ulaanbaatar

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 regularly 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.

**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:

Interview with Kh. Ariunbold, Sept. 5, 2011, Ulaanbaatar

Interview with S. Ouyntuya, Sept. 5, 2011, Ulaanbaatar

Interview with D. Tserenjav, journalist, Sept. 6, 2011, Ulaanbaatar

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.

**Comments:**

Accessing finance records does not involve high costs. However, retrieving them requires making several visits to a specific office such as the General Election Commission in the capital or parliament's archive in Ulaanbaatar and involves overcoming many bureaucratic obstacles, such as having to submit a formal letter with an explanation or justification for requesting the records.

References:

Interview with Kh. Ariunbold, Sept. 5, 2011, Ulaanbaatar

Interview with S. Ouyntuya, Sept. 5, 2011, Ulaanbaatar

Interview with D. Tserenjav, journalist, Sept. 6, 2011, Ulaanbaatar

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 NGOs. 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 NGOs 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

Comments:

Publicly available records of independent political candidates' campaign finances are available but often are overly general or otherwise incomplete.

References:

Interview with Kh. Ariunbold, Sept. 5, 2011, Ulaanbaatar

Interview with S. Ouyntuya, Sept. 5, 2011, Ulaanbaatar

Interview with D. Tserenjav, journalist, Sept. 6, 2011, Ulaanbaatar

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 3. Government Conflicts of Interest Safeguards & Checks and Balances

3.1. ⁴⁹ Conflicts of Interest Safeguards & Checks and Balances:
Executive Branch

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

0

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

Yes | No

Comments:

No such regulations exists. Not applicable.

References:

No regulations exist.

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.

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

56

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

100 | 75 | 50 | 25 | 0

Comments:

The prime minister or cabinet ministers give explanations of policy, answering MPs' questions, but not always in a timely or complete way.

References:

Kh. Temuujin, member of parliament, head of Human Rights Subcommittee of parliament, Sept. 4, 2011, Ulaanbaatar

Interview with M. Natsagbadam, board member, Women for Social Progress, Sept. 5, 2011, Ulaanbaatar

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**

Comments:

Constitutional and administrative courts can pass judgments on the legality or constitutionality of actions taken by the executive.

References:

Law on Constitutional Court, Article 8

Law on Administrative Court Process, Article 4

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

Comments:

Based on research, there is no evidence that the judiciary reviews the executive branch.

References:

Rotten to Core? Judicial Reform Assessment, Brant T. White, 2008

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

Interview with Kh. Ariunbold, lawyer, Zuv huuli law firm, Sept. 5, 2011, Ulaanbaatar

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

Comments:

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

References:

Interview with Bayartsetseg, legal assistant to the president, Sept. 6, 2011, Ulaanbaatar

Interview with M. Natsagbadam, board member, Women for Social Progress, Sept. 6, 2011, Ulaanbaatar

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, Articles 29.2, 29.3, 36 and 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 prime minister cannot be investigated, charged or prosecuted for criminal allegations without the permission of parliament. Ministers cannot be investigated, charged or prosecuted for criminal allegations without the permission of the prime minister. However, other officers from ministries can be investigated, charged or prosecuted for criminal allegations.

References:

Mongolian Constitution, Article 42

Law on Cabinet of Ministers, Articles 25.2.6 and 25.2.4

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**

Comments:

The Law on Anti-Corruption, Article 10, states that heads of state and government are required by law to file every year an asset and income disclosure form while in office, illustrating sources of income, stock holdings and other assets. They must submit their declarations to the relevant organization or officials (specified in Article 11 of the same law) within 30 days of their election or appointment to office and annually thereafter. Annual declarations are due on Feb. 15 of each year for the duration of their public service.

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**

Comments:

Ministerial-level officials, or their equivalents, are all required by law to file an annual asset disclosure form while in office, illustrating sources of income, stock holdings and other assets.

The Law on Anti-Corruption, Article 10, states that officials holding political, administrative or special office of the state must submit their assets and income declarations within 30 days of their election or appointment to the relevant office and annually thereafter. Annual declarations are due on Feb. 15 of each year for the duration of an official's public service.

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

Comments:

The parliament (State Great Hural) has started to discuss a draft law on regulation of conflict of interests but has not adopted it yet.

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

Comments:

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

References:

Interview with Kh. Temujin, parliament member, head of the Human Rights Subcommittee, Sept. 6, 2011, Ulaanbaatar

Interview with P. Erdenejargal, executive director, Open Society Forum, member of the Public Consul, Anti-Corruption Agency, Sept. 7, 2011, Ulaanbaatar

Interview with J. Batzandan, Tavan Tolgoi mining company, member of the Public Consul, Anti-Corruption Agency, Sept. 8, 2011, Ulaanbaatar

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

Comments:

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

References:

Interview with P. Erdenejargal, executive director, Open Society Forum, member of the Public Consul, Anti-Corruption Agency, Sept. 7, 2011, Ulaanbaatar

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

Comments:

No regulations exist for auditing executive branch asset disclosures.

References:

Interview with P. Erdenejargal, executive director, Open Society Forum, member of the Public Consul, Anti-Corruption Agency, Sept. 7, 2011, Ulaanbaatar

Interview with J. Batzandan, Tavan Tolgoi mining company, member of the Public Consul, Anti-Corruption Agency, Sept. 8, 2011, Ulaanbaatar

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?

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

Yes | No

Comments:

Asset and income declarations of high level officials, such as the president, speaker, parliament members, the prime minister and cabinet members are published regularly in Government News Magazine within the second quarter of each year and placed on the Internet as required by Article 14.1 of the Anti-Corruption Law.

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 posted on the website of the Independent Authority Against Corruption of Mongolia.

References:

Independent Authority Against Corruption of Mongolia. <http://www.iaac.mn/pdf/tailan/hom2010.pdf>

State Gazette, April 19, 2011

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.

Comments:

Asset disclosures of the heads of state and government are published in the State Gazette and on the website of the Independent Authority Against Corruption of Mongolia.

References:

Independent Authority Against Corruption of Mongolia. <http://www.iaac.mn/pdf/tailan/hom2010.pdf>

State Gazette, April 19, 2011, Ulaanbaatar

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 NGOs. 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 NGOs trying to access this information.

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

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

Interview with D. Tserenjav, journalist, Sept. 8, 2011, Ulaanbaatar

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.

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

50

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

100 | 75 | 50 | 25 | 0

Comments:

The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. For example, during the last parliamentary election in 2008, there were many violations of provisions on election campaigning by incumbent members of parliament and ministers, including extensive use of public resources and campaigning during the cooling period. The district election committees recommended sanctions against candidates be issued; however, the GEC did not take action.

References:

Interview with Kh. Ariunbold, policy research, Open Forum, Sept. 5, 2011, Ulaanbaatar

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

Interview with Tserenjav, journalist, Sept. 8, 2011, Ulaanbaatar

Interview with J. Batzandan, Tavan Tolgoi mining company, member of the Public Consul, Anti-Corruption Agency, Sept. 8, 2011, Ulaanbaatar

Interview with D. Sukhgerel, executive director, Oyu Tolgoi Watch, NGO, Sept. 7, Ulaanbaatar

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.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

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

Comments:

The Constitutional Court can pass judgments on the constitutionality of laws passed by the State Great Hural, as well as cabinet resolutions and presidential decisions.

References:

Law on Constitutional Court, Articles 64 and 66

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; it cannot proactively review them on its own. According to the Law on Constitutional Court, judgments shall be reviewed by parliament and can be revoked.

References:

Interview with Kh. Ariunbold, policy research, Open Forum, Sept. 5, 2011, Ulaanbaatar

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

Interview with D. Tserenjav, journalist, Sept. 8, 2011, Ulaanbaatar

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 parliament. This committee consists of members of represented parties in parliament. It makes its decisions by majority vote.

References:

Mongolian Constitution, Article 29.3

Law on State Great Hural (parliament), Articles 6.9 to 6.15 (amendments made Dec. 30, 2010)

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?

36

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

Yes

No

Comments:

All members of the legislature are required by the Anti-Corruption Law to file an asset disclosure form while in office, illustrating

sources of income, stock holdings and other assets. This form does need to be publicly available.

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

Comments:

In the spring session of 2011, parliament started to discuss a draft law on the regulation of conflicts of interest.

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

Comments:

The Law on State Great Hural regulates gifts and hospitality for members of the legislature.

References:

Law on State Great Hural (parliament), Article 37.1

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 State Great Hural (parliament)

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

Comments:

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

References:

Interview with P. Erdenejargal, executive director, Open Society Forum, member of the Public Consul, Anti-Corruption Agency, Sept. 7, 2011, Ulaanbaatar

Interview with J. Batzandan, Tavan Tolgoi mining company, member of the Public Consul, Anti-Corruption Agency, Sept. 8, 2011, Ulaanbaatar

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 off” 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

Comments:

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. For example, at the end of 2010, S. Bayartsogt, ex-minister of finance and a member of parliament, was ringing a bell on behalf of Rio Tinto at the New York Stock Exchange. His trip was not granted by the state. Zanaa Jurmed, a resident of Ulaanbaatar, complained about Bayartsogt's conflict of interest in the matter to the appropriate governing body on May 7, 2011.

References:

Interview with D. Tserenjav, journalist, Sept. 8, 2011, Ulaanbaatar

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

Interview with Zanaa Jurmed, executive director, Citizen's Alliance, NGO, Sept. 10, 2011, Ulaanbaatar

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

Comments:

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

References:

Assessment of Implementation on Campaign Finance Disclosure Regulation in 2008

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

Interview with D. Tserenjav, journalist, Sept. 6, 2011, Ulaanbaatar

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

Comments:

In law, citizens can access the asset disclosure records of members of the national legislature. Asset and income declarations of high level officials are published regularly in the Government News Magazine in the second quarter of each year and placed on the website of Independent Authority Against Corruption of Mongolia.

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, non-governmental 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

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0

Comments:

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

References:

Report, National Anti-Corruption Agency, 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 NGOs. 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 NGOs 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?

17

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

Yes

| No

Comments:

There is no legal right to 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, 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 they are not regulated as public information. It is still difficult to gain access to hearings. In 2010, the Law on State Great Hural did make changes to have a 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 Drafting Process, Article 18.4.1

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 parliament's 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:

State Great Hural of Mongolia. www.parliament.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.

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:

Interview with D. Tserenjav, journalist, Sept. 8, 2011, Ulaanbaatar

Interview with P. Erdenejargal, executive director, Open Society Forum, member of the Public Consul, Anti-Corruption Agency, Sept. 7, 2011, Ulaanbaatar

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 NGOs. 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 NGOs trying to access this information.

47

3.3. Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch

36. Are judges appointed fairly?

8

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

Yes

No

Comments:

National-level judicial candidates are nominated by the General Court of Council, headed by the minister 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:

Judges are appointed by the president based on recommendations of the General Council of Courts (GCC). There is a lack of official professional qualifications for selection of court judges. The most important characteristic of the current system is examining the candidate's knowledge by administering a test and interviewing the candidate. One problem is that citizens who

pass the test are then voted on by members of the General Court Council. The voting process is anonymous, and there are no official criteria; therefore, members are able to elect judges at their own discretion.

References:

Report on the status of court reform in Mongolia, Brent T. White, 2009. www.forum.mn

Policy research on Enhancing of Judicial Independence in Mongolia, N. Lundendorj, Ch. Unerbayar, M. Batsuuri, 2010, Ulaanbaatar. 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:

There are no regulations requiring members of the national-level judiciary to give reasons for their decisions.

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:

There are no regulations requiring members of the national-level judiciary to give reasons for their decisions.

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:

Policy research on Enhancing of Judicial Independence in Mongolia, N. Lundendorj, Ch. Unerbayar, M. Batsuuri, 2010, Ulaanbaatar. www.forum.mn

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:

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 a case on its own.

References:

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

Comments:

Judicial disciplinary proceedings lack transparency. General statistics released by the Judicial Disciplinary Committee illustrate that the vast majority of complaints against judges are dismissed without action or explanation. For example, 35 of 61 complaints against judges in Ulaanbaatar in the first half of 2011 were dismissed. Only 10 complaints against judges were resolved by the disciplinary committee. In the absence of public transparency, or even an independent audit, one is left to wonder if the high dismissal rate is the result of inadequate enforcement or the lack of actual judicial misconduct.

References:

Interview with Kh. Ariunbold, policy researcher, Open Forum, Sept. 6, 2011, Ulaanbaatar

Judicial Disciplinary Agency report for first half of 2011, July 10, 2011. http://gcc.mn/gcc/index.php?option=com_content&view=category&layout=blog&id=3&Itemid=51

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?

32

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

Yes | **No**

Comments:

The General Council of Courts receives assets and income declarations from judges of all ranks, except for those at the Supreme Court.

References:

The Law on Anti-Corruption, Articles 10 and 11

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**

Comments:

Judges are prohibited from receiving gifts, money rewards, loans, privileges or free services from other citizens, officials, entities or organizations in return for executing the authority of his position.

References:

Law on Court, Article 44.1.4

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:

Law on Anti-Corruption

Law on Courts

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**

Comments:

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

References:

Law on Anti-Corruption

Law on Courts

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 off" 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

Comments:

The regulations governing gifts and hospitality to members of the national-level judiciary are too general. The regulations are rarely enforced. There is no enforcement mechanism.

References:

Report on the status of court reform in Mongolia, Brent T. White, 2009. www.forum.mn

Policy research on Enhancing of Judicial Independence in Mongolia, N. Lundendorj, Ch. Unerbayar, M. Batsuuri, 2010, Ulaanbaatar. www.forum.mn

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

Comments:

Auditing requirements for national-level judiciary asset disclosures do not exist.

References:

Anti-Corruption Law

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?

81

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 and 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

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75

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50

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25

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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 online and in the State Gazette. Declarations of judges of lower tier courts are available only upon request.

References:

National Anti-Corruption Agency website. www.iaac.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.

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

100 | 75 | 50 | 25 | 0

Comments:

Records are free to all citizens and available online.

References:

National Anti-Corruption Agency website. www.iaac.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 NGOs. 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 NGOs 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. www.iaac.mn

State Gazette

Report on the status of court reform in Mongolia, Brent T. White, 2009. www.forum.mn

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.

3.4. Budget Process Oversight & Transparency

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

83

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

Yes

| No

Comments:

There are formal regulations that give the legislature the power to add or remove items to the national government budget. The Mongolian Constitution, Article 25.1.7, states that the State Great Hural may define the state's financial, credit, tax and monetary policies, including laying down guidelines for the country's economic and social development, approving the government's program of action and the state budget and reporting on the budget's execution.

References:

Mongolia Constitution, Article 25.1.7

Law on Public Sector Management and Financing, Article 6

Law on State Great Hural, Article 20.5

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

Comments:

The year-end report compares the actual budget execution to the enacted budget. Year-end reports can inform policymakers on tax policies, debt requirements and major expenditure priorities, facilitating modifications for upcoming budget years.

References:

International Budget Partnership Report, 2010. <http://internationalbudget.org>

Interview with Tserenjav, coordinator of Citizen Watch the Budget Network, Sept. 9, 2011 Ulaanbaatar

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

Comments:

According to the Open Budget Survey 2010, budget oversight provided by Mongolia's legislature is inadequate because the legislature does not hold open budget discussions at which the public can testify.

References:

Open Budget Index 2010. <http://internationalbudget.org/wp-content/uploads/2011/04/OBI2010-Mongolia.pdf>

Interview with Tserenjav, coordinator of Citizen Watch the Budget Network, Sept. 9, 2011, Ulaanbaatar

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 civil society organizations and citizens to comment or contribute to the draft budget. Mongolia does not produce a citizens' budget.

References:

Open Budget Index 2010. <http://internationalbudget.org/wp-content/uploads/2011/04/OBI2010-Mongolia.pdf>

Interview with Tserenjav, coordinator of Citizen Watch the Budget Network, Sept. 9, 2011, Ulaanbaatar

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:

It is difficult to provide input to budget hearings due to lack of a formal channel or mechanism. Often civil society organizations comment informally or contribute to a draft budget through their elected or closely related ministers of parliament, or MPs. Mongolia does not produce a citizens' budget.

References:

Open Budget Index 2010. <http://internationalbudget.org/wp-content/uploads/2011/04/OBI2010-Mongolia.pdf>

Interview with Tserenjav, coordinator of Citizen Watch the Budget Network, Sept. 9, 2011, Ulaanbaatar

100: Citizens, usually acting through NGOs, 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 NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs 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:

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. Mongolia does not produce a citizens' budget.

References:

Open Budget Index 2010. <http://internationalbudget.org/wp-content/uploads/2011/04/OBI2010-Mongolia.pdf>

Interview with Tserenjav, coordinator of Citizen Watch the Budget Network, Sept. 9, 2011, Ulaanbaatar

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

75:

50: Citizens, journalists and NGOs 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.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes | No

Comments:

The Parliamentary Committee on the Budget and Budget Expenditure Subcommittee provide oversight for the expenditure of public funds.

References:

Parliamentary Committee on the Budget, Budget Expenditure Subcommittee. www.parliament.mn,

Law on Parliament. www.legalinfo.mn

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).

43. Is the legislative committee overseeing the expenditure of public funds effective?

67

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

Cabinet ministers submit reports to a budget oversight expenditure committee, but these reports are lacking important details.

References:

Open Budget Index 2010. <http://internationalbudget.org/wp-content/uploads/2011/04/OBI2010-Mongolia.pdf>

Interview with Tserenjav, coordinator of Citizen Watch the Budget Network, Sept. 9, 2011, Ulaanbaatar

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 from both majority and opposition parties.

References:

Interview with Tserenjav, coordinator of Citizen Watch the Budget Network, Sept. 9, 2011, Ulaanbaatar

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

Comments:

The budget expenditure subcommittee headed by the opposition party member starts investigations, but it is limited in its effectiveness. It does not have sufficient staffing, money or power to implement its mandate.

References:

Open Budget Index 2010. <http://internationalbudget.org/wp-content/uploads/2011/04/OBI2010-Mongolia.pdf>

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.

Category 4. Public Administration and Professionalism

4.1. ⁵³ Civil Service: Conflicts of Interest Safeguards and Political Independence

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

Comments:

In the Law on Civil Service, there are formal rules requiring the civil service to carry out its duties independent of political interference, with impartiality and neutrality.

References:

Law on Civil Service, Articles 10.5, 10.6 and 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**

Comments:

In the Law on Civil Service, there are regulations on competitive recruitment and promotion procedures in the civil service. Articles 4.2.4 and 17 state that citizens have equal opportunity to run for the civil service according to legal conditions, and there will be competitive recruitment procedures for civil servant positions.

References:

Law on Civil Service, Articles 4.2.4 and 17

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 it adjudicates complaints brought by civil servants. The board consists of nonpermanent 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 does not directly prohibit employment of those who are convicted of corruption. A general clause prohibits employment of any convicted criminal. In Mongolia, only some corrupt acts are 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?

42

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Appointment, promotion or removal of civil servants is based mostly 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:

USAID, Mongolia DG Assessment Exec Summary Final, March 12, 2011. <http://mongolia.usaid.gov/2011/03/democracy-assessment/>

Measures Against Abuse of State Power Policy Study, S. Bayaraa, 2005. www.forum.mn

Monitoring of Equal Opportunity for Civil Service Employment, Mongolian Women Lawyers Association, 2008. www.forum.mn

Interview with J. Batzandan, Tavan Tolgoi mining company, member of the Public Consul, Anti-Corruption Agency, Sept. 8, 2011, Ulaanbaatar

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 political loyalties. There are roughly 15,000 civil servants across the nation's public institutions, according to the Civil Service Council of Mongolia. As much as 30 percent of the civil service is replaced after each election, which results in numerous complaints from dismissed employees and others to the Administrative Courts.

References:

USAID, Democracy Assessment. March 2011. <http://mongolia.usaid.gov/2011/03/democracy-assessment/>

Monitoring of Equal Opportunity for Civil Service Employment, Mongolian Women Lawyers Association, 2008. 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

Comments:

Nepotism, cronyism and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint friends or party members to favorable positions in the civil service. For example, the Government Service Council detected that 66 public organizations appointed 133 people to the public service and 51 public organizations appointed 106 people to senior level positions without competitive recruitment in 2010.

References:

Monitoring of Equal Opportunity for Civil Service Employment, Mongolian Women Lawyers Association, 2008. www.forum.mn

Speech by D. Zumberellham, chair of the Government Service Council in International Conference, Ulaanbaatar. http://csc.gov.mn/main/index.php?option=com_content&view=article&id=8:2011-10-19-11-06-57&catid=9:2010-05-17-07-38-48&Itemid=50

Interview with journalist Munkhtur, member, Government Service Council. http://csc.gov.mn/main/index.php?option=com_content&view=article&id=285:2011-01-18-01-51-28&catid=9:2010-05-17-07-38-48&Itemid=50

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:

Public Expenditure and Financial Management Review, World Bank, 2002

Interview with B Khishigsaikhan, researcher, Sept. 6, 2011, Ulaanbaatar

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.

**Comments:**

According to the above-mentioned report, increases in salary grades and promotions are discretionary and 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 the case of two jobs) base salary. Government employees are provided transportation and newspaper, telephone and travel allowances. Anecdotal evidence suggests that these extra spending perks can add up to more than some political service employees' salaries.

References:

Public Expenditure and Financial Management Review, World Bank, 2002

Interview with B Khishigsaikhan, researcher, Sept. 6, 2011, Ulaanbaatar

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.

**Comments:**

The government publishes such a list, but it is often delayed or incomplete. There is no regulation stipulating which publication to use and when and how to publish this information.

References:

Monitoring of Equal Opportunity for Civil Service Employment, Mongolian Women Lawyers Association, 2008. www.forum.mn

Interview with B Khishigsaikhan, researcher, Sept. 6, 2011, Ulaanbaatar

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 address these complaints, and almost all complaints are appealed to the court. The board's decision is often ignored by public officials. This is mainly due to the political sensitivity regarding the cases.

References:

Mongolian Civil Service Commission website. <http://csc.gov.mn/main/index.php>

Interview with B Khishigsaikhan, researcher, Sept. 6, 2011, Ulaanbaatar

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

Comments:

In the past year, research revealed no case in which a civil servant was paid late.

References:

Interview with B Khishigsaikhan, researcher, Sept. 6, 2011, Ulaanbaatar

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:

There is no direct prohibition against future government employment for those who are convicted of corruption, but there is generally a prohibition related to all crimes. According to the Civil Service Law, there are two requirements for civil service appointments: more than five years must have passed for the applicant without a criminal conviction and more than one year must have passed without suffering disciplinary action. Therefore, anyone who has not had a criminal conviction in the past five years can be appointed to the civil service.

References:

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

Interview with B Khishigsaikhan, researcher, Sept. 6, 2011, Ulaanbaatar

Interview with J. Bayartsetseg, legal assistant to the president, Sept. 6, 2011, Ulaanbaatar

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**

Comments:

The Law on Anti-Corruption, Article 10, requires senior members of the civil service to file an asset disclosure form while in office, illustrating sources of income, stock holdings and other assets within 30 days of their election or appointment to office and annually thereafter. Annual declarations are due on February 15 of each year for the duration of their public service. This form must be made available to the public.

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**

Comments:

The parliament started to discuss a draft law on conflict of interest regulation. Article 15.1.12 of the existing Law on Civil Service requires civil servants to get financial help and be responsible on behalf of national and international citizens, companies and organizations.

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:

Civil servants cannot take positions in the private sector that are 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 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, Articles 15.1.5 and 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.

**Comments:**

There has been no updated information since the 2009 research period.

References:

Assessment of Corruption in Mongolia, USAID, 2005. http://pdf.usaid.gov/pdf_docs/PNADE136.pdf

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

Interview with B Khishigsaikhan, researcher, Sept. 6, 2011, Ulaanbaatar

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.

**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 action or inaction.

References:

Interview with N. Ariunbold, researcher, Sept. 5, 2011, Ulaanbaatar

Assessment of Corruption in Mongolia, USAID, 2005. 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

Comments:

Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected because of the weak regulation on it. On Jan. 19, 2012, parliament passed a law on conflict of interest regulations.

References:

Interview with N. Ariunbold, researcher, Sept. 5, 2011, Ulaanbaatar

Assessment of Corruption in Mongolia, USAID, 2005. http://pdf.usaid.gov/pdf_docs/PNADE136.pdf

Interview with B Khishigsaikhan, researcher, Sept. 6, 2011, Ulaanbaatar

Monitoring of Equal Opportunity for Civil Service Employment, Mongolian Women Lawyers Association, 2008. 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

Law on Civil Service

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

Comments:

The Law on Anti-Corruption requires that the records of filed asset disclosures of senior civil servants should be published in the State Gazette and posted online.

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 State Gazette and posted online on the Anti-Corruption Agency website.

References:

"Turiin medeelel" (State 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 State Gazette and posted online at the Anti-Corruption Agency website.

References:

"Turiin medeelel" (State 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 NGOs. 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 NGOs 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 investments or other financial arrangements in which the individual has an interest. The public believes that these records are often not accurate.

References:

"Turiin medeelel" (State 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.

4.2. Whistle-blowing Protections

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

Comments:

There is no requirement that civil servants who report cases of corruption, graft or abuse of power or resources be protected from recrimination or other negative consequences.

References:

Law on Anti-Corruption

Law on Public Service

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

Comments:

There are no legal protections.

References:

Law on Anti-Corruption

Law on Public Service

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

Comments:

There are no regulations that protect private sector employees who report cases of corruption, graft or abuse of power or resources from recrimination or other negative consequences.

References:

Law on Anti-Corruption

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.

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

49a. 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, the Web 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.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

63

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

In recent years, the police, customs and Independent Authority Against Corruption have established 24/7 complaint hot lines that have a growing reputation for responsiveness and effectiveness. However, the agencies have limited staff. The absence of whistle-blower laws and witness protections inhibits some people from coming forward.

References:

Interview with P. Erdenejargal, executive director, Open Society Forum, member of the Public Consul, Anti-Corruption Agency, Sept. 7, 2011, Ulaanbaatar

Interview with J. Batzandan, Tavan Tolgoi mining company, member of the Public Consul, Anti-Corruption Agency, Sept. 8, 2011, Ulaanbaatar

Democracy and Governance Assessment of Mongolia. <http://mongolia.usaid.gov/wp-content/uploads/Mongolia-DG-Assessment-Exec-Summary-FINAL-3-12-11.pdf>

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

Comments:

The Independent Agency Against Corruption has a predictable source of funding from the state budget and donors. Political considerations are not a major factor in determining agency funding. The hot line number is 1969, and the website is www.iaac.mn.

References:

Interview with J. Batzandan, Tavan Tolgoi mining company, member of the Public Consul, Anti-Corruption Agency, Sept. 8, 2011, Ulaanbaatar

Hotline number of 1969. www.iaac.mn

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 Independent Authority Against Corruption. Some complaints are acted on, but some take longer to receive a response, and complaints are often dismissed. It is difficult to get detailed information about how quickly the IAAC acts on complaints, even for Public Council members.

References:

Interview with J. Batzandan, Tavan Tolgoi mining company, member of the Public Consul, Anti-Corruption Agency, Sept. 8, 2011, Ulaanbaatar

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 agency starts investigations but is limited in its effectiveness. 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. For example, cases against parliament members took four years. A public perception survey in 2011 shows that corruption in the political sector is very high.

References:

Interview with J. Batzandan, Tavan Tolgoi mining company, member of the Public Consul, Anti-Corruption Agency, Sept. 8, 2011, Ulaanbaatar

Interview with B Khishigsaikhan, researcher, Sept. 6, 2011, Ulaanbaatar

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.

54

4.3. Government Procurement: Transparency, Fairness, and Conflicts of Interest Safeguards

51. Is the public procurement process effective?

63

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 offers for private interest. They must 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:

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.

Comments:

Conflicts of interest regulations are not enforced and are often ignored due to lack of clear enforcement mechanisms and responsible institutions. For example, in 2010, the Open Forum sponsored 34 NGOs in monitoring of government agencies. In Uverkhangai aimag, some of the public obligations were implemented by an NGO on a contractual basis. The local initiative NGO found out that a public procurement officer had cooperated with his own brother, who had established an NGO in his name, and embezzled more than 20 million tugrugs from the Social Security budget using false documentation. The proof of embezzlement was revealed to local people within the monitoring scope.

References:

Procurement and Corruption, O. Munkhbat, 2009. www.forum.mn

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

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:

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

Comments:

Article 8.2 calls for all major procurements (above a threshold defined by the cabinet) to require competitive bidding.

Article 9.2 calls for the nonexclusive bidding on international tenders for procurement over roughly 1 million tugriks, and Article 21.3 calls for public announcements for all tenders over roughly 1 million tugriks (about \$700).

References:

Law on Procurement, Articles 8.2, 9.2 and 21.3

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:

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

Comments:

In the Procurement Law, Articles 54, 55 and 56 provide a formal appeal process for unsuccessful bidders. They can instigate an official review of procurement decisions and can complain to the suppliers, courts and the Office Against Monopoly.

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

Comments:

The Law on Procurement allows unsuccessful bidders to use the courts to appeal a procurement decision.

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, Article 57.3

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

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75

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50

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25

|

0

Comments:

There are no requirements in the law that prohibit companies guilty of major violations of procurement regulations from participating in future procurement bids.

References:

Law on Procurement

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?

63

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 tugriks (about \$800,000), 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 Article 21.4, if the tender is above the threshold price, then results of the procurement will be posted 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:

Procurement and Corruption, O. Munkhbat, 2009. www.forum.mn

Citizens' Oversight of Budgets Network. www.tusuv.mn

Interview with Tserenjav, coordinator, Citizen Watch the Budget Network, Sept. 8, 2011, Ulaanbaatar

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.



Comments:

Accessing procurement regulations requires visiting offices and meeting with the relevant public officials, which involves significant costs.

References:

Procurement and Corruption, O. Munkhbat, 2009. www.forum.mn

Citizens' Oversight of Budgets Network. www.tusuv.mn

Interview with Tserenjav, coordinator, Citizen Watch the Budget Network, Sept. 8, 2011, Ulaanbaatar

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 NGOs. 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 NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.



Comments:

Some procurements are not advertised. The agencies may intentionally choose the closed bidding procedure, which they are not required to announce publicly. The procurement regulations do allow for stepping outside the normal procedures, depending on the source of funding or specific national interests. Foreign donor agencies can impose tender rules that supersede the Mongolian regulations (see Article 3.2), and special areas such as national security interests can be exempted (see Article 3.3). In practice, officials can potentially use these loopholes to close bids.

References:

Procurement and Corruption, O. Munkhbat, 2009. www.forum.mn

Citizens' Oversight of Budgets Network. www.tusuv.mn

Interview with Tserenjav, coordinator, Citizen Watch the Budget Network, Sept. 8, 2011, Ulaanbaatar

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

Comments:

The opening of bids is to occur publicly at a time and place stipulated by the tender announcement as stated in Article 26.1 of the procurement law. The competing bidders themselves, at least, should be present if not members of the media or other interested groups.

References:

Citizens' Oversight of Budgets Network. www.tusuv.mn

Interview with Tserenjav, coordinator, Citizen Watch the Budget Network, Sept. 8, 2011, Ulaanbaatar

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.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

33

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes

|

No

Comments:

All businesses are equally eligible to compete for privatized assets. Privatization by tenders and auction trading can be open or limited. Tender among certain professional legal people and individuals to meet professional, investment and technological requirements to maintain the profile and increase the efficiency of the privatizing property is considered as "limited." Free public participation is "open." An auction open to all interested participants is called a public auction, and an auction within particular legal persons is called a limited auction.

References:

Law on State and Local Property, Articles 38.2, 38.3, 46.3 and 46.4

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

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75

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50

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25

|

0

Comments:

There is no regulation regarding conflicts of interest for government officials involved in privatization.

References:

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

Interview with B Khishigsaikhan, researcher, Sept. 6, 2011, Ulaanbaatar

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 are not mandated by law to be publicly available.

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 published in daily newspapers and on the State Property Committee's website.

References:

Interview with Tserenjav, coordinator, Citizen Watch the Budget Network, Sept. 8, 2011, Ulaanbaatar

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

Comments:

Disclosure of privatization regulations is not required in law.

References:

Interview with Tserenjav, coordinator, Citizen Watch the Budget Network, Sept. 8, 2011, Ulaanbaatar

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

Comments:

Disclosure of privatization regulations is not required in law.

References:

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

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 NGOs. 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 NGOs trying to access this information.

Category 5. Government Oversight and Controls

5.1. ⁶¹National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes | No

Comments:

The Human Rights Commission is an agency whose primary mandate is to investigate the actions of government on behalf of common citizens.

References:

Law on Human Rights Commission. www.legalinfo.mn

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.

56. Is the national ombudsman effective?

41

56a. In law, the ombudsman is protected from political interference.

Yes | No

Comments:

Article 3 states:

The Commission shall be organized and authorized to supervise the implementation of provisions of the Constitution of Mongolia and international treaties on human rights and freedoms.

The Commission shall adhere to the law; be independent; protect human rights, freedoms and legitimate interests; and be guided by principles of justice and transparency.

It is prohibited for any entity, organization, official or individual to influence and intervene in activities of the commission and its members.

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 Human Rights Commission cannot effectively investigate politically sensitive cases. The commission does not concentrate its activities on establishing an effective mechanism for ensuring human rights, protecting and restoring infringed rights or compensating damages suffered. This may be explained by the fact that the Law on the National Human Rights Commission does not provide for its independent activities and does not conform to the Paris Principles. In addition, the human rights commissioner and members are in reality political appointees, without experience or expertise in human rights issues, appointed for political motives. This is one reason why the commission made an irresponsible statement that "human rights were not infringed" during the July 1 to 4 state of emergency, which was used by the judiciary to waive complaints about the use of torture and ill treatment to obtain self-incriminating confessions, causing innocent people be detained and sentenced for criminal offenses.

The chairperson of the commission, J. Byambadorj, was appointed in November 2010 by the parliament. He is a former parliament member and was head of the ruling party committee in parliament. He later worked as chairman of the Constitutional Court.

References:

July 1 and Human Rights Violation in Mongolia, NGO report to Universal Periodic Review. <http://www.upr-mongolia.mn/images/xupd/July1violations.pdf>

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

Interview with B Khishigsaikhan, researcher, Sept. 6, 2011, Ulaanbaatar

NGO reports to Universal Periodic Review. <http://www.upr-mongolia.mn>

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:

The Human Rights Commission is responsible for monitoring human rights abuses and initiating and reviewing policy changes. It reports directly to the parliament. The commission consists of three senior civil servants nominated by the president, Supreme Court and parliament for terms of six years. In its reports, the commission has repeatedly criticized the government for abuses of the power of arrest and detention; poor conditions in detention and prison facilities; lengthy detentions without trial; and failure to implement laws related to human rights. However, at the Dec. 2 hearing, the chairwoman broadly retracted the criticisms of law enforcement, claiming that their conclusions had been incorrect. The chief commissioner, Solongo Davaajav, was appointed in Feb. 6, 2007, for a six-year term but was removed Nov. 11, 2010, by the parliament.

References:

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

Interview with B Khishigsaikhan, researcher, Sept. 6, 2011, Ulaanbaatar

2009 Human Rights Report: Mongolia, Bureau of Democracy, Human Rights and Labor, March 11, 2010. <http://www.state.gov/g/drl/rls/hrrpt/2009/eap/136001.htm#>

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:

The Human Rights Commission has 16 full-time staff members, but no staff in local governments. The limited staff hinders its ability to fulfill its basic mandate.

References:

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

Interview with B Khishigsaikhan, researcher, Sept. 6, 2011, Ulaanbaatar

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

Comments:

Appointments are usually based on professional qualifications. Individuals appointed may have clear party or personal loyalties. The first public committee by the Human Rights Commission was established in 2002 and nominated through an open process. A new chief commissioner was appointed in 2011. The public committee was renewed without informing NGOs.

References:

Interview with S. Ouyntuya, executive director, Voter Education Center, member of Public Council — NHRC (2002 to 20011), Sept. 5, 2011, Ulaanbaatar

Interview with D. Lamjav, former member of parliament, Sept. 6, 2011, Ulaanbaatar

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 never enough to carry out its functions. Thus, the commission largely relies on external funding.

References:

Law on Human Rights Commission, Article 22.2

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

Interview with B Khishigsaikhan, researcher, Sept. 6, 2011, Ulaanbaatar

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

Comments:

The National Human Rights Commission is responsible for monitoring human rights abuses and initiating and reviewing policy changes; it reports directly to the parliament every year. The NHRC makes reports available to the public, but they sometimes are delayed. For example, the last report in on the website of the NHRC is a 2009 report.

References:

Interview with S. Ouyntuya, executive director, Voter Education Center, member of Public Council — NHRC (2002 to 20011), Sept. 5, 2011, Ulaanbaatar

Interview with N. Ariunbold, policy researcher, Open Forum, Sept. 5, 2011, Ulaanbaatar

Website of the National Human Rights Commission. <http://www.mn-nhrc.org/32>

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 National Human Rights Committee has limited staff and effectiveness when investigating; however, it cooperates with other agencies' investigations.

References:

Interview with N. Ariunbold, policy researcher, Open Forum, Sept. 5, 2011, Ulaanbaatar

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

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

Comments:

The National Human Rights Commission does not have the power to penalize offenders.

References:

Interview with N. Ariunbold, policy researcher, Open Forum, Sept. 5, 2011, Ulaanbaatar

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

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:

Other agencies are supposed to act on the ombudsman committee's annual reports. But, unfortunately, politically sensitive issues are prone to being ignored, such as the report for human rights violations related to July 1 cases during state of emergency after the parliamentary election in 2008. No action has been taken on the report.

References:

Interview with N. Ariunbold, policy researcher, Open Forum, Sept. 5, 2011, Ulaanbaatar

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

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 number of complaints from citizens, but the complaints often take a long time to be resolved or dismissed. This is mainly due to a lack of capacity and resources on the part of the institution. There is a page on the website for the commission with results of complaints issued (see: <http://www.mn-nhrc.org/60>). The page for the report of complaints is empty.

References:

National Human Rights Commission of Mongolia. <http://www.mn-nhrc.org/60>

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

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?

50

57a. In law, citizens can access reports of the ombudsman(s).

Yes

|

No

Comments:

Article 20 says:

The Commission shall make reports on human rights and freedoms in Mongolia to the State Great Hural within the first quarter of every year.

The report of the commission shall be published in the state information periodical.

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

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75

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50

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25

|

0

Comments:

Reports are free to all citizens and are available online on the National Human Rights Commission's website. The reports are uploaded with delay; in some cases, they may be available sooner. Currently, the last uploaded report is the report from 2009.

References:

Interview with N. Ariunbold, policy researcher, Open Forum, Sept. 5, 2011, Ulaanbaatar

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

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:

Reports cannot be obtained at little cost, such as by mail or online. Retrieving reports may require a visit to an office in the national capital.

References:

Interview with N. Ariunbold, policy researcher, Open Forum, Sept. 5, 2011, Ulaanbaatar

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

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 NGOs. 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 NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes | **No**

Comments:

The National Audit Office is an agency whose primary mandate is to audit and track the movement of money through the government. This agency is specifically charged to investigate and document the misuse of funds.

References:

National Audit Office

Law on Audit, Article 23-30

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.

59. Is the supreme audit institution effective?

78

59a. In law, the supreme audit institution is protected from political interference.

Yes | **No**

Comments:

In the Law on Audit, Article 5.2, the National Audit Office has formal organizational independence from the government.

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

Comments:

The director and deputy directors of the National Audit Office serve for six years and can be renominated. They cannot be removed without significant justification through a formal process, such as impeachment for abuse of power.

References:

National Audit Office. www.mnao.mn

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

Comments:

The Mongolian National Audit Office has a total of 50 employees, 18 of whom work in the Performance Audit Department. Management and staff members of the Performance Audit Department all have a background in auditing, accounting, economics or finance; none of them has a social science background. The three team leaders are CPAs. The competence of the present management and staff is largely in the fields of accounting and financial auditing and not performance auditing.

References:

Annual Performance Report, Mongolian National Audit Office,
2011. http://202.70.41.150/welcome_mnao/welcome_mnao/inter/mn/reports/

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:

There is no case available within the period of this report.

References:

Interview with D. Tserenjav, journalist, Sept. 8, 2011, Ulaanbaatar

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

Comments:

The National Audit Office has a predictable source of state funding.

References:

Annual Performance Report, Mongolian National Audit Office,
2011. http://202.70.41.150/welcome_mnao/welcome_mnao/inter/mn/reports/

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 Mongolian National Audit Office makes all performance audit reports available on the Internet. Sometimes, they are delayed.

References:

National Audit Office. http://202.70.41.150/welcome_mnao/welcome_mnao/inter/mn/reports/

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

Comments:

An Annual Performance Report by the Mongolian National Audit Office is submitted to the parliament. The agency communicates with parliament about its annual plan.

References:

Peer Review Report: On the Institutional Setup and Practice with Regard to Performance Auditing of the Mongolian National Audit Office, 2010. http://202.70.41.150/welcome_mnao/welcome_mnao/inter/mn/dwnloads/2011/PeerReviewENG_final.pdf/

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

Comments:

The National Audit Office can generally decide what to investigate and when, but it is subject to pressure from the executive branch or legislature on politically sensitive issues. Pursuant to the law (Law of Mongolia on State Audit 2003, Article 22), the National Audit Office must give due consideration to suggestions made by the State Great Hural and its standing committees when developing long-term and annual plans.

References:

Peer Review Report: On the Institutional Setup and Practice with Regard to Performance Auditing of the Mongolian National Audit Office. http://202.70.41.150/welcome_mnao/welcome_mnao/inter/mn/downloads/2011/PeerReviewENG_final.pdf/

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?

83

60a. In law, citizens can access reports of the audit agency.

Yes | No

Comments:

Pursuant to the law (Law of Mongolia on State Audit 2003, Article 18), the National Audit Agency must publish reports on any performance audit.

Article 18 of the law discusses publishing and says the Professional Council shall publish the information on newly registered and removed CAs and auditors in designated public newspapers.

References:

Law of Mongolia on State Audit 2003, Article 18. <http://www.nvcmongolia.com/nvce/download/Auditing.pdf>

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:

There is no focused press strategy aimed at capturing the interest of the general public when a performance audit report is finished, and the National Audit Office has limited direct contact with journalists to encourage press coverage of performance audit reports. A press release is produced each time an audit report is discussed at the governing board. Quarterly announcements are not published in the mass media at present due to budget constraints. In addition, the printed copies of the performance audit reports are not freely available to the general public.

References:

Peer Review Report: On the Institutional Setup and Practice with Regard to Performance Auditing of the Mongolian National Audit Office, 2010. http://202.70.41.150/welcome_mnao/welcome_mnao/inter/mn/dwnloads/2011/PeerReviewENG_final.pdf/

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:

Reports are free to all citizens and available online on the Mongolian National Audit Office website.

References:

Mongolian National Audit Office website, www.mnao.mn

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 NGOs. 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 NGOs trying to access this information.

⁸⁷

5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes

|

No

Comments:

The General Taxation Office is a national agency formally mandated to collect taxes.

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.

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

Comments:

The tax office has staff at the local and national level that is sufficient to fulfill its basic mandate.

References:

Tax Collection Mechanism Policy Study, 2007, G. Altanzaya. http://forum.mn/index.php?sel=resource&f=resone&obj_id=611&menu_id=3&resmenu_id=2

Website of National Taxation Authority. <http://www.mta.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

Comments:

The National Taxation Authority has a predictable source of funding from the state budget and donors.

References:

Tax Collection Mechanism Policy Study, 2007, G. Altanzaya. http://forum.mn/index.php?sel=resource&f=resone&obj_id=611&menu_id=3&resmenu_id=2

Website of National Taxation Authority. <http://www.mta.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.

63. In practice, are tax laws enforced uniformly and without discrimination?

25

63a. In practice, are tax laws enforced uniformly and without discrimination?

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

Comments:

Tax laws are generally enforced consistently in terms of collecting individual income tax, as the collection duty is put on the paying agency to deduct and transfer tax from every payment made to individuals that is defined as "income." Some degree of arbitrariness is exercised in interpreting "income."

In terms of corporate taxes, there is much more freedom in how the tax law is applied, including tax pardons for large corporations being passed by parliament (over 60 percent of which consists of corporate VIPs). On Feb. 6, 2008, a tax pardon law was passed by SGH, which set a precedent that is expected to be repeated soon.

References:

Tax Collection Mechanism Policy Study, 2007, G. Altanzaya. http://forum.mn/index.php?sel=resource&f=resone&obj_id=611&menu_id=3&resmenu_id=2

Interview with D. Sukhgerel, executive director, OT Watch, NGO, Sept. 12, 2011, Ulaanbaatar

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

64a. In law, is there a national customs and excise agency?

Yes

| No

Comments:

The Customs General Office is an agency formally mandated to collect excises and inspect customs. The Law on Customs defines a code of conduct, structure, mandate, mayoral duties, powers and management of the Customs General Office.

References:

Law on Customs, Article 265-268. <http://www.legalinfo.mn/insys/lawmain.php?vlawid=35995>

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.

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

Comments:

The customs agency has a professional, full-time staff sufficient to fulfill its basic mandate.

References:

Monitoring of Performance of Customs Agency, Zorig Foundation, 2006

Website of National Taxation Authority. <http://www.mta.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.

65b. In practice, the customs and excise agency receives regular funding.

**Comments:**

The customs office receives regular state funding.

References:

Customs Office website. <http://www.ecustoms.mn/>

Budget Law on 2011. www.legalinfo.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.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

0

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

**Comments:**

The customs law is unequally applied. Some companies or citizens with close connections with customs officers can evade custom taxes, and these violations are often ignored by customs authorities.

The 2011 Corruption Index of Mongolia by the Independent Agency Against Corruption shows that the corruption percentage has increased by 4 percent compared with data from a 2009 survey of experts. The "Experts' Perception Survey" involved 350 experts representing all sectors.

The data indicates that assets equaling to 11.1 percent of the average cost of agreements or transactions related to government programs and projects, procurement of goods and services with national and local public funds, debt solution and civil litigation and tax deductions and exemptions are spent as bribes, according to the surveyed experts.

References:

Competitiveness Report 2010-2011. http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2010-11.pdf

Corruption Index by Sant Maral Foundation, 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.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes

|

No

Comments:

According to the Law on State and Local property, the State Property Committee is mandated to oversee the conduct and performance of state-owned companies on behalf of the state.

Articles 10 and 11 state:

The State Property Committee is an organization within the main government structure whose duties are to own, use and protect the state property.

The State Property Committee shall have the following powers:

Appoint state property representatives to legal people with state property to supervise its activity;

Supervise and confirm proposals of legal people with state property to cut from the balance their immovable property and movable property related to basic capital; supervise and confirm orders; and make decisions on purchasing new items.

References:

State Property Committee. <http://www.spc.gov.mn>

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.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

50

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 Committee is part of the government. The prime minister appoints the head of the committee and its members. The committee consists of eight nonpermanent 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

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 seven nonpermanent members.

References:

State Property Committee. http://www.spc.gov.mn/index.php?option=com_content&view=article&id=1&Itemid=5 <=mn

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

Comments:

The State Property Committee works under the supervision of the prime minister. The committee has a source of state funding approved by the parliament. The budget law does not describe the exact amount of funding that the committee should receive.

References:

Annual State Budget Law 2010. www.legalinfo.mn

State Property Committee website. http://www.spc.gov.mn/images/stories/statistik_medee/2009-onii_hagas_jiliin_tailan.pdf

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 Audit 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 Audit Office.
National Audit Office website, www.mnao.pmis.gov.mn

Peer Review Report: On the Institutional Setup and Practice with Regard to Performance Auditing of the Mongolian National Audit Office. http://202.70.41.150/welcome_mnao/welcome_mnao/inter/mn/dwnloads/2011/PeerReviewENG_final.pdf/

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 Audit Office, monitors financing and imposes penalties on offenders. However, there have been no cases investigated or penalties imposed for the project period.

References:

National Audit Office, Audit Reports. http://202.70.41.150/welcome_mnao/welcome_mnao/inter/mn/reports/auditreport.html

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

Comments:

No such rules exist for this project period. The freedom of information law was passed only recently — in June 2011.

References:

No such rules exist. www.legalinfo.mn

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 previously were not obligated to make public their financial data. Therefore, in practice, information was not publicly available and was hard to obtain. On June 16, 2011, the Freedom of Information and Access to Information Law was passed by the parliament. According to this law, state-owned enterprises are obligated to make public their financial data. There is no existing research or published report on enforcement of this law.

References:

Mongolian Legal Unified Information System. www.legalinfo.mn

Interview with Tserenjav, coordinator, Citizen Watch Budget Coalition, Sept. 8, 2011, Ulaanbaatar

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 Audit Office, and this auditing should be performed regularly. However, the auditing might not fully meet international standards.

References:

Law on State Auditing

Peer Review Report: On the Institutional Setup and Practice with regard to Performance Auditing of the Mongolian National Audit Office. http://202.70.41.150/welcome_mnao/welcome_mnao/inter/mn/downloads/2011/PeerReviewENG_final.pdf/

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

Comments:

State-owned enterprises previously were not obligated to make public their financial data. Therefore, in practice, information was not publicly available and was hard to obtain. On June 16, 2011, the Freedom of Information and Access to Information Law was passed by the parliament. According to this law, state-owned enterprises are obligated to make public their financial data within a reasonable time period. There is no existing research or published report on enforcement of this law.

References:

June 16, 2011, Freedom of Information and Access to Information Law passed by the parliament

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

Comments:

State-owned enterprises previously were not obligated to make public their financial data. Therefore, in practice, information was not publicly available and was hard to obtain. On June 16, 2011, the Freedom of Information and Access to Information Law was passed by the parliament. According to this law, state-owned enterprises are obligated to make public their financial data within a reasonable time period. There is no existing research or published report on enforcement of this law.

References:

June 16, 2011, Freedom of Information and Access to Information Law passed by the parliament

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 NGOs. 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 NGOs trying to access this information.

55 5.5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

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 has different requirements, and, depending on the requirement, anyone can apply for them.

References:

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 are 13 laws regulating business licensing. Generally, business licenses involved in disputes shall be resolved by a higher level government agency. If the parties to the dispute disagree with the decision of the government agency, they may file a complaint with the courts. A general complaint mechanism exists within the administrative law procedure.

References:

Law on Special Business Licenses, Article 17.1

Mining Law: Resolution of Disputes Arising in Connection with Licenses, Articles 62 to 65

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.

Comments:

The time required to deal with construction permits is 215 days, according to "Doing Business 2011: Making a Difference for Entrepreneurs," by the World Bank.

References:

Doing Business 2011: Making a Difference for Entrepreneurs, World Bank

Summary of Freedom of Economy in Mongolia, 2010, Mongolian Economic University, Open Society Forum. http://forum.mn/res_mat/2011/Forum_economic_freedom_2010.pdf

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.

Comments:

Much of the cost associated with licenses is the cost of time. Agencies do not generally provide uniform or consistent information about requirements for licenses. The process and procedures are fairly consistent, but first-time applicants have a hard time discovering what the application process is and may find officials who provide incomplete information unhelpful. Therefore, several attempts are required before an application is completed.

References:

Doing Business 2011: Making a Difference for Entrepreneurs, World Bank

Summary of Freedom of Economy in Mongolia, 2010, Mongolian Economic University, Open Society Forum. http://forum.mn/res_mat/2011/Forum_economic_freedom_2010.pdf

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 and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

All government inspection arms were handed down annual penalty collection plans, which fed into the central budget, but 20 percent was retained by the collecting agency. This requirement was the key engine for government inspection not being interested in enforcing compliance.

The Law on Standards Agency required that it partially self-finance from the income made on selling standards and standards-setting activity. This requirement encouraged the agency to issue ever-changing standards which were sold to businesses at high cost. SME and micro-businesses thus were discouraged from purchasing standards bulletins and attempting to comply with standards. This may soon change.

Thus, in all cases, there is no established culture of good governance and integrity within government structures and law enforcement.

References:

Doing Business 2011: Making a Difference for Entrepreneurs, World Bank

Summary of Freedom of Economy in Mongolia, 2010, Mongolian Economic University, Open Society Forum. http://forum.mn/res_mat/2011/Forum_economic_freedom_2010.pdf

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

Comments:

All government inspection arms were handed down annual penalty collection plans, which fed into the central budget, but 20 percent was retained by the collecting agency. This requirement was the key engine for government inspection not being interested in enforcing compliance.

The Law on Standards Agency required that it partially self-finance from the income made on selling standards and standards-setting activity. This requirement encouraged the agency to issue ever-changing standards, which were sold to businesses at high cost. SME and micro-businesses thus were discouraged from purchasing standards bulletins and attempting to comply with standards. This may soon change.

Thus, in all cases, there is no established culture of good governance and integrity within government structures and law enforcement.

References:

Doing Business 2011: Making a Difference for Entrepreneurs, World Bank

Summary of Freedom of Economy in Mongolia, 2010, Mongolian Economic University, Open Society Forum. http://forum.mn/res_mat/2011/Forum_economic_freedom_2010.pdf

Interview with Sh. Byambaa, executive director, Local Initiative, NGO, Sept. 12, 2011, Ulaanbaatar

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

Comments:

All government inspection arms were handed down annual penalty collection plans, which fed into the central budget. Twenty percent was retained by the collecting agency. This requirement was the key engine for government inspection not being interested in enforcing compliance.

The Law on Standards Agency required that it partially self-finance from the income made on selling standards and standards-setting activity. This requirement encouraged the agency to issue ever-changing standards, which were sold to businesses at a high cost. SME and micro-businesses thus were discouraged from purchasing standards bulletins and attempting to comply with standards, though this may soon change. There is no established culture of good governance and integrity within government structures and law enforcement.

References:

Doing Business 2011: Making a Difference for Entrepreneurs, World Bank

Summary of Freedom of Economy in Mongolia, 2010, Mongolian Economic University, Open Society Forum. http://forum.mn/res_mat/2011/Forum_economic_freedom_2010.pdf

Interview with Sh. Byambaa, executive director, Local Initiative, NGO, Sept. 12, 2011, Ulaanbaatar

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 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

6.1. ⁷⁰Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

Yes | No

Comments:

Article 3 of the Anti-Corruption Law defines corruption and abuse of official power. Article 32 of the Criminal Code describes attempted crime. Article 149 of the Criminal Code describes extortion.

References:

Anti-Corruption Law, Article 3

Criminal Code, Article 32

Criminal Code, Article 149

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 the Criminal Code prohibits extortion.

According to the article, the demand to transfer property or the right of ownership or to perform any actions related to property under the threat of violence to the victim or his or her close relations, the spreading of slanderous or libelous information about the victim or his or her close relatives, or the damaging or destruction of his or her private property or the property in his or her custody shall be punishable by a fine equal to 251 to 300 times the amount of the minimum salary, incarceration for a term of more than three to six months or imprisonment for a term of up to three 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**

Comments:

Article 269 of the Criminal Code says that offering a bribe is illegal. According to the article, giving a bribe to an official in person or through an intermediary shall be punishable by a fine equal to 51 to 250 times the minimum salary or imprisonment for a term of up to three years. The same crime committed repeatedly by a person who previously was sentenced for this crime, an organized group or a criminal organization shall be punishable by imprisonment for a term of more than five to eight years.

Note: A person who voluntarily confesses to a competent authority the giving of a bribe shall be released from criminal liability.

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**

Comments:

Article 268 of the Criminal Code says that receiving a bribe is illegal. According to the article, receiving a bribe by an official exclusively in view of his or her official post for a support or connivance in office, a favorable solution of issues within his or her competence or a performance or failure to perform in the interests of the person giving the bribe of any action which this person should have or could have performed using his or her official post shall be punishable by a fine equal to 51 to 250 times the minimum salary or imprisonment for a term of up to five years with deprivation of the right to hold specified positions or engage in specified business for a term of up to three years.

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

Comments:

It is illegal to bribe officials without definition of whether this applies to domestic or foreign officials. Presumably, this means bribery in general is potentially considered an offense.

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

Comments:

Article 263, 264 and 265 of the Criminal Code say that using public resources for private gain is illegal. According to Article 263, abuse of power or office by a state official, if it has been committed for lucrative or other personal interests and has caused a substantial damage to rights and interests of the citizens, shall be punishable by a fine equal to five to 50 times the minimum salary, with deprivation of the right to hold specified positions or engage in specified business for a term of up to three years or by incarceration for a term of one to three months. The same crime, committed repeatedly or leading to damage in a large amount, shall be punishable by a fine equal to 51 to 100 times the minimum salary or imprisonment for a term of up to five years, with deprivation of the right to hold specified positions or engage in specified business for a term of up to five years.

Note: State officials referred to in this chapter include political, special, administrative and technical service civil servants.

According to Article 264, obvious excess by an official related to the limits of the rights and powers afforded to him or her by law, if it has caused substantial damage to the rights and interests of a business entity, organization or citizens, shall be punishable by a fine equal to five to 50 times the minimum salary, with deprivation of the right to hold specified positions or engage in specified business for a term of up to three years or incarceration for a term of one to three months. The same crime committed repeatedly by use of violence or threat, or if it has caused damage in a large or an extremely large amount, shall be punishable by a fine equal to 51 to 100 times the minimum salary, incarceration for a term of more than three to six months or imprisonment for a term of up to five years, with deprivation of the right to hold specified positions or engage in specified business for a term of up to five years.

According to Article 265, abuse of power or office afforded to an individual by legislation or charter by an official of an NGO or a business entity with the view of establishing priority to himself or herself or others, if committed for lucrative or other personal interests and causing substantial damage to the rights and interests of the citizens, shall be punishable by a fine equal to 301 to 400 times the minimum salary or incarceration for a term of three to six months. The same crime committed repeatedly by use of violence or threat and causing damage in a large amount shall be punishable by imprisonment for a term of two to five years with or without deprivation of the right to hold specified positions or engage in specified business for a term of up to three years.

References:

Criminal Code, Articles 263, 264 and 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

Comments:

This appears covered under the Abuse of Power clause in Article 263 of the Criminal Code. Whether, in practice, the use of confidential information for personal gain is recognized as an abuse of power is another question.

References:

Criminal Code, Article 263, 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

Comments:

In criminal law, money laundering is illegal.

Article 163 states what is considered illegally gained property and money (money laundering).

It says that knowingly releasing into circulation the illegally gained property and money by way of entering into transactions shall be punishable by a fine equal to 20 to 50 times the minimum salary or by incarceration for a term of one to three months.

The above crime, whether committed repeatedly in a group using one's office or resulting in a large income, shall be punishable by imprisonment for a term of up to three years, with confiscation of property.

References:

Criminal Code, Article 163

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**

Comments:

This is covered indirectly in other parts of the Criminal Code.

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.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes | **No**

Comments:

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 to detect corruption; and reviewing and inspecting assets and income declarations. The Mongolian president nominates and parliament appoints the chair and deputy chair of the agency.

References:

Law on Anti-Corruption, Article 15

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.

75. Is the anti-corruption agency effective?

67

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes

|

No

Comments:

The Anti-Corruption Agency is legally protected from political interference. Article 28 says:

Political parties, coalitions, movements or clerical organizations are prohibited from conducting political, religious or other activities within the premises of the Anti-Corruption Agency office.

In exercising freedom of expression, speech, publication and the right to worship, an officer of the Anti-Corruption Agency shall respect his or her own official duties.

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

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0

Comments:

The Independent Anti-Corruption Commission faces numerous structural and procedural challenges. The commission is only authorized to investigate two out of eight categories of corruption. The commission also has been without key leadership for most of 2011 following the arrest and imprisonment of its inaugural chairman and his deputy on allegations of illegal wiretapping and misuses of power.

References:

Interview with P. Erdenejargal, executive director, Open Society Forum, member of the Public Consul, Anti-Corruption Agency, Sept. 7, 2011, Ulaanbaatar

Interview with J. Batzandan, Tavan Tolgoi mining company, member of the Public Consul, Anti-Corruption Agency, Sept. 8, 2011, Ulaanbaatar

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

Comments:

The Independent Anti-Corruption Commission faces numerous structural and procedural challenges. The commission also has been without key leadership for most of 2011 following the arrest and imprisonment of its inaugural chairman and his deputy on allegations of illegal wiretapping and misuses of power.

References:

Chiefs of the Anti-Corruption Authority Being Investigated. <http://english.news.mn/mail/content/38827.shtml>

Anti-Corruption Officials Allowed Leave to Appeal to Supreme Court. <http://english.news.mn/print/content/70275.shtml>

ACA Officials to Enter Prison Proper on June 15. <http://english.news.mn/print/content/70706.shtml>

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.

**Comments:**

There is no clear professional criteria or transparent recruitment mechanism for new employees.

References:

Interview with J. Batzandan, Tavan Tolgoi mining company, member of the Public Consul, Anti-Corruption Agency, Sept. 8, 2011, Ulaanbaatar

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.

**Comments:**

The Anti-Corruption Agency has sufficient staff to carry out its main function in the capital. The agency has limited staff in local governments.

References:

Interview with J. Batzandan, Tavan Tolgoi mining company, member of the Public Consul, Anti-Corruption Agency, Sept. 8, 2011, Ulaanbaatar

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.



Comments:

The Anti-Corruption Agency has a predictable source of state funding. The agency got state funding of 3,063.4 million tugriks in 2009 and 3,013.5 million tugriks in 2010. Political considerations are not a major factor in determining agency funding.

References:

Interview with P. Erdenejargal, executive director, Open Society Forum, member of the Public Consul, Anti-Corruption Agency, Sept. 7, 2011, Ulaanbaatar

Interview with J. Batzandan, Tavan Tolgoi mining company, member of the Public Consul, Anti-Corruption Agency, Sept. 8, 2011, Ulaanbaatar

Budget Law of 2009. <http://www.legalinfo.mn/insys/lawmain.php?vlawid=41375>

Budget Law of 2010. <http://www.legalinfo.mninsyslawmain.php?vlawid=53135>

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.



Comments:

The Anti-Corruption Agency regularly publishes asset and income declarations as required by law. However, the agency does not provide reports about its operations to the public. The agency's main information channel is its website, which contains some case statistics and a summary of its activities. Otherwise, it does not report proactively through different means of communication.

References:

Interview with J. Batzandan, Tavan Tolgoi mining company, member of the Public Consul, Anti-Corruption Agency, Sept. 8, 2011, Ulaanbaatar

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

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

Comments:

The Anti-Corruption Agency has the power to gather information and can question suspects, order arrests and bring suspects to trial.

References:

Interview with J. Batzandan, Tavan Tolgoi mining company, member of the Public Consul, Anti-Corruption Agency, Sept. 8, 2011, Ulaanbaatar

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

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:

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

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?

0

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Complaints and simple issues take three months to resolve, according to the law on complaints. However, there is no information or monitoring of the agency's actions on complaints. Information is closed, even to Public Council members, by the Anti-Corruption Agency.

References:

Interview with J. Batzandan, Tavan Tolgoi mining company, member of the Public Consul, Anti-Corruption Agency, Sept. 8, 2011, Ulaanbaatar

Interview with M. Natsagbadam, board member, Women for Social Progress, NGO, Sept. 10, 2011, Ulaanbaatar

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 recrimination.

100 | 75 | 50 | 25 | 0

Comments:

Since there is no whistle-blower protection, there is often a high risk or negative consequences for whistle-blowers. No concrete example is available.

References:

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

Interview with J. Batzandan, Tavan Tolgoi mining company, member of the Public Consul, Anti-Corruption Agency, Sept. 8, 2011, Ulaanbaatar

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.

56 6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

50

77a. In law, there is a general right of appeal.

Yes | No

Comments:

Article 16.14 of the Mongolian Constitution provides that the citizens of Mongolia have the right to appeal to the courts to protect

their rights if they believe their rights or freedoms, as enshrined in Mongolian law or an international treaty, have been violated. Their other rights include: being compensated for damage illegally caused by others; not having to testify against themselves, their family, parents and children; self-defense; receiving legal assistance; having evidence examined; getting a fair trial; being tried in their presence; appealing against a court decision; and seeking a pardon. Compelling individuals to testify against themselves shall be prohibited. Every person shall be presumed innocent until proven guilty by a court by due process of law. The penalties imposed on the convicted shall not be applicable to their family members and relatives.

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

Comments:

Some appeals may go unacknowledged for months or years, and simple cases may never be resolved. For example, cases against 2008 election fraud took months to be resolved or never were resolved.

References:

Interview with N. Ariunbold, policy researcher on "Electoral Justice in Mongolia," Open Forum, Sept. 6, 2011, Ulaanbaatar

Strengthening of Judicial Independence, policy research, N. Lundendorj, Ch. Unerbayar and M. Batsuuri, 2010. www.forum.mn

Interview with Erkhembayar, 2008 candidate from Democratic Party, and Jargalsaikhan, candidate from Republican Party, Sept. 12, 2011, Ulaanbaatar

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.

Comments:

Attorney fees present somewhat of a barrier to pursuing an appeal. An appeals fee to the court used to be 250 tugriks (around 20 cents); in 2011, it rose to 70,200 tugriks (around \$50), which is not an affordable option for middle- and poor-class citizens. The average monthly income for middle-class citizens is around \$300.

References:

Rotten to Core? Judicial Reform Assessment, Brant T. White, 2008. www.forum.mn

Interview with N. Ariunbold, policy researcher, Open Forum, Sept. 6, 2011, Ulaanbaatar

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

78a. In practice, do judgments in the criminal system follow written law?

Comments:

The judiciary is independent, but corruption among judges persists. For example, the Corruption Expert Survey says that bribery and corruption in the criminal judicial process are common elements affecting decisions, especially at higher levels of court.

References:

Mongolia – NGO Forum Joint Submission on Human Rights Status to OHCHR for UPR on November 23, 2010

Strengthening of Judicial Independence, policy research, N. Lundendorj, Ch. Unerbayar and M. Batsuuri, 2010. www.forum.mn

Corruption Perception Index Survey in Political and Law Enforcement Sector 2010, Independent Agency Against Corruption. http://www.iaac.mn/pdf/ssha/Uls_tur_2010.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

79a. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

The application and enforcement of law by the state is not uniform, but it is fairly consistent.

References:

Strengthening of Judicial Independence, policy research, N. Lundendorj, Ch. Unerbayar and M. Batsuuri, 2010. www.forum.mn

Interview with N. Ariunbold, policy researcher, Open Forum, Sept. 6, 2011, Ulaanbaatar

Corruption Perception Index Survey in Political and Law Enforcement Sector 2010, Independent Agency Against Corruption. http://www.iaac.mn/pdf/ssha/Uls_tur_2010.pdf

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?

63

80a. In law, the independence of the judiciary is guaranteed.

Yes

| No

Comments:

The Law on Courts establishes that the judiciary is independent from political interference by the executive and legislative branches. Specifically:

A judge shall exercise judicial power independently and shall be subject only to the constitution and other laws adopted in compliance with it.

The independence of judges is guaranteed by the constitution, the Law on Courts and other laws.

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

Comments:

The General Council of Courts nominates candidates for vacancies on the courts; the president has the power to approve or refuse such nominations. The council also is charged with protecting the rights of judges and providing for the independence of the judiciary. The law provides for an independent judiciary, and the government generally respects this provision in practice.

References:

Judicial Reform, Open Forum, J. Amarsanaa, B. Chimed, P. Muhiit and L. Tur-od, 2010. www.forum.mn

Strengthening of Judicial Independency, policy research, N. Lundendorj, Ch. Unerbayar and M. Batsuuri, 2010. www.forum.mn

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

Comments:

The case assignment system is nontransparent to the public. In general, judges at every level of court control the case assignment.

References:

Law on Court, Articles 36.1.6, 37.1.8, 371.1.2, 38.1.4 and 39.1.4

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

Comments:

The Law on Courts has specific, formal rules for removal of a justice.

It prohibits the dismissal, removal or transfer of a judge to another job or post without his consent except in cases provided for by law.

It also prohibits demanding a judge to conduct activities or duties that are irrelevant to his duties assigned by law.

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?

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**

Comments:

There have been no incidents of judges being killed because of adjudicating corruption cases during the study period.

References:

Interview with Tserenjav, journalist, Sept. 9, 2011, Ulaanbaatar

Interview with Kh. Naranjargal, Globe International Mongolia, NGO, Sept. 10, 2011

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?

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

**Comments:**

There is no case of judicial decisions being affected by racial or ethnic bias for the project period.

References:

Court Monitoring Report, Open Forum, 2010. www.forum.mn

Interview with Tserenjav, journalist, Sept. 9, 2011, Ulaanbaatar

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.

**Comments:**

In Mongolia, women enjoy equal status in the eyes of the courts; they are not treated differently because of their gender, and there is no bias or discrimination primarily based on gender difference.

References:

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

Interview with B. Khishigsaikhan, lawyer and researcher, Sept. 6, 2011, Ulaanbaatar

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

Comments:

Article 9.4 of the Law on Courts states that an incapable defendant's legal costs shall be financed from the state budget. Procedures for financing such costs and accounting shall be adopted by the government member in charge of legal issues.

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

Comments:

Three law schools did monitoring on nine court sessions for the period of April 5, 2010, to June 25, 2010. Findings show that state-provided legal aid is unavailable to most impoverished defendants. State legal aid defenders are consistently incompetent or unwilling and not well-prepared to represent all defendants fairly.

References:

Report of the Monitoring of Courts Sessions, Open Forum, 2010. www.forum.mn

Judicial Reform in Mongolia Last 20 years, Open Forum, J. Amarsanaa, B. Chimed, P. Muhiit and L. Tur-od, 2010. www.forum.mn

UPR NGO Report, 1st of July Case and Human Rights. www.forum.mn

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 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:

Access to Legal Information, Its Dissemination and Legal Assistance Survey, United Nations Development Programme (UNDP), 2005

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

Interview with N. Ariunbold, policy researcher, Open Forum, Sept. 5, 2011, Ulaanbaatar

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

Comments:

Attorney fees are high enough to discourage most small businesses from bringing a case.

References:

Judiciary Reform, Open Forum, J. Amarsanaa, B. Chimed, P. Muhiit and L. Tur-od, 2010. www.forum.mn

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

Comments:

The courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to its location. Courts are located in the capital and province centers. Air tickets to reach higher level courts in the capital cost more than the monthly income of ordinary citizens.

References:

Interview with participants, Judicial Reform Forum, April 15, 2011, Ulaanbaatar

Interview with N. Ariunbold, policy researcher, Open Forum, Sept. 6, 2011, Ulaanbaatar

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.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100		75		50		25		0
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Comments:

Appointments are usually based on professional qualifications.

References:

Strengthening of Judicial Independence, policy research, N. Lundendorj, Ch. Unerbayar and M. Batsuuri, 2010. www.forum.mn

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
-----	--	----	--	----	--	----	--	---

Comments:

The law enforcement agency has a limited budget, generally considered somewhat insufficient to fulfill its basic mandate. The budget is not permanently tied to a percentage of the national budget to protect against the misuse of the budgetary process to control the agency.

References:

General Intelligence Agency

Interview with Bayartsetseg, legal assistant to the president, Sept. 6, 2011, Ulaanbaatar

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:

Security forces are under the jurisdiction of the Ministry of Defense, Ministry of Justice and Home Affairs and General Intelligence Agency. The Ministry of Defense oversees national defense and assists in providing domestic emergency assistance and disaster relief in support of internal security forces. The national police and the border force operate under the Ministry of Justice and Home Affairs. The General Intelligence Agency is responsible for both internal security and foreign intelligence collection and operations. The General Intelligence Agency's civilian head reports directly to the prime minister. The State Prosecutor General's Office supervises undercover activities of the police and intelligence agencies.

Corruption in law enforcement agencies has been endemic. The government's Independent Agency Against Corruption investigated some police officers but did not make public the results of the investigation.

References:

Strengthening of Judicial Independence, policy research, N. Lundendorj, Ch. Unerbayar and M. Batsuuri, 2010. www.forum.mn

2009 Human Rights Report Mongolia, Bureau of Democracy, Human Rights and Labor, March 2010. <http://www.state.gov/g/drl/rls/hrrpt/2009/eap/136001.htm>

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**

Comments:

The government's Independent Agency Against Corruption has the power to investigate police officers. The State Prosecutor General's Office supervises undercover activities of the police and intelligence agencies. The Special Investigation Unit investigates allegations of misconduct by law enforcement personnel, prosecutors and members of the judiciary.

References:

Law on Police

Anti-Corruption Law

Law on Prosecutors

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

Comments:

Some serious abuses are not investigated with any urgency. For example, the July 1 human rights violations after the 2008 election have still not been solved.

References:

Strengthening of Judicial Independence, policy research, N. Lundendorj, Ch. Unerbayar and M. Batsuuri, 2010. www.forum.mn

Interview with N. Ariunbold, researcher, Sept. 6, 2011, Ulaanbaatar

July 1 and Human Rights Violation in Mongolia, NGO report to Universal Periodic Review. <http://www.upr-mongolia.mn/images/xupl/July1violations.pdf>

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

Comments:

The internal department of the General Prosecutors Office takes corruption cases related to law enforcement officials such police, prosecutors, intelligence agencies and judges.

References:

Law on Prosecution, Article 10.1

Criminal Procedure Law, Articles 26.1 and 27.2

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.

References:

Strengthening of Judicial Independence, policy research, N. Lundendorj, Ch. Unerbayar and M. Batsuuri, 2010. www.forum.mn

Interview with J. Batzandan, Tavan Tolgoi mining company, member of the Public Consul, Anti-Corruption Agency, Sept. 8, 2011, Ulaanbaatar

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

Comments:

The Investigative Department of the General Prosecutors Office takes corruption cases related to law enforcement officials such as police, prosecutors, intelligence agencies and judges.

References:

Law on Police, Article 51.2

Law on Prosecution, Article 10.1

Criminal Procedure Law, Articles 26.1 and 27.2

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

Comments:

The Investigative Department of the General Prosecutors Office has a mandate to take corruption cases related to law enforcement officials. The office can take cases only in response to relevant complaints from citizens. The Corruption Perception Survey by IAAC shows that is a widespread view among the public and experts that the office is ineffective in dealing with cases because it is part of the system.

References:

Interview with N. Ariunbold, researcher, Sept. 5, 2011, Ulaanbaatar

Interview with S. Ouyntuya, executive director, Voter Education Center, Sept. 5, 2011, Ulaanbaatar

Corruption Perception Index Survey in Political and Law Enforcement Sector 2010, Independent Agency Against Corruption. http://www.iaac.mn/pdf/ssha/UIs_tur_2010.pdf

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.
