

Fighting Corruption in Eastern Europe and Central Asia

Anti-corruption reforms in Mongolia

4th round of monitoring of the Istanbul Anti-Corruption Action Plan

Anti-Corruption Reforms in MONGOLIA

**Fourth Round of Monitoring of the Istanbul Anti-
Corruption Action Plan**



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About the Istanbul Anti-Corruption Action Plan

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ACRONYMS

ACL	Anti-Corruption Law
AML	Anti-Money Laundering
ACN	Anti-Corruption Network for Eastern Europe and Central Asia
CoE	Council of Europe
COI	Conflict of Interest
CPI	Corruption Perception Index
CSC	Civil Service Council of Mongolia
CSL	Civil Service Law of Mongolia
EBRD	European Bank of Reconstruction and Development
EITI	Extractive Industries Transparency Initiative
EU	European Union
FOI	Freedom of information
GCB	Global Corruption Barometer of Transparency International
HRMIS	Human Resources Management Information System
HRM	Human Resources Management
IAAC	Independent Authority Against Corruption
IAP	Istanbul Anti-Corruption Action Plan
IMF	International Monetary Fund
JGC	Judicial General Council
MOJ	Ministry of Justice of Mongolia
MoU	Memorandum of understanding
MNT	Mongolian Tugrik
MNCCI	Mongolian National Chamber of Commerce and Industry
MP	Member of Parliament
NGO	Non-governmental organisation
OGP	Open Government Partnership
OSCE	Organisation for Security and Co-operation in Europe
OECD	Organisation for Economic Co-operation and Development
PPL	Public Procurement Law of Mongolia
RTI	Global Right to Information Rating
SOE	State-owned enterprise
SME	Small and medium-sized enterprise
SPEAK	Survey on Perceptions and Knowledge of Corruption in Mongolia by Asia Foundation
State Great Khural	Parliament of Mongolia
TI	Transparency International
UNDP	United Nations Development Programme
USD	United States Dollar
WEF	World Economic Forum

EXECUTIVE SUMMARY

Anti-corruption reforms

Petty corruption has been gradually declining in Mongolia, but in general corruption is widespread. Anti-corruption laws and action plans are poorly implemented. The Independent Authority Against Corruption (IAAC) has continued and somewhat stepped up its policy coordination and prevention work, however it lacked independence, resources, and necessary support from state bodies to fully exercise its mandate. Mongolia has also made enforcement efforts to address pervasive grand corruption: several high-level officials were convicted and a number of investigations are ongoing.

Anti-Corruption Policy

Mongolia has adopted the National Anti-Corruption Strategy and its implementation Action Plan with wide stakeholder consultations carried out by the IAAC. The authorities consider the adoption of the policy documents as one of the key achievements in the area of anti-corruption in Mongolia. While the participatory approach is commendable, the shortcomings related to the lack of clear timeframes and measurable indicators may hamper the implementation. The responsible agencies must put necessary efforts and show full cooperation with the IAAC to develop and implement corresponding individual action plans of public bodies. The Government is also encouraged to proactively and systematically engage with civil society addressing the concerns of the stakeholders in this regard.

Mongolia is complemented for working on an electronic system of **monitoring** performance of responsible authorities. It is encouraged to further define the methodology for monitoring and use measurable indicators to assess results. Targeted approach to sectoral corruption risk areas should be stepped up as well. To address the lack of regional offices, IAAC established so-called Citizen's Oversight **Councils** operating both at central and regional level. Their mandate includes monitoring implementation of the action plans, transparency, integrity and financial accountability. While this may be an optimal solution given the shortage of resources, it cannot fully substitute the regional offices of IAAC which report recommends to establish. Mongolia must also ensure transparency and accountability of the work of these Councils and that the information about their activities is available online.

Surveys are widely carried out and to some extent used in the policy work in Mongolia. The report commends Mongolia for its established practice and encourages to fully use the abundance of data, analyse and incorporate available evidence in its strategic planning and monitoring processes to increase impact. A **high-level coordination mechanism** has not been established, but the IAAC is in charge of policy coordination and there is some established practice of working with focal points appointed in each responsible agency. Yet, a systemic, structured and consistent approach to policy coordination with wide stakeholder participation has yet to be ensured.

While **awareness** of corruption as well as its intolerance has increased in the society, Mongolia should do more to increase the trust and get the citizens on board of anti-corruption reforms. This will only be possible if the Government is determined to fight corruption and public is confident in those efforts. Mongolia continued its work on raising public awareness and public education on corruption but the results of the awareness raising campaigns have not been evaluated. Mongolia is recommended to conduct thematic campaigns aimed at sectors where they may have most impact in conjunction with other preventive and repressive measures, e.g. fighting against corruption in traffic police, local authorities, hospitals, or others. It is advisable to measure impact of these campaigns to plan next cycle of awareness raising accordingly.

The report welcomes the enhanced performance of the **Independent Authority Against Corruption** (IAAC). At the same time, it points to various challenges Mongolia's anti-corruption agency is regrettably facing in its daily operations, including political pressure stemming from various power groups and the lack of necessary support from state agencies. The IAAC has stepped up its work in all directions of its mandate. Over the last three years its budget, staff and salaries

to staff have been increasing, however the establishment of regional offices was not supported. Ongoing attacks threatening the independence of the IAAC and attempts to interfere in its activities are worrying and pose a serious obstacle to Mongolia's anti-corruption efforts. The report calls on Mongolia to ensure that the IAAC carries out its functions free from undue influence and strictly uphold guarantees of independence, such as those related to the term of office of the Head of the IAAC. The report also recommends to ensure objective and transparent selection of the Public Council members responsible for the oversight of the IAAC, as well as accountability of their activities.

Prevention of Corruption

The lack of professional **civil service** has not been of concern in Mongolia in the reporting period. Highly politicized civil service, recruitments based on political affiliations, alleged bribery in connection with the appointments in the public service and high turnover of staff after each political change, have persisted as key challenges. Mongolia adopted a new civil service law and related secondary legislation. Enforcement of this reform requires strong leadership and adequate capacity of the Civil Service Council backed with the political support by the Cabinet of Ministers. It is key that the CSC is free from political influence and able to carry out its functions efficiently. Mongolia is encouraged to ensure stability of its professional civil service, increase competitiveness of civil service salaries and ensure transparent and fair remuneration. Human resources management information system should be put in place to ensure evidence-based reform and efficient management of the civil service.

High level corruption is pervasive in Mongolia. The recent corruption scandals, including "SME case" and "60 billion tugrik case" followed by large scale protests by citizens of Mongolia illustrates the magnitude of the problem. Against this background, the enforcement of integrity regulations in relation to political officials has remained weak. Mongolia is recommended to ensure proactive, systemic and consistent enforcement of integrity regulations with the focus on high-level political officials; provide objective verification of their asset and interest declarations; adopt codes of conduct for political officials and provide training, consultations and guidance to political officials on their practical application.

The system of **asset declarations** is in place and public officials routinely submit asset declarations that are subsequently published online. The oversight mechanism is still complex and decentralized which may hamper efficiency of verification and enforcement. The main monitoring body (IAAC) does not have enough resources and tools (access to important state databases, random sampling etc.) to ensure effective verification. Some sanctions are applied for related violations but they are not dissuasive. Mongolia should endeavour to ensure systematic, consistent and objective verification of asset declarations with the focus on high-level officials and follow up on alleged violations, publish declarations in open data format and provide for dissuasive sanctions for related violations.

Since the last monitoring Mongolia did not revise its **conflict of interest** regulations to address the recommendation. On the contrary, there is a set-back that allows appointing on civil service positions in the situation of conflict of interest. This should be remedied, along with the required revisions of the law to make respective rules enforceable in practice. Vigorous enforcement should follow supported by adequate monitoring based on information and data. Even though the trainings conducted on this issue are commendable, further work is needed with public agencies and public servants by means of systematic guidance, consultations and training.

Reporting of corruption is mandatory as before, but **whistleblower protection** has not been introduced. Citizens can report about corruption to the IAAC through a direct line, post, in person and email. But these channels do not seem to be applied in practice in the absence of the system of protection. Mongolia is encouraged to work with interested parties and adopt sound legal basis for protecting whistleblowers, including procedures for submitting, reviewing and following up on whistleblower reports, and providing incentives to report. Mongolia should also provide training and raise awareness of the protection mechanisms and promote reporting.

Despite the general legal guarantees, the **independence of judges** is not ensured. Political bodies are involved and have significant discretion in making important decisions related to the judiciary, including appointment of judges and members of other judicial bodies. The report recommends excluding political institutions from the decision-making processes, except in appointment of the Judicial General Council's members, where the President's role is recommended to be reduced to essentially ceremonial. While legislative amendments have limited the role of courts' chairpersons, they still have powers related to distribution of cases. Moreover, presiding judges of the courts' chambers are empowered to supervise the work of the respective chambers. Therefore, Mongolia is recommended to abolish those extensive powers of judges holding administrative positions. The financing of the judicial branch of power has significantly worsened which led to artificially keeping about 30 % of judicial positions vacant. Mongolia is recommended to ensure proper financing of the judiciary. The report highlights shortcomings in the procedure of the selection of judges and calls on Mongolia to ensure merit-based appointment to judicial posts. It is also necessary to enhance the training of judges on ethics, anti-corruption and integrity.

Ensuring both external autonomy of the **Prosecutor's Office** and internal independence of prosecutors are the most challenging issues for the Mongolian prosecution service. The involvement of political bodies in the appointment and dismissal of the leadership of the Prosecutor's Office, and powers of the President to approve regulations related to the institution's work pose serious risks of political interference in prosecutions. The report also criticizes the straightening of hierarchy and centralisation inside the prosecution service as a result of the legislative amendments in 2017. It is necessary to reasonably limit powers of senior prosecutors to supervise and instruct subordinated prosecutors and provide safeguards against unlawful instructions. The report recommends establishing a separate disciplinary body and consider establishing an independent system of prosecutorial self-governance. Mongolia should also address the problem of absence of merit-based recruitment and promotion of prosecutors and ensure that high professional qualifications and integrity are underlying principles for the appointment and promotion of prosecutors.

Anti-corruption screening of legislation does not seem to function in practice and existing regulations are insufficient. Legal framework for **access to information** remained the same in the reporting period and there is no evidence that the practice has improved either. The responsibilities are not clearly defined in this regard in the public agencies and oversight by the Ombudsman is not functioning in practice. **Defamation** was decriminalized but administrative responsibility is still in place. **Filtering on-line content** through informal instructions to service providers is an issue of concern as well. On the other hand, the report commends Mongolia's progress in its participation in EITI and OGP and encourages to boost its performance under these and other transparency initiatives.

Mongolia is commended for rolling out a comprehensive **e-procurement** system. Large number of staff of public entities and contractors/suppliers have been trained on how to use the e-procurement system. However, an area of concern is that the applicability of the public procurement law has not been widened, but instead, further public sector entities have been excluded from the law. Furthermore, the number and value of contracts that were not awarded fully competitively has increased substantially. Mongolia is recommended, among others, to extend the applicability of the public procurement law to all public sector entities (e.g. Development Bank of Mongolia), reduce the use of limited bidding procedures, in particular direct contracting, further enhance the functionality of the electronic procurement platform to include all procurement procedures and comprehensive and machine-readable reporting.

Mongolia's standing in international rankings on business environment and competitiveness remained poor. The Government has not prioritised **business integrity** measures and the efforts to promote compliance and ethics in the private sector have been limited. Business associations, NGOs and other stakeholders have been active in promoting business integrity through trainings, awareness raising and designing various tools and standard policies companies can use to develop their own policies. The Government has not worked to encourage companies to develop internal control and ethics policies and no incentives have been put in place to this effect. The lack of

transparency and accountability of state funds raises concerns. There are no channels for businesses to report about corruption and in the absence of whistleblower protection and given the low confidence in the Government's efforts to fight corruption, the companies are not willing to report. The report includes number of recommendations on business integrity, including those related to ensuring prevention of corruption in state funds, governance and anti-corruption programmes in SOEs, disclosing beneficial ownership, providing reporting channels for the private sector and others.

Enforcement of criminal responsibility for corruption

In the area of **criminalisation of corruption**, Mongolia has made some progress to align its legislation with international standards. A new Criminal Code entered into force in 2017 introduced improvements in regulating bribery and illicit enrichment offences. Offering, requesting and accepting the offer of a bribe are now criminally punishable. However, many previous recommendations have not been yet addressed, and a number of international standards have not yet been reflected in the Criminal Code. While the new legislation improved liability of legal persons, many shortcomings remain, such as unproportionate sanctions and dependence of corporate liability on conviction of a natural perpetrator. Despite some positive amendments on confiscation, the respective legislation needs further improvement with regard to rules on confiscation of mixed proceeds of corruption, value-based confiscation and confiscation of assets found in the possession of knowing third parties. In several cases the new provisions are open to contradictory interpretations and sanctions remain not effective, proportionate or dissuasive. Short statute of limitations, too broad scope of immunities applied to extensive list of public officials remain obstacles for effective investigations and prosecutions.

As to the **procedures** of detection, investigation and prosecution of corruption, the new Mongolian Criminal Procedure Code entered into force in July 2017, however, the monitoring team has been provided only with some small extracts from its text. One of the novelties of the new legislation was shortening of the time frame of the pre-investigation inquiry, a preliminary stage when materials are collected to decide if there are enough grounds to start criminal investigation. The report recommends Mongolia to continue reforming its criminal procedure and fully abolish the enquiry stage. In terms of detection of corruption Mongolia uses different sources of information including media and anonymous reports, however, more attention should be paid to analytical sources as well. Mongolia is also recommended to provide direct access of its investigators to all relevant state databases, as well as to create financial investigations and asset recovery and management units. In terms of international cooperation in criminal matters Mongolia relies mostly on formal mutual legal assistance and is, recommended to use in addition informal channels and international networks more actively.

In terms of **enforcement of corruption offences**, Mongolia is commended for its efforts to tackle the problem of high-level corruption. These efforts already resulted in several convictions of high-level officials and more investigations are ongoing. Mongolia is encouraged to vigorously pursue its fight against high-level corruption. Another positive finding is that the same level of attention is paid to the enforcement of both active and passive forms of bribery. Mongolia is encouraged to regularly publish general criminal statistics on corruption offences including data on sanctions and confiscations.

The IAAC continues to act as a **specialised anti-corruption law enforcement agency** entrusted with general investigating powers on corruption offences, and a special unit of the Capital City Prosecutor's Office supervises criminal cases investigated by the IAAC. The workload of the Agency has sharply increased in the last years, but the number of its investigators has remained the same. Moreover, the IAAC does not have transparent, merit-based and competitive procedures of recruitment of its law enforcement staff. Regional IAAC investigative units have not been established, while several regional investigators have been appointed recently. The report recommends a number of steps to provide the IAAC with necessary resources and introduce new recruitment procedure. Mongolia is also recommended to strengthen capacities and specialisation of its anti-corruption investigators and prosecutors.

Financing of political parties

Political corruption is one of the key corruption problems for Mongolia. A number of high-level politicians have been found in the middle of big corruption scandals, and even prosecuted by foreign jurisdictions. Political parties are perceived to be among the most corrupt institutions. Even though the Anti-Corruption Strategy sets a number of objectives to improve legal framework and practice in relation to political party financing, the responsible government institutions have not so far been working on reforming this area. Furthermore, a special working group created in the Parliament with the purpose to develop a new legal framework has not produced any results yet. Inter-agency cooperation to address the problems of political parties financing seems to be quite weak and requires significant improvement.

Thus, financing of political parties remains to be poorly regulated and it is neither transparent nor audited. Hidden corporate donations are fuelled to political parties which makes them dependent on private donors and consequently act in their interests. State funding of the political parties holding seats in the Parliament has not led to more active audit and transparency of party finances. The report encourages Mongolia to immediately address this problem by adopting a comprehensive legal framework on political party financing. The new framework should ensure that political parties regularly publish their financial reports in an open data format and that these are properly audited.

The report also recommends ensuring independent monitoring and supervision of party finances. For this purpose, an agency authorised to perform audit and supervision in relation should be designated. It is essential that such agency has proper level of independence; real supervisory and investigative powers, including access to information and initiation and application of sanctions, as well as sufficient resources, including professional staff.

The report stresses that the mentioned loopholes pose a risk of political parties being financed from assets of illegal origin. Therefore, it is important to ensure that political parties are covered by the national anti-money-laundering regime.

Financing of election campaigns is more regulated, but its sufficient audit is not ensured and published financial reports are not informative. The law provides monetary sanctions for violating the rules on financing of election campaigns, but these sanctions have never been applied. Hence, the overall mechanism of control over financing of election campaigns is not effective and efficient. At the time of the adoption of this report Mongolia was working on its new legislation on elections which should increase the role of the audit and tax authorities in the area of control over financing of election campaigns.

SUMMARY OF COMPLIANCE RATINGS

Third Monitoring Round Recommendation	Compliance Rating			
	Fully	Largely	Partially	Not Compliant
1.1.-1.2. Political will to fight corruption, anti-corruption policy documents			*	
1.3. Corruption surveys		*		
1.4.-1.5. Public participation in anti-corruption policy work, raising awareness and public education			*	
1.6. Specialised anti-corruption policy and co-ordination institution			*	
2.1-2.2 Offences and elements of offence			*	
2.3. Definition of public officials			*	
2.4.-2.5. Sanctions and confiscation			*	
2.6. Immunities and statute of limitations				*
2.7. International co-operation and mutual legal assistance			*	
2.8. Application, interpretation and procedures			*	
2.9. Specialised anti-corruption law-enforcement bodies				*
3.2. Integrity of civil service				*
3.3. Promoting transparency and reducing discretion in public administration			*	
3.4. Public financial control and audit	--	--	--	--
3.5. Public procurement			*	
3.6. Access to information			*	
3.7. Political corruption				*
3.8. Integrity in the judiciary				*
3.9. Private sector			*	

4th MONITORING ROUND RECOMMENDATIONS TO MONGOLIA

ANTI-CORRUPTION POLICY

New recommendation 1

1. Ensure that anti-corruption strategic planning is used as an instrument to steer policy coordination and push anti-corruption reforms.
2. Link survey results to concrete measures, use data for monitoring results, adjusting measures and setting new targets.
3. Involve NGOs in the monitoring of anti-corruption policy implementation.
4. Ensure that the selection of the members of the Citizen's Oversight Council is transparent and objective and perceived as such. Increase the visibility of their work.

New recommendation 2

1. Target awareness raising activities to corruption-prone areas. Use appropriate methods for each target group.
2. Assess outcomes and plan next cycle of awareness raising accordingly.

New recommendation 3

1. Introduce merit-based, transparent and participatory selection of the Head and Deputy Heads of the anti-corruption agency.
2. Ensure objective and transparent procedure for selection of members of the Public Council responsible for the oversight of the IAAC.
3. Ensure transparency and public accountability of the Public Council.
4. Ensure that the IAAC carries out its functions independently without any interferences in its activities.
5. Ensure merit-based appointment, promotion and performance evaluation of the staff of the IAAC.
6. Provide IAAC with regional offices and resources necessary to implement its mandate in full.
7. Provide IAAC with regional offices and resources necessary to implement its mandate in full.
8. Ensure proactive and systematic engagement with civil society.

PREVENTION OF CORRUPTION

New recommendation 4

1. Ensure necessary resources for full exercise of the Civil Service Council's mandate and implementation of the law on Civil Service.
2. Put in place a human resources management information system to support evidence-based civil service reform.

New recommendation 5

1. Ensure stability of professional civil service.
2. Ensure that remuneration of civil servants is transparent and fair.
3. Increase the level of competitiveness of civil service salaries.
4. Limit the share of variable pay in total remuneration.
5. Ensure that bonuses and other benefits are allocated objectively and are linked to performance.

New recommendation 6

1. Adopt ethics codes for civil servants, for selected sectors and for high-risk areas.
2. Provide training, written guidelines, practical advice and guidance on request.
3. Monitor enforcement of the ethics codes.

New recommendation 7

1. Ensure that the rules prohibiting conflict of interest are comprehensive and cover high corruption-risk areas.
2. Ensure necessary procedures to enforce these rules in practice.
3. Ensure vigorous enforcement with the focus on high-level officials.
4. Ensure monitoring and analysis based on data.
5. Provide practical guidance and training to public agencies and officials concerned.

New recommendation 8

1. Publish asset declarations in open data format.
2. Ensure dissuasive sanctions for related violations (such as false data) in law and in practice.
3. Ensure that the bodies responsible for verification of asset declaration have access to all registers and databases held by public agencies and tools necessary for verification.
4. Centralize verification and oversight function to increase efficiency.
5. Focus verification efforts on high-level officials and corruption-risk areas.
6. Collect enforcement data to monitor efficiency.

New recommendation 9

1. Establishing legal framework and practical mechanisms for incentivising and protection of whistleblowers.
2. Collect and analyse statistics on reporting and whistleblower protection.
3. Raise awareness on reporting channels and protection mechanisms to promote whistleblowing.

New recommendation 10

1. Ensure proactive, systemic and consistent enforcement of integrity regulations with the focus on high-level political officials.
2. Provide systematic, consistent and objective scrutiny of asset declarations of political officials, including based on the information received from citizens, and subsequent follow up as required by law.
3. Adopt codes of conduct for political officials.
4. Provide training, consultations and guidance to political officials on practical application of codes of conduct and integrity regulations.

New recommendation 11

1. Exclude political institutions (the President and Parliament) from the appointment and dismissal of judges, members of the Judicial Qualifications and Ethics Committees (by replacing them with the Judicial General Council).
2. Ensure merit-based appointment of judges in law and in practice.
3. Introduce in the law a clear procedure of appeal against the Judicial General Council's decision not to nominate a candidate for a judicial position.
4. Provide that chief judges be appointed and dismissed by judges of relevant courts.
5. Introduce automatic random distribution of cases.

6. Abolish powers of chief judges to approve the decision on appointment of a chair of court session and a bench of judges.
7. Abolish powers of presiding judges of the court chambers to supervise the work of the respective chambers.
8. Ensure that the President is bound by proposals on judicial candidates for members of the Judicial General Council, and the President's power to appoint them is essentially ceremonial.
9. Consider introducing full-time membership in the Judicial Qualifications and Ethics Committees.
10. Provide for the legislative prohibition to reduce operational budget of courts and ensure in practice proper financing of the judiciary.
11. Fix remuneration rates and all wage increments of judges directly in the law.
12. Ensure that components on ethics, anti-corruption and integrity are a mandatory part of the training curricula for candidate and sitting judges.
13. Distinguish grounds and procedures of disciplinary liability and dismissal of judges in cases of breach of incompatibility rules.

New recommendation 12

1. Provide for clear, transparent and merit-based procedures for the selection and appointment of the Prosecutor General involving legal community and civil society.
2. Provide for participation of an independent expert body in the dismissal procedure of the Prosecutor General with an authority to give preliminary legal opinion on the matter. A fair hearing within dismissal proceedings shall be guaranteed by the law.
3. Ensure granting the prosecution service with the mandate to present its budget proposal to the Parliament.
4. Fix directly in the law amounts of all components of the prosecutor's salary.
5. Limit both in law and in practice the role and powers of senior prosecutors to supervise and instruct subordinated prosecutors.
6. Ensure that any guidance or instructions on individual cases is based on law, reasoned in writing and is a part of the case file.
7. Grant prosecutors with the right to challenge unlawful orders in an independent internal procedure.
8. Ensure that any decision of senior prosecutors to reassign a case to another prosecutor is based on law, reasoned in writing and is a part of the case file.
9. Introduce merit-based recruitment and promotion of prosecutors based on high professional qualifications and integrity.
10. Create a disciplinary body composed of experienced professionals (ordinary prosecutors and third legal experts) selected through a transparent procedure based on merit and ensure its independence and key role in disciplinary proceedings against prosecutors.
11. Consider establishing an independent system of prosecutorial self-governance with vesting the new bodies with sufficient powers regarding appointment of prosecutors, promotions, disciplinary proceedings and other related matters.
12. Ensure that the rules of ethics, asset, income and interest disclosure, conflict of interests, gifts, incompatibility are followed by prosecutors in practice and violations are adequately followed up.
13. Conduct systematic trainings for prosecutors on international standards of independence and autonomy of prosecutors, on ethics, anti-corruption and integrity.

New recommendation 13 (valid from the previous round)

1. Ensure that all public law institutions and entities receiving public funding or performing public functions are covered by the transparency and access to information requirements.
2. Stipulate that no category of information should be absolutely exempt from disclosure; any restriction of access to information, including state secrets, should be based on the law, be necessary and proportionate and possible only upon compliance, on a case-by-case basis, with the harm and public interests tests in line with international best practice. The law should also establish information which may not be restricted in access, in particular on corruption and other infringements of the law, any use of public money and other public resources.
3. Remove unnecessary formalities from the law with regard to obtaining of information on request by simplifying and clarifying the procedure as much as possible.
4. Introduce dissuasive administrative sanctions for violation of the access to information provisions by public officials.

5. Establish an independent supervisory mechanism for enforcement of the access to information right with adequate resources and powers, including access to any classified information and issuing of binding decisions.
6. Decriminalise all defamation and insult offences; ensure that civil law provides effective constraints not to stifle freedom of information with unjustified defamation lawsuits
7. Improve budget transparency, oversight and public engagement by implementing recommendations given to Mongolia as the outcome of the 2012 Open Budget Index.

New recommendation 14

1. Extend the applicability of the Public Procurement Law to all public sector entities (e.g. Development Bank of Mongolia).
2. Reduce the use of limited bidding procedures, in particular direct contracting.
3. Ensure adequate staffing of the Government Agency for Policy Coordination of State Properties and specialisation of staff for providing its oversight, guidance and training functions in the area of procurement.
4. Decrease the application of domestic preference.
5. Revise the public-private partnership and concession award procedures to ensure fair competition, efficiency and transparency.
6. Ensure independence, adequate specialization, budget and staff allocation to the procurement complaints appeals bodies.
7. Further enhance the functionality of the electronic procurement platform to include all procurement procedures and comprehensive and machine-readable reporting.

New recommendation 15

1. Provide for incentives for companies to develop effective anti-corruption compliance programmes.
2. Ensure that transparency and accountability requirements and integrity rules are applicable to the state funds and properly enforced.
3. Assist companies and business associations to assess integrity risks, organise awareness raising, provide advice and guidance on prevention of corruption in business operations.
4. Develop and implement joint projects with business entities such as collective actions against corruption and integrity pacts, especially in the risk areas.
5. Introduce comprehensive measures to strengthen corporate governance, transparency, internal control and corruption prevention systems in state and municipally-owned enterprises. Establish the system to monitor and assess the implementations of the anti-corruption programs in SOEs. Ensure the efficiency of the implemented anti-corruption measures in SOEs taking into consideration industry specifics and corruption risks.
6. Ensure gradual and effective beneficial ownership disclosures: a) require disclosure of beneficial ownership of legal persons; b) create a central register of beneficial owners; c) publish the information on-line in open data format in line with local and internationally recognised guarantees of data and privacy protection; d) ensure verification and dissuasive sanctions for nondisclosure in law and in practice.
7. Provide and use reliable channels to report corruption, independent review bodies, e.g. business ombudsmen.
8. Provide support to small and medium enterprises to prevent corruption.
9. Introduce business integrity measures in corporate governance policies, e.g. corporate disclosure including about beneficial owners, role of boards and audit in preventing and detecting corruption.

ENFORCEMENT OF CRIMINAL RESPONSIBILITY FOR CORRUPTION

New recommendation 16

1. Pursue the activity of the forum of relevant stakeholders with the purpose of analysing the quality of the provisions of the new Criminal and Criminal Procedure Codes with the purpose of identifying the drawbacks of the new provisions and the inconsistencies with the international standards that could limit the effective fight against corruption.

2. Ensure that the activity of the forum takes into consideration the reasoned opinions expressed by judges, prosecutors, IAAC, as well as other relevant national and international experts and that the conclusions and recommendations of this forum are made public.

New recommendation 17

1. Align offences of active and passive bribery with international standards, in particular by ensuring that the same corresponding elements of crime can be identified both in the offence of active bribery as in the offence of passive bribery, clearly including the bribery for the benefit of a third person and the acceptance of the offer of a bribe.
2. Enact a statutory definition of “bribe” in the Criminal Code, which would clearly apply to both active and passive bribery and which should include non-pecuniary intangible benefits.
3. Introduce in the Criminal Code the definition of national public official subject to corruption offences, which would cover all state and local self-government employees, as well as other persons who perform public functions and candidates for elected offices.
4. Review the wording of all corruption related offences in the Criminal Code in order to improve legislative technique, and bring more clarity, predictability of the legal text.

New recommendation 18

1. Consider incriminating trafficking of influence and align the offence of bribery in the private sector with international standards.
2. Take necessary measures to clarify the extent of the offence of abuse of power in order to ensure legal certainty and predictability.
3. Take the necessary measures, either in the legislation or in practice, in order to explicitly provide that conviction for the predicate offence is not required for the prosecution and adjudication of money laundering.
4. Further review the offence of “Illicit enrichment” to bring it in line with Article 20 of the UNCAC.

New recommendation 19

1. Further review the legal provisions on liability of legal persons providing proportionate and dissuasive sanctions, including the liability for lack of proper supervision by the management, and ensuring that corporate liability is not dependent on detection, prosecution or conviction of a natural perpetrator. Envisage incentives for companies with efficient anti-corruption policies.
2. Further develop training programs for investigators, prosecutors and judges on liability of legal persons, including using practical case studies from other jurisdictions.

New recommendation 20

1. Further improve the definition of bribery offences involving foreign public officials and officials of international organizations, in line with international standards and clearly define such officials in the Criminal Code. Take the necessary measures, either in the legislation or in practice, in order to explicitly provide that conviction for the predicate offence is not required for the prosecution and adjudication of money laundering.

New recommendation 21

1. Introduce the possibility for confiscation of mixed proceeds as well as clear rules for value-based confiscation.
2. Introduce extended confiscation (criminal or civil) with reversing burden of proof where the suspicion for corruption offence was put forward.
3. Clarify the legal grounds for confiscation of assets (instrumentalities and proceeds from corruption as well as any profits thereof) found in the possession of knowing third parties.

New recommendation 22

1. Review the system of immunities of public officials by narrowing down their scope and list of relevant officials to the extent necessary in a democratic state; immunities should be functional, cover only period in office, exclude situations in flagrante, allow effective investigative measures into persons with immunity; establish swift and effective procedures for lifting immunity based on clear criteria.
2. Increase statute of limitations for corruption offences; consider establishing fixed, sufficiently long statute of limitations for all corruption crimes regardless of their gravity; stipulate that statute of limitations be interrupted by bringing of charges or other procedural action, as well as by the period when person enjoyed immunity.

New recommendation 23

1. Revise the scope of the effective regret defence, eliminating its automatic effect and limiting in time the possibility for the bribe giver to be released from liability as a consequence of reporting.

New recommendation 24

1. Review the criminal sanctions for corruption offences and money laundering to ensure that they are effective, proportionate and dissuasive.
2. Compile and analyse statistics on application of sanctions for corruption offences to see how effective they are in practice (e.g. how often conditional release is applied, how often imprisonment is the main sanction for serious offences).

New recommendation 25

1. Ensure proactive detection of corruption with the use of information from tax, customs and other state databases, audit reports and other analytical sources. Ensure effective cooperation of IAAC and FIU in detection of corruption using STR's of FIU and reports from foreign FIUs.
2. Set up unified state register of bank accounts (covering individuals and legal entities across the country).
3. Ensure that IAAC investigators have direct access to all relevant state registries in order to use their data as evidence and for other investigative purposes.
4. Abolish the pre-investigative "inquiry" stage in criminal procedure and introduce automatic system of launching criminal proceedings with unified electronic register of criminal proceedings.
5. Establish separate unit within IAAC dealing exclusively with analytics and financial investigations.
6. Empower the specialised prosecutors supervising IAAC cases to give all sanctions to investigators of IAAC.
7. Conduct systematic trainings for IAAC investigative and analytical staff, as well as specialised prosecutors to strength capacity of these institutions in detection and investigation of corruption crimes including new investigative techniques and instruments provided by the Criminal Procedural Code (e.g. plea bargaining).
8. Establish a special unit(s) or body(ies) responsible for asset recovery and/or management of seized assets and implement efficient procedures for tracing, identification, seizure and management of proceeds from corruption.

9. Conduct systematic trainings for IAAC investigators, specialised prosecutors and employees of the above-mentioned special unit(s) or body(ies) on asset recovery.

New recommendation 26

1. Ensure effective international mutual legal assistance in investigation and prosecution of corruption cases, in particular by implementing recommendations of the UNCAC Review.
2. Extend the number of bilateral treaties concluded with other countries in the field of international cooperation in criminal matters.
3. Develop informal channels of communication in order to identify and contact the relevant counterparts.
4. Provide the necessary resources for enhancing the participation of the IAAC and prosecutors in the relevant international anticorruption networks and international cooperation expert meetings.
5. Use the opportunities given by the UNCAC tools for international cooperation in corruption cases, such as the On-line Directory of Competent National Authorities and the participation to the Open-ended intergovernmental expert meetings to enhance international cooperation.
6. Further extend the conclusion of bilateral agreements between the IAAC and other anticorruption agencies from relevant countries.
7. Encourage various forms of direct co-operation in corruption cases, including on asset recovery, aiming at: the use of Joint Investigation Teams; the assistance to the execution of the request by the competent authorities of the recipient state; the early, informal consultation before sending a request and the coordination during the execution of the request.
8. Ensure that the staff of units responsible for international cooperation within the central authorities, as well as the IAAC investigators and prosecutors who draft the requests and who execute MLA requests are well trained, have adequate resources, including translators, necessary means of communication; training sessions should include best practices and experiences, relevant challenges and ways to overcome them, and case examples from other jurisdictions, as well as the successful use of international organizations and tools.
9. Provide in the legislation measures for direct asset recovery as envisaged by Article 53 of the UN Convention against Corruption, as well as procedure for and conditions of recovery and disposal of assets in accordance with Article 57 of that Convention.

New recommendation 27

1. Analyse discrepancy between the numbers of launched corruption cases and cases submitted to the court, and address identified problems, if any, related to termination of cases at the pre-trial stage.
2. Ensure high-quality investigations and prosecution of corruption crimes leading to effective sanctioning by courts and judicial deterrence.
3. Seek the confiscation of instrumentalities and proceeds of corruption as well as profits thereof in every corruption case.
4. Draw special attention to prompt and effective investigation of high-profile corruption cases as well as to effective detection, investigation and prosecution of foreign bribery, money laundering and illicit enrichment cases.
5. Communicate successful prosecution, conviction and confiscation in high-profile corruption cases to the public.
6. Ensure maintenance and regular publication of reliable and detailed statistics in corruption cases and cases of money laundering including number of full range of corruption crimes and its adjudication (set of sanctions and number of acquittals) as well as detailed statistics on the types of confiscation (form of confiscation, type of asset (instrumentalities, proceeds (direct/indirect), profits), belonging to defendant, relatives, knowing third party (individual/legal entity), rate of equivalent confiscation etc.).

New recommendation 28

1. Provide the IAAC with the necessary human and financial resources, including sufficient number of investigators, as well as economic, financial and other technical specialists, to ensure quality investigations of corruption cases.

2. Introduce a transparent, merit-based and competitive procedure of recruitment of investigators and all the operative personnel of the IAAC.
3. Provide regional branches of the IAAC (to be set up) with investigators operating in the regions.
4. Allocate resources of the IAAC Investigation Department with priority to the sectors identified as the most affected by corruption. Among other sources, the results of the analytical activity of the Prevention Department could be used to identify relevant sectors.
5. Provide regular, specialized training for IAAC investigators, including on modern corruption investigation methods, financial investigations, international cooperation and asset recovery.
6. Further specialize the unit of the Capital City Prosecutor's Office responsible for supervising corruption investigations carried out by the IAAC and provide it with sufficient resources, autonomy, and regular training including on corruption investigations, financial investigations and undercover operations.
7. Consider specializing the necessary number of judges and local prosecutors called to try corruption cases, provide them with specialized training.

POLITICAL PARTY FINANCING

New recommendation 29

1. Strengthen the system of regulation of political party financing by establishing limits on membership fees, broadly defining the term "donation" to include in-kind donations, extending donation restrictions to all entities related or controlled by the party and its representatives, specifying rules on publication of information on donations, prohibiting donations from companies that received funding through public procurement or other public source.
2. Ensure balance between private and public funding of the political parties and implement restrictions on the use of funds received from the state budget.
3. Provide public funding to parties that obtained a certain level of popular support at the national elections even if it is lower than the electoral threshold.
4. Ensure full transparency of party finances, by requiring detailed annual consolidated financial reports with all contributions (except for very small ones) and each contributor, as well as all party expenses reported.
5. Ensure that detailed consolidated financial reports of political parties are standardised and published on the internet.
6. Improve rules for disclosure of election campaign finances, including submission and publication of detailed financial reports before election day.
7. Establish without delay a system of independent monitoring and supervision for party finances and financing of election campaigns with adequate resources and powers, in particular to impose proportionate and dissuasive sanctions.
8. Consider assigning powers of supervision over political party financing to the Anti-Corruption Agency.
9. Ensure that the General Election Commission is a professional and independent body consisting of employed full-time members selected according to their merit, preferably based on an open competition.
10. Ensure that political party funding (financial transactions made to/by political parties and their managers) is covered by the national anti-money-laundering regime.

INTRODUCTION

The Istanbul Anti-Corruption Action Plan (Istanbul Action Plan, or IAP) was endorsed in 2003. It is the main sub-regional initiative of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN). The Istanbul Action Plan covers Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Ukraine and Uzbekistan; other ACN countries participate in its implementation.

Mongolia joined the Istanbul Action Plan in September 2012. The initial review of Mongolia was conducted in 2013-2014 (adopted on 18 April 2014). Joint First and Second Rounds of Monitoring Report on Mongolia was adopted on 9 October 2015. Mongolia provided updates about the actions taken to implement the recommendations and participated in other activities of the ACN. All reports and updates are available at the ACN web-site at: www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm.

The 4th round of monitoring of Mongolia under the Istanbul Action Plan was launched in August 2018 in line with the [methodology](#) adopted by the ACN countries. Mongolian authorities submitted replies to the country-specific questionnaire in November 2018. However, answers to some sections were not provided and some key supporting documents were missing. The Asia Foundation also provided alternative answers to the questionnaire. Additional information was received after the on-site visit.

The on-site visit to Ulaanbaatar took place on 16-21 December 2018. The OECD/ACN Istanbul Anti-Corruption Action Plan monitoring team included:

- Ms Anca Jurma, Acting Head of the National Anti-Corruption Directorate Romania (sections 3.1; 3.4; subsection on international cooperation)
- Ms Elena Konceviute, Senior Anti-corruption Expert, EU Anti-Corruption Initiative in Ukraine (chapter 1)
- Ms Airi Alakivi, Permanent Representation of Estonia to the European Union, Brussels, Belgium (section 2.1)
- Mr Guillaume Vallette-Valla, Magistrate, Supreme Court of Paris (chapter 4)
- Mr Dirk Plutz, Associate Director, Procurement Policy and Advisory Department, European Bank for Reconstruction and Development (section 2.5)
- Mr Grigory Gruzinov, Compliance Department, International Investment Bank (section 2.6)
- Mr Vitalii Kasko, Independent Expert, Member of the Executive Committee of the International Association of Prosecutors, partner of the Vasil Kisil & Partners (sections 2.3 (prosecutors), 3.2 and 3.3)
- Ms Ketevan Meskhishvili, Judge of Appeals Court of Georgia (section 2.3)
- Mr Simone Rivabella, Project Manager, ACN, OECD (sections 3.1 and 3.4)
- Mr Andrii Kukharuk, Consultant, ACN, OECD (sections 2.3; 3.2; 3.3 and chapter 4)
- Ms Rusudan Mikhelidze, Consultant, ACN, OECD (team leader, chapter 1, sections 2.1; 2.2; 2.4; 2.5 and 2.6)

The monitoring team would like to thank the government of Mongolia for their collaboration in the framework of the 4th round of monitoring under the IAP. The co-ordination on behalf of Mongolia was ensured by the ACN National Co-ordinator Mr. Bayarkhuu Tuvshinsaikhan, Director of Prevention and Public Awareness Department of Independent Authority Against Corrupting (IAAC), Mr. Galbadrakh Sonom, Prevention Officer of the IAAC, and the staff members of the IAAC.

During the on-site visit, the monitoring team held 14 thematic panels with representatives of various public authorities of Mongolia organised by the national co-ordinator. The OECD Secretariat arranged special sessions with the international community, representatives of business and civil society organisations. The special sessions civil society and business representatives was hosted by the Asia Foundation, the session with international community was co-organised by the UNDP Mongolia. The monitoring team is particularly thankful to Mr Mark Koenig, the Asia Foundation's Country Representative in Mongolia for his contribution.

In line with the methodology of the 4th round of monitoring, the report includes in-depth study of a selected sector, that is political party funding for Mongolia. The sector was selected based on a survey of non-governmental representatives and Mongolian authorities. The monitoring team is thankful to the representatives of NGOs, international organisations, business and the Government who took part in the survey.

Representatives of the following government agencies participated in the meetings: Office of the President of Mongolia; Cabinet Secretariat of Government of Mongolia; Secretariat of the State Great Hural; Ministry of Finance; Ministry of Justice and Home Affairs; Ministry of Construction and Urban Planning; Ministry of Mining and Heavy Industry; Ministry of Health; Ministry of Education, Culture, Science and Sports; Civil Service Council; National Audit Office; Judicial General Council; Supreme Court of Mongolia; General Election Commission; Prosecutor General's Office; Independent Authority Against Corruption; Government Agency for Policy Coordination on State Property; National Police Agency; General Intelligence Agency; Communications and Information Technology Authority; National Development Agency; Prosecutor's Office of the Capital City; General Department of Taxation; Mongolian National Chamber of Commerce and Industry; National Institute of Forensic Science; Association of Judges of Mongolia; Financial Information Unit of the Central Bank of Mongolia; Agency for Fair Competition and Consumer Protection; Governor's Office of the Capital City; Mongolian Customs General Administration; National Human Rights Commission of Mongolia; Secretariat of Extractive Industries Transparency Initiative in Mongolia; Mongolian Bar Association; National Legal Institute and National Academy of Governance.

This report was prepared on the basis of the answers to the questionnaire, the monitoring team's findings at the on-site visit, additional information provided by the Government of Mongolia and other stakeholders and the research by the monitoring team, as well as information received at the preparatory meetings and the ACN Plenary meeting on 19-21 March 2019.

The report was adopted at the ACN/Istanbul Action Plan Plenary Meeting in Paris on 21 March 2019. It contains the following compliance ratings with regard to the recommendations of the previous round of monitoring of Mongolia: **out of 19 previous recommendations Mongolia was found to be not compliant with 5 recommendations, partially compliant with 12 recommendations and largely compliant with 1 recommendation. One recommendation of the previous round (public financial control and audit) was not evaluated, as the 4th round of monitoring does not cover the topic. The report includes 27 new recommendations; 2 previous recommendations are still valid.**

The report was made public after its adoption, including at www.oecd.org/corruption/acn. The authorities of Mongolia are invited to widely disseminate the report. To present and promote implementation of the results of the 4th round of monitoring, the ACN Secretariat will organize a return mission to Mongolia, which will include a meeting with representatives of the public authorities, civil society, business and international communities.

The 4th Round of Monitoring under IAP is carried out with the financial support of Liechtenstein, Lithuania, Poland, Sweden, Switzerland and the United States.

1. ANTI-CORRUPTION POLICY

1.1.1. Key anti-corruption reforms and corruption trends

Reforms

Petty corruption has been gradually declining in Mongolia, but overall, corruption is still widespread. Business and politics are intertwined,¹ and powerful oligarchs go mostly unpunished despite corruption scandals. Cronyism is extensive² and pressure on private sector is not uncommon.³ Anti-corruption laws and action plans are poorly implemented.

The Parliament of Mongolia approved the National Anti-Corruption Strategy (2016-2023) targeting eleven corruption prone areas. The Independent Authority Against Corruption (IAAC) has continued and somewhat stepped up its policy coordination and prevention work, however it lacked independence, resources and support from state bodies to fully exercise its mandate. Mongolia has also made enforcement efforts to address pervasive grand corruption: several high-level officials were convicted and a number of investigations are ongoing.

Thousands of citizens came out in streets at the end of 2018 “angry enough to protest in midwinter”⁴ demanding resignation of the Parliamentary Speaker and the majority leader who had formerly served as prime minister and the mayor of Ulaanbaatar,⁵ allegedly involved in sale of government positions⁶ and SME scandal over corruption, embezzlement and misappropriation of public funds.⁷ The parliamentary speaker was eventually voted out by the majority of the Parliament early 2019.

Corruption trends

The Transparency International’s **Corruption Perception Index 2018** (TI CPI) ranked Mongolia 93rd of 180 countries. Its score has remained between 36-39 in the period 2012-2018, and the rank fluctuated between 72 (2015) and 103 (2017).

¹ The Asia Foundation, [Survey on Perceptions and Knowledge of Corruption](#) (SPEAK) 2018 at pg. 56.

² [Mongolia: Overview of Corruption and Anti-Corruption](#) Transparency International (2018).

³ US Department of State, 2018 Investment Climate Statements.

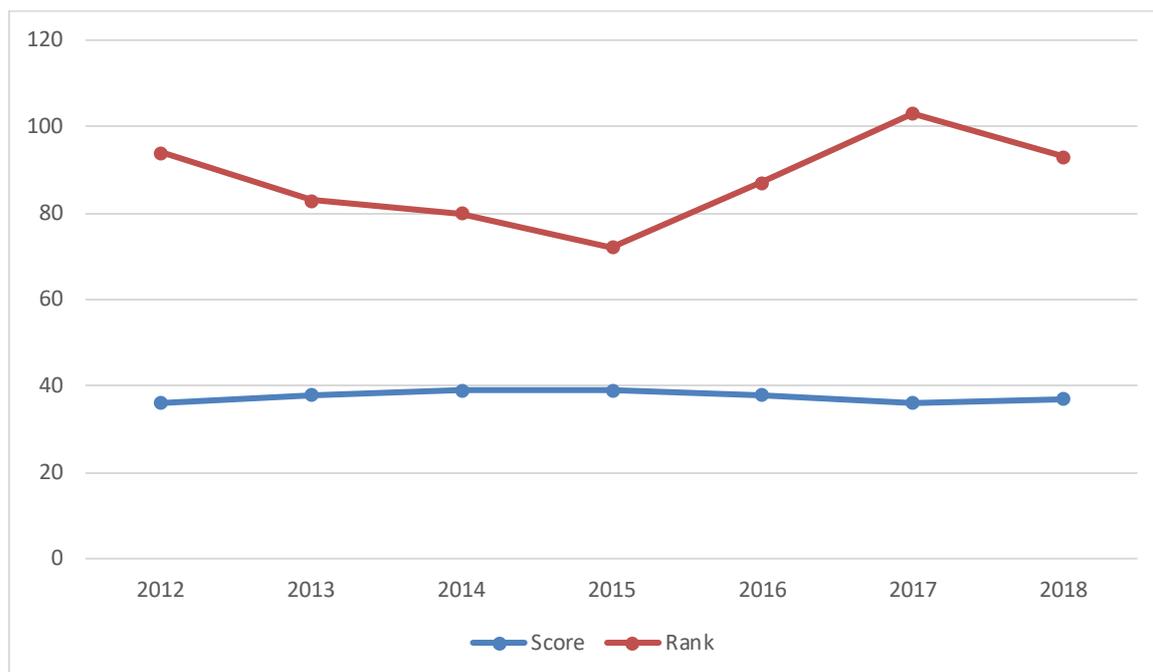
⁴ The Economist, [Mongolians are getting angry about corruption](#).

⁵ [Mongolia: Thousands protest corruption in Ulaanbaatar](#)

⁶ [60 billion tugrik case](#)

⁷ Fourteen parliamentarians, two cabinet members and other high-ranking officials were accused in November of embezzling more than \$1m in government funds, diverting resources intended to support small and medium enterprise (SME) development to their family and friends. See: [Mongolia speaker expelled amid ongoing battle against corruption](#) and [Small and Medium-sized Enterprise Development Fund \(SME\) case](#).

Chart 1 Mongolia's CPI Scores and Ranks (2012-2018)



Source: Transparency International, Corruption Perception Index, 2012-2017, <https://www.transparency.org/research/cpi/overview>.

According to the TI **Global Corruption Barometer**, Asia and Pacific (2017):⁸

- 61% of Mongolians assess the fight against corruption by the government very or fairly badly.
- The Parliament is perceived as the most corrupt institution. 46% of respondents believe that most or all of the members of parliament are involved in corruption.
- Only 14% consider reporting to the authorities as an effective means to combat corruption (the regional average is 22%), even though 69% Mongolians feel personally obliged to report corruption. 49% consider that refusal to pay a bribe is the best way citizens can fight corruption (the regional average is 21%).

According to the Asia Foundation and the Sant-Maral Foundation's 2018 **Survey on Perceptions and Knowledge of Corruption (SPEAK)**⁹

- Corruption is seen as the second most important problem of the country after unemployment.
- 90.1% of the respondents agree that corruption is a common practice in the country (91.1% in 2016) and it is increasing.
- The level of petty corruption has shown a steady reduction.
- 70.7% were not aware of the National Anti-Corruption Strategy.
- Majority of participants (59%) evaluate IAAC's performance in fighting corruption as bad or very bad, this is the worst assessment of performance of the IAAC since 2007. 75% of

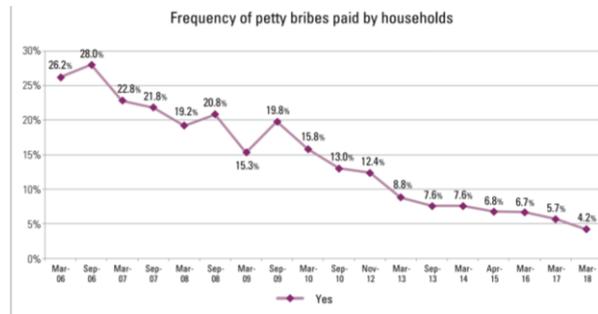
⁸ Available at [People and Corruption: Asia-Pacific-Global Corruption Barometer \(2017\)](#).

⁹ The Asia Foundation, [Survey on Perceptions and Knowledge of Corruption \(SPEAK\) 2018](#). The survey is conducted since 2006, 18 such surveys have been held so far.

respondents were not confident in IAAC, while 74% did not consider the Authority an impartial law enforcement body.

- Land Administration, Political Parties and Parliament are the administrations considered as the most affected by corruption.

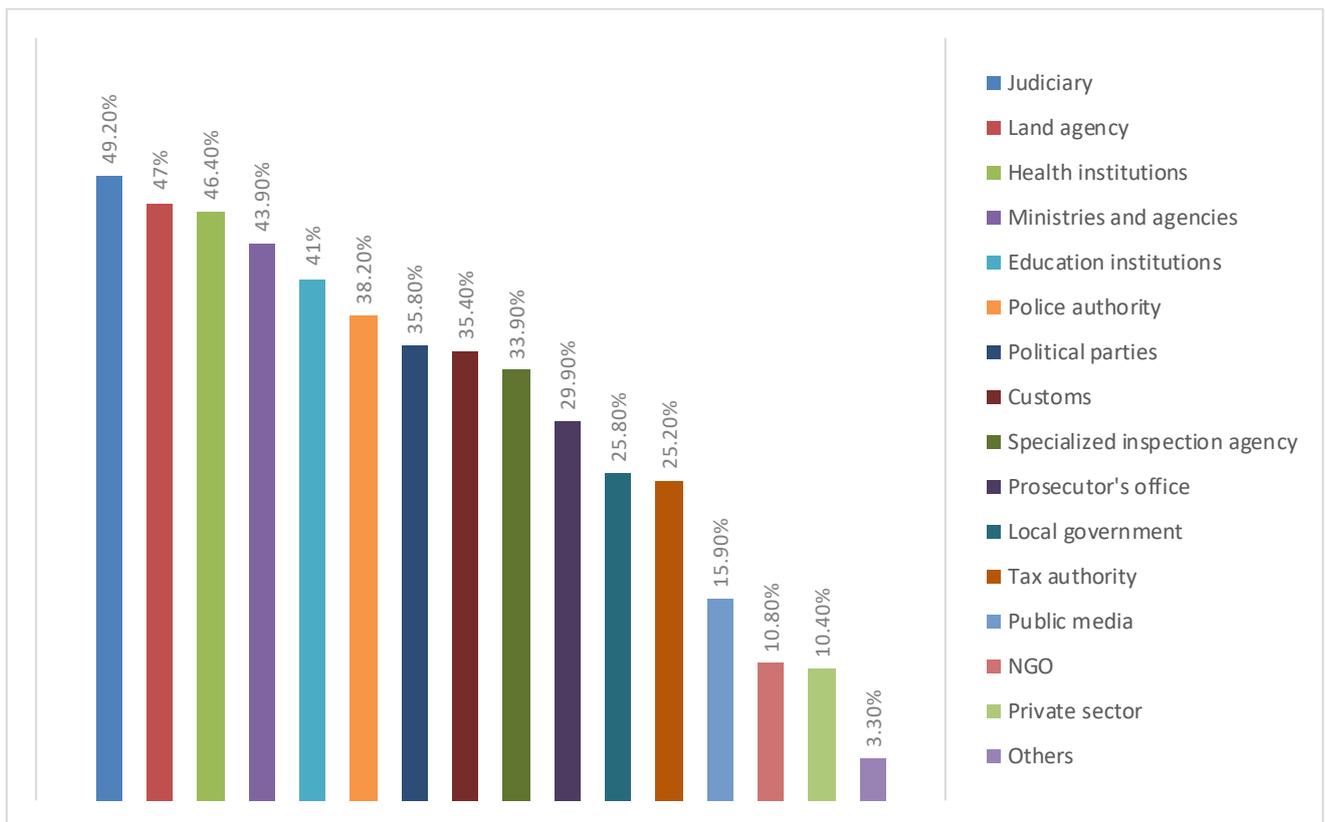
Chart 2 Frequency of petty bribes paid by households



Source: SPEAK Survey 2018, The Asia Foundation, available at: <https://asiafoundation.org/publication/survey-on-perceptions-and-knowledge-of-corruption-2018/>

According to the SPEAK survey, top most corrupt institutions are political parties Parliament, National Government, land administration, mining, customs, tax office, and judges.¹⁰ The list is similar to the perception of corruption survey by institutions (2018) carried out by the IAAC.

Chart 3 Perception of Corruption by Institutions



Source: Data provided by the Government of Mongolia

¹⁰ The Asia Foundation, [Survey on Perceptions and Knowledge of Corruption](#) (SPEAK) 2018 at p. 53.

1.1.2. Impact of anti-corruption policy implementation

Previous recommendation 1.1 – 1.2: Political will and anti-corruption policy

1) Adopt as soon as possible a new national anti-corruption strategy (programme) and an action plan with clearly defined goals, tasks, specific activities, measurable implementation indicators, responsible persons or institutions, timeframes, mechanism for coordinating and monitoring implementation, allocation of necessary funds. The new policy documents should be based on evidence of sound analysis of the corruption situation and trends, assessment of the previous anti-corruption efforts and set main priorities. Civil society and business sector organisations should be involved in the process of development and monitoring of implementation of anti-corruption policy documents.

2) Establish an effective high-level mechanism (e.g. a national council) for anti-corruption policy co-ordination and implementation that is sufficiently independent from the government, represents different authorities and includes a meaningful representation of the civil society, is supported with adequate resources including dedicated staff; reports on anti-corruption strategy and action plan implementation should be regularly prepared and made public.

3) Consider developing sectoral anti-corruption strategies or action plans for areas particularly vulnerable to corruption.

Previous recommendation 1.3: Corruption surveys

1) Continue conducting regular corruption surveys, including on specific sectors, with focus on public trust, corruption perception and experience. At least part of surveys should be commissioned to independent organisations on competitive basis.

2) Ensure that findings of the surveys be used for drafting, amending and monitoring implementation of the anti-corruption policies. Results of surveys should be made public.

Previous recommendation 1.4 - 1.5: Public participation

[...]

3) Ensure that civil society organisations and other non-governmental actors are involved in a meaningful way in the development and implementation of anti-corruption policy measures, including designing, implementing and evaluating awareness-raising and public education campaigns.

Anti-corruption policy documents

After a six-year time gap since the last strategy, the Parliament adopted the National Anti-Corruption Strategy (Strategy) on 3 November 2016¹¹ and soon, in March 2017, the Government adopted its implementation Action Plan (Action Plan). The Strategy focuses on 11 priority areas: merit-based, neutral, fair, transparent, accountable and ethical public service; efficient, transparent and accessible public services; transparent and accountable budget, finance and audit; accountability and efficiency of public procurement; independence, fairness and transparency of judiciary and law enforcement authorities; fair competition and decreased corruption risks in the private sector; cooperation between private and public sectors in anti-corruption; public oversight; improved legal framework for media, professional ethics and accountability of journalists; integrity in politics, freeing government, judiciary and parliament from business interests; cultivating zero tolerance to corruption in the general public, anti-corruption education and international cooperation.

The Strategy does not include assessment of previous anti-corruption efforts or analysis of corruption situation and there is no evidence that available survey data have been used to define

¹¹ Resolution No. 51 of the Parliament of Mongolia, 3 November 2016, *Regarding Approval of the National Anti-Corruption Strategy*.

the priorities.¹² Some priority areas mentioned by the interlocutors at the on-site visit as key anti-corruption challenges are, however, included in the Strategy (merit-based public service, digital government services, public procurement, transparency of political party funding and importance of breaking the link between business and politics).

The authorities consider the adoption of the Strategy and the Action Plan as one of the main achievements in the area of anti-corruption in Mongolia. The representatives of the line ministries confirmed that they are using these documents to develop their own plans and report to the IAAC. At the same time, interlocutors pointed out that there is a proliferation of action plans and policy documents that are formalistic that largely remain on paper and do not have much of a practical value.

The monitoring team appreciates anti-corruption policy work undertaken by the IAAC and other state bodies in Mongolia. At the same time, it regrets to note that the shortcomings, such as clear timeframes, measurable indicators, the lack of systematic coordination, outlined in the previous monitoring reports have not been addressed to ensure that the policy documents serve as efficient instruments to steer policy coordination. Furthermore, the focus is still made on adoption of laws rather than implementation. The monitoring team stresses that strategies and action plans should not be seen as end results, but rather as working instruments to move anti-corruption reforms forward.

Public consultations and CSO involvement

The policy documents were developed through extensive consultations with stakeholders and wider public, covering regions. Conferences, seminars and public discussions were held and proposals received from CSOs,¹³ private sector and media.¹⁴ Some CSOs are included in the Action Plan as implementing partners.¹⁵ The IAAC has further worked on promoting anti-corruption policy documents through various meetings and trainings conducted countrywide.

Civil society is active in Mongolia.¹⁶ Civil society participation in anti-corruption at all levels of government decision-making is a distinct priority of the Strategy that the state authorities at central and local levels are required to implement. The IAAC cooperates with CSOs and attends their anti-corruption events. It has recently signed a Memorandum of Understandings with several NGOs to help monitor the Strategy implementation.¹⁷ At the same time, interlocutors met at the on-site visit informed that the authorities are not proactive to engage NGOs, participation opportunities are not regular, systematic or institutionalised and are largely dependent on individuals, who in recent years have been quite passive. It was further noted that the space for CSOs is gradually shrinking. The Government is encouraged to address these concerns and ensure systematic, structured and institutionalized work with civil society.

¹² Mongolia has a well-established practice of surveys, see below.

¹³ At the initiative of the Mongolian Bar Association, clarifying legal grounds for refusal of the appointment of the President of candidates for judgeship was added (Action Plan measure 4.1.5.1.3).

¹⁴ The first version of the Strategy was drafted by Mongolian female lawyers Association and Mongolian Bar Association's suggestions have been added to the action plan (Article 3 of 4.1.5.1). 4.1.6.2 (1) and 4.1.6.3 (1) were added at the initiative of the Mongolian Employers Federation.

¹⁵ For example, NGO Mongolian Employers Federation. Article 1 of 4.1.6.2, and Article 1 of 4.1.6.3 of the Strategy

¹⁶ [Business Integrity Country Agenda](#), Mongolia (2018), Transparency International Mongolia.

¹⁷ Globe International, University Students Association, Youth Association, and Secondary School Students Association.

Evidence-based policies and measuring impact

Mongolia has an established practice of conducting corruption and integrity surveys, (general as well as targeted surveys, such as “politics and law enforcement sector”, “judicial and prosecutorial bodies” and “state administrative bodies”). The results of surveys are published.¹⁸ In line with the recommendation, Mongolia introduced competitive selection for external organisations to carry out such surveys. In 2018, the IAAC Research and Analysis Division outsourced an external evaluation to improve the practice of conducting surveys. The annual budget for surveys is around USD 25,000.¹⁹

The last integrity survey carried out by IAAC in 2018 covered 62 public institutions and included information collected from as many as 9411 government units across the country. Recently, the IAAC prioritized youth integrity and conducted surveys and awareness raising activities for various age groups, in cooperation with state bodies and non-governmental organisations (e.g. Family, Children and Youth Development Agency, Student Association).

In addition to the surveys conducted by state authorities, perception and experience of corruption is widely and comprehensively researched by the Asia Foundation in Mongolia,²⁰ Transparency International Mongolia, Save the Children Research Centre²¹ and others.

According to the IAAC, the findings of the surveys are used for anti-corruption policy. The monitoring team found some evidence that this information is used to make overall conclusions on the impact of anti-corruption reforms. However, it is not clear how these data are translated into concrete follow-up actions and how strategies and action plans are adapted to increase impact.

Mongolia should be commended on stepping up its practice of surveys, including by commissioning independent surveys, dedicating budget and resources to this work and publishing the results. Mongolia is further encouraged to fully use the abundance of data, analyse and incorporate available evidence in its strategic planning and monitoring processes to increase impact.

Timeframes and indicators

The implementation timeframe is divided into two phases in the policy documents (4-4 years and 3-3 years for the Strategy and the Action Plan, respectively). However, most of the measures do not have clear timeframes/targets or indicators (120 out of 225 measures in the Action Plan are spread over the whole period of these two phases), targets for both phases are too broad, and sometimes very similar. For instance, the target for the first phase of one measure (4.1.1.1.) “conclusions of the Public Service Council on conflict of interest declarations should be made open and transparent”, is that by 2019 “conclusions will be open to public access and transparent”, whereas after the second phase, by 2022, “conclusions will be *continuously* open to public access and transparent” [emphasis added]. Further, the target for the measure 4.1.1.5 “approval of corruption risk methodology and its implementation” by 2019 is “measures to reduce corruption will be done” and by 2022 the target is “action to reduce corruption and increase salary for public officials will be done”; for the measure 4.1.1.9 “training and retraining of public officials”, targets for both 2019 and 2022 are “90 per cent of staff will be trained”. Thus, it is not clear what purpose do these 2 phases serve.

Indicators for performance of the Strategy include improved TI CPI score and decreased perception of corruption amongst public as well as increased trust to public institutions. Higher level of implementation of the strategy and the improved integrity of public agencies are among

¹⁸ <https://bit.ly/2CTebBe>; <https://bit.ly/2uHzhy7>; <https://bit.ly/2WHpp3e>.

¹⁹ IAAC’s Activity Report 2018.

²⁰ A Survey on Perceptions and Knowledge of Corruption (SPEAK) has been conducted 18 times since 2006. Last one is from 2018.

²¹ [Child Integrity Survey Report Young Voices 2 \(2018\)](#).

the indicators as well, however the baseline, target and sources for data are not specified.²² Most indicators of the Action Plan are output-oriented and not measurable, except for some concrete measures for which indicators are quantifiable. For instance, one positive example is measure 1 of action 4.1.1.9 (“linking government organisations’ documentation system with public key infrastructure”), by 2019, the indicator is “electronic information exchange system should be at 50 per cent”, while by 2022, “it should be fully developed”. However, overall, the proportion of measurable qualitative or quantitative indicators is low.

Nevertheless, the authorities maintain however that the Strategy and the Action Plan are framework documents with more general directions and the concrete timelines and indicators are spelled out in the action plans of the individual public bodies. However, the monitoring team has not seen these documents to be able to assess their quality.

Thus, while the policy documents prioritize important corruption prone areas, they do not set specific targets to be implemented in concrete timeframes and to be assessed by measurable indicators.

Necessary funds

The budget allocated for the implementation of the Strategy for the period of six years is MNT 24.9 billion (approximately EUR 9 million or EUR 1.5 million per year). The biggest amount has been allocated to e-services, integrated network for the exchange of information among state institutions, training of public officials and engagement of Citizen’s Oversight Councils. Other actions are implemented with the budget of individual responsible agencies, including the budget of the IAAC (see below). According to the Government the allocated budget is sufficient for the implementation of the Strategy. The monitoring team has not been provided with financial reports or information on spending to make conclusions on the adequacy and use of budget allocations. It is clear however, that the planned measures are not separately costed or reported in the financial reports.

Local level and sectoral action plans

Mongolia does not have sectoral action plans. According to the Government, sectors are covered either by the National Action Plan or action plans of individual state bodies developed on its basis. For example, i.e. corruption in land administration, mining, health and education are addressed by anti-corruption plans of respective line ministries. According to the Government, all state bodies including at local level, have approved action plans for the implementation of the Strategy. The monitoring team could not assess the quality and depth of these action plans, as they have not been provided. The national Action Plan itself is quite limited and vague on sectors: it does not include such vulnerable areas as customs, tax office, health sector, education sector, and measures for sectors that are envisaged, are not concrete or targeted. For example, mining sector, one of the key corruption “hot spots” for Mongolia is addressed under priority 6, cooperation with private sector, with six broad measures, mainly related to legal reforms. The action plan of the Ministry of Mining and Heavy Industries may include more details, but this could not be assessed by the monitoring team.

Mongolia should be commended for assessing corruption risks in various state bodies and sectors in cooperation with NGOs. These assessments cover government agencies and state-owned enterprises, including hospitals and universities (see below in 1.4). It is notable that according to the IAAC they are using integrity survey results to plan inspections and research into concrete fields. The results are integrated in the recommendations of the IAAC and ultimately in the action plans of the relevant bodies. The new methodology of corruption risk assessment in state agencies was approved by the IAAC and pilot survey is underway in 24 agencies by 6 NGOs. In 2019, a contract was signed with 15 NGOs who will be in charge of 15 risk assessments.

As regards the local level, the action plan of Ulaanbaatar City has been highlighted as a success story of anti-corruption efforts, improved transparency and access to public services. The

²² Chapter 5 of the National Anti-Corruption Strategy: Duration, Phases and Results.

Governor's Office of the Ulaanbaatar City cooperated with an NGO, International Republican Institute to design the action plan. The NGO conducted risk assessment with the involvement of foreign experts from US, Slovakia and Canada. The focus groups for qualitative interviews included representatives of NGOs, businesses and public officials. The working group on the action plan consisted of representatives of the Governor's Office, IAAC, International Republican Institute and other NGOs. The members of the working group studied international standards and good practices and developed the program based on the draft of the National Anti-Corruption Strategy (as it was not in force at that time). The procedure for the monitoring and evaluation was approved and a special Committee was established to monitor the implementation of the action plan.²³ One of the results is launching service centres in the capital city providing a number of public and private services to the citizens.

Mechanism for coordinating and monitoring of implementation

The recommended high-level coordination mechanism with CSO participation has not been established. However, the Strategy implementation coordination has been assigned to the Independent Authority Against Corruption (IAAC) and the oversight to the Parliament's Standing committee on Legal Affairs. Some oversight functions lie with the President as well (on Public Council appointed by the President see section 1.4).²⁴ The role of the Government is to support the ministries, agencies and local government in implementation.²⁵

The responsible bodies submit annual self-assessment reports on the implementation of the Strategy to the IAAC. On this basis, the IAAC prepares an integrated report with assessment and recommendations and submits it to the Parliament. The Parliamentary Standing Committee can discuss the report and may issue a resolution instructing respective state bodies to ensure implementation of the Strategy. The Standing Committee is entitled to further present the report to the Plenary Meeting of the Parliament for further discussions. This is not a mandatory step in the process, and to the knowledge of the monitoring team has not happened so far. Thus, the Parliamentary oversight seems formalistic.

The implementation reports include information on performance by the agencies and recommendations to those who are underperforming (one-third of the responsible agencies were underperforming at the time of the on-site visit). The reports are published on the IAAC website.²⁶ In 2017, the Strategy implementation was at 32.9%, this figure is not illustrative to the monitoring team due to the lack of the concrete annual targets. The analytical value and quality of the report could not be assessed either, as the report is not available in English.

The Strategy provides that a monitoring methodology should be elaborated with the assessment criteria and a centralized electronic system should be set up. Three years after the adoption of the Strategy, however, such methodology has not been adopted. The monitoring team was informed that it will be developed in parallel with the electronic software for reporting and monitoring and the IAAC is working on it actively.²⁷ The electronic tool will incorporate a module for NGO assessment as well.

The IAAC established a new Office for the Implementation of the Strategy that employs three people. It also set up 7 thematic working groups, to coordinate with the respective line ministries and public bodies on a daily basis. Prevention specialists and investigators of the IAAC also

²³ The action plan is to be implemented in two phases 2015-2017 and 2017-2020. The level of implementation as of January 2018 was assessed at 61.4% with 4 measures (out of 38 measures of 7 objectives) implemented at 100%, 20 measures at 70%, 8 measures at 40%, 6 measures at 0%.

²⁴ National Anti-Corruption Strategy, Appendix to Resolution No. 51 of the Parliament of Mongolia, 3 November 2016, Item 7.1.2.

²⁵ Ibid, Item 7.1.3.

²⁶ [Implementation report for 2017 available in Mongolian.](#)

²⁷ IAAC Activity Report 2018 provided by the Government.

contribute to this work with the findings of their research and investigations. There are 1630 anti-corruption focal points in responsible state agencies throughout the country, of which 109 are main contact points, as IAAC explained. Focal points coordinate anti-corruption work in their agencies and receive methodological guidance from the IAAC. In addition to policy work, they are in charge of collecting and verifying income and asset declarations submitted by employees of their respective agencies, on top of their other duties. The focal points met at the on-site visit confirmed that they cooperate with the IAAC well but their own work as focal points should be made full-time, as it requires substantial specialisation time and efforts.

As the IAAC does not have regional offices (see section 1.4) it came up with a creative solution and established so-called Citizen's Oversight Councils. These councils operate both at central and regional level (44 in total and includes line ministries as well)²⁸ consisting of local activists, usually retired lawyers, economists or journalists. Their mandate is to monitor implementation of the action plans, as well as transparency, integrity, financial accountability, public participation, access to information, compliance with the regulations on asset and income declarations and ethics. Positions for council membership are publicly announced and members are selected by a working group set up by the IAAC. Council members are paid by the IAAC (the average salary ranges from MNT 100,000 to 350,000 or appr. EUR 30-100). Out of 168 positions (appr. 4 people per council), 125 have already been filled. Some interlocutors criticised the selection of the members and said that their list was not publicly available. Later the Government clarified that the information is available on the web-site of the line ministries. In addition, the Government informed that it has appointed 7 regional investigators (see below in section 3.4).

External monitoring or impact evaluation has not been carried out yet. According to the authorities, shadow monitoring will form part of the monitoring process after the launch of the new monitoring software. The authorities informed that for now, they are using available research by other international organisations or NGOs when compiling reports.

Conclusions

The monitoring team welcomes the adoption of long-awaited Strategy and the Action plan that include some key corruption prone areas as priorities. IAAC has put much effort in developing these documents through wide stakeholder consultations. It is important that the public bodies make necessary efforts and show full cooperation in development and implementation of corresponding individual action plans.

Surveys are widely carried out and to some extent used in the policy work. Mongolia should keep up this work and link the survey results to individual anti-corruption actions in a given field to measure impact and adjust measures accordingly. A high-level coordination mechanism has not been established, but the IAAC is in charge of policy coordination and there is some established practice of working with focal points appointed in each responsible agency. Yet, a systemic, structured and consistent approach to policy coordination with wide stakeholder participation is lacking.

Mongolia is complemented for working on an electronic system of monitoring performance of responsible authorities. It is encouraged to further define the methodology for monitoring and use measurable indicators to assess results. Mongolia should also consider making the work of focal points of in state authorities most vulnerable to corruption a full-time job. Targeted approach to sectoral corruption risk areas should be stepped up as well.

Thus, further work is needed to make better use of the strategic planning and coordination processes as instruments to drive anti-corruption performance and increase impact.

Mongolia is **partially compliant** with the recommendation 1.1.-1.2, **largely complaint** with the recommendation 1.3 and **largely compliant** with the part 3 of the recommendation 1.4-1.5.

²⁸ The process and criteria of selection of the public oversight council are laid down in the joint resolution of the Minister of Justice and the head of the IAAC of 2017.

New recommendation 1

1. Ensure that anti-corruption strategic planning is used as an instrument to steer policy coordination and push anti-corruption reforms.
2. Link survey results to concrete measures, use data for monitoring results, adjusting measures and setting new targets.
3. Involve NGOs in the monitoring of anti-corruption policy implementation.
4. Ensure that the selection of the members of the Citizen's Oversight Council is transparent and objective and perceived as such. Increase the visibility of their work.

1.1.3. Public awareness and education in anti-corruption**Previous recommendation 1.4 - 1.5: Public participation, raising awareness and public education**

1. Ensure that awareness raising and public education campaigns are carefully planned and correlate with the anti-corruption programme objectives and tasks; clearly define the target groups, main issues and expected outcome of these activities.
2. Regularly assess the results of awareness-raising and educational activities, in particular by seeking external independent assessment.

The previous monitoring report concluded that awareness raising activities lacked systemic approach, their results were not clear and the allocated resources were insufficient. These shortfalls seem to be partly addressed in the reporting period. Awareness raising activities are part of the national strategic documents. IAAC's Prevention and Public Awareness Department has its detailed action plan and resources to carry out related work. However, the activities are still not aimed at specific outcomes. The results of work are not assessed and thus not taken into account in planning awareness raising strategies.

Changing public attitudes to corruption is one of the objectives of the Strategy. This is planned to be done by integrating topic of corruption in the curriculum at all stages of the education process; by training and support of teachers conducting anti-corruption courses; by informing public about good practices of fighting corruption and by targeted use of social media. The Action Plan requires all ministries, government agencies and local authorities to conduct awareness activities.²⁹ The total budget of MNT 110 million (appr. EUR 36,500) has been allocated for six years.

The 2018 action plan of the Prevention and Public Education Department is mostly aimed at working with school children, students and NGOs to cultivate integrity and raise anti-corruption awareness. The indicators included in the action plan are process rather than impact oriented, e.g. dissemination of ideas, cultivation of students' initiatives, performance of studies or organisation of discussions.

Mongolian authorities reported a number of public education campaigns targeting mostly youth and public officials: a campaign "Together for a Fair Society" in 2015 and 2016 targeted youth and involved debates, conferences, lectures and a poster competition. "Different Future" in 2018 targeted youth, public officials and general public using videos on public procurement and state inspections, conducting interviews with celebrities and spreading anti-corruption information on social networks. In 2018, the IAAC conducted a "paper clip" campaign for youth. Pictures of young people wearing paper clips attracted media attention and the IAAC continued to use the Facebook page of the paper clip campaign as a channel to continue promoting anti-corruption.

NGOs support this work. The IAAC reported cooperating with Globe International Centre, Citizens Education Centre, Management Academy; Mongolian National Chamber of Commerce

²⁹ Measure 4.1.10.1 (1), dealing with the requirement of public awareness and promotion of zero tolerance towards corruption,

and Industry, Asia Foundation, and Transparency International Mongolia; Open Society Forum and others.³⁰

The results of these numerous activities are not recorded and the impact is not measured by the authorities. However, perception surveys reveal a positive trend in public attitudes. The SPEAK Survey 2018 provides interesting insights: 54.7% of respondents disagreed with the statement that “some level of corruption is acceptable” (compared to 41.8% in 2006). The level of petty corruption has decreased from 26% in 2006 to 4.1% in 2018. And less people are willing to pay bribes: percentage of those who would refuse to pay a bribe increased from 28.7% to 46.9% within the decade.³¹

These positive trends may partly be attributable to multiple anti-corruption campaigns and public education. According to the IAAC the increased number of complaints to the IAAC (about 5-6 times more than in the previous years) is also a good indicator of trends in awareness and trust, that could be a result of its awareness work. At the same time, there is a decline in the knowledge and awareness of the anti-corruption strategy and measures carried out by the Government.

Conclusions

Mongolia continues its work on raising public awareness and public education on corruption. Policy documents include anti-corruption awareness as one of the objectives. Ongoing campaigns and trainings are supported by private sector and NGOs. However, the results of the awareness raising campaigns are not evaluated. This area of work would benefit from clear goals aimed at concrete results. Mongolia is recommended to conduct thematic campaigns aimed at sectors where they may have most impact in conjunction with other preventive and repressive measures, e.g. fighting against corruption in traffic police, local authorities, hospitals, or others. It is advisable to measure impact that such campaigns have to plan next cycle of awareness raising accordingly.

While knowledge and awareness of corruption has increased and there is an improvement in intolerance of corruption by public over the past decade, Mongolia should do more to increase the trust of the society at large and get them on board of anti-corruption reforms. However, this will only be possible if the Government is determined to fight corruption and public is confident in the will and efforts of the Government in this regard.

Mongolia is *partially compliant* with the first and second parts of the recommendation 1.4-1.5.

New recommendation 2

1. Target awareness raising activities to corruption-prone areas. Use appropriate methods for each target group.
2. Assess outcomes and plan next cycle of awareness raising accordingly.

1.1.4. Corruption prevention and coordination institutions

Previous recommendation 1.6 (from the Review Report): Specialised policy and co-ordination institution

1. Strengthen capacity of the specialised anti-corruption agency by guaranteeing its institutional, functional and financial independence; put in place effective mechanisms to prevent various forms of hierarchical pressure and undue interferences with corruption investigations and prosecutions; strengthen regional focus of the agency’s work, in particular by considering establishing regional (local) offices of the agency.

³⁰ In addition to awareness raising and training, IAAC has worked with NGOs on implementation of Glass Account law, legal framework of financing of political parties etc.

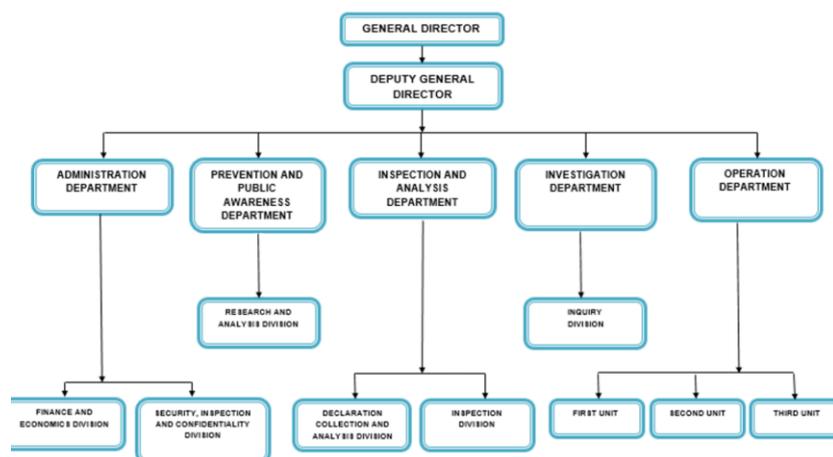
³¹ The Asia Foundation, [Survey on Perceptions and Knowledge of Corruption](#) (SPEAK) 2018 at pg. 39.

2. Introduce competitive and transparent merit-based selection of the Head and Deputy Heads of the specialised anti-corruption agency; establish clear criteria and procedure for merit-based and competitive recruitment of the agency's staff.
3. Improve annual planning of the Independent Authority Against Corruption by emphasizing in its action plans the priorities, clearly defining the content and expected outcomes and outputs of activities, timeframe, setting measurable indicators of implementation and controlling their fulfilment.

The Independent Authority Against Corruption (IAAC) is a specialized anti-corruption body accountable to the Parliament, established in 2007. The analysis in this section discusses the implementation of the recommendation 1.6 with the focus on IAAC's policy coordination and preventive functions, the law enforcement aspects are described in section 3.4.

In the reporting period, the IAAC remained Mongolia's leading agency with the mandate including anti-corruption policy, prevention of corruption and law enforcement. The IAAC has five departments in charge of, respectively, prevention and public awareness, inspection and analysis, investigation, undercover operations and administration.³² After the adoption of the Strategy, a dedicated office was created to ensure its implementation as described in section 1.2. The IAAC also established a Public Center where it organises trainings and awareness raising activities.

Chart 4. IAAC's Structure



Source: IAAC website.

The IAAC conducts inspections in state bodies, provides them with recommendations and subsequently reviews their implementation. In recent years, the IAAC has stepped up its preventive and policy work. For example, it has inspected state funds, one of the corruption “hot-spots” in the country, education sector and the judiciary and provided recommendations, it conducted corruption risk assessments in 24 ministries (2018) and started the assessment has started in 15 state-owned enterprises including hospitals and universities (2019).

As an independent anti-corruption institution, the IAAC continues to encounter various challenges. These include: political pressure, challenges related to the lack of cooperation and those related to the lack of resources.

The IAAC actively works with state institutions at central and local level in exercise of its mandate. However, in view of the monitoring team, it has cooperation challenges and needs stronger support

³² The mandate and functions of the IAAC as defined by the Anti-Corruption Law (Chapter 4) are described in detail in the previous round monitoring reports at: <https://www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm>

from state agencies and stakeholders alike. This view was shared by some interlocutors met at the on-site. In the process of coordination of the answers to the monitoring questionnaire and the on-site visit in the framework of 4th round of Monitoring some key state bodies did not show their full support, some answers were not provided and key state bodies did not attend the sessions with the monitoring team.

The monitoring team was alerted about political pressure exerted on the IAAC stemming from various power groups. According to media sources, in April 2018, the President of Mongolia attempted to remove the current head and the deputy head before the expiry of their term of office, criticizing their performance in connection with the low ranking on Transparency International Corruption Perception Index. The President conducted an opinion poll and nominated a new head and a deputy. This attempt was condemned by TI Mongolia as a political pressure that issued a press release urging to “stop undermining anti-corruption efforts nationwide and cease threats to fire the country’s top watchdog”.³³ The new nominees were not approved by the Parliament eventually.

Some interlocutors also pointed to the frequent changes in the management of the IAAC, and that none of the heads were able to finish their terms. The IAAC reported that out of the four heads since the launch of the agency, one passed away, one was convicted, the third one resigned voluntarily and the current one is in the office since July 2016. The monitoring team became aware of further attempts to circumvent the statutory terms of office of the IAAC leadership and remove them from the office, which is a worrying development attesting to the political pressure highlighted above.

The IAAC reported shortage of staff especially investigators in view of the increased caseload (see below in section 3.4) The lack of capacity and proactiveness of the IAAC employees have been mentioned by interlocutors as one of the challenges as well.

Trust and assessment of performance

In 2018, public rated the IAAC’s performance the lowest in its whole history of existence. 59% evaluated its performance as either “bad” or “very bad” and only 5.7% rated it as “good” or “very good.”³⁴ Even though its political impartiality is sometimes questioned, Mongolian society in principle sees the IAAC as an anti-corruption leader.³⁵

At the on-site visit, the monitoring team heard criticism over the weakened IAAC that is “going after small fish not sharks”. This criticism was strongly voiced by the President in its address to the Parliament when discussing the state budget at the end of 2018. The President questioned the funding given to the IAAC stating that it is not performing its duties to confiscate proceeds of crime and return offshore assets, it has not resolved “60 billion tugrik case”, it failed to act in the face of clear tax evasion, and bribery over the natural resources revenue and instead it is dealing with a school director concluding: ‘I am sure that the MPs are asking themselves if we need to finance an institution that doesn’t do its job.’³⁶

The IAAC representatives commented that these public perceptions are largely driven by media and politicians. Negative media coverage and criticism by the President is quoted by various reports and interlocutors as one of the reasons for decreased trust to the IAAC as well.

Budget and resources

The ACL provides that state funding should be sufficient to enable the IAAC to operate independently (Art. 18 ACL). The IAAC has alarmed the monitoring team about the change in the law that removed the requirement that the budget in a given year may not be less than in the

³³ [Mongolia’s Anti-Corruption Agency Under Threat.](#)

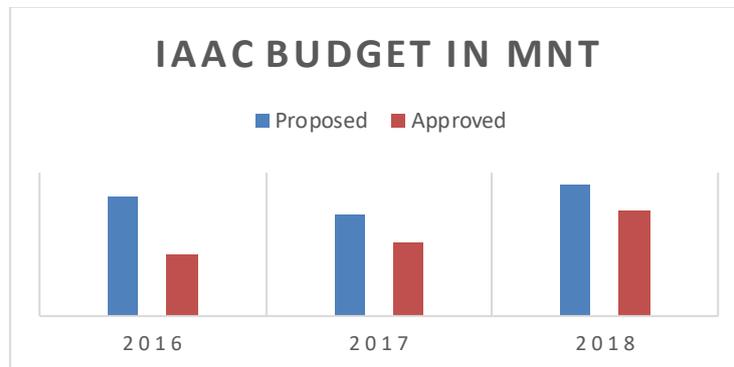
³⁴ [Survey on Perceptions and Knowledge of Corruption, 2018](#), the Asia Foundation, p.32, 44.

³⁵ See <https://mn.usembassy.gov/2018-investment-climate-statement-mongolia/>.

³⁶ [President’s address to the Parliament \(2018\).](#)

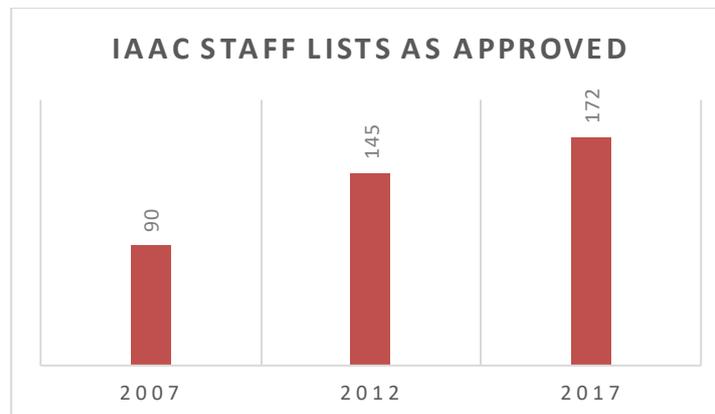
previous year (now abolished Art. 29.3). This change, may be seen as limiting financial independence of the IAAC, but so far it has had no practical implications. In practice, IAAC budget, as well as its staff and salaries have been growing in recent years.

Chart 5. IAAC's Annual Budget



Source: data provided by Mongolia as a part of the answers to the monitoring questionnaire.

Chart 6 IAAC's Staff



Source: data provided by Mongolia as a part of the answers to the monitoring questionnaire.

According to the IAAC, the lack of human resources, still represents a challenge and the staff salaries are much lower than initially planned, when establishing the IAAC (envisaged 50-60% higher than other public officials, but is 60-70% lower than of prosecutors and 1.4-1.7 times lower than that of judges).

The IAAC has continued using annual planning of its work that is reflected in separate annual plans of the organisation and respective annual reports. Some of these documents were presented to the monitoring team. Performance targets of the IAAC focused on processes, rather than results e.g. develop leadership skills of directors, strengthen co-operation between public and private sector; increase participation of civil oversight committee, increase number of detection and confiscation of proceeds of crime etc. The provided information is insufficient to assess financial planning, as only total amounts of expenditure and balance have been provided.

Regional offices

Regional offices have not been set up despite the IAAC's several requests to the Government. The IAAC came up with a creative solution and Citizen's Oversight Councils as described above. However, with the limited mandate and capacities (only 3-4 people per Council responsible for monitoring strategy and some preventive work) these Councils cannot replace or compensate for the absence of the IAAC's regional offices.

Appointment of the leadership and selection of staff

No new developments have taken place regarding the introduction of a competitive, merit-based selection of Head and Deputy Head of the Agency. As before, they are appointed for 6-year term by the Parliament, based on a nomination by the President of Mongolia. The law provides for criteria, but not for procedure for selection or appointment. (Art. 21 of the ACL). Hence, the appointments cannot be considered objective and transparent.

Staff of the IAAC are civil servants covered by general civil service recruitment procedures (please refer to the section 2.1. of the Report). Open competitions have not taken place since the establishment of the Agency. The majority of staff, especially law enforcement, were transferred from other law enforcement bodies. The IAAC has not encountered any substantial staff turnover throughout its existence despite changes of the top management. For example, the head of the administration has been working in the Agency since the establishment of the IAAC. There is no system of performance evaluation in place, additional benefits/bonuses are discretionary and not linked to the objective assessment of performance.

Hierarchical pressure

No new developments have taken place to address this part of the recommendation. The ACL provides for the prohibition to interfere in the operations of the IAAC (Art. 16.2). Public officials are also required to report any pressure or influence in the process of exercise of their functions to their supervisor or the IAAC.³⁷ According to the authorities, if IAAC investigators face pressure or undue interference, they submit influence declaration to directors. No information was provided on implementation of this provision in practice or about any protection provided in case of pressure. In fact, the IAAC representatives denied any direct pressure or interference in their work, including on the ongoing cases.

CSO participation and external oversight

The IAAC cooperates with CSOs and involves them in its policy work and awareness raising, as discussed above. Nevertheless, CSOs informed that there is no robust system of participation and cooperation with NGOs depends on individuals and proactiveness has been decreasing under the current leadership. It was also pointed out that the space for CSO participation is shrinking.

The ACL provides for an external oversight over the IAAC performance through the Public Council (Art. 27) consisting of 15 members appointed by the President for four-year term. The criteria for the appointment are general and the selection is not transparent. The current composition was approved one year ago. The Public Council is based in the IAAC premises.

The monitoring team interviewed the representatives of the Public Council, who were extremely critical of the IAAC performance, largely voicing the opinion of the President quoted above. In their view, the IAAC is closed and underperforming with politically biased leadership. To corroborate this statement, reference was made to alleged secret meetings of the IAAC Head with then prime minister who was under investigation for “60 billion tugrik case”. The IAAC did not find evidence to pursue the case attracting a lot of criticism.³⁸

The Public Council representatives receive complaints from citizens and in their words act as a ‘bridge’ between the citizens and the IAAC. They oversee the operation of the IAAC except of the investigative department. No information, reports or statistics, were provided to the monitoring team about their performance.

Many interlocutors met on-site considered the Public Council political and lacking concrete results, not much seems to be known about them to the public. Direct appointment by the President without transparent selection and clear criteria, questionable professional background of its members and no evidence for their performance except for critical and, sometimes partisan, public statements have been mentioned among the concerns. Several interlocutors have even pointed to

³⁷ Regulation of Public and Private Interests and Prevention of Conflicts of Interest in Public Service, Art. 9.1.

³⁸ For details about the case, see section 3.3.

the possible political affiliations of its members. Notably, members of the Public Council were not represented at the on-site visit session held with CSO representatives.

The IAAC representatives have indicated that they would welcome any external evaluation or recommendations on their performance by the Public Council. However, they never received recommendations or guidance, instead they have been active criticized in public on 16 press conferences held during one year of operation.

TI Mongolia informed that IAAC has agreed to take part in the performance assessment that will cover 6 countries and will constitute the independent assessment of performance. This assessment has been launched and will be finalized by the end of April. It will include recommendations for improving IAAC's performance. An external assessment of performance is a commendable and can help the agency boost its performance.

Conclusions

The IAAC continued to face challenges related to political interference, coordination and resources. Over the last three years its budget, staff and salaries to staff have been increasing, however the establishment of regional offices was not supported. Political pressure with regard to the prominent cases has been present. There is no mechanism for the staff to be protected against hierarchical pressure apart from reporting to superiors from which such pressure may originate. The selection and performance of the Public Council lacks transparency. The IAAC annual planning is process rather than result-oriented, it is short of key performance indicators and does not include concrete budgetary allocations per each measure. The IAAC is encouraged to proactively engage with civil society and other stakeholders.

Mongolia is *partially compliant* with the recommendation 1.6.

New recommendation 3

1. Introduce merit-based, transparent and participatory selection of the Head and Deputy Heads of the anti-corruption agency.
2. Ensure objective and transparent procedure for selection of members of the Public Council responsible for the oversight of the IAAC.
3. Ensure transparency and public accountability of the Public Council.
4. Ensure that the IAAC carries out its functions independently without any interferences in its activities.
5. Ensure merit-based appointment, promotion and performance evaluation of the staff of the IAAC.
6. Provide IAAC with regional offices and resources necessary to implement its mandate in full.
7. Ensure proactive and systematic engagement with civil society.

2. PREVENTION OF CORRUPTION

2.1.1. Integrity in the civil service

Recommendation 3.2 (from the Review Report): Integrity in civil service

1. Establish clear legislative delineation of political and professional public service; ensure merit-based appointments and promotions for all categories of public officials based on transparent and objective criteria; ensure that remuneration system for public officials is fair, transparent and objective.
2. Review the prohibitions and restrictions for public officials and ensure that all types of conflict of interests are covered by law and properly enforced.
3. Ensure that competent authorities empowered to apply sanctions for breach of the anti-corruption laws are clearly identified and procedures are described in detail and effective sanctions for non-compliance are provided.
4. Ensure that asset declarations system cover all categories of public officials, including those in political offices; ensure effective verification mechanism for asset declarations and their proactive publication, first of all on Internet. Provide for effective and dissuasive sanctions for the failure to submit declarations and for submitting false information.
5. Introduce mandatory reporting of corruption offences and protection of whistleblowers.

Integrity and professionalism of civil service has not been ensured by the public administration of Mongolia in the reporting period. Highly politicized civil service, recruitments based on political affiliations, alleged bribery in connection with the appointments in the public service and high turnover of staff after each change of political power, have persisted as key challenges.

Strategy and the new law on civil service

Civil service reform is one of the objectives of the National Anti-Corruption Strategy. The goal is to prevent corruption risks by creating accountable and transparent civil service that is based on merit and is free from political influence.³⁹ The corresponding measures in the Action Plan are mostly declaratory, without concrete targets and are focused on changes of laws rather than implementation. The new Law on Civil Service (CSL)⁴⁰ with the matching goal to ensure professional, sustainable, transparent and responsible civil service has entered into force and 46 by-laws for its implementation were still in the process of adoption in December 2018 at the time of the on-site visit. While legal improvements are welcome, main issue to be addressed is the lack of adequate enforcement.

Civil Service Council

The new CSL provides for a new composition and somewhat broader functions for the central authority for civil service, Civil Service Council (CSC), an independent collegial agency accountable to the Parliament, responsible for co-ordination and overall management of civil service.⁴¹ The previous report raised serious concerns over its membership, as it was composed of politically affiliated persons. Under the new framework, three of five members are still nominated by the President, the Parliament and the Government, but the nominees should not be holding

³⁹ Objective one of the Strategy includes: merit-based appointment and promotion, freeing public service from political influence, among them high-level political officials and political parties, remuneration, ethics, training of public servants.

⁴⁰ In force since 1 January 2019.

⁴¹ Chapter 21 of the CSL.

political positions or be members of a political party at least for one year before the nomination.⁴² Two members are selected from the core civil servants with 15 years of service.⁴³ The selection procedure is not approved yet. The CSL also provides that the CSC's operation shall be immune from undue interference and influence of any third parties, including listed political officials.⁴⁴ These legal amendments, if dually implemented, may contribute to reducing politicisation of the civil service of Mongolia.

The CSC has a Secretariat with 14 staff (as of 1 February 2019). It also has a centre for training, research and consultation and sub-councils: 11 in the ministries, 14 in public agencies, and 22 at the local level. In view of its broad functions and an important new task to enforce the new CSL, these resources seem insufficient. The representatives met at the on-site visit informed that the CSC requested staff increase to ensure the implementation of the new CSL and fully enforce its extended functions.

Evidence-based management

Human resources management information system (HRMIS) is not in place to support the reform with comprehensive data and evidence. Even basic data, such as information about vacancies or disciplinary proceedings, is not available. The authorities informed that establishing a system is on the agenda since 2000, but it did not materialize due to the lack of financial resources.

Conclusion

Mongolia adopted a new civil service law and prepared related secondary legislation. Enforcement of this reform requires strong leadership and adequate capacity of the Civil Service Council backed with the political support by the Cabinet of Ministers. It is key to keep the CSC free from political influence and able to carry out its functions efficiently. HRMIS should be put in place to ensure evidence-based reform implementation and enable efficient management of the civil service.

New recommendation 4

1. Ensure necessary resources for full exercise of the Civil Service Council's mandate and implementation of the law on Civil Service.
2. Put in place a human resources management information system to support evidence-based civil service reform.

Delineation of political and civil service positions

The classification of civil service remained the same under the new CSL.⁴⁵ The core civil service consists of public administration positions (providing professional advice for developing state policies and managing their implementation) and special state service positions (performing special state functions related to ensuring national and public security, and keeping social order and the rule of law). Political positions are listed separately (Art. 11). Thus, there is a clear legal delineation between political and professional public service. At the same time, Mongolia should consider separating politically appointed persons from the law on civil service, to further decrease the risk of politicization of the civil service.

According to CSC data, public sector employees constitute 21.4 of the total workforce, which is quite high. In comparison to 2014, number of civil servants increased by 5% proportionately for each category.

⁴² Art 68.4, CSL.

⁴³ Art 68.2, CSL.

⁴⁴ Art 65.8, CSL.

⁴⁵ It is classified into four categories: political, public administration, special state service and public support service positions.

Table 1 Number of Staff by Category

No	Classification	Numbers	Percentage
1	Political Officials	3430	1.8%
2	Public Administration	18952	9.8%
3	Special State Service	37433	19.5%
4	Public Support service	132660	68.9%
	Total	192475	100.0%

Note: As of 1 February 2019

Source: Data submitted by Mongolia.

Clear division between political officials and core civil servants did not prevent high politicisation of the civil service of Mongolia in the past. A severe risk of further politicisation lies in the recent amendments of the Law on the Regulation of Public and Private Interests and Prevention of Conflict of Interest in Civil Service (COI Law, Art. 23 paras 6, 7 and 9) stipulating appointing authorities' large discretion to appoint a candidate in public service even after the IAAC has given a negative conclusion having found a potential conflict of interest. This is a clear setback that Mongolia is encouraged to address.

Merit-based civil service

The recruitment procedure has remained largely the same in the new CSL, including promotion from within the civil service, the selection from the roster/reserve list, and the open competition, only in case vacancy cannot be filled with the first two. This procedure unreasonably restricts entry into the core civil service of Mongolia, as it was found by the previous round of monitoring report. Moreover, political officials can still be listed in the reserve without passing the exams.⁴⁶ The authorities at the on-site visit pointed out that the new CSL extended the merit-based system, which the monitoring team could not conclude based on the examination of the new CSL.

The number of vacant positions announced by the Civil Service Council was about 30% less in 2017 (731) than in 2015 (1091). Average number of candidates per vacancy was 10, but only the third have passed the exams in 2015-2017. The number of vacant positions at the senior managerial level was 33 in 2017, 52 in 2016 and 34 in 2015 and two candidates were registered per vacancy, but the Civil Service Council proposed only one per vacancy to the appointing authority. In this context it should be mentioned that in 2016, parliamentary elections took place, resulting in a shift of the coalition that could have influenced some major changes in the upper level of the civil service in that year.

All stakeholders met at the on-site visit, including the representatives of the Civil Service Council, non-governmental and business society as well as international organisations, confirmed, that the recruitment, promotion and termination of service is not based on merit and equal treatment in practice. And the human resource management tools such as performance appraisal, professional training, transparent and fair remuneration, integrity and disciplinary measures, do not properly function either.

Furthermore, so-called "60 billion tugrik case" under investigation by the IAAC where high level officials were allegedly involved in selling public service positions, that has instigated the public unrest and manifestations and resulted in the dismissal of the parliamentary speaker, is illustrative in this regard. It is largely believed that the public service positions are being "sold" in exchange of a bribe or distributed based on political affiliations.

The lack of merit-based professional civil service is especially visible during the periods of changes of governments. Many structural changes occur in conjunction with 'voluntary

⁴⁶ Including a member of parliament, minister, deputy minister or head of the agency, senior advisor of the president, prime minister or speaker of the parliament.

resignations' or dismissal of civil servants. Over 40 000 civil service positions have been abolished due to reorganisation of public bodies during the past six years.⁴⁷ Interlocutors met at the on-site visit stated that civil servants are under pressure to resign after political change. Another evidence to confirm that the civil service is not merit-based is the large volume of compensations for unlawful dismissal of civil servants. According to the Court Decision Enforcement Agency, only in 2016, courts ordered compensation of 788 million 479 thousand tugriks (262 700 euros) to 239 unlawfully dismissed civil servants. In 2017, 514 complaints (630 and 626 respectively in 2016 and 2015) were filed to the Civil Service Council, majority of these concerned dismissals, recruitments and entry examinations. However, no information has been provided on the results of the proceedings.

Table 2 Complaints Received by Civil Service Council

No	Content	2015	2016	2017
1	Dismissal from public service positions	228	144	135
2	Selection process, its result and reserve appointments to public service positions	86	72	59
3	Professional exams, requirements, results and reserve	101	62	70
4	Lack of ethics and morale of public servants	66	31	37
5	Selection process of administrative level positions in the public support service	15	10	7
6	Disciplinary punishment	10	12	19
7	Pension, benefit, salary and remuneration of public servants	24	27	22
8	Demotion from his/her position	28	28	22
9	Dismissed due to restructuring	56	187	22
10	Activities of sub-councils	3	4	6
11	Rotation of public service positions	9	8	3
12	Not appointing to public service positions	-	11	30
13	Not enforcing court orders	-	6	2
14	Repeatedly applied for public service positions	-	18	23
15	Request for dismissal from his/her own position	-	-	2
16	Not being hired after maternity leave	-	-	3
17	Revoking illegal decisions	-	-	2
18	Other	-	10	47
Total		626	630	514

Source: Data submitted by Mongolia.

All the above-mentioned gives ground to believe that each political change brings about massive 'cleaning up' of the public service. The authorities met at the on-site confirmed that the instability of civil service is one of the key challenges. The constant changes of the government together with high turnover of staff negatively affect the professionalism and integrity of the civil service. Mongolia is strongly urged to ensure stability of professional civil service by enforcing its own laws and putting an end to the malpractice.

⁴⁷ The average duration of the Government of Mongolia has been approximately 1.5 years: Activity report of the Civil Service Council of Mongolia (2017).

Remuneration

No major changes have taken place since the previous monitoring and the remuneration system remains complex. The salary consists of the basic salary, additions for special conditions, duration and rank of service, academic degree, qualifications and other allowances as well as bonuses based on quarterly performance appraisal results (art. 51.1.4 of the CSL).⁴⁸ Based on the interviews during the on-site visit, the share of variable part of the total pay does not usually exceed 40% but no concrete data was provided. The authorities met at the on-site informed that bonuses have been provided arbitrarily in the past in violation of regulations. The IAAC issued a recommendation to the Government to remedy the situation with a new regulation based on the results of the research of a dedicated thematic working group, but there has been no follow up.

According to the National Statistics Committee of Mongolia, the monthly average salary was 998 000 tugriks (333 euros), and 1.1 million tugriks (367 euros) in the capital Ulaanbaatar as of June 2018. According to the CSC, the average salary of civil servants is about 700 000 tugriks (233 euros), thus remaining well below the average salary in the country and preventing from attracting well-qualified people to the civil service. The main competition sectors are mining industry and ICT-sector where salaries reach often 1.5 million tugriks, i.e. 50% higher than in the civil service.

There is no classification of civil service positions, or standardized job descriptions. According to the CSC this represents a challenge of the current system that does not differentiate civil servants based on knowledge, expertise, experience and skills. It is important to narrow down the managerial discretion in assigning different elements of salary, including allowances and bonuses and limit it with clear and objective criteria and ensure consistency of salary setting in the civil service. The Mongolian authorities informed that the procedure for bonuses was approved by the Government in January 2019. The monitoring team did not have an opportunity to review it.

New recommendation 5

1. Ensure stability of professional civil service.
2. Ensure that remuneration of civil servants is transparent and fair.
3. Increase the level of competitiveness of civil service salaries.
4. Limit the share of variable pay in total remuneration.
5. Ensure that bonuses and other benefits are allocated objectively and are linked to performance.

Ethics codes and trainings

Code of Conduct for public administration is in force since 2010, requiring state agencies to put in place oversight structures to ensure its implementation. Authorities informed that most of the sectors and services have dedicated codes of ethics and about 682 ethics committees are operating countrywide. However, the information about their activities has not been provided.

Under the new CSL, ethics code for politically officials and special state service positions should be established by law and those for public administration positions and public support service positions by the Government upon the proposal by the Civil Service Council (Art. 40). The CSC informed that they are working on a new model code of conduct.

Ethics trainings are conducted either by the IAAC or by the CSC but do not seem to be systematic or based on any established curriculum. Answers to the questionnaire refer to the contract signed by IAAC with the civil service training institution under the Government -- National Academy of Governance, in December 2017 to conduct trainings for public servants, including on ethics. In 2018, 27 trainings have been held for 2232 people encompassing broad issues of anti-corruption, asset and income declarations and conflict of interest regulations. According to the new law, CSC

⁴⁸ There is a Civil Service Council regulation on evaluating performance appraisal but this does not define clear criteria and upper thresholds for bonuses and it would in any case need revisions to align with the new CSL.

is responsible for providing guidance on ethics and overseeing implementation of training programmes carried out by the National Academy of Governance.

New recommendation 6

1. Adopt ethics codes for civil servants, for selected sectors and for high-risk areas.
2. Provide training, written guidelines, practical advice and guidance on request.
3. Monitor enforcement of the ethics codes.

Sanctions

The previous round monitoring report concluded that sanctions for violation of provisions in the ACL were weak and not effective as serious violations were punished by disciplinary sanctions, there was not a clear procedure for sanctioning, violations were broad and imprecise raising concerns on legal certainty. There was also an overlap with violations of criminal law nature that (Art. 7, ACL). No new developments have been reported in this regard. The IAAC has provided statistics on enforcement of sanctions based on the review of complaints and inquiries on violations of the conflict of interest or asset declarations, however it is not clear for what violations were these sanctions imposed.

A study by the Asia Foundation on the operations of ethics committees showed poor performance on receiving and responding to citizens' complaints on breaches of ethics rules and conflict of interest. The follow up has been lacking in relation to higher level officials in respective public agencies.

Conflict of interests

The previous monitoring report identified gaps in conflict of interest regulations. The reported legal changes do not address those issues.⁴⁹ A new Article 10¹ was added to the COI Law prohibiting possessing of bank accounts, immovable and movable property and incorporating legal entities in offshore zones, which is a positive development. Second amendment constitutes a setback as described above, and concerns conflict of interest of candidates for public service and provides that an appointing agency is not obliged to follow the recommendation of the IAAC in case conflict of interest of a candidate was established and still appoint the candidate (Art. 23.9).

The COI Law covers same group of public officials as the anti-corruption law (Art. 4 of the ACL)⁵⁰ and some of the key corruption risk sectors (such as mining) are not covered. Furthermore, the procedures for identifying, managing and resolving conflict of interest situations are not in place either. The authorities met at the on-site visit recognized these shortcomings and informed that the IAAC is working on a research to propose amendments. In their assessment, key challenges to enforcement are the lack of administrative procedures and sanctions, as the General Administrative Code does not include related provisions and the COI Law is insufficient. At the same time, it was noted that amendments should be approached carefully since opening up the law for revisions may open the door for regressive provisions and backsliding.

The monitoring of enforcement of the conflict of interest regulations is entrusted to the Legal Standing Committee of the Parliament (in relation to the MPs and IAAC staff), General Judicial Council (in relation to judges) and the IAAC (all other public agencies). However, results of such monitoring are not available. The IAAC's Research and Inspection Department provides some *ad hoc* guidance and assistance. However, this does not seem to be systematic, no guidance material has been produced and enforcement data is not available either. It is not clear if the public agencies have introduced conflict of interest policies and follow COI law. In addition, there are no established procedures or practices of complaint handling or whistleblowing (see below) to help uncover violations. The IAAC has carried out awareness raising work and trainings of public

⁴⁹ For details see the [Third Round of Monitoring Report on Mongolia](#) at pg. 62-63.

⁵⁰ According to the IAAC it covers about 40 000 people.

officials. In total, 10137, 6962 and 12 686 professionals have been trained in 2015, 2016 and 2017 respectively.

The regulations on gifts and post-employment restrictions have not changed since the last monitoring. The Government resolution about registration of gifts is still pending. The enforcement of these rules is lagging behind: no cases were reported in 2015-2017. The IAAC representatives pointed out at the on-site visit that these regulations are difficult to enforce. In 2018, one person was fined by 720 000 tugriks (240 euros) for violating post-employment restriction. Two other violations of post-employment restrictions have not been reported but not followed up due to the expiry of statute of limitation. Three public servants who held concurrent offices in violation of incompatibility rules have been sanctioned by decreasing salary.

Conclusion

Mongolia did not revise the COI Law to address the recommendation. On the contrary, there is a set-back that allows appointing candidates for civil service positions that have conflict of interest. This should be remedied, along with the required revisions of the law to make COI rules enforceable in practice. Vigorous enforcement should follow supported by adequate monitoring based on information and data. Further work is needed with public agencies and public servants by means of systematic guidance, consultations and training.

New recommendation 7

1. Ensure that the rules prohibiting conflict of interest are comprehensive and cover high corruption-risk areas.
2. Ensure necessary procedures to enforce these rules in practice.
3. Ensure vigorous enforcement with the focus on high-level officials.
4. Ensure monitoring and analysis based on data.
5. Provide practical guidance and training to public agencies and officials concerned.

Asset declarations

Regulations on asset declarations have not been changed since the last monitoring. Asset declarations of around 40 000 public officials are collected, with the submission rate at 99% in the reporting period. All declarations are published since 2017 (without personal data).⁵¹ The collection and monitoring of asset declarations remains decentralized. Electronic system has fully replaced the paper-based system in 2018, and is being further upgraded to ensure random selection for verification, interoperability of data with relevant databases and include other relevant modules. The IAAC, being the main agency responsible for collecting and monitoring asset declarations,⁵² has access to some state databases (car registry, land registry) but lacks access to, for example, tax data.

According to 2007 data, 40 073 asset declarations have been submitted, of this number: 59.7% are core civil servants, 18.6% political officials, 10.9% public support positions at management level; 0.7% high level officials and 10.1% other officials.

As regards sanctions, the following statistics has been presented: for the failure to submit asset declarations, 62 and 15 officials were sanctioned respectively in 2017 and 2018 and for late submission 313 and 111 in 2017 and 2018 respectively. In 2017 and 2018 warnings were used for 3 times and twice, respectively, decrease of salary 8 times and dismissal once for each year. It is difficult to assess efficiency, based on the provided data in view of the lack of information on the related follow up. The figures provided at the bilateral meeting before the plenary show some level of enforcement. Out of 171 declarations inspected in 2018, 14 resulted in sanctioning individuals.

⁵¹ The list is provided in the Art. 14 of the ACL.

⁵² those of MPs and IAAC staff are monitored by the Legal Standing Committee of the Parliament and of judges by General Council of Courts, local level is dealt with separately.

This includes inspections based on complaints. However, these figures do not seem to demonstrate adequate enforcement and dissuasive sanctions.

There is no random sampling or prioritization of verification. The IAAC informed at the on-site visit that usually they develop a schedule of agencies to be checked, sometimes based on integrity survey data, other times at their own discretion. Last year IAAC prioritized judiciary.⁵³ It plans to focus on top level officials next. According to the authorities, in addition to the official data, the IAAC has used information from investigative journalists and verification has led to criminal cases uncovering corruption related offences. However, this information has not been confirmed by investigative section of the IAAC and no data was provided. About 10% of all declarations are verified each year and only 5% was verified in 2018. This figure would not represent a problem if the random sampling were used for verification and allegations were followed up by responsible bodies. As a general assessment based on its 10 years of experience, the IAAC informed the monitoring team that public officials are using various new tricks to conceal their property, starting with transferring assets to related persons, or registering assets on some companies.

The IAAC has 21 staff working on asset declarations that includes collection, work with focal points, checking completeness, responding to complaints and providing trainings. According to the IAAC these resources are insufficient.

Conclusion

The system of asset declarations is in place. Electronic declaration system is now fully functional and paper-based proceedings are no longer kept. High-level officials routinely submit asset declarations which are published, however not in machine-readable format. Some sanctions are applied but they are not dissuasive. As noted in the previous monitoring report, Mongolia is encouraged to consider criminal liability for intentional submission of false declarations.⁵⁴ The oversight mechanism is complex and decentralized which hampers efficiency of verification and enforcement. The main monitoring body (IAAC) does not have enough resources and tools (access to important state databases, random sampling etc.) to ensure effective verification. Mongolia should endeavour to ensure systematic, consistent and objective scrutiny of asset declarations with the focus on high-level officials and follow up on alleged violations. Provided enforcement data is not sufficient to assess effectiveness of enforcement.

New recommendation 8

1. Publish asset declarations in open data format.
2. Ensure dissuasive sanctions for related violations (such as false data) in law and in practice.
3. Ensure that the bodies responsible for verification of asset declaration have access to all registers and databases held by public agencies and tools necessary for verification.
4. Centralize verification and oversight function to increase efficiency.
5. Focus verification efforts on high-level officials and corruption-risk areas.
6. Collect enforcement data to monitor efficiency.

Whistleblower protection

Reporting of corruption is mandatory as before, but whistleblower protection system has not been introduced. According to the IAAC, there is a draft law in the Parliament, but it was not provided to the monitoring team. The Parliament has issued a decree to approve the operation of online and

⁵³ Please note that this information has not been confirmed by the representatives of the Judiciary during the on-site visit. The additional information did not reflect this either.

⁵⁴ This approach is applied by the ACN countries such as Georgia or Ukraine.

hotline methods for the submission of information on corruption. However, no results are available yet.⁵⁵ Citizens can report about corruption to the IAAC through a direct line, post, in person and email. According to the IAAC, direct lines are most frequently used as they offer anonymity. However, this does not seem to be the understanding of stakeholders, as confirmed by the monitoring team at the on-site. Statistics on reporting and subsequent follow-up was not provided. According to SPEAK 2018, awareness of hotline is declining, in March 2010 47.8% of respondents were aware of a telephone hotline, compared to 18.5% in 2018.⁵⁶

Importance of whistleblowers protection system was underlined by civil society and business representatives as well as by international organisations who are ready to co-operate with Mongolian authorities to jointly develop legislation and practical mechanisms for whistleblower protection. One attempt by the Transparency International Mongolia to submit a draft law on Protection of Criticizers failed in 2015. But given that the President of Mongolia has announced 2018-2019 as years for the protection of corruption witnesses and informants, and that the Anti-Corruption Strategy foresees establishing legal framework for protecting whistleblowers and journalists (para 4.1.5.6 of the Strategy), the momentum should be gained. Mongolia is encouraged to work with interested parties on developing sound legal basis for protecting whistleblowers, including procedures for submitting, reviewing and following up on whistleblower reports, providing protection and incentives to report. Mongolia should provide training and raise awareness of the protection mechanisms and promote reporting.

Mongolia is *partially compliant* with the recommendation 3.2. of the previous monitoring round.

New recommendation 9

1. Establishing legal framework and practical mechanisms for incentivising and protection of whistleblowers.
2. Collect and analyse statistics on reporting and whistleblower protection.
3. Raise awareness on reporting channels and protection mechanisms to promote whistleblowing.

2.1.2. Integrity of political public officials

High level corruption is pervasive in Mongolia. According to SPEAK 2018, 64% of citizens believe that grand corruption is significant (increasing trend since 2012) and public is increasingly linking the growth of grand corruption with deteriorating living standards among the general population. “The merger of business and politics,” “The Mongolian legal system is still developing and cannot deal with such issues,” and “The lack of transparency at high levels of government” are considered as main reasons leading to grand corruption in Mongolia. 46% of respondents find most or all members of parliament and 39% all government officials corrupt.⁵⁷ Interlocutors met at the on-site visit confirmed these findings, adding to this selling of government positions and attempts to interfere in the operations of the IAAC as other examples (on political parties see chapter 4.). The recent corruption scandals, including *SME case* and *60 billion tugrik case* followed by large scale protests by citizens of Mongolia illustrates the magnitude of the problem.

According to the authorities, one of the frustrations of the public is that the sanctions applied to low level officials but influential high-level officials are rarely touched and the MPs are protecting their own business.

⁵⁵ [Business Integrity Country Agenda](#), Mongolia (2018), Transparency International Mongolia.

⁵⁶ SPEAK Survey 2018, The Asia Foundation, available at: <https://asiafoundation.org/publication/survey-on-perceptions-and-knowledge-of-corruption-2018/>.

⁵⁷ SPEAK Survey 2018, The Asia Foundation, available at: <https://asiafoundation.org/publication/survey-on-perceptions-and-knowledge-of-corruption-2018/>.

The IAAC conducts the research on corruption perception in politics annually since 2008. According to the survey results, the trust of general public in politics is low.

Political officials are listed in the Law on Civil Service (Art. 12)⁵⁸ and as of 1 February 2019 constitute 3430 officials, 1.8% of the public service of Mongolia. The authorities met at the on-site stated that while rules are clear for members of parliament, there is no regulation for other high-level officials, however. Asset declarations and conflict of interest provisions are the same for political officials. Ethics Sub-Committee of the Parliament is in charge of monitoring and verification but there seems to be no cases of enforcement. The new code of conduct for members of Parliament was approved by Parliament resolution in 2019.⁵⁹

Statistics on enforcement and application of sanctions to political officials have not been provided. But clearly the enforcement of regulations against political officials remains weak. The representatives of the Parliament met at the on-site informed that there were 15 complaints regarding alleged violations, however none of them resulted in a follow up action. The authorities met at the on-site informed that a former deputy speaker of the parliament, who was also mentioned in *panama papers*, and who held 1 million USD on offshore accounts, resigned. The Ethics Sub-Committee did not impose any sanctions since at that time, the act did not constitute a violation of existing rules. As regards self-recusals in case of conflict of interests, there were 2 such cases, when MPs did not vote on bills, one of which concerned financing of universities and where they had shares.

New recommendation 10

1. Ensure proactive, systemic and consistent enforcement of integrity regulations with the focus on high-level political officials.
2. Provide systematic, consistent and objective scrutiny of asset declarations of political officials, including based on the information received from citizens, and subsequent follow up as required by law.
3. Adopt codes of conduct for political officials.
4. Provide training, consultations and guidance to political officials on practical application of codes of conduct and integrity regulations.

2.1.3. Integrity in the judiciary and public prosecution service

Previous Recommendation 3.8: Judiciary

1. Consider excluding political institutions (the President and parliament) from the appointment and dismissal of judges (by replacing them with the Judicial General Council); review procedure for appointment of judges to ensure that it is merit-based and competitive; introduce mandatory initial training of judges (before or after appointment) in the national school of judges.
2. To ensure better guarantees of judicial independence: provide that chief judges be appointed and dismissed by judges of the relevant court; introduce through the law an automatic random distribution of cases among judges and make the decision on case assignment publicly available.
3. Align composition of the Judicial General Council with international standards, in particular by ensuring that it consists of majority of judges representing different levels of the court system and elected by other judges.

⁵⁸ Prime Minister and members of the Government; chairman and vice chairmen of the office/secretariat of the President and Government; advisors to the President, chairman of the Parliament and Prime Minister; all level Governors of aimag/capital city/soum/districts; advisors, assistants and spokesmen supporting politically appointed officials during their term of office; positions of the secretariats serving the parties and coalition caucuses in the Parliament; other positions provided in relevant laws. President of Mongolia; chairman, deputy chairmen and members of the Parliament (State Great Khural);

⁵⁹ The document has not been provided to the monitoring team.

4. Fix remuneration rates and all wage increments of judges directly in the law; avoid payment of bonuses to judges.

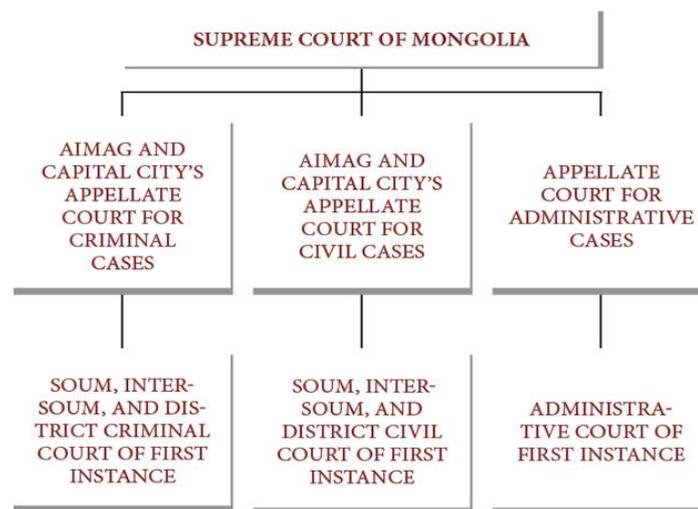
Judiciary

Judicial system

The system of courts in Mongolia is specified in the Constitution, it is a three-tier system which includes the Supreme Court, courts of appeal, and courts of first instance. Most judges are specialised in one of three jurisdictions - criminal, civil and administrative. There are 57 courts of first instance (suum, inter-suum courts, and specialised district civil criminal and administrative courts) and 21 courts of appeal (separate for each jurisdiction except some regions where civil and criminal courts of appeal operate as one court) in Mongolia. The system of administrative courts was launched in Mongolia in 2004⁶⁰.

The legislation on the judiciary in Mongolia consists of the Constitution, the Laws on Establishment of a Court, on Courts of Mongolia, on Legal Status of Judges, on Judicial Administration, on Legal Status of Jury and others.

Chart 7 System of courts in Mongolia



Note: Aimag is a province in Mongolia. In general, Mongolia is divided into 21 aimags and one provincial municipality - Ulaanbaatar. Soum is a second level administrative subdivision of Mongolia.

Source: website of the Supreme Court of Mongolia.

⁶⁰ <http://www.supremecourt.mn/english/content/11>

Table 3 The System of Courts in Mongolia

Court		Number of positions of judges and general judges adopted by 42 nd resolution of the parliament in 2016		Number of judges and general judges as of end of 2017		Number of judges and general judges as of end of 2018		
SUPREME	Supreme Court	25		24		23		
APPEAL	Civil	24	159	23	111	23	111	
	Criminal	24		20		19		
	Criminal and Civil	95		56		56		
	Administrative	16		12		12		
FIRST INSTANCE	District (CIVIL)	96	534	86	383	85	369	
	District (CRIMINAL)	82		54		54		
	Administrative	104		74		74		
	Soum	CRIMINAL		93		69		66
		CIVIL		120		73		72
		NOT SPECIALIZED		39		27		29
			718		511		503	

Source: additional information provided by the Government of Mongolia, point 80.

The judiciary in the national anti-corruption policy

The National Anti-Corruption Strategy provides the following objectives related to integrity in the judiciary: (1) improving integrity, transparency and independence and anti-corruption cooperation of the judiciary, (2) avoiding illegal interference from political and business group. The action plan for implementing the Strategy provides a number of measures to meet these objectives. While they would lead to positive transformations if properly implemented, their vague wording may cause misinterpretations and problems with monitoring of the Strategy's implementation as well as with achieving its intended results. Some of the mentioned measures are described more specifically in this section below.

Representatives of the judiciary met on-site appeared to have only general information about the Strategy and were unaware of the action plan measures, which may be an indication of the lack of ownership by the judiciary.

Judicial General Council

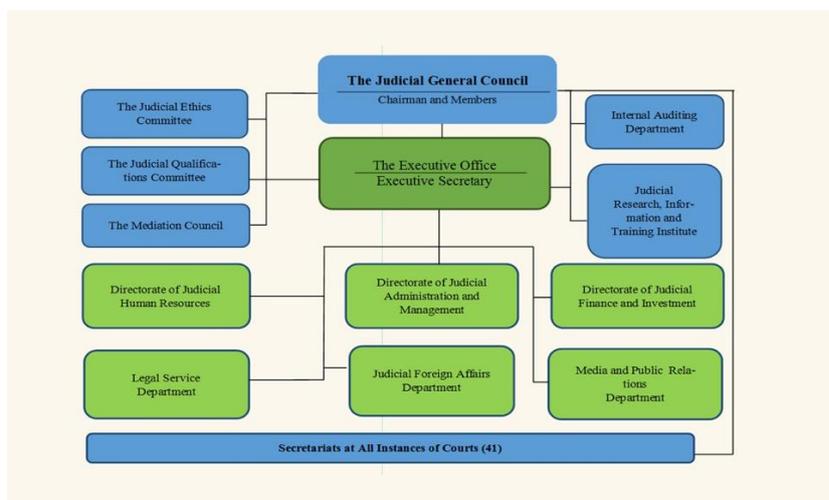
There is a separate body within the Mongolian judiciary - the Judicial General Council (JGC) - mandated by the Constitution to ensure independence of judges. The JGC also deals with administrative operations and human resource management of courts.

The Council is composed of five full-time members three of whom are nominated by courts of first instance, courts of appeal, and the Supreme Court respectively, one member - by the Bar Association of Mongolia, and one member - by the Ministry of Justice. All members of the Council are approved by the President.

After their appointment, the members nominate, by majority vote, one from among themselves to become Chairman of the Council, subject to appointment by the President of Mongolia who has discretion in this appointment as well as in appointment of all JGC members.

Therefore, no changes have been introduced in regard to the composition of the JGC since the previous round of monitoring.

Chart 8 Structure of the Judicial General Council



Source: website of the Judicial General Council <http://eng.judcouncil.mn/Structure.html>.

Institutional, operational and financial independence

The independence of the judiciary is guaranteed in the Constitution⁶¹ and laws by prohibiting any interference in the exercise of duties of a judge.⁶²

Judges have to submit to the JGC an influence statement, and the Council should approach the competent authorities in cases where any actions have been taken to interfere with the independence of the judiciary and impartiality of a judge. Upon request of the JGC sanctions should be imposed on individuals, public officials or legal persons who attempted to interfere in any way with the judge's functions or influence a judge.⁶³ In fact, such cases have never been detected. At the same time, the action plan on the implementation of the Anti-Corruption Strategy envisages tightening these sanctions, however without specification of any details. No sanctions are prescribed for not filing the influence statements by the judges either.

In spite of the mentioned legislative provisions, there is no indication of any substantial changes related to ensuring independence of the judiciary within the reporting period. The President and Parliament remain to be involved in the decision-making on many important matters related to the judiciary.

Thus, the President has a wide scope of powers in appointment and dismissal of all judges, their appointment to and dismissal from judicial administrative positions, appointment and dismissal of JGC's Head and members, appointment of Heads and members of the Judicial Qualifications and Ethics Committees. The President also determines the procedure of the selection of judges, approves important regulations on selection of judges, their disciplinary liability and ethics. Despite all these decisions are initiated or proposed by the judicial branch of power, the President has considerable discretion in the judiciary related matters.

Candidatures of the Supreme Court judges are presented to the Parliament prior to their submission to the President.

With regard to the role of chief judges (heads of courts), they mostly deal with organisation of work in respective courts and represent them in domestic and foreign relations. They are prohibited from interfering in adjudication process by any judge, and from the issuance of directives, guidelines, or from assignment of a case to a particular judge in relation to this process, or in any

⁶¹ [Constitution of Mongolia](#), Art. 49

⁶² Law on Courts, Art.6, Law on Legal Status of Judges, Art. 21,22

⁶³ Law on Legal Status of Judges, Art. 22, 38

other manner. At the same time, chief judges have a function to formalise the decision on appointment of a chair of court session and a bench of judges, and chambers' presiding judges are empowered to supervise the work of the respective chambers.⁶⁴ The Chief Judge of the Supreme Court is authorised to manage and regulate the work of presiding judges of the Court's chambers.⁶⁵ These extensive powers open the possibilities for influencing judges by their colleagues holding administrative positions.

Performance evaluation of judges has been abolished on the grounds of protection of the judicial independence.

Thus, the Mongolian legislation had included JGC's powers to conduct performance evaluation of the judges for every 3 to 5 years, with the criteria and regulations of such evaluation to be developed by JGC and approved by the Chief Judge of the Supreme Court.

However, according to the Ruling of the Constitutional Court issued in 2015 the respective legislative provisions were declared not compliant with the Article 49, sections 1 and 4, of the Constitution which guarantee judicial independence and stipulate the scope of JGC's powers.

The problem of judicial independence is acknowledged and well recognised in Mongolia. Strengthening independence of the judiciary is one of the objectives declared in the National Anti-Corruption Strategy.

The Mongolia Investment Climate Statement 2018 published on the website of the U.S. Embassy in Mongolia states that the strong influence of Mongolian prosecutors on Mongolian courts is well documented. Mongolian courts, for example, rarely dismiss charges over the objection of the prosecution or otherwise enter defense verdicts even after trial. The same report also says that although the constitution and law provide for an independent judiciary, NGOs and private businesses report that judicial corruption and third-party influence continue.⁶⁶

Against this background, the monitoring team is concerned about the fact that a JGC's special unit who dealt with the issues of judicial independence has been disbanded recently.

The judiciary shall have an independent budget, which is subject to approval by the Parliament, and the government shall provide the conditions for its continuous operation. At the same time, as shown in the table below that reflects the situation with state financing of the courts, becomes apparent that the average adopted budget of Mongolian courts constituted from 43 to 68% from the requested.

Table 4 Requested and adopted budget allocations for the judiciary

	2014 /in thousand MNT/	2015 /in thousand MNT/	2016 /in thousand MNT/	2017 /in thousand MNT/
Requested budget	135,491,029.9	88,117,033.0	110,622,308.1	68,196,166.3
Adopted budget	58,465,877.3	52,136,741.3	48,267,942.5	46,731,333.7
	<i>43% from requested</i>	<i>59% from requested</i>	<i>43% from requested</i>	<i>68% from requested</i>

Source: Government's replies to the monitoring questionnaire.

Furthermore, within the reporting period a legislative amendment, which abolished the prohibition to reduce operational budget of the courts in comparison with a previous year, was passed. This negatively affected proper budget funding of the judiciary.

⁶⁴ Law on Courts, Art. 13, 14

⁶⁵ Law on Courts, Art. 18

⁶⁶ <https://mn.usembassy.gov/2018-investment-climate-statement-mongolia/>

During the on-site visit the monitoring team was informed that such unsatisfactory state of budget allocations for the judiciary was caused by difficult economic situation in the country and the allocations were expected to be much higher in 2019, but this statement has not been proven by any concrete figures.

Interlocutors met on site also informed the monitoring team about poor working conditions of judges.

Merit-based recruitment and promotion of judges, secure judicial tenure (grounds for dismissal)

All judges are appointed for permanent tenure, i.e. until retirement. The appointment and dismissal of judges are a statutory mandate of the President who appoints judges of the Supreme Court upon their presentation to the Parliament by the JGC and appoints judges of other courts on the proposal of the JGC.

The basic requirements for a candidate for judicial office are Mongolian nationality, age, education and professional career in law, actual licence of lawyer's profession, knowledge of Mongolian, computer and technology proficiency, knowledge and proficiency in the area of respective specialised jurisdiction. A candidate should have no criminal records, not be under criminal investigation, not be liable for any debt or be a defendant in a civil case at the moment of nomination, have no disease or mental disorder disabling him/her from administering justice. A set of soft skills is also required. However, it is unclear why judges' assistants who are required to be lawyers are not allowed to apply.

There are also additional requirements for candidate judges of the courts of appeal and the Supreme Court.⁶⁷

The selection of judges is organised by a body attached to the JGC, the Judicial Qualifications Committee, which is comprised of nine non-staff members who should be highly qualified and experienced lawyers including judges. The Committee is established by the JGC for a 5-year term, upon a recommendation of the Bar Association of Mongolia. Officials of the JGC or court administration, attorneys and prosecutors are prohibited from membership in the Committee. Members of the Judicial Qualification Committee are appointed by the JGC. The Rules of the Committee are approved by the President of Mongolia, the Committee is supported by an administrative unit in the structure of JGC's administrative office. In this regard, the monitoring team reiterates point of the previous round of monitoring that recruitment and assessment of judges is a time-consuming activity and the process would benefit if the Judicial Qualification Committee was composed of full-time members.

The selection process of judges is envisaged by the new Resolution 13 of the President adopted in 2018. For the courts of first instance the selection shall be carried out at least twice a year, and for the courts of appeal and the Supreme Court - every time when a vacancy is announced.

The procedure of judicial recruitment consists of the following stages:

- decision of the JGC Head on the selection for vacant judicial posts
- official notification
- registration of candidates
- basic examination (only for candidates for non-administrative judicial positions in the courts of first instance), which covers professional ethics, moral qualities, soft skills and knowledge of the language
- special examination, which covers legal knowledge and experience
- interview conducted by the JGC

⁶⁷ [Constitution of Mongolia](#), Art. 51, Law on Legal Status of Judges, Art. 4-6.

- training (only for first instance court judges)
- submission of selected candidates to the President (in case of the Supreme Court the proposal should be presented to the Parliament prior to its submission to the President).

The decision on selection for vacant judicial posts that includes list of documents subject to submission, date of registration and the exams, is published on the websites of the JGC and all courts. Information about candidates, including their working experience and education is also published upon their consent.

Some part of the exam is conducted in electronic format, the results of the exams are disseminated by the media. The subsequent training for candidates is organised by the Judicial Research, Information and Training Institute which is a part of the JGC. The training programme was extended from 10 to 30 days in 2018. However, the training programme does not include anti-corruption topics except one lecture on conflict of interest.

The final list of candidates nominated as a judge is published on the internet prior to submission to the President. Decision of the JGC not to submit a candidature to the President can be subject to appeal to JGC, but the respective procedure is not regulated by the law. Those who passed the examinations but were not selected are kept on the reserve list and their scores remain valid for the next two years.

In total 99 judges were newly appointed and promoted for vacant posts within the past three years.

The same selection procedure is applied for promotion of judges.

While the overall procedure looks for the most part transparent and well-designed, it contains several serious loopholes at its final stage. The first one lies in the absence of criteria for short-listing candidates by the JGC. As a result, the JGC selects candidates for the appointment among those who passed all the exams and interview regardless of their scores. This decreases the public trust to the process.

Another significant problem remains involvement of the President in the final decision-making in the appointment of judges. The President can reject nomination by the JGC. The authorities informed the monitoring team that the President's decision to reject a candidate should be motivated and it may be challenged. Despite these explanations and the fact that there were just several cases of rejection since 1992, the monitoring team finds this approach problematic from the point of view of international standards and encourages Mongolia to review it.

In this context, it should be noted that the Action Plan envisages to update the criteria and procedure of the selection of judges and prosecutors and improve the independence and responsibility of judges, and to clarify the legal ground for refusal to appoint a candidate by the President. However, implementation of these measures is yet to be initiated.

Administrative positions in courts

Chief judges (or heads) of all courts in Mongolia are appointed by the President. Chief Judge of the Supreme Court is appointed for a 6-year term, chief judges of lower courts are appointed on proposal of the JGC for a 3-year term with a right of reappointment for the second consecutive term in the same court.

While according to the information provided to the monitoring team at the on-site visit the scope of powers of chief judges in relation to other judges is quite limited, as it was mentioned above, the law empowers them to decide on appointment of a chair of court session and a bench of judges, and the presiding judges of chambers should supervise the work of the respective chambers.

Transfer/secondment

Transfer of a judge to another court of the same level shall be made upon the judge's consent. The only exception from this rule is dissolving or restructuring the court.

The proposal on appointment, dismissal or transfer of a judge shall be submitted to the President.

Judges from courts of first instance and appeal can be on mission in another court. The JGC by its resolution adopted the common procedure of working while on mission. In 2017-2018 192 judges were on mission to other courts.

Judicial self-governance

The Law on Courts envisages functioning of the consultative conference of judges in each court. The conferences consist of all judges of the respective courts and deal with approval of internal regulations of the court, including on allocation of cases, and nominate candidates to the JGC and the Judicial Ethics Committee and candidates for chief judges of the respective courts.⁶⁸

Apart from that, there is also the Judicial Association which is a professional non-profitable organisation. It was founded in 1998 to unite judges against growing pressure from executive at that time. In November 2012 the Association had 395 members who voluntarily applied for a membership and registered into central membership registration.⁶⁹

Judicial Ethics Committee and ethics rules

The Judicial Ethics Committee is a body attached to the JGC, it is comprised of nine members, selected from among distinguished legal professionals and academic scholars. Three members are respectively nominated from courts of first instance, appeal and the Supreme Court, three other members - by the Bar Association of Mongolia and three more members - by the Ministry of Justice, all members including the Head of the Committee are subject to appointment by the President of Mongolia who has the same level of discretion as in other appointments in the judiciary. The President also approves the Rules of the Committee.

This Committee resolves complaints from individual citizens, government officials or legal entities regarding judges' discipline, accountability and ethics, and decides whether to impose disciplinary sanctions or not on a judge upon review and consideration of a disciplinary case.

The Code of Ethics for judges was adopted by the 1/08th resolution of the board of directors of the committee of judges of the Mongolian Bar Association on 28 February 2014. Judges are responsible for being compliant with the rules of ethics.

The Code covers the following issues: the principle of judge's conduct; definition of ethical violation; ethics of judges in social relations; description of inappropriate activities of judges; relations with media; independence; contacting with defendants; accessing official functions; judges' obligation to disclose their personal interests, incomes and assets; forbidding judges to receive any illegal payment, gift, loan, property, donation, service, or other valuable items provided in connection with his/her official duties; incompatibilities; prohibition of political activities for judges; accountability of judges. A violation of the Code is regarded as disciplinary misconduct and can be a ground for disciplinary liability.

The JGC shall enforce the ethics rules by organizing trainings on ethics. The Ethics Committee is also in charge of imposing disciplinary sanctions in case of violation of the ethics rules.

The Action Plan stipulates updating the Code and the Rules of the Judicial Ethics Committee. Moreover, the monitoring team was informed about the planned legislative amendments to improve the Committee's work.

As in case with the Judicial Qualifications Committee, the Judicial Ethics Committee could benefit from introducing full-time membership.

Conflict of interests, interest and assets declarations, anti-corruption restrictions

According to the law a judge is obliged to recuse him/herself in court sessions where conflict of interest may arise or shall inform trial participants about potential conflict of interest and provide

⁶⁸ Law on Courts, Art. 25

⁶⁹ <http://www.judge.mn/english/content?id=19>

them with opportunities to recuse him/her. The law further prohibits a judge to work as an attorney for 2 years after his/her resignation.

Furthermore, each year before 15 February all judges submit their asset and income declarations and private interest declarations to the electronic system administered by the IAAC and inform on the submission to a competent official of the JGC. The competent official prepares report on the status of declarations' submission and delivers the report to the IAAC, who reviews whether all judges submitted their declarations before the deadline and notifies the JGC if any breaches are found. According to this notification, the Ethics Committee discusses committed violation and decides whether to take measure. IAAC verifies asset and income declarations by cross checking with data provided by various state registers and obtains commentary from declarers.

Within the reporting period 2 judges were held liable for submitting false asset and income declarations and for having private relationship with one of participants of the case.

During the on-site visit the monitoring team was informed about a targeted campaign on verification of asset and income declarations of all judges by the IAAC. Allegedly the campaign was caused by a statement of one politician about high level of corruption in the judiciary. Unfortunately, the monitoring team has not been provided with any information about results of this campaign if any.

The Law on Legal Status of Judges provides a broad list of anti-corruption and ethical restrictions for the judges, which are, for instance, related to expression of judges' opinion on ongoing cases, use of information, receiving gifts and other incentives, contacts with third parties including political forces, incompatibilities, improper conduct.

In terms of incompatibility judges are subject to stricter restrictions compared to other public officials – they are prohibited from holding any concurrent work, including providing legal advice. Lecturing or research may be allowed depending on the context.

Availability of training, advice and guidance on request, written guidelines

The Judicial Research, Information and Training Institute was established in 2014, it is in charge of conducting training for judges and court staff.

The JGC adopted a programme of the initial basic training for judges which includes issues on prevention of corruption and violation of ethics rules. The training on rules of judicial ethics is being conducted since 2015 whereas all judges in rural areas were covered in 2017.

The JGC in cooperation with the Asia Foundation conducted a training on judicial ethics from 22 October 2018 through 7 November 2018 for all judges of the courts of first instance and appeal. The training was intended for providing knowledge on ethics, prevention of ethical misconduct among judges. The training covered 484 judges from the city and rural areas and provided handbook on ethics issues. Also, the IAAC disseminates the handbook on conflict of interest each year and provides advice through the phone call or in person.

The monitoring team encourages Mongolia to introduce advanced training on ethics, anti-corruption and integrity as an important part of the judicial on-going training curricula used on a permanent basis.

One more problem is that the JGC and the courts do not have specialised personnel to provide judges with professional advice on the issues related to conflict of interests and rules of ethics.

Fair and transparent remuneration

The amount of judicial salary was adopted by the 101st resolution of the Parliament in 2015.

According to Mongolian authorities the salary of a judge shall be incremented by 2 per cent each year after the fifth years' experience, but it does not include bonuses anymore.

Table 5 The amount of salaries of judges of all instances

	Position	Monthly salary (in MNT)
1	Chief judge of the Supreme Court	3 300 000 (≈1187 EUR)
2	judge of the Supreme Court	3 200 000 (≈1150 EUR)
3	Chief judge of the court of appeal	3 000 000 (≈1080 EUR)
4	judge of the court of appeal	2 900 000 (≈1043 EUR)
5	Chief judge of the court of first instance	2 800 000 (≈1007 EUR)
6	judge of the court of first instance	2 700 000 (≈970 EUR)

Source: Government's replies to the monitoring questionnaire.

The Progress Updates submitted by Mongolia also include information that the legislative provision stipulating that “when adopting the budget of the court, the component and size of the wage of judges shall not be decreased” was abolished by the amendment of 10 November 2015. The Government of Mongolia decided to decrease the salary fund of judges by 35 percent due to economic downturn. At the time of the progress update report the JGC and Mongolian Bar Association were trying to negotiate with the Government on the matter but without any success.⁷⁰

During the on-site visit the monitoring team was informed that wages of judges had not been reduced, albeit the vacant positions of judges had not been planned to be filled due to the economic downturn of Mongolia.

Since the previous round of monitoring the basic remuneration rates for judges remained the same.

Workload and case distribution

During 2015-2017 an average number of cases per judge was constantly growing (from 104 cases in 2015 to 143,8 in 2017), with judges of the administrative court of appeal having the heaviest workload (more than a thousand case per judge). The monitoring team believes that increased overload of judges may open space for corruption risks if not addressed properly. This problem stems from the difficult situation with insufficient funding of the judiciary which led to keeping approximately 30% of judicial positions vacant.

According to the law the case distribution procedure is adopted by the conference of the judges of the respective court. The criminal, civil and administrative courts are connected to the integrated system of the case registration and revision. Each court adjusts the settings of the case distribution based on the decision issued by the conference. The cases are then randomly distributed to the judges of that court based on the settings.

The Mongolian authorities informed the monitoring team that in practice all cases are randomly distributed to judges by a special system and without any undue interference. As previously, this approach is not regulated in the law but only in the secondary legislation.

Another issue in this regard is the aforementioned powers of the courts' chief judges to formalise decision on appointment of a chair of court session and a bench of judges.

Complaints against judges, disciplinary proceedings, and dismissal

Complaints against judges are received by the secretariat of the Judicial Ethics Committee. The Head of the Committee shall distribute a complaint to one of the Committee's members who

⁷⁰ Progress Update of Mongolia, 2018, ACN OECD, p.53

should send a copy of the complaint to the judge in question and verify the respective facts. After the examination process is over the issue is subject to discussion at the Committee meeting.

The law provides three possible disciplinary sanctions: warning, decrease of salary up to 30 percent up to 6 months, and dismissal.

The Ethics Committee is in charge of applying disciplinary actions in case of violation. If the disciplinary action is dismissal, the JGC shall submit the proposal to the President (with prior presentation to the Parliament in relation to the Supreme Court Judges). The judge is allowed to view the materials, attend the meeting in person or hire an attorney, and appeal against the decision on disciplinary action. Regarding the latter the monitoring team was provided with an example when the Ethics Committee proposed to dismiss a judge who borrowed money from one of the parties in the case he heard. The judge appealed against this decision to the court who cancelled the decision on the initial sanction and the Committee had to impose a less strict sanction - decrease of the judge's salary.

All imposed disciplinary sanctions are published at JGC's website.

Table 6 Statistics on imposed disciplinary sanctions during 2015-2018

Year	Total	Warning	Decrease of the salary	Dismissal
2015	2	2		
2016	3	2	1 (for three months)	
2017	4	2	2 (by 20 percent for 6 months and by 30 percent for 6 months respectively)	
2018	4	1	2 (by 15 percent for 3 months and 30 percent for 3 months respectively)	1

Source: Government's replies to the monitoring questionnaire.

The law provides a number of grounds for dismissal of judges, including engagement in activities incompatible with the judge's position; committal of a second disciplinary violation within one year; court decision on convicting the judge of criminal offense; decision on forced medical treatment etc. Separately, the law provides a list of grounds for early termination of the judge's powers, such as a written request for dismissal; inability to exercise the judicial power; participation of the judge in political elections; refusal to be transferred to another court in connection with the dissolving or restructuring of the court; moving to another position etc.⁷¹

The JGC is obliged to submit a respective proposal to the President if these grounds are in place.

One of the above-mentioned grounds for dismissal of judges overlaps with a disciplinary violation. It is unclear which procedure should be applied in case of breach of incompatibility restrictions which is at the same moment a disciplinary violation (breach of rules of ethics) and a ground for dismissal. While the monitoring team didn't hear if this created any problems in the past, such uncertainty may result in misinterpretations and lead to different practice in the future.

Apart from dismissal and termination of powers of judges, the President upon proposal by JGC shall suspend the judge in case of his/her involvement in criminal activities, appointment as a member of the JGC, and on some other grounds.

Transparency of the judiciary – access to court decisions, court premises, media in the courtroom

The court sessions are recorded and accessible through screens placed in each court. Also, the recordings are available for trial participants and for academic purpose only. The court rulings can be found at www.shuukh.mn.

As for November 2018, the website contained 23 thousand cases and 313 thousand rulings and visited by 30 thousand persons daily. "The compilation of selected court rulings" is published

⁷¹ Law on the Legal Status of Judges, Art. 18

annually for academic and research purpose. Information on the cases of public interest is provided through the media in order to ensure transparency and impartiality.

The 77th resolution adopted by the JGC in 2015 regulates the court hearing transmitted through the media and journalists. According to this procedure, journalists shall apply for media coverage of the court hearing 3 days prior to the scheduled court session to the court administration. The court administration then shall introduce the request to the judge who is responsible for the case hearing subject to the requested media coverage. Upon the judge’s consent, the court administration shall conclude a contract with the journalist in order to prevent the use of the materials generated during the media coverage for illegal purposes. The journalist is then free to broadcast the court hearing.

In 2017 JGC introduced the court service centre in courts of all levels. The centre enables access to court hearings through the screens transmitting the sessions. Furthermore, the JGC keeps video recording of all court hearings, these recordings are available to trial participants on their request.

The court rulings subject to closed session shall not be included in the system mentioned above. The sessions are closed if the case is related to the state secrecy, when the defendant is underaged or upon request of a party in the case.

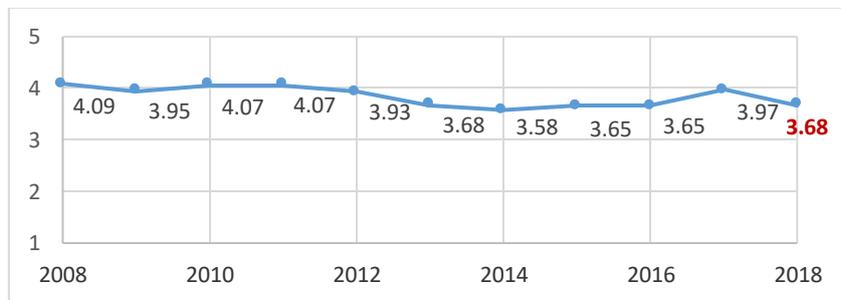
The Action Plan prescribes creating legal framework for conducting open court sessions other than sessions subject to confidential matters. This measure apparently aims at introduction of the respective rules in the law.

Impact of integrity policies in the judiciary, trust and perception of corruption

According to the annual IAAC corruption perception survey the judiciary in Mongolia in 2017-2018 was perceived as facing the greatest challenges with regard to corruption in the judicial and law enforcement sector.⁷²

According to the survey conducted by the IAAC in 2018, the corruption perception index is assessed as 3.68 points decreased by 0.29 points in comparison to previous year.

Chart 9 Perception of corruption level in the judiciary and law enforcement sector in 2018



Source: Government’s replies to the monitoring questionnaire.

The overall assessment of the judiciary and law enforcement is 3.57 which was decreased by 0.29 points in comparison to the previous year. The assessment of the judiciary was decreased by 0.05 points.

⁷² Government’s replies to the monitoring questionnaire, p.44

Table 7 The perceived scope of corruption in the judiciary and law enforcement organizations

	2017	2018	Change	Distribution
1 Prosecutor's Office	4.04	4.02	-0.03	66.7%
2 Judiciary	4.02	3.97	-0.05	68.2%
3 The Police Agency	3.96	3.68	-0.28	53.0%
4 Court Decision Enforcement Agency	3.81	3.54	-0.27	43.9%
5 Anti-Corruption Agency	3.71	3.53	-0.19	48.5%
6 Forensics Agency	3.86	3.50	-0.36	40.9%
7 Intelligence Agency	4.08	3.43	-0.65	33.3%
8 Immigration Office	3.73	3.42	-0.31	37.9%
9 Border Agency	3.54	3.05	-0.49	24.2%
Total	3.86	3.57	-0.29	46.3%

Source: Government's replies to the monitoring questionnaire.

The scope of activities of judicial and law enforcement bodies scored as 3.44 points, decreased by 0.27 points compared to the previous year. The scores of criminal, administrative and civil court proceedings were decreased by 0.10, 0.08 and 0.42 points respectively.

Table 8 Perceived corruption level of judicial and law enforcement bodies

	2017	2018	Change
Investigation	3,94	3,85	-0,09
Prosecutor's review	4,02	3,82	-0,20
Criminal court proceedings	3,81	3,71	-0,10
Administrative court proceedings	3,70	3,62	-0,08
Forensic activity	3,74	3,53	-0,21
Immigration registry	3,64	3,42	-0,22
Civil court proceedings	3,84	3,40	-0,44
Court decision enforcement	3,72	3,30	-0,42
Protection of witnesses and victims	3,24	2,87	-0,37
Border protection	3,50	2,85	-0,65

Source: Government's replies to the monitoring questionnaire.

At the same time, according to the 2018 SPEAK survey, the judicial system ranks 6th in the rating of areas most affected by corruption,⁷³ while in 2017 it ranked 7th.⁷⁴ And the 2017 survey also indicated about 15% increase of the level of confidence in the judiciary in comparison with 2010.⁷⁵

According to the World Economic Forum's 2017 Judicial Independence report, Mongolia ranks 110 out of 137 countries, compared to its ranking last year at 101.⁷⁶

By contrast, no judges were convicted for corruption offences during the reporting period.

⁷³ [Survey on Perceptions and Knowledge of Corruption, 2018](#), the Asia Foundation, p.52

⁷⁴ [Survey on Perceptions and Knowledge of Corruption, 2017](#), the Asia Foundation, p.57

⁷⁵ [Survey on Perceptions and Knowledge of Corruption, 2017](#), the Asia Foundation, p.67

⁷⁶ http://reports.weforum.org/pdf/gci-2017-2018-scorecard/WEF_GCI_2017_2018_Scorecard_EOSQ144.pdf

Conclusions

The judiciary in Mongolia is considered as facing the greatest challenges with regard to corruption in the judicial and law enforcement sector.

Involvement of the political bodies in final decision-making on many important issues related to the judiciary is one of the most challenging issues for the judicial power in Mongolia. In combination with a high level of discretion of the President when exercising these powers, it opens possibilities for political influence on judges. Moreover, the Parliament is also involved in the process of appointment and dismissal of the Supreme Court judges.

No changes have been made in this regard since the previous round of monitoring. The monitoring team reiterates that the existing approaches are not in line with international standards as well as good practices and urges the immediate reforming steps to be taken to reduce the role of political bodies in the judiciary.

With the adoption of the new legislation the role of the courts' chief judges has been limited. Moreover, the automated case assignment among judges has been introduced. At the same time, the law still authorises chief judges to formalise the decision on appointment of a chair of a court session and a bench of judges. Presiding judges of the courts' chambers are empowered to supervise the work of the respective chambers. These functions may have a negative impact in terms of ensuring 'internal independence' of judges which is also considered to be another challenging issue in Mongolia.

The situation with financing of the judiciary significantly worsened which led to problems with filling judicial vacancies. The legislative changes which abolished a guarantee from reducing operational budget of the courts is a serious step back in terms of ensuring proper functioning of the judiciary and its independence. The monitoring team was informed that this situation is caused by the economic difficulties of the country in general.

In this regard the monitoring team would like to recall the opinion of the Venice Commission who in its report on independence of the judicial system pointed that "it is the duty of the state to provide adequate financial resources for the judicial system. Even in times of crisis, the proper functioning and the independence of the Judiciary must not be endangered. Courts should not be financed on the basis of discretionary decisions of official bodies but in a stable way on the basis of objective and transparent criteria."⁷⁷

The basic remuneration rates of judges in MNT are almost the same as during the previous monitoring, and judges' salary does not include bonuses anymore. The rates still are not included in the law.

The JGC, a constitutional body tasked to ensure independence of the judiciary, selection of judges, and compliance with rules of ethics, is fully operational, with established procedures and practices. Despite the majority of the JGC's members are nominated by the courts of different levels, all members of the body, as well as members of its key Committees – Qualifications and Ethics – are appointed by the President.

The monitoring team is also concerned about the fact that a JGC's special unit who dealt with the issues of judicial independence has been disbanded recently.

The procedure of selection of judges includes examination of the candidates to check their knowledge and soft skills, as well as interview. However, the selection process has a significant gap at its final stage as the candidates are proposed for the appointment by the JGC regardless their scores. Therefore, the selection procedure cannot be referred to as merit-based. The procedure of appeal against decisions in the selection process needs to be specified in the law.

⁷⁷ The Venice Commission (2010), Report on the Independence of the Judicial System, Part I: the Independence of Judges, p. 11

Anti-corruption issues are insufficiently covered by the initial training course for candidate judges and are included in the training activities for sitting judges on an *ad hoc* basis. This problem should be addressed by introducing components on ethics, anti-corruption and integrity in the training curricula for candidate and sitting judges.

Based on the analysis described above and taking into account all the developments which took place during the reporting period, the monitoring team comes to the conclusion that Mongolia is **not compliant** with recommendation 3.8. of the previous round of monitoring.

New recommendation 11

1. Exclude political institutions (the President and Parliament) from the appointment and dismissal of judges, members of the Judicial Qualifications and Ethics Committees (by replacing them with the Judicial General Council).
2. Ensure merit-based appointment of judges in law and in practice.
3. Introduce in the law a clear procedure of appeal against the Judicial General Council's decision not to nominate a candidate for a judicial position.
4. Provide that chief judges be appointed and dismissed by judges of relevant courts.
5. Introduce automatic random distribution of cases.
6. Abolish powers of chief judges to approve the decision on appointment of a chair of court session and a bench of judges.
7. Abolish powers of presiding judges of the court chambers to supervise the work of the respective chambers.
8. Ensure that the President is bound by proposals on judicial candidates for members of the Judicial General Council, and the President's power to appoint them is essentially ceremonial.
9. Consider introducing full-time membership in the Judicial Qualifications and Ethics Committees.
10. Provide for the legislative prohibition to reduce operational budget of courts and ensure in practice proper financing of the judiciary.
11. Fix remuneration rates and all wage increments of judges directly in the law.
12. Ensure that components on ethics, anti-corruption and integrity are a mandatory part of the training curricula for candidate and sitting judges.
13. Distinguish grounds and procedures of disciplinary liability and dismissal of judges in cases of breach of incompatibility rules.

Prosecutors

Background information

According to the Article 56 of the Constitution of Mongolia the Prosecutor's Office exercises supervision over the inquiry into and investigation of cases and the execution of punishment and participates in court proceedings on behalf of the state.⁷⁸

The Prosecutor's Office is referred to in the Constitution of Mongolia as a part of country's judicial system. Apart from the Constitution, the Law on Prosecutor's Office, the Criminal Procedure Code and some other legislative acts form a legal basis for functioning of the Prosecutor's Office.

The prosecution service was subject to reforming within the reporting period, the Law on Prosecutor's Office was revised, and its new version came into force from July 1, 2017. The monitoring team was informed during the on-site visit that the main purpose of the reform was to bring the legislation on the Prosecutor's Office in line with the amended Criminal and Criminal Procedural laws. Another goal of the reform was to make the prosecution service more centralised.

⁷⁸ http://www.conscourt.gov.mn/?page_id=842&lang=en

Institutional, operational and financial independence, appointment and dismissal of Chief Prosecutor

The Prosecutor's Office of Mongolia is a separate body with a three-layer structure which includes the Prosecutor General's Office, regional and local prosecutor's offices, there is also a specialised transport prosecutor's office.

The law contains guarantees of prosecutors' independence by prohibiting any interference and undue influence. A prosecutor is not obliged to provide information about the case and crime to any person other than concerned people of the case and crime.

Prosecutors have to declare any attempts of undue influence or interference in their work to superior prosecutors. However, this instrument has never been applied in practice.

By law the Prosecutor's Office is independent from political institutions, and should not receive from them any instructions, especially on concrete cases. However, according to information published in the Mongolian media this is not always the case in practice. For example, one of such media articles mentions several sensitive high-profile corruption cases in which the President provided the Prosecutor General, IAAC Director and Minister of Justice with some instructions.⁷⁹

The Prosecutor's Office in Mongolia is a hierarchical institution headed by the Prosecutor General who is appointed by the President with the consent of the Parliament (by a simple majority vote) for a 6-years term with the possibility of reappointment/prolongation for one consecutive term.

In case the Parliament declines the appointment of a nominee of the Prosecutor General the President shall nominate another candidate. Such situation happened once in the past when a nominated candidate was not approved by the Parliament because of the problems with his credentials.

The procedure for reappointment is the same.

Both the President and the Parliament have a substantial level of discretion in making decision on appointment of a Prosecutor General. Apart from the general requirements, such as age, legal and prosecutorial experience, there are no specific rules for selection of nominees.

Besides the general grounds envisaged by the Civil Service Law, such as reaching the retirement age or resignation, there are three grounds for the early termination of powers of the Prosecutor General: appointment or election to another job or position with his/her consent, his/her conviction by a final judgement, and health condition preventing from performing his/her powers. The procedure of termination of powers is the same as for the appointment, and the same applies to Deputy Prosecutors General as well.

The incumbent Prosecutor General is a third one holding position during the recent decade. His five predecessors serviced their full term, two were reappointed for a second term, and one left his position because of the appointment to another position.

The decision on the early termination of powers of the Prosecutor General should be made by the President with the consent of the Parliament.⁸⁰

According to the law there are two Deputy Prosecutors General who are appointed for a 6-years term by the President based on the proposal of the Prosecutor General and with the consent of the Parliament. There are some minimal requirements to the candidates, including 5 years of prosecutorial experience, but no competitive procedure for the nomination is prescribed. Deputy Prosecutor General may be reappointed for a second consecutive term, in practice this happened only once.

The principles of relations between the Prosecutor General and other institutions are envisaged by law. The Prosecutor General shall report to the State Ikh Khural about the implementation of the

⁷⁹ <http://montsame.mn/en/read/131002>

⁸⁰ Government's replies to the monitoring questionnaire for the Study on Independence of Prosecutors, p.2

criminal and infringement legislation at least once a year. The Prosecutor General can also render conclusion on matters of pardon and others pertaining to his/her powers upon the request by the President.

In terms of relations with the Government the Prosecutor General may, on request of the Prime Minister or member of the Government, participate in the Government sessions with a consultative vote and give opinions and conclusions on issues covering the scope of his/her power.

The monitoring team was informed that one of the achievements of the Prosecutor's Office reform was strengthening of control exercised by superior prosecutors over decisions of inferior ones, or in other words, increasing of hierarchy and centralisation. Indeed, the Law on Prosecutor's Office contains a number of rules regarding the respective powers of higher prosecutors, such as the right to cancel any decision of inferior prosecutor he or she considers illegal. There is also an extensive list of cases when decisions of inferior prosecutor are subject to mandatory monitoring by superiors. This list, for instance, includes receiving complaints from any natural or legal person, requests from an investigator or advocate, termination of a case, change of a sentence or indictment by court, waiver of prosecution at trial stage, acquittal judgment.

The monitoring team is of the opinion that such approach does not maintain the reasonable balance between control over the work of prosecutors and interference in their activities.

In this regard the monitoring team would like to refer to the opinion of the Venice Commission that "in a system of hierarchic subordination, prosecutors are bound by the directives, guidelines and instructions issued by their superiors. Independence, in this narrow sense, can be seen as a system where in the exercise of their legislatively mandated activities prosecutors other than the prosecutor general need not obtain the prior approval of their superiors nor have their action confirmed. Prosecutors other than the prosecutor general often rather enjoy guarantees for non-interference from their hierarchical superior. Non-interference means ensuring that the prosecutor's activities in trial procedures are free from external pressure as well as from undue or illegal internal pressures from within the prosecution system".⁸¹

The monitoring team believes that the broad system of post-factum control, introduced in the Mongolian Prosecutor's Office, may also be perceived as a kind of potential pressure that creates a serious risk in terms of prosecutors' ability to perform their duties in an independent way.

The Prosecutors' Code of Conduct instructs prosecutors to refrain from execution of orders and requests from politicians, public and law enforcement officials, presumably including superior prosecutors. Another rule of the Code prescribes that prosecutors shall neither ignore nor officially comment on the substantiated decisions of the superior prosecutor or court decisions, and appeal according to the established order in case of disagreement.

Mongolia is urged to address the problem with contradiction between these two rules of ethics, as well the absence of clear internal procedure of appeal against decisions of superior prosecutors.

The expenses of the Prosecutor's Office shall be financed from the state budget and the state shall ensure economic guarantees of its activities. The Prosecutor General submits a budget proposal to the Finance Ministry who prepares the consolidated draft state budget which is subject to approval by the Parliament. The provided figures make it clear that the adopted budget of the Prosecutor's Office in 2 last years increased by more than 50%, which may be assessed as a positive development, especially taking into account that the number of staff remained almost the same. Interlocutors met on-site informed the monitoring team that the adopted budget of the prosecution service is usually less than requested, however actually allocated budget corresponds with the adopted one.

⁸¹ Venice Commission (2010), European Standards as regards the Independence of the Judicial System: Part II – the Prosecution Service, p.7

Table 9 Adopted budget of the Prosecutor's Office of Mongolia

Year	Amount
2015	MNT 18,097,301,900 (≈ EUR 6 million)
2016	MNT 17,660,244,200 (≈ EUR 5,9 million)
2017	MNT 26,723,270,700 (≈ EUR 8,9 million)
2018	MNT 29,238,024,800 (≈ EUR 9,7 million)

Source: data submitted by Mongolia.

Further increase of the budget is expected as the workload of prosecutors has increased.

Merit-based recruitment and promotion of prosecutors, grounds for dismissal

The Law on the Prosecutor's Office does not specify the recruitment procedure, prescribing just minimal requirements for candidates – age of 25 years, Mongolian citizenship, a lawyer's license, professional experience (3 years as a lawyer or 2 year as an assistant in the Prosecutor's Office) and absence of criminal records. While the monitoring team was informed that some competitive procedure is applied for recruitment purposes, no further details have been provided. At the same time, interlocutors met on-site informed that usually preference is given to the candidates working as assistants in the prosecution service whose tasks are to provide prosecutors with legal advice and recommendations, preparation and review of some legal documents.

According to the provided information there is a competitive selection of prosecutors' assistants organised by the Public Administration Service, but no further details on the procedure have been provided as well. In 2018 from about 200 candidates only 12 were selected for the appointment as assistants, but only some of them have been appointed while others were put on the reserve list.

The only criterion stipulated in the law for promotion of prosecutors is five years of work as a prosecutor. No details have been received on the application of the procedure in practice.

All final decisions on appointment and promotion of prosecutors are made by the Prosecutor General. Prosecutors have their own ranks the highest of which are awarded by the President and the lower ones – by the Prosecutor General.

The number of prosecutors' positions remained almost the same during past three years with slight increase in 2018 from 505 to 525 positions. At the same time, there were no vacancies, which was explained by high attractiveness of the prosecutor's job. In total, 98 prosecutors were appointed and 49 were promoted during 2015-2017.

It should be noted that the Anti-Corruption Strategy includes an objective to ensure that the process of selection and appointment of prosecutors is fair, transparent and free from political influence. According to the Action Plan, the criteria and procedure should have been revised in 2017-2018, but no evidence of implementation of this activity has been provided.

There are the following grounds for dismissal of prosecutors: transition to another job, health reasons, retirement. One more ground is conclusion of the Prosecutors Professional Council about a prosecutor's non-compliance with professional requirements. All prosecutors are dismissed by a decision of the Prosecutor General. A prosecutor may appeal against his dismissal to the court.

The monitoring team was provided with 2 examples of unlawful dismissal of prosecutors that had been appealed in the court.

Council of Prosecutors

There is no Council of Prosecutors in Mongolia. At the same time, there is the Association of Prosecutors which is an NGO and its main task is to contribute to building prosecutors' capacities. Deputy Prosecutor General is the Head of the Association, and its members have to pay a membership fee which is approximately USD 40. Of particular concern is that it is mandatory for all prosecutors to be a member of the mentioned Association. Mongolia is urged to change this approach and make the membership optional on a voluntary basis.

Prosecutors Professional Council

The Prosecutors Professional Council is a collegial body comprised of 11 prosecutors appointed by the Prosecutor General for a three-year's term. The Rules of the Council are approved by the President of Mongolia.

The Council reviews prosecutors' work with a view to its compliance with the law and internal regulations. Such review by the Council may be initiated by superior prosecutors with the purpose to check if any breaches were made by inferior prosecutors, or by any prosecutors to justify decisions they made in their cases. The Council also makes a conclusion on a prosecutor's compliance with the professional requirements, this is applied to the prosecutors who were disciplinarily sanctioned three times. Such professional checking may involve different tests and exams, an interview and research on the decisions made by the prosecutor in question.

Decisions of the Council may serve as a ground for disciplinary liability or dismissal of a prosecutor.

The monitoring team has not received any information about results of the Council's work.

Ethics rules

According to the general rule envisaged by the law, the prosecutors should obey the legislation, respect human right and protect public interest, be independent, open and transparent.

The Code of Conduct, which specifies rules and principles of professional ethics of prosecutors, was approved by the President of Mongolia in January 2018. The Code contains specific rules related to impartiality, objectivity, relations with colleagues and third parties, conflict of interest, use of information, political neutrality, gifts etc.

The Prosecutors Ethics Council is in charge of enforcing ethics rules for prosecutors. The Council is a collegial body composed of 12 members appointed by the Prosecutor General and headed by a Deputy Prosecutor General. Members of the Council should be acting prosecutors with not less than 5 years of prosecutorial experience. The Rules of the Council are approved by the President of Mongolia.

The Council receives complaints about prosecutors' non-ethical behaviour, conducts their examination and/or transfers them for examination to respective PGO Departments, for instance to the Inspection and Internal Security Department. Based on results of such examinations the Council may conclude there was a violation of rules of ethics which is a ground for disciplinary liability, the Prosecutor General imposes a sanction based on Council's conclusion.

In total, 18 prosecutors violated the Code of Ethics in 2015-2017. Scolding people, drinking alcohol, close connection with suspects, bad manners, and receiving gifts were mentioned as examples of information provided in the received complaints from citizens.

Conflict of interest

Prosecutors are covered by the general rules applicable to all public officials (see section 2.1)

At the same time, there are also some rules envisaged by the mentioned Code of Conduct. For instance, the Code instructs prosecutors to refrain from making any decisions or influencing third parties in the case of conflict of interest. Prosecutors should inform their hierarchy if their relatives or family members are involved in the cases they are working on.

The Inspection and Internal Security Department of the Prosecutor General's Office is in charge of investigating and preventing from conflict of interest among prosecutors (more information about the Department is provided in section 3.4).

No violations of conflict of interest rules were detected within the reporting period.

Other restrictions

Prosecutors are covered by the general anti-corruption restrictions applicable to all public officials (see section 2.1).

In terms of incompatibility prosecutors as well as judges and investigators are subject to stricter restrictions compared to other public officials – they are prohibited from holding any concurrent work, except lecturing and academic research.

As it was mentioned above, the Code of Conduct contains a number of restrictions in terms of incompatibilities and gifts etc.

The Prosecutor General and his/her related persons shall not be shareholders, stockholders or partners of economic entities or sole proprietors that are recipients of the central and/or local government procurement contracts, state financial resources or state-guaranteed credits, except the cases where these have been granted as a result of open competition. This restriction is applied to some other high-level officials.

The Administration Department and the Inspection and Internal Security Department of the Prosecutor General's Office are obligated to enforce the above-mentioned restrictions in respect to prosecutors.

Asset and interest disclosure

Prosecutors are covered by the general rules of asset and interest disclosure applicable to all public officials (see section 2.1).

Each year, before 15 February, all prosecutors submit their asset and income declaration and private interest declaration to the electronic system administered by the IAAC and inform on the submission to PGO's competent official. This official prepares report on the status of the declaration submission and delivers the report to the IAAC who reviews whether all prosecutors submitted their declarations timely. If not, the IAAC sends notification to the PGO. Furthermore, IAAC verifies asset and income of declarers by cross checking with data provided by various state registrations and obtains commentary from declarers if deemed necessary.

Asset and income declarations of the Prosecutor General and his/her Deputies are published in the official magazine.

However, no statistics have been provided about compliance of prosecutors with the aforementioned rules, and results of examination of their declarations.

Performance evaluation

There are no other forms of prosecutors' performance evaluation than the compatibility checking conducted by the Prosecutors Professional Council in relation to prosecutors who had been brought to disciplinary liability three times. This procedure is described above in this section.

Complaints against prosecutors, disciplinary proceedings, and dismissal

Both Prosecutor's Ethical and Professional Councils are in charge of handling complaints against prosecutors with regards to their ethics and professional failures. Moreover, last year the Prosecutor General's Office opened a phone hotline through which complaints against prosecutors are received and examined further by the PGO Inspection and Internal Security Department.

Disciplinary sanctions shall be imposed on prosecutors who have violated the law or internal regulations of the Prosecutor's Office or failed to fulfil their official duties depending on the character and gravity of the violation.

The law envisages the following types of disciplinary sanctions: warning, reduce of salary by 20% for six months, reduction in rank, reduction in position, dismissal.

Such disciplinary sanctions as warning and reduction of salary, except if it is for a professional error or ethical violation, may be imposed by the head of local prosecutor's office where the respective prosecutor works. All other sanctions are imposed by the Prosecutor General.

The prosecutor may appeal against a decision on his/her disciplinary liability to the Prosecutor General (if a sanction was imposed by the head of local prosecutor's office) or to the court (if the sanction was imposed by the Prosecutor General).

No statistics on imposed sanctions have been provided.

Besides the general grounds stipulated by the Law on Civil Service, there are several specific grounds for dismissal of prosecutors. These are appointment or election to another job or position with his/her consent, health condition preventing from performing his/her powers, retirement, and finding him/her non-compliant with professional requirements.

There were no cases of forced dismissal of prosecutors during 2015-2018.

Availability of training, advice and guidance on request, written guideline

Between 2015 and 2018 1200 prosecutors took part in 17 training courses on anti-corruption legislation and restrictions, rules on ethics and conflict of interest. These training courses were co-organized by the GPO and the IAAC.

It is possible to obtain advice and guidance directly from the IAAC and/or the competent official from any public administration. These advices and guidelines are obtained orally through phone calls. It looks like there are no specialised personnel within the Prosecutor's Office who could provide prosecutors with such sort of advice.

Fair and transparent remuneration

Prosecutor's salary shall consist of the basic salary, bonuses for the length of service, special conditions of the service, ranks and scientific degree. Prosecutor's basic salary and amounts of allowances are set by the Parliament.

Prosecutors' remuneration is more than twice higher than the average salary in the country which is 760.000 ₮ (\approx 272 EUR).

Table 10 Average remuneration of prosecutors: ⁸²

Junior prosecutor in the beginning of career	Middle-level senior prosecutor	Prosecutor General and his/her Deputies
2.400.000-2.800.000 (\approx 860-1000 EUR)	2.800.000-3.000.000 (\approx 1000-1070 EUR)	3.000.000-4.000.000 (\approx 1070-1400 EUR)

Source: information submitted by Mongolia

To a prosecutor who has a long-term experience in the Prosecutor's Office the state shall provide support to build or purchase a house or apartment or take soft loan for tuition fee of his/her child, if necessary, the state shall provide credit guarantee. No data about how this is implemented in practice has been provided.

Allocation of cases

Heads and deputy heads of regional and local prosecutor's offices are obligated to register complaints and inquiries and allocate cases to prosecutors on a rotation basis.

There is also a rule that if a higher- level prosecutor revoked a decision to terminate a case of a lower- level prosecutor, the case will not be allocated again to the same prosecutor who made a decision to terminate the case.

The possibility of assigning complex or very important cases to a team of prosecutors is provided by the Criminal Procedure Code.

It looks like reassignment of a case from one prosecutor to another is not regulated enough by the legislation and is a discretion of chief prosecutors.

Impact of integrity policies in the prosecution service, trust and perception of corruption

According to the annual IAAC corruption perception survey the Prosecutor's Office in Mongolia in 2017-2018 was perceived as one of those facing the greatest challenges with regard to corruption

⁸² Government's replies to the monitoring questionnaire for the Study on Independence of Prosecutors, p.12

in the judicial and law enforcement sector (the percentage distribution is 66,7%, even though the score slightly improved in 2018).⁸³

No prosecutors were convicted for corruption offences during the reporting period.

Conclusions

Ensuring both external autonomy of the Prosecutor's Office and internal independence of prosecutors are the most challenging issues for the Mongolian prosecution service.

The involvement of political bodies in the appointment and dismissal of the Prosecutor General and Deputy Prosecutors General with a significant level of discretion, as well as powers of the President to approve different regulations directly related to the institution's daily work pose serious risks of political interference in prosecutions. As mentioned above, the monitoring team is aware of at least one example when the Prosecutor General was given a sort of instructions by the President.

Mongolia is urged to address this problem by introducing a competitive and professional selection of a nominee for the Prosecutor General and clear rules of early termination of his/her powers. The monitoring team is of the opinion that broader involvement of legal professionals, including those from civil society, in selection of a nominee for the Prosecutor General could reduce a danger of politicisation of the appointment.

In terms of financial independence, the Prosecutor's Office does not have possibilities to protect its budget, as a result it has never received the requested financial allocations.

The centralisation and strengthening of hierarchical nature of work in the Prosecutor's Office, made in the framework of the reform of the prosecution service in 2017, is a step back in terms of independence of prosecutors. However, the Mongolian authorities consider that a broader scope of duties of superior prosecutors towards subordinated ones does not mean more centralisation of the prosecution service.

While stricter control over decisions made by inferior prosecutors could be justified by the new role of a prosecutor in criminal proceedings, the monitoring team believes this would be better addressed by training, guidelines and other similar instruments.

The monitoring team is of the opinion that the current system of post-factum control over prosecutors' decision may be perceived as a kind of potential pressure that creates a serious risk in terms of prosecutors' ability to perform their duties in an independent way.

Mongolia should reconsider this strict hierarchy and centralisation that should be made in combination with introducing clear rules of giving instructions in concrete cases to inferior prosecutors as well as of internal system to appeal against such instructions.

The structure of prosecutors' salary includes a number of different bonuses and the amounts of basic salary and all allowances are fixed by the Parliament. To prevent any negative effect from the perspective of prosecutors' independence Mongolia should fix amounts of all components of their salary in the law and avoid paying bonuses based on discretion of chief prosecutors.

The two key collegial bodies operate under the Prosecutors General's Office – Ethics and Professional Councils with all their members being appointed by the Prosecutor General who is also a final decision-maker on all issues related to the competence of both Councils. With the purpose of providing prosecutors with more active role in protection of their independence and the autonomy of the prosecution service Mongolia could consider further transformations through introduction of the fully-fledged prosecutorial self-governance system.

The monitoring team comes to the conclusion that Mongolian Prosecutor's Office does not have competitive and transparent selection and promotion of prosecutors which is essential for strengthening capacities of the institution and reducing corruption risks in HR procedures.

⁸³ Government's replies to the monitoring questionnaire, p.44

Reassignment of a case from one prosecutor to another is not regulated enough by the legislation and is a discretion of chief prosecutors.

The Prosecutor's Office pays attention to ensuring prosecutors' compliance with anti-corruption and ethics rules. This work should be further evolved through more comprehensive preventive, monitoring and training activities.

New recommendation 12

1. Provide for clear, transparent and merit-based procedures for the selection and appointment of the Prosecutor General involving legal community and civil society.
2. Provide for participation of an independent expert body in the dismissal procedure of the Prosecutor General with an authority to give preliminary legal opinion on the matter. A fair hearing within dismissal proceedings shall be guaranteed by the law.
3. Ensure granting the prosecution service with the mandate to present its budget proposal to the Parliament.
4. Fix directly in the law amounts of all components of the prosecutor's salary.
5. Limit both in law and in practice the role and powers of senior prosecutors to supervise and instruct subordinated prosecutors.
6. Ensure that any guidance or instructions on individual cases is based on law, reasoned in writing and is a part of the case file.
7. Grant prosecutors with the right to challenge unlawful orders in an independent internal procedure.
8. Ensure that any decision of senior prosecutors to reassign a case to another prosecutor is based on law, reasoned in writing and is a part of the case file.
9. Introduce merit-based recruitment and promotion of prosecutors based on high professional qualifications and integrity.
10. Create a disciplinary body composed of experienced professionals (ordinary prosecutors and third legal experts) selected through a transparent procedure based on merit and ensure its independence and key role in disciplinary proceedings against prosecutors.
11. Consider establishing an independent system of prosecutorial self-governance with vesting the new bodies with sufficient powers regarding appointment of prosecutors, promotions, disciplinary proceedings and other related matters.
12. Ensure that the rules of ethics, asset, income and interest disclosure, conflict of interests, gifts, incompatibility are followed by prosecutors in practice and violations are adequately followed up.
13. Conduct systematic trainings for prosecutors on international standards of independence and autonomy of prosecutors, on ethics, anti-corruption and integrity.

2.1.4. Accountability and transparency in the public sector

Previous recommendation 3.3: Promoting transparency and reducing discretion in public administration

1. Introduce anti-corruption screening of draft laws and other normative legal acts with publication of relevant findings.
2. Adopt an administrative procedure act in line with international standards to regulate procedures of the public administration.
3. Review procedure and practice of mandatory preliminary administrative complaint (before appealing against administrative decision, action or inaction to the court) and introduce amendments, if needed, to ensure effective appeal system against public administration.

Previous Recommendation 3.6: Access to information

1. Ensure that all public law institutions and entities receiving public funding or performing public functions are covered by the transparency and access to information requirements.
2. Stipulate that no category of information should be absolutely exempt from disclosure; any restriction of access to information, including state secrets, should be based on the law, be necessary and proportionate and possible only upon compliance, on a case-by-case basis, with the harm and public interests tests in line with international best practice. The law should also establish information which may not be restricted in access, in particular on corruption and other infringements of the law, any use of public money and other public resources.
3. Remove unnecessary formalities from the law with regard to obtaining of information on request by simplifying and clarifying the procedure as much as possible.
4. Introduce dissuasive administrative sanctions for violation of the access to information provisions by public officials.
5. Establish an independent supervisory mechanism for enforcement of the access to information right with adequate resources and powers, including access to any classified information and issuing of binding decisions.
6. Decriminalise all defamation and insult offences; ensure that civil law provides effective constraints not to stifle freedom of information with unjustified defamation lawsuits
7. Improve budget transparency, oversight and public engagement by implementing recommendations given to Mongolia as the outcome of the 2012 Open Budget Index.

Anti-corruption screening of legislation

The Government adopted a methodology for evaluating the effectiveness of draft legislation.⁸⁴ Its article 4.10.15 provides that the assessment should consider whether draft law contains provisions that may create conditions for corruption and bureaucracy. No further details are provided on procedure or methodology of assessment. A second methodology approved by the Ministry of Justice has been mentioned during the on-site visit, however, the provided document did not contain reference to anti-corruption screening. The screening results are not published and the examples of such screening have not been provided to assess their quality. In addition, the Government could not provide any statistics or recent examples when the conclusions of the anti-corruption screening have been used for adjusting draft laws. Thus, this part of the recommendation has not been implemented.

The second and the third parts of the recommendation have been addressed during the third round of monitoring.

Access to information

The lack of transparency and accountability of the public administration is one of the challenges in Mongolia. The legal framework for access to information has not changed since the last monitoring. Mongolia ranks 72nd (among 123 countries) in Global Right to Information Ranking.⁸⁵

Adoption of several bylaws was reported:

- on official document in electronic form,⁸⁶ regulating preparation, receipt, registration, delivery, sharing, sending, revision, categorization, filing, storing, usage, reporting, ensuring security of electronic documents other than state secrets.

⁸⁴ Government resolution 59 (2016).

⁸⁵ <https://www.rti-rating.org/>

⁸⁶ Government resolution 111 (2017).

- On the list of public services to be provided in electronic form through state electronic information exchange system, comprising 320 services.⁸⁷
- On state electronic database, regulating storage, maintenance and security of data.⁸⁸

These bylaws may be progressive but are not directly related to the recommendation or regulations of access to information.

One positive development is the adoption of the Law on State Registration, that reportedly, declassified information about legal entities, property and land. This law however was not available for the review of the monitoring team.

Freedom of information officers are not designated in public agencies. The representatives of public relations departments of several agencies present at the session during the on-site visit informed that there is no common standard or guidance on access to information or proactive publication of information that agencies should follow and each agency has its own practice. Statistics on freedom of information requests are not maintained. No information was provided about the complaints either. Open data portal is not operational yet, and is planned to be introduced. Thus, parts of the recommendation related to access to information have not been implemented.

Defamation

Defamation and insult were decriminalized. However, Law on Administrative Violations still includes defamation (Article 6.21.). Statistics do not show the wide application of this provision in practice. At the on-site visit, the monitoring team was informed however, that the Head of Public Council was charged for defamation of the IAAC Head, which raises concerns that this article could be used as a retaliation for whistleblowing. This information was however not confirmed by Mongolian authorities. No new developments have been reported in the civil law to address the recommendation.

Filtering online content by CRC was found problematic by the previous monitoring report. Service providers were required to remove or pre-authorize the content so that they would not contain slander, “violate legal or moral standard”, potentially leading to significant obstacles to uncovering corruption. The same practice seems to have continued in the reporting period. The authorities met at the on-site informed that some content is indeed filtered through informally contacting service providers.

Transparency initiatives and service delivery

Budget transparency: Mongolia’s score in Open Budget Index 2017 is 46 out of 100. Government of Mongolia launched the unified “glass account” portal <http://www.shilendans.gov.mn/>, it includes 37 types of information to be published according to 19 templates. In addition, the Ministry of Finance operates transparency portals and budget information is published on a regular basis.⁸⁹ No information was provided about other elements of the recommendation.

EITI: Mongolia is EITI Compliant country since October 2010 (process started in 2005) and has successfully continued its participation in the EITI in the reporting period. Mongolia’s **EITI National Council** is responsible for coordination and monitoring, chaired by the Minister of Mining and Heavy Industries. EITI Secretariat has 5 full-time staff members. According to the government, Mongolia EITI is a pioneer in using open electronic portal, and fully web-based reporting, this success was recognized and Mongolia received EITI Chairman’s award in 2016. Mongolia’s EITI established subnational Councils in regions, providing necessary guidance and technical assistance at local level. Beneficial ownership disclosure Roadmap was approved in

⁸⁷ Government resolution 259 (2018).

⁸⁸ Government resolution 159 (2017).

⁸⁹ <http://www.iltod.gov.mn/>, and <http://www.mof.gov.mn/>.

2016. According to the authorities, the implementation of the roadmap is at 50%, however the details have not been provided. The EITI secretariat representative met at the on-site informed that the World Bank funding to the Secretariat may be suspending thus their functioning is at stake since the funding is not envisaged in the state budget.

OGP: Mongolia joined the OGP in 2013 and has been an active member in the reporting period. The current action plan is closely aligned with the Government action plan and the National Program for Anti-corruption. It consists of 13 commitments no financial transparency, improving public services, anti-corruption and extractive industry transparency.⁹⁰ One of the highlights of the implementation of the OGP initiative has been establishing social accountability measures in provinces. For example, in Uvs province, engaging local CSO experts and citizens in the local procurement process of pharmaceuticals has reportedly saved MNT 112 million.⁹¹

Service delivery: Mongolia made some progress in increasing quality of public services and introducing one-stop-shops and electronic services. According to SPEAK 2018, 39% of the respondents assessed one-stop-shop as effective and 59.6% considered them as extremely important. The Government provided information about the services implemented by various parts of the public administration, including on-line payment system in customs, introducing the capital city service centres providing one-stop-shop services, online admission to kindergartens, “smart car” providing various services related to vehicles, online tax returns and others. The recently approved bylaws on electronic services serve as a legal basis for developing e-services coordinated by the Communications Information Technology Authority under the Cabinet of Ministers.

Conclusions

Anti-corruption screening of legislation does not seem to function in practice and existing regulations are insufficient. Legal framework for access to information remained the same in the reporting period and there is no evidence that the practice has improved either. The responsibilities are not clearly defined in this regard in the public agencies and oversight by the Ombudsman is not functioning in practice. Defamation was decriminalized but administrative responsibility is still in place. Filtering on-line content through informal instructions to service providers constitutes a problem. Mongolia has made progress in its participation in EITI and OGP.

Mongolia is *partially compliant* with the recommendation 3.3. and *not compliant* with the recommendation 3.6 the latter remains valid as **new recommendation 13**.

2.1.5. Integrity in public procurement

Previous recommendation 3.5: Public Procurement

1. Review the Public Procurement Law to:
 - Cover procurement contracts financed by the Development Bank of Mongolia and in the road sector
 - Prohibit unreasonable splitting of works, goods or services which circumvents competitiveness and openness of respective procurement
 - Minimise application of domestic preferences

⁹⁰ The 13 commitments are (1). Mobile application for the 11-11 centre, (2). Improve quality of and access to education and health services by Social accountability, (3). Civic engagement in decision-making, (4). Political party financing transparency, (5). Create a favourable environment for media, (6). National Program for Combating Corruption, (7). Promoting transparency of loans and aid from foreign countries, (8). Online registration of VAT, (9). Improving glass-account system, (10). Promoting transparency of public procurement process (11). Transparency of contracts of public resource exploitation, (12). Transparency of beneficial ownership in the extractive sector (13). Improving transparency of state-owned companies.

⁹¹ www.zasag.mn/tunshlel, <https://www.facebook.com/OGPMongolia/>.

- Streamline time limits in the law to reflect international best practice
 - Strengthen criteria for professionalism of evaluation committee members
 - Expand affiliation rules.
2. Revise the public-private partnership and concession award procedures to ensure fair competition, efficiency and transparency
 3. Extend e-Procurement system to fully cover all public procurement at all levels. Create a single-entry government web-portal for disclosure of procurement information and e-procurement.
 4. Ensure publication of key information in respect of procurement contracts
 5. Strengthen review mechanisms by ensuring adequate level of independence of relevant bodies, transparency of their procedures and guarantees of fair proceedings.
 6. Revise the scale of fines to ensure that sanctions are dissuasive and further develop the debarment system in line with international best practice and standards.

Main developments since the last monitoring round

Changes in regulations

In the reporting period the following amendments were introduced in the Public Procurement Law of Mongolia (PPL)⁹² (in force since 2006):

- a) General Election Commission of Mongolia, the Future Heritage Fund and the Future Heritage Fund Corporation were excluded from the scope of the PPL (Articles 3.7 and 3.8).
- b) Preferential treatment of bidders was extended to entities with 25 or more employees, where 50% or more of the workforce have disabilities (Article 10.1.7 and related changes in Articles 10.2, 10.3 and 10.4).
- c) For low value procurement of goods (thresholds defined in Article 9.2), domestically produced goods must be procured, provided these goods are available domestically and meet defined minimum quality standards (New Article 10¹).
- d) In addition to bank guarantees and government bonds, the retention money for the defects liability/warranty period can be released by providing an “insurance certificate” (Articles 43.6 and 43.7).

Mongolia is in the process of adoption of further amendments to the PPL. According to the Government, these amendments include provisions concerning green procurement, improvements of e-procurement (e.g. e-shop, frameworks), obligation for bidders to provide deposits for submitting complaints (for bidding procedures exceeding MNT 20 million), regulation on assessment and publication of bidders’ performance. The draft has been submitted to the Parliament. It has not been shared with the Monitoring Team.

Changes in institutions

The Government Procurement Agency was dissolved and integrated into the newly formed **Government Agency for Policy Coordination of State Properties (“Agency”)** after the parliamentary elections in June 2016. The Agency reports directly to the Prime Minister of Mongolia. As a result, the number of staff was reduced from 55 to 23. This reduction is likely to have adverse implications on fulfilling the duties and tasks of the Agency in the area of procurement.

The functions of the Agency are:

- Submitting proposals to the Government concerning amendments to the PPL, improvements of the procurement policies and system, and ensuring the implementation of such amendments and improvements;
- Planning, organising, implementing and reporting on procurement processes to the public in a transparent manner;
- Ensuring transparency of the procurement information and provision of all relevant information to potential purchasers;
- Providing local procurement units with professional and methodological recommendations and guidance;
- Receiving and promptly resolving requests from citizens and organisations on procurement;
- Developing proposals and recommendations for the efficient use of investment and budget funds and improving their efficiency;

⁹² In the second half of 2015 as well as in 2016 and 2017. Other amendments introduced before the reporting period are analysed in the previous round monitoring report.

- Improving the efficiency of public sector projects and activities and related disbursements;
- Further development and implementation of the e-procurement system.

The National Anti-Corruption Strategy

Public procurement reform in Mongolia is embedded in Article 4.1.4 of the National Anti-Corruption Strategy (November 2016).

The Strategy provides for measures to further enhance public sector procurement, including:

- transfer all tender processes to the e-procurement system;
- renew the complaint and dispute review procedures and disclose to the public the results of complaint reviews concerning tender processes;
- improve procurement planning policy and process, and create legal framework for disclosing such plans to the public for preliminary discussion;
- specify the methods and criteria for awarding concessions and for direct contracting;
- improve financial accountability, increase penalties for individuals or legal persons who failed to comply with their contractual obligations;
- create mechanism for improving the independent monitoring system.

Scope of the Public Procurement Law (PPL), exemptions, single-source and other simplified procedures

The scope of exemptions from the PPL includes:

- contracts funded by loans or grants from international lenders or donors, unless otherwise agreed between the Government and the lender/donor;
- contracts subject to state secrecy and national security;
- contracts related to road maintenance by state legal entities as permitted by law;
- contracts procured by the Development Bank of Mongolia;
- contracts related to the organisation of elections by the election body;
- contracts procured by the Future Heritage Fund or the Future Heritage Fund Corporation
- contracts related to fiscal policy as stipulated in the Law regulating the activities and duties of the Central Bank of Mongolia.

The Government determines a threshold below which contracts for goods and works may be procured directly (Article 8.1.2 of the PPL). This threshold is currently set at MNT 10 million.

In terms of numbers, the Open Bidding Procedure increased from 971 open biddings in 2015 to 1,769 open biddings in 2017 (increase of 82.1%) and in volume from MNT 676.2bn in 2015 to MNT 753.2bn in 2017 (increase of 11.3%). Whilst, in principle, this is a positive development, it must also be noted that, during the same period, procurement based on the Special Bidding Procedure (which includes Limited Bidding, Shopping, and Direct Contracting) has increased in 2017 by 46.5% in numbers and by 74% in volume compared to 2015. The large increase of limited or non-competitive bidding in terms of volume is of high concern, as it shows that further efforts need to be undertaken by the Government to reduce these limited or non-competitive procedures to achieve a higher degree of competition, transparency, fairness and economy. The same concern applies to the approximate doubling in volume of biddings undertaken under the Procedure of Bidding with Public Participation. The following table provides an overview of the application of the respective procurement methods in 2015, 2016 and 2017:

Table 11 Public Procurement Volume by Different Methods

No.	Procurement Method	2015	2016	2017	2018
1	Open bidding procedure (Article 7.1.1)	676.2 billion MNT 971 open biddings	390 billion MNT 1308 open biddings	753.2 billion MNT 1769 open biddings	2018 statistics are not available now. The Ministry of Finance is working on this and collecting data from budget administrators.
2	Special bidding procedure (Article 7.1.2)	189 billion MNT 1456 special biddings	458 billion MNT 2186 special biddings	329 billion MNT 3589 special biddings	
3	Procedure of selecting contractor for consulting services (Article 7.1.3)	Not applicable. The number of consulting services was included in open procurement procedure.			
4	Procedure of bidding with public participation (Article 7.1.4, 7 ¹)	Not applicable	1.2 billion MNT 83 biddings with public participation	2.4 billion MNT 193 biddings with public participation	

Source: information received from the Government of Mongolia

Status of implementation of the recommendations from the previous report

No changes have been introduced in the legislation to address this recommendation. The PPL is not applicable to contracts procured by the Development Bank of Mongolia or the procurement of goods, works and services related to the maintenance of national roads, executed by a state owned entity. IAAC considers this to be a risk of corruption, bribery, abuse of power, conflict of interest, limiting the rights of citizens and legal entities to compete fairly. To corroborate their assessment, the authorities refer to the research carried out on the implementation of Public Procurement Law available on the web-site of the parliament (in Mongolian language only).⁹³

Contrary to the recommendation to widen the applicability of the PPL by including the procurement of contracts by the Development Bank of Mongolia and in the road sector, legislation has been adopted to also exclude the procurement of goods, works and services by the Future Heritage Fund, the Future Heritage Fund Corporation and the General Election Commission of Mongolia from the application of the PPL (see revised Article 3 of the PPL). This is seen as a negative development, which likely decreases transparency, competition, efficiency and accountability and provides further scope for prohibited practices.

Splitting of works, goods or services

The splitting of goods and works into smaller tenders for the purpose of applying non-competitive procedures is prohibited (Article 8.5 of the PPL). The Government explained that the Ministry of Finance frequently assesses tender evaluation reports submitted by procurement agencies to ascertain whether unlawful splitting has been undertaken. Where there is an allegation of such splitting, the National Audit Office reviews the case. If an unlawful splitting is thus confirmed, the respective procurement agency will not receive the funding for the contract in question. However, statistics concerning the unlawful splitting of goods, works and services were not provided.

Application of domestic preferences

According to the Government, in 2016, the following amendments were incorporated in the PPL concerning the application of domestic preference in the evaluation of bids:

- Domestic companies with half or more of personnel consisting of disabled persons and a total of 25 or more persons employed will be eligible for the application of domestic preference.
- For the above category of bidders, the existing provisions of Articles 10.2 and 10.4 of the PPL will apply, namely:

⁹³ <http://forum.parliament.mn/projects/389>.

- a) In case of granting preference, quotations of that part of goods which were made in Mongolia submitted by a bidder shall be reduced abstractly by 10 per cent, quotations of works shall be reduced by 7.5 per cent.
 - b) In case of granting preference, the procuring entity shall make note of it in the bidding documents and the claimant of preference shall provide evidence.
- For the procurement of goods estimated to cost less than MNT 10 million, bidders who supply foreign goods shall not be selected as qualified bidders (new Article 10¹ of the PPL).

In 2018, the Minister of Finance adopted a “Guideline to Use Domestic Preference in a Bid Evaluation” (an unofficial English translation was provided to the Monitoring Team).

With respect to the granting of domestic preference in a procurement process, it can be concluded that, Mongolia has increased the scope of application of domestic preference, which is a development contrary to the recommendation. The Government however contends that the domestic preferences are crucial in the Mongolian context to support local manufacturers.

Time limits, criteria for professionalism of evaluation committee members, affiliation rules

No changes have been introduced.

Public-private partnership and concession award procedures

In 2015, the Government Procurement Agency (now abolished), jointly with the Asian Development Bank, drafted the Law on Public Private Partnership. The concept of the law was approved and discussed at a Cabinet meeting in 2016. However, it has not been submitted to the State Great Khural due to the changes in the structure and composition of the Government after the most recent parliamentary elections.

The Government Resolution No. 208 of 2016 approved a detailed plan for implementing the Economic Recovery Programme, and it was stated in the programme that the draft law on Public-Private Partnership has to be approved by the Parliament. By order A-143, a working group was formed to draft the law on Public Private Partnership. However, some of the working group members have been relieved of their duties. Consequently, the new working group was only formed with new members on 3 September 2018. Within the framework of this work, in collaboration with the Asian Development Bank, foreign and domestic consultants were selected and the work on a new draft law has commenced. As the legislation and relevant regulations concerning public-private partnerships have not been revised during the current reporting period, it needs to be concluded that this part of the recommendation has not been complied with.

E-Procurement

A new procurement portal (www.tender.gov.mn) was launched in December 2016, which serves as the single access point for the e-procurement system of Mongolia. The Government confirmed that the e-procurement system now covers the whole procurement process, from the publication of the procurement notice (if applicable) to the award of the contract to the successful bidder. It provides information on procurement plans, the relevant bidding procedure, notifications, bidding documents, participation, opening of bids, selection result etc. Some of the information on the website is also available in English language. The Government reports that it is expected that in 2018 approximately 90% of all procurement activities that are subject to the PPL will be handled by using the e-procurement system. The remaining procuring entities use the e-procurement for the publication of their procurement notices. It should be noted that the current PPL does not make the use of the e-procurement system mandatory. However, Anti-Corruption Strategy and the new draft of the PPL include provisions to this effect.

The Government has provided the following timeline of measures since the previous monitoring round that illustrate the efforts of establishing an e-procurement system that is fit for purpose and includes all the necessary features:

2015: The standard bidding documents that were used in procurement processes in 2015 were more suitable for traditional procurement activities. Thus, as part of the “E-Procurement System Phase 2” project, the Agency had urged the Ministry of Finance to establish a working group in charge of developing standard documents for e-procurement. Another working group was established to work on the elimination of issues that had been identified during the launch of the system.

2016: Overall 115 public administrations from the capital city, districts and provinces were provided with advice, guidance, technical assistance, handbooks and training sessions on the e-procurement system. In addition, approximately 325 suppliers, private entities and bidders received assistance on various aspects concerning the use of the e-procurement system.

2017: In addition to providing frequent advice and developing a new handbook, seminars and training sessions were provided by the Agency every Tuesday and Thursday to a total of 765 institutions and companies.

2018: The Agency organised training sessions in cooperation with public administrations. Furthermore, in cooperation with IAAC, lectures on e-procurement were provided to institutions and companies twice every week.

The following data demonstrates the increased use of the e-procurement system by public sector entities in terms of value of goods, works and services procured in 2015-2018:

In 2015 - MNT 426 492 721 489

In 2016 - MNT 570 878 374 509

In 2017 - MNT 1 516 696 492 278

In 2018 - MNT 3 209 596 477 003

Source: information received from the Government of Mongolia

Publication of information on procurement contracts

All information, including the procurement plan, bidding process, implementation of contract etc., is published on www.tender.gov.mn in line with the Government resolution 337 and decree 363 of the Minister of Finance of 2017. Most of the documents are in machine-readable format. However, some documents such as pages with stamp, seal, signature are provided as photo images. The procuring entities are obliged to also publish contracts the website that were not awarded on a competitive basis.

The PPL requires that the procuring entity discloses the procurement plan publicly through mass media within the first month of the relevant year (Article 48.5 of the PPL). The notifications shall be published in daily newspapers and other media instruments of national scale. The notifications and results of contract award shall be published on www.tender.gov.mn and in daily newspapers (Article 21 of the PPL).

The following information is not published:

- The bidding documents submitted by participants
- Information on members of the evaluation committees
- minutes of the evaluation committee meetings
- bid evaluation report
- contract
- funding scheme
- progress update of the works

There is currently no requirement to publish information on the performance of contractors during contract implementation. The Government has advised the monitoring team that the new PPL will include such a requirement.

A critical observation is the fact that public entities that are not subject to the application of the PPL are apparently not obliged to publish their contract awards in newspapers or electronic platforms.

Review mechanisms

The procurement complaint procedure has not been amended since the last monitoring.

Depending on the stage of the procurement process, complaints are reviewed by the following bodies:

- Complaint prior to bid opening: Authority for Fair Competition and Consumer Protection
- Complaint after bid opening and up to contract signing: procuring entity
- First level of appeal: Ministry of Finance
- Second level of appeal: Court.

The following table provides statistics on the work of the review body for each of the years 2015-2018, concerning complaints that submitted to the Ministry of Finance for review. As can be seen from the data, the total number of complaints has constantly risen and the number of upheld complaints is considerably higher than those rejected.

Table 12 Complaints

No	Decisions	2015	2016	2017	2018
1.	Total number of complaints which are submitted to the Ministry of Finance	588	608	813	1187
2.	Number of complaints with breakdown according to decisions appealed	These figures were not made available.			
3.	Number of complaints accepted for review	191	222	287	451
4.	Number of rejected/upheld complaints	76/176	67/165	40/222	76/373
5.	Number of procurement contracts or decisions repealed	86	94	166	176
6.	Average duration of consideration of the complaint	12 days	13.3 days	11.9 days	11.8 days

Source: information received from the Government of Mongolia

As regards the online complaint procedure, according to the authorities, tender.gov.mn provides functions for the registration and review of procurement complaints and is technically ready to be launched. However, only complaints resolved by the Authority for Fair Competition and Consumer Protection are registered in the e-procurement system. The delay in the introduction of the e-complaint functionality is connected with the delay in introducing the e-signature in other agencies.

Dissuasive sanctions and debarment

The scale of fines has not been revised since the last monitoring round.

The debarment system remains unchanged and is regulated in Annex 1 “Regulation on Registration of Public Procurement” of the “Procedural rules for book keeping” of Order NO 264, from 2013 by the Minister of Finance. Debarment decisions are published on the official website of the Ministry of Finance (www.mof.gov.mn) and the official Government procurement website (www.tender.gov.mn).

According to the statistics provided by the Government, only one entity was debarred (in 2016) in the period 2015–November 2018. The Government did not have an explanation for the lack of debarment decisions.

Additional issues

Participation of CSOs

The practice was overall positively assessed in the report of the previous monitoring round (see the analysis on pg. 78 and 82 of the previous report).⁹⁴ The Government advised that at the beginning of each year, the Agency publishes announcements to invite civil society members to create a list of participants for evaluation committees. The participants work under contracts established between them and the Agency.

Prevention of conflicts of interests in public procurement

Conflict of interest provisions are regulated in Article 50.1 of the PPL. There are no new developments in this regard. Information about the enforcement has not been provided.

Professionalism – procurement officials, training, guidelines, capacity

According to the Government, numerous trainings were carried out for procurement units of local administrations, online training, as well as advice and assistance provided to procurement officials.

Procurement of SOEs – competitive rules, transparency, internal/external oversight

In line with any other public sector entity, Procurement by SOEs is subject to the PPL SOEs must disclose procurement plans, notifications, minutes of bid opening, information on contract awards on www.tender.gov.mn.

Impact, surveys and studies on corruption in procurement

A Bureaucracy Index survey carried out by the MNCCI (1200 respondents were surveyed about 900 services provided by 54 government agencies) showed that public procurement data demonstrated that 74% of the respondents are dissatisfied with public procurement. 17% of all bidders (198) submitted complaints, of which 36% were resolved in their favour.⁹⁵

Impact, surveys and studies on corruption in procurement

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Conclusions

Mongolia is commended for rolling out a comprehensive e-procurement system. It is planned that it will eventually include all procurement processes by public entities which are subject to the Public Procurement Law of Mongolia. A related positive development is the fact that a reasonably large number of staff of public entities and contractors/suppliers have been trained on how to use the e-procurement system.

However, an area of concern is that the applicability of the PPL has not been widened, but instead, since the end of the previous monitoring round, further public sector entities have been excluded from the PPL. Furthermore, the number and value of contracts that were not awarded fully competitively has increased substantially.

⁹⁴ OECD (2014) [Anti-Corruption Reforms in Mongolia: Assessment and Recommendations](#) see the analysis on pg. 78 and 82 of the previous report.

⁹⁵ In Mongolian: <https://bit.ly/2BUqHQI>

⁹⁶ In Mongolian: <https://bit.ly/2BUqHQI>

Mongolia is *partially compliant* with the recommendation 3.5.

New recommendation 14

1. Extend the applicability of the Public Procurement Law to all public sector entities (e.g. Development Bank of Mongolia).
2. Reduce the use of limited bidding procedures, in particular direct contracting.
3. Ensure adequate staffing of the Government Agency for Policy Coordination of State Properties and specialisation of staff for providing its oversight, guidance and training functions in the area of procurement.
4. Decrease the application of domestic preference.
5. Revise the public-private partnership and concession award procedures to ensure fair competition, efficiency and transparency.
6. Ensure independence, adequate specialization, budget and staff allocation to the procurement complaints appeals bodies.
7. Further enhance the functionality of the electronic procurement platform to include all procurement procedures and comprehensive and machine-readable reporting.

2.1.6. Business integrity

Previous recommendation 3.9: Private sector

1. Develop specific measures in the new anti-corruption strategy and action plan to promote business integrity; ensure clear allocation of responsibility for coordination of implementation of these measures with the relevant state bodies; ensure that business partners are involved in the development and monitoring of the implementation of these measures.
2. Involve business sector in the process of elaborating of legislation establishing responsibility of legal persons for corruption; consider developing incentives for compliance with this legislation such as the possibility of defense from responsibility for companies with effective anti-corruption compliance programmes.
3. Assist companies and business associations to assess integrity risks, organise awareness raising, provide advice and guidance on prevention of corruption in business operations.
4. Develop and implement joint projects with the business entities such as collective actions against corruption and integrity pacts, especially in the risk areas.
5. Introduce comprehensive measures to strengthen corporate governance, transparency, internal control and corruption prevention systems in state and municipally-owned enterprises.
6. Consider introducing recording and disclosure of beneficiary owners of all legal entities during their state registration.

This section analyses state of implementation of the previous monitoring report recommendation on business integrity and highlights other issues within the scope of the 4th round of monitoring to draw new findings and recommendations.

Mongolia's international rankings in doing business and investment climate have remained poor. It holds 101th place (out of 137) in the Global Competitiveness Index by WEF.⁹⁷ Some key indicators are presented in the below table.

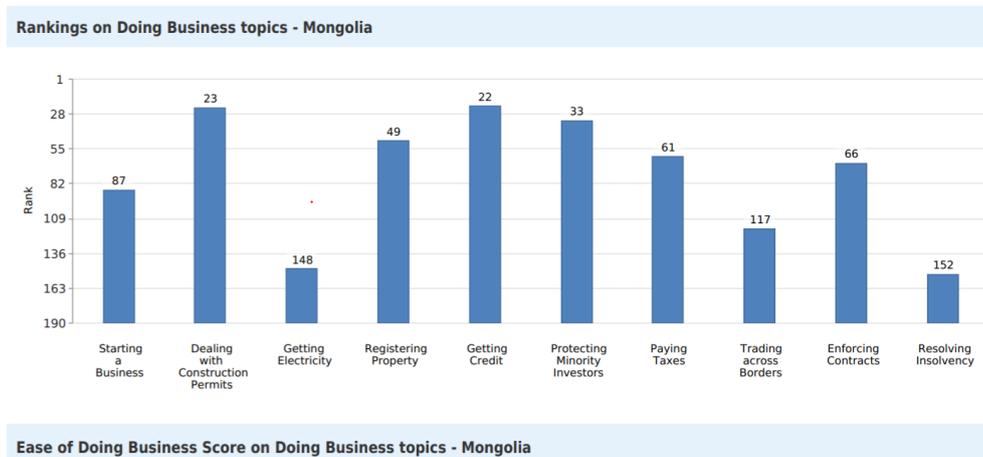
⁹⁷ World Economic Forum, [Global Competitiveness Report 2018](#)

Table 13 Mongolia in Governance and Doing Business Ratings (2013-2019)

Index	Rank/Number of Countries in the Index		
	2013	2016	2018-2019
Doing Business	76/185	56/189	74/190
Economic Freedom Index	75/177	100/178	126/180
Global Competitiveness Report	107/148	102/138	101/137
- <i>Burden of government regulations</i>	119	82	88
- <i>Property rights</i>	110	110	112
- <i>Transparency of government policy making</i>	105	72	93
- <i>Irregular payments and bribes</i>	94	75	81
- <i>Judicial independence</i>	111	100	110
- <i>Favouritism in decisions of government officials</i>	132	132	132
- <i>Burden of customs procedures</i>	135	98	108
- <i>Ethical behaviour of firms</i>	117	115	123

Source: web-sites of the relevant indexes.

In Doing Business 2019, overall score of Mongolia has in principle remained the same (marginal improvement by 0.27%). It is ranked 74th among 190 countries.⁹⁸ Mongolia's rank is relatively high on dealing with construction permits and getting credit indicators as shown below.

Chart 10 Doing Business 2019 Indicators for Mongolia

Source: World Bank Doing Business Report 2019 <http://www.doingbusiness.org/>

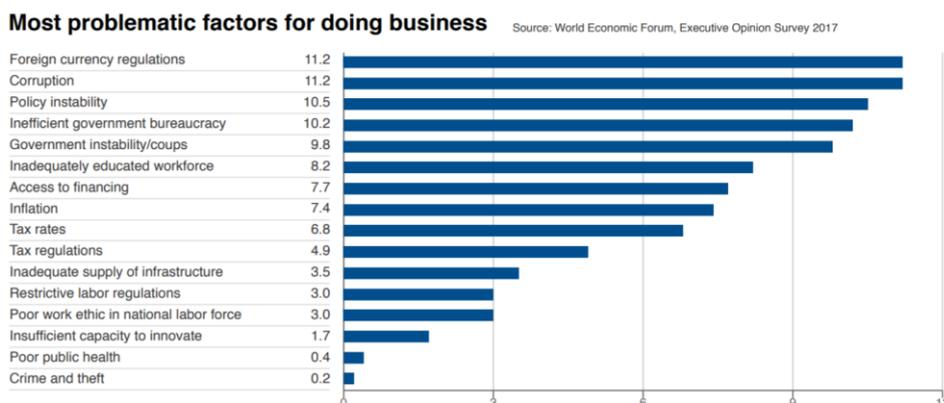
According to the Global Competitiveness Report (2017-2018) by World Economic Forum, corruption is the second most problematic factor for doing business in Mongolia.⁹⁹ At the same time a local survey shows that incidences of bribery involving business and the government has reduced from 16% in 2016 to 6% in 2018.¹⁰⁰

⁹⁸ <http://www.doingbusiness.org/en/data/exploreconomies/mongolia#>

⁹⁹ World Economic Forum, [Global Competitiveness Report 2017-2018](#)

¹⁰⁰ [STOPP survey](#) is implemented in the framework of Strengthening Democratic Participation and Transparency in the Public Sector in Mongolia (STEPS) project by Asia Foundation.

Chart 11 Global Competitiveness Report (2017-2018)



Note: From the list of factors, respondents to the World Economic Forum's Executive Opinion Survey were asked to select the five most problematic factors for doing business in their country and to rank them between 1 (most problematic) and 5. The score corresponds to the responses weighted according to their rankings.

Source: World Economic Forum, available at: <https://goo.gl/JXTs73>

Business integrity in the Strategy

One of the objectives of the National Anti-Corruption Strategy is to reduce corruption risks in the private sector and ensure fair competition (section 4.1.6.). Overall, as discussed above in section 1.2. the Action Plan measures are broad and imprecise,¹⁰¹ and the actions aimed at promoting business integrity are limited. The following two measures are relevant:

- a. encourage anti-corruption initiatives in business sector (responsible entity: Mongolian National Chamber of Commerce and Industry (MNCCI));¹⁰²
- b. incentivize organisations with efficient anti-corruption policies (responsible entity: the IAAC).

While these measures are in-line with the recommendation of the previous monitoring round, they are not clear, concrete or actionable. The IAAC informed that the overall progress of implementation of section 4.1.6. of the Strategy is about 27%, but in the absence of concrete targets and implementation report the monitoring team is unable to interpret these figures. Nevertheless, it is evident that business integrity measures carried out by the Government have been limited in the reporting period as illustrated below.

According to the IAAC, private sector was involved in large scale public consultations carried out for the developing the Strategy (see section 1.2). The MNCCI actively participated in the preparation of the Action Plan and is one of the entities responsible for the implementation, but not involved in the monitoring. Other interlocutors met at the on-site visit stated the same that they are not involved in the monitoring of the implementation of the Action Plan either. Thus, this part of the recommendation has been addressed partially.

Liability of legal persons and incentives for companies

Mongolian authorities referred to the general practice of public participation in legal drafting to demonstrate that business representatives were involved in developing new criminal code articles establishing responsibility for legal persons. However, concrete information has not been provided.¹⁰³ Incentives for companies with compliance programmes are not envisaged. This part of the recommendation has not been addressed.

¹⁰¹ For example, it is not clear what is the aim of the changes in the consumer protection law and how this will contribute to the objective of reducing corruption risks in private sector. For detailed analysis of the Anti-Corruption Strategy and Action Plan see section 1.2 above.

¹⁰² MNCCI includes about 1000 Mongolian companies. <https://www.mongolchamber.mn/en/>

¹⁰³ For detailed analysis of the legal provisions on liability of legal persons see section 3.1 of the Report.

Assessing business integrity risks, awareness raising, advice and guidance on prevention of corruption in business operations

The Government of Mongolia has not been proactive in promoting risk assessment in private companies and business associations, organising awareness raising or providing guidance on prevention of corruption in business operations. According to the IAAC, its general anti-corruption awareness campaigns included private sector as well.¹⁰⁴ At the same time, other stakeholders, NGOs, business associations and private sector¹⁰⁵ have been active in researching and promoting business integrity, occasionally in partnership with the IAAC. Thus, the answers to the monitoring questionnaire mainly focus on the efforts by these organisations rather than the Government of Mongolia.

Two most recent researches carried out on the subject are Study of Private Sector Perception of Corruption (STOPP) Survey (2017) conducted by the Asia Foundation regularly¹⁰⁶ and Business Integrity Country Agenda, Mongolia (2018) by Transparency International Mongolia.¹⁰⁷ These assessments are widely applied and referred to by stakeholders, including the Government.

MNCCI is a key player in promoting business integrity in Mongolia. It carries out trainings and surveys and receives complaints from its members. With the support of the Asia Foundation, it has conducted large-scale trainings for private sector on ethics and anti-corruption. The MNCCI representatives met at the on-site visit highlighted some negative developments in interactions with the Government by Mongolia's private sector referring to the latest Bureaucracy Index survey in which 1200 respondents were surveyed about 900 services provided by 54 government agencies.¹⁰⁸

Business Council of Mongolia (BCM) established a working group on business ethics, developed model policies on gifts and whistleblowing and launched a case-based anti-corruption e-learning tool that is widely promoted. The monitoring team was informed that unfortunately, the majority of its members do not apply these tools in practice, however. **American Chamber of Commerce in Mongolia (AmCham)** designed a compilation of best practices and success stories on code of ethics; regulations on gift; management of conflict of interest; corporate transparency and reporting; challenges related to ethics and corruption and disseminated the product among its members. In addition, **TI Mongolia** developed ethics principles and guidelines for private sector.

Collective actions and integrity pacts

There are several examples of joint actions by business associations and private sector supported by donors. The Partnership Against Corruption formally known as Partnership Transparency Initiative (PTI) founded in 2015 was supported by the Asia Foundation and aimed at involving companies to pledge to develop codes of ethics and carry out trainings on business integrity, but the network remained limited to 11 NGOs and was discontinued in 2017.

The Mongolian Employers' Federation (MONEF) established the Public Monitoring Sub Council of the IAAC with 21 councils nationwide, joint initiatives with civil society to create fairer business environment. However, they were stopped after the change of government. The MONEF in cooperation with the American Chamber of Mongolia, Chinese Business Association of Mongolia and MNCCI has actively worked on tax, social insurance and permit legislation submitted to the Ministry of Justice. The IAAC supported MONEF in organising trainings.

¹⁰⁴ For details see section 1.3 of the Report.

¹⁰⁵ Among them the Asia Foundation, MNCCI, BCM, AmCham, TI Mongolia.

¹⁰⁶ [STOPP survey](#) is implemented in the framework of Strengthening Democratic Participation and Transparency in the Public Sector in Mongolia (STEPS) project by Asia Foundation.

¹⁰⁷ [Business Integrity Country Agenda](#), Mongolia (2018), Transparency International Mongolia.

¹⁰⁸ Report is available in Mongolian [here](#).

Corporate governance, transparency, internal control and corruption prevention systems in state and municipally-owned enterprises

State-owned enterprises (SOEs) fall within the scope of the ACL. SOEs are required to adopt anti-corruption programmes, submit them to the IAAC and publish them on websites together with implementation reports. SOEs are also subject to Glass Account Law and are obliged to disclose a set of data, including financial reports, remuneration of the Board of Directors members and senior executives. Conflict of interest, asset declarations and ethics code regulations apply to managers of SOEs. Procurement by SOEs is subject to the PPL, they must disclose procurement plans, notifications, minutes of bid opening, information on contract awards on www.tender.gov.mn.

According to the Government Agency for Policy Coordination of State Property in 2018, SOEs have followed these rules, including conflict of interest statements during the procurement, submitting asset declarations to IAAC, publishing procurement related information on the electronic portal.

Furthermore, the answers to the questionnaire (provided after the onsite visit) include the information about the MoU signed by Government Agency for Policy Coordination of State Property with the National Council for Corporate Governance and various activities implemented within its framework, including trainings and discussions on improving governance, study, evaluation of corporate Governance of the SOEs, ensuring the transparency of state-owned enterprises and improving requirements for independent member of boards. However, the monitoring team could not verify this information at the on-site since the information was not provided on time and relevant representatives were not present at the on-site visit sessions.

The IAAC oversees the implementation of these rules by SOEs, inspects them and provides recommendations for better compliance with requirements. It also submits policy recommendations to the Government and may even recommend liquidation of a company (4 such proposals in 2018). The IAAC plans to prioritize assessment of 15 companies in 2019. One of the results of the research by the IAAC was the recommendation to introduce competitive recruitment of CEOs, as the existing rules contained corruption risks, which was not implemented.

Anti-corruption programmes are generally in place but do not have all necessary elements (for instance, only few have conflict of interest clauses, none of them describe gift policy). Also, they largely follow IAAC's generic template and do not include industry specific risks, which may indicate formalistic approach to such plans. The IAAC informed at the on-site that the electronic monitoring software will include the SOEs who will be able to submit reports electronically, once operational. Further, the IAAC informed about cases of SOE's managers being investigated for alleged corruption violations. Monitoring team was also told that since they do not have a jurisdiction on middle level managers (only top level), they were hampered in their investigations.

State funds

One of the hot-spots carrying massive corruption risks in Mongolia are special funds, established by line ministries and state agencies, some of them managing big amounts of funds providing subsidies and loans to citizens and companies. Transparency and accountability of these funds raise serious concerns, especially in view of the information uncovered in the recent SME case. According to the interlocutors, 29 such funds operate in Mongolia, of which 4 are large entities, including SME Fund.¹⁰⁹

The IAAC has jurisdiction over these funds. Based on its inspections and research, it has provided the Cabinet of Ministers 150 recommendations related to their transparency and accountability but no action seems to have followed. One of the recommendations concerned the amended regulations of the SME Fund allowing to give loans directly to the borrowers without assistance

¹⁰⁹ <http://smefund.gov.mn/en/contactus> ; other 3 listed at the on-site visit are Employment Promotion Fund, Livestock Protection Fund, Agriculture Development Fund.

of banks and compliance checks. This regulation remained despite IAAC's recommendation and the SME scandal followed soon.

Disclosure of beneficiary owners

The authorities reported adoption of the new General Law on State registration,¹¹⁰ whereby legal entities upon registration, are required to disclose detailed information, such as name, address, registration number, type, form, direction of activity, state registration date, founder's name, number of founder's, names of shareholders, etc. This information is included in the integrated database of state registration that includes state registration data on citizen, legal entities and property.¹¹¹ However, the disclosure of beneficiary owners is not required by the mentioned law.

At the same time, in the framework of the EITI, Mongolia approved a roadmap for the disclosure of beneficial owners in the mining sector in 2016. All Mongolian extractive companies should publicly disclose their beneficiary owners by 2020. Another initiative concerns Mongolia Media Council, which reportedly took a proactive decision to disclose beneficiary owners of the media companies.

Legal definition of a beneficial owner is provided in the anti-money laundering law of Mongolia (Art. 3.1.6) However, tax authority representatives informed at the on-site about their on-going with international consultants to properly define beneficiary owner in laws. The monitoring team would like to stress the importance of having a uniform legal definition of a beneficiary owner in line with international standards and good practices as a first step for the disclosure. Thus, Mongolia has not considered disclosure of beneficiary owners and is not compliant with this part of the recommendation.

Business integrity support to small and medium enterprises

The ACL provides for obligation for economic entities to adopt codes of ethics and publish performance reports and financial statements as well as define and comply with business ethics policies (Art. 6.5.1). The majority of Mongolian businesses however, lack compliance programmes and anti-corruption policies. In the absence of the Government's efforts to promote compliance and the lack of concrete incentives, companies in Mongolia are reluctant to introduce such policies.

Almost 98% of Mongolian enterprises are SMEs, the majority of which do not even have basic corporate elements to prevent corruption. Implementing new regulations and setting internal anti-corruption policies entail additional financial costs for them. According to the answer to the monitoring questionnaire, businesses are not enthusiastic to introduce integrity measures, since they either benefit from or depend on existing malpractices, or find it an additional burden without added value, as they are not convinced in the Government's efforts to fight corruption.

Large companies with foreign investors, especially in the banking industry, are interested in implementation of anti-corruption policies, procedures to report and investigate prohibited practices in Mongolian subsidiaries.¹¹² Disclosure of anti-corruption programs on websites is poor even in case of these companies, however. Reportedly, only 8 from top 100 Mongolian companies disclose their programmes and only 4 of them report on their implementation regularly.

STOPP Survey was conducted among 330 CEOs of completely Mongolian-owned companies, showing that 78% of them do not have any written policy. Out of 100 companies, only 15 companies have policies which includes anti-corruption element. 72.4% of 330 companies in 2016

¹¹⁰ Entered into force in November 2018.

¹¹¹ <http://burtgel.mn/#/home>

¹¹² "Apart from XacBank and Oyu Tolgoi LLC, no private companies report having risk-based programmes covering a broad range of anti-corruption areas. XacBank has adopted an e-learning tool in their internal HR on-board procedure: this is a training module covering international concepts of corruption." [Business Integrity Country Agenda](#), Mongolia (2018), Transparency International Mongolia.

reported that they had not taken any steps to combat fraud or corruption. Only 9.1% of respondents had reported a corruption case to state bodies.¹¹³

Whistleblowing

There are no whistleblower protection regulations in Mongolia as discussed in section 2.1. There are no dedicated channels to report corruption for businesses either. The Government informed that businesses can use the IAAC channels as described above in section 2.1, but Mongolia did not provide any information about the use of these channels by private sector. According to SPEAK 2018, 81% of Mongolians are not aware of any hotline for reporting corruption. Business representatives met at the on-site stated that without anonymity and whistleblower protection, and in view of government pressure on business it is highly unlikely that businesses would report corruption. Added to this, businesses do not have confidence in the IAAC. MNCCI mentioned to the monitoring team that they are receiving complaints from private entities, but no further information was provided about the follow up actions.

As regards corporate whistleblowing policies, each company can decide to develop this procedure. In fact, only small number of companies have implemented this anti-corruption tool. BCM's model policy for whistleblowing could be used by private sector. In the STOPP survey of TOP-100 companies, only nine disclosed information on the availability of specific channels and only one multinational company reported having dedicated software for whistleblowing which ensures the total confidentiality of the informant and thus protection from retaliation. Three companies (MCS Holding LLC, XacBank and Oyu Tolgoi LLC) in the survey specifically prohibit retaliation in their code of conduct.¹¹⁴

Conclusions

Mongolia's standing in international rankings on business environment and competitiveness remained poor. In the reporting period, the Government has not prioritised business integrity measures. The efforts to promote compliance and ethics in the private sector have been limited. However, business associations, NGOs and other stakeholders have been active in promoting business integrity through trainings, awareness raising and designing various tools and standard policies companies can use to develop their own policies. Subsidiaries of multi-national companies in Mongolia do have such policies, but such practice is limited throughout the private sector of Mongolia. The Government has not worked to encourage companies to develop internal control and ethics policies and no incentives have been put in place to this effect. The lack of transparency and accountability of state funds raises concerns. Mongolia has not considered introducing disclosure of beneficiary owners. There are no channels for businesses to report about corruption and in the absence of whistleblower protection and considering the low confidence in the Government's efforts to fight corruption, the companies are not willing to report.

Accordingly, Mongolia is *partially compliant* with the recommendation 3.9.

New recommendation 15

1. Provide for incentives for companies to develop effective anti-corruption compliance programmes.
2. Ensure that transparency and accountability requirements and integrity rules are applicable to the state funds and properly enforced.
3. Assist companies and business associations to assess integrity risks, organise awareness raising, provide advice and guidance on prevention of corruption in business operations.

¹¹³ [STOPP survey](#) is implemented in the framework of Strengthening Democratic Participation and Transparency in the Public Sector in Mongolia (STEPS) project by Asia Foundation.

¹¹⁴ [STOPP survey](#) is implemented in the framework of Strengthening Democratic Participation and Transparency in the Public Sector in Mongolia (STEPS) project by Asia Foundation.

4. Develop and implement joint projects with business entities such as collective actions against corruption and integrity pacts, especially in the risk areas.
5. Introduce comprehensive measures to strengthen corporate governance, transparency, internal control and corruption prevention systems in state and municipally-owned enterprises. Establish the system to monitor and assess the implementations of the anti-corruption programs in SOEs. Ensure the efficiency of the implemented anti-corruption measures in SOEs taking into consideration industry specifics and corruption risks.
6. Ensure gradual and effective beneficial ownership disclosures: a) require disclosure of beneficial ownership of legal persons; b) create a central register of beneficial owners; c) publish the information on-line in open data format in line with local and internationally recognised guarantees of data and privacy protection; d) ensure verification and dissuasive sanctions for nondisclosure in law and in practice.
7. Provide and use reliable channels to report corruption, independent review bodies, e.g. business ombudsmen.
8. Provide support to small and medium enterprises to prevent corruption.
9. Introduce business integrity measures in corporate governance policies, e.g. corporate disclosure including about beneficial owners, role of boards and audit in preventing and detecting corruption.

3. ENFORCEMENT OF CRIMINAL RESPONSIBILITY FOR CORRUPTION

3.1.1. Criminal law against corruption

Criminalisation of corruption offences

The monitoring team received no translation of Mongolia's Criminal Code before the on-site visit. This hindered the assessment of the criminalisation of corruption offences. Some criminal provisions have been translated and provided to the team after the country visit, but a relevant part of the requested information was still missing at the time of the drafting of the present report. Furthermore, the translation of some articles provided before the visit significantly differs from the one the team received afterwards, which posed additional difficulties to the analysis of the provisions.

Mongolian authorities reported that the current Criminal Code was enacted in 2015 and entered into force in 2017. Mongolia allegedly leveraged this two-years period to provide judges and prosecutors with the necessary training on the new provisions.

The new CC brings some improvements as compared to the previous one. The new provisions on bribery offences include some of the elements of crime provided by the international conventions, which were recommended in the previous monitoring rounds. The corporate criminal liability is now established, and foreign bribery is criminalised.

However, some of the interlocutors (NGO sector) qualified the new CC as a step back. Indeed, many recommendations have not been incorporated and many international treaties have not been transposed. Practitioners also claimed that they face challenges in interpreting some of the norms. Representatives of the Ministry of Justice of Mongolia explained to the monitoring team that they organised a meeting of all relevant stakeholders in April 2018, in order to discuss possible amendments to the current Criminal and Criminal Procedural Codes. In the aftermath of the meeting, an inter-institutional task force has been set up to reform the text and draft amendments have now been submitted to relevant institutions to collect their feedback.

New recommendation 16

1. Pursue the activity of the forum of relevant stakeholders with the purpose of analysing the quality of the provisions of the new Criminal and Criminal Procedure Codes with the purpose of identifying the drawbacks of the new provisions and the inconsistencies with the international standards that could limit the effective fight against corruption.
2. Ensure that the activity of the forum takes into consideration the reasoned opinions expressed by judges, prosecutors, IAAC, as well as other relevant national and international experts and that the conclusions and recommendations of this forum are made public.

Bribery

Previous recommendation 2.1-2.2: Offences and elements of offence

1. Align offences of active and passive bribery with international standards, in particular by criminalising offer or promise, acceptance of offer/promise of a bribe, request of a bribe as complete offences, bribery through a third person or for the benefit of a third person.
2. Enact a statutory definition of "bribe" which should include non-pecuniary and intangible undue advantages.

Previous recommendation 2.3: Definition of public officials and foreign bribery

1. Introduce in the Criminal Code definition of national public officials subject to corruption offences which would cover all state and local self-government employees, as well as other persons who perform public functions and candidates for elected offices.

Article 22.4. Receiving a bribe

1. A person demands directly or through others and/or receives bribe in exchange of doing his/her obligated official duty for the interest of person/entity who offered the bribe shall be punishable of fine of 2700 to 14000 units equal to tugriks with deprivation of right to hold public office for a period of 2 to 5 years or restriction of travel from 6 months to 3 years or imprisonment for a period of 6 months to 3 years.
2. Public official demands directly or through others and/or receives bribe in exchange of doing his/her obligated official duty for the interest of person/entity who offered the bribe shall be punishable of fine of 14000 to 27000 units equal to tugriks with deprivation of right to hold public office for a period of 2 to 5 years or restriction of travel from 1 to 5 years or imprisonment for a period of 2 to 8 years.
3. A person, who has official duties, intentionally abstained or promise to abstain from carrying out his duties, or acted or promised to act outside the ambit of his powers/prohibition in the interest of a person/entity who offered the bribe, or has indirectly demanded, received or accepted bribes, shall be punishable of fine of 2700 to 14000 units equal to tugriks with deprivation of right to hold public office for a period of 2 to 5 years or restriction of travel from 6 months to 3 years or imprisonment for a period of 6 months to 3 years.
4. Public official intentionally abstained or promise to abstain from carrying out his duties, or acted or promised to act outside the ambit of his powers/prohibition in the interest of a person/entity who offered the bribe, or has indirectly demanded, received or accepted bribes, shall be punishable of fine of 10000 to 40000 units equal to tugriks with deprivation of right to hold public office for a period of 2 to 5 years or imprisonment for a period of 2 to 8 years.
5. If the crimes specified in Article 2 of this section is committed by publicly exposed person or a syndicated criminal organisation by way of creating impediments shall be punishable of fine of 10000 to 40000 units equal to tugriks with deprivation of right to hold public office for up to 8 years or be imprisoned for a period of two to eight years.
6. If the crimes specified in Article 4 of this section is committed by publicly exposed person or a syndicated criminal organisation by way of creating impediments shall be punishable of imprisonment for a period of 5 to 12 years.

Article 22.5. Giving a bribe

1. Any acts done for the purpose of acquiring privileges or otherwise favourable position through transferring, promising or offering to transfer pecuniary and non-pecuniary assets and ownership rights thereof, or through providing service on a discount or free of charge to, shall be punishable of fine of 2700 to 14000 units equal to tugriks with deprivation of right to hold public office for a period of 2 to 5 years or restriction of travel from 6 months to 3 years or imprisonment for a period of 6 months to 3 years.
2. If this crime is committed by a publicly exposed person, relevant criminal subject's right to be appointed in public office shall be suspended from 2 - 5 years and be fined 5400 - 27000 units equal to tugriks or restriction of travel from 1 - 5 years or imprisonment for a period of 1 to 5 years.
3. If this crime is committed in the name of or on behalf of a legal person, the legal person's right to conduct certain types of operation shall be dismissed and be fined amount of 20000 - 400000 units equal to tugriks.

Explanation:

- If bribe offeror voluntarily confesses to the competent authority that he/she gave the bribe to receive public service as a result of impediments created by the public official, the

bribe offeror will be released from criminal sanctions and the received public service will not be undone/confiscated.

- If bribe offeror gave the bribe in order to have public official commit an unlawful act, such bribe offerors shall not be released from sanctions/liability. If bribe offeror voluntarily confesses his/her crime to the competent authority, such confession will be the basis for mitigating relevant sanctions/liability.¹¹⁵

Art. 22.4 of Mongolia Criminal Code (“Receiving a bribe”) criminalizes the conduct of “a person” receiving a bribe. The provision considers the commission of passive bribery by a public official or a politically exposed person as aggravating circumstances that increase the severity of the sanction. On the one hand, the bribery offences in the Mongolian Criminal Code are therefore very extensive, as the subject of passive bribery can be any person who has certain scope of duties. On the other hand, the same offences do not include all of the constitutive elements that are recommended by international standards.

The new provision on passive corruption (article 22.4), as it results from the translation provided by Mongolia, criminalizes both the request and receipt of a bribe. However, the provision does not cover the acceptance of the offer of a bribe. The request of a bribe is no longer limited to the situations of extortion, which is a step forward. The active bribery offence (Art. 22.5, “Giving a bribe”) includes also the elements of offer and promise of a bribe alongside the material giving and transferring of assets.

According to the authorities, bribery through the intermediary of a third person is covered by the bribery offences. Art. 22.4 refers to receiving a bribe “directly or through others”. The offence of receiving a bribe therefore includes bribery through a third person. However, a similar language cannot be found in the text of the offence of giving a bribe.

Bribery for the benefit of a third person is still not covered by the offences of active and passive bribery. However, Mongolian authorities reported that in practice cases of bribery in the interest of a third party are investigated by using the provisions of the general part of the Criminal Code concerning complicity in the crime. The monitoring team has not been provided with the relevant translated texts of the general part of the Criminal Code.

Mongolian authorities reported a case where, in exchange for the act of a public official, the briber gave money to the public official’s mother. The woman was prosecuted for bribe taking. Instead, authorities did not indict the public official for complicity in bribe taking, as he successfully claimed he did not know about the bribe. Further examples of cases were given of bribery schemes concerning individuals that were indicted or sentenced for taking bribes for the benefit of their political party. Authorities referred that cases of bribery committed through the intermediation of a company or in the benefit of a company are increasing.

According to what Mongolian authorities referred, it seems that the third-party beneficiary of a bribe is considered as the author of passive bribery, while the public official would be the accomplice in the crime, if he/she knew about the bribery. This legal construction is not fully in line with international standards, that could raise problems in the practice.

There is no specific definition of “bribe” in the Mongolian Criminal Code. This reduces the clarity of provisions and hinders their application. Art. 22.5 on “Giving a bribe” criminalizes the transfer, promise or offer of “pecuniary and non-pecuniary assets and ownership rights thereof, or through providing service on a discount or free of charge”. However, the same elements are not mentioned in Art. 22.4 on “Receiving a bribe”, which only refers to “a bribe”. According to the Mongolian authorities in practice the definition of ‘bribe’ given in Art. 22.5 is applied for both active and passive bribery. The Mongolian authorities claim that the most frequent forms of bribes encountered in practice are cash, material assets, vehicles, real estate. They did not report many cases where the bribe consisted in bank transfers. What remains unclear is if all intangible non-

¹¹⁵ “Explanations” in Mongolia’s Criminal Code are an integral part of the provisions and have same legal effect as law provisions.

pecuniary benefits are included. No relevant example concerning such kind of bribe was provided during the on-site visit.

The Criminal Code does not provide a definition of “national public official”, nor of “foreign public official”. The authorities of Mongolia explained that the notion of public official refers to the persons subject to the Anti-Corruption Law, as listed in Art. 4 of that law.¹¹⁶ However, the purpose of the Anti-Corruption Law is not to enforce criminal law, but to set up prevention activities and enhance detection of corruption. In order for the criminal norm to be clear and predictable, the Criminal Code should cover the definition of all the elements of crime or, at least, refer explicitly to another piece of legislation. The current Criminal Code employs in Art. 22.4 and 22.5 either the term “public official” with no further explanation, or terms such as “person who has duties under the law, administrative legal acts and agreements”, or “government officials or persons who have duties under law, administrative legal acts and agreements”. Difficulties in interpretation and doubts on the qualification of public official remain. Therefore, the respective part of the previous recommendation remains valid.

The monitoring team was not provided with any explanation, definition or court ruling describing the constitutive elements of the crime established in the above-mentioned legal texts. The translation does not seem accurate and completely reliable either. However, it is a fact that these two articles of the Criminal Code do not mirror one another. On the one hand, this is not in line with the international standards and, on the other hand, the different wording can create problems to the interpretation and application of the provisions by courts. According to all the international conventions or treaties which regulate active and passive bribery, one must find the same common elements of crime written in the same form in both incriminating texts. An alternative legislative technique could be to include all the constitutive elements of crime in the text of one provision (active *or* passive bribery) and then just refer to them in the text of the other. The Criminal Code of Mongolia does not seem to follow thoroughly neither of the two techniques. For instance, Art. 22.4 refers to “bribe”, while Art. 22.5 refers to “pecuniary and non-pecuniary assets and ownership rights thereof” and “providing service on a discount or free of charge”. In Art. 22.4 bribery is committed “for the interest of the person / entity who offered the bribe”, while in Art. 22.5 the bribery is committed “for the purpose of acquiring privileges or otherwise favorable position”. Also, as mentioned in the previous paragraph, the definition of the bribed person differs in Art. 22.4 and Art. 22.5. All these differences create potential risks jeopardizing the investigations concerning both bribe givers and bribe takers and their intermediaries. Furthermore, the outcome of corruption cases in court results at risk as incriminations inevitably lack the necessary clarity and predictability.

Conclusions

The monitoring team welcomes the new provisions of the Criminal Code criminalising active and passive bribery. According to the provided translation, now offering, requesting and accepting the offer of a bribe are criminally liable. The use of intermediaries does not hamper Mongolian authorities to prosecute all the actors of the bribery scheme. However, some important

¹¹⁶ Art. 4 of the Anti-Corruption Law (2006, modified in 2012).

“Persons subject to this Law. The following persons are subject to this Law: 1) Persons who hold executive or managerial position in the political, administrative or special office of the state; 2) Persons who hold executive or managerial position in the public service, or who is the general or senior accountant at such place; 3) Managers or authorised employees of legal entities in which the state or the local administration has full or partial equity interest; 4) The National Council Chairperson and the General Director of public radio and television; 5) Managers and executive officers of non-governmental organizations, temporarily or permanently performing particular state functions in compliance with legislation; 6) Candidates for President of Mongolia, Parliament or all levels of Citizens' Representative Khural; 7) Directors and representatives from all levels of Citizens' Representative Khural; 8) Public officials who have been included in the list approved by an authorised entity; 9) The competent official and member of supervisory board of Future Heritage Fund Corporation stipulated in provision 4.1.7 of Law on Future Heritage Fund.”

shortcomings remain. The criminalisation of bribery for the benefit of a third person is not clearly stated in the law. The Criminal Code does not provide a definition of bribe and the two provisions on active and passive bribery do not provide the same wording for defining a bribe. Art. 22.4 does not expressly refer to all intangible non-pecuniary advantages. The Criminal Code still lacks a definition of public official.

Mongolia is *partially compliant* with points 1) and 2) of Recommendations 2.1.-2.2.

Mongolia is *not compliant* with point 1) of Recommendation 2.3, which remains valid.

New recommendation 17

1. Align offences of active and passive bribery with international standards, in particular by ensuring that the same corresponding elements of crime can be identified both in the offence of active bribery as in the offence of passive bribery, clearly including the bribery for the benefit of a third person and the acceptance of the offer of a bribe.
2. Enact a statutory definition of “bribe” in the Criminal Code, which would clearly apply to both active and passive bribery and which should include non-pecuniary intangible benefits.
3. Introduce in the Criminal Code the definition of national public official subject to corruption offences, which would cover all state and local self-government employees, as well as other persons who perform public functions and candidates for elected offices.
4. Review the wording of all corruption related offences in the Criminal Code in order to improve legislative technique, and bring more clarity, predictability of the legal text.

Other offences

Previous recommendation 2.1-2.2: Offences and elements of offence

1. Introduce liability for bribery in the private sector and trafficking in influence in line with international standards; consider providing release from liability for active bribery in cases of extortion/request of a bribe when the bribe-giver reported such extortion/request to law enforcement authorities in line with the best international practice.
2. Clarify the terms used in offences of abuse of powers and money laundering to ensure legal certainty; through legislative amendments and/or changes in practice, explicitly provide that conviction for predicate offence is not required for prosecution and conviction for money laundering.
3. Review the offence of “Improvement in the financial state by illegal means” to bring it in line with Article 20 of the UNCAC.

Chapter 22 of the new Criminal Code (“Corruption crime”) includes 11 types of crime classifications. The Criminal Code apparently does not criminalise trading in influence.

- Private sector bribery

According to Para. 1 of Art. 22.4 (Receiving a bribe), the offence of receiving a bribe can be committed by a person who has “obligated official duty”. Para. 3 of the same provision refers to a person “who has duties under law, administrative legal acts and agreements”. Art. 22.5 (Giving a bribe) concerns “government officials or persons who have duties under law, administrative legal acts and agreements in relation to their duties, powers and positions”. The Mongolian authorities explained that a person who has “obligated official duty” includes private sector officials. As an example, was provided a case against a private school principal who was convicted for receiving a bribe. However, the analysis of the legal texts cannot ascertain whether the receiving side of bribery has to be necessarily a public official or representatives of private sector are covered as well. Therefore, the respective part of the recommendation cannot be considered implemented.

- Abuse of power

Article 22.1. Abuse of power and official position

1. *Public official abusing his/her power, office or deliberately abstained from carrying out his/her duties, powers (granted under law) and positions in order to acquire preferences to himself/herself or others shall be punishable by fine of 5400 to 27000 units equal to tugriks with deprivation of the right to hold public positions from 2 to 5 years or restriction of travel from 1 to 5 years or imprisonment for a period of 1 to 5 years.*

2. *Public official abusing his/her power, office and in result causing a large amount of damage shall be punishable by fine of 5400 to 27000 units equal to tugriks with deprivation of the right to hold public positions from 2 to 5 year or restriction of travel from 1 to 5 years or imprisonment for a period of 1 to 5 years.*

3. *If the said crime has been committed by politically exposed person, such person's right to be appointed in public office shall be suspended for a period of 5 to 8 years and be fined of 10000-40000 units or imprisonment for a period of 5 to 8 years.*

Mongolian authorities emphasize that while the previous Criminal Code incriminated “misuse of power”, the new Code now incriminates the “abuse of power”. It is not clear what the substantial difference between the two labels is, if any. Article 22.1 of the Criminal Code incriminates as abuse of power both the action and inaction of the public official in relation to his/her duties or powers. According to the text, the powers of which the public official abuses must be provided by the law.

As a positive remark, unlike the incrimination of bribery offences, Art. 22.1 on abuse of power makes specific reference to the element of third-party beneficiaries. The offence can be committed when the purpose of the public official is to obtain benefits (“preferences”) either to him/herself, or to others. Mongolia could use this model and improve the incriminations of the bribery offences accordingly.

The new provision on abuse of power no longer requires the existence of damages among the constitutive elements of the offence. While the Mongolian authorities claim that causing a large amount of damages should be understood as an aggravating circumstance, in fact it applies the same sanction. This is one more evidence of problems with legislative techniques used in the Criminal Code which is lacking legal certainty and can lead to misinterpretation of its provisions in future.

However, in practice, as Mongolian prosecutors mentioned, the investigation still strives to identify a damage. The investigators still require the economic analysts to identify and calculate the damage in every case, as this is a very appreciated evidence in court. The UN Convention against Corruption does not require such element, as the sole essential requirement is the purpose of obtaining an undue advantage. However, since the current form of the abuse of power offence in the Criminal Code of Mongolia is rather new, it is expected that the evolving courts' jurisprudence will be adapted to the new elements of the crime. The IAAC presented a case of abuse of power in which the Minister of Construction and Urban Planning has been investigated for violating the public procurement law. The minister allegedly purchased 223 rental housing units at a higher price than the market rate, thus favoring a certain construction company. The housing units were then rent out to people close to the minister's political party instead of being offered by drawing lots. The Supreme Court returned the case back to the court of first instance for revision. The hearing before the court of first instance was not scheduled at the time of drafting this report.

Practitioners met on-site expressed contradictory views on whether article 22.1 incriminates also the exceeding of power by the public official. The prevailing opinion was that the public officials who exceed their powers in order to obtain favors would not be punished under the new article 22.1. Prosecutors complained about this ambiguity of the law and about the challenges that this potential omission of the law creates in practice.

It is important that the criminal law provisions be very clear, especially those defining criminal offences, so that fundamental requirements of the rule of law such as predictability and legal certainty are observed. Moreover, as the Venice Commission stated in its *Report on the relationship between political and criminal ministerial responsibility*,¹¹⁷ vague or too general incriminations of abuse of power offences are vulnerable to political misuse. The notion of abuse of power should be interpreted narrowly and applied with a high threshold. The law should foresee additional requirements such as intent or gross negligence, or intent of personal gain for the person concerned or for another person, or a political party.¹¹⁸

International anti-corruption standards require that the abuse of power or abuse of functions by a public official concern the acts committed in discharge of the functions of the public official. The Mongolian legislator could incriminate excess of power or usurpation of power if wishes so, but the same requirements of predictability and legal certainty should be observed.

- Money laundering

Article 18.6. Money laundering

1. Acquisition, possession or use of assets, money and proceeds knowingly of its origin from a crime; concealment of its illegal origin and modification and transfer to assist a person evade criminal liability; concealment of actual nature, origin, location, expenditure, owner and property right shall be punishable by limitation of travel for a period of 6 months up to 1 year or imprisonment for a period of 6 months up to 1 year.

2. The same crime committed in the following:

2.1. Assets, money and proceeds knowingly of its origin from a crime punishable by imprisonment for more than 5 years specified in the Special part of this law;

2.2. Continuous committed;

2.3. Abuse of office, power and influence shall be punishable by limitation of travel for a period of 1 year up to 5 years or imprisonment for a period of 1 year up to 5 years.

3. The same crime committed by a criminal organization shall be punishable by imprisonment for a period of 10 years up to 12 years.

4. The same crime committed on behalf of or for interest of a legal entity shall be punishable by revoke of the legal entity's right to conduct certain activities and fine from 120,000 units to 400,000 units equivalent to tugriks.

The new provision on money laundering is now in Article 18.6 of the special part of the Criminal Code, under a specific title. The previous choice of the legislator was to include article 166¹ on money laundering under the chapter of offences against the property. Although there might be some differences between old and new texts due to variances of the translations, it seems that the elements of the money laundering offence remain the same as they were in the old Criminal Code (as amended in 2014). The money laundering offence provided by Art. 18.6 of the Criminal Code follows the requirements of the UN Convention against Corruption, as well as those of the UN Transnational Convention against Organized Crime. Surprisingly, the punishment for the new money laundering offence is much lower as compared to the previous code, if to compare at least the severity of the imprisonment penalty. The previous code punished money laundering by a fine of 50 to 100 times the amount of the minimum salary, or incarceration up to 6 months, or *imprisonment of up to 5 years*. The new code sanctions the same offence with a limitation to travelling for a period of 6 months to 1 year or *imprisonment for a period of 6 months up to 1 year*. This raises questions as to the dissuasiveness of the sanction.

¹¹⁷ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)001-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)001-e)

¹¹⁸ Ibidem.

As the statistics provided by the authorities show, in 2018 four cases regarding 14 people have been investigated for money laundering. It is not clear how many of them regarded cases of money laundering stemming from corruption offences.

The Mongolian FIU claimed that they cannot know from the information obtained from the obliged entities whether a suspicious transaction originate from corruption. Also, the analyses they carry out on the received information cannot indicate the involvement of corruption as a predicate offence. Therefore, the FIU does not send STR reports to the IAAC, but to the General Police. FIU officials also mentioned difficulties in getting timely assistance from other judicial authorities in cases of transnational money laundering.

Investigators and prosecutors said they still have to file an indictment and prove the predicate offence together with the money laundering offence, a limit that was criticized also in the previous reports.

On 26 April 2018, Parliament adopted the new “Law on Money Laundering and Fight against Financing of Terrorism”. The National Committee for the Fight against Money Laundering and Financing of Terrorism was established by Decree n.144 of the Prime Minister of Mongolia in August 2018. Primary functions of the National Committee are to draft national AML/CFT policy and strategy to be approved by the Government of Mongolia.¹¹⁹ The Minister of Justice chairs the National Committee and the Director of the General Intelligence Agency is the Deputy Chair. The Committee is then participated by representatives of the Prosecutor General’s Office, the IAAC, the Government, including the Ministries of finance and foreign affairs, Bank of Mongolia, the Judicial General Council, the Financial Regulatory Commission, the General Police Agency, the Agency of Court Decision, Mongolian Customs, the General Taxation Office, and the Authority for State Registration. The FIU performs the secretariat function for the National Committee.

- Illicit enrichment

Article 22.10. Illicit Enrichment

1. *If a government official cannot justify major increase of his/her income and assets as lawful, such income and assets shall be confiscated and the relevant official's right to be appointed in public office shall be suspended for up to two years and be fined an amount of 2700 -14000 units equal to tugriks or restriction of travel from 6 months to 3 years or imprisonment for a period of 6 months to 3 years.*

2. *If this crime has been committed by politically exposed person, such person's right to appointed or elected in public office shall be suspended for 2 to 5 years and be fined an amount of 5400 to 27000 units equal to tugriks, or restriction of travel from 1 to 5 years or imprisonment for a period of 1 to 5 years*

The offence of illicit enrichment has been improved as compared to the text of the previous Criminal Code. Mongolian lawmakers introduced the element of unjustified major increase of the income or assets. However, the offence appears to be limited only to government officials and “politically exposed persons”, while it is apparently not applied to other categories of public officials. In addition, the monitoring team is concerned about the fact that the provision does not refer to the element of intent, incurring the risk of over-incriminating conducts that might have a licit explanation.

¹¹⁹ See Art. 221 of the Law on Combating Money Laundering and Terrorism Financing.

Conclusions

Mongolian authorities have not clarified if the Criminal Code incriminates bribery in the private sector in compliance with international standards. The new provision on money laundering lowers the sanctions considerably. In addition, in order to prosecute a case of money laundering it is still necessary to prove the predicate offence. The provision concerning abuse of power is still open to contradictory interpretations. Although the monitoring team recognises improvement in the criminalisation of illicit enrichment, the new provision is not yet fully in line with international standards.

Mongolia is **not compliant** with points 3)-4) and **partially compliant** with point 5) of Recommendation 2.1-2.2.

New recommendation 18

1. Consider incriminating trafficking of influence and align the offence of bribery in the private sector with international standards.
2. Take necessary measures to clarify the extent of the offence of abuse of power in order to ensure legal certainty and predictability.
3. Take the necessary measures, either in the legislation or in practice, in order to explicitly provide that conviction for the predicate offence is not required for the prosecution and adjudication of money laundering.
4. Further review the offence of "Illicit enrichment" to bring it in line with Article 20 of the UNCAC.

Liability of legal persons

Previous recommendation 2.1-2.2: Offences and elements of offence

1. Establish effective liability of legal persons for corruption criminal offences with proportionate and dissuasive sanctions, including liability for lack of proper supervision by the management which made possible commission of the offence; corporate liability should be autonomous and not depend on detection, prosecution or conviction of the actual perpetrator.

Mongolian authorities did not provide the monitoring team with the translation of all the relevant provisions from the Criminal Code on corporate liability. This makes it difficult to analyze the compliance of the provisions concerning the criminal liability of the legal persons with anti-corruption international standards.

Article 5.1.4. of the Criminal Code specifies that "If specified in the Special part of this law, criminal liability can be imposed on a legal entity". Corporate liability is expressly mentioned in Art. 22.5, incriminating bribe giving, and Art.18.6 on money laundering. Para. 3 of art. 22.5 states that "*If this crime is committed in the name of or on behalf of a legal person, the legal person's right to conduct certain types of operation shall be dismissed and be fined amount of 20000 - 400000 units equal to tugriks*". Translated in local currency, the monetary sanction is between 2.000.000 – 400.000.000 tugriks, which means between USD 760 - 150.200. Art. 5.1.5 of the Criminal Code specifies that legal persons are sanctioned based on the characteristics of the crime, as well as the level of harm and circumstance of the crime. Both the minimum and the maximum fines seem too low. The former almost equals two average salaries in Mongolia, while the maximum fine would be likely irrelevant for a big company, especially if compared with the value of public contracts worth millions of dollars.

The practical application of the criminal liability of legal persons has been limited in Mongolia. The authorities refer only to two cases. A finalized case regards Director of the National Transportation Center, who abused of his power and granted an illicit advantage to a legal person. The IAAC investigated the legal person, which then was sanctioned by the court with a fine. It is not clear though for what offence was the legal person charged and convicted, since according to

the translated texts of the Criminal code incriminating the abuse of power (art. 22.1), a legal person cannot be held responsible for abuse of power (not even in the form of complicity).

According to the authorities who met with the monitoring team, the liability of legal persons is not autonomous from the liability of the natural persons who committed the crime. A legal person cannot be pursued if the natural offender is not convicted because absconded, died, exempted from liability, granted amnesty or acquitted. At the same time, engaging the liability of legal persons does not exclude the liability of the responsible individuals. Nevertheless, a recent case decided in court raised prosecutors' concerns about how judges interpreted the provision. In the case, a trade company transporting coal to China paid a 57 million tugrik bribe in order to obtain the license for transport. Prosecutors indicted both the CEO of the company and the company for bribery, yet the court asked the prosecutor to choose between the two. The natural person was eventually released from liability.

Mongolian laws apparently do not regulate the liability of a person in management position for lack of supervision. There is also no defense for companies implementing compliance programs.

Prosecutors at the on-site visit stated that they would not prosecute a company when it results that the offence was committed for the sole benefit of the natural person. However, considering the text of Art. 22.5 Para. 3 on the offence of giving a bribe, the criminal liability of the legal person should be engaged whenever the crime is committed "*in the name or on behalf* of the legal person". There seems to be no reference in the law to a criterion related to the legal person's benefit. Experiences of OECD and non-OECD countries show that various criteria can be employed to attribute an act of a natural person to a legal person, without being in conflict with international standards. Committing the offence for the benefit or in the interest of the legal person can be one of the criteria, but it is not a compulsory element. For instance, in order to trigger legal persons' liability, only 66% of members of the OECD Working Group of Bribery consider whether the acts of a natural person were committed for the company's benefit or interest.¹²⁰

Prosecutors admit that there is a strong need for further training with regard to the application of corporate criminal liability. Further training on the topic targeting judges is also seen favorably.

Conclusions

Although the new Criminal Code reviewed the liability of legal persons, sanctions continue to lack proportionality and dissuasiveness. Corporate liability still depends on the conviction of the perpetrator and the law does not regulate the liability of a person in management position for lack of supervision. Court jurisprudence on the law is contradictory and there is no consensus on its interpretation among judges and law enforcement practitioners.

Mongolia is **partially compliant** with point 6) of Recommendation 2.1-2.2.

New recommendation 19

1. Further review the legal provisions on liability of legal persons providing proportionate and dissuasive sanctions, including the liability for lack of proper supervision by the management, and ensuring that corporate liability is not dependent on detection, prosecution or conviction of a natural perpetrator. Envisage incentives for companies with efficient anti-corruption policies.
2. Further develop training programs for investigators, prosecutors and judges on liability of legal persons, including using practical case studies from other jurisdictions.

¹²⁰ <http://www.oecd.org/corruption/liability-of-legal-persons-for-foreign-bribery-stocktaking-report.htm>

Foreign bribery

Previous recommendation 2.3: Definition of public officials and foreign bribery

1. Establish bribery offences involving foreign public officials in line with international standards and clearly define such officials in the Criminal Code.

Article 22.6. Giving bribe to officials of foreign countries or international organisations

1. An official of a foreign country or an international organisation directly or indirectly demands, receives or accepts bribes in exchange of acting in the interest of the bribe offeror shall be imprisoned for a period of five to twelve years.

2. Any acts done for the purpose of acquiring or maintaining privileges or otherwise favourable position through transferring, promising or offering to transfer tangible and intangible assets and ownership rights thereof, or through providing service on a discount or free of charge to officials of foreign countries or international organisations in relation to their duties, powers, positions and cross-border activities shall be punishable by law. Subjects of such crimes shall be suspended from being appointed in public office for up to three years and be fined an amount of 5400 to 27,000 units equal to tugriks, or restriction of travel from 1 to 5 years or imprisonment for a period of 2 to 8 years.

Mongolia has introduced the offence of “Giving a bribe to officials of foreign countries or international organizations” in Art. 22.6 of the Criminal Code. This is considered as a progress. The provision covers the elements of giving, promising or offering a bribe, as well as it concerns the tangible or intangible assets (according to the translation provided by Mongolian authorities). However, it is not clear whether the mention of intangible assets covers all kinds of non-pecuniary benefits. Moreover, the lack of a definition for the “officials of foreign countries or international organizations” also weakens the incrimination.

Mongolian authorities have mentioned no examples of cases regarding foreign bribery. However, according to the authorities, Mongolia has jurisdiction over foreign bribery offences committed abroad if a citizen of Mongolia or a resident committed a criminal offence abroad and he/she was not sanctioned in the foreign country.

Conclusions

The monitoring team acknowledges Mongolia’s progress in the criminalisation of foreign bribery. However, the provision seems not to cover bribery committed through the offer, promise or transfer of all kinds of non-pecuniary benefits. A clear definition of foreign public official is still missing.

Mongolia is *partially compliant* with point 2) of Recommendation 2.3.

New recommendation 20

1. Further improve the definition of bribery offences involving foreign public officials and officials of international organizations, in line with international standards and clearly define such officials in the Criminal Code.

Confiscation

Previous recommendation 2.4-2.5: Sanctions and confiscation

1. Revise provisions on confiscation to enable mandatory application of the confiscation of instrumentalities and proceeds to all corruption and corruption-related offences, including converted or mixed proceeds, benefits derived from proceeds and value-based confiscation; consider reversing burden of proof in confiscation proceedings (criminal or civil) and introduce extended confiscation.

Article 7.5. Confiscation of assets and income

1. Assets and income equivalent to the amount of criminal assets and income or in order remedy damage caused to others from the criminal act shall be forcibly confiscated from persons, legal entities committing crime.

(Amended on 11 May 2017)

2. "Criminal assets and income" means directly, indirectly gained material and non-material assets, its value, profit, technical equipment and items used or prepared for use to commit crime punishable by imprisonment for a period more than one year under the Special part in Mongolia or punishable for the same period of imprisonment abroad.

3. Confiscated assets and income shall be allocated for remedy of caused damage and criminal proceedings expense. If the amount of criminal assets and income is larger than the damage, then its shall be allocated to State budget.

4. If determined that items, their value gained from committing a crime, automobile, cart, firearms, equipment specially prepared to be used as a weapon are in the possession of guilty person, then it shall be confiscated and stored, destroyed, allocated for remediation of caused damage of the crime.

5. If assets and income gained from committing a crime has been transferred to the ownership of others under legal contracts, then court will examine the items and damage shall be forcibly remedied by assets and income not prohibited for confiscation from the person or legal entity. If found that it was known, then court shall revoke the contact for transferring assets and income to others and confiscate assets and income to remedy caused damage.

(Amended on 11 May 2017)

6. Court shall completely specify in its decision the assets and income for confiscation.

In the new Criminal Code confiscation can be applied to any instrumentalities and proceeds of corruption crimes punishable by imprisonment for a period more than one year as well as profits thereof (so called special confiscation of instrumentalities and proceeds of crime). Its value equivalent can also be confiscated instead according to the legislation, however clear rules for value-based confiscation are missing in the pieces of legislation provided by the authorities. Besides, the Criminal law does not contain any provisions on confiscation of mixed proceeds of corruption which was clearly recommended in the previous monitoring report.

Moreover, confiscation of criminal assets transferred to third parties under the current criminal law covers situations when such assets were transferred into ownership of a knowing third party and with the use of legal agreement. What seems to remain uncovered is situations when a third party ought to have known about criminal origin of the transferred assets, as well as when the assets are transferred into possession (not ownership) of a third party with or without a formal legal agreement directly or indirectly (for instance, upon instruction) from the offender.

In the period 2015-2018, assets equal to USD 11,523,202.77 were confiscated in criminal proceedings related to corruption. In 2017, Mongolian courts confiscated about USD 24,090 of assets related to one illicit enrichment case. Authorities reported a finalized case of 2015, where the criminal court of Dornod Aimag confiscated assets from three individuals involved in a corruption case.¹²¹ Confiscations were worth about USD 33,500 in total and the money was transferred to the Vocational Training Center and the Labor Division of Dornod Aimag for recovering of damages caused by corruption.

¹²¹ Case no. 201511000035.

Conclusions

Mongolia prescribed application of confiscation to all corruption and corruption-related offences. However, mixed proceeds composed of legal and illegal wealth cannot be confiscated. Legislation also lacks clear and comprehensive rules on value-based confiscation. The monitoring team stresses the importance of introducing a criminal or civil extended confiscation system, with a reversed burden of proof in cases where suspicion of corruption has arisen. The grounds to confiscate proceeds of corruption in the ownership of third parties should be extended to situations when a third party should have known about the criminal origin of the assets, as well as when the assets are transferred in the possession of third parties with or without legal agreement, directly or indirectly from the offender.

Mongolia is *partially compliant* with point 3) of Recommendations 2.4-2.5.

New Recommendation 21

1. Introduce the possibility for confiscation of mixed proceeds as well as clear rules for value-based confiscation.
2. Introduce extended confiscation (criminal or civil) with reversing burden of proof where the suspicion for corruption offence was put forward.
3. Clarify the legal grounds for confiscation of assets (instrumentalities and proceeds from corruption as well as any profits thereof) found in the possession of knowing third parties.

Statute of limitations

Previous recommendation 2.6: Immunities and statute of limitations

1. Increase statute of limitations for corruption offences; consider establishing fixed, sufficiently long statute of limitations for all corruption crimes regardless of their gravity; stipulate that statute of limitations be interrupted by bringing of charges or other procedural action, as well as by the period when person enjoyed immunity.

Mongolia made no changes to the statute of limitations concerning corruption offences, which is five years. No suspension of the statute of limitations was introduced and no statistics were available on the number of corruption cases that were abandoned because of the expiry of the limitation period. Prosecutors complained about the short statute of limitations applied to most of the corruption offences (five years). The Government's replies to the monitoring questionnaire also indicate the statute of limitations as a serious obstacle for effective enforcement of corruption offences.

Conclusions

No change was made in the reporting period concerning the regulation of the statute of limitations.

Mongolia is *not compliant* with point 2) of Recommendation 2.6, which remains valid.

Immunities

Previous recommendation 2.6: Immunities and statute of limitations

1. Review the system of immunities of public officials by narrowing down their scope and list of relevant officials to the extent necessary in a democratic state; remaining immunities should be functional, cover only period in office, exclude situations in flagrante, allow effective investigative measures into persons with immunity; establish swift and effective procedures for lifting immunity based on clear criteria.

The list of public officials who enjoy immunity is still very large. No changes in the Mongolian legislation have been reported in this matter. According to the law, the same institution that appointed the public official should lift his/her immunity. In the case of prosecutors, the Prosecutor

General lifts it, while in the case of judges it is the Judicial General Council. Prosecutors complained that over the last 20 years only three MPs lost their immunity. The majority of requests to lift MPs' immunity are rejected, at an average of three rejection per year.

However, the immunity is confined to the investigative measures that could impede the Parliamentary activity of the MP. These include measures such as body search, house, office or vehicle search, as well as measures restricting persons' freedom. In the case of *flagrante delicto* immunities do not apply.

The immunity covers only the period when MPs exercise their mandate. Nevertheless, it remains as a general immunity, covering all the wrongdoings committed in this period. Added to this the fact that the statute of limitation is not suspended during the mandate period and that many MPs seek for a second mandate, in practice there is almost no possibility to effectively investigate an MP. Mongolian authorities did not provide the monitoring team with information on procedure for lifting the immunity and the criteria applied.

Conclusions

No change has been made in the reporting period concerning the system of immunities of public officials.

Mongolia is **not compliant** with point 1) of Recommendation 2.6, which remains valid.

New Recommendation 22

1. Review the system of immunities of public officials by narrowing down their scope and list of relevant officials to the extent necessary in a democratic state; immunities should be functional, cover only period in office, exclude situations in flagrante, allow effective investigative measures into persons with immunity; establish swift and effective procedures for lifting immunity based on clear criteria.
2. Increase statute of limitations for corruption offences; consider establishing fixed, sufficiently long statute of limitations for all corruption crimes regardless of their gravity; stipulate that statute of limitations be interrupted by bringing of charges or other procedural action, as well as by the period when person enjoyed immunity.

Effective regret and other defences

Previous recommendation 2.1-2.2: Offences and elements of offence

1. Introduce liability for bribery in the private sector and trafficking in influence in line with international standards; consider providing release from liability for active bribery in cases of extortion/request of a bribe when the bribe-giver reported such extortion/request to law enforcement authorities in line with the best international practice.

The Explanation to Art. 22.5 of the Criminal Code (Giving a bribe) regulates the case where a briber sought a lawful public service from the public official and informs law enforcement at her/his own will about the facts. In this case, no sanction can be imposed on the reporting person. When a bribe is paid in exchange for an illicit service, the spontaneous reporting to the authorities is not a defence but could be considered as a mitigating circumstance (Art. 6.5 CC).

From the letter of the law, it results that judges only have to certify the existence of effective regret's legal conditions, with no discretion on its application. The effective regret defense remains therefore automatic: if the legal conditions provided for in Art. 22 are met, the court has no discretion on the application of the impunity clause.

The law does not provide any time limitation for the bribe giver to report to the authorities. The briber could therefore report after many years and his/her willingness to report might stem not only from "effective regret", but also from ill-motivated reasons or fear of being investigated.

As Mongolian authorities reported, courts have not applied the effective regret defense since the adoption of the new law.

New Recommendation 23

1. Revise the scope of the effective regret defence, eliminating its automatic effect and limiting in time the possibility for the bribe giver to be released from liability as a consequence of reporting.

Sanctions**Previous recommendation 2.4-2.5: Sanctions and confiscation**

1. Review criminal sanctions for corruption offences to ensure that they are effective, proportionate and dissuasive.
2. Compile and analyse statistics on application of sanctions for corruption offences to see how effective they are in practice (e.g. how often conditional release is applied, whether imprisonment is the main sanction for serious offences).

The system of penal sanctions in the Mongolian criminal law provides for alternative sanctions for each criminal offence. The Criminal Code applies the following sanctions (Art. 5.2-5.7 CC): fine, community service, restriction of travel, imprisonment, and deprivation of rights.

In the case of corruption crimes, the law often provides for the cumulative punishments, including fines, deprivation of rights to hold public offices and, alternatively, restriction of travel or imprisonment. It results from the law that, at least for corruption crimes, imprisonment is considered as an *ultima ratio* measure. In practice, as prosecutors and investigators stated at the on-site visit, the courts usually rule fines and restrictions of rights in corruption cases. According to Mongolian investigators, prosecutors rarely file appeals to overturn too lenient sentences. Representatives of the civil society complained about the leniency of the sanctions applied in corruption cases.

Compared to Art. 268.1 of the previous Criminal Code, the new Criminal Code sanctions the offence of receiving a bribe in exchange for performing an act within the duty (Para. 2 of Art. 2.4) with longer imprisonment but lower fines. The alternative penalty of imprisonment is now from two to eight years, compared to the previous sanction of one to five. However, fines are lower in the new Criminal Code, now from 4.660 to 8.980 Euro,¹²² compared to 4.900 to 24.000 Euro in the previous code.¹²³

In conclusion, Mongolia has not done much in order to ensure effective, proportionate and dissuasive sanctions for corruption offences.

In 2017, the IAAC analysed court judgements in order to assess whether sanctions applied in corruption cases were effective, proportionate and dissuasive. The IAAC obtained information from the database of court orders¹²⁴ and analysed criminal judgements from 2011 to 2015. Based on the court records analysis, most sanctions for corruption offences appeared to be fines. Another review of the applied sanctions is planned to cover the period 2008-2018.

Conclusions

Although the new Criminal Code presents some changes in the sanctioning of corruption crimes, sanctions remain not effective, proportionate or dissuasive.

Mongolia is *partially compliant* with points 1) and 2) of Recommendations 2.4-2.5.

¹²² Art. 22.4 para 2, the fine of 14000 to 27000 units equal to tugriks

¹²³ See the report on Mongolia on Joint First and Second Rounds of Monitoring of the Istanbul Anti-Corruption Action Plan adopted on 9 October 2015, page 45 (the reference is in USD – receiving a bribe, art. 268.1. fine USD 5.610 – 27.500)

¹²⁴ <http://old.shuukh.mn/eruanhan/1163/view> and www.shuukh.mn.

New Recommendation 24

1. Review the criminal sanctions for corruption offences and money laundering to ensure that they are effective, proportionate and dissuasive.
2. Compile and analyse statistics on application of sanctions for corruption offences to see how effective they are in practice (e.g. how often conditional release is applied, how often imprisonment is the main sanction for serious offences).

3.1.2. Procedures for investigation and prosecution of corruption offences**Previous recommendation 2.8: Application, interpretation and procedure**

1. Consider clarifying the Criminal Code and interpretation of corruption offences in practice so that intent can be inferred through circumstantial evidence, thereby eliminating the requirement of direct evidence of intent.
2. Build capacity of investigators and prosecutors to conduct financial investigations and use circumstantial evidence; encourage use of in-house or outsourced specialised expertise.
3. Ensure effective access of law enforcement officials to bank, financial, and commercial records.

Reform of the Criminal Procedure Law

The new version of the Criminal Procedure Code of Mongolia came into force on July 1, 2017. The monitoring team has not been provided with the full text of the new law and therefore is not able to analyse all its novelties.

One of the changes has shortened the term of initial pre-investigation inquiry from 19 to 5 days, within this term the investigator has to evaluate if there are grounds for opening criminal investigation. This change appeared to be challenging for investigative bodies, including the IAAC, which informed the monitoring team about the lack of resources to ensure proper analysis within so short timeframe.

When a prosecutor agrees that the case has to be opened it should be registered within 1 month with a file number. From this moment the prosecutorial supervision starts. The decision not to open a case can be appealed before the superior prosecutor and then the Prosecutor General.

Investigations can be terminated only by prosecutors, with or without the advice of investigators. If the investigator does not agree with the decision of the prosecutor to close the investigation, he or she can appeal to the superior prosecutor.

Detection

Mongolia does not maintain a comprehensive and sufficient statistics on sources of detection of corruption. According to the general information received by the monitoring team, corruption offences were detected from complaints, anonymous reports, inquiries, media, tax and FIU reports.

Mongolian authorities also report about growing cooperation between the IAAC and FIU, the two agencies signed the Memorandum of Understanding (MOU) and there is an exchange information according to this MOU for the purpose of combating and preventing corruption, money laundering and financing of terrorism.

At the same time, during 2015-2018 only one FIU suspicious transaction report (received from a foreign jurisdiction) was used as a ground for opening a corruption case. This situation is not entirely clear if to take into account that corruption is one of the high-risk predicate offences in Mongolia.¹²⁵

¹²⁵ [APG MER on Mongolia](#), p. 3

Table 14 Data on execution of IAAC requests by the FIU

Year	Request* received from the IAAC	Response* sent by the FIU
2015	10	10
2016	108	108
2017	1,085	1,040
2018 (as of Q3)	1,444	1,460

Note: * by number of entities.

Source: Information provided by Mongolia

During the on-site visit the FIU mentioned about the lack of feedback from the IAAC on the FIU materials shared with the Agency.

The National Council for the Fight against Money Laundering and Financing of Terrorism established under the new Anti-Money-Laundering Law and where the IAAC is a member could be used to trigger more active cooperation.

As a positive remark, anonymous reports are legally accepted as a source of detection of corruption. Thus, from 184 anonymous reports received by the IAAC during 2015-2018, 16 served as a ground for opening corruption cases. Also, within this period of time over 200 reports published on media were investigated and documented.

While different sources of information are used for detection of corruption, proactive use of analytical tools for this purpose is still lacking.

Financial investigations and access to bank and financial records

The investigative bodies need to get a sanction from a prosecutor to obtain access to financial data. The authorities report that domestically to get such access is not a problem, there were no cases of refusal of financial institutions to provide such access to law enforcement agencies during 2015-2018. However, with introduction of the rule prescribing that all requests for information should be endorsed by a prosecutor, the process of preparation of such request takes a half or one day longer. In general, the whole process is not considered by law enforcement practitioners as too long.

There is no central register of bank accounts in Mongolia. In practice, if there is a need check if a person holds an account and in which bank, the requests are being sent to all 14 commercial banks operating in Mongolia.

Before July 1, 2018 law enforcement agencies received information from the tax and customs databases directly through exchange by official letters, but after legislative amendments they also need a permission from a prosecutor to request for such information. There is no legal framework for direct access of investigative authorities to the state databases.

In the previous monitoring round the problem of access to information in those agencies whose officials are under investigations was discussed. The problem still seems to be unsolved.

The IAAC understands the importance of financial investigations to be conducted in complex corruption cases and already staffed one financial investigator. According to the Agency's estimation at least two more such experts would be required.

Asset and income declarations are rarely used for detection and investigation of corruption offences.

In this respect should be also mentioned that in many countries, a valuable input to financial investigations is provided by Asset Recovery Offices (AROs) created for the purposes of effective tracing and identification of crime-related assets and their further freezing, seizure and confiscation. While there are different institutional models of AROs, most of them are established as part of law enforcement agencies or prosecutorial bodies.

It is not less important to ensure saving value of the seized assets, which is a task of asset management offices (AMOs).

In some countries both functions of ARO and AMO are combined in one agency.

It looks like some attention is paid to strengthening capacities of law enforcement practitioners in investigation and prosecution of corruption-related offences through different training activities.

In 2017, the PGO organized two training courses on money laundering for 40 investigators of the Police Authority. In 2018 the PGO organized 6 training courses on financial investigations, each for 40 hours for 150 prosecutors of the Capital City, and District levels.

In 2018, the ADB and PGO co-organized a training course on “Improving Capacity of Investigating Economic Crimes”, for 70 prosecutors and 30 investigators. This course included 24 hours programme for investigating complex financial cases.

The IAAC conducted train-of-trainers’ activities for some of its staffs to get in-house qualified trainers on newly adopted Criminal Code. This was done with involvement of experts from the StAR Initiative. They also organized several training courses jointly with the OSCE on topics such as fighting against money laundering at domestic and international level.

Since 2012, the StAR Initiative and IAAC have been hosting several training courses on financial investigations and mutual legal assistance etc., Representatives from all law enforcement authorities and the FIU took part in the training courses.

Preventing abuse of prosecutorial discretion

Mongolian criminal justice system is based on the principle of mandatory prosecution.

There are following circumstances when a criminal case shall not proceed:

- in the absence of the elements of a crime;
- upon the expiration of the statute of limitation;
- the person involved in the crime has died (except cases when proceedings are necessary in order to rehabilitate the deceased or to reopen a case with respect to other persons on the basis of newly discovered circumstances);
- there is a valid decision previously issued to terminate the case;
- the acts and omissions are not considered as crimes.

This matter lies under competence of prosecutors who have discretion in making these decisions.

Prosecutors also have discretion in determining jurisdiction. Thus, prosecutors are empowered to determine jurisdiction when the case falls under mandate of several investigative agencies. For the purpose of securing the most speedy and complete investigation, a prosecutor may determine jurisdiction of the case at the place where the crime was detected or at the place where the suspect, accused, or majority of the witnesses or victims are located. If an investigator finds out that a case is subject to jurisdiction of another investigative department or another agency, the case shall be referred by a written decision of a prosecutor to respective jurisdiction.

Some investigative activities, such as searches, and covert investigative activities are sanctioned by prosecutors other than those dealing with IAAC cases. The monitoring team is of the opinion that it is important to ensure consistency and quality of law enforcement practice. What is even more important is autonomy of investigators and prosecutors dealing with corruption cases. Usually these objectives are met through establishment of specialised investigative and prosecutorial bodies or units with the proper level of autonomy. While no special rules of autonomy are applied to the unit of the Capital City prosecutor’s office working on IAAC cases, some specialisation is ensured there. Therefore, the monitoring team finds it reasonable to empower prosecutors supervising the IAAC to sanction all its investigative activities for which sanction of a prosecutor is required, including searches and covert investigative activities.

Plea bargaining

Mongolia has introduced a plea bargaining in its criminal procedure law. As in other jurisdictions, this instrument is used for receiving information which can be useful for detection of criminal activities.

The monitoring team was informed that there were examples of plea bargaining in corruption related cases when bribe givers entered in the agreement with prosecutors providing information in exchange for a reduction in the sanction.

Neither legal provisions nor statistics on plea bargaining in criminal cases have been provided.

Use of joint investigative teams, other forms of cooperation

The Mongolian legislation allows to create joint investigative teams in corruption cases. This approach is applied in practice. For instance, in 2017, the IAAC, General Intelligence and General Police agencies established 16 joint investigative teams on corruption cases. The monitoring team has not been provided with information about results of work of those teams.

Evidence threshold

As noted in the Review Report and reiterated in the previous Monitoring Report, Mongolia's Criminal Code does not appear to permit intent to be inferred from circumstantial evidence. Direct evidence of intent rarely exists or requires catching perpetrator in the act, which prevents retroactive corruption investigations. Refusing to permit inferences from circumstantial evidence creates an unnecessary obstacle to securing a meritorious conviction.

During the previous Monitoring Round Mongolian authorities replied that circumstantial evidence is widely used by investigators, but only as a facility for supporting the direct evidence. The accusation cannot be based only on circumstantial evidences, and according to the law they have to be evaluated in aggregate with other evidence.

No changes were introduced in this regard in law or practice.

Conclusions

Mongolia adopted a new version of the Criminal Procedure Code which came into force in July 2017. Since the monitoring team has been provided only with quite small extracts from this law it is impossible to ensure comprehensive analysis of the new regime.

What remained unchanged in the new law is that a stage of initial pre-investigation inquiry has been kept, but now it should be conducted in shorter terms. The existence of this stage poses corruption risks as making decision if to open a case always depends on the investigator and prosecutor. Another problem in this regard is that some information, including explanations from potential suspects or witnesses, is collected at the inquiry stage which is outside a criminal investigation. Mongolia is recommended to continue its reforms and abolish the inquiry stage as such.

Mongolia uses different sources of information for detection of corruption including media and anonymous reports. However, more attention should be also paid to analytical reports, such as from the FIU, tax authorities and auditors, or information from state databases, such as customs. These resources are often a reliable source of detection of high-profile corruption. The cooperation between the IAAC and FIU is getting more active, but it relates mostly to providing IAAC with information on request.

Anti-corruption investigators get access to financial data and to the public databases, such as tax and customs, upon their written request endorsed by a prosecutor. When there is a need to check if and in which bank a person holds an account, the requests are sent to all 14 banks operating in Mongolia.

In this regard the monitoring team would like to recall the opinion, expressed in the framework of other monitoring activities, that access to credit information, asset declarations, tax information and property records all requires disclosure of the existence of the investigation to third parties

which could compromise ongoing investigative activity. These impediments to direct access by corruption crime investigators appear to be unreasonable limitations for investigations.

The IAAC understands the importance of financial investigations to be conducted in complex corruption cases and already staffed one financial investigator, which is a step forward. The monitoring team expects this direction will get its further development. In this respect Mongolia is encouraged to establish a separate financial investigations unit.

In many countries, a valuable input to financial investigations is provided by Asset Recovery Offices (AROs) created for the purposes of effective tracing and identification of crime-related assets and their further freezing, seizure and confiscation. While there are different institutional models of AROs, most of them are established as part of law enforcement agencies or prosecutorial bodies.

It is not less important to ensure saving value of the seized assets, which is a task of asset management offices (AMOs).

The monitoring team also finds it reasonable to empower prosecutors supervising the IAAC to sanction all its investigative activities for which sanction of a prosecutor is required, including searches and covert investigative activities.

Based on the analysis provided above the monitoring team comes to the conclusion that Mongolia is *partially compliant* with points 1) -3) of Recommendation 2.8.

New Recommendation 25

1. Ensure proactive detection of corruption with the use of information from tax, customs and other state databases, audit reports and other analytical sources. Ensure effective cooperation of IAAC and FIU in detection of corruption using STR's of FIU and reports from foreign FIUs.
2. Set up unified state register of bank accounts (covering individuals and legal entities across the country).
3. Ensure that IAAC investigators have direct access to all relevant state registries in order to use their data as evidence and for other investigative purposes.
4. Abolish the pre-investigative "inquiry" stage in criminal procedure and introduce automatic system of launching criminal proceedings with unified electronic register of criminal proceedings.
5. Establish separate unit within IAAC dealing exclusively with analytics and financial investigations.
6. Empower the specialised prosecutors supervising IAAC cases to give all sanctions to investigators of IAAC.
7. Conduct systematic trainings for IAAC investigative and analytical staff, as well as specialised prosecutors to strength capacity of these institutions in detection and investigation of corruption crimes including new investigative techniques and instruments provided by the Criminal Procedural Code (e.g. plea bargaining).
8. Establish a special unit(s) or body(ies) responsible for asset recovery and/or management of seized assets and implement efficient procedures for tracing, identification, seizure and management of proceeds from corruption.
9. Conduct systematic trainings for IAAC investigators, specialised prosecutors and employees of the above-mentioned special unit(s) or body(ies) on asset recovery.

International cooperation

In terms of international cooperation in criminal matters, Mongolia uses three types of instruments as legal basis: the bilateral treaties concluded with other countries; the international conventions or treaties, such as UNCAC; when there is no treaty or convention concluded, the cooperation is based on the equity principles and the domestic laws.

Mongolia notified the Secretary General of the UN that the central authority responsible to send and receive MLA requests on the basis of UNCAC is the Ministry of Justice.

However, the Ministry of Justice is not in all the cases the central authority. Depending on the treaty, either the Prosecutor General's Office or the Ministry of Justice are designated as central authority. Also, for some multilateral conventions, the central authority is the Ministry of Foreign Affairs, which implies that the cooperation follows the diplomatic channels. The authorities gave the examples of the treaty with China which provides for the Ministry of Justice as the central authority, while for Russia, Kazakhstan, South Korea, France and Sweden, the central authority is the Prosecutor General's Office .

The authorities interviewed on site complained that the number of treaties signed by Mongolia in the field of MLA is very low and they consider this to be a big weakness. They also complained that the cooperation with the countries with which Mongolia is not tied by a treaty is very weak, due to the obligation to use the diplomatic channels. At the same time, apparently, it looks like they do not use very often other, informal, channels in order to identify and contact their counterparts, while identification of the right authority / person in the requested country seems to be a very difficult issue.

Among the countries with which the cooperation seems to be very difficult, the Mongolian authorities mentioned the countries from North and South America. Also, they mentioned difficult communication with Switzerland, US and Canada in the famous Oyu Tolgoi foreign bribery case, however, no details have been mentioned about the case and the reasons of the above- mentioned difficulties.

The IACC mentioned the participation of Mongolia to some international networks, such as ARIN-AP (the Asset Recovery Interagency Network for Asia and Pacific), in which Mongolia will have the Presidency in 2019, as well as the StAR Program, used in order to identify stolen assets located abroad. This is a progress that needs to be highlighted. However, when these channels are used, Mongolian authorities may not use the obtained information as evidence, but only as intelligence. Further MLA is always required. It appears that more efforts could be done in order for the relevant Mongolian responsible authorities to use the international networks in order to identify and contact the central authorities and the executing authorities.

For instance, they could request access to the On-line Directory of Competent National Authorities under the United Nations Convention Against Corruption¹²⁶ where they could find relevant contact information of national authorities authorized to receive, respond to and process requests for MLA, extradition and asset recovery under UNCAC, as well as information on legal and procedural requirements to be observed in requests. Participation to the Open-ended intergovernmental expert meetings to enhance international cooperation under the UNCAC could also be a useful tool for enhancing the informal channels of communication with other judicial and anticorruption authorities. The recent initiative of the OECD to organize meetings of the Global Network of Law Enforcement Practitioners against Transnational Bribery could also be used as a useful opportunity to exchange contact information and experiences. Participation in international networks of anticorruption agencies could be an open gate to concluding bilateral agreements between the IACC and anticorruption authorities from other countries, which in their turn could help the further contact of the authorities responsible for the MLA.

According to the authorities of Mongolia, all the investigation measures provided by the criminal procedure law can be performed through an MLA, including the special investigative measures such as undercover operations, wiretapping, control deliveries. However, no examples of such operations have been presented to the monitoring team.

With regard to the modern tools of mutual legal assistance, the Mongolian authorities mentioned the Joint Investigation Team organized together with Russia in a case, on the basis of the bilateral treaty. Mongolian authorities explained that the Russian investigators came to Mongolia and

¹²⁶ http://www.unodc.org/comppauth_uncac/en/index.html

assisted the Mongolian authorities while executing a request. It is not clear though from the information provided whether the MLA activities developed in this case have been done under the specific conditions provided for a Joint Investigation Team, as provided for instance by Art. 49 of UNCAC, which means a real-time exchange of information and evidence between the two partner countries, both of them having an open case and being granted access to information and evidence gathered in the other country. Or, it could have been a regular MLA request sent by Russia to Mongolia, for the execution of which the Russian competent authorities came to Mongolia and, with the permission of the Mongolian authorities, assisted by Mongolian investigators/prosecutors in the execution. They also mentioned a Joint Investigation Team concluded with France.

Participation of the requesting authority as an assistant party during the execution by the executing authority from another country of the investigative measures mentioned in the MLA request proved to be, in the practice of many countries, a very useful tool for ensuring the common understanding of the case and of the measures to be executed and for speeding up the execution. Mongolian prosecutors though do not, apparently, use this possibility, at least not in the last year. One of the factors could be the lack of resources for travel and translation.

One of the complaints of the interlocutors of the monitoring team with regard to the effectiveness of the international cooperation in corruption cases was related to the delays of execution and refusals of executions of their MLA requests by some countries. They gave the example of a denial or execution received to a request sent to Hong Kong. The reason given by the Hong Kong authorities was related to the inconsistencies of the request with the executing country's legislation. However, it appears that Mongolian prosecutors do not engage in consultations with the executing authorities in the phase of preparing a request, in order to minimize the risks of rejection. One of the reasons is, as stated above, related with the difficulties in identifying the foreign counterpart and the absence of a practice of informal consultation altogether. Striving to get informed before sending a request about the relevant legal requirements of the requested country and, when needed, entering into informal consultations with the competent authorities before sending an MLA request is key to the success of the international cooperation. Legislations of various countries might differ, especially among countries which do not belong to the same legal system; there could be formal or substantial requirements that, if known in advance, could be addressed and thus the MLA request could be successful. Executing authorities might need to ask clarification questions to the requesting ones, if they know whom to ask, but it is the interest of the requesting authority to identify themselves to the executing authorities.

According to the international community representatives, one of the obstacles in the international cooperation in the Mongolian cases might be related with the lack of equivalence of some laws; some of the criminal law and criminal procedure law provisions do not have the perfect correspondence with the legislations of the requested countries. For instance, not all the countries incriminate the abuse of power, therefore in such a case, when the dual criminality is an issue, the Mongolian request could not be executed. There are also complaints from the international community regarding the insufficient quality of the prosecutors' MLA requests.

When Mongolia is the requesting state, in a corruption investigation, the investigators (the IACC for instance) are drafting the MLA request, the prosecutor is supervising the request and, later on, the Office for International Cooperation from the Prosecutor General's Office does the regularity final check.

The Mongolian authorities mention as main weaknesses of the international cooperation activity the financial constraints and the fact that translations are very expensive; the same constraints are a hindrance for the travel of the prosecutors to relevant international meetings. They are also aware of the fact that they need to get better informed with the relevant requirements of the national legislations of the countries they wish to send MLA request to, as well as of the need for further training in international cooperation.

In terms of statistics, the only information provided by the IAAC was about 24 MLA requests sent in corruption cases for the past three years. No assets were recovered from foreign jurisdictions. Also, there were no incoming or outgoing extradition requests in corruption cases.

Based on the analysis provided above and with taking into account the scope and character of challenges Mongolia faces in the area of international cooperation in corruption cases the monitoring team comes to conclusion that Mongolia is *partially compliant* with Recommendation 2.7.

New Recommendation 26

1. Ensure effective international mutual legal assistance in investigation and prosecution of corruption cases, in particular by implementing recommendations of the UNCAC Review.
2. Extend the number of bilateral treaties concluded with other countries in the field of international cooperation in criminal matters.
3. Develop informal channels of communication in order to identify and contact the relevant counterparts.
4. Provide the necessary resources for enhancing the participation of the IAAC and prosecutors in the relevant international anticorruption networks and international cooperation expert meetings.
5. Use the opportunities given by the UNCAC tools for international cooperation in corruption cases, such as the On-line Directory of Competent National Authorities and the participation to the Open-ended intergovernmental expert meetings to enhance international cooperation.
6. Further extend the conclusion of bilateral agreements between the IAAC and other anticorruption agencies from relevant countries.
7. Encourage various forms of direct co-operation in corruption cases, including on asset recovery, aiming at: the use of Joint Investigation Teams; the assistance to the execution of the request by the competent authorities of the recipient state; the early, informal consultation before sending a request and the coordination during the execution of the request.
8. Ensure that the staff of units responsible for international cooperation within the central authorities, as well as the IAAC investigators and prosecutors who draft the requests and who execute MLA requests are well trained, have adequate resources, including translators, necessary means of communication; training sessions should include best practices and experiences, relevant challenges and ways to overcome them, and case examples from other jurisdictions, as well as the successful use of international organizations and tools.
9. Provide in the legislation measures for direct asset recovery as envisaged by Article 53 of the UN Convention against Corruption, as well as procedure for and conditions of recovery and disposal of assets in accordance with Article 57 of that Convention.

3.1.3. Enforcement of corruption offences

Previous recommendation 2.8: Application, interpretation and procedure

...

- 4) Collect and analyse data on corruption cases to identify trends in types of corruption detected, investigated and prosecuted, to determine what practical challenges arise and how they can be tackled; improve statistical databases and methodologies for collecting, organising and analysing case-related information.

High-profile corruption

The recent Asia Foundation survey on perceptions and knowledge of corruption in Mongolia indicates that if in March 2014 37,6% of respondents were of the opinion that “there was a significant amount of grand corruption in Mongolia,” in March 2018 it almost doubled, reaching 64,3%. The merger of political and business interests was perceived as the main source of grand corruption in 2017 and 2018.¹²⁷ Almost all interlocutors met on site confirmed that high-level political corruption is one of the most serious problems for the country.

It should be noted that the IAAC is trying to address this problem through a number of investigations of high-profile corruption started in recent years.

For instance, the IAAC is conducting criminal investigation against two former Prime Ministers on charges of abuse of office, issuing illegal decisions, providing benefits to others in the process of approving the investment agreements.¹²⁸

Another ongoing investigation in a so-called “SME case” has already led the incumbent MP who is accused of abuse of power to resign from his previous position of the Minister of Food, Agriculture, and Light Industry. The Prosecutor General requested the Parliament to lift his immunity,¹²⁹ but this request has been rejected.

One more case was initiated against former Minister of Construction and Urban Planning who manipulated with the public contract on purchase apartments for 223 families. The Minister was convicted for abuse of office and fined. The amount of contract, MNT972.448.955, was decided to be confiscated from the construction company involved. The Supreme Court returned the case back to the court of first instance for revision. The hearing before the court of first instance was not scheduled at the time of drafting this report.

The IAAC provided information about the case against former Minister of Health and Sport who during his tenure received bribe of MNT 5,000,000 from his State Secretary, and USD 160,000 from a private company which implemented the “Electronic Health” project. The former Minister was found guilty and imprisoned for 5 years and 1 month and the former State Secretary was fined and prohibited from holding public office for one year. As a negative element, the IAAC mentioned, that at the previous stages the case was returned from the prosecutor and the court several times for further investigation that raised concerns about attempts of the suspects to influence the prosecutors and judges.

Most of the high-profile corruption cases concern two types of corruption offences – passive bribery or abuse of power in relation to spending public funds.

¹²⁷ [Survey on Perceptions and Knowledge of Corruption, 2018](#), the Asia Foundation, p.56-58

¹²⁸ <https://www.iaac.mn/news/investigation-is-being-conducted-against-two-former-prime-ministers>

¹²⁹ <https://thediplomat.com/2018/11/small-and-medium-sized-outrage-building-over-corruption-in-mongolia/>

Table 15 Statistics on the level of convicted officials

Position	2017	2018
Minister, Head of Agency	2	2
Deputy Minister, Deputy Head of Agency	0	3
Member of Parliament	0	0
Judge	0	0
Prosecutor	0	0
Governor and others	43	80

Source: Government's replies to the monitoring questionnaire.

Statistics on investigation, prosecution and adjudication of corruption-related crimes

Table 16 Statistics on the types of corruption offences under investigation of IAAC

Corruption offence	2015	2016	2017	2018
Total number of cases under investigation	238 (345 suspects)	235 (459 suspects)	427 (654 suspects)	1040 (1126 suspects)
Total number of cases, submitted to the court	55 (23% out of all investigated cases)	67 (23% out of all investigated cases)	106 (24% out of all investigated cases)	206 (19% out of all investigated cases)
Total number of cases finalised with conviction	24 (10 % of all investigated cases)	25 (10 % of all investigated cases)	46 (10% out of all investigated cases)	84 (8% out of all investigated cases)
Total number of dismissed cases at the pre-trial stage	50 (21 % of all investigated cases)	43 (18 % of all investigated cases)	94 (22% out of all investigated cases)	436 (41% out of all investigated cases)

Source: Government's replies to the monitoring questionnaire.

The provided statistics makes it clear that the most frequently detected corruption offences in Mongolia in 2015-2018 were abuse of power, active and passive bribery. Increasingly active work of the IAAC in 2018 is explained by the legislative amendments which excluded damages as an element of abuse of power and assigned to its jurisdiction all criminal offences committed by police officers while fulfilling official duties. As a positive development it should be noted that the IAAC has focused equally on active and passive bribery.

The data above shows that approximately 22 % of all cases were submitted to the court within the reporting period, and only 9,5% were finalised with conviction, 25% of all investigated cases were terminated at the pre-trial stage, that significantly increased last year. The monitoring team would like to draw attention of the Mongolian authorities to such discrepancy and urge them to analyse the situation in terms of reasons of termination of cases at the pre-trial stage.

Public access to criminal statistics, including on corruption cases

The IAAC provides information to the public through press releases and briefings. The PGO established central information database on complaint and inquiries on criminal matters received from the citizens. Currently the PGO is in the process of enhancing it.

Research and Analysis Division of the IAAC provides assessment of corruption trends on a regular basis and publishes the results on IAAC official website.

However, generalised statistics on corruption offences do not seem to be regularly published in public domain.

Statistics on criminal sanctions and confiscation in corruption cases have not been provided to the monitoring team. However, as it is mentioned in section 3.1., sanctions in most corruption cases appear to be fines.

Conclusions

The IAAC and respective prosecutors, should be commended for their efforts to tackle the problem of high-level corruption. These efforts already resulted in some convictions and a number of ongoing investigations. The monitoring team encourages Mongolia to continue on this course proceeding vigorously with its fight against high-profile corruption.

The other positive developments are more active detection and investigation conducted by the IAAC, and its equal focus on both passive and active bribery.

At the same time, Mongolia is urged to analyse the situation with discrepancy between the numbers of all investigated cases and those sent to trial, especially with regard to the reasons of cases' termination at the pre-trial stage.

No generalised statistics on investigation, prosecution and adjudicating of corruption cases is publicly available.

No information about improvement of statistical databases and methodologies for collecting, organising and analysing case-related information has been provided.

Mongolia is *partially compliant* with Recommendation 2.8. of the previous round of monitoring.

New Recommendation 27

1. Analyse discrepancy between the numbers of launched corruption cases and cases submitted to the court, and address identified problems, if any, related to termination of cases at the pre-trial stage.
2. Ensure high-quality investigations and prosecution of corruption crimes leading to effective sanctioning by courts and judicial deterrence.
3. Seek the confiscation of instrumentalities and proceeds of corruption as well as profits thereof in every corruption case.
4. Draw special attention to prompt and effective investigation of high-profile corruption cases as well as to effective detection, investigation and prosecution of foreign bribery, money laundering and illicit enrichment cases.
5. Communicate successful prosecution, conviction and confiscation in high-profile corruption cases to the public.
6. Ensure maintenance and regular publication of reliable and detailed statistics in corruption cases and cases of money laundering including number of full range of corruption crimes and its adjudication (set of sanctions and number of acquittals) as well as detailed statistics on the types of confiscation (form of confiscation, type of asset (instrumentalities, proceeds (direct/indirect), profits), belonging to defendant, relatives, knowing third party (individual/legal entity), rate of equivalent confiscation etc.).

3.1.4. Anti-corruption criminal justice bodies (police, prosecution and judges, anti-corruption bodies)

Recommendation 2.9: Specialized anti-corruption law enforcement bodies

1. Establish independent internal investigative units in government agencies, particularly in law enforcement agencies, to enhance the resources and abilities of corruption-specific law enforcement agencies.
2. Strengthen capacity of the Anti-Corruption Authority in investigation of corruption offences, in particular by increasing the number of investigators and establishing its investigative units in the regions.
3. Ensure effective specialization of prosecutors in anti-corruption cases with special guarantees of autonomy for the relevant prosecutors (units).

4. Provide for continuous role of a prosecutor – from supervising investigation to supporting charges in the court.

System of investigative agencies, status and autonomy of investigators

No new bodies investigating corruption offences have been established since 2015. According to the Criminal Procedure Code, the IAAC is the agency entrusted with general investigating powers on corruption offences. Any other law enforcement agency detecting a corruption-related crime may initiate an enquiry, but then it is obliged to transfer the case to the IAAC for further investigation. Art. 22 of the Criminal Code provides for a list of ten corruption-related crimes and all of them are in the responsibility of the IAAC. Also, all public officials listed in Art. 4 of the Anti-Corruption Law have the obligation to immediately report to the IAAC any corruption-related information obtained while performing their official duties.¹³⁰

Apart from corruption offences IAAC's jurisdiction also covers all criminal offences committed by police officers.

The General Police Agency (GPA), however, has a general authority over all criminal offences and is often used to support the IAAC investigations. As Mongolia has not set up regional IAAC offices (see above section 1.4), especially in rural areas police investigators support the IAAC.

All investigative actions and measures are approved and supervised by a prosecutor, with no possibility for investigators to appeal prosecutorial decisions.

Specialised a-c investigative agencies – independence, sufficient powers and resources, accountability

Independent Authority Against Corruption

Institutional placement, status, structure, competence

The Independent Authority Against Corruption (IAAC) is a special, independent government body entrusted with the carrying out of under-cover operations, inquiries, investigations, and detection of corruption crimes. As described in section 1.4, the Authority also conducts corruption prevention and awareness raising activities as well as it reviews and inspects the assets and income declarations of those required by law to communicate their financial statements. According to a 2017 Resolution of the Prosecutor General, the Capital City Prosecutor's Office is now entitled to review all criminal cases investigated by the IAAC.¹³¹

The IAAC Investigation Department has 34 staff members. There are 30 investigators, including 4 senior and 26 regular investigators. Four administrative staff members include two managers and two statisticians. This department also includes the enquiry office.

The Operational Department dealing with special investigative techniques and undercover operations has 17 investigators, 3 senior investigators and 8 administrative staff. Investigators at the on-site visit complained about the lack of specialists in economic or other technical fields

¹³⁰ See Art. 8 of the Anti-Corruption Law. "Reporting on Corruption. The officials mentioned in provision 4.1. of this Law shall have the duty to immediately report to the Anti-Corruption Agency any corruption-related information obtained while performing their official duties. The implementation of the reporting duty specified in provision 8.1. of this Law shall not be subject to limitations established by the Law on State, Organization's and Personal Secrecy."

¹³¹ See Prosecutor General's Decree N. A/67 on "Procedural rules for crime inquiries and complaints and Prosecutor's supervision over inquiry and investigation in criminal cases" and Decree N. A/58 on "Procedural rules for investigating offences committed outside of Mongolian territory or offences which were committed in unknown places, and subordinating prosecutors on such cases".

assisting in their work, as these technicians could be key in the course of complex economic investigations.

Investigations that take place far from the capital Ulaanbaatar still need the cooperation of local police agents, as Mongolia has not yet opened regional office of the IAAC. This affects considerably IAAC's efficiency in investigating corruption cases. In 2011, the IAAC asked the government to open regional branches but the request was rejected. In execution of the new Anti-Corruption Strategy, the government committed to create local offices of the IAAC by the end of 2019, but only 7 regional investigators were appointed so far.

With the reform of the Criminal and Criminal Procedural Codes (see section 3.2), the IAAC experienced a remarkable increase of work. The new Criminal Code does not require the prove of damages to prosecute abuse of office, with a direct impact on the amount of cases sent to trial. At the same time, the criminal procedure now gives investigators less time (5 days instead of 19) for the inquiry after which a case may be opened. This ended up pushing investigators to send more requests for opening investigations as they do not have enough time to evaluate the relevance of the allegations.

The insufficient capacity of the IAAC (shortage of human resources, absence of regional offices) determines the frequent close cooperation with the General Police Agency (GPA). According to the representatives of the IAAC, the police exercise a supporting role, assisting IAAC investigations and receiving instructions. In the regions far from Ulaanbaatar, which IAAC agents cannot reach, the police carry out the corruption investigations. In addition, in complex cases the prosecutor may decide to form a task force or a joint investigation team, participated by the IAAC, the GPA, General Intelligence Agency and/or other law enforcement agencies.

In general, IAAC law enforcement practitioners reported no direct influence on the cases investigated. Yet, investigated politicians very often release public statements in order to declare their innocence before the public, which could have indirectly put pressure on some investigators.

Appointment of investigators

The IAAC usually recruits investigators from the police in the form of transfer. As reported during the on-site visit, the recruitment procedure of investigators is not competitive. Only the auxiliary personnel are hired based on a competitive process. In practice, whenever a vacancy for an investigator opens, IAAC management applies an informal procedure to approach the Police or other agencies, headhunting agents who are considered among the best qualified. These are asked to join the IAAC and if they accept the Management Council proceeds to their appointment. While this form of recruitment may help find experienced law enforcement personnel, the selection and appointment of personnel based on objective, transparent and merit-based criteria and procedures is one of the factors determining the independence of anti-corruption bodies. In-depth background and security checks may also be applied in the recruitment procedures.¹³²

Staff and budget resources

The representatives of the IAAC complained about the scarcity of their resources, especially human resources, which are not in accordance with the increasing volume of work the Agency has experienced. For instance, in 2018 the IAAC investigated 1040 cases involving 1126 suspects, while in 2017 it investigated only 427 cases with 654 suspects. The workload practically doubled while staff remained unchanged with 34 personnel of the investigation department.

Understaffing and budgetary shortage are seen and the main challenges of the Authority. Participants in the on-site visit expressed the need to increase the existing number of investigators by around 50 staff. To this aim, the IAAC has also conducted a thorough analysis of the Authority's needs and has submitted to the National Security Council a request for increasing the investigative staff accordingly. The Council, whose approval is required by the law, has not responded to the request yet.

¹³² OECD ACN [Specialised Anti-Corruption Institutions](#), Review of Models (2008) at p. 26.

Prioritisation and evaluation of work

The IAAC does not prioritise any specific corruption areas over others. There is no prioritization based on the economic or social sectors vulnerable to corruption, or on the consequences or impact produced by corruption. As it was referred during the on-site visit, authorities consider all complaints, without distinctions. At most, the priority of cases is established according to their complexity and the need to create task forces. There is no apparent link between the preventive activity and anticorruption policy activity of the IAAC, on the one hand, and the law enforcement activity, on the other hand. There is no indication that the study on sectors mostly involved in corruption carried out by the Agency is used to prioritise investigations, or that the results of the investigations are capitalized by the preventive department.

Having a system of mandatory prosecution, Mongolian authorities must consider any report concerning a possible perpetration of a crime. However, it is a lack of general vision and a flaw of the anti-corruption policy not to allocate more resources to investigations concerning certain sectors (e.g. mining or education sector) which are more relevant or sensitive to corruption. The relevance for the society of the corruption cases that are brought to courts should also be taken into consideration as an indicator of the effectiveness of the fight against corruption.

General Police Agency (GPA)

Although the General Police Agency cannot be considered a specialised anti-corruption investigative agency, the following section describes GPA's features and activities that are relevant to investigate corruption.

Mongolian authorities reported that within the GPA there are 4,428 investigators and administration staff accountable for investigations of corruption. However, it is not clear whether the mentioned staff only work on corruption-related crimes. Every GPA investigator holds a higher education certificate and bachelor's degree in law and has experience of working in this field from 3 months to 25 years.

The heads of investigation departments of the GPA are selected and appointed following a procedure set forth in the "Officer Promotion Procedure", as regulated in Code 909 approved by the Commissioner General's Order 4/248 of 2017.

Between 2015 and 2017 more than 40 series of training per year were organised within the GPA Economic Crime Department. About 2500 officers participated in the training. From January to September 2018, 42 training sessions have been organized and 600 officers attended. 498 officers have attended the specific "Anticorruption" classroom training organized at the Public Center of the IAAC, in the framework of the implementation of the Action Plan. Other training sessions have been provided on money laundering and other topics. Training activities are usually composed of lectures, debates and practical exercises. Additional manuals and methodological materials have been disseminated to improve the knowledge and skills of officers in charge of fighting economic crimes.

The GPA considers the lack of staff and legislative framework as the biggest challenges hindering the work of the Agency. In addition, it is suggested to build capacity of the officers through long-term training that should include successful stories and best practices from foreign countries.

Specialised a-c prosecution bodies (units) – independence, sufficient powers and resources, accountability

Mongolia does not have any specialized anti-corruption prosecution body or unit. However, prosecutors supervise all corruption investigations, where all operations need the approval of a prosecutor. Since 2017 the Capital City Prosecutor's Office, subordinated to the Prosecutor General, supervises the criminal cases investigated by the IAAC. There is neither special procedure of recruitment of the prosecutors assigned to the Capital City Prosecutor's Office, nor a special budget.

A division dealing with the supervision of IAAC's criminal cases, consisting of 17 prosecutors, is part of the Capital City Prosecutor's Office. The Prosecutor General decides the assignment of

prosecutors to this division without a competitive procedure. The division is composed of two units. One unit of 10 prosecutors is responsible for overseeing IAAC cases, as well as cases investigated by the intelligence services. Another unit of seven prosecutors supervises cases investigated by the police. No special rules govern the unit for IAAC and intelligence services cases. This unit does not benefit of any autonomy and applies the same rules as the entire Prosecutor's Office.

The General Prosecutor's Office mentioned the organization of a series of training activities for prosecutors and IACC investigators on topics of corruption investigation and financial investigation during 2015-2018 (5 events in 4 years). However, it is not clear whether all the 10 prosecutors of the IACC unit have benefited of this training.

According to the procedure, when an investigator starts a case, he/she shall submit the written request to initiate the case to the prosecutor within 72 hours. Once the investigation opens, the prosecutor supervises the investigation carried out by the IAAC (or the police). In Mongolia, the same prosecutor supervises the investigation and later on presents the case in court. However, if the trial is in a distant rural area and if the case and evidence seem solid enough, a local prosecutor will participate in the hearings before local courts. Approximately 30% of cases are tried in the rural areas. Nevertheless, authorities reported that in only about 10% of cases prosecutors from the Capital City Prosecutor's Office cannot attend trial and delegate local prosecutors.

The Capital City Prosecutor's Office concluded an Action Plan with the IAAC, according to which, if the case is particularly complex, more prosecutors could be involved. In addition, the prosecutor can form a task force of investigators. The prosecutors also provide guidelines and instructions to investigators.

The representatives of the Capital City Prosecutor's Office consider that more skilled prosecutors work for the unit overseeing IAAC investigations. However, there are no special selection procedure or formal higher requirements for prosecutors wishing to work in this unit. The workload of this unit is very high. The current backlog was created in 2017 due to the drastic increase of cases due to the change of the criminal legislation. Neither prosecutors from the Capital City Prosecutor's Office nor the IAAC consider the mentioned unit as a specialized anti-corruption prosecution body. The monitoring team would like to stress that creation of such unit would be a step forward in terms of better implementation of international anti-corruption standards. For instance, it could be done through further specialisation of the existent unit in the Capital City Prosecutor's Office. Specialization should imply the stability of the prosecutors within this unit, the necessary independence, specialized training and resources.

Specialisation of judges/courts in corruption cases, availability of training to judges on adjudication in corruption cases

In Mongolia there are no specialised judges or courts for corruption cases. The procedural law establishes jurisdiction over a case according to territorial criteria. During the on-site visit, both prosecutors and investigators expressed their concern over the lack of judges' specialization in corruption cases. The complexity of these cases and the need for multidisciplinary knowledge to understand complicated fraudulent mechanisms and master modern investigative techniques require specialization and special training. An effective criminal procedure would greatly benefit from having specialized judges in corruption cases.

The IAAC together with the Judicial General Council, Ministry of Justice, Prosecutor General's Office and the Asia Foundation are planning to launch a joint project on judges' specialization in 2019.

Internal investigative units in criminal justice bodies – mandate, powers, status, effectiveness

Mongolian authorities reported that no such independent bodies have been established. Yet, the Prosecutor General's Office has a Department for Internal Control and Security which fulfils the role of a disciplinary unit, investigating individual behaviour and disciplinary offences of prosecutors. The department is composed of five prosecutors. They receive and deal with complaints from the public, the media or through a special phone hotline. When they encounter indications of corruption, the IAAC is notified. The department is also entrusted with ensuring the security of prosecutors, as well as sending guidance and recommendations to prosecutors in order to prevent them from committing misconducts.

Conclusions

In view of the sharp increase of IAAC's workload in the last years, the Authority continues to face staff shortages. The number of IAAC investigators has not increased since last monitoring and regional investigative units have not been established.

Authorities have not taken relevant steps in order to ensure the specialization of prosecutors supervising anti-corruption cases or provide them with the guarantees of autonomy. In an estimated 10% of corruption cases, all of which are tried before regional courts, the prosecutor from the Capital City Prosecutor's Office who supervised the investigation cannot attend the trial, and the local prosecutors present charges in court. In addition, no specific training on anti-corruption investigations and legislation is provided to local prosecutors.

No independent internal investigative units have been established in government agencies.

Mongolia is **not compliant** with recommendation 2.9.

New Recommendation 28

1. Provide the IAAC with the necessary human and financial resources, including sufficient number of investigators, as well as economic, financial and other technical specialists, to ensure quality investigations of corruption cases.
2. Introduce a transparent, merit-based and competitive procedure of recruitment of investigators and all the operative personnel of the IAAC.
3. Provide regional branches of the IAAC (to be set up) with investigators operating in the regions.
4. Allocate resources of the IAAC Investigation Department with priority to the sectors identified as the most affected by corruption. Among other sources, the results of the analytical activity of the Prevention Department could be used to identify relevant sectors.
5. Provide regular, specialized training for IAAC investigators, including on modern corruption investigation methods, financial investigations, international cooperation and asset recovery.
6. Further specialize the unit of the Capital City Prosecutor's Office responsible for supervising corruption investigations carried out by the IAAC and provide it with sufficient resources, autonomy, and regular training including on corruption investigations, financial investigations and undercover operations.
7. Consider specializing the necessary number of judges and local prosecutors called to try corruption cases, provide them with specialized training.

4. POLITICAL PARTY FINANCING

Previous Recommendation

1. Strengthen the system of regulation of political party financing by establishing limits on membership fees, broadly defining the term “donation” to include in-kind donations, extending donation restrictions to all entities related or controlled by the party, specifying rules on publication of information on donations, prohibiting donations from companies that received funding through public procurement or other public source.
2. Ensure balance between private and public funding of the political parties and implement restrictions on the use of funds received from the state budget. Provide public funding to parties that obtained a certain level of popular support at the national elections even if it is lower than the electoral threshold.
3. Ensure transparency of party finances, by requiring detailed annual consolidated financial reports with all contributions (except for very small ones) and each contributor, as well as all party expenses reported; such reports should be standardised and published on the internet.
4. Improve rules for disclosure of election campaign finances, including submission and publication of detailed financial reports before election day.
5. Establish without delay a system of independent monitoring and supervision for party finances and financing of election campaigns with adequate resources and powers, in particular to impose proportionate and dissuasive sanctions. Consider assigning powers of supervision over political party financing to the Anti-Corruption Agency. Ensure that the General Election Commission is a professional and independent body consisting of employed full-time members selected according to their merit, preferably based on an open competition.
6. Revise the rules on ethics and integrity of members of the parliament, including decision-making procedure for violations, and ensure an effective mechanism of their enforcement.

Political party financing was selected as a sector for in-depth evaluation in the framework of the 4th round of monitoring of Mongolia. This chapter analyses state of implementation of the previous round of monitoring recommendation related to funding of political parties and election campaigns and provides conclusions on compliance rating. Further, it examines additional aspects of political party financing in Mongolia and draws new findings and recommendations.

Background information

Mongolia is a semi-presidential democratic republic with a multi-party system. Executive power is exercised by both the President and the Government, and legislative power is exercised by the Parliament – the State Great Hural which has one chamber with 76 seats.

The President is the Head of the State who is elected at general elections from candidates nominated by the political parties that have seats in the Parliament. The President in consultation with the majority party or parties of the Parliament nominates before the Parliament a candidate for the post of Prime Minister, is in charge of foreign relations, is the Commander-in-Chief and chairs the National Security Council.

The Government is the highest executive body. The Prime Minister, in consultation with the President, submits his or her proposals on the structure and composition of the Government and on the changes in these to the Parliament.

Elections are held in Mongolia by direct universal suffrage as follows: Presidential elections every four years with a two-round electoral system, Parliamentary elections every four years with a first-past-the-post system and local elections every four years. Both parties and individual candidates may run in the Parliamentary and local elections.

Currently 28 political parties are registered in the Supreme Court of Mongolia, three of which – Mongolian People’s Party (MPP), Democratic Party (DP) and Mongolian People’s Revolutionary Party - represented in the Parliament.

Although coalition governments have been the norm in Mongolia, the MPP obtained a constitutional majority of more than three-quarters in the last legislative election, enabling it to build a uniform cabinet in July 2016. The incumbent president elected in 2017 and comes from the main opposition party (the DP), although the Constitution requires the president to suspend his or her party membership before running, following the principle of national unity¹³³.

Political corruption is the area of increased attention of Mongolian society, business controlling politics is often mentioned among the key challenges, a number of high-level politicians very often appear in the middle of corruption scandals in recent years.

One of the examples is so-called “60 billion tugrik case” in which a number of politicians were allegedly involved in a bribery scheme to raise 60 billion tugrik for their party and election campaign funds¹³⁴. This case attracted significant public attention and led to President’s calls to remove leadership of IAAC¹³⁵ and more recent dismissal of the Head of the Parliament¹³⁶.

The surveys on perceptions and knowledge of corruption conducted by the Asia Foundation found that since 2006 political institutions such as “political parties,” “Parliament,” and “national government” have received a worsening assessment from the general public and today are considered among the most corrupt institutions.¹³⁷

The TI report on business integrity also says that recently populist politicians have started to have a negative impact on business, including such practices as cronyism. Political parties become increasingly corrupt and have a damaging influence on business integrity. While there is an audit system in place by the state audit office, it is not leading to campaign finance transparency and therefore is a major danger for political corruption. Additionally, the close ties between business and politics are left unchecked as there is no lobbying regulation, leaving the influence non-transparent and unregulated¹³⁸.

Both governmental and non-governmental interlocutors met on site confirmed that political corruption is currently one of the key problems for the country.

Sectoral anti-corruption policy

Enabling public access to information on political parties and elections campaigns’ finances is one of the objectives of the Mongolian Anti-Corruption Strategy. The document included the following activities to meet the objective:

- to create mechanism to develop and implement laws and regulations to make funding of political parties and the relevant reports transparent to the public, to improve monitoring mechanism of financial transactions of political parties through regulating sanctions for non-compliance of duties to not receive any illegal financing, to publish report on election campaign funding and to disclose audit evaluation of its financial reports, and to effectively implement respective regulations in the law;
- to establish a system to enable independent monitoring of financial statement of political parties that have seats in Parliament, and to inform result of such monitoring reports to the public;

¹³³ [IDEA Report on Political Finance in Mongolia](#), p. 13

¹³⁴ [Ahead of Presidential Election, Mongolia Corruption Scandal Has a New Twist](#)

¹³⁵ [Joint Calls for Special Sessions to Removal of IAAC Leadership](#)

¹³⁶ [Mongolia parliamentary speaker ousted amid corruption scandal](#)

¹³⁷ [Survey on Perceptions and Knowledge of Corruption, 2018](#), the Asia Foundation, p.9

¹³⁸ [Business Integrity Country Agenda](#), Mongolia (2018), Transparency International Mongolia. p.7, 17.

- to ensure financing from the state budget to political parties accessible to all parties, and to create condition in which the political parties that do not have seat in the Parliament have opportunity to develop and not be influenced by interested parties in terms of financing;
- to improve the Law on Election and Law on Political Party;
- to establish a system for monitoring assets and incomes of managerial level officials of political parties;
- to create legal framework for social interest groups and citizens to participate, influence or lobby in the state policy and decision-making process;
- to increase participation of citizens and civil society organisations' in activities to raise political accountability and to improve transparency.

The Action Plan mostly repeats the mentioned objectives as measures to be implemented, but the following discussion proves that there is a clear lack of governments' ownership over the planned activities.

Legal framework

Political party financing is primarily regulated by the Law on Political Parties (LPP) adopted in 2005 that has not changed since the previous round of monitoring, and financing of election campaigns is regulated by the Law on Election that was adopted in December 2015 and consolidated multiple laws on different types of elections.

The latest Mongolian Progress Update (July 2018) included information about the legislative package to improve the regulations on financing of political parties and election campaigns.¹³⁹

However, as revealed during the on-site visit, no governmental agency, including the Ministry of Justice and Internal Affairs who according to the mentioned Action Plan is responsible for improving the respective legal framework, was working on this in reality.

The monitoring team was also informed about an alleged "working group" created in the Parliament for this purpose. However, this group had only been created and did not have even a clear concept of the planned amendments at the time of the on-site visit.

At the same time, the working group created by a decision of the Speaker of the Parliament and respective sub-groups were working on the new legislation on elections which would split the current consolidated Law on Election into separate laws on different types of elections.

In the framework of the planned reform of NGOs it is planned to distinguish completely NGOs from political parties. It remains unclear how it will influence the area of political party financing since, as it is seen from the provided concept of the planned reform, NGOs are already prohibited from making donations to political parties and election campaigns.

Political parties' legal status

LPP defines political party as a union of nationals of Mongolia who agreed voluntarily under the objective to exercise political activities, social interest and individual's view in line with the Constitution of Mongolia.

According to the law political parties have the following rights:

- participate in the parliamentary, presidential and local elections,
- initiate and organize demonstrations and other type of activities in accordance with the law
- protect the rights and lawful interest of its members
- choose freely its operational structure, objective, method of its activities if not stated otherwise

¹³⁹ OECD (2018), IAP Progress Update of Mongolia, p. 52

- own property
- establish contact with political parties, international institutions of foreign countries if there is no contradiction to the national interest
- other rights stated in the law.

All political parties should be registered in the Supreme Court of Mongolia. Details of financial manager or chief accountant should be provided for the registration.

Private contributions

According to LPP party's revenues can consist of the following: membership fees; donations from members, natural persons and legal entities; subsidies from the state; sale of merchandise with party's symbols; revenue from publishing and media activities; revenue from renting or selling its own properties; interest on its savings in banks.

Apart from these sources, there is also a practice of parties requesting for contributions from their members for nominating them. According to the report of the International Institute for Democracy and Electoral Assistance (IDEA) the amount of "pledge money" has grown from MNT 20 million (USD 8,100) in 2008 to MNT 80 million (USD 32,400) in 2012 and around 100 million (USD 41,200) in 2016¹⁴⁰.

Amount of the membership fee should be defined by rules of each party, there are no restrictions regarding the maximum amount.

The law establishes caps on the private donations. The maximum amount of a one-time donation for a legal entity is MNT 10 million (about EUR 4,000), for a natural person MNT 1 million (EUR 400). A donor is allowed to give a donation to one organization of the party not more than two times a year. All parties shall publish information about its donations (scope of information to be published is not specified).

The IDEA report states that politicians and corporations seem to have found a way to bypass the limits by disguising corporate donations as individual donations, and by funneling resources to candidates as part of the 'pledge money' they are expected to provide to receive their party's nomination¹⁴¹. The existence of such practice and the use of membership fees as a channel for providing corporate donations was indirectly confirmed by some interlocutors met during the on-site visit.

Donations from the following sources are forbidden: Mongolian citizens under 18 years of age; state and state-related organizations, companies; religious organizations; international organizations, foreign citizens, foreign legal entities, stateless persons; legal entities that are less than one year old after their establishment; anonymous persons or without address specified; legal entities that have bankrupted or have expired bank loans; other persons forbidden so by law. Exclusion of international organisations and foreign legal entities does not cover sponsorship of projects, events in co-operation with international organizations, other foreign political organizations, funds.

The previous monitoring report underlined the need for the following legislative improvements:

- The term "donation" should be defined in the Law and should cover "any deliberate act to bestow advantage, economic or otherwise, on a political party", including in-kind donations (e.g. free supply of office, transport, equipment or staff, free advertisement, sponsorship of events, discounts of goods/services).
- All donations and membership fees should be registered in the party's records.

¹⁴⁰ [IDEA Report on Political Finance in Mongolia](#), p. 16

¹⁴¹ *Idem*.

- Restrictions on donations should cover not only the party itself but any entity related, directly or indirectly, to the party or which are otherwise under the control of the party.
- Maximum amount of the membership fee should be defined in the law, so membership fees are not used to circumvent restrictions on donations.
- The Law should specify the rules on publication of information about donators and donations (how published, what information, etc.).
- Prohibition of donations from public organisations or publicly owned companies should be clarified to explicitly cover all companies owned by the state or local self-government, companies in which the state or local self-government has shares, as well as entities established by such companies. It is also recommended to prohibit donations from companies that received e.g. during the previous year a certain amount (e.g. certain per cent of their annual income) of public funding through public procurement or other similar mechanisms (export credits, state aid, etc.)¹⁴².

None of these have been implemented, so they all remain fully relevant.

One more problem which remains unsolved is the absence of an agency authorized to perform audit and supervision in relation to political parties funding. The monitoring team would like to reiterate opinion of the previous round of monitoring regarding the need to designate an agency in charge of reviewing party finances and enforcing the law on financing restrictions. It is essential that such agency has proper level of independence, cooperates actively with the General Election Commission (GEC) and the State Audit Office NAC, has real supervisory and investigative powers, including access to information and applying or initiating sanctions; sufficient resources including professional staff.

State funding

Since the previous round of monitoring the rules on state funding remained unchanged. The law provides for two types of subsidies to parliamentary parties: a one-time subsidy after the elections and further quarterly payments. A party holding seats in Parliament receives a one-time payment within three months after the election result is announced. Each vote is valued as MNT 1,000 (0,354 EUR). The party which has seats in the parliament also receives quarterly subsidy from the state budget during the parliament's term of office; for each seat in Parliament the party receives MNT 10 million (\approx 3500 EUR). 50% of this subsidy has to be spent for the parliamentary election unit areas.

As previously, only parliamentary parties (those that passed election threshold – i.e. 5% at the last national elections in 2016) are eligible for state funding. In this regard the monitoring team reiterates the previous monitoring report which pointed that this is not in line with international best practice – to foster political pluralism it is recommended to provide state funding to parties that obtained a certain level of support even if it is below the threshold to enter the parliament (e.g. 1-2 % less than the threshold)¹⁴³.

¹⁴² OECD, [IAP Third Round Monitoring Report on Mongolia](#), p. 90-91

¹⁴³ OECD, [IAP Third Round Monitoring Report on Mongolia](#), p. 92

Table 17 State finding of political parties in 2017-2018

No	Name of the party	Number of seats	Funding (quarterly)	Funding (annual)
1	Mongolian peoples' party	64	MNT 640,000,000 (216, 3 thousand EUR)	MNT 2,560,000,000 (865 thousand EUR)
2	Democratic party	9	MNT 90,000,000 (30, 4 thousand EUR)	MNT 360,000,000 (121 thousand EUR)
3	Mongolian peoples' revolutionary party	1	MNT 10,000,000 (3,3 thousand EUR)	MNT 40,000,000 (13,5 thousand EUR)

Source: Information received from the Government of Mongolia

And according to the IDEA report public funding remains a very limited portion of political parties' financing in Mongolia—less than 20 per cent of their revenue, according the most accurate estimates, which makes parties dependent on corporate donations and pledge money. Of the MNT 36 billion spent during elections, around half was financed by the candidates themselves¹⁴⁴.

Transparency

Membership fees and private donations shall be kept at one bank account, direct cash donations are not allowed.

The Law requires central organization of the party to prepare a consolidated financial statement after the corresponding organizations have made the financial report. Finances of the party should be audited annually, and reports should be published.

The Supreme Court of Mongolia is in charge of controlling internal rules and platform of the party with regard to their compliance with the Constitution and the law.

The previous round of monitoring concluded this financial reporting regime is too general and insufficient. No changes have been introduced in this regard.

The provided form of financial report includes some level of details, but it looks like this is the form used for reporting about finances of election campaigns, but not funding of political parties. This allows to conclude, there is still no a unified form of financial reports of the political parties and established rules of their publication.

In fact, there is no supervision over compliance with the rules on financing and reporting, and respectively no sanctions were imposed, undermining the deterrence effect of the overall framework.

Financing of election campaigns

According to the Law on Elections the election expenses should consist of donations, assets of the political party and assets of the candidate. The maximum limit for the campaign expenses should be established by the State Audit Office (SAO) separately for each election.

Donations to the election campaign are limited to 15 million MNT from a legal person and 3 million MNT from a natural person. Donations from the following sources are prohibited:

- foreign organization /foreign participant of the joint organization;
- international organization;
- state or local self-government organisation;
- national of foreign country;
- stateless person;

¹⁴⁴ [IDEA Report on Political Finance in Mongolia](#), p. 19

- person under the age of 18;
- state and local administration owned legal entity, legal entity with state or local administration participation;
- legal entity with tax debt determined by the court ruling and overdue bank loan debt and liquidated legal entity;
- trade union, religious body and other NGOs;
- legal entity established less than one year ago.

All transactions should be made through a designated account.

An individual or legal entity who is giving the monetary donation shall provide his/her registration number in a bank slip and the receiver shall transfer back the donation which does not meet such requirement. A donation without any return address shall be transferred to the state treasury as stated in the related legislations.

If a legal entity has given the donation to election campaign, the donation shall be included in the legal entity's financial and tax statement. The same rule applies in respect to donations made to political parties, however no specific regulations exist in this regard.

The Law requires the financial report to include the following:

- total amount of income deposited in election expenditure account including incomes from candidate's own assets and incomes from donations;
- donator's first and last name, address, amount of donation, type;
- donator-legal entity's name, address, first, last name of the executive, amount of donation and type;
- category of expense and execution;
- total balance, location.

The head of the bank or bank's branch where the account is located shall prepare report on transactions and submit it to the election body of that level within 45 days after the election day.

The Law on Elections allows providing movable or immovable property as well as services for free as in-kind donations to the election campaigns. One person can donate for a party, coalition or candidate once a year. Fines should be imposed for violation of this rule. In-kind donations shall not exceed the limit envisaged by law.

According to the new legislation the State Audit Office is responsible for auditing party and candidate campaign finances. Within 90 days after the elections the Office is required to publish its reports on contestants' campaign finance, including the names of individuals and legal entities contributing more than MNT one million and MNT two million, respectively.

The Law provides the State Audit Office with the following powers related to the audit of finances of election campaigns:

conduct audit of and provide conclusion on the expenses of election campaigns of political parties and candidates who participated in parliamentary elections;

conduct revision and provide confirmation on report on donations given by individuals and legal entities to political parties participating in the parliamentary election during one-year period from the start of the election year;

conduct audit and provide conclusion on finances and performance of the election expenditure of the candidate for the president if the General Election Commission deemed necessary.

According to the law the campaigners should send their financial reports to the General Election Commission who sends their copies to the State Audit Office, tax authorities and the General

Authority for State Registration. Moreover, respective banks should inform the State Audit Office about all donors after the elections.

At the same time, in fact the audit is not sufficient at all so far.

The OSCE/ODIHR Election Observation Mission for the latest Parliamentary elections in 2016 reported that key legal provisions enabling effective SAO's oversight have not been developed, and by the end of the campaign period the SAO did not published any regulations or procedures for campaign finance audits. While sanctions should be effective and proportionate to enable candidates to compete on a level playing field, serious campaign finance violations such as a breach of campaign spending limits or the submission of falsified campaign finance reports are not subject to sanction. Fines for other violations of campaign finance rules remain relatively low. Moreover, the SAO does not have the power to audit campaign accounts or impose financial penalties¹⁴⁵.

And in the OSCE/ODIHR report for the latest Presidential elections in 2017 says that for the first time, the SAO exercised control over campaign financing by carrying out unannounced checks at campaign offices in the aimags in the first round, aimed at verifying the accuracy of the parties' subsequent expenditure reports. However, reporting templates for both the SAO regional offices and the parties were not developed prior to the campaign. There were no requirements to disclose party funds or expenditures prior to the election and none of the parties volunteered detailed information on their campaign finance. Hence, it was impossible to verify the levels of spending during the campaign and promptly address infringement of campaign finance rules¹⁴⁶.

The IDEA report also says that the law does not clearly describe the process and procedures for selecting which party or candidate reports should be audited. Nor does it specify what the tax authorities are supposed to do with the copy of the report they receive. In addition, the SAO has thus far only published summaries of the reports and audits submitted by parties¹⁴⁷.

According to Mongolian authorities the State Audit Office did not get additional staff with getting the new powers which does not allow to fulfill its respective tasks effectively.

The Law provides monetary sanctions for violating the rules on financing of election campaigns, but these sanctions have never been applied.

As the monitoring team was informed after the on-site visit, the current draft laws on various types of elections include provisions to increase the mandate of the audit body with regard to reviewing election funding and publishing audit reports. Also, the participation of tax authority will be clarified and increased. For instance, if a legal entity gives donation to an election campaign the respective political party will be obliged to include the donation to its financial report. The tax authority will be mandated to review and cross check the financial report of election campaigns with the report on donations and funding released by the audit body and mandated to impose fines if it detects inconsistency with the audit report.

Conclusions

As it is also highlighted in the section 2.2, political corruption is among the key current problems for Mongolia, a number of high-level politicians appeared in the middle of big corruption scandals, even prosecuted by foreign jurisdiction, and political bodies are perceived to be the most corrupt institutions.

Despite the country's Anti-Corruption Strategy sets a number of objectives to improve legal framework and practice in relation to political party financing, the responsible governmental institutions are not working on reforming this area, and respectively no amendments have been introduced so far. The monitoring team also has an impression that domestic inter-agency

¹⁴⁵ [OSCE/ODIHR Election Observation Mission Final Report \(2016\). Mongolia Parliamentary Elections.](#)

¹⁴⁶ [OSCE/ODIHR Election Observation Mission Final Report \(2016\). Mongolia Parliamentary Elections.](#)

¹⁴⁷ [IDEA Report on Political Finance in Mongolia](#), p. 21

cooperation to address the problems of political party financing is quite weak and needs for significant improvement.

Therefore, financing of statutory activity of political parties remains to be poorly regulated and is neither transparent nor audited. Hidden corporate donations are fuelled to political parties which makes them very much dependent on the private donors, and consequently acting in their interests.

The monitoring team encourages Mongolia to urgently address this problem through the development and adoption of a comprehensive legal framework on political party financing. The new regime should ensure that political parties regularly publish their financial reports in an open data format which are properly audited.

It is also essential to ensure independent monitoring and supervision for party finances. For this purpose, an agency authorized to perform audit and supervision in relation to political parties funding should be designated. It is essential that such agency has proper level of independence; real supervisory and investigative powers, including access to information and applying or initiating sanctions; sufficient resources including professional staff.

The mentioned loopholes may also pose a risk of political parties financing from assets of illegal origin. Therefore, it is important to ensure that political parties are covered by the national anti-money-laundering (AML) regime.

Financing of election campaigns is more regulated, but its sufficient audit is not ensured and published financial reports are not informative. Hence, the overall mechanism of control over financing of election campaigns is not effective and efficient. At the time of the adoption of this report Mongolia was working on its new legislation on elections which would increase the role of the audit and tax authorities in the area of control over financing of election campaigns.

Mongolia is *not compliant* with recommendation 3.7 of the previous round of monitoring.

New Recommendation 29

1. Strengthen the system of regulation of political party financing by establishing limits on membership fees, broadly defining the term “donation” to include in-kind donations, extending donation restrictions to all entities related or controlled by the party and its representatives, specifying rules on publication of information on donations, prohibiting donations from companies that received funding through public procurement or other public source.
2. Ensure balance between private and public funding of the political parties and implement restrictions on the use of funds received from the state budget.
3. Provide public funding to parties that obtained a certain level of popular support at the national elections even if it is lower than the electoral threshold.
4. Ensure full transparency of party finances, by requiring detailed annual consolidated financial reports with all contributions (except for very small ones) and each contributor, as well as all party expenses reported.
5. Ensure that detailed consolidated financial reports of political parties are standardised and published on the internet.
6. Improve rules for disclosure of election campaign finances, including submission and publication of detailed financial reports before election day.
7. Establish without delay a system of independent monitoring and supervision for party finances and financing of election campaigns with adequate resources and powers, in particular to impose proportionate and dissuasive sanctions.
8. Consider assigning powers of supervision over political party financing to the Anti-Corruption Agency.
9. Ensure that the General Election Commission is a professional and independent body consisting of employed full-time members selected according to their merit, preferably based on an open competition.

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| 10. Ensure that political party funding (financial transactions made to/by political parties and their managers) is covered by the national anti-money-laundering regime. |
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www.oecd.org/corruption/acn/

