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ASSESSMENT OF CORRUPTION IN MONGOLIA FINAL REPORT

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Submitted By:

Casals & Associates, Inc. (C&A)
1199 North Fairfax Street, 3rd Floor
Alexandria, VA 22314 USA
Phone: +703.920.1234
Fax: +703.920.5750
E-Mail: info@casals.com

Submitted to:

U.S. Agency for International Development
(USAID)/Mongolia
U.S. Embassy
Big Ring Road
11th Microdistrict
Ulaanbaatar, Mongolia

In collaboration with:

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EXECUTIVE SUMMARY

This report presents the results of a corruption assessment conducted in June and July 2005 by Casals & Associates, Inc. (C&A) with funding from the U.S. Agency for International Development (USAID) Mission to Mongolia in collaboration with USAID/Washington and The Asia Foundation (TAF). The major finding of the report, consistent with other quantitative and qualitative studies conducted previously, is that opportunities for corruption are increasing in Mongolia at both the “petty” or administrative and “grand” or elite levels. Both types of corruption should be of concern to Mongolians, but grand corruption should be considered a more serious one because it solidifies linkages between economic and political power that can negatively impact or ultimately derail democracy and development, as it has in other post-Communist countries. Several inter-related factors contribute to the growing corruption problem in Mongolia, the most significant of which are:

- A profound blurring of the lines between the public and private sector brought about by endemic and systemic conflict of interest (COI) at nearly all levels;
- A lack of transparency and access to information that surrounds many government functions and undermines nearly all aspects of accountability by contributing to an ineffective media and hindering citizen participation in policy discussions and government oversight;
- An inadequate civil service system that gives rise to a highly politicized public administration and the existence of a “spoils system;”
- Limited political will and leadership to actually implement required reforms in accordance with the law, complicated by conflictive and overlapping laws that further inhibit effective policy implementation; and
- Weak government control institutions, including the Central Bank, National Audit Office, Parliamentary standing committees, Prosecutor General, State Professional Inspection Agency, State Property Committee, and departments within the Ministry of Finance.

The aforementioned systemic shortcomings have allowed for an evolution of corruption in Mongolia that “follows the money,” meaning that graft on the most significant scales generally occurs most often in the industries and sectors where there is the most potential for financial gain.¹ Opportunities for increased corruption emerged during the transition toward democracy and market economy and process of reconnecting to the international community. Two areas that offered particular opportunities for grand scale corruption at that time were foreign donor assistance, such as the U.S. Government wheat donation program,² and privatization of state-owned enterprises. Later, as Mongolia embarked on further policy changes to install capitalistic practices, corruption reared its head in the process of privatizing public land. Now that most of the high-valued land has been doled out and the overall economy is expanding, based in part on extractive industries, emerging areas for corruption include the banking and mining sectors. As in many developing countries, there also are several areas that provide stable and consistent opportunities for corruption, both grand and administrative in nature, such as procurement, customs, the justice sector, among high-level elected and appointed officials, and in the conduct a variety of day-to-day citizen- and business-to-government transactions.

¹ This was true even during Soviet control. Then, involvement in the party apparatus meant the ability to use government resources controlled by the party for personal financial gain with almost complete secrecy, a tradition that still exists today to a certain extent.

² Section 416(b) of the Agriculture Act of 1949.

Despite the fact that few of the conditions to prevent corruption from getting worse are in place, the situation has not reached the levels that are evident in many other countries with contexts and histories similar to that of Mongolia. Perhaps more importantly, there are a number of nascent and rudimentary efforts underway to actively combat corruption, including:

- Government commitments to international anti-corruption regimes and protocols, such as the Anti-Corruption Plan of the Asian Development Bank/Organization of Economic Cooperation and Development (ADB/OECD) and the United Nations Convention Against Corruption (UNCAC);
- Development of a National Program for Combating Corruption and formation of a National Council for coordinating the Program and a Parliamentary Anti-Corruption Working Group;
- Drafting of a new anti-corruption law that, in its current form calls for the formation of an independent anti-corruption body; and
- Short- and medium-term anti-corruption advocacy and “watchdog” programs initiated by civil society organizations, often with international donor support.

There is, in fact, time for Mongolians and the international community to nurture these efforts and take further action before the corruption problem gets out of hand. In general, the main need in Mongolia is for effective disincentives for corrupt behavior at both the administrative and political level. In its broadest configuration, this implies a strategy of increasing transparency and effective citizen oversight, as well as intra-governmental checks and balances. Without these major changes, administrative reforms may provide some small improvements, but they are unlikely to reverse current trends. Specifically, the report makes several strategic recommendations, including:

- Diplomatic engagement focused on keeping anti-corruption issues on the policy agenda, promoting implementation of existing laws related to anti-corruption, and highlighting the need for further measures to promote transparency and improved donor coordination;
- General programmatic recommendations to address COI, transparency/access to information, civil service reforms, and the independent anti-corruption body, with a definitive focus on engaging civil society and promoting public participation utilizing UNCAC as a framework; and
- Specific programmatic recommendations to address loci of corruption, such as citizen- and business-to-government transactions, procurement, privatization, customs, land use, mining, banking, the justice sector, and the political and economic elite.

I. INTRODUCTION

A. Overview

There is no question that corruption is taking hold in Mongolia. By its very nature, corruption is a phenomenon that occurs behind closed doors. Those engaged in corruption intend to conceal it. Therefore, it is never easy to measure. Even the most careful survey methodologies that seek to measure participation and victimization rather than perceptions and opinions are subject to high degrees of error, and this type of survey has not yet been conducted in Mongolia. While this assessment is informed by a number of surveys that have been conducted in Mongolia and other indices of corruption, it is impossible to provide a “scientific” or objective measure of the

seriousness of corruption in the country. Based on three weeks of interviews and background research, however, it is possible to make some critical observations about the extent and forms of corruption in Mongolia.

Corruption on the Rise

Corruption is increasingly prevalent in Mongolia and the stakes are getting larger as economic growth makes more resources available. A rapid transition to democracy and a market economy—and one that was largely managed from above rather than cracking the system open from below—created a wide range of new demands on an under-prepared bureaucracy, while at the same time not really establishing the conditions for effective intra-governmental checks and balances and public oversight of government. At the same time, generally low incomes and the natural human tendency to “want more,”—whether out of need or greed, or both—create an environment in which incentives to use public authority to gain wealth are prevalent. As a result, the range of checks and balances that constitute an environment that mitigates corruption—from effective implementation of regulatory regimes and access to information about those regulations and the use of public resources more broadly, to public and legislative oversight of government affairs and the promise of unbiased recourse to courts—is not in place in Mongolia. There are weaknesses at every level of Mongolia’s integrity system. While they do not guarantee that corruption will take place, they do provide ample opportunities for it and few checks on it.

Though it may be possible, though difficult, for average Mongolians to conduct their daily lives and operate businesses without getting involved in corruption (either as a recipient or a provider), administrative corruption is common. The assessment team heard repeated accounts of lower-level abuse of authority such as weekly visits to a restaurant by one inspector or another (and the concomitant “free lunch” provided to avoid citations), taxi drivers seeking to be stopped by police early in the day in order to collect a ticket that shows they have paid their daily “dues,” the practice of “tipping” doctors for services, and paying for children to enter schools they didn’t otherwise qualify to attend. Corruption is affecting many peoples’ daily lives, but the surprising finding is that most people seem to excuse this kind of corruption and take it in stride.³

While administrative corruption is eating away at public efficiency and reducing the security of economic activity, *by far the most problematic characteristic of corruption in Mongolia is elite-level corruption*. This is not necessarily because it involves greater sums of money or more frequent transactions than administrative corruption. The former is probably true, but the latter is harder to ascertain. Rather, elite-level corruption is a more critical problem in Mongolia because 1) it sets the tone and example for administrative corruption and creates deeply vested interests in the *status quo*, and 2) it has the potential to solidify a political and economic system that marginalizes all other interests, including those of democratic consolidation and broad-based economic growth.

³ This is suggested by the number of surveys showing that people blame low public service salaries for corruption—and the number of times the team heard people (both high officials and “ordinary Mongolians”) say that public employees “have no choice but to be corrupt.”

As one interviewee stated, “Mongolia is perilously close to state capture.”⁴ The team heard over and over again that economic and political elites are, if not one and the same, then certainly operating in close cooperation with each other for mutual benefit. *The line between public and private spheres is almost non-existent, and COI is rampant*, particularly at the highest levels of the economy and polity. A standard of non-transparent self-dealing dating back to the initial privatizations of state-owned enterprises in the 1990s (and drawing its inspiration from the privileges and perks of the politically powerful under the previous Communist regime) is well established. More troubling is the sense of many long-time observers that high-level corruption in Mongolia is getting both more predatory and more sophisticated. Instead of demanding a small kickback for a favorable price for a public asset, political elites now expect part ownership or control of companies, further consolidating the linkages and overlaps between the public and private sectors.

Several factors facilitate the continuation of this pattern, all of which are treated in this report. Among them are institutional and procedural weaknesses, as well as ambiguities in public understanding of the issue. But the team found that the most critical shortcomings in the environment for fighting corruption in Mongolia are the *lack of transparency* surrounding nearly all government activities and the *near-absence of the public in substantive policy discussions and oversight of government*. These basic elements of democratic accountability are substantially absent in Mongolia, resulting in a political system that is increasingly skewed toward the entrenchment of existing elites and a public management and regulatory system that lacks leadership and incentives to address corruption. At the same time, the complete opacity of the system makes it nearly impossible even to clarify whether supposition and rumors are true.

Regarding the question of where corruption is happening, the short answer is “almost any place or time where financial interests are at stake in the use of public authority.” Given the lack of detailed and reliable data (see Section II), locating the most common areas for administrative corruption in any authoritative way is extremely difficult. With regard to elite-level corruption, the team can confirm that extensive interviews supported widespread impressions that land allocation, particularly in the high-value areas of Ulaanbaatar and mining zones, as well as payments to obtain mining licenses and avoid tax and customs payments, have been among the most problematic and high-stakes venues for corruption. Privileged access to other public assets such as companies that are being or have been privatized and publishing/broadcasting permits also appears to have helped establish and perpetuate the current structure of elite power. Courts are widely seen as corrupt and generally do not constitute an effective recourse for victims of corrupt use of public authority. Opacity in the banking system and political manipulation of the Central Bank undermine effective regulation and create opportunities for corrupt transactions, but the team did not find that the problems in the banking sector were significantly different from those in other sectors.

⁴ “State capture” is a term coined by World Bank analysts to describe the situation - mainly in the former Soviet Union countries - wherein economic elites (many of whom got their wealth through especially favorable privatization deals) have become so influential that they are effectively able to control state policy to serve their economic interests. State capture differs from the more familiar notion of “lobbying” in that it a) is not transparent and b) seeks not simply to provide advantage to influential economic interests, but ultimately to exclude all others from accessing the state for similar purposes. See Cheryl Gray, et al., “*Anticorruption in Transition 2: Corruption in Enterprise-State Interactions in Europe and Central Asia 1999-2002*,” The World Bank, 2004. See also “*Seize the State, Seize the Day: An Empirical Analysis of State Capture and Corruption in Transition*,” The World Bank, April 2000.

The critical finding here is that the *underlying conditions of opacity and lack of checks on public authority* have to be addressed in order for problems in any specific sector to be dealt with effectively. The final section of this report will provide some suggestions on how this might be accomplished, including some sectoral approaches, but it is critically important that any specific activities keep the larger environmental issues clearly in view.

Comparative Perspectives and Signs of Hope

While corruption in Mongolia is certainly serious, it is important to keep the situation in perspective. It does not appear that corruption has reached the cancerous and extortionary levels that typify the world's "worst cases." For several reasons, corruption in Mongolia is not yet as deeply entrenched as it is in many post-Communist countries, especially the Central Asian countries to which Mongolia is most often compared. Nor are the problems facing anti-corruption efforts nearly as serious in Mongolia as they are in countries facing conflict and grinding poverty. First, the stakes remain relatively low compared to countries with significant natural resources and market size (e.g. Nigeria or Russia). Second, the government system and economy in Mongolia never totally collapsed during the transition as it did in other places (e.g. Albania, Cambodia, or Liberia), thus maintaining standards of living and keeping at least some management systems and controls in place. Nor was the transition marked by such repression that political participation has to be rebuilt from the ground up. A high level of literacy is an additional advantage that was maintained because of a relatively smooth political and economic transition. Third, Mongolia remains free from conflict, and the government maintains control over the entire territory (unlike Colombia, Sri Lanka, or Nepal), so the risks of tackling corruption, should strong leadership emerge, are fewer and the likelihood of having a broad impact is greater. Fourth, Mongolia's small size and culture where "everybody knows everybody," while often cited as a constraint on fighting corruption, may also place an inherent cultural check on those who take corruption "too far."

Furthermore, there are important signs of hope. A number of anti-corruption related laws recently have been passed or are being considered, though significant implementation challenges remain. Second, some transparency and accountability steps are being taken, such as publishing portions of the national budget (some for the first time) and signing the UNCAC (ratification pending). Third and perhaps most importantly, the fact that Mongolians have voted out and replaced governments in two consecutive elections demonstrates that a basic foundation for accountability exists. This is not an inconsiderable achievement less than 15 years after a transition from authoritarian rule. This tradition of public participation is a major advantage that Mongolia enjoys compared to many other countries facing the challenges of dealing with corruption, though the nature of that participation needs to be extended, informed, and made more sophisticated.

The Stakes: Danger and Opportunity

Mongolia is a country at a critical crossroads. There is still time for the leadership, with the support of the international community, to make decisions that will put the brakes on, and even reverse, current trends. But if elite self-dealing and lack of transparency are not addressed soon, the patterns that are currently emerging can easily become a mutually re-enforcing cycle. There are few examples in the modern world where the fusing of economic and political power in the hands of a limited number of elites has led to anything other than economic decline and political repression. Mongolia has not reached this stage yet, but if unchecked, the current trend line could greatly impede the country's progress toward economic and democratic development, as it

has in a number of other transitional countries with similar cultural and historical contexts. Corruption could quite easily open the door for a thriving underworld of trafficking, terrorism, and organized crime; Mongolia already is in a “bad neighborhood” from this perspective. Continued efforts and serious steps are needed to avoid the possibility of slipping onto a much less productive and promising path than the one Mongolia has forged up to now.

This assessment provides analysis of both the positive and negative features of the political, economic, and social structures, as well as the processes and institutions that shape the environment for corruption in Mongolia and outlines the serious risk factors that currently exist. The report presents the assessment team’s findings in a prioritized way that then implies a strategic framework for addressing the risk factors, both at a broad national level and for USAID’s consideration of its own possible interventions.

B. Purpose

In compliance with the task order for this assignment and pursuant to subsequent conversations with USAID, there are four main inter-related purposes to this assignment:

- 1) To provide USAID/Mongolia with a better understanding of the degree to which corruption exists in Mongolia within political, legal, and administrative structures, including the possible sources and dynamics of corruption;
- 2) To describe and analyze the capacity of government and civil society organizations within Mongolia to address the corruption issue, with an eye toward potential interventions that could be initiated by USAID and other donors;
- 3) To place corruption in Mongolia in comparative perspective and in an international context of “best practices;”
- 4) To provide comments on and analysis of a draft anti-corruption law that will be presented to the Mongolian Parliament, the State Great Hural (SGH), later this year.

C. Methodology and Team

Team members included Michael Geertson (C&A Team Leader), Elizabeth Hart (Senior Anti-Corruption Advisor, USAID/DCHA/DG), Olga Nazario (C&A Senior Associate), Mashbat Sarlagtay (Legal Consultant), and Byamba Odgerel (Coordinator/Translator). The team worked closely with the staff at TAF which provided administrative support and information related to the Mongolian context.

The assessment team used a combination of reviewing relevant documents and key informant interviews, a qualitative analysis technique widely accepted among social scientists. The team conducted dozens of interviews with government officials, representatives of civil society, and members of the international community working in or on issues related to Mongolia. Interviews were conducted both in Washington, D.C. and Ulaanbaatar during the period of 6 June to 1 July 2005.⁵ A full list of the individuals interviewed and with whom briefings were conducted is included in Annex 1.

⁵ The timing of the assessment was especially appropriate, as it was conducted shortly after Mongolian presidential elections in May 2005 at a time when a number of significant pieces of anti-corruption legislation were being considered. Candidates widely debated anti-corruption issues during the elections. Further, in April 2005, Mongolia signed the UNCAC, but has not yet ratified it.

Because corruption is, by definition, a non-transparent phenomenon, direct information is usually quite difficult to gather. Thus, a method of “triangulation” is necessary. The team interviewed and analyzed the statements of (1) those with the opportunity to engage in corruption, (2) those concerned with combating corruption, and (3) those impacted by corruption. From this, patterns emerged about the causes of corruption and the extent in Mongolia, forms of corruption present in the country, and current initiatives to promote transparency and accountability. Based on knowledge of relevant literature and best practices, experience conducting corruption analyses and supporting anti-corruption initiatives in developing countries, the team drew conclusions about how Mongolia compares to other countries engaged in similar transitions and made recommendations on potential efforts to address the issue. The key informant interview process was augmented by a detailed review of literature gathered in Mongolia published by the GOM, civil society organizations, international donor organizations, and multilateral development banks.

The approach used in this assessment is relatively unique among donors. Most “governance assessments” evaluate institutional and legal arrangements, identifying shortcomings in rules and institutional structures, and perhaps in implementation. Often due to institutional restrictions on addressing “political” issues, many governance assessments do not identify the “why” of institutional and procedural problems or failures in implementation. Based on USAID’s new Anti-Corruption Strategy, which articulates the need for the Agency to use a more comprehensive and dynamic analysis of corruption problems, this assessment goes beyond institutional analyses to identify the broader political and economic processes and inheritances that help explain the corruption phenomenon in Mongolia. The assessment then places the solutions in a broader strategic framework that looks not just at symptoms, but also the root causes, of the corruption illness.

D. Acknowledgements

The team appreciates the support and strategic guidance provided by U.S. Embassy and USAID officials in Ulaanbaatar as the assessment was carried out. This report also would not have been possible without the logistical and substantive assistance provided by TAF offices in Ulaanbaatar and San Francisco.

II. Interpreting the Surveys and Other Qualitative Studies

A. Existing data on corruption in Mongolia

Despite the number of surveys and qualitative studies that touch on corruption in Mongolia (see summary findings in Table 1), none of them can be interpreted as providing a conclusive measure of the extent and nature of corruption in Mongolia. This is rarely possible even with more sophisticated surveying techniques,⁶ but existing surveys for Mongolia are even less reliable insofar as few of them contain comparable data over time, and also because of serious difficulties in interpreting perception and opinion data, as discussed below.

Despite the problems with existing data, the summary conclusion that corruption is increasingly perceived as a problem is nonetheless hard to avoid, though the mixed treatment of corruption in

⁶ The World Bank Institute tri-partite corruption survey methodology, and a few quantitative surveys that ask about victimization rather than participation in corruption, are the most effective approximations of hard “measurements” of corruption. The team heard that WBI may be planning to conduct a corruption survey in the coming year.

the recent International Republican Institute (IRI) presidential election poll suggests caution in assuming how the Mongolian public sees corruption vis-à-vis other, more concrete problems of daily life. This is not an uncommon phenomenon in research about political opinions, since the immediate daily economic concerns of respondents generally outrank issues that seem harder for them to address. Additionally, the repeated presence of land, licensing, customs, and courts in lists of problematic institutions warrants closer examination of these institutions and processes.

B. International corruption indices

Two major international indices of corruption and anti-corruption efforts also suggest that corruption should be seen as a critical issue that is getting worse in Mongolia. Transparency International (TI) twice has included Mongolia in its annual Corruption Perception Index (CPI).⁷ In 1999, Mongolia's CPI score was 4.3, placing it among fairly developed countries like Poland, Uruguay, and Jordan. In 2004, Mongolia "dropped" 42 spots in the rankings with a CPI score of 3.0, placing it among far less developed countries such as Armenia, Bosnia and Herzegovina, Madagascar, Senegal, Dominican Republic, Iran, and Romania.⁸

The World Bank Institute (WBI) issues governance indicators every two years, and Mongolia's score on Control of Corruption fell in the most recent round, from +.11 in 2002 to -.51 in 2004 (on a scale of -2.5 to +2.5). This places Mongolia in the 40th percentile among all countries, down from the 60th percentile in 2002. Though performance on this index has clearly fallen, Mongolia is still well above the median for low-income countries of -.84.

While these measures signal a worsening in the corruption situation in Mongolia, each suffers from significant methodological shortcomings that must be understood when the data is being used:

- These indices only measure "corruption," which is a multi-faceted set of behaviors subject to a wide range of definitions. Understanding the nature of the problem in any given country requires a significant "unbundling" effort that macro-level indices do not begin to capture.
- Perception-based data, which is included in both the CPI and WBI indicators, is notoriously difficult to interpret. It is very possible that perceptions of worsening corruption can simply reflect increased availability of information about activities that have not changed significantly in either frequency or scope (creating the possible perverse outcome that an improved environment for fighting corruption – e.g., access to information, better reporting, etc. – could actually cause a CPI-type score to fall).
- Both of these indices are composites of other scores and indices, most of which are qualitative in nature, so they are not an "objective" measure of corruption, though they seek to improve objectivity by balancing subjective analyses against each other.
- The TI and WBI indices include significant time lags, since they draw on data that might be up to two years old (in the case of WBI) when the score is issued.
- Scores for each country rely on different data sets, depending on what is available for each country, making cross-country comparisons unreliable. Even comparisons of the

⁷ TI-Berlin only includes countries in the CPI in which a minimum of three data sources exist for the country. In the years between 1999 and 2004, three data sources did not exist for Mongolia.

⁸ In part, this drastic fall in the CPI ranking for Mongolia is explained by the addition of 46 countries that were included in the 2004 ranking and not in the 1999 ranking.

same country's score over time can be tricky, since data sources may be added or subtracted from one year to the next. An examination of the margins of error in the WBI scores for Mongolia indicates the danger in drawing too-specific conclusions based on these scores.⁹

What do all these considerations mean? First, it is important to understand the international corruption indices for what they are: macro-level and somewhat flawed assessments, on a delayed basis, of general impressions about a very abstract concept. Relying on them to describe the actual state of the problem in a given country at a given time creates a risk of becoming embroiled in ongoing debates about their accuracy and relevance. Second, even though public perception about the seriousness of corruption can be an important contributor to political and economic dissatisfaction and is thus a matter of essential concern in its own right, it is not always the best indicator of just how much corruption there is, or where it is taking place. But the weight of the information for Mongolia indicates that corruption is indeed a problem that needs to be addressed. The rest of this report uses a range of observations and analysis to identify the most critical elements of the problem and the most strategic ways of addressing it. The table below summarizes some key findings of recent surveys and studies of corruption in Mongolia.

Table 1: Summary Findings of Surveys and Studies of Corruption in Mongolia

Conducting/Sponsoring Organization and Title or Subject of Report	Key Findings About the Scale/Loci of Corruption
Government of Mongolia and UNDP, <i>Public Perception and Attitude Surveys in Mongolia – 1999 and 2002 and Comparison of 1999 and 2002 Mongolian Public Perception Anti-corruption Surveys</i> ¹⁰ (2002)	<ul style="list-style-type: none"> • Where corruption is worst: in 1999, banking, customs, judiciary/courts, parliament; in 2002, customs, courts, land management, police, banking. • Large increases in perception of corruption (1999-2002): land management, public prosecutor. • Only decline in perception of corruption: banking (but perception of corruption is still among the highest). • In 2002, highest responses saying “a lot of time and money” is required to achieve a goal: 1) getting medical treatment; 2) “obtain a license or permission”; 3) “obtain a land license”; 4) study at a school or university. (When combined with “it is only a dream for me” response, land licensing and getting a dwelling have the highest scores.)
Mongolian Chamber of Commerce and Industry, <i>Report on the Survey on Corruption and the Business Sector</i> (2000)	<ul style="list-style-type: none"> • 97% of surveyed business people believe there is corruption in the business sector. • Largest response to question about what corruption is: 38% said it is a tool for bringing relevant government officials under their control. • Corruption mainly exists as a monetary exchange (78% of respondents), but can also include giving presents (27%), appointment to high positions, and providing apartments or other living facilities (14.5% each).
Mongolian Chamber of Commerce and Industry,	<ul style="list-style-type: none"> • Corruption scored 4th in ranking of the most urgent social issues (in a national sample), after heavy drinking, unemployment, and poverty.

⁹ For example, the lower range of error for the 2002 corruption score equals the upper range for 2004. Statistically, the score could be the same for both years. Daniel Kauffman, the creator of the WBI scores, has warned against using them for making specific policy recommendations. His position is that at best, the scores can be used to group countries into broad categories like those of a three-color traffic light. By that analysis, Mongolia's current control of corruption score would put it in the red “danger” zone, though (with margin of error) it might rank in the yellow “caution” zone.

¹⁰ Comparisons in the first document listed are somewhat unreliable due to non-comparability of questions between the surveys (as indicated in the second document listed here). However, it is possible to at least assess general trends in perceptions about certain institutions and initiatives.

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<i>Corruption Index Research Report (2002)</i>	<ul style="list-style-type: none"> • 53% of respondents thought corruption had increased dramatically or somewhat over the previous year. • Ulaanbaatar seen as the most corrupt city/aimag, followed distantly by Ohron aimag, Selenge aimag, Zamin-Uud town, and Darhan-Uul aimag.
Democratic Governing Institutions Capacity Building Project, <i>National Integrity System Country Study Report (2001)</i>	<ul style="list-style-type: none"> • None of the institutions and processes that constitute a national integrity system are operating sufficiently to assure integrity in governance in Mongolia.
Asian Development Bank, <i>Country Governance Assessment: Mongolia (2004)</i>	<ul style="list-style-type: none"> • “Mongolia’s transition to a market economy has outpaced the development of effective monitoring institutions to curb abuses such as corruption” (p. 53). • Civil service reform has been effective in some pilot entities under the Public Service and Financial Management Law, including the National Statistics Office, the National Audit Office, and the General Department of National Taxation (p. 54).
Sant Maral/National Center for State Courts, <i>Public Perception of the Judicial System in Mongolia (2001, 2003, and 2005)</i>	<ul style="list-style-type: none"> • Some negative perceptions of the courts have declined, while others have not. For example, the percentage of individuals surveyed who perceived corruption to be a problem in the courts declined from 38.9% in 2001 to 17.7% in 2005. At the same time, around 70% of respondents (both general public and those with direct experience with the courts) believe that judges and decisions are affected by political considerations and the personal interest of judges and/or other government officials. • Around 90% of respondents (both general and those with experience in the courts) believed wealthy people, influential officials, and friends/relatives of court officials would get somewhat or far better treatment in the courts (not a significant change since 2001).
International Republican Institute and Alternative Center, <i>Mongolia Nationwide Voter Survey (2005)</i>	<ul style="list-style-type: none"> • Corruption identified as top issue that the President should change to improve economic situation (26% of respondents in 1/05; 31% in 4/05). Next highest was alcoholism: 14%/11%). • When asked what issue was most important for the government to address to improve individual respondent’s life, job creation was top answer (54%/59%), followed by increasing wages and pensions (47%/41%). Fighting corruption in government ranked about 6th (10%/14%).

III. CAUSES AND DYNAMICS OF CORRUPTION

A. Conflict of Interest (COI)

Only a handful of individuals interviewed in Mongolia demonstrated a familiarity with and understanding of the implications of the concept of COI. Private interests and official responsibilities are mixed with little regard or awareness that the lack of separation between private and public infringes on public servants’ objectivity and impartiality in handling government affairs. Also, public servants use position, knowledge, and information for their personal benefit with impunity.

There are consistent rumors that high-level officials in the GOM hold assets in and/or are involved in day-to-day management of businesses, including radio and television stations that affect the results of political processes. Yet secrecy laws and lack of access to information make it impossible to confirm allegations and/or prove ownership of high government officials in particular business interests. Instances in which government officials also hold positions in

civil society organizations or in independent research centers may also create the impression of impropriety or actually be improper if and when the officials influence government funding for such organizations.

Mongolia lacks the legal provisions, as well as the associated policy and regulatory framework that would define and prevent COI and sanction violations. COI regulations are normally part of a modern government ethics regime. One primary tool for addressing COI is a system for declaring and investigating the assets and incomes of public servants that has not yet been established in Mongolia. In the absence of clear legal provisions to detect instances of malfeasance, habits from the Communist past and cultural tradition continue to control the behavior of public servants. While the issue may not have been as significant in the past, the new opportunities for enrichment and plush lifestyles that have surfaced under a market economy have made the COI issue in Mongolia a predominant feature in allowing corruption to grow.

The draft Anti-Corruption Law currently in bill form before the State Great Hural addresses some important COI issues. It calls for the development and implementation of an enforceable and transparent system of asset/income declaration, including investigation and sanction. If passed, the law would be an important step in providing disincentives to corruption since public officials' assets and incomes could be investigated and offenders could be sanctioned.¹¹ It covers COIs in areas such as receiving gifts, direct involvement in business activities, abuse of power, and representation of interests before the government. The proposed bill, however, falls short in addressing other COI concerns. It does not include any language about post-employment restrictions, blind trusts, recusals, limitations on ownership of media outlets, and many other aspects of COI prevention prescribed by international standards.

B. Lack of Transparency and Access to Information

Lack of transparency stems from a culture of secrecy. It permeates the society and is deeply rooted in the bureaucracy. The right of citizens to know what occurs in the government and the principle that elected officials and public servants must be accountable to citizens do not appear to be basic tenets of governance in Mongolia, at least not in practice. Archaic secrecy laws still inhibit and curtail implementation of laws that guarantee freedom of speech, press, and association. Authorities remain fearful of information and, thus, reticent to comply with citizens, media, or civil society organizations' requests for information. The presence of secrecy laws helps protect this status quo and should be a target for reform.

Lack of information makes monitoring and holding government accountable difficult. There is no easy access to government documents. Simple records, such as parliamentary debates, are treated as "secret," and obtaining them becomes a complicated operation. Women for Social Progress, for example, can only access documents of Parliament for its public library through international organizations. Similarly, copies of the budget are usually more accessible to international donors than to local journalists. The case is not that documents are not printed, as happens in other countries; institutions are simply not in the habit of providing information to the public or journalists.

¹¹ An Anti-Corruption Law adopted in 1996 calls for asset/income declarations; however, by most accounts, provisions of that law make asset/income declaration a "voluntary" action and not a firm requirement.

The lack of access to information and laws on secrecy also restrict the role of the media. Passage and implementation of the “Law on Freedom of Information” (currently pending in Parliament) and elimination of secrecy laws could encourage more investigative media coverage. Laws that criminalize libel can and have been used to intimidate journalists, while there is no credible sector association that defends and protects journalists’ rights.

Despite having a large number of media outlets for the size of its population, word of mouth appears more effective than media coverage to learn “what really is going on” in Mongolia. Only one television channel and one newspaper maintain independence from government views. Many are owned by politically-connected individuals and, thus, are not trusted as unbiased news sources. The slowness or refusal of governing elites to understand and respect the role of the media in a democracy has hindered the development of a dynamic information sector in Mongolia. As a result, media outlets and journalists lack objectivity. They often align themselves with or are pressured by political and business interests and may fall prey to corruption themselves. After decades of state-controlled media, the country’s 22 journalism schools struggle to instill new values among their students.

C. Politicization of Government Administration

Political interests interfere in the effective implementation and application of public sector laws and regulations. As a result, government institutions are highly politicized, lack professional and technical personnel, and often deprive citizens of their legitimate rights and opportunities. The civil service in Mongolia is probably the first and most direct victim of the politicization. The system was reformed during the years of transition, yet political interests continue to influence the hiring process. Several legal provisions govern personnel management. Article 46 of the 1992 Mongolian Constitution and the “Law on Government Service” adopted in 1993 establish the basic tenets of a civil service system, including such provisions as merit-based hiring and promotion, pay for performance, and position classification and grading.

In practice, however, hiring and promotion is based on a “spoils system.” Only two positions in each ministry are to be filled by political appointees; yet, unofficial estimates maintain that as many as 60 percent of all government staff, including civil service employees, were terminated and replaced after the parliamentary elections of 1996 and 2000, when the party in power changed. Turnover after the 2004 Parliamentary election, when the same party remained in control, is estimated at between 30 to 40 percent of the staff. Personnel are often blatantly fired without consideration for civil service hiring and removal practices. They are then replaced by staff chosen on the basis of political patronage, including those who worked or contributed to the campaigns, regardless of whether or not they possess the capabilities or skills required by the jobs to which they are assigned.

The illegal turnover results in an unprofessional bureaucracy whose loyalty responds not to the needs of the institution or the citizens but to the political and economic interests that provided the job. These interests often are inconsistent with logical and sound policy and administrative goals. The bureaucracy is also used to provide jobs to members of Parliament who have lost an election.

The deficiency of the civil service system combined with lack of COI laws and regulations account for much of the corruption among government employees. Mongolians often justify such actions by pointing to the low salary offered paid to government officials. The argument is that

lack of a “living wage” causes otherwise honest public employees to engage in acts of illicit enrichment. In response, the GOM already has quadrupled wages from 1996 to 2004 to about US\$80 per month, a rate comparable to those in other transitional democracies. There is certainly room for improvement in salaries—a one-room apartment in Ulaanbaatar is said to rent for \$100 per month—but there is no guarantee that, in the presence of the aforementioned weaknesses of the system, salary increases would resolve the problem of administrative corruption.

In 2002 and 2003, new policy initiatives sought to strengthen ethical standards among civil servants. A code of ethics would guide the behavior of several levels of civil servants. Unfortunately, the code of ethics does not contain effective sanctions to discourage unethical behavior. Also, a new “Public Sector Management and Finance Law” establishes the Government Service Council, an independent oversight and coordination body that reports to the Parliament. The Council is responsible for implementing and monitoring policy, processes, and procedures related the civil service.

The impact that the Council is having on preventing a spoil system remains to be seen but there are some potential bright spots, even though many interviewees suggested that the Council is beholden to powerful political interests. The office has developed a fairly advanced system of posting job vacancies and filling them within 21 days based on merit. Similarly, the establishment of an Administrative Court is an encouraging sign. Civil servants can take complaints of unfair labor actions, such as wrongful termination on political grounds, to the Court.¹² Further amendments to the civil service legal framework are being contemplated in 2005. These most likely will increase the number of prohibited actions for civil servants and develop a new sanction process for ethical violations, including administrative penalties and dismissals.

D. Control and Enforcement Institutions

The creation and implementation of a legal framework to govern economic and political management issues has not been able to keep up with the speed and the magnitude of Mongolia’s growth. As a result, there are contradictions in the myriad of new laws, as well as legislation plagued by poor enforcement and implementation capacity. There also is an absence of basic codes of conduct, and oversight institutions are weak. Mongolians, however, have the opportunity, as the UNDP has noted, to develop “an understanding of the weakness in the governance/administrative systems and adopt the strategy around these in order to achieve improvements.”¹³

The table below summarizes the functions and weaknesses of the key internal control and enforcement institutions in the GOM. On the whole, these entities suffer from politicization and provide too much autonomy and discretionary powers to decision-makers, and thus, offer significant opportunities for corruption.

¹² In practice, when the court rules in favor of a dismissed civil servant, conditions for returning to the job might be highly unfavorable. There are cases in which the employee has returned to his or her old job, only to be told that they no longer have access to a desk or a computer.

¹³ UNDP (Mongolia), “Independent Anti-Corruption Agency Report,” (photocopy with no date).

Table 2: Summary of Government Control and Enforcement Institutions

Institution	Function/Jurisdiction	Weakness
National Audit Office (NAO)	NAO is an independent office tasked with conducting financial and performance audits of government entities and reporting findings to the SGH and/or the police and Prosecutor General. The Director of NAO is appointed by the SGH.	NAO is structurally independent and should respond only to the SGH. NAO transfers potentially criminal cases to police or prosecutor general, which can dismiss the case based on their perception of its merits. NAO is seeking new preliminary investigation rights by way of new legislative initiatives. The SGH has not demonstrated the ability to adequately follow-up on NAO's recommendations.
Central Bank	The Central Bank (a.k.a. MongolBank) is responsible for independently implementing national monetary policy, including oversight of commercial bank activities.	The Central Bank is arguably the most opaque government institution in Mongolia. Its independence from the President, Cabinet, and MPs is questionable at best. ¹⁴ The combination of lack of transparency and ineffectively regulating the activities of commercial banks has resulted in recent allegations of significant impropriety.
Government Service Council (GSC)	GSC is established as an independent body responsible for implementing and monitoring policies, processes, and procedures related to civil service management, including reforms. The Director is appointed by the SGH.	The GSC lacks practical independence and is beholden to powerful political interests within the SGH, Cabinet, and the Presidency. It has not demonstrated the political will or capability to put into practice the reforms that would de-politicize the bureaucracy, such as those commonly associated with a merit-based civil service system that exists in more developed democracies.
Parliamentary standing committees on Budget, State Structure, Agriculture and the Environment, and the Economy	According to the Law on Parliament, the standing committees are responsible for monitoring and overseeing implementation of regulations in the relevant sectors. Standing committees request to SGH to establish Ad-Hoc Special Working Groups to address specific issues, as necessary.	The standing committees have not demonstrated the will and ability to ensure implementation of laws relevant to government control and anti-corruption. They are largely ineffective in their oversight and monitoring role, lack practical independence, and do not possess adequate technical capacity, including staff with appropriate skill sets.
Prosecutor General (PG)	The President appoints the PG with the consent of SGH. The PG is in charge of all criminal investigations and decides whether to process or throw out cases presented by other entities and its own Special Investigative Unit. PG also is responsible for prison compliance with requirements.	PG is independent from the Justice Ministry but has shown little will or ability to prosecute corruption cases. Its Special Investigative Unit only has jurisdiction over cases involving the police, prosecutors, and judges, while the police investigate violations in the administration, including corruption cases. Most cases investigated are thrown out by the PG or settled out of court, due both to political manipulation and lack of proper investigative and evidence-gathering skills.
State Property Committee	SPC assures that 70 stated-owned entities comply with the law and regulations. It appoints the senior	The Committee has experienced a series of alleged cases of mismanagement and corruption. In October 2004, the director was sacked and

¹⁴ As one representative of an international donor organization put it: "the Government manages the Central Bank like a state-owned enterprise, not as an independent financial policy institution."

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	management at each company and establishes criteria for sale of these state properties. It is currently analyzing social sector privatization. The Director is nominated by the Prime Minister and appointed by the SGH.	replaced with the current director, who has served in the past. According to the new director, it is the most transparent government agency, although it also is the most criticized because of its role in the privatization process.
State Professional Inspection Agency (SPIA)	SPIA is a ministry-level agency tasked with ensuring that policies, procedures, norms, and standards of quality and measurement required by laws and regulation are followed and observed in government agencies dealing with the environment, infrastructure, agriculture, service industries, health, education, science, finance, insurance, social security, labor, and border points.	SPIA is modeled after a similar body that exists in China. Formed by legislation in 2002 to ensure independence in inspection processes, SPIA brings together the former inspection agencies of nine ministries. The consolidation power and lack of any discernable oversight makes it prone to petty corruption, particularly at the local and district levels. SPIA receives support from the Government of China and will jointly operate a scientific laboratory with it in the near future.
Ministry of Finance (MoF)	The Treasury Department within the MoF is responsible for overall financial management and budgeting of government monies, as it holds all government agencies' accounts, allocates a budget according to each agency's needs, and transfers money to an agency account by item-by-item.	With multilateral development bank support, the MoF recently has implemented a new government-wide financial management system. Since the system has only been in place for a few months, it is too early to assess its effectiveness. However, many interviewees from donor organizations were hopeful that the system is a "step in the right direction" for controlling corruption. A major initial criticism of the new system, according to some interviewees, is that the system it may be "too stringent," in that it has created a system that effectively prevents leakage of government funds, but allows little room for input at the local level or any discretion to meet changing government needs.

E. Electoral and Political Processes

With very few exceptions, politics in Mongolia is a domain for seeking economic advantage and accumulating wealth. For the most part, political parties are increasingly similar to one another in terms of platform or program, a hallmark of personalistic political systems, where distribution of state resources is the main basis for political loyalty. This patronage system typically reinforces patterns of party dominance. In Mongolia, despite alternation in power between the political parties since 1996, the dominant party is the Mongolian People's Revolutionary Party (MPRP). This seeming paradox is actually easily explainable by the party's superior organizational structure and power inherited from the period of Communist rule. Even under the current power sharing arrangement, it is clear that the MPRP's greater presence at the local level and more significant experience with organizing campaigns allowed it to make dramatically more effective use of state resources in the recent presidential campaign.¹⁵

¹⁵ During the campaign, Women for Social Progress, a local NGO, monitored usage of state resources for political campaigns in a number of jurisdictions across the country. Of the documented events, the vast majority were by the MPRP.

Corruption is manifested in the political system in several ways. Elected and appointed officials benefit from their positions both by making decisions that directly advantage their own economic interests and by taking gifts (including, but by no means restricted to, cash payments) from others seeking advantageous treatment by government. Donations to political parties in expectation of specific favors are also common. In a more indirect way, players in the political game benefit from corruption insofar as political allocation of jobs and other state resources (see the discussion of politicization of the civil service) strengthens the hand of the party or individual politician that controls those resources. Furthermore, usage of state resources for political campaigns constitutes a misuse of public authority for the benefit of individual or group interests (corruption) that has the added negative impact of consolidating single-party domination.

These practices all thrive in the conditions of opacity that prevail throughout the Mongolian political and economic systems. Disclosure of assets and economic interests of public officials would shed light on the COI inherent in many politicians' decision-making roles and illuminate the differences between declared wealth and income, on the one hand, and the high standard of living that results from graft. Limits on and disclosure of campaign contributions would also help break the link between money and politics, if they are implemented and there is effective oversight.¹⁶

The domination of a single party (and its counterpart, the weakness of opposition parties) in Mongolia, along with a Parliamentary political structure that gives significant executive power to the dominant party in the legislature, constitutes a major roadblock to reform of the conditions that foster corruption. The "winner-takes-all" nature of politics makes the current system an attractive target for criticism by those on the outside, but a dearly-held prize for those on the inside. Legislation on ethics for MPs and government officials has been introduced in the State Great Hural for the past three years, but it has never received more than a first reading before dying from lack of attention.¹⁷ Electoral reform to introduce a mixed majority and proportional representation system has been proposed to moderate the extreme outcomes of previous elections, in which a mere 51% of the vote (and a small amount of money, politicians point out) can result in near-total control of the Parliament. Such changes may help create greater diversity of interests within Parliament, and therefore some possibility of strengthening parliament's role vis-à-vis government. But the power of the dominant party is rooted in its organizational structure and political experience; changing the electoral law will only affect this power on the margins.

The missing link in the effort for reform of political processes and thus of the entire structure of governance is incentive for reform. As a close observer of legislative and party politics told the team, young opposition MPs want procedural reforms to open up political processes, but they want it so they can have their turn to take advantage of their position to accumulate wealth. So, reform will only go so far, if anywhere at all, without a major change in incentives, and this will only come from an informed and activated public. Again, transparency and effective participation will be key to change.

¹⁶ MP Oyun told the team that party finance legislation is being drafted which would cap political contributions and require disclosure of campaign finance sources and expenditures, but that legislation has not yet been introduced into the Parliament.

¹⁷ The team was told that the provisions governing ethics standards for MPs have been generally accepted, but that the sticking point each time has been the provisions regarding government officials.

F. Political Will

The current state of corruption in Mongolia demands clear and decisive political will to minimize the growing risks of corruption entrenchment, but it seems to be missing at the highest level of government. There are pockets of political will among the leadership, but there are also powerful interests trying to obstruct reform initiatives.

Political will is defined as the commitment of actors to undertake actions to achieve a set of objectives—in this case, anti-corruption policies and programs—and to sustain the cost of those actions over time.¹⁸ David Brinkerhoff establishes five key indicators to identify if and where political will is present. These include: 1) locus of initiative for anti-corruption efforts; 2) degree of analytical rigor to understanding the context and causes of corruption; 3) mobilization of constituencies of stakeholders in support of anti-corruption reforms; application of credible sanctions in support of anti-corruption reform objectives; and 5) continuity of effort in pursuing reform initiatives.¹⁹ Based on these, it is safe to say that the GOM's political will to fight corruption is relatively weak.

The locus of initiative to fight corruption in Mongolia seems to have come from leaders within the Democratic Party when it held the majority between 1996 and 2000. There are allegations that the anti-corruption campaign of Sanjaasurengiin Zorig, probably the most prominent democratic leader in Mongolia, may have been the motive for his assassination in 1998, signaling that fighting corruption is a risky business. High-ranking elected or appointed officials have not led a crusade against corruption, although some leaders may temporarily assume the issue apparently for electoral purposes and/or to please the international community. For instance, the MPRP governments have not conducted an in-depth analysis of the causes and effect of corruption, another indicator of political will. Instead, accusations of corruption are often based on rumors used to politically undermine the opposition.

The Parliament showed political will in 2002 when it approved the National Program for Combating Corruption and the formation of the National Council for coordinating and monitoring its implementation. Yet, it has not implemented or passed legislation that could help prevent corruption. Moreover, both Parliament and the Executive show weak willingness or little ability to consistently support anti-corruption initiatives. For example, debate about passing laws related to freedom of information, an independent anti-corruption body, and asset disclosure have been ongoing for years without actually being passed. Nor is there openness on the part of the governing institutions to identify incentives and apply sanctions, both positive and negative, in the context of the anti-corruption strategy. Finally, there is no indication yet of a formal effort to commit resources and support to anti-corruption activities on a continuous basis.

Political will often is found on the margins. The Parliamentary Anti-Corruption Working Group, for example, has attempted to overcome the lack of political will among Parliamentarians and has brought together several concerned MPs that want to achieve a set of objectives in fighting corruption. They have analyzed the implications of the UNCAC on Mongolia's legislation and proposed some changes. Yet, they are a minority in Parliament, where the majority is interested

¹⁸ Derick W. Brinkerhoff, with assistance from Nicolas F. Kulibaba, "Identifying and Assessing Political Will for Anti-Corruption Efforts, Working Paper No. 13, January 1999 (A publication of USAID's Implementing Policy Change Project), p. 2.

¹⁹ See Brinkerhoff, *op. cit.* p. 3.

in maintaining the status quo. In fact, even the UNCAC remains unratified by the Mongolian Parliament.

There is political will among civil society organizations that are active and committed to bringing about change. They denounce government excesses and called attention to the probable misuse of foreign aid and the lack of transparency in the privatization processes that occurred in the early stages of the transition. Several organizations have presented alternatives and drafted amendments to existing legislation that curtails anti-corruption efforts. The initiatives coming from civil society provide Parliament with the opportunity to show its own political will by being receptive and working with civil society. At times, however, both Parliament and the Executive attempt to discredit them.

It seems safe to conclude that political will in Mongolia is currently weak and dispersed. There is no clear and consistent indication at the highest levels of a desire and commitment to implement the reforms that would contribute to preventing corruption and to prosecute and sanction acts of corruption. Few strong and stable islands of anti-corruption support are visible in the horizon.

G. Limited Public Participation

In 1989-1990, pressure from citizens catalyzed the winds of change coming from the Soviet Union and forced the Communists to join the reformist movements that were prevalent at the time. The impressive drive for democracy generated a breed of democratic leaders. Fifteen years later, Mongolian civic activism seems to have lost its zest.

There are several possible explanations for this decreased activism. Some citizens are disheartened by the poor performance of institutions and political parties. Others abide by a longstanding tradition of not questioning authority. Also, some leaders of the movement towards democracy are relatively content with achievements to date and remain on the margins, while others have been lost to activism by joining national politics or international organizations. Still, citizens have created approximately 4,000 civil society organizations although not more than 300 are active and less than 50 are influential. Yet, some have spearheaded important anti-corruption initiatives.

Civil society is in the process of professionalization and not yet capable of demanding transparency and accountability from the public sector in a sustainable way. Organized citizenship is a relatively new phenomenon in Mongolia and still lacks funds, skills, strength, and focus for the task. Most civil society organizations, with few exceptions, are engaged in implementing specific projects for which intermittent international funding is available rather than pushing on their own for greater long-term citizen participation in a sustainable way. Despite these shortcomings, government-conducted surveys on perception of the role of civil society show that a healthy 54 percent of the population believes that civil society has a very big role in the fight against corruption.²⁰ Some key civil society organizations are already committed to fighting corruption, but need further support from the international community.

Despite these positive developments, the fact remains that citizen participation and ability to hold leaders accountable is one of the most critical missing links in the environment for fighting

²⁰ UNDP, "Comparison of 1999 and 2002 Mongolian Public Perception Anti-Corruption Surveys."

corruption in Mongolia. The lack of information and transparency, combined with a relatively weak civil society, results in a near-absence of citizen participation in policy debates and monitoring of government performance. “Policy debate is the domain of donors and government,” a donor representative told the team. And, as another interviewee put it, “leaders have no fear of the public here.” Mongolian citizens need access to information that would give them a more complete picture of whether their leaders are governing well. Opportunities for participation also need to be made non-discriminatory, rather than current practices that result in much less engagement of women in political processes.²¹ These are critical missing links in Mongolian governance that must be forged if consolidation of a corrupt elite is to be avoided and leaders made more accountable.

H. Social and Cultural Factors

The marks left on Mongolian society by almost seven decades of Communist dictatorship cannot be erased by fifteen years of transition towards democracy, much like the totalitarian regime could not eliminate the inherent characteristics of the society, despite efforts to do so. Corruption is a complex phenomenon that goes beyond criminal, political and economic matters, and the sociological aspects influencing it must also be analyzed.

Mongolians emerged practically yesterday from a system that curtailed every freedom and demanded undivided alliance to its political, economic, and social tenets. They have proven to be fast learners, transitioning from an extreme all-encompassing regime into freedom, democracy, and market economics. Rapid changes also bring numerous challenges. Concepts such as COI, the right to know, freedom from political pressure, impartiality of the courts, and the right to demand accountability from elected officials are not yet fully understood by citizens or even by elected and appointed officials and civil servants. For citizens with limited experience living in democratic free market context, emerging freedoms gained, new businesses, the opportunity to own property, the possibility of improving living standards by using power positions in a fast process of privatization, and massive entrance of financial aid, among other factors, offer immense financial opportunities to those who are willing and able to exploit loopholes.

Mongolia also possesses a unique set of centuries old traditions that must be taken into consideration when analyzing corruption. Tight familial ties and close-knit communities within a small nomadic population, and a tradition of “gift-giving,” often blur the lines between malicious graft and benevolent custom. At the heart of tradition is the notion of *ariin khaalga*. Translated as “back door,” *ariin khaalga* is an unwritten system of long-term barter, favors, relationships, and IOUs that have governed commerce for centuries, in which money may or may not exchange hands.

Ariin khaalga allowed Mongolians to get by under Communist rule. It remains an efficient way to get things done in government-to-business and government-to-citizen interaction in Mongolia. Rather than wade through the complex maze of Communist-era regulations and potential bureaucratic entanglements in order to apply for public employment, obtain a license or permit, pay taxes, or engage in a variety of related transactions, many Mongolians simply look for a friend, family member, or *tanidag hun*²² to circumnavigate the formal system of rules.²³

²¹ In the June 2005 party Congress, the MPRP resolved to provide women a 25 percent share on the election list.

²² Literally: “an acquaintance.” Informally: “the person that can get you through the back door.”

In reality, back door solutions generate favoritism, cronyism, and nepotism. They are not limited to instances of so-called “petty” corruption. The system of *ariin khaalga* also applies to actions undertaken by political and administrative elites at the highest levels and impacts such major government functions as hiring processes for management positions, procurement, electoral processes, licenses and permits for lucrative mining operations or other industries, and the like. Many of these decisions are made along networks of families, friends, and associates.

Like the *zud*, *ariin khaalga* is, to a certain extent, an inescapable fact of Mongolian life that survived Soviet domination and may very well outlast democracy. Yet, if Mongolia is to accept modernity, industrialize, attract foreign investment, and integrate itself into the global economy, it must develop efficient public administration systems and justice sector institutions that can provide services in transparent ways without resorting to the back door. Reaching that goal should be a major focus of the GOM and the international community for years to come.

IV. FORMS/LOCI OF CORRUPTION

The assessment team found corruption present in practically every public entity but particularly evident in several key areas and sectors, referred to in this report as “loci.” Regardless of where and how corruption specifically manifests itself, there are two main underlying causes. One is the drastic blurring of lines between political and economic spheres, resulting in profound COI in many parts of the government. The other is the generalized lack of transparency and access to clear and understandable information in government operations. These two conditions manifest themselves in the areas described below. While Section VI of the assessment report provides recommendations to address the aforementioned underlying causes at a “macro” level, Section IV discusses some potential interventions that USAID or other donors could undertake to address these specific forms of corruption at a more practical level. In both sections, the assessment team has customized the recommendations to the specific strengths and weaknesses of USAID, as a bilateral donor, by paying close attention to issues like scarce resources, economies of scale, core competencies, the focus of current ongoing programs, the momentum gained by them, and the role of other donors, including multilateral development banks.

A. Citizen- and Business-to-Government Transactions

Practically any financial or regulatory transaction that requires a citizen or a business to interact with a government official is prone to petty corruption. The situation is such that several prominent government officials propose drastically reducing the instances of contacts between government officials and anyone else requiring a service. Several processes are particularly plagued by corruption, including taxation, permitting, licensing, and inspection processes. It occurs at the national, provincial, and even more so at the local level, where extortionary tactics and abuse of power are a daily routine.

Interviewees reported that the breadth and scope of the problem is diverse. Illicit payments to government officials range from a few thousand Togrogs (about US\$3) to avoid a citation to as much as a million Togrogs (about US\$830) to obtain a coveted and hard-to-get “company certificate.” Bribes are not only paid in cash but in favors to family, friends, and acquaintances.

²³ From a comparative perspective, Mongolia is not the only country in which familial ties and circles of friendship often trump the state rules. Examples include: notions of the “Big Man” in West Africa or *Teip* culture in Chechnya and the Caucasus.

Those with the right friends or political and family ties are more often compensated without reaching into their wallets.

Generally, there are two reasons provided to explain the flagrant violation of the letter and spirit of the law. First, there is a cultural one: a number of Mongolians told the team that many of their fellow citizens are generally not inclined to take actions that would result in public embarrassment to another individual, such as denouncing the inspector who comes every day to find one more violation in order to extract a small bribe. Second, corruption in these types of transactions often goes unchecked because many Mongolians do not report them, believing that enforcement bodies and the judicial system will not effectively apply sanctions for malfeasance. In this sense, this impunity has dis-empowered citizens and created an atmosphere of “why bother?”

Specifically, these patterns of corruption are made possible by several specific factors, such as:

- The combination of personal (often face-to-face) interaction and administrative discretion make it especially easy for officials to accept bribes or “cash in” on political favors in return for altering or eliminating formal enforcement actions or “speeding” up traditionally slow processes related to taxation, permitting, licensing, and inspection.
- Government officials engage in rent-seeking behavior by capitalizing on a seemingly endless maze of often arcane rules that are not understood by the majority of the populace, especially small-to-medium size enterprises and herders, and rarely posted or made available publicly. For instance, some businesses claim having to meet with more than twenty-six different officials in order to obtain the proper paperwork to establish and operate a single business.
- High official taxation rates and costs for permits and licenses make informal methods a cheaper and, therefore, more effective option for citizens and businesses alike.
- Ineffective oversight by supervisors or control institutions exacerbates the problem.
- An ombudsman-type institution does not exist at any level of government in Mongolia in order address allegations and complaints of corruption that occur during these transactions. Citizens and businesses feel they have “nobody to turn to” when they encounter rent-seeking practices. In fact, they are right.

The assessment team found that many college graduates go to great lengths to obtain a job as an inspector or tax official because the potential for accepting bribes may offer a higher standard of living than a job with no opportunity to benefit from corruption. Paying money upfront to higher-level officials to obtain such positions in a sort of “initial occupational investment” appears to be a growing trend.

Summary and Recommendations: While it is impossible to entirely eliminate the type of corruption just described, there are ways to limit the environment that enables it to exist. Many of these changes will come about slowly as Mongolia undergoes a process of democratic and economic development. It would also require strict enforcement of civil service provisions for hiring according to merit in order to have a more professional public administration, as well as adequate compensation. On the other hand, it also requires a more educated citizenry that refuses to engage in such activities.

Still, donors have an opportunity to address the issue. A potentially fruitful and affordable intervention is to utilize a bureaucratic simplification diagnostic (BSD) methodology to evaluate

regulatory conditions that are conducive to corruption and, on the basis of findings, design regulatory simplification procedures to reduce opportunities for both soliciting and offering bribes (e.g., elimination of rules that officials can “hide behind” to get bribes). The experience of the assessment team in other counties suggest that after a BSD is conducted, then the next step is to advocate for and implement the legal and policy changes required to simplify regulations whenever this proves feasible, or eliminate them altogether if it is determined that the regulations in question do not serve any useful purpose.

Corruption in citizen- and business-to-government transactions also can be reduced by simply informing the public and businesses about how actual bureaucratic requirements ought to be handled (e.g., by posting at points of service clear instructions regarding what to expect, how long it should take, and how much to pay for a service, if payment is required) and by informing consumers where to report violations (this approach requires, of course, swift and certain enforcement mechanisms to be developed in conjunction), if they occur. In fact, USAID-supported programs in Mongolia (e.g., the Ger Initiative) already have begun to implement similar initiatives. The assessment team suggests allocation of increased resources to such efforts and technical assistance in the form of international experts with an understanding of successful application in developing countries.

B. Procurement and Privatization

Procurement and privatization processes in Mongolia traditionally have been opaque and understood by only a select few, characterized by inconsistent application of standardized rules and procedures, and tainted by internal and external political pressures coming from elites at the highest levels of government and political parties. Direct bribery and kickbacks, although still fairly common, appeared to be less of a concern to most individuals interviewed by the assessment team.

Initial privatization efforts in Mongolia were plagued by what international experts would view as grand corruption, resulting in borderline oligarchy in some sectors. Sources within the SGH indicate that of the 400 or so state-owned enterprises that have been privatized thus far, approximately 70 percent of the shares ended up in the hands of only 1500 individuals, even though the GOM utilized a voucher system that was expected to produce a wider distribution of assets. This resulted largely from two inter-related factors: (1) limited understanding within businesses and citizenry about the processes that were to be followed and how to become involved in them and (2) the fact that government officials and political elites had access to “inside information” that put them in financially advantageous positions.

A new Procurement Law was passed in 2000, but much of it remains unimplemented and filled with ambiguities and jurisdictional overlaps. Officials in many ministries and businesses themselves lack knowledge of appropriate procedures, suggesting that further education and training are needed. The result of these shortcomings is a system with high potential for corruption, including in donor projects.

Summary and Recommendations: While both procurement and privatization have presented plenty of opportunity for elite-level corruption, the assessment team does not believe that USAID should drastically change its approach to addressing either at this time, for the reasons described below.

Efforts by the international community, USAID in particular, have helped to improve privatization efforts in recent years, including averting deals with potentially negative financial impacts to the government and several so-called “midnight privatizations” that would have been carried out in the dark and, instead, were executed in the open with more favorable pecuniary results. For example, through leadership provided to two recent privatizations (Trade and Development Bank and Agricultural Bank) USAID helped to add more than \$20 million to the GOM treasury and served as an important voice for transparency in the process. Further, economists estimate that as much as 75% of industry in Mongolia already is controlled by the private sector; therefore, in the future, privatization will, by definition, provide less opportunity for corruption. Because of the sheer size and scope, multilateral development banks (e.g., ADB or World Bank) may be better positioned to assume the leadership role in upcoming privatization efforts (e.g., those in telecommunications and MIAT Mongolian Airline). As it has in the past, USAID can and should be involved when windows of opportunity present themselves to reduce opportunities for corruption in privatizations through the provision of periodic hands-on technical assistance.

USAID is not particularly well-positioned to provide comprehensive technical assistance support to procurement reform activities. Multilateral development banks (e.g., World Bank and ADB) already are implementing several technical assistance and training programs to address procurement shortcomings. In addition, they are actively conducting investigations of alleged malfeasance with an eye toward making the results public and then, diplomatically engaging the GOM to prosecute such cases. USAID and the USG should coordinate those efforts to ensure that consistent messages are being sent from the international community.

C. Customs

As in many countries, those interviewed indicated that the customs sector in Mongolia is plagued by administrative corruption in many of the same ways and for the same reasons as the other types of transactions between citizens or businesses and government described above. Paying bribes to avoid duties or speed up customs processes has practically been established as the way to conduct business. One importer told the team that, “without bribes it is impossible to procure goods from abroad.”

An investigation conducted recently supported by USAID found that bribery in the customs sector is so pervasive that an entire informal, but widely accepted, system of tariffs can exist at a given border point.²⁴ Traders and importer-exporters generally know the unofficial rates that they will pay to clear customs for a particular type of good even before they arrive at the border. On the other hand, some businessmen suggested to the team that it is quite possible to import goods without engaging in corruption, but also noted, however, that “honest people” will carry more administrative burden to conduct business legally and will experience slower “clearing” times.

The emergence of grand corruption in the customs sector is perhaps more troubling and detrimental for fair competition. Through multiple laws and administrative decisions, the GOM has established so-called “greenlighting.”²⁵ It consists of removing customs tariffs and duties for a select group of exempted businesses that import goods in certain sectors considered necessary

²⁴ USAID/Chemonics International, Economic Policy Reform and Competitiveness Project’s *Team Trip Report – Gashuun Suhait Border Point* (p. 1-5).

²⁵ As in the green-colored “nothing to declare” customs line that is found at most airports.

for the development of Mongolia's industry and infrastructure, such as heavy equipment and information technology equipment, including those required for the Millennium Road Project.

Several interviewees suggested that most businesses selected for exemptions under the greenlighting regime are allegedly close to high-ranking government officials. If this preferential treatment is confirmed, it would not only represent a serious COI, but also would present a significant disincentive to both foreign and domestic investors and businessmen that simply cannot compete under such conditions.

Summary and Recommendations: Customs is another area in which USAID and many bilateral donors lack the resources to address corruption in a comprehensive way. For that reason, remedying the customs sector is a task best left to multilateral development banks. USAID and USG, however, could take several smaller steps to address the problems described above. For example, they could use diplomatic means to encourage the GOM to address customs issues. On a pilot basis, USAID could support application of the BSD technique (described earlier) at border points particularly troublesome border points (e.g., Gashuun Suhat) and look toward replication elsewhere. USAID could probably have the greatest immediate impact using the least amount of resources by providing a grant to a civil society organization to monitor and draw attention to the greenlighting process, while at the same time advocating for necessary changes in the process. This is an emerging high-profile issue of great concern to many prominent Mongolians interviewed by the team, which perhaps could be prevented with immediate intervention.

D. Land Use

As in the customs sector, interviewees frequently reported that the allocation of land use licenses is a key venue for corruption at the grand and administrative levels, with the allocation of land in Ulaanbaatar and the immediate surrounding areas being the most problematic. Land management and tenure issues were discussed in detail in a separate report recently developed for USAID which foreshadowed the concerns heard during this assessment that land use rights were being allocated in a highly non-transparent manner.²⁶ Though there are few specific examples, the report points to a general trend of land licenses being provided to individuals with political connections at rates well below those established by the tight real estate market in the growing economy of Ulaanbaatar. The USAID report also cites lack of clarity about land licensing procedures as contributing to both minimal competition for land licenses and the opacity of the license allocation process. In addition, there appears to be no way for the public to learn what is paid for valuable land use licenses. This lack of transparency is a fundamental failure in public management that can only encourage the kind of "sweetheart" deals that are already suspected to be the norm.

Summary and Recommendations: As recommended by the USAID report, there is need for clearer statements of land licensing opportunities and procedures as well public education on these issues. The assessment team also emphasizes, however, that transparency in the valuation and allocation process, along with openness about the terms of payments for access to this public resource, is also essential, and no program of assistance in this area should go forward if these

²⁶ USAID/Associates in Rural Development, *Property Rights and Land Privatization: Issues for Success in Mongolia*. Report submitted to USAID/Mongolia. December 2004. See p. 12 on transparency issues, and the reference to "evidence...that land allocation... remains the domain of the privileged and more affluent of *aimag* and *soum* residents." (p. 11).

issues are not addressed. USAID lacks the resources to reform the entire land allocation process at a “nuts and bolts” level, but, as suggested in the report, USAID could assume a leadership role in organizing donors to push for a comprehensive property rights policy and legal framework, as it has in other countries facing situations similar to those found in Mongolia (e.g., Kazakhstan, Tajikistan, Moldova, etc.).

E. Mining

The assessment team finds that mining is an emerging area for corruption. Some international donors and civil society organizations interviewed suggested that the processes to provide rights for exploration and subsequent exclusive development have been corrupt in the past, despite the GOM’s fervent attempts to issue these on a “first come, first served” basis. Some interviewees suggested that foreign companies working in collaboration with Mongolian counterparts have bribed high-level officials in return for rights to certain highly sought after tracts of land. Further, they noted that political elites and those close to them have been given preferential treatment as part of these processes. Interviewees alleged that officials previously involved in government-sponsored mining efforts possessed “inside information” about the viability of certain areas that they capitalized on by seeking rights to those tracts before others had the opportunity to do so. There is a prevailing sense that mining rights end up in the hands of a particular set of well-connected individuals. Decisions are made and nobody knows why or how.

Government secrecy laws and limited access to information make these allegations very difficult to prove. This perception of corruption is enabled primarily by a mechanism in Mongolia’s Mineral Law that requires companies seeking exploration rights to obtain “comment” from the soum or aimag level, a provision that is open to diverse interpretation. While well intended, there is some evidence that this clause has allowed Governors and other local officials to stop or delay applications for explorations unless they are provided with their “fair cut” or only grant approval to those with political ties.

A number of those interviewed by the assessment team also have suggested that regulation of day-to-day operations of the mining industry is skewed by corruption, especially relative to environmental degradation and health and safety standards. Those mine operators that are properly registered and licensed are able to “skirt” the rules and avoid enforcement actions through bribery or political ties. In addition, so-called “ninja” or artisanal miners are believed to utilize the same tactics to avoid registration and licensing altogether and are often simply not regulated at all. Blatant violations of environmental laws in particular are evident in Mongolia’s mining regions, though it remains to be seen if this results from poor enforcement techniques and capability or outright corruption.

Whether these claims of corruption are true or not is becoming increasingly immaterial. Mongolia already has developed a “bad rap” in the world mining community, thus impacting economic growth in a sector that already accounts for 10 percent of GDP and nearly 60 percent of exports. For example, the Fraser Institute, an independent Canadian research organization, conducts an annual survey of mining and exploration companies to determine the extent to which public policy impacts investment decisions in the sector in countries with potential mineral wealth. The results are published in a “policy potential index” that measures the attractiveness of given geopolitical entities (nation-states, provinces, regions, etc.) from a mining investment

perspective, considering factors like political risk and stability of regulatory regimes, among others. Mongolia ranks among the bottom quartile of those included this report card.²⁷

Mongolia faces important decisions in the upcoming months about what specific provisions to include in “stability agreements” with mining companies to provide them with a stable regulatory environment over the long-term in order to reduce the risks associated with developing mining prospects. Many Mongolians interviewed view this as “corruption” in the sense that political leaders would be granting leniency to powerful economic interests through the Parliamentary process that could involve backhanded deals in the dark designed to benefit the interests of politicians. Others view the stability agreements as inherently necessary to development of a critical industry.

Summary and Recommendations: Whether the specific mining-related sub-issue is allocation, enforcement, or stability agreements, transparency of these processes and public input into and oversight of them remains the main issue in the sector. In addition to more overarching approaches discussed in Section VI of this paper, USAID may want to consider providing technical and financial support to non-governmental entities that could serve as an industry “watchdog” capable of beginning to open up the aforementioned processes.

F. Banking

As indicated in the public perception surveys referred to earlier and confirmed through the team’s interviews, banking is also viewed as a major venue for corruption. While it is difficult to put numbers or names to the problem, there is clearly a problem of transparency in the sector, and this is in many ways a more important observation than citations of specific examples. The lack of transparency leads to rampant speculation and uncertainty about the reliability of banking institutions, which leads to perceptions that corruption is rampant and to distrust of the system that undermines economic growth possibilities. Standards for bank management and supervision, despite good regulations on paper, are low. As a result, the banking system is burdened with bad loans and undercapitalized because they lack appropriate liquidity. Many banks are considered poor risks for informed investors and depositors.²⁸

The source of this fragility is at least in part the limited oversight and regulation exercised by the Central Bank, called MongolBank. The banking sector has expanded exponentially in recent years. Banks held about \$250 million assets in 2000; now that figure is about \$1.1 billion.²⁹ Despite what the IMF and other observers see as improved supervision capacity and performance at Mongol Bank over the past 18 months or so, this capacity has not kept pace with the massive expansion of the sector. In addition, there are indications that Mongol Bank is not immune to pressures to participate in non-transparent dealings itself.³⁰ Other examples of lack of

²⁷PriceWaterhouseCoopers’ *Mine: Enter the Dragon: Review of Global Trends in the Mining Industry in 2004*, (p. 32-33)

²⁸ One illustration of the fragility of the banking system is the fact that at least one Western-managed bank in the country will not use local banks as depositories for its excess liquidity, fearing that the lack of transparency and poor oversight that characterizes the sector will put its own funds at risk.

²⁹ Data provided by Khan Bank.

³⁰ The large payment to settle sovereign debt to Russia is the principle example of this lack of transparency at Mongol Bank, though at least in this case there is a record of actual funds being transferred for a specific and identified purpose (though it isn’t clear where the money went on the Russian side, raising questions about the legitimacy of the payees). There is also speculation that some of the lack of supervision and discipline in the

transparency include the fact that almost no banks publish their audit reports, or they only publish the uncritical parts of them.

The overall impact of this environment is rampant speculation and rumors about what else is being hidden from auditors, supervisors, and/or the public. The lack of transparency in the system encourages massive holding of wealth outside the formal banking sector (some suppose this amount to be as much as two to three times recorded GDP), which further reduces possibilities for productive investment and for effective management of monetary policy (interest rate changes affect such a small portion of the money in the country). The lack of a paper trail for a large portion of financial transactions also reduces the government's ability to tax effectively, provides a fertile environment for criminality and money laundering and, perhaps most importantly from the perspective of fighting corruption, leaves very few options for investigating corruption charges.

Regarding money laundering, the team inquired of many economic observers and participants, and the general impression is that the practice may be taking place, but the amounts are relatively small. The fragility of the banking system is sometimes cited as a reason for the low level of money laundering in Mongolia (i.e. there are far more secure places to deposit funds). The current proposed Anti-Money Laundering Law is viewed as flawed by international observers for at least two reasons: (1) the proposed \$25,000 floor on transactions to be reported is seen as too high to capture the low amounts anticipated to be involved and (2) the proposal to place the Financial Intelligence Unit in Mongol Bank would simply put another area of authority in an institution that is widely considered not to be independent of political authorities.

Summary and Recommendations: With the exception of support provided by donors like USAID on issues of bank privatization or regulatory reform, the IMF remains the primary and best-equipped international actor actively addressing the issue of transparency in the banking sector, among a host of other related matters, particularly because of its unique relationship with the Central Bank. The IMF currently is in the processes of evaluating and altering its overall programming in Mongolia, including support to and progress on transparency matters. After that analysis is completed, it may be helpful for the IMF and USG to coordinate a diplomatic policy agenda on issues related to transparency. In the meantime, the USG can and should seek to monitor the progress made on the anti-money laundering bill and provide technical assistance to improve the draft law, as feasible.

G. Justice and Legal Sector

The authoritarian past and strong traditions continue to haunt the Mongolian court system. Despite improvement in perceptions³¹, citizens continue to distrust the courts and for good reasons. The concepts of independence and impartiality have not settled into the court systems during the short transition period. Also, while prosecutors and judges have received training on

banking system is due to political pressures to avoid letting any bank fail, regardless of its solvency and management practices.

³¹ The percent of those surveyed that viewed corruption as a problem in the courts fell from 38.9% in 2001 to 17.7% in 2005. However in 2005, 93% of those surveyed thought that politically influential people received better treatment in the courts. 90% of those surveyed felt that rich people received better treatment. See Sant Maral/National Center for State Courts USAID-funded Mongolia Judicial Reform Project's *Public Perception of the Judicial System in Mongolia*, 2001,2003, and 2005.

the new legal system, many law professors are the same as those that taught during the totalitarian period. The new democratic spirit will take some time to be instilled in the graduates.

Many judges are of the generation that served under the previous regime. They are used to looking over their shoulder for guidance from political bosses and/or high-ranking officials. They are also subject to the “back door” tradition, when someone who knows someone else will contact the judge in search of preferential treatment. They are also influenced by economic factors. A judge’s perception of potential benefits or consequences for self, family, or friends may determine a ruling. Many interviewees suggested that low salary is often used as an excuse for judges to accept bribes, gifts, or other in-kind gratifications. Still other interviewees suggested that this type of corruption is worse at the aimag-level, where it is easier to reach the judge, who may be more vulnerable due to lack of experience and resources.

The level of political influence and corruption in the system, however, increases with the relevance of the Court. Political pressure is lower in the Primary Court, moderate in the Appeal Court, and practically inevitable at the Supreme Court. The President appoints all judges and former judges allege that corruption starts in the selection process. Secrecy of court decisions facilitates corruption in the courts since judges need not worry about disclosure of lack of evidence in reaching a decision.

Conviction for corruption in Mongolia is not common, thus providing a safe haven for impunity. The Special Investigative Unit reporting to the Prosecutor General investigates all crimes by justice sector officials. Of 20 bribery investigations³² between September 2002 and June 2005, only 4 resulted in convictions. Most of the rest were dismissed at the prosecutor’s request. Some interviewees suggested that no one has ever heard of cases of civil servant corruption convictions.

Summary and Recommendations: Implementing and enforcing the law is a difficult task in Mongolia. In the process of transforming the legal system, some laws were drafted and passed rapidly without serious consideration to contradictions among laws, implementation shortcomings, or loopholes. This is especially true of laws related to anti-corruption. While in general most laws are good, they might be difficult to understand or implement. As democracy settles in, a complete review of the legislation on an issue-by-issue basis is in order. USAID could lend support to such an effort with a particular focus on issues related to good governance principles.

Support from international donors in reforming the judicial system has been instrumental in the transition toward a system ruled by enforceable laws. Implementation and long-term capacity building remain the key challenges, though USAID and the World Bank continue to support ongoing efforts through their successful respective judicial reform projects. There is also limited awareness of the extent of the reforms in the judicial system that already have been put in place with support from USAID and other donors. For example, nearly all members of the legal profession interviewed by the team recommended improving access to court decisions to make them more transparent. However, great strides already have been made in that area and nearly all of those interviewed were unaware that computerized case information is available at each

³² The Mongolian Criminal Code does not have a category for corruption. Most Mongolians understand it to mean only bribery. Prosecutions for abuse of authority are often corruption cases but it is not necessary to prove receipt of the bribe to motivate the improper use of authority. Thus, the actual number of corrupt individuals convicted may be somewhat higher.

courthouse. Placement of this information on the Internet in the near future as planned will contribute to public awareness and transparency. Clearly, donors and the GOM need to get the word out.

H. The Political and Economic Elite

The most important locus of corruption in Mongolia is found among the political and economic elites. Personal, economic, and political interests are blatantly and openly intertwined in government, and politicians do not appear concerned about how these conflicting interests impact governance. A significant number of Members of Parliament (MPs) and the Cabinet seem to view the holding of decision-making positions as a mean to access state resources and power for personal gain. As a result, anti-corruption initiatives already approved, such as the National Program for Combating Corruption, are not implemented, and pending bills are acted upon and often not even discussed because they would infringe on enrichment opportunities.

Many interviewees suggested that opportunism appears to be an institutional frame of mind. The mentality of “getting what you can” while in office and “it’s now our turn” permeates political party leadership. Many of the same interviewees suggested that these notions and practices have crossed generational lines, affecting both old Communist leaders and the young technocrats educated abroad. Senior officials justify it as their chance to get rich during their turn in power, while lower level civil servants, judges, police officers, and governors blame the behavior on not earning a “living wage.”

Interviewees also suggested that opportunities for kickbacks seem to be even greater in the Executive Branch. While direct embezzlement of government monies does not appear to be common, cabinet members and their senior staff members manage parts of the budget and implement policies that lend themselves to favoritism, perks, and bribes.

There are virtually no effective mechanisms to prevent or punish grand corruption and abuse of power among the elites. A number of prime ministers who have been in office and numerous cabinet members have been singled out in the media on alleged use of government funds for private use. They have been associated with deals involving privatization, banking, mining and more. Several remain in office. Impunity is practically guaranteed in the absence of effective oversight institutions and as long as the courts and the media are not free from political and economic pressures. Demands for investigation and justice from the citizenship often are left unattended.

Summary and Recommendations: International donors are spearheading a number of initiatives to strengthen control and oversight mechanisms that would make institutions more transparent and accountable and address corruption at the highest levels, including those related to political parties and elections. Real public understanding on accountability needs to be reinforced. Diplomatic messages at the highest level, which seem to have made an impact before, would probably contribute in sensitizing the governing elites on the costs and risks of grand corruption on governance and development. Further large-scale efforts to address corruption at this level are discussed in Section VI.

V. ANTI-CORRUPTION INITIATIVES AND OBSTACLES

A. International Commitments

As a signatory to two international anti-corruption agreements, the GOM has obligated itself to meet the standards set forth in both documents. The GOM signed the Anti-Corruption Plan of the Asian Development Bank/Organization of Economic Cooperation and Development (ADB/OECD) in 2001 and the United Nations Convention Against Corruption (UNCAC) in 2005. To date, little progress has been made in complying with the ADB/OECD Plan and the ratification of the UNCAC is pending.

The ADB/OECD Action Plan promotes the “need for reform to develop effective and transparent systems for public service, to strengthen anti-bribery initiatives, to promote integrity in business operations, and to support citizens’ involvement.”³³ It specifies that the goal is to attack corruption both from the “supply side”— the sources of corrupt funds and the “demand side”— the recipients of these.³⁴

The UNCAC calls for numerous initiatives that require adapting Mongolian legislation to the Convention’s requirements, strengthening control mechanisms, and more. Immediately after signing UNCAC, Parliament organized a seminar to analyze the demands of the Convention and to study the experiences of independent anti-corruption bodies in several countries. UNCAC calls for the existence of a body or bodies with the necessary independence “to carry out its functions effectively and free from any undue influence.” The entity/entities shall prevent corruption by implementation and/or overseeing and coordinating the implementation of those policies. It shall also increase and disseminate knowledge about the prevention of corruption. Moreover, it establishes that the State shall provide material resources and specialized staff, as well as training to the staff, to carry out its functions.³⁵

The diplomatic community as well as civil society might serve the interest of the Mongolian people by reminding and assisting the GOM in complying with these two important agreements. The GOM will need technical assistance in complying with these obligations.

B. National Anti-Corruption Plan and National Anti-Corruption Council

At the national level, the GOM has an obligation to implement and comply with the National Program for Combating Corruption (NPCC), approved by Parliament in July 2002. On its third anniversary, the results are mixed. The National Council of the Parliament of Mongolia on Coordinating and Monitoring the Implementation Work of the NPCC, created by Parliament in the same resolution in which the Plan was approved, meets irregularly and has not been effective in implementing the Plan.

The National Program is technically inadequate for addressing Mongolia’s corruption problems. It calls for a two-phase implementation. The first phase ended on July 1, 2005 and focused mostly on awareness raising. International donors have supported the GOM in achieving some

³³ ADB/OECD, “Anti-Corruption Policies in Asia and the Pacific: Self-Assessment Report Mongolia,” (The Secretariat: Anti-Corruption Initiative for Asia and the Pacific), no date.

³⁴ ADB/OECD, *Anti-Corruption Action Plan for Asia and the Pacific* (Tokyo, Japan, 28-30 November, 2001).

³⁵ UN, *United Nations Convention Against Corruption* (copy), Article 6 on “Preventive anti-corruption body or bodies,” p. 5.

of the short-term goals of the first phase, particularly in the area of accelerating public administration reforms. Still, a 2004 survey indicated that 58.9 percent of the population considers the implementation of the law and the program not satisfactory.³⁶ Implementation of a legal and policy framework remains the greatest challenge for the GOM. A second phase of the Plan runs from 2006 to 2010.

The National Program has some serious shortcomings. It is not specific enough in dealing with corruption problems. In fact, the National Program has been superseded by the international agreements that the GOM has endorsed, particularly the UNCAC. The UNCAC provides for more concrete regulations on a number of issues, including assets declaration, reporting on corrupt acts and procurement. It also includes provisions for bribery of foreign officials, trading influence, abuse of public function and illicit enrichment that are not considered in the National Program. This means that the National Program should be revised to ensure that it incorporates the provisions of the UNCAC and the ADB/OECD Plan that Mongolia agreed to implement. It would also avoid the duplicity and confusion over implementation of different anti-corruption plans.

The National Council has been basically inoperative yet, it could have a role to play if entrusted with the responsibility of coordinating the reforms required in each ministry and state agencies to comply with the provisions of a revised National Program. On the other hand, the independent anti-corruption body suggested in the UNCAC and proposed in the pending Anti-Corruption Law in bill form should be the central authority to monitor Mongolia's compliance with the UNCAC. That way the National Council would look inward to guarantee that the public sector makes the needed reforms and the independent anti-corruption body would oversee the compliance of the reforms with international agreements. Both entities must have clear functions or run the risk of none of them functioning well.

C. Anti-Corruption Law and Independent Anti-Corruption Body

The *piece de resistance* of the draft Anti-Corruption Law is the formation of an independent anti-corruption body, modeled after the famed Hong Kong Anti-Corruption Commission that successfully rooted out corruption in several hard-to-reform institutions in the former colony. The law calls for the proposed independent anti-corruption body to embark on a three-pronged approach to fighting corruption: (1) implementing government-wide policies and procedures to prevent corruption, (2) investigating and prosecuting acts of corruption when they occur, and (3) engaging in activities to educate the citizenry and public officials.

The UN Convention Against Corruption calls for the establishment of an independent entity or entities. Also, in a 2002 survey showed that 77 percent of the Mongolians interviewed held the opinion that it is necessary to set up an independent agency to fight corruption.³⁷ On the other hand, the results of similar anti-corruption bodies in developing countries have been mixed, especially when other institutions of government remain weak. In fact, the UNDP warns "that weak systems of governance and consolidation of democracy may be hurt more by such an agency than helped."³⁸

³⁶ Speech by Mr. Munh-Orgil Tsend, Member of Parliament and Minister for Foreign Affairs of Mongolia, 3 May 2005.

³⁷ UNDP, "Independent Anti-Corruption Agency Report." (undated)

³⁸ Ibid.

One reason the draft Anti-Corruption law has not been passed is the disagreement over where to locate the independent anti-corruption entity. Some argue that it should be located within the Ministry of Justice and Home Affairs (MOJHA) or under the Prosecutor General. Others insist that neither location would guarantee its independence and thus, it should remain autonomous. Remaining autonomous and independent would be the appropriate option for such an entity.

The experience of other countries indicates that forming and operationalizing an independent anti-corruption body is difficult and labor intensive. First, independent anti-corruption bodies threaten powerful interests. As a result, after their formation, subsequent legislative and court initiatives often attempt to dilute the powers or “cut the legs out from underneath.” Second, forming entirely new entities of this nature requires significant technical capacity support from international donors, in order to get the institutions up and running. Third, the establishment of a new agency often draws attention and resources away from other basic governance functions that must be in place in order to effectively fight corruption, or indirectly allows other government agencies to abdicate their own responsibilities for fighting corruption. An independent anti-corruption body should have well-defined tasks that do not duplicate or distract from the responsibilities of other governance institutions. Its role should be that of overseeing and assuring the implementation of anti-corruption procedures, public education and outreach, and, perhaps, also investigating particularly “untouchable” cases of corruption. Regardless, the independent anti-corruption body can be viewed as a replacement for core governance and rule of law functions.

D. Civil Society

Strength in purpose and commitment rather than in numbers makes civil society a significant player in demanding transparency and accountability from government officials in Mongolia. There are approximately fifty civil society organizations that are pushing the issues. They are professionally staffed, generally do not serve political party interests and maintain regular contacts among themselves. Most are located in Ulaanbaatar but persistent efforts are on the way to establish and strengthen ties with regional and local organizations. Many of these organizations are involved in transparency, accountability, access to information issues, electoral and judicial reform, and other topics directly related to fighting corruption.

The team visited with a dozen prominent civil society organizations in Ulaanbaatar.³⁹ Most are engaged in projects that specifically address civil society capacity building, institutional development at the national and local level, drafting legislation that is more responsive to the needs of the Mongolian society, and demanding accountability from elected and appointed officials. The Open Society Forum, for example, has conducted a Public Expenditure Tracking survey in 110 schools that looks at how the education budget has been spent and how it relates to the quality of education. Globe International has coordinated the drafting of the Freedom of Information Law, which is now before Parliament. The Zorig Foundation drafted the new Anti-Corruption Bill and regularly works on anti-corruption campaigns. TI has assigned Mongolia the category of Chapter in Formation and several board members are involved in transparency issues.

³⁹ The Open Society Forum, DEMOS, the Zorig Foundation, the CEDAW (Convention on the Elimination of all Forms of Discrimination against Women) Watch, Globe International, the Women for Social Progress Movement, the Liberty Center, Amnesty International, the Ongi River Movement, the Healthy Society Movement, the Sant Maral Foundation and the NGO's Anti-Corruption Coalition (both Board Members of TI-Mongolia Chapter in Formation).

In the brief ten years since it emerged as an independent force in political life, Mongolian civil society has evolved from plain activism into a second phase of professionalism, seeking to use more efficient tools for improving the performance of Mongolian institutions. The organizations recognize that they are young and need to learn and develop more skills. They also need professional and technical resources in developing capacity for using the legal system and the courts more effectively and at a lower cost. For example, several organizations (and journalists) are trying to take the government to court, a civil society technique that is gradually replacing street demonstrations, but the cost for such initiatives is very high. Support in providing national and international lawyers this area could make a difference.

Spontaneous citizens activism and protests around specific issues still takes place. At least one organization, the Healthy Society, has used civil disobedience to protest government actions. Challenging authorities with street protest, the Healthy Society achieved a major victory when the government lifted the ban on citizens' demonstrations on Sukhbaatar Square, a prohibition that lingered from the repressive Communist era. The Healthy Society Movement represents an energetic group of young Mongolians that communicate through the Internet and that have shown to be able to muster support for key issues.⁴⁰

Civil society needs support in making citizens and government officials understand its legitimate role in governance. Elected and appointed officials have told civil society organizations that they have no role in the budget other than to pay their own taxes. Civil society organizations need assistance in making the society as a whole more aware of the issues, including definition of concepts such as COI, which are difficult to grasp by citizens. Better understanding of the issues may provide receptivity to the initiatives spearhead by civil society. Civil society also needs support in becoming more self-sustained and to decrease dependency on international funding.

Table 3: Sample of Civil Society Initiatives

Civil Society Organization	Major Activities	Objectives
CEDAW Watch	<ul style="list-style-type: none"> Organized International Civil Society Forum for Democracy, held in Mongolia in 2003 Serves as ICSFD Interim Secretariat Preparing a national report on the state of civil society in Mongolia, with the support of CIVICUS 	<ul style="list-style-type: none"> Monitor and evaluate Mongolian government complying with CEDAW obligations Promote more effective implementation of the Convention in Mongolia
DEMO (Democracy Education Center)	<ul style="list-style-type: none"> Proposal to allow citizens to allocate 1 percent of collected taxes to civil society organizations NGOs Capacity Building Program Democracy Education Program for teachers Bringing together young political leaders from all political parties to improve political skills. Activities carried out by volunteers 	<ul style="list-style-type: none"> Strengthen citizens participation Strengthen civil society Achieve funding sustainability for civil society organizations
Globe International	<ul style="list-style-type: none"> Right to know: Freedom of Information Media for Transparent Governance 	<ul style="list-style-type: none"> Sustain Mongolian democracy and civil society

⁴⁰ There are mixed reactions to the Healthy Society. While most other civil society organizations applaud their activities, there is also concern that it might have been used by the Democratic Coalition for partisan politics.

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	<ul style="list-style-type: none"> • Enhancing participation of the poorest 	<ul style="list-style-type: none"> • Spread the power of information and knowledge
The Healthy Society Movement	<ul style="list-style-type: none"> • Public demonstration against corruption in February, March and April 2005. • Sit in on 15 April 2005 	<ul style="list-style-type: none"> • Fight for a more fair and equal society • Raise people's awareness
The Liberty Center	<ul style="list-style-type: none"> • Training program on Administrative Court • Raising awareness on how to contest the government • Maintains law library 	<ul style="list-style-type: none"> • Provide free legal advise on human rights cases
The Onggi River Movement	<ul style="list-style-type: none"> • Radio Program since 2004 • 15 minute TV Program • Planning to take government to court on mining companies' failure to pay reparations • Meetings and press conferences 	<ul style="list-style-type: none"> • Defend flow of Onggi River to the Ulaan Lake and Khuren toiom • To raise awareness on environmental issues
NGOs Anti-Corruption Coalition	<ul style="list-style-type: none"> • Board Member of TI-Chapter in Formation • Conducting survey on anti-corruption issues • Mongolia's National Chamber of Commerce and Industry's 2000 Corruption in Business Sector Survey • Training CSOs on combating corruption 	<ul style="list-style-type: none"> • To monitor government operations
The Open Society Forum	<ul style="list-style-type: none"> • Budget Tracking, Ministry of Education • Campaign Finance Monitoring • Freedom of Information Law • Public consultation meetings on land reform & budget • Coordination CSOs Issues Meeting • Country Study on Corruption in Mongolia • TV Program 	<ul style="list-style-type: none"> • Support active engagement of citizens and civil society in civic life • Facilitate broad public access to policy relevant information resources • Encourage improved policy research and analyses
The San Maral Foundation	<ul style="list-style-type: none"> • Board Member of TI-Chapter in Formation 	<ul style="list-style-type: none"> • Main survey institution in the country
Women for Social Progress Movement	<ul style="list-style-type: none"> • Voter Education Center in all 21 Aimags • Campaign Finance Monitoring • Evaluates performance of MPs and government officials against election platforms and plans of action. • Produces radio and TV public education programs • Organizes training programs on civil education, income-generation, computer literacy, etc. • Activities carried out by volunteers 	<ul style="list-style-type: none"> • Achieving participatory democracy • Improve civic education • Improve status of women in government • Eliminate gender discrimination • Empower women
The Zorig Foundation	<ul style="list-style-type: none"> • Encourages the political and civic education of young people and their participation in democratic process • Conducts research in political science • Raises public awareness in transparency, anti-corruption and political ethics • Advocates for methods of mediating and peaceful resolution of political conflicts • Participates and contributes towards improvement of legislation on human rights 	<ul style="list-style-type: none"> • Spreading democratic values • Strengthening human rights, freedom and social justice • Respecting and promoting pluralism • Improving the system of transparency and accountability of state and government to the public

VI. RECOMMENDATIONS

A. Strategic considerations

Given the assessment team's analysis that COI and lack of transparency are the fundamental problems underlying the growth of corruption in Mongolia, the team has developed a number of recommendations to help USAID and the broader USG mission consider its options. In preparing these recommendations, a number of considerations were taken into account:

- Addressing corruption, particularly grand corruption, depends to an almost alarming degree on the willingness of political leaders to press for reforms. The “levers” that donors have to push in this case are relatively few. In Mongolia, some possible levers include the relative openness of GOM counterparts to donor suggestions and an interest in being part of the international community and attracting foreign investment. This openness, combined with the importance of leadership, represents an opportunity for the USG to engage Mongolian leaders on these issues, but also a challenge to do so in ways that offer concrete alternatives and conveys the risks and benefits of different approaches to dealing with corruption.
- In the current situation, incentives for either elites or lower-level public servants to avoid corrupt behaviors are relatively few—mainly depending on an individual's personal integrity balanced against a sense of need and possible benefits of corruption. Given this situation, a focus on changing laws and procedures alone is unlikely to be an effective approach, since incentives for implementing those changes are limited. Mongolia already has a long list of laws that have not been implemented. That said, certain legal reform steps, such as creating a legal right to public information and removing secrecy laws, may be valuable in their own right as the basis for claims for access.
- While investigation and prosecution can help restructure incentives for engaging in corrupt behaviors, international experience is that an enforcement-based approach to corruption is, over the long term, less effective and more expensive than approaches that focus on preventing corruption before it happens.
- Incentives for improving transparency and reducing elite self-dealing can only ultimately come from an informed civil society (the public, not just NGOs) that desires to hold leaders accountable to different standards of openness and transparency in how the country operates. This implies efforts to inform the public on the costs and risks posed by the current non-transparent system and give them access to alternatives to redress grievances.

B. Recommendations for donor/diplomatic dialogue

- Keep the corruption issue on the agenda, emphasizing the risks to Mongolia if current trends continue or worsen (e.g., increased public dissatisfaction, lower confidence in investment environment, and risks to future donor assistance, including MCA), but keep the focus on concrete issues that need to be addressed: transparency and COI.
- Emphasize that the international community is looking for implementation, not just passage of laws.
- Support passage of the anti-corruption law. When discussing the anti-corruption law, particularly the proposed independent anti-corruption body, highlight international lessons learned about their limited effectiveness in most developing countries (especially when they are not independent) and focus on options for narrowing its mandate (e.g., as a coordinating

body for Convention compliance) to achievable goals that do not take away needed resources or appropriate governance tasks from other government bodies. Emphasize the need to balance enforcement and prevention approaches. Public disclosure of assets and interests and more comprehensive COI elements should be emphasized.⁴¹

- Donor coordination: support the World Bank's efforts to promote implementation of civil service reforms and budget transparency. Reinforce messages coming from the Bank that, with the coming online of the financial management information system (FMIS), Mongolia has an opportunity to join other countries (such as Nigeria) that are taking major steps toward openness in government by using FMIS to make information about the use of public funds more broadly available.
- Translate portions of this assessment report for distribution to key government officials and civil society organizations.

C. Program recommendations

Overall:

- Put additional emphasis on public awareness of transparency and COI issues and assisting civil society to participate meaningfully in policy debates and/or practice oversight of government. Public information about the costs of COI and corruption on long-term democratic and economic development needs to reach beyond Ulaanbaatar. Past experience has shown the team that the most cost-effective means by which to accomplish this is through the implementation of media campaigns that rely heavily on leveraging the expertise and resources of local and national partners. There are a number of examples from recent USAID programs, such as "Transparency is Development" in Honduras or "Corruption Must Go" in Nigeria, among others, that could be used as models.
- Support (through civil society advocacy and/or provision of technical assistance) the establishment of an ombudsman-type office to provide Mongolians recourse to seek redress of corruption cases and then advocate through the courts or other means to change the laws and policies behind which individuals hide or use to engage in rent-seeking practices. If the proposed independent anti-corruption body indeed appears to be independent, this could be a useful role for that entity, or it could be located in civil society organization. In Albania and several other post-Communist countries, for example, similar USAID projects have established citizens' advocacy offices (CAO) to provide that type of legal assistance to people trying to avoid becoming involved in corruption and have been highly successful. At the same time, they also serve as a valuable tool that can raise awareness among businesses and the citizenry about demanding change and responsiveness from government.

COI:

Based on the need to address cultural attitudes and the importance of pending legislation and the impact it could have if passed, the assessment team proposes several possible interventions for USAID and other donors:

- Provision of financial and technical support to educate and raise awareness of the detrimental effects of COI among the citizenry and public officials, possibly using the media approaches briefly described above.
- Provide support to CSOs to advocate for passage of the Anti-Corruption Law with emphasis on keeping the parts of the draft legislation that deal with asset declaration intact.

⁴¹ Both the World Bank and U.S. Department of State have supported or commented on the draft legislation.

- Assuming the strengthening of the legal regime for asset declaration, provision of technical expert(s) who have “hands on” experience at implementing asset/income declaration regimes in developing or developed countries to examine and correct any potential emergent shortcomings in the proposed legislation as the process proceeds and provide further support in advocating for its passage through Parliamentary workshops, media events, and press conferences while the expert(s) are visiting Mongolia.
- Provide experts who have similar in-depth knowledge of COI regimes to work in collaboration with Mongolian civil society organizations to improve the COI provisions in the draft Anti-Corruption Law or draft and advocate for the passage of a separate COI law like those that have been passed in other developing countries. Again, also provide the support of technical experts during the implementation process.

Transparency:⁴²

- Support civil society and/or media organizations to advocate for increased freedom of information and removal of secrecy laws.
- Make transparency a theme of any assistance to government or civil society. Legislative and/or political party assistance should include specific objectives for promoting transparency in those institutions as well.
- Provide technical assistance and training to civil society organizations on how to request information from public officials.
- As needed, provide technical assistance to deal with the tremendous challenges of implementing freedom of information procedures and laws, particularly at non-central levels of government, following models developed in other USAID projects (e.g., Mexico). Provide technical assistance and training to public officials on how to respond to citizens and media request for information, focusing on how to establish an office and develop staff for such activities in each public entity.

Civil service:

Reducing the number of jobs given on political grounds will help reduce the winner-take-all nature of politics in Mongolia and improve conditions for stable public management.

Recognizing that USAID is not in a position to support government-wide civil service reform (and that other donors are working with the government on these issues), USAID may be able to assist in the effort in the following ways:

- Coordinate actively among donors to determine the smaller aspects of the GOM’s civil service strategy that could be supported, where adequate political will exists.
- Develop a civil society mechanism that can raise public awareness through the media and other means about the negative impacts of the spoils system and educate civil servants about their rights according to established laws on the topic.
- Use the MCC as a lever to diplomatically engage the GOM on addressing the issue of politicization of the bureaucracy.

Anti-Corruption Bill and Independent Anti-Corruption Body:

- Provide technical and financial support to civil society organizations to lobby Parliament to maintain the independence and autonomy of the proposed anti-corruption body as the legislative process proceeds;
- Develop a long-term assistance project that, in collaboration with other donors, could meet the capacity-building needs of the newly formed independent anti-corruption body, if the

⁴² Many of the COI recommendations above also have transparency implications.

legislation is passed, while still paying attention to the need to strengthen and build capacity of other relevant institutions;

- Provide advocacy support to ensure that the independent anti-corruption body is empowered to oversee the implementation of UNCAC as the “central authority” for Mongolia, as required by the convention. Provide capacity building assistance and coordination support to achieve that end.

ANNEX 1: LIST OF INTERVIEWS AND BRIEFINGS (in alphabetical order)

Ariuntuya
Director, Liberty Centre

Jugnee Armarsanaa
Member, Constitutional Court of Mongolia and
Director, National Legal Center, Mongolia Ministry of Justice and Home Affairs

Yadamjav Ayushjav
Head, Tax Audit Division, City of Ulaanbaatar and
Member Presidium, City Council, City of Ulaanbaatar

Bat-Erdin Baabar
Chairman, North-East Asia Association and
Former Minister of Finance of Mongolia

Tsolmon Bat-Ochir
Senior Operations Officer, The World Bank Mongolia

Ulziisaikhan Batsaikhan
Officer, State Property Committee of Mongolia

Luvsandorj Bayan-Altai
Program Director, Mercy Corps/Mongolia

Danykhuu Bayanbileg
Head of Legal Information Center, National Legal Center, Mongolia Ministry of Justice and
Home Affairs

Danzandorj Bayasgalan
President and CEO, Golomt Bank

Katia Bennett
Mongolia Desk Officer, U.S. Department of State Washington, D.C.

Fernando Bertoli
Chief of Party, USAID/Mongolia Economic Policy Reform and Competitiveness Project

Genevieve Braho
Local Governance Advisor, The World Bank Mongolia

Bayar Budragchaa
Board Member, Mongolian Alternatives Center

Horloo Bulgan
Political Officer Assistant, U.S. Embassy Ulaanbaatar

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Radnaa Burma
Executive Director, Women for Social Progress

Charles Caruso
Asia Law Initiative, American Bar Association/Bangkok, Thailand

Ch. Chimedsuren
Member, Healthy Society Movement

B. Chuluunbaatar,
Member, Health Society Movement

Bill Cole
Director, Rule of Law and Governance, The Asia Foundation/San Francisco

Layton Croft
Country Director, The Asia Foundation/Mongolia

Ganbold Dashdemberel
Legal Advisor, Liberty Centre

Dorjsuren
Chair, Public Administration Department, Mongolia Academy of Management

Calista Downey
Desk Officer, Mongolia and Philippines, USAID/Washington

Zandaakhuu Enkhbold
Chairman, State Property Committee of Mongolia

Kh. Enkhjargal
Director, National Center Against Violence

Jargalsaikhan Enkhsaikhan
Advisor, International Civil Society Forum for Democracy/Mongolia

Erdnenjargal
Executive Director, Open Society Forum/Mongolia

Verena Fritz
Research Fellow, Overseas Development Institute, United Kingdom/World Bank

Burentugs Galdaa
Head, Investigation Office, Prosecutor General of Mongolia

Ch. Hutagt Ganhuyag
Executive Director, XacBank

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Mark Gillette
Defense and Army Attache, U.S. Embassy Ulaanbaatar

Jeff Goodson
Senior Program Manager, USAID/Mongolia

Lamjav Gundalai
Member, State Great Hural of Mongolia

Margaret Herro,
Country Director, CHF International/Mongolia

Barry Hitchcock,
Country Director, Asian Development Bank Mongolia Resident Mission

Gund Dugar Jargalsaikhan
Vice Chairman, Mineral Resources and Petroleum Authority of Mongolia

Lkhamsuren Javzmaa
Auditor General of Mongolia, Mongolia National Audit Office

Jambyn Jargalsaikhan
Deputy Director, Department of Economic Policy, Mongolia Ministry of Finance

Patrick Keuleers
Policy Advisor for Public Administration Reform, United Nations Development Programme
Bangkok, Thailand

Kh. Khulan
Former Member, State Great Hural of Mongolia and
Consultant, United Nations Development Programme Mongolia

David Kim
Project Director, The Asia Foundation/San Francisco

Robert LaMont
Chief of Party, USAID/Mongolia Judicial Sector Reform Project

Robert Lopez
Program/Project Development Officer, USAID/Washington

Danzangiin Lundeejantsan
Vice Chairman, State Great Hural of Mongolia

O. Magnai
Coordinator, Health Society Movement

Horst Meinecke
Energy Advisor, USAID/Mongolia Economic Policy Reform and Competitiveness Project

H. Mendsaihan
Project Management Specialist, USAID/Mongolia

Madhuri Mukhtyar Messenger
Project Manager, Asia Law Initiative, American Bar Association/Washington

Saha Dhevan Meyanathan
Country Manager and Resident Representative, The World Bank Mongolia

Megan Myers
Economic and Commercial Officer, U.S. Embassy Ulaanbaatar

Bataa Mishigish
Officer-in-Charge, International Office, Mongolia Academy of Management

Shabih Mohib
Economist, Poverty Reduction and Economic Management, East Asia and the Pacific Region,
The World Bank Washington, D.C.

Ts. Munkhbayar
Head, Ongi River Movement NGO

Chultem Munkhtsetseg
Administrative Program Officer, The Asia Foundation/Mongolia

Myagmardash
Officer, Budget Policy Department, Mongolia Ministry of Finance

Norinpil Naranchuluun
Chief of Administration Division, Land Management Department, City of Ulaanbaatar

Sodovsuren Narangerel
National President, Amnesty International and
Director, Law School, National University of Mongolia

H. Naranjargal
President, Globe International

Stephen Ndegwa
Governance Specialist, Poverty Reduction and Economic Management Public Sector, The World
Bank Washington, D.C.

Chuluunbat Nergui
Executive Director, NGO's Anti-Corruption Coalition and
Head of Economic, Business Analysis, and Rating Center, Mongolian National Chamber of
Commerce and Industry

Sanjaasurengin Oyun
Member, State Great Hural of Mongolia and
Head, Zorig Foundation

Rex Patterson
Political Advisor, U.S. Embassy Ulaanbaatar

John Poepsel
Resident Program Director, International Republican Institute/Mongolia

Dawn Rehm
Country Director, International Monetary Fund/Mongolia

Mr. Reiner
President, MCS

Michael Richmond
Commercial Assistant, U.S. Embassy Ulaanbaatar

Tserenbaljidiin Samballhundev
Director, Government Service Council of Mongolia

Sanjragchaa
Officer, State Professional Inspection Agency of Mongolia

Professor Siezi
Criminal Law Professor, Law School of Mongolia

Pamela Slutz
Ambassador, U.S. Embassy Ulaanbaatar

L. Sumati
Executive Chairman, Transparency International/Mongolia (Chapter in Formation)
Director, Sant Maral Foundation

Tom Terry
General Director, Eagle Broadcasting Company

Alice Thomas
Program Manager, Asia Law Initiative, American Bar Association/Washington

David Timberman
Advisor, Democracy, Governance, and Conflict Programs, USAID/Washington

Mark Tokola
Deputy Chief of Mission, U.S. Embassy Ulaanbaatar

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Shadrav Tudev
Vice Rector, Mongolia Academy of Management

Manaljav Turbayar
Senior Officer, Legal Policy Department, Mongolia Ministry of Justice and Home Affairs

L. Tur-Od
Governance Practice Manager, United Nations Development Programme Mongolia

Ben Turnbull
Deputy CEO, Khan Bank

Tumursukh Undarya
Advisor, International Civil Society Forum for Democracy/Mongolia

Gombodorj Undral
Director, DEMO Democracy Education Center

Uyanga
Independent Journalist and
Former Director, Mongol Times

Leon Waskin
USAID Representative, USAID/Mongolia

J. Zaana
Director, CEDAW Watch

Steve Zimmerman,
Country Director, Mercy Corps/Mongolia
D. Zorigt
Director General, Policy Coordination and Strategic Planning Department, Mongolia Ministry of
Industry and Trade

M. Zorigt
Member, State Great Hural of Mongolia and Former Director, Bodi International

Dorjdamba Zumberellkham
Vice President, Police Academy of Mongolia and
Head of Sector for Criminological Research, National Legal Center, Mongolia Ministry of
Justice and Home Affairs