

FROM BIG BANG TO INCREMENTALISM: CHOICES AND CHALLENGES IN CONSTITUTION BUILDING

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Mongolia

Gunbileg Boldbaatar

What changes to the Constitution of Mongolia are currently under consideration?

Changes to the following provisions of the Constitution of Mongolia are currently under consideration:

State Ikh Khural (Parliament)

- The procedure of the election of members of the State Ikh Khural (§21.4).
- The dissolution of State Ikh Khural (§22.2).
- The prohibition on the State Ikh Khural creating a new source of credit (§25.1.7).
- The Control organization for supporting State Ikh Khural in exercising its power (§251.1, §251.2).
- The duration of regular sessions of State Ikh Khural (§27.2).
- The presence of a majority of members shall be required to consider a session of the State Ikh Khural and Standing Committee valid, and decisions shall be taken by the majority voting of all members present. The Prime Minister's and Government members' appointment and other issues shall be decided by open ballot unless other laws provide otherwise.
- The validity of session of State Ikh Khural, requirement for resolve an issue in discussion and for adopting a law (§27.6).
- The Establishment of a provisional control committee within the power of State Ikh Khural (§28.3, §28.4).
- The Members of State Ikh Khural shall not hold concurrently any post or employment irrespective of his/her official duties (§29.1).

President

- The right of the President of Mongolia to initiate laws (§26.1).
- The right of the President of Mongolia to instruct government (§33.1.3).

Government

- The members of the government shall be restricted to hold a post as "Member of parliament" (§39.1)
- The Prime Minister shall constitute the Government of Mongolia (§39.3)
- The procedure for stepping down the prime minister and government of Mongolia (§43.2, §43.4)
- The inclusion of the names of ministries and their functions in the Constitution of Mongolia (§46.1)
- The Civil Service Council, its independence and function, shall be determined by law (§46.3, §46.4).
- The prohibition on dismissal and removal of civil servants due to political discrimination and election result (§46.2, §46.5).

Judiciary

- The judicial system (§48.1).
- The composition of the General Council of Courts (§49.3).
- The appointment of judges in the Supreme Court of Mongolia, chief justice and judges of other courts (§51.2).
- The minimum age for appointment of judges (§51.3).

Administrative and Territorial Units of Mongolia and their Governing Bodies

- The administrative and territorial units of Mongolia (§57.1, §57.2, §58.1, §58.2, §59.2, §59.3, §60.1, §61.2, §61.4, §62.1, §62.3, §63.1).
- The appointment of governors of aimag, capital city, cities /subordinates to local areas/, districts, baghs, villages and khoros (§60.2).

What prompted the call for constitutional change?

The Constitution of Mongolia was amended in 2000 by the Mongolian Parliament. These amendments are known as the ‘Seven Collapsing Amendments’ by legal scholars because they were not made in accordance with the proper constitutional procedure and were not based on the fundamental principles of Constitution of Mongolia.

The seven amendments were:

- The Constitution originally required the dissolution of the State Ikh Khural if two thirds of the Members of Parliament or the President agreed that it was unable to carry out its mandate. The constitution now provides that MPs may decide to dissolve the State Ikh Khural only if it fails to appoint the Prime Minister within 45 days. The President, in consultation with the Speaker of the Parliament, may also decide to dissolve parliament (art 22.2).
- The process for appointing the Chairman and Vice-Chairman of the State Ikh Khural was changed, moving from a secret ballot to open ballot; and the appointment of the Vice-Chairman to be made by the winning party based on the results of the election (art 24).
- Regular sessions of the State Ikh Khural were reduced from 75 to 50 days (art 27.2).
- Changes were made to the number of MPs required to attend sessions of the State Ikh Khural. Prior to the amendments, an overwhelming majority of all MPs were required to make a valid session. The amendment changed this to require an overwhelming majority of all MPs and Standing Committee members (art 27.6). The prohibition on MPs holding concurrent posts was lifted to allow MPs to also be members of the Cabinet (art 29).
- The process for appointing the Prime Minister was changed to require agreement between parties and coalitions within 5 days.
- Article 39.2 originally required the Prime Minister to consult with the President before submitting his or her proposals on the ‘the structure, composition and change of the Government to the State Ikh Hural’. The amendments allow the Prime Minister to submit such proposals directly to the State Ikh Hural if the consultation with the President does not occur within one week.

These 2000 amendments caused instability of government in Mongolia and misbalanced control of governance authority. The amendments led to the condition that irresponsible decisions of Government of Mongolia could not be easily controlled or restricted. For instance, the percentage of members of parliament needed to sit in a State Ikh Khural session was reduced from 57 percent to 37 percent in adopting a new law or amendment to the existing law (excluding amendment to the Constitution of Mongolia) which increased a risk to the country. Regular sessions of the State Ikh Khural were insufficient to decide what was planned, because of the reduction from 75 to 50 days. The prohibition on MPs holding concurrent posts was lifted to allow MPs to also be members of the Cabinet, resulting in instability of the Cabinet. Members of the Parliament wishing to be Ministers in the Cabinet is reflected in the life-time of the Cabinet, which was shortened after the amendments.

For many years legal scholars and researchers have been trying to find a solution to fix the problems in the Mongolian Government. Constitutional amendments are required for this reason.

Is it an option to reform the existing semi-presidential system, rather than make a significant change to a new parliamentary or presidential system?

The working group is considering whether to adopt a few changes to the semi-presidential system such as to deprive the President of Mongolia of the power to initiate a law and to instruct the government of Mongolia. It is considered that such changes would bring Mongolia close to the standards of a parliamentary system.

What is the process for constitutional amendment? How are these formal processes supplemented by other processes (eg public polling) and why?

The process for constitutional amendment is contained in Chapter 6 of the Mongolian Constitution.

There are several people who may present a draft to amend the Constitution of Mongolia. These are the President of Mongolia, a Member of Parliament or a Member of the Government of Mongolia. However, this is restricted in certain ways. For instance, the person shall not present a proposal which is about minimizing the requirements for an elected candidate for a post which he/she holds at that moment, or an exclusive right which he/she has, or to amend requirements for an election in which he/she will be running. Any draft of the amendment to the Constitution must go through a process of three discussions in the Parliament in order to be adopted.

Article 69.2 provides that if a proposed amendment has through this process of discussions twice and does not obtain a supporting vote of three quarters of the parliamentary members, that draft may not be subject to consideration by the Parliament again under a new composition of the Parliament is constituted.

Often, amendments are first discussed in Parliament, and the members take into account comments and recommendations from various sources. If at least two thirds of the members of Parliament agree to discuss further, a working group including a lawmaker may be established. Then, the working group or Standing Committee will comment and provide conclusions on the draft. The parliamentary members shall discuss the comments and conclusion provided by the Standing Committee as well as comments from parliamentary members.

The Chairman of Parliament shall present a draft of each articles and provision and proceed with polling again. The articles and provisions which are taken votes by not less than three quarters of the members of Parliament, shall be considered as approved. Then the Chairman of Parliament shall present a whole draft and shall take a poll on it. If the draft is voted by not less than three quarters of the members of Parliament, the draft shall be considered as approved and shall announce it to public.

However, Parliament may decide, on a vote of no less than two thirds of members, that the draft shall be considered by public polling in the form of a national referendum (article 68). The referendum shall be administered by a Standing Committee of the State Ikh Khural. Parliament is prohibited from amending articles and provisions approved by public polling. Further, the Constitutional Court is prohibited from discussing articles and provisions approved by public polling.

In April 2017, the Mongolian Parliament conducted a unique process of deliberative polling. 669 randomly selected citizens from across the nation were brought to the capital Ulaanbaatar to consult on constitutional change in a two-day event. The topics consulted on included the powers of the president, the independence of civil society and the frequency of elections.

This event followed the Mongolian government's passage of a law two months earlier that required such a process to be conducted before the constitution could be amended. The process of deliberative polling was

developed by James Fishkin of Stanford's Center for Deliberative Democracy. It had been used previously in Mongolia in 2015, when 300 residents of Ulaanbaatar deliberated about infrastructure projects.

What are likely to be the most difficult questions in designing the constitutional changes?

The following are the most difficult issues confronting the designers of constitutional change:

- The question of the President's right to initiate a law according to the Constitution of Mongolia. This right is shared with a right of State Ikh Khural and Government of Mongolia to initiate a law, and has resulted in conflict and duplicated powers.
- The succession system of Government of Mongolia has been lost due to instability of civil servants' employment. Civil servants have instead become dependent on political discrimination and the election result.
- The conflict and duplication of powers given to municipal authorities and governors of cities. The exact status of administrative and territorial units are not provided by law.
- Arbitrariness, corruption and bribery have been seen in government due to a lack of discipline, a deficient justice and law enforcement system, and a weak system of government accountability.

What comparative models (if any) are being considered? Are any other international influences being brought to bear?

In order to make the constitutional amendments, the Research Department, affiliated to Parliament, conducted a broad range of comparative studies. The Research Department conducted more than 500 research works and published 24 volumes. Out of it, more than 100 research works relate to the parliament, the structure of president, government, powers of judiciary and local government. Thus, the researcher's opinions and conclusions of research works are restricted in certain ways in research work.

Comparative studies of the Constitutions of 186 countries were made by legal scholars and researchers in Mongolia. Contexts which are similar to the Mongolian condition and environment have been presented by legal scholars and researchers to the constitutional amendments working group.

Gunbileg Boldbaatar

Dr Gunbileg Boldbaatar is the president of Mongolian Bar Association. He received a BA in international law at the School of Law, National University of Mongolia in 2003 and an LL.M at the Saint Thomas University in the United States in 2005. He completed his PhD in Law at the School of Law, National University of Mongolia in 2009. Prior to working as the President of Mongolian Bar Association, Dr Boldbaatar worked as a Senior Partner at Erhemj Consulting law firm, an arbitrator at International and National Arbitration of Mongolia, a Legal Policy Counsellor to the Chairman of State Ikh Khural (Parliament of Mongolia) and as a lecturer at the National University of Mongolia. Dr Boldbaatar has held visiting positions at Melbourne Law School in Australia, Kyushu University in Japan and the Max Planck Institute for International and Comparative Law in Germany. He has published more than 20 articles and co-authored 10 law books.