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DeFacto **ARTICLE**

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**WEEKLY**

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## **VULNERABLE POINT OF POST-COMMUNISM**





**JARGALSAIKHAN Dambadarjaa**

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# THREE RISKS

## LOOMING OVER OUR CIVIL SOCIETY

Preparations are underway to revise the Mongolian law on non-governmental organizations and pass with a new name 'The law on non-profit legal entities'. This topic was touched upon in my column *'We're going through democratic backsliding'* two weeks ago. The Independent Research Institute of Mongolia (IRIM) recently completed their analysis on this draft legislation, which was prepared by the Ministry of Justice.

If passed, the proposed law will undoubtedly bring about positive and negative impacts on our civil society, one of the pillars of democracy. While it is challenging to predict all changes and impacts, it is highly likely that the following three risks will materialise.

### RISK OF RESTRICTING NGO ACTIVITIES

The proposed law bans non-profit legal entities from making any kind of donations for religious activities and activities of political parties. The ban would encompass monetary and in-kind donations to candidates in all elections. Also, it includes specific clauses on terrorism financing and money laundering.

The proposed law aims at constraining political parties from having their own NGOs, many of which are led by senior government officials. Although the intention is to restrict over-politicization in the society, the NGO activities to be prohibited are not fully specified, thereby rendering the scope of implementation unclear.

This means NGOs that focus on democracy, good governance, and human rights will also face restrictions to a certain degree. According to a 2016 IRIM report, these NGOs comprise 20.3% of all NGOs. With such restrictions in place, the NGO oversight of the government will weaken and the capacity to deliver the voice of the people to the authorities can be expected to be compromised. More precisely, it will hamper their ability to provide oversight on the state and its use of power, their support of civic political participation, and their capacity to adequately supervise elections -ultimately, their efficiency to strengthen the values of democracy will be impeded.

In addition, the proposal has incorporated regulations on supporting activities for the public good and on the determination of what constitutes as support of the public good. Moreover, it entails an allowance for NGOs that support the public wellbeing to receive a range of benefits, including tax reductions and government support. This would steer NGOs into aligning their activities with the government requirements in order to receive those benefits. As it is the government which will be signing off on what constitutes 'support of the public good', this framework ultimately guarantees the government's direct involvement in determining and controlling the type, form and scope of activities for the public good.

### RISK OF SQUEEZING NGO FUNDING

For NGOs, their most important and pressing issue is funding. The concept section of the proposed law on non-profit legal entities states that 3.9% of total funding of NGOs currently come from membership fees, 21.4% from donations, 67.7% from international funding, and

7% from other sources. The section also states that the NGO funding is prone to risks of terrorism financing and money laundering and mentions the minimal direct involvement from the government (2% of total funding). ►►

▶ According to a 2016 IRIM survey, 28.2% of all respondent NGOs indicated that their main source of funding stems from implementing projects and initiatives from the government. Only 12.1% stated that they generate funding from operational revenues. As a result, the government is pursuing a policy to provide NGOs with direct funding from the public budget.

Nonetheless, increased government funding will heighten the risk of bribery and corruption. The same survey in 2016 revealed that 18,4% of NGOs perceive the lack of openness and transparency of government tenders to be one of the biggest issues of fundraising. Mongolia's current corruption risk is still high, and we've recently seen the corruption cases connected to government funds. This suggests a high likelihood of that the government's fund to support civil society, and other governmental support, might not serve their intended recipients.

Another peril poses the government's attempt to limit international funding. NGOs will be obligated to verify the sources of funding received from other countries, while many international organizations will be required to curb their activities on the basis that they run religious or politically oriented operations. In my previous column I wrote about how the voices of NGOs are being silenced in a similar fashion in many other countries.

## RISK OF INCREASING GOVERNMENT INVOLVEMENT

The establishment of a council to support the development of civil society represents another big change introduced in the new law proposal. The concept of the proposed legislation says "With the objective of forming the foundations to promote the development of civil society, the state will set the legal framework to establish a 'Council to Support Development of Civil Society', which will have the directive to engage, consult, and liaise with the state or government on topics of civil society development."

However, this council is not set to have a structure similar to those of civil society organizations. Four out of nine members of the council ought to be appointed on a proposal by the government minister, while the Cabinet Secretariat appoints or dismisses the council. In this way, the government will clearly have a strong hold over the proposed council. Moreover, given the council's directive of managing the fund to help develop civil society and determining what constitutes as 'support of the public good', their members are likely to be replaced as per political cycles. Hence, there is a significant chance that the fund will not provide sustainability and continuity for their operations. The IRIM survey respondents also perceived growing attempts of the government to get more involved and exert stronger control on civil society organizations.

## PRICE OF LIBERTY

The whole world is going through democratic backsliding, which has led to civil society organizations being more controlled and restricted. In 2017 only, nearly 60 countries passed a law that imposed restrictions on civil society.

Clearly, an improvement of law is desirable. However, you need to base your improvement idea on comprehensive research. Otherwise, the law will need to be amended yet soon again. In Mongolia, the law-making process seeks feedback from people and civil organizations, but it remains very difficult to track whether the feedback has been reflected in the draft legislation. In fact, it is more likely that the feedback is omitted. In this aspect Mongolia is not an isolated case.

For instance, when developing a law on establishing a national center to promote development of civil society, Poland did a fantastic job on collecting input but ended up passing the law discreetly without incorporating the feedback. In Mongolia today, the state is about to embark on a journey to 'get NGOs organised' and impose restrictions on people's freedom association (in public organizations on the basis of social and personal interest) granted by the constitution.

Two hundred years ago, Thomas Jefferson said "Eternal vigilance is the price of liberty". We should not forget its significance.

2019.07.03 ■



№ 489

**JARGALSAIKHAN Dambadarjaa**

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# VULNERABLE POINT OF POST-COMMUNISM

Since the transition to democracy, our social and political landscape is defined by events revolving around corruption. We have a very generic understanding of corruption, that is limited to bribery for power and positions. Thus, we talk a lot about corruption and solutions to eradicate it. Given the many forms and faces of corruption, different methods and solutions are required to tackle this issue. When addressing corruption in developing countries with a weaker economy like ours, Francis Fukuyama points out two phenomena.

1

The first phenomenon is called 'rent-seeking', which arises from various licenses and regulations. For resource-rich countries this represents a common challenge. Rent-seekers are those who seek to use their authority to reap higher benefits with minimum effort. Simply put, these groups seek to perpetuate their benefit solely through their authority.

2

The second phenomenon is called 'clientelism', which describes an interdependence between political elite and business interests where authorities offer advantages to businesses due to the attainment of political power with their support in the first place. The recently disclosed cases, including the so-called '60 billion MNT' case and 'the small and medium enterprise fund' case, are undeniable evidence for the flourishing clientelism in Mongolia. The price stabilization program, the Development Bank loans, and concession contracts are only a part of a very long list of clientelism cases. In short, our current political environment can be described as a 'clientelist politics'.

## WOES OF A YOUNG DEMOCRACY

Clientelism is, of course, nothing new. In the 19th century, for instance, clientelism was so strong in the United States that the political party which won the election used to divvy up the public service between their clientele groups. It is even said that President James Garfield was assassinated because a promised appointment was not made. This led to the passing of a law that ensured the embedding of merit-based principles in the American public service and intended to protect the government from selling positions. In the

20th century, Austria saw their two political parties divvy up all government positions, starting with kindergarten and school headmasters. These examples demonstrate that today's highly developed democracies have also gone through a time when clientelism was status quo.

In our case, 'rent-seeking' and 'clientelism' are the fundamental causes that have been keeping Mongolia's public governance weak for the last 30 years. In the same vein, political parties and media are both supposed to be a channel that helps shape the public opinion by ►►

► expressing views in a more organised and transparent manner. However, over 70 per cent of Mongolia's media are controlled by politicians today, while our political parties are prone to clientelism and unlikely to contribute

to the formation of an educated and informed public opinion. Under these circumstances, civil society is the platform to keep public governance healthy.

## PILLAR OF DEMOCRACY

French political scientist Alexis de Tocqueville has provided a very simple definition of civil society in his book 'Democracy in America'. According to him, civil society is a prerequisite of democracy and a platform where people unite at their own free will and collectively find solutions to common issues by sharing their time, knowledge, and information. In modern terms, civil society is a politically independent, open platform that allows to exercise the right to unite, hold a peaceful demonstration, and voice opinions (to exercise the right to freedom of peaceful assembly and association).

When transitioning to a new society, we ratified the basic rights of civil society in our constitution. In 1997, a law was passed on non-governmental organizations, which is the key institution that represents civil society. Between then and now, over 20,000 NGOs have been

established, which shows that people have been exercising their right to unite. Despite the formation of a plethora of civil society organizations, their quality and maturity remain questionable.

Fifteen years ago, the [CIVICUS](#), which is the global alliance of civil society organizations, conducted its first ever assessment on Mongolia's civil society and its development. The report concluded that our civil society was relatively weak in its ability to hold the government accountable for its actions and influence government policy. Cases of corruption get revealed with plenty of evidence, yet, no one faces accountability for the crimes illustrating that Mongolia's civil society is still not mature enough to exert significant influence on public governance.

## VULNERABLE POINT

Similar events are taking place in the social and political landscape of other post-communist countries which have made a transition similar to Mongolia's. The history of these countries is partly defined by the totalitarian system before the 1990s. Since totalitarianism prohibited an autonomous civil society, therefore these nations did not have the conditions for civil society to flourish when their democratic transition started.

In his book 'From Totalitarianism to Defective Democracy', political scientist Michal Klima described the Czech Republic's 25-year-old clientelism and the crisis of political parties which is very similar to what is happening in Mongolia today. Klima concludes that the void of civil society has become the most vulnerable point of the Czech Republic's transition to democracy.

In this context, civil society has been forming and maturing in these countries. However, we witness increasing attempts to restrict civil society in Eastern Europe, previously viewed as one of the most stable regions.

Fed up of the refugee crises in the euro zone as well as corruption cases of their own authorities, the Eastern European countries elected radical political parties to power. As a result, independent judiciary and civil society are greatly compromised.

Mongolia's democratic transition over the last 30 years has been defined by corruption and corruption-related phenomena. What our society and politics will form into over the next three decades is largely depending on our civil society. A strong civil society is key to escaping the public governance crisis and leaving the clientelist system behind.

As Michal Klima said, if civil society does not fulfil its irreplaceable functions, there will only be a 'clientelist democracy' or even an authoritarian regime.

2019.07.10 ■



## DeFacto **REVIEW**

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**Host:**  
Namsrai Tsend

**Commentator:**  
Jargal Dambadarjaa

## ACCREDITATION OF BANKING EQUITY CAPITAL INCREASE



In this instance we are concerned with accrediting and certifying the manner in which banks increased their equity capital. Given that the main objective of the IMF program was to facilitate the establishment of a healthier banking sector, the first condition was to carry out an Asset Quality Review by the end of 2018, which was completed.

A recommendation was made to commercial banks that they increase their equity capital to a norm consistent with the conduct of efficient business. Commercial banks claim to have implemented this recommendation but we need assurances as to the origin of the influx of capital. A transparency law that allowed for a grace period of seven months following 2015 where individuals and entities to declare previously undeclared income without declaring the source of those funds is relied on by the banks to back their reluctance to divulge information.

33 trillion MNT came into the economy during those seven months, which constitutes more than the annual income of Mongolia. This garnered the attention of international organizations such as IMF that are concerned with ensuring that funds come from healthy sources. Consequently, Mongolia runs the risk of being grey listed by an organization called FATF that investigates money laundering and terrorism financing.

One reason this may take place is due to a significant amount of cases sent from the IAAC to the General Prosecutor's office were not adjudicated. Being grey listed would mean issues with banks that correspond with Mongolia and a boycott of all credit cards issued by Mongolian banks. Despite the reluctance of banks to divulge information, according to Mongol Bank, an investigative group has been set up and its report is expected in the middle of August.

Parliament is considering an Asset Management legislation which is much needed due to the amount of bad loans reaching 15% of the credit portfolio of the country. Bad loans drastically increased in 2015, 2016 and I believe it is correlated to Mongolia's foreign debt. Considering that 50% of the Mongolian total banking assets is comprised of credit, 15% of which are bad loans, bringing a need for the legislation. Many countries that have struggled with bad loans implemented similar measures. Most loans in Mongolia are bought against real estate holdings that are extremely difficult to collect as collateral and involves a process of 3 - 5 years.

It is in the interest of the banking sector to get rid of the banking sector but it has to be done in a proper manner. Writing off bad loans against ownership equity would entail a change in the ownership structure and the creation of an Asset Management company. Under Mongolian legislation, Mongol bank reserves the right to alter the ownership structure of banks. It is a matter of diluting the ownership share in the bank equity. This will hopefully lead to a healthier banking system.

## FAKE OPENING OF KHUSHIGT VALLEY AIRPORT

The agreement that gives Mongolia 49% of the airport but this is not particularly important, as the airport is still not open. It was claimed that the airport was open during the signing ceremony but this is little more than political maneuvering. Moreover, the 32km road connecting Ulaanbaatar to the airport was opened for the ceremony and immediately closed.

We borrowed 65.6 billion yen from Japan 11 years ago with 10-year grace period and a 30-year payment plan. We started making payments last year and the airport is still not open. The situation was not helped by Mongolia going through 6 Prime Ministers, cabinets and 9 Transport Ministers during those 11 years. The airport is ready but aspects such as the road are not ready and we spend 1 billion MNT a month on the maintenance of an un-operational airport.

With the capacity of the airport at 2 million passengers, we expect a complete liberalization of air travel with its opening. This should be facilitated by the open air policy that would allow any airline to conduct operations in Mongolia. This is good news for the customer as the customer is presented with

more choice. The airport will also make significant contributions to the growth of the Mongolian tourism industry.

One of the issues yet to be resolved is the supply of kerosene to the airport. We are dependent on Russia and Rosneft which raises concerns regarding quality standards that the Japanese would place on kerosene. With a co-management agreement with Japan, I believe the management of the airport will be more efficient. The consortium of Japanese companies shall ensure that the new airport operates at international standards.

With political interests permeating the airport, its opening may be delayed longer than expected but it is my hope that it will enjoy a degree of continuity in the management of the airport given Japanese management. Mongolians are delusional in that they believe that they already operate an airport consistent with international standards but the new airport will allow them to learn how to truly operate one. The only one conveyer at the current airport often leads to delays in delivering luggage and confusion when multiple flights land.

## SPRING SESSION OF PARLIAMENT AND EXTRAORDINARY SESSION

The Spring session of parliament made 14 new laws, amended 74 laws and abolished 10 laws. It is difficult to gauge the success of parliamentary systems. Lawmaking is only considered effective if it hinders the operations of criminals and furthers the pursuit of justice. One has to question the quality of legislation that is produced if Parliament is forced to amend 74 laws in one session. The 60% attendance of Parliament is also disheartening and raises questions as to the whereabouts of the remaining 40%.



During his Speakership, Mr. Zandanshatar is implementing some interesting measures that were previously not pursued.

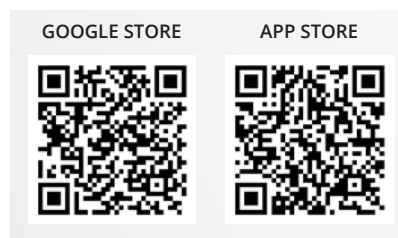
One thing of note is that he held public hearings on this issue and on the change in the leadership of the IAAC, Prosecutor's office and the Head of Mongolian Supreme Court as well as on the prevention of abuse against children. Moreover, the Parliament took up the issue of the state of human rights in Mongolia for the first time in 10 years.

Regarding the extraordinary session, there was no other way of addressing amendments to the Constitution. At the behest of the President, an extraordinary session of parliament is scheduled to continue on the 17th of July following the Naadam Festivities. Standing committees will continue their operations through Naadam in order to ensure that all relevant information are presented to available.

The extraordinary session is expected to discuss amendments to the Constitution, the report of the working group on the OT investment agreements and the change in the leadership of the election commission. If I may diverge for a moment, I have long stated that there needs to be electorate commissions consisting of non-party individuals than partisan representatives.

Back to the amendments, the Presidential term would be changed to a six-year non re-electable term. They also propose changing the minimum age of candidates to 55. One thing to note however is that the new Constitution, should it be adopted, will come into effect on January 1st of 2025. There have also been rumblings of limiting presidential power, particularly regarding nominations for the judiciary. There is no doubt that the Constitution shall be approved given that one party controls 85% of seats and is committed to change.

*This review has been edited here for space and clarity. You can watch the full 30-minute review on the Defacto website [\[HERE\]](#).*



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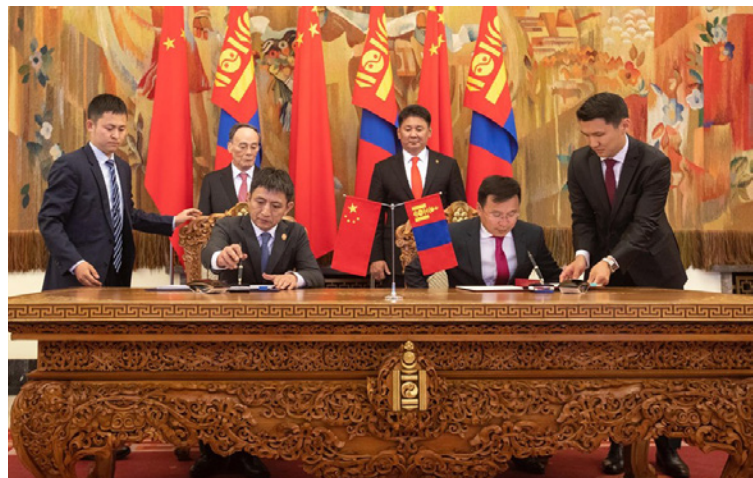
## VICE-PRESIDENT OF THE PEOPLE'S REPUBLIC OF CHINA

The Vice-President of Wan Qishan is visited Mongolia between July 10 – 12 at the behest of Prime Minister Khurelsukh Ukhnaa on the occasion of the 70th anniversary of the establishment of diplomatic relations between the countries and the 25th anniversary of the cooperation agreement. There were a number of documents signed, the Vice President met with President Battulga Khaltmaa and the Speaker of Parliament, Mr. Zandanshatar Gombojav, visited the history museum and attended the opening ceremony of the Naadam festival. Vice President Wan Qishan is a close acquaintance of President Xi Jinping together during the Cultural Revolution at Shaanxi province.

Agreements were reached on issues such as an extension to the Disabled Children's Center, cooperation agreement between the border towns of Zamiin-Uud and Erlian, as well as between Sainshand and Baotou. The Vice-President also visited a projects funded by a development loan from China such as the road to the new airport and a 20.9 km road construction from Gachuurt to Nalaikh.

The visit carries significant importance as Mongolia is currently highly dependent on China. China continues to be Mongolia's largest trading partner with the 6.7 billion USD trade in 2017 with them constituting 70% of Mongolia's international

trade. Today, 92% of our exports are to China and 34% of our imports come from China. An agreement was also reached that the two countries would increase its trade to 10 billion USD per annum by 2020. During a visit by President Xi Jinping five years ago, an agreement was reached to develop the relations of the two countries to a strategic partnership level.



This strategic partnership will hopefully facilitate cooperation between the private industries of the two countries. Our two neighbors also support us by providing long term low interest loans and at times even providing certain amounts of grants. This should stimulate cooperation between private industries but the issue is that the economies of those countries are dominated by state-owned-enterprises.

## ORGANIZATION OF NAADAM FESTIVAL

We have a special legislation governing the Naadam festival adopted in 2003 and amended in 2007, 2014, 2017. Naadam has also evolved into a holiday for the Mongolian diaspora as well as those living in Mongolia. The underlying question that has to be raised is whether Naadam is a state festival, people's festival or a people's festival organized by the state.

Naadam is funded through the state budget but concerns can be raised whether those funds are better off diverted to tackling social issues such as overcrowded schools and improving medical services. The time has come to investigate organizing the festivities without budget money. One issue surrounding Naadam is that half of the seats in the stadium are sold domestically, a quarter reserved for dignitaries and the remaining quarter (about 3000 seats) sold to tourists. This is despite a demand of 15,000 tickets from tour operators.

Moreover, the price of the ticket has not changed for the last 10 years with it remaining at 24,000 MNT. This creates a black market of tickets being sold at over 120,000 MNT at the stadium. This is actually the market price for the tickets so proper marketing and setting the official price at that rate can generate more funds than we can imagine. Given the increasing demand, we should build a new stadium but it should not be funded from the state budget. If it was managed by the private sector, there would no longer be excruciating lines for tickets as the price will be set at market price.

A small amount of tickets was sold electronically but they still had to be collected in person. As for putting a ban on the resale of tickets, there is no legal mechanism through which to pursue this. A democratic society can not ban the resale of tickets

simply because some managed to procure them at a cheaper price. A better measure would be to simply increase ticket prices to 120,000 MNT. Less people will be able to buy tickets but placing LED screens and other facilities around the stadium will allow for them to undergo a similar experience.

The horseraces are marred by a similar mismanagement. This becomes especially apparent with thousands of people rushing to the finish line to touch the sweat of the horses as it allegedly brings good fortune. Cars and people are separated at the finish line with ditches but the finish of horseraces is difficult to see given the 2-3 km line of people. The situation can be fixed by placing sufficient seating stands that will also open up the opportunity to place advertisements.



Moreover, if the private sector or professional associations organize the festivities, there be less of a need for police. In general, state involvement in the festivities should be kept to a minimum. The organization of the festival is significantly outside the boundaries of the role of the state which is to protect one's life, rights and property. Put into the hands of the of the private sector, Naadam can become a source of significant revenue such as the football World Cup.

## MONGOLIA'S TOURISM SECTOR



Currently the percentage of returning tourists to Mongolia is less than 10%. An interesting study by Mongolian Airlines and the Mongolian Tourism Association in 2016 determined the strengths and weaknesses of the Mongolian tourism sector. Another issue that is presented is a challenge for Mongolian Airlines to integrate their domestic flights with the three other airlines given Mongolia's large territory and difficulty to travel to, from and between provinces.

The aforementioned study indicated that one of the main attractions of Mongolia was a promise to experience traditional nomadic culture. Therefore, services that provide tourists with experiences in constructing gers, herding and other similar ventures will be a significant success.

There are many documents regarding the growth of Mongolian tourism such as the National Program of Tourism Development adopted in August 2015 which involves coordinating the ticket prices of airlines. Much like many programs adopted by the Mongolian government, this features characteristics of socialist centrally planned economy policies. Moreover, they rarely place responsibility for implementing the policies on anyone. The program also promised comfortable rest stops along key tourist trails which are yet to be implemented.

Standards should be set for tourist camps and those incapable, unwilling to meet those standards should be closed. The same standards should be upheld for domestic tourism. If we wish to increase tourism, the quality of our tourism facilities have to be significantly improved.

I wrote an article a year ago on the potential of Mongolia's hospitality industry. Aside from mining, I believe tourism is the only sector capable of carrying the Mongolian economy. The sector consists of hotels, restaurants and entertainment. If Mongolia has half a million tourists bringing 500 million USD into the economy, increasing the number of tourists twentyfold will make tourism industry the size of Mongolia's current economy.

In order to engage in this pursuit, Mongolia should institute an open-air policy as travelling by air is the most and perhaps the only feasible way of coming to Mongolia. With Asiana and SCAT airlines beginning flights to Mongolia, ticket prices are expected to become more competitive. One issue that may arise is an enhanced capacity to bring tourists in winter for whom Mongolia would have very little to offer. Another promise is that camps will be ranked and brought to a level consistent with international standards which has also not taken place.

In order to stimulate tourism, the state should set standards for sanitary conditions of camps, security of camps as well as other areas and enforce them. The quality requirements for services, hotels and lodges need to be enhanced.