

[Working Paper Series: Ups and Downs of Direct Democracy Trends in Asia]

Direct Democracy's History and Trends in Mongolia

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Although hailed as a democratic outlier in Central Asia, if we consider the essence of direct democracy to be 'direct voting,' Mongolia remains a country with limited space for direct democracy. Since Mongolia's democratic transition in the 1990s, no referendums have been held, citizens' initiatives are rarely considered, and demands for recalls are disregarded. Institutional mechanisms of direct voting are lacking. Therefore, this working paper examines the institutional mechanisms of direct democracy defined more broadly as public participation, rather than solely direct voting.

Institutional Mechanisms of Direct Democracy

Mongolia has been making progress in institutionalizing mechanisms of direct democracy since its democratic transition in 1990. The first democratic Constitution of 1992 includes three articles that have bearing on direct democracy.¹ Since then, legal reforms have been undertaken to establish and strengthen democracy in Mongolia. During the early stages of reform in the 1990s, foundational laws such as the Law on People's Referendums of Mongolia (1995) and the Law on Non-Governmental Organizations (1997) were ratified. The 2010s saw another surge in direct democracy initiatives through the ratification of laws promoting government transparency, citizen participation, and participatory budgeting. Notable legislation includes the Law on Information Transparency and Right to Information (2011); the Integrated Budget Law, which allows direct citizen participation in local development funds (2013); the Glass Account Law (2014), which requires transparency of the state budget; the Law on Citizens Halls; and the Law on Deliberative Democracy (2017), which allows Mongolia to exercise various direct democracy mechanisms. This section elaborates on the current implementation of these mechanisms, challenges faced, and changes and reforms needed.

¹ **Article 3** stipulates "the people of Mongolia shall directly participate in State affairs and shall exercise such right through the representative organ of the State power established by their election." Clause 12 of **Article 16** stipulates "the right to submit petitions or complaints to the State organs and public officials, and get it resolved by those State organs." Clause 16 of **Article 16** stipulates "freedom of thought, opinion and expression, speech, press, and peaceful assembly." Clause 16 of **Article 25** on referendums stipulates that the State Great Khural must "hold national referendums, verify the validity of a referendum in which the majority of citizens who are qualified for elections have participated, and consider the question which obtained a majority vote as decided."

Right to Information

The 2011 Law on Information Transparency and Right to Information (Law on RTI) requires all government organizations (judiciary, parliamentary, executive, and sub-national) to maintain transparency in operations, human resources, budgets, and procurement. The law specifies methods, timelines, and standards of information transparency to facilitate citizens' access to information and ability to provide feedback and comments to the government. The Independent Research Institute of Mongolia (IRIM) has engaged in regular monitoring of the implementation of the law and documented the gradual improvement of transparency across organizations. Yet, the lack of timeliness, availability and relevance, and user-friendly information persist² (IRIM 2021). The 2016 Law on State and Official Secrets has constrained the progress that can be made through the RTI Law and, according to a CIVICUS analysis, “allows virtually all information to be classified as a state or official secret, leading in some cases to the prosecution of journalists exposing corruption” (CIVICUS 2020). In 2021, laws on public information transparency and the protection of personal information were approved by the Parliament. The laws allow for establishing and using open data and improved mechanisms of information transparency and access to information, but only for information that is not classified as secret. However, as mentioned in the 2022 BTI index, “the new law allows the government to define the scope of state secrets.” Per The Globe International, the number of documents or portions of documents classified as a ‘state secrets’ in Mongolia increased from 60 in 2017 to 565 in 2019, indicating a serious setback for the right to access information (Bertelsmann Stiftung 2022).

Petitions, Comments, and Complaint Mechanisms

The 1995 Law on Resolving Petitions and Complaints of Citizens to State Organizations and Public Officials was a significant step forward in formalizing the political participation of citizens. The law aimed to ensure the right of every citizen to receive a response and proposed solution to their problems, offering four mechanisms for participation: petitions, proposals, notices, and complaints. The law has been revised several times. In 2003, improvements in registering and tracking the status of citizen complaints were introduced, and in 2009, articles were added to guarantee that those who lodged a petition or complaint would receive a final response and resolution. In 2016, additional clarifications were issued regarding how to handle cases of disagreement with the government response and how to address higher-level organizations and officials.

Despite these updates to the law, several further changes and reforms are needed. First, the period to respond to a petition or complaint should be shortened to meet the needs of the public in the digital information era. The current law specifies that “a petition or a complaint shall be resolved within 30 days of its receipt,” “this period may be extended for up to 30 days,” and “a response to a petition with the nature of a proposal shall be provided within 90 days.” Second, there should be clarity and criteria about the meaning of “resolve.” Current practice considers a problem “resolved” when a written response has been provided (Myagmartsooj 2013). Third, the distinction between the four types of feedback—petitions, proposals, notices, and complaints—should be revised to meet

² As of 2021, the government digital transparency index was 0.602 out of 1.0 according to the IRIM monitoring.

international standards, and the process for resolving them should be clearly mapped out. The lack of clarity surrounding the definition of these main concepts has resulted in a poor registration and reporting system nationwide, which in turn has affected the ability to engage in adequate planning.

In 2012, the Parliament³ established a Standing Committee on Resolving Petitions and Complaints for the first time. In 2016, the Committee received upwards of 3,000 petitions and complaints. In 2018, 1,233 complaints/petitions were received from 7,231 citizens, of which 9.2% reflected issues pertaining to the public interest (State Great Khural Committee on Petition 2018).

The Standing Committee is an important mechanism of direct democracy and accountability, as it can form working groups, initiate public hearings, appoint analysts to conduct further investigation, or submit an inquiry from government officials and organizations. However, the current Parliament does not have a dedicated Standing Committee on Petitions and Complaints (State Great Khural 2020).

Referendums

Article 24 of the Constitution of Mongolia (1992) specifies regulations surrounding people's referendums, and the Law on People's Referendums of Mongolia (1995) specifies that only the president, government, or parliament (with at least one third of members voting in favor) have the right to initiate national referendums. This law has several drawbacks. First, it restricts the right of citizens to initiate a referendum. Second, it lacks clarity on what preconditions must be met to initiate a referendum. Third, there are strict limitations on repeating referendums if needed, making it difficult to use the national referendums due to their irreversible nature. For example, a resolution of a referendum can only be amended if at least three quarters of the Parliament vote in favor, and within to five years for a referendum that had a clear majority and two years for a referendum that did not have a clear majority. Fourth, the cost of organizing a referendum is equivalent to that of a general election (Chultemsuren 2007). As a result, following its adoption, the law was amended just once (in 2016), and not a single referendum has been held thus far.⁴ Although no substantial changes were introduced in 2016, the Law on People's Referendums was amended to make it consistent with the Law on General Elections, which uses automated election systems. The Constitutional Amendment in 2019 introduced a clause relating to referendums, stating, "Mongolia shall not allow any attempt to negate its independence and territorial integrity and prohibits a referendum for this purpose."

Deliberative Polling

The Mongolian Law on Deliberative Polling was ratified in 2017 based on Professor James Fishkin's (Stanford University) theory of deliberative polling. The law stipulates that executive and legislative organizations at all levels can hold a deliberative poll to identify issues and consult with citizens on policy priorities. A deliberative poll should select a random and representative sample of

³ Parliament of Mongolia

⁴ The Parliament of Mongolia did not hold a referendum when it introduced amendments to the Constitution of Mongolia in 2000. When the second set of amendments to the Constitution were introduced in 2019, deliberative polling (explained later in this paper) was used.

the population to engage in dialogue with competing experts using carefully balanced briefing materials and questionnaires. This deliberative polling process is required for projects to be funded by the local development fund, for planning of cities and green facilities in public space, and prior to a constitutional amendment (Naran 2019). The organizational cost is covered by the state budget.

Using this law, the first deliberative poll was conducted in Mongolia in April 2017 as part of an effort to amend the Constitution. The quantitative results were used as the basis for recommendations to the Parliament about which proposals had sufficient support to merit consideration (Naran 2019). In total, 1,570 citizens were polled on six topics related to constitutional amendments and received a written explanation and oral consultation with experts (Lundeejantsan 2017). As constitutional researcher Odonkhoo observed, “It was an innovative experiment not only in Mongolia but also around the world” (Odonkhoo 2021). In 2018, deliberative polling was organized on various topics including illegal coal extraction, and in 2020 on rangeland protection.

Public Hearings

The Law on Public Hearing (2015) provides that public hearings shall be held before the approval of administrative legal acts and the approval of administrative decisions concerning the public interest. The law provides mechanisms for direct democracy by allowing government organizations and officials to consult, monitor, evaluate, and obtain expert views on nine types of issues.⁵ The initiative to hold a public hearing can be initiated by a citizen, a local government, or a legal entity.

Citizens Halls were established in 2009 under President Elbegdorj Tsakhia as a permanent venue for public hearings on draft laws, the first of which would be the draft Press Law (Benequista and H 2011). In 2012, the Parliament’s Sub-Committee on Human Rights organized the first public hearing on the protest event of July 1, 2008⁶. Since then, dozens of public hearings have been organized concerning both national and local level issues.⁷

Public hearings are regularly employed by a wide range of stakeholders at different levels regarding a variety of topics. The law has been amended and improved in a timely manner. However, efforts should be made to increase public knowledge about the public hearing mechanism and its potential for use, and monitoring of the implementation of the results of hearings should be increased..

Digital and E-governance

E-governance has become a major focus of the Mongolian government. The e-Mongolia national program was first approved in 2005 with the aim of increasing the number of internet users and improving digital infrastructure in the country.⁸ Between 2008 and 2012, the National Data Center

⁵ Namely: legislation, general oversight, budget oversight, appointments, administrative matters, local planning, hearings on consultations, oversight of human rights and freedom.

⁶ A mass protest where about 220 civilians and 108 servicemen were injured, 700 protesters were detained, and 5 were shot dead. <https://www.reuters.com/article/us-mongolia-idUSSP3149220080702>

⁷ Examples include appointment of head of the Anti-Corruption Agency, local budgeting of Bayanzurh District of Ulaanbaatar city, land use planning, the access and right to education of children with disabilities, socio-economic development planning in Bayanzurkh District, and consultation on amendment of the Law on General Elections. Various international organizations including IRI and Open Society Forum were providing training and technical support in these processes.

⁸ Resolution #216 of the Government of Mongolia, 2005

was established,⁹ and between 2012 and 2016, the e-governance program introduced 25 types of e-services.¹⁰ Since 2013, the call center "11-11" has provided a platform for citizens to give direct feedback. This was expanded in 2019 to the Government Public Communication Center, which accepts feedback, transfers callers to the relevant government organization, and monitors the implementation of the program. According to the 2018 Index on E-Participation, Mongolia ranked 65th with a rating of 0.736. However, the country slid to 87th place with a rating of 0.607 in 2020 (UN 2020).

Although digital transformation is making services easily accessible to citizens and providing more opportunities to participate in governance, as some studies note, Mongolia's preparedness remains insufficient, with one in five citizens living with limited access to electricity (L.Galbaatar 2020). The digital divide is real, especially among older people and people with disabilities (IRIM and UNDP 2021). Capacity building to improve the digital skills of marginalized groups, increased support for e-participation, actual implementation of initiatives, and monitoring of and accountability for said implementation, are needed. Furthermore, digital platforms are primarily used to regulate the state-to-citizen relationship rather than to support citizen-to-state relationships and other feedback relationships. The enabling environment within which citizens can use digital methods to directly participate in governance and vote on issues pertaining to their needs remains inadequate.

Other mechanisms of public participation have been created as part of the State Decentralization Policy, such as citizen participation in setting local budget priorities and voting for Local Development Fund investments. However, the scale of these local budgets is relatively small and such participation is not a standard element of general state budget processes.

Prevailing Claims about Democracy and Direct Democracy

Popular Claims in Support of Implementing Direct Democracy Mechanisms

Major claims in support of implementing direct democratic mechanisms relate to Mongolia's independence and identity as a free and democratic country, the small population (which facilitates participation in decision-making), opportunities for budget efficiency, and the need to ensure accountability. Groups supporting or advancing these views include civil society organizations, media representatives, pro-democracy activists, and politicians.

Table 1: Claims Supporting Democracy and Direct Democracy

Popular Claims Supporting Direct Democracy	Which Groups	Reasons/Rationale
Mongolia is a democratic country , and the principle of citizen participation is enshrined in the Constitution	Opposition parties (e.g. Democratic Party), journalists, activists, and CSOs	Depending on which party wins elections, the leadership of presidents, prime ministers and the parliament is critical to support efforts to advance direct democracy

⁹ Resolution #78, Annex 1 of the Government of Mongolia, 2008

¹⁰ Resolution #101, Annex 1 of the Government of Mongolia 2012

The opportunity to directly influence decision making should be made available to marginalized and vulnerable groups	Marginalized and vulnerable groups (youth, older persons, people with disabilities), CSOs	Limited access to other lengthy participatory processes (e.g. writing official petitions and complaints), limited ability to use digital tools, etc.
The process of facilitating direct democracy mechanisms has been simplified and the cost has decreased thanks to digitalization . Therefore, direct democracy mechanisms should be used more often.	Media, IT, Ministry of Communications	Tools, including e-tools, are expanding direct democracy. Digital development/progress is improving access to tools and refining regulations. COVID-19 lockdowns emphasized the need for enhanced direct democracy
There is a need for direct participation - Parliamentarians and local representative councils have been ineffective in reflecting and acting on the voices of the public.	General public	Expressed through demonstrations and social media movements demanding direct participation. Provides opportunities and signals for the population to participate in politics. Reinforced by media and social media.
Citizens and businesses should not/cannot afford to wait for the bureaucracy and government to solve social problems. Hence, direct action and implementation are needed	CSOs, communities, activists	Citizen cooperation and support – citizen groups and NGOs taking initiative to solve social problems
There is a need for direct oversight of budget, contracting, and procurement. Accountability should be demanded from politicians	Micro, small and medium-sized business owners	MSMEs bore the economic costs of the pandemic and suffered from the embezzlement of public funds. This pushed MSME owners and employees to support democracy

Popular Claims against Implementing Direct Democracy Mechanisms

Table 2 Claims against (Direct) Democracy

Popular Claims Against Direct Democracy	Which Groups	Reasons/Rationale
Nationalist claims – anti-democratic claims and attacking so-called Pro-American “liberals”	Nationalist groups	Extremist and discriminatory/far-right views have spread via social media
National security concerns should limit opportunities for the intervention of foreign agents and interference in government operations ¹¹	National security, justice and defense sector members	Mongolia’s independence from and fear of external actors. For example, over-dependence on Russia and China could hinder Mongolia’s development. A friendly relationship with the two neighbors is needed

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Unity and need to support each other. There is no need for debate or arguments during emergencies/crisis situations	Government, politicians, opposition	Prioritizing unity takes precedence over the notion of plurality and democracy
CSOs should be restricted and controlled in terms of registration, funding, and operations to avoid money laundering and misuse by political powers ¹²	Leaders and members of national defense, security, and justice systems	Increased risk of money laundering, terrorism, and disobedience
Inequality - democracy only enriches the rich and their large-scale businesses. Ordinary citizens are not able to benefit from democracy.	Media, journalists, and politicians	Declining trust in representative democracy, increased corruption, and unethical behavior of politicians. Increasing poverty and inequality—disappointment with democracy over the last 30 years and unfulfilled expectations.
Mongolia should prioritize friendly relationships above all and avoid adopting values that are too “Western” and “liberal”	Nationalist movements	Unfavorable international environment and disinformation/propaganda from Russia and China
Lingering emergency situations justify quick, direct decisions making rather than a lengthy consultative process	Government, parliament and some academics	Increasing restrictions on demonstrations and protests in public spaces to defend the ruling party’s interests
Rather than direct and regular criticisms that risk stalling progress, direct support is needed for the country’s achievement of its long-term vision and prosperity	Government/cabinet, politicians	Due to several changes in government and instability of civil services, calls for government stability have been increasing. ¹³ Stagnating economic growth and uncertain times
The “ masses ” are inherently uneducated and incapable of making informed and rational decisions, and therefore should not be included in governance ¹⁴	Journalists, influencers, and politicians	Elitist arguments

A technical, legislative, and cultural environment—as well as leadership of politicians and non-state actors—favorable to direct democracy exists in Mongolia. Nonetheless, recent years have seen accelerating regression, with increasing censorship and limitations on freedom of expression and speech, as well as the outbreak of demonstrations and protests during COVID-19 lockdowns. This has been exacerbated by an unfavorable external environment and series of events, including the mass protests/events in Kazakhstan, Mongolia’s economic dependence on China (felt strongly during

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¹⁴ Prominent politicians decried the participation of “ordinary citizens” in a discussion of legal affairs, arguing that only a panel of experts should be allowed to comment on draft laws <https://participedia.net/case/1150>

border closures during the COVID-19 crisis), and Russia's invasion of Ukraine. Furthermore, the declining support of Western bilateral and multi-lateral organizations in promoting democratic values has been strongly felt. ■

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